



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.22.9

AUGUST 11, 2022

## EFFECTIVE DATE

(08-11-2022)

## PURPOSE

- (1) This transmits revised IRM 8.22.9, Closing and Post Closing Actions, incorporating Appeals Interim Guidance Memorandum AP-08-0820-0015, Automated Offer in Compromise (AOIC) Generated Form 7249 and Electronic Public Inspection File (PIF), Appeals Technical Employee (ATE) Guidance.

## MATERIAL CHANGES

- (1) See the table below for material changes in this IRM:

IRM	Title and Brief Description
IRM 8.22.9.4.3.3, Acceptance - Counsel Review Not Required	At (1), incorporated IGM AP-08-0820-0015, to include a redacted, AOIC generated Form 7249.
IRM 8.22.9.4.3.4, Acceptance - Counsel Review Required	At (2), incorporated IGM AP-08-0820-0015 to include a redacted, AOIC generated Form 7249.

## EFFECT ON OTHER DOCUMENTS

IRM 8.22.9 dated August 26, 2020, is superseded. This revision incorporates Appeals Interim Guidance Memorandum AP-08-0820-0015, Automated Offer in Compromise (AOIC) Generated Form 7249 and Electronic Public Inspection File (PIF), Appeals Technical Employee (ATE) Guidance.

## AUDIENCE

Appeals Officers, Appeals Account Resolution Specialists and Appeals Team Managers

Steven M. Martin  
Director, Case and Operations Support



8.22.9

Closing and Post Closing Actions

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8.22.9.1  
(08-26-2020)  
**Program Scope and Objectives**

- (1) Purpose: This section provides guidance to Appeals Technical Employees (ATEs) and Appeals Team Managers (ATMs) for closing and post-closing actions in Collection Due Process (CDP), Equivalent Hearing (EH) and Retained Jurisdiction (RJ) cases.
- (2) Not every closing issue is discussed in this section. Instructions for some issues fit better in other sections. The table below reflects the IRM location of instructions for closing issues not covered in this section.

Closing Issue	IRM Location
Manually-Monitored Installment Agreements	IRM 8.22.7.5.2
Currently Not Collectible	IRM 8.22.7.7
OIC-Collection Recommends Acceptance	IRM 8.22.7.10.4.4
OIC-Collection Recommends Rejection	IRM 8.22.7.10.4.5
OIC-Mandatory Withdrawals, Returns and Terminated Offers	IRM 8.22.7.10.6
EITC-when EITC is precluded from CDP	IRM 8.22.8.9
Reasonable Cause Penalty Abatement -when PENAP is precluded from CDP	IRM 8.22.8.10.6
SOB-Approval of Case Decisions	IRM 8.22.8.14.4

The Appeals Team Manager (ATM) has approval authority for all CDP closures except:

- Son of Boss (SOB) liabilities
  - Offers in Compromise (OIC) that require a higher level of approval under IRM 1.2.2.6, **Delegation Order 5-1 (Rev. 5)**.
- (3) Audience: The primary users of this IRM section are ATEs and Appeals Team Managers (ATMs) handling CDP, EH and RJ cases.
  - (4) Policy Owner: Director, Case and Operations Support.
  - (5) Program Owner: Director, Policy, Planning, Quality and Analysis (PPQ&A).
  - (6) Contact Information: Appeals Employees should follow established procedures on **How to Contact an Analyst**. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM section.

8.22.9.1.1  
(08-26-2020)  
**Background**

- (1) The IRS Restructuring and Reform Act of 1998 (RRA 98) created Collection Due Process (CDP) appeal rights and with them, the ability for taxpayers to contest their liability under certain circumstances.

- 8.22.9.1.2  
(08-26-2020)  
**Authority**
- (1) Internal Revenue Code (IRC) sections 6320 and 6330 are the primary sources of authority, in addition to applicable Internal Revenue Manual (IRM) sections. Further, the Taxpayer Bill of Rights, IRC 7803(a)(3), applies to Appeals employees' interactions with taxpayers.
- 8.22.9.1.3  
(08-26-2020)  
**Responsibilities**
- (1) The Policy analyst shown as the originator on the Product Catalog page is the assigned author of this IRM.
- 8.22.9.1.4  
(08-26-2020)  
**Program Reports**
- (1) PPQ&A provides trend and data analyses and detailed summary reports for Appeals.
- 8.22.9.1.5  
(08-26-2020)  
**Terms and Acronyms**
- (1) See IRM Exhibit 8.22.4-3, Common Terms and Acronyms used in Collection Due Process, for such common terms and their definitions.
- 8.22.9.2  
(08-26-2020)  
**Administrative Record**
- (1) Your decision in a timely CDP case may be subject to Tax Court review. When a taxpayer petitions Tax Court, the Court reviews the administrative record you compiled in making your determination. If the administrative record is incomplete, the CDP may be remanded for reconsideration.
- (2) Regardless of the format of the administrative record (paper, electronic, or a hybrid of the two), at closing, the record should include the following:
- Final Notice of Determination (NOD) and any Supplemental NOD (if applicable)
  - ACM/attachments to the NOD
  - Case Activity Record (CAR), including hand-written notes maintained separately from the CAR
  - Final Form 5402
  - CDP hearing request and envelope(if available)
  - CDP lien/levy notice (Letter 3172, Letter 1058, etc.). If not available, include transcripts showing appropriate transaction code entries.
  - All documents and correspondence sent to or received from the taxpayer/representative, in any format
  - All documents and correspondence sent to or received from the Service (such as in response to an ARI, or an IS, OIC, PENAP or other CDP related issue)
  - Any account transcripts reviewed by you (AMS, ICS, IDRS, Form 4340, etc.)
  - Any financial or related forms (Form 433-A, 433-B, 433-F, Form 14561, etc.) and related documentation
  - Forms 656, 656-L and/or 14640
  - Documentation related to verification of supervisory approval of penalties under section 6751(b)(1)
  - Other documents obtained from the Service's records, and which were reviewed in making determinations regarding underlying liability or other determinations, including:
    - Tax Returns
    - SNOD and supporting documents
    - For certain TFRP issues, Letter 1153 and Form 4183 and related documents

- Documentation establishing that a liability issue should be precluded from consideration in CDP
- Documentation establishing that an issue is precluded from consideration in the CDP hearing under 6330(c)(4)
- Form 14041, *Waiver of Right to Request New Settlement Officer*, if applicable
- Tape Recordings (if the taxpayer recorded the hearing)

8.22.9.3  
(11-13-2013)  
**Disposing of Credit Reports**

- (1) When closing a CDP case with a credit report:
  - a. Summarize your review of the report in the case activity record, and
  - b. Remove and destroy the credit report prior to submitting the case for closure.
- (2) The disposition of credit reports by IRS personnel is monitored under The Fair Credit Reporting Act, 15 U.S.C. 1681.

8.22.9.4  
(11-13-2013)  
**Closing a CDP with a Related WUNO**

- (1) When a separate Work Unit Number (WUNO) is established for a non-precluded liability issue in CDP, both WUNOs must be closed together to the same Account and Processing Support (APS) location unless one is withdrawn. APS holds the case files together until the suspense periods expires or the matter is resolved in Tax Court.
- (2) The related WUNO may be an interest abatement, innocent spouse, offer-in-compromise or other CDP-related liability issue.

8.22.9.4.1  
(11-13-2013)  
**Closing a CDP with Interest Abatement**

- (1) CDP and interest abatement WUNOs must have separate administrative files due to different closing actions required for each. These files must be closed together unless one is withdrawn.
- (2) At the conclusion of the CDP hearing, issue one of the combination letters below. A combination letter must be used as it provides the taxpayer with an extended period to petition Tax Court on the interest abatement issue.

If...	Then issue...
Timely CDP	Letter 4389 - Notice of Determination Concerning Collection Action(s) Under IRC 6320 and/or IRC 6330 and Abatement of Interest Under IRC 6404
EH	Letter 4440 - Decision Letter Concerning Equivalent Hearing Under Section 6320 and/or 6330 of the Internal Revenue Code and Abatement of Interest Under Section 6404

8.22.9.4.2  
(11-13-2013)  
**Closing a CDP with Innocent Spouse**

- (1) CDP and Innocent Spouse (IS) WUNOs must have separate administrative files due to different closing actions required for each. These files must be closed together unless one is withdrawn.
- (2) When a joint CDP request includes IS as an issue, each spouse receives a different closing letter because:
  - The requesting spouse (RS) has 90 days to petition Tax Court regarding the IS determination

- The RS and non-requesting spouse (NRS) each have 30 days to petition Tax Court regarding the CDP determination

For joint CDP requests, the CDP attachment can be the same for both spouses as Appeals is making one determination/decision.

- (3) The table below describes the closing letters in a CDP case where the NRS was a participant in the CDP hearing. Letter 3289, Final Appeals Notice, is not issued when the NRS is advised of the result of the IS decision in the CDP closing letter.

If...	And...	Issue to RS...	Issue to NRS...
Timely CDP	Taxpayer(s) sign Form 12257 and RS signs Form 870 IS-Waiver	Letter 4382, Form 12257 Closing Letter, acknowledging the receipt of both the CDP and IS waivers	Letter 4382
	Taxpayer(s) sign Form 12257 but RS does not sign Form 870IS	<ul style="list-style-type: none"> <li>• Letter 4382</li> <li>• Letter 3288, Final Appeals Determination to Requesting Spouse</li> </ul>	Letter 4382
	Taxpayer(s) do not sign Form 12257 but RS signs Form 870IS	Letter 3193, Notice of Determination	Letter 3193
	Taxpayer(s) do not sign Form 12257 and RS does not sign Form 870IS.	Letter 4390, Notice of Determination, Request for Relief from Joint and Several Liability	Letter 3193
EH	RS signs Form 870IS	Letter 3210, Decision on Equivalent Hearing Under IRC Section 6320 and/or 6330	Letter 3210
	RS does not sign Form 870IS	Letter 4439, Decision Letter - Equivalent Hearing and Innocent Spouse	Letter 3210

- (4) When the NRS was not a participant in the CDP hearing, issue the NRS Letter 3289 at closing.
- (5) Input the final action codes to both WUNOs. Your ATM inputs the ACAP to both WUNOs.

#### 8.22.9.4.3 (11-13-2013)

#### **Closing a CDP with Offer in Compromise**

- (1) CDP and the OIC WUNOs must have separate administrative files due to different closing actions required for each. The CDP and OIC files must be closed together unless one was withdrawn, the OIC is not processable or there is an imminent TIPRA statute.
- (2) If you are recommending acceptance of an OIC that requires Counsel review, hold the CDP open until approval is secured so the two files can be closed together.



8.22.9.4.3.1  
(08-26-2020)  
**Rejection**

(1) When a CDP OIC is rejected, the OIC file must contain:

- Form 5402
- Appeals Case Memorandum (ACM)
- A review by the Austin, TX ETA-NEH team if the taxpayer requested ETA-NEH consideration of the offer
- Form 3040 or other written authorization submitted by the taxpayer to apply an offer deposit to a tax liability, if applicable

**Note:** Do not prepare a Form 1271, *Rejection or Withdrawal Memorandum* as it is not used in a CDP OIC..

**Note:** Letter 5197, Offer in Compromise Rejection, *may* be used but, generally, only in TIPRA related circumstances. See (2), Note 2, below.

(2) Your decision to reject the OIC is conveyed in the attachment to the CDP determination/decision letter or other closing letter. Your attachment must explicitly state the OIC was rejected and the reason for the rejection including a discussion of Reasonable Collection Potential (RCP) when RCP is the basis of the rejection. If the OIC is not clearly rejected, it may lead to a deemed acceptance under IRC section 7122(f).

**Note:** In the event an OIC is not agreed to and the case is settled with a different agreed resolution that includes a Form 12257 waiver, the narrative regarding the OIC may be brief. However, the brief narrative must clearly state the disposition of the offer and include all offer periods.

**Note:** If the expiration of the TIPRA statute is imminent, consider issuing a separate Letter 5197, Offer in Compromise Rejection, rejecting the offer directly to the taxpayer so that the TIPRA statute is protected. Be sure to include all offer periods if such a letter is issued, not just the CDP periods. See IRM 8.20.7.20.19.2.

(3) Once the above documents are complete and assembled, update ACDS case status to 'AC/FR' and submit the CDP and OIC case files together to your ATM for approval.

(4) If a taxpayer submits an OIC to Appeals and Appeals rejects it, the taxpayer is not entitled to an administrative appeal under the Appeals OIC program . The independent administrative review requirement of IRC 7122(e), Administrative Review, of the proposed rejection is satisfied by the ATM review of the file at closing.

8.22.9.4.3.2  
(08-26-2020)  
**Withdrawal**

(1) When a CDP OIC is withdrawn, the OIC file must contain:

- Form 5402
- ACM if more details are needed than can fit on Form 5402
- Form 3040 or other written authorization submitted by the taxpayer to apply an offer deposit to a tax liability, if applicable

(2) The withdrawal of the OIC must be discussed in the attachment to the CDP determination/decision letter or other closing letter to close the OIC and the TIPRA statute. Include in the attachment or closing letter **all** periods that were included in the offer.

**Note:** Letter 241, Offer in Compromise Withdrawal, may be used to communicate the withdrawal when you are using Letter 4383 to close the CDP.

- (3) Once the above documents are complete and assembled, update ACDS case status to 'AC/FR' and submit the CDP and OIC case files together to your ATM for approval.
- (4) The date an OIC is withdrawn depends on how the taxpayer transmits the withdrawal. Advise APS on Form 5402 to input a TC 482 with a date based on the table below:

If an OIC is withdrawn by...	The TC 482 is
<ul style="list-style-type: none"> <li>• regular mail, or</li> <li>• fax</li> </ul>	the date of the CDP closing letter.
<ul style="list-style-type: none"> <li>• certified mail, or</li> <li>• hand delivery</li> </ul>	the date you received the certified or hand delivered withdrawal.

8.22.9.4.3.3  
(08-11-2022)

**Acceptance-Counsel  
Review Not Required**

- (1) When a CDP OIC is being accepted and Counsel review is not required, the OIC file must contain:
  - Form 656 and, if applicable, amended Form 656 or addendum Form 14640
  - A redacted AOIC generated Form 7249, Offer Acceptance Report
  - A Public Inspection File consisting of a redacted copy of an AOIC generated Form 7249
  - Form 5402
  - ACM with details not included in the Letter 3193 or the Letter 3210 attachment
  - Financial information, including Form 433-A (OIC) and/or Form 433-B (OIC), and verification information used to make the acceptability determination.
  - OIC acceptance letter with a copy of the Form 656 and any collateral agreements
- (2) When recommending acceptance of two or more related offers based on a single financial analysis, only one OIC ACM is necessary. To ensure proper processing of the related offers, create separate files marked "1 of 2," and "2 of 2." The separate files should contain the documents listed above except for the single consolidated ACM.
- (3) Once the above documents are complete and assembled, submit the CDP and OIC case files to your ATM for approval.

8.22.9.4.3.4  
(08-11-2022)

**Acceptance-Counsel  
Review Required**

- (1) IRC 7122(b) requires an opinion from Counsel if a liability is \$50,000 or more including tax, penalties and interest. The requirement is based on the liability at the time of submission, not at the time of acceptance. See IRM 8.23.4.3.2, Counsel Review of Acceptance Recommendations.
- (2) When a CDP OIC is recommended for acceptance and Counsel review is required, the file must contain:

- Form 656 and if applicable, Amended Form 656 or addendum Form 14640
  - AOIC generated Form 7249, Offer Acceptance Report
  - A Public Inspection File consisting of a redacted copy of an AOIC generated Form 7249 attached to redacted copies of TDS or MFTRAX transcripts.
  - Form 5402
  - ACM with details not included in the Letter 3193 or the Letter 3210 attachment
  - Financial information, including Form 433-A (OIC) and/or Form 433-B (OIC), and verification information used to make the acceptability determination
  - OIC acceptance letter with a copy of the Form 656, amended Form 656 or addendum Form 14640, and any collateral agreements
- (3) Route an OIC that requires Counsel review following the procedures at IRM 8.23.4.3.2, Counsel Review of Acceptance Recommendations.
- (4) If an offer is rejected due to an unfavorable review by Counsel, explain in both the ACM and case activity record why Counsel declined to sign and why you rejected the OIC.

**Note:** If an offer receives a review by Counsel that does not support acceptance, the offer may still be accepted by Appeals. See IRM 8.23.4.3.2, Counsel Review of Acceptance Recommendations.

8.22.9.5  
(08-09-2017)  
**CDP Closing Letters**

- (1) A closing letter is prepared for every CDP/EH with the exception of withdrawn CDPs that did not receive an Appeals Substantive Contact letter. The closing letters used are discussed below.

8.22.9.5.1  
(08-26-2020)  
**Mailing Requirements for Closing Letters**

- (1) Any notice required to be sent by statute is sent separately to each individual filing a joint return. When one joint hearing is requested for both individuals on a joint return, the following closing letters are addressed jointly but mailed **separately** to each individual requesting the joint hearing:
- Notices of Determination (NOD)
  - Decision Letter
  - Letter 3978 Supplemental NOD
- (2) Closing letters not required by statute are sent separately to each spouse **if** one is living at a different address. Examples include:
- Letter 4381
  - Letter 4382
  - Letter 4383
  - Letter 5145
- (3) Print an ENMOD or INOLES at closing to ensure the closing letter is mailed to the taxpayer's most current address.
- (4) NODs or Decision Letters should **not** be sent to a taxpayer representative if their Form 2848, Power of Attorney and Declaration of Representative, does **not** include **all periods** included in the NOD or Decision Letter.

8.22.9.5.2  
(11-13-2013)  
**Letter 4381 Disregarded  
Hearing Request**

- (1) Appeals may disregard any portion or all of the CDP or EH hearing request when a portion or all the request states a position which the Service has publicly identified as frivolous or reflects a desire to delay or impede the administration of the federal tax laws. The entire CDP request may be disregarded and the taxpayer denied a CDP hearing only if the taxpayer fails to raise a single non-frivolous argument. See IRM 8.22.5.5.3 , Frivolous Issues.
- (2) If a taxpayer fails to respond within 30 days or responds with frivolous or desire-to-delay statements after receiving Letter 4380, Frivolous Acknowledgement, then use Letter 4381, Disregard Frivolous, to advise the taxpayer the hearing request has been disregarded.
- (3) An attachment is not prepared for Letter 4381 since Appeals did not conduct a legal and administrative analysis.

8.22.9.5.3  
(08-26-2020)  
**Letter 4382 Waiver  
Acknowledgement**

- (1) When you reach an agreed resolution and the taxpayer signs Form 12257, Summary Notice of Determination, prepare Letter 4382 as a cover letter. This letter acknowledges receipt of Form 12257 and the agreed resolution of the CDP.

**Note:** When the taxpayer concedes the CDP matter and consents to the filed NFTL or levy action, a Form 12257 should **not** be secured. A withdrawal from the hearing request should be solicited.

- (2) Document the agreement reached on either Form 12257 or Letter 4382 including the terms of the agreed resolution:
  - IA: payment amount and date
  - OIC: terms of the accepted offer
  - CNC: accrual of interest and penalty
  - Innocent Spouse: the final determination
  - Penalty and/or Interest abatement: the final determination

**Note:** This list is not all inclusive.
- (3) If you considered an OIC prior to reaching agreement on an IA or CNC, you **must state whether the offer was rejected, returned or withdrawn** in order to end the TIPRA statute.
- (4) Letter 4382 is signed by the ATM with the following exceptions noted below. Delegation Order App-193-1 allows Appeals Officers, Settlement Officers or Account Resolution Specialists to sign Form 12257 and Letter 4382 when either:
  - IS is the sole issue and relief is granted in full leaving no remaining issue for Appeals consideration
  - Collection is the sole issue, which is resolved by an IBTF-Express, Streamlined or Guaranteed IA
  - Penalty appeal is the sole issue and relief is granted in full with prior ATM approval, leaving no remaining issue for Appeals consideration
  - Collection accepts a taxpayer's Offer in Compromise, leaving no issues for Appeals consideration

- The taxpayer is granted a short term payment plan following IRM 8.22.7.6, Short Term Payment Plan within 120 Days, and there are no other issues for Appeals consideration

(5) The hearing officer signing the Form 12257 and Letter 4382:

- e-Mails the case resolution to the ATM so the ATM can enter the ACAP date on ACDS
- Enters "N/A- D.O. App-193-1" in the Form 5402 signature block
- Sends the closed case to APS for processing

#### 8.22.9.5.4

(08-26-2020)

#### **Letter 4383 Withdrawal Acknowledgement**

- (1) Prepare Letter 4383 when a taxpayer withdraws a CDP request. Letter 4383:
  - Provides the taxpayer the date Appeals received the withdrawal
  - Provides APS the date Appeals received the withdrawal and this date is used for input of the TC 521 cc 76/77
  - Can be signed by the hearing officer
- (2) Use Letter 4383 even if the withdrawal was received before Appeals issued a SCL. Before issuing the letter, ensure the AO had no prior involvement with the taxpayer, type of tax and tax periods, since Letter 4383 contains a no prior involvement clause.
- (3) In a withdrawal, there is no need to:
  - Prepare an ACM
  - Secure an ATM signature on Form 5402
- (4) Use the following codes on the Form 5402:
  - Closing Code = 16
  - CDP Tracking Code = WD
  - Resolution Reason Code = OT
- (5) If a taxpayer withdraws from a CDP hearing but then rescinds that withdrawal prior to formal issuance of the closing letter by Appeals, proceed with the hearing. The rescission by the taxpayer may be made verbally or in writing. Document the CAR.

#### 8.22.9.5.5

(08-26-2020)

#### **EH Decision Letter**

- (1) At the conclusion of an EH hearing, prepare one of the following decision letters in APGolf 2.0:
  - Letter 3210, Decision on Equivalent Hearing Under IRC 6320 and/or 6330 Closing, or
  - Combination Letter 4439 where IS was raised
  - Combination Letter 4440 where Abatement of Interest was raised
  - Letter 5145, Agreed Equivalent Hearing Closing Letter, for agreed EH cases
- (2) Decision Letters contain a Summary Statement at the bottom of the letter which:
  - Briefly states whether the disputed collection action is sustained or not

**Example:** "The issuance of the Notice of Intent to Levy was proper. The levy action proposed by the Revenue Officer is sustained"

- b. Describes any conditions that might result in future enforced collection action

**Example:** “Your request for an installment agreement is granted. Failure to meet the terms of the agreement may result in collection action.”

- (3) If a CDP liability is paid and the taxpayer doesn’t withdraw the request, you still must issue a Decision Letter.
- (4) Appeals Officers, Settlement Officers and Account Resolution Specialists may sign Letter 5145, Agreed Equivalent Hearing Closing Letter, and Form 5402 when:
  - IS is the sole issue and relief is granted in full leaving no remaining issue for Appeals consideration
  - Collection is the sole issue, which is resolved by a IBTF-Express, Streamlined or Guaranteed IA
  - Collection accepts a taxpayer’s Offer in Compromise, leaving no issues for Appeals consideration
  - The taxpayer is granted a short term payment plan following IRM 8.22.7.6 , Short Term Payment Plan Within 120 Days, and there are no other issues for Appeals consideration.
- (5) The hearing officer signing Letter 5145:
  - a. e-Mails the case resolution to the ATM so the ATM can enter the ACAP date on ACDS
  - b. Enters “N/A-D.O. App-193-1” in the Form 5402 signature block
  - c. Sends the closed case to APS for processing
- (6) When closing an EH case where the timeliness determination of the appeal remained in dispute with the taxpayer, use the remarks section on Form 5402 to alert APS to suspend the case following procedures in IRM 8.20.6.20.2, CDP Notices of Determination (NOD), in the event the taxpayer files a tax court petition.

8.22.9.5.6  
(08-26-2020)  
**CDP Determination  
Letter**

- (1) At the conclusion of a CDP hearing, prepare one of the following determination letters in APGolf 2.0:
  - Letter 3193 in most instances, or
  - Combination Letter 4389 when Abatement of Interest was raised
  - Combination Letter 4390 when IS was raised
  - Letter 4382 when the taxpayer signed Form 12257
- (2) Determination Letters contain a Summary Statement at the bottom of the letter which:
  - a. Briefly states whether the disputed collection action is sustained or not
 

**Example:** “The filing of the Notice of Federal Tax Lien was appropriate. The lien will remain in place until the liability is satisfied or the collection statute of limitation expires”
  - b. Describes any conditions that might result in future enforced collection action

**Example:** “Your request for an installment agreement is granted. Failure to meet the terms of the attached agreement may result in collection action.”

- (3) If a CDP liability is paid and the taxpayer doesn't withdraw their request, you still must issue a determination letter.

8.22.9.6  
(08-26-2020)  
**Attachment to  
Determination and  
Decision Letters**

- (1) Determination and decision letters are issued with an attachment which provides the taxpayer a substantive discussion of the CDP hearing. Avoid referencing computer codes by their number or description (i.e. TC 520, TXMOD) and using acronyms the taxpayer won't be familiar with.
- (2) In an abuse of discretion review, the Tax Court relies on your attachment to decide if your determination was arbitrary, capricious, or without sound basis in fact or law.
- (3) The attachment may be prepared in APGolf by selecting "Attachment" from the CDP pick list. Other formats are acceptable as long as they generally follow the same layout and contain the information noted in the sections below.

8.22.9.6.1  
(08-26-2020)  
**Tax and Periods  
Considered**

- (1) At the start of the attachment, list the type of tax, period(s), date of the CDP notice(s), and date of taxpayer's CDP request. List all periods that appeared in the CDP notice(s). If an OIC was considered in CDP, separately indicate in the attachment **all** periods that were included in the OIC.
- (2) State whether you conducted a levy or lien hearing, or a combination of both.
- (3) If the request was based on both lien and levy notices, specify tax and periods listed in each notice.
- (4) If the tax includes civil penalty module(s), specify the code section under which the penalty was imposed.
- (5) Tax periods from related WUNOs may be combined into a single NOD or Decision Letter if they are for the same taxpayer or taxpayer entity.

8.22.9.6.2  
(11-13-2013)  
**Summary and  
Recommendation**

- (1) This section briefly summarizes what the reader will find in the rest of the document. Clearly state what your determination is regarding the hearing.

8.22.9.6.3  
(08-09-2017)  
**Brief Background**

- (1) The brief background section of the attachment discusses:
  - Requests for documentation, how much time the taxpayer had to produce the documents and whether they were provided
  - Whether a conference was held and, if so, the type of conference, such as in-person, telephone, etc. See IRM 8.22.5.6.1 , Types of Appeals Conferences, for information on the different types of Appeals conferences
  - Any issues regarding timeliness of the CDP request. If timeliness was disputed by the taxpayer, discuss this further in "Issues" section

8.22.9.6.4  
(08-26-2020)  
**Big Three Review**

- (1) You are required by law to consider three areas in a CDP determination, referred to as the "Big Three." Your attachment must contain a "Big Three" review that includes:
  - a. Verification the requirements of any applicable law or administrative procedure were met



- b. Issues raised
- c. Balancing

8.22.9.6.5  
(08-09-2017)

**Verify the Requirements  
of Any Applicable Law  
or Administrative  
Procedure**

- (1) This section is for discussing the legal and administrative review.
- (2) **Valid and Accurate Assessment:** Was a valid and accurate assessment made for each tax and period on the CDP notice? Invalid or inaccurate assessments must be abated and collection cannot proceed. If the liability arose from a Statutory Notice of Deficiency (SNOD) or Letter 1153, Proposed Trust Fund Recovery Penalty Notification, discuss whether the notice was properly issued as per IRM 8.22.5.4.2, Legal and Administrative (L&A) Procedure Review. Discussion should include whether:
  - The assessment is valid because the SNOD or 1153 was timely issued by certified mail to the taxpayer's last known address
  - The assessment is valid because the taxpayer signed a waiver, making the SNOD or 1153 unnecessary.
  - The assessment is invalid because the SNOD or 1153 was not sent to the last known address and not received in sufficient time to petition Tax Court
  - The assessment is invalid because the assessment was incorrectly assessed under math error procedures with no SNOD
  - For 6020(b) nonfiler assessments, that the failure to file, failure to pay and estimated tax penalties are listed on the SNOD. If not, the penalty assessments would be invalid.
- (3) Receipt of the SNOD or 1153 is not required to verify an assessment is valid. Receipt is relevant to establishing whether liability was properly at issue in the hearing. If the taxpayer admitted receipt of the notice, document it here. If the taxpayer denied or could not recall receipt of the notice, see the table below for additional documentation:

If you...	Add this language to the Valid Assessment discussion...	Liability at issue?
Can't confirm receipt of SNOD	I confirmed a valid notice of deficiency was issued and that the notice was sent to your last known address. You denied receipt of this notice and I could not confirm receipt.	Yes
Confirms receipt of SNOD	I confirmed a valid notice of deficiency was issued and that the notice was sent to your last known address. You denied receipt of the notice but our records confirm that you either signed for or refused delivery of this notice.	No
Can't confirm receipt of Letter 1153	I confirmed Letter 1153 was properly sent to your last known address prior to the assessment of the IRC 6672 Trust Fund Recovery Penalty. You denied receipt of this letter and I could not confirm receipt.	Yes
Confirms receipt of Letter 1153	I confirmed Letter 1153 was properly sent to your last known address prior to the assessment of the IRC 6672 Trust Fund Recovery Penalty. You denied receipt of this letter but our records confirm that you either signed for or refused delivery of this letter.	No



- (4) **Notice and Demand:** Was notice and demand issued to the taxpayer's last known address within 60 days of assessment as per IRC 6303? Failure to give notice and demand within 60 days doesn't invalidate the notice and demand or the assessment. See Treas. Reg. 301.6303-1(a). If the IRC 6303 notice was not issued or issued late, most other collection notices can constitute notice and demand for purposes of the statute.
- (5) **Balance Due:** Was there a balance due at the time the CDP notice was issued?
- (6) **CDP Notice Properly Issued:** CDP notice verification requires you to confirm the CDP lien or levy notice was properly issued to the taxpayer. Properly issued means the CDP notice was:
- Delivered personally to the taxpayer, or
  - Left at the taxpayer's dwelling or usual place of business, or
  - Sent by certified or registered mail, return receipt requested, to the taxpayer's last known address

**Note:** Return receipt requested is not required for CDP lien notices

- (7) **No prior involvement:** Did you previously handle a non-CDP case (including EH cases) on this taxpayer for the same tax and tax period? If so, document that you obtained a Form 14041 waiver. IRC 6320(b)(3) and 6330(b)(3) require the hearing to be conducted by an employee with no prior involvement with respect to the unpaid tax. Prior involvement includes participation in a matter (other than a prior CDP hearing) that the taxpayer may have had with respect to the taxes shown on the CDP notice.

**Exception:** For cases in the 10th circuit, see IRM 8.22.5.4.1.1, 10th Circuit Exception.

- (8) For other required verifications, in general, see IRM 8.22.5, Collection Due Process, Receipt, Control and Pre-Conference Considerations.

8.22.9.6.6  
(08-26-2020)  
**Issues Raised**

- (1) This section is for discussing all non-frivolous issues raised on Form 12153 and in the hearing. The table below highlights the issues a taxpayer might raise and what to discuss:

If the issue is...	Then discuss...
Spousal defense	Any spousal defense raised and why the claim was accepted or rejected.
Challenges to appropriateness of collection action	Any challenges to the appropriateness of collection action raised including: <ul style="list-style-type: none"> <li>Economic hardship: If the taxpayer claims levy action will result in an economic hardship, discuss why this is or isn't so. Levy action is prohibited if it would cause economic hardship even if the taxpayer has unfiled returns. If you find economic hardship, place the CDP periods in CNC hardship status. Discuss that penalties and interest continue to accrue and the account may be removed from CNC status if their financial situation improves.</li> <li>Taxes discharged in bankruptcy: If the taxpayer claims the tax liability was discharged in bankruptcy, discuss why this is or isn't so</li> </ul>

If the issue is...	Then discuss...
Collection alternatives	<p>Any collection alternatives raised including IA, OIC, posting a bond, substitution of other asset, withholding collection action and withdrawal of an NFTL.</p> <ul style="list-style-type: none"> <li>• For an IA, discuss the terms of agreement and actions required. Advise the taxpayer of the consequences if the terms are not met or if there is a change in their financial situation</li> <li>• For an NFTL withdrawal request, discuss the issue using one of the four withdrawal criteria in IRC 6323(j)</li> <li>• For accepted OICs, do not record the details of the RCP as they are instead listed in a separate ACM</li> <li>• For rejected OICs, provide a detailed RCP so the taxpayer will know the reason for the rejection. Also, clearly state the OIC was rejected and the reason for the rejection.</li> </ul>
Liability Challenges	<p>Any liability challenge made by the taxpayer.</p> <ul style="list-style-type: none"> <li>• Discuss whether the taxpayer was precluded from raising liability and why</li> <li>• If liability was at issue, explain why adjustments requested by the taxpayer were accepted or rejected</li> <li>• If you considered a liability that was precluded from CDP, your attachment will only describe the adjustments to the liability. A liability precluded from CDP is not addressed in the attachment except to note that liability was addressed separately from the CDP</li> <li>• If there is no challenge to the liability, state "The taxpayer did not dispute the liability"</li> </ul>

- (2) If the taxpayer's arguments and/or collection alternatives were rejected, why were they rejected? Explain in detail why your determination was correct.
- (3) If the taxpayer or representative listed issues in the request for Appeal that were **not** pursued while the case was in Appeals, note that in your ACM with a general statement such as :

No other issues were pursued by the taxpayer / representative while in Appeals.

**Example:** In the request for the appeal, the taxpayer seeks alternatives such as: OIC, CNC, IA, and interest and penalty abatement. However, at conference, only an OIC is discussed and the case is ultimately resolved with an OIC. There is no need to address any other of the original proposed alternatives other than as stated above.

- (4) When an ASFR/SFR liability was raised by the taxpayer, document the following under Issues Raised or on the Form 12257:

You filed income tax return(s) for calendar year ending [ ] with Appeals after the IRS completed substitute return(s) for you as authorized by Internal Revenue Code 6020(b). Appeals forwarded your income tax return(s) for reconsideration. The IRS processed your return(s) and made the adjustments you requested. Since there is no dispute as to the amount of the tax liability, it is not necessary for Appeals to make a determination on this issue.

- (5) When an ASFR/SFR liability was raised by the taxpayer but **precluded**, document the following under Issues Raised or on the Form 12257:

I determined you were precluded from challenging the liability for the [ ] tax year(s) in CDP because you received a prior opportunity to do so. Though precluded, your liability was reconsidered outside of CDP. You filed an income tax return for the [ ] tax year(s) which were forwarded for reconsideration. The IRS made the adjustments you requested.

- (6) If the taxpayer raised frivolous issues, do not discuss them. Instead, note that Appeals does not consider frivolous issues.

8.22.9.6.7  
(11-13-2013)  
**Balancing**

- (1) In the balancing section, explain whether the proposed collection action balances the need for efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. Balancing is tied to the taxpayer's:

- a. Actions or inaction
- b. Compliance history
- c. Financial circumstance

- (2) Discuss balancing even when the only issue raised is liability.

**Example:** Having confirmed the validity of the underlying liability, the IRS has little choice but to collect your tax liability as best it can until you decide to voluntarily pay. It is my judgment that the Notice of Intent to Levy balances the efficient collection of taxes with your legitimate concern that the collection action be no more intrusive than necessary.

- (3) When the taxpayer is unresponsive or proposes no collection alternatives, the levy proposed or Notice of Federal Tax Lien is generally sustained.

**Example:** You proposed no alternative to the Notice of Federal Tax Lien and you did not participate in the hearing you requested. It is my judgment that the Notice of Federal Tax Lien balances the efficient collection of taxes with your legitimate concern that the collection action be no more intrusive than necessary. When the tax liability is paid in full or expires by statute, the lien will be released.

- (4) When the Notice of Intent to Levy was properly issued but you subsequently agree to a collection alternative, state so.

**Example:** While the Notice of Intent to Levy was properly issued, you subsequently provided financial information to Appeals that confirmed levy would result in economic hardship. Appeals has agreed to put your account into Currently not Collectible status.

- (5) When the Notice of Federal Tax Lien is sustained.

**Example:** The filing of the Federal Tax Lien makes the IRS a secured creditor, which protects the Government in the event that you sell assets or file bankruptcy. You failed to demonstrate that the Notice of Federal Tax Lien was overly intrusive or that better alternatives are available. It is my judgment that the Notice of Federal Tax Lien balanced the efficient collection of taxes with your legitimate concern that the collection action be no more intrusive than necessary.

8.22.9.7  
(08-09-2017)

#### Abbreviated Attachment

- (1) When you reach an agreed resolution and the taxpayer declines to sign Form 12257, use the language below as an abbreviated attachment to your determination or decision letter:

“An impartial Appeals officer or an employee who had no prior involvement with this tax and tax period(s) conducted your hearing, unless you waived that right. Appeals has verified that applicable laws and administrative procedures have been met, has considered the issues raised, and has balanced the proposed Collection action with the legitimate concerns that such action be no more intrusive than necessary as required by section 6330(c)(3). The taxpayer(s) has (have) represented to Appeals that the taxpayer(s) agrees with the proposed collection alternative described below. The proposed collection alternative balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary. The determination of Appeals is: [Insert terms of the collection alternative]”.

- (2) If you considered and did not accept an OIC, the abbreviated attachment **must state whether the offer was rejected, returned or withdrawn.**

8.22.9.8  
(11-13-2013)

#### Closing Codes for CDP, EH, and RJ Hearings

- (1) **CDPs** are closed using one of the following closing codes:

Closing Code	Definition
04	Agreed-Form 12257 Waiver
05	Defaulted Determination Letter
10	Docketed-Agreed, decision document
11	Docketed-Dismissed, lack of jurisdiction
12	Docketed-Dismissed, lack of prosecution
13	Disregarded CDP or EH hearing request
16	Withdrawn-Form 12256 or rescinded with Appeals time
17	Tried with Appeals time
20	Premature Referral, withdrawn or rescinded with no Appeals time
42	case remanded
43	petition filed

- (2) **EH** cases are closed using one of the following closing codes:

Closing Code	Definition
13	disregarded CDP request
14	<ul style="list-style-type: none"> <li>fully sustained</li> <li>collection action is supported with no change</li> </ul>

Closing Code	Definition
15	<ul style="list-style-type: none"> <li>partially or not sustained</li> <li>full or partial abatement</li> <li>minor changes or collection action is completely overturned</li> </ul>
16	withdrawal
20	withdrawal with no Appeals time

(3) **RJ** cases are closed using one of the following closing codes:

Closing Code	Definition
14	Whether the Collection function is following Appeals determination: <b>Collection is following Appeals determination</b>
14	Change in circumstances: <b>No change in Appeals determination</b>
15	Collection is not following Appeals' determination
16	CDP determination is revised in cases involving change in circumstances

8.22.9.9  
(08-09-2017)  
**IRC 6702(b)**  
**Penalty-Failure to**  
**Withdraw Frivolous or**  
**Delaying Position**

- (1) Collection is responsible for recommending assessment of the IRC 6702(b) penalty and may impose a \$5,000 penalty against a taxpayer who makes a:
  - Frivolous or desire-to-delay argument in a CDP request and fails to withdraw in writing the frivolous/delay argument, or
  - Hybrid request as per IRM 8.22.5.5.3, Frivolous Issues, and fails to withdraw the frivolous/desire-to-delay argument
- (2) When the taxpayer fails to withdraw a frivolous or desire-to-delay position, whether in a completely frivolous request for hearing or a hybrid request, Appeals must provide certain documents to Collection so they can consider the penalty. In such an instance, direct APS to return the following documents to Collection:
  - a. Form 5402: state on the Form that Appeals determined the issues raised were either a specified frivolous position or intended to delay or impede the hearing process
  - b. A copy of the frivolous CDP hearing request
  - c. Letter 4380 or 3846 issued to solicit a withdrawal of taxpayer's frivolous/delay arguments

**Note:** Include a copy of Letter 3846 in addition to the Letter 4380 if the taxpayer in response to Letter 4380 provided a legitimate reason but failed to withdraw the frivolous or desire-to-delay position

- d. Case history documenting any discussion with the taxpayer regarding the withdrawal request
- e. Any written communication received from the taxpayer in response to the withdrawal request

(3) The IRC 6702(b) penalty does **not apply** to EH hearings.

8.22.9.10  
(11-13-2013)

**Information Received  
after Determination or  
Decision Issued**

(1) A CDP hearing continues until the determination or decision letter is issued. If a taxpayer provides information after the determination or decision is issued, see the table below:

If...	Then...
the case is in suspense in APS	put the new information in the administrative file
the case is closed out of Appeals	forward the new information to Collection
the case is docketed	forward the new information to the assigned Area Counsel attorney

(2) Note the date you received the information in your Case Activity Record in case the taxpayer disputes timeliness to the Tax Court.

8.22.9.11  
(08-26-2020)

**Taxpayer Contact after  
Determination or  
Decision Issued**

(1) Appeals does not meet with a taxpayer after a determination or decision letter is issued, unless there is a remand or a retained jurisdiction hearing. Instead, direct the taxpayer to Collection. The Tax Court does not consider a supplemental Notice of Determination unless it was issued as part of a Court-ordered remand.

(2) If the taxpayer alerts you to an issue concerning the implementation of your determination, see IRM 8.22.9.12, Post-Closing Issues, below.

8.22.9.12  
(08-26-2020)

**Post-Closing Issues**

(1) When a collection alternative or adjustment is not input properly, refer the post-closing issue to the Appeals Account Resolution Service (AARS) team for correction:

- a. Initiate the fully online referral to AARS using the Customer Service Request site that is on the Appeals intranet page for the AARS team.
- b. Complete the referral and include any attachments that will aid in the resolution of the matter.
- c. Return to the site as needed to check status of your request.

(2) Only make a referral to AARS if the case has been closed, on PEAs, for a minimum of **30 days**. AARS do not correct problem issues on open cases or those not having been closed for at least 30 days. Cases not meeting this criteria must be corrected through APS. See IRM 8.1.9.2(2) , AARS Closed Case Referrals.

8.22.9.13  
(11-13-2013)  
**Amending or Revising a  
Notice of Determination**

- (1) Appeals cannot rescind a Notice of Determination (NOD) in any circumstance. Appeals may amend or revise a NOD within the 30 day period to petition Tax Court if:
  - a. The NOD is clearly in error
  - b. The taxpayer has not petitioned Tax Court
  - c. The correction can be made within the 30 day period to petition Tax Court

**Example:** The summary statement on the determination letter says levy action is appropriate while the attachment to the determination says the account is to be placed in CNC. The hearing officer meant to say that levy action was not appropriate because the account should be placed in CNC. The NOD is clearly in error and should be corrected if the 30 day period to petitioned Tax Court has not expired.

- (2) If the time remaining within the 30 day period to petition Tax Court is not sufficient to determine if the NOD was in error, do not amend or revise the NOD.

**Example:** The taxpayer timely submitted financial information that was not associated with the case before the NOD was mailed. It is not clear if the additional information would have changed the determination.

- (3) If the error is not correctable within the 30 day period to petition Tax Court, do not amend or revise the NOD.

**Example:** The taxpayer submitted an offer directly to COIC before the NOD was mailed and the offer was not associated with the CDP. Investigating an offer will take more than 30 days.

- (4) An amended or revised NOD must contain the same date as the original NOD. The NOD should be titled "Revised" and issued by certified mail.
- (5) Consult with counsel if it is not clear whether an amended or revised determination is appropriate.

8.22.9.14  
(08-09-2017)  
**Collection Disagrees  
with Appeals  
Determination**

- (1) If Collection disagrees with Appeals determination in CDP, they may express their disagreement to local Appeals management **after** the case is closed out of Appeals and returned. Such discussions are delayed until after a case is returned to prevent prohibited ex parte communications, preserve the independence of Appeals, and protect the integrity of the CDP process.
- (2) If a resolution cannot be reached at the local level, the disagreement may be elevated via the process found at IRM 8.6.4.2.10 , Disagreements to Appeals Determinations.
- (3) The Appeals determination in a timely CDP or EH must be implemented even if Collection disagrees and the disagreement is elevated. The purpose of raising or elevating a disagreement is not to overturn Appeals determination but to ensure similar concerns do not arise in the future.



8.22.9.15  
(11-13-2013)

#### Tax Court Review

- (1) The United States Tax Court is a court of record established by Congress under Article I of the U.S. Constitution. The Tax Court's jurisdiction in CDP includes reviewing the following determinations:

- CDP
- Innocent Spouse
- Interest abatement

8.22.9.15.1  
(08-09-2017)

#### Deadline to Petition Tax Court

- (1) A Tax Court case is commenced by filing a petition. The table below lists the deadline for filing a petition with the Tax Court:

Determination	Deadline	IRC
Collection Due Process	30 days from issuance of Notice of Determination	6320/6330
Innocent Spouse	90 days from issuance of Notice of Determination	6015(e)
Interest Abatement	<ul style="list-style-type: none"> <li>• For claims filed after December 18, 2015: Any time after the earlier of the date the notice of determination denying interest abatement is issued or the date which is 180 days after the date the taxpayer files the interest abatement claim. If a notice of determination is issued, a petition must be filed within 180 days after the date of issuance.</li> <li>• For claims filed on or before December 18, 2015: 180 days from issuance of Notice of Determination.</li> </ul>	6404(h)

- (2) If the taxpayer wants Tax Court review of a denial of relief under IRC 6015 or 6404, as well as other issues raised in the CDP hearing, the taxpayer must petition within 30 calendar days of the issuance of the Notice of Determination.
- (3) 11 USC 362(a)(8) prohibits the filing of a petition with the Tax Court if a taxpayer is in bankruptcy. If a taxpayer petitions Tax Court after filing a bankruptcy petition, the Tax Court petition will be dismissed. In innocent spouse and CDP cases where the taxpayer has filed a bankruptcy petition, the deadline for filing a petition with the Tax Court is suspended for the period during which the taxpayer is prohibited by the bankruptcy from filing such petition, plus 60 days (applicable to Tax Court petitions filed after December 18, 2015).
- (4) IRC 6330(d)(1) does not provide additional time to petition to persons residing outside of the US.

**Note:** Special extensions may be available for members of the Armed Forces serving in a combat zone/contingency. See IRC 7508(a).



8.22.9.15.2  
(11-13-2013)

### Standard and Scope of Review

- (1) The table below describes the standard and scope of Tax Court review in a CDP determination:

If...	The standard of review is...	The scope of the review is...
Liability is at issue	<ul style="list-style-type: none"> <li>de novo (anew) for the liability issue.</li> <li>abuse of discretion for other administrative determinations</li> </ul>	With respect to the liability issues, the court is not limited to reviewing the record before Appeals and may hold a trial and take new evidence and testimony.
Liability is not at issue	abuse of discretion	The administrative record.

- (2) “Abuse of discretion” is defined as “arbitrary, capricious, clearly unlawful, or without sound basis in fact or law.”

8.22.9.16  
(11-13-2013)  
**Remand**

- (1) The Tax Court may remand a case to Appeals when:
- Appeals abused its discretion, or
  - The taxpayer was not given a proper hearing, or
  - The administrative record is insufficient for the Tax Court to properly evaluate the case
- (2) Counsel may request a remand if there is a significant, non-harmless error and the case cannot be defended. In such instances, Counsel may file a Motion for Remand in Tax Court. Examples of when remand may be appropriate include:
- Taxpayer requested abatement of interest but Appeals failed to consider the issue
  - Appeals rejected the taxpayer’s OIC without considering financial information provided by the taxpayer prior to the issuance of the determination/decision letter
  - Appeals issued the determination prior to the expiration of an agreed upon deadline for the taxpayer to provide verification information
  - Taxpayer raised liability where liability was not precluded and the Appeals closed the case without addressing liability
  - Appeals findings were confusing or contradictory
- (3) Changed circumstances occurring after the CDP hearing that might affect the outcome of the taxpayer’s case are dealt with outside of the CDP process. If a taxpayer submits a new issue while the Tax Court case is pending, Counsel may approach Collection per IRM 5.1.9.3.10.1, Post Petition Investigation, to consider the new issue and input any case resolution. The new issue might include, but is not limited to:
- Collection alternatives
  - CNC
  - ID theft claim
- (4) Collection considers the new issue if:
- The taxpayer’s circumstances changed since the CDP hearing, or

- The taxpayer did not respond to Appeals during the CDP hearing due to illness or travel and is now offering a collection alternative which would resolve the case

**Example:** Taxpayer petitions Tax Court and requests an OIC that was not submitted during the CDP hearing. The taxpayer's circumstances have changed. Due to the absence of error by Appeals, Counsel does not request a remand. Instead, Counsel submits Form 656 to Collection to consider and if agreement is reached, Collection inputs the case resolution.

- (5) Remand may be appropriate in rare, unusual situations when there has been a change in circumstances that is material and affects the core issues in the case such that, if known at the time of the Appeals hearing, would likely have altered Appeals' determination. Such remands should be limited to cases in which the taxpayer:

- fully cooperated
- submitted all requested and available evidence within the taxpayer's control

- (6) The harmless error rule provides that a court should not find an abuse of discretion if the mistake causes no prejudice or does not affect the ultimate determination. This rule is often applied where the taxpayer makes only frivolous or groundless arguments. Counsel evaluates errors to determine whether they are harmless.

- (7) When a CDP is remanded, the Counsel attorney prepares a memorandum addressed to Appeals explaining:

- a. The reasons why the court remanded the case
- b. Any special requirements in the order
- c. What issues the court has ordered Appeals to address on remand

**Note:** The Counsel attorney provides a copy of this memorandum to the taxpayer/representative.

- (8) Rev. Proc. 2012-18 and IRM 8.1.10, Ex Parte Communications, provide guidance on the ex parte rules in communications between Counsel attorneys and the hearing office in remands in CDP cases. A request for legal advice in a remanded CDP may be handled by the Counsel attorney who is handling the docketed Tax Court case. Neither the taxpayer nor their representative have a right to participate in any discussions between Appeals and Counsel regarding the advice.

8.22.9.16.1  
(08-26-2020)

#### Receipt of Remand and Supplemental Hearing

- (1) Assignment of a remand should generally be to an AO **other** than who issued the NOD.

**Note:** This may not be possible based on requirements stated by the court, IRS Counsel, or local Appeals staffing and resource issues.

- (2) If an AC/FR was previously input on the Case Activity Record (CAR), the ATM must input \*\*RR to reflect the case returning to the assigned hearing officer. This changes the prior AC/FR to MS. If the case is reassigned to a different hearing officer, the ATM will reassign and input \*\*RR on the CAR.

- (3) Send a secure e-mail to APS requesting input of:
  - a. Closing code 42, Case Remanded. CC 42 changes the case from PART 3 to PART 2.
  - b. REMAND in LOC 3 field.
- (4) Remands must be expeditiously worked to meet court-ordered deadlines for conducting the supplemental hearing and responding to the court. These deadlines are found in the Area Counsel memorandum accompanying the remand.
- (5) In a docketed case, the taxpayer's counsel of record should *solely* receive all correspondence as stated in *26 CFR 601.509*.
- (6) Contact the taxpayer or counsel of record, as needed, to schedule the supplemental hearing. Ask if a copy of Counsel's memorandum to Appeals regarding the remand was provided, and give them a copy if it was not.
- (7) Notwithstanding the expedited nature of a remand assignment, be certain that enough attention and consideration are given to the issues discussed in the remand order and that they are adequately presented to the taxpayer, particularly when the taxpayer is *pro se*.
- (8) Complete the requirements in Counsel's remand memo including contacting Counsel by the specified due dates. Do not address issues that are outside of the scope of the remand. If anything is unclear, be sure to address any clarifications to the memo with Counsel.
- (9) Depending on the requirements stated in the remand, new information may be necessary to be obtained from the taxpayer. Discuss with Counsel the appropriateness of issuing an ARI to Collection to obtain, review and/or investigate and comment on new information.
- (10) Avoid the hasty issuance of a supplemental notice of determination. Be liberal with granting reasonable extensions of time for the taxpayer to complete the requirements of the remand. If extensions will go beyond a deadline stated in the remand order or Counsel memo, consult with IRS Counsel regarding the extension.

8.22.9.16.2  
(08-09-2017)

**Consideration of a New  
OIC**

- (1) When the Tax Court remands a CDP for consideration of an OIC not submitted in the initial hearing, follow IRM 8.22.7.10, Offers in Compromise (OICs), for carding in and processing the OIC.
- (2) If Collection accepts the OIC, Collection prepares and processes the acceptance documents with courtesy copies sent to Appeals. The Hearing Officer must forward copies of the acceptance documents to the Counsel attorney.
- (3) If Appeals accepts the OIC, it cannot be processed until the Status 72 is reversed. Send Counsel the entire accepted offer file along with the supplemental NOD, making sure Counsel understands it has the original offer and that Counsel must direct APS to process the accepted offer.

8.22.9.16.3  
(08-09-2017)

**Reconsideration of an Existing OIC**

- (1) When the Tax Court remands a CDP for reconsideration of an OIC, Appeals reconsiders the original offer. The taxpayer is not asked to submit a new OIC, pay a new application fee or make a new TIPRA payment. However, if the offer amount is increased, the taxpayer must make an additional payment of 20% of the increase if the taxpayer is making a lump sum offer.
- (2) The original rejection of the offer in the CDP hearing tolls the TIPRA statute under IRC 7122(f) even if the court holds the rejection was erroneous.
- (3) Request APS reopen the CDP OIC WUNO:
  - **STATDATE** field remains blank
  - Enter SUSP in the **STATCODE** field

8.22.9.16.4  
(11-13-2013)

**Closing of Remand**

- (1) Once the supplemental hearing is concluded:
  - a. Prepare Letter 3978, Supplemental Notice of Determination, and share with assigned attorney prior to submitting the case to the ATM. The attorney reviews the NOD before it is issued to ensure compliance with the Tax Court's order.
  - b. Input AC/FR on the CAR.
- (2) Submit to your ATM at closing:
  - a. Letter 3978
  - b. Case Summary Card
  - c. CAR
  - d. The administrative file including copies of all letters and documentation issued to or received from the taxpayer regarding the remand
  - e. Form 2828, Transmittal Memorandum, to return the case to Counsel
  - f. If the decision in the case changed during the remand hearing, prepare a new form 5402. If the decision remains the same, a new form 5402 is not needed.
- (3) The ATM inputs a revised ACAPDATE and submit to APS for closing
- (4) The remand file is returned to APS after the ATM review. APS issues the supplemental NOD and puts the case back into PART 3. Then APS sends the file back to Counsel.
- (5) After the Supplemental NOD is issued, the jurisdiction of the case remains with the Tax Court. The Supplemental NOD is not a new determination and does not provide the taxpayer with additional judicial appeal rights.
- (6) The taxpayer is not required to re-petition the Tax Court if they disagree with the Supplemental NOD.

8.22.9.17  
(08-26-2020)

**Rescinding a CDP Offer Acceptance**

- (1) As described above in IRM 8.22.9.13, Amending or Revising a Notice of Determination, an NOD may **not** be rescinded. However, an offer acceptance is a separate decision which can be rescinded.
- (2) Rescission may be appropriate following Treasury Regulation section 301.7122-1(e)(5), for situations where:
  - a. false information or documents were supplied in conjunction with the offer;

- b. the assets of the taxpayer or their ability to pay were concealed; or
- c. a mutual mistake of material fact is discovered which is sufficient to cause the offer agreement to be reformed or set aside.

**Note:** Under section 164, comment (a) of the Restatement 2d of Contracts, false information or concealment may allow the IRS to rescind an accepted offer. To do so, the IRS must be able to show that: (1) the misrepresentation was material; (2) the misrepresentation induced the IRS to accept the offer; and (3) the IRS was justified in relying on the misrepresentation.

- (3) **Rescission is exceedingly uncommon.** See IRM 5.8.9.2, Rescission of Accepted Offers, and related subsections, for more information.
- (4) In **all** cases, follow the procedure in IRM 8.22.7.10.9, Rescission of a Previously Accepted Offer, if you are considering the rescission of a CDP accepted offer.

8.22.9.18  
(08-26-2020)  
**Retained Jurisdiction  
(RJ) Hearings**

- (1) Appeals retains jurisdiction on CDP determinations except as noted in the table below. RJ hearings are available after either:
  - The expiration of the 30 day period for seeking judicial review if the taxpayer does not petition Tax Court or
  - The Tax Court enters a decision and all appeals of that decision are completed
- (2) Taxpayers may return to Appeals for a RJ hearing under the following two circumstances:

If...	Then...
Collection does not implement Appeals' determination	<ul style="list-style-type: none"> <li>• Taxpayer should try to resolve the disagreement with Collection's implementation of Appeals' determination with a Collection manager.</li> <li>• If Collection and the taxpayer do not agree on a resolution, the taxpayer may return to Appeals for a RJ hearing.</li> </ul>
There is a change in the taxpayer's circumstances which affects Appeals' determination	<ul style="list-style-type: none"> <li>• Taxpayers must follow initial CAP procedures in Publication 1660, Collection Appeal Rights. A conference with the Collection manager is encouraged but not mandatory.</li> <li>• If Collection and the taxpayer do not agree on a resolution, the taxpayer may return to Appeals for a RJ hearing</li> </ul>

- (3) During RJ hearings:
  - a. Levy action is withheld unless collection is at risk. The statute of limitations is not suspended
  - b. The **ONLY** issues considered are those from the original Appeals determination
  - c. Taxpayers wishing to raise new issues or tax periods can do so in a CAP request. The CAP request would not need to be sent to Collection first
- (4) Taxpayers requesting RJ hearings may qualify for other types of hearings. Explain to the taxpayer the types of hearings they qualify for and the advantages and disadvantages of each.

- (5) RJ cases are carded in with type code DPLV, DPLN or DPL2 and feature code "RJ". Indicate the earliest CSED in the STATDATE field on ACDS.
  - a. Attempt to close the case within 5 business days
  - b. The hearing officer who worked the original CDP should work the RJ hearing
- (6) At closing, prepare Form 5402, ACM and the CAP type closing letter for the taxpayer. Form 5402 can serve as your ACM.

8.22.9.19  
(08-26-2020)

**Procedures for Shipping  
Personally Identifiable  
Information (PII)**

- (1) Appeals employees must adhere to PII shipping policy found at *this hyperlink*.
- (2) For additional information on shipping PII, go to *Employee Toolkit, Shipping Procedures for Personally Identifiable Information (PII)*.

**Exhibit 8.22.9-1 (08-26-2020)****Instructions for Completing Customized Form 5402**

Item	Entry
1. Date	Leave blank as APS will fill in.
2. Route to	ACS: select address from drop down box Field: fill in address from Form 3210 <b>Note:</b> Field cases should be returned to the group manager of the originating RO group.
3. From	Populates from ACDS
4. Features:	Populates from ACDS
5. Taxpayer	Populates from ACDS
6. TIN	Populates from ACDS
7. WORKUNIT NO.	Populates from ACDS
8. Tax Years (MFT/Tax Period)	"Key Case" MFT and Tax Periods populate from ACDS
9. Type of Case	Populates from ACDS
10. Category Code	Populates from ACDS
11. WUNO-related MFT/Tax Period(s)	If applicable, complete with MFT/Tax Periods related to the WUNO of the case
12. Disposal Information Closing code and CDPTS code fields	ACDS populates ARDI Code 7. Employee selects: Closing code, Premature Referral code (when applicable), Closing information for CDPTS (Reason Code and Resolution Reason) from drop down boxes
13. Special Features, Remarks, and/or Appeal Case Memorandum	Complete "Short Statute" if applicable; "Other" box is optional. If fewer than 90 days remain on a CSED for any timely CDP period, the CSED will be 90 days from the date the CDP determination becomes final (TC 521 date). In such rare cases, make a note in the remarks section of Form 5402: "Short statute: CSED 90 days from TC 521 date. Collection may manually calculate the new CSED and input TC 550."
14. For APS use	APS will use this section for TC 521 information
15. Taxpayer telephone #	Populates from ACDS
16. Area Counsel/Docket #	Completed by APS
17. AO signature date	self-explanatory
18. Earliest statute date	Populates from ACDS
19. Approval Date	ATM signs and dates, if required.
20. Area Counsel Date	Counsel signature, if required

