



Part 4. Examining Process

Chapter 46. LB&I Examination Process

Section 5. Resolving the Examination

4.46.5 Resolving the Examination

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Manual Transmittal

March 09, 2016

Purpose

(1) This transmits revised IRM 4.46.5, *LB&I Examination Process, Resolving the Examination*.

Scope

Not all examinations are the same in scope, size, and complexity; therefore, portions of this IRM may be more applicable to some cases than others.

Material Changes

- (1) Rewrote and streamlined this IRM to incorporate the issue-driven examination as described in Publication 5125, *LB&I Examination Process*.
- (2) Included discussions on issue resolution, factual development, applying the law to the facts, and interpretation of the law in IRM 4.46.5.2.
- (3) Modified and included changes to Appeals working with Exam including new Appeals policy and new statute requirements.
- (4) Clarified subsection 4.46.5.4.2.3 on Accelerated Issue Resolution (AIR).
- (5) Removed obsolete subsection 4.46.5.6, *Settlement Authority*, and renumbered subsequent subsections.
- (6) Included the new dissent procedures for disagreements with Appeals determinations.
- (7) All references to "Technical Advisors (TA)" were removed.
- (8) All references to LB&I Compliance Issues labeled as "Tier I, Tier II or Tier III" have been removed.
- (9) All references to Rev. Proc. 2000-43 on ex parte communications with Appeals were updated to Rev. Proc. 2012-18.
- (10) Editorial corrections made throughout.
- (11) Material from IRM 4.46.7 has been modified and included in this IRM as follows:

IRM 4.46.7 cite	Title	New IRM cite
4.46.7.2	Closing a Case	4.46.5.10
4.46.7.2.1	Completing the Examination	4.46.5.7
4.46.7.2.2	Partial Closings	4.46.5.10.1
4.46.7.2.3	Files and Workpapers	4.46.5.10.2.1
4.46.7.2.4	Review of Case	4.46.5.8
4.46.7.2.4.1	Assistance from PFTG-LQMS	4.46.5.8.1
4.46.7.2.5	Forwarding for Appeals Actions	4.46.5.7.4
4.46.7.2.6	Closing Actions	4.46.5.10.2
4.46.7.2.6.1	Closing Agreements - Process	4.46.5.6
4.46.7.2.7	Conference with Appeals	4.46.5.11
4.46.7.2.7.1	Procedures for LB&I Cases	4.46.5.11.1
4.46.7.2.7.2	Requesting a Pre-Conference	4.46.5.11.2
4.46.7.2.7.3	Participation in Pre-Conference	4.46.5.11.3
4.46.7.2.7.4	Other Communications with Appeals	4.46.5.11.4
4.46.7.2.7.5	Applications to Docketed Cases	4.46.5.11.5
4.46.7.2.7.6	Post-Settlement Conference	4.46.5.14
4.46.7.2.7.7	Direct Examination Time for Conference Procedures	4.46.5.14.1
4.46.7.2.7.8	Dissent Procedures for Disagreements with Appeals Determinations	4.46.5.15
4.46.7.3	Assessment of Team Members Performance	4.46.5.16
4.46.7.3.1	Performance Assessment	4.46.5.16.1
4.46.7.4	Post-Examination Management Critique	4.46.5.17
4.46.7.4.1	Post-Examination Critique Objectives	4.46.5.17.1
4.46.7.4.2	Critique with the Examination Team	4.46.5.17.2

4.46.7.4.3	Scope of Critique	4.46.5.17.3
4.46.7.4.5	Critique with Taxpayer	4.46.5.17.4
4.46.7.4.6	Documentation of Post-Examination Critique	4.46.5.17.5
4.46.7.4.7	Carryover Adjustment Schedule	4.46.5.9.2.1
4.46.7.4.8	Recurring Issues	4.46.5.9.2
4.46.7.4.9	Disposal of Critique	4.46.5.17.5
Exhibit 4.46.7-2	Agenda for Post-Examination Critique	Exhibit 4.46.5-1

Effect on Other Documents

IRM 4.46.5 dated July 22, 2011 is superseded.

Audience

All LB&I personnel

Effective Date

(03-09-2016)

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4.46.5.1 (03-09-2016)

Overview

1. The goal of the resolution phase is to reach a mutual agreement on the tax treatment of each issue examined at the earliest appropriate point in the examination in a quality manner. The taxpayer and LB&I will benefit in terms of resource utilization and tax certainty when the parties have open and meaningful discussions of issues throughout the examination process. Early and frequent issue team discussions and presentation of all relevant facts are crucial for a complete understanding of the taxpayer's and government's tax positions and their relative strengths and weaknesses.
2. The issue manager, in collaboration with the case manager, will lead the issue team in resolving issues utilizing appropriate issue resolution tools. Expedient issue resolution necessitates open communication, cooperation and collaboration among issue team members. Issue exit strategies should consider recurring and carryover issues to provide certainty for the government and the taxpayer.

4.46.5.2 (03-09-2016)

Issue Resolution

1. Each issue should be developed giving the taxpayer an opportunity to agree or disagree with the findings. For an issue to be resolved there must be an open discussion by the issue team in these three areas: factual development, the law that applies to the facts and each party's interpretation of the law.

4.46.5.2.1 (03-09-2016)

Factual Development

1. In order to apply the facts to the law, all relevant facts must be identified.
2. Present the relevant facts in a clear and effective manner.
3. Distinguish between facts and opinions. The facts are not to include opinion, personal inferences, biases or prejudices.
4. Document the evidence relied upon to reach the factual conclusion of a given transaction in a clear and understandable manner.
5. It is the taxpayer's responsibility to ensure all relevant facts have been identified and presented to support the tax position taken on the return. It is imperative that the issue team discuss the facts gathered to understand each other's position.
6. Appeals may return the case to exam if new information is presented during the Appeals process. See IRM 8.7.11.5.3.
7. An acknowledgment of the facts must be documented in the case file for all unagreed issue(s). Any disputed facts should also be noted. The issue team should work together to develop and reach a common understanding of the relevant facts. To effectively apply the law, all of the fact must be clear and accepted by both parties. (See IRM 4.46.4, *Executing the Examination*, for the process of obtaining the acknowledgment of the facts)

4.46.5.2.2 (03-09-2016)

Application of the Law

1. Apply the law to the facts in a fair and impartial manner.
2. Open and transparent discussions will aid in reaching an understanding of each other's views when identifying the appropriate laws.
3. If the appropriate laws are clear based on the set of facts, then application of the law is straightforward. However, if the laws are unclear, the issue team must weigh the various legal authorities and other guidance to determine the merits of the issue.
4. Refer to IRM 4.10.7.2, *Researching Tax Law*, which provides the most common, but by no means all, research resources available when applying the law.

4.46.5.2.3 (03-09-2016)

Interpretation of the Law

1. The issue team must apply judgment and experience in weighing the taxpayer's and government's tax position, based on the applicable laws, when resolving the issue.
2. The issue team must discuss the interpretation of the law, based on the facts presented, to reach an understanding of the taxpayer's and government's position.

4.46.5.3 (03-09-2016)

Resolution vs. Settlement

1. **Resolution:** LB&I managers have the broad authority to resolve issues based upon the application of tax law to the facts. Other issue resolution tools, as outlined below, should be used to resolve issues when appropriate.
2. **Settlement:** Appeals has the authority to settle cases based upon hazards of litigation. For example, when there is uncertainty in the event of litigation, as to how a Court would interpret and apply the law or weigh the facts, Appeals utilizes techniques such as "mutual concession" and "split issue" settlements. Exam is not authorized to use these settlement techniques.

Note:

There are various delegation orders available for settlement of issues at the examination level. See IRM 1.2.43.

**4.46.5.4 (03-09-2016)
Issue Resolution Tools**

1. Consideration and utilization of issue resolution tools can start at the earliest appropriate point and continue until the case is closed from examination jurisdiction. Using appropriate issue resolution tools can potentially reduce examination time, save resources and lessen the burden on both parties. LB&I encourages the use of issue resolution strategies. Refer to IRWeb for more information regarding the following resolution options and procedures.

**4.46.5.4.1 (03-09-2016)
Taxpayer-Specific Pre-Filing Resolution Tools**

1. Taxpayer-specific pre-filing resolution tools include: Pre-Filing Agreements (PFA), Advanced Pricing Agreements (APA), Compliance Assurance Process (CAP) and Private Letter Rulings.

**4.46.5.4.1.1 (03-09-2016)
Pre-Filing Agreements**

1. Pre-Filing Agreements (PFA) permit a taxpayer to request the examination of specific issues relating to a tax return before the return is timely filed. The purpose is to resolve issues involving factual questions under well-settled principles of law. A PFA can often resolve such issues more effectively and efficiently. A PFA also provides the taxpayer with a greater level of certainty regarding the examined issue at an earlier point in time than a post-filing examination. The request is subject to a user fee. For more information see Rev. Proc. 2009-14 and the PFA web page at <http://msb.irs.gov/hq/pftg/pfts/pfa/preagree.asp>.

**4.46.5.4.1.2 (03-09-2016)
Advanced Pricing Agreements (APA)**

1. Advanced Pricing Agreements (APA) is a process that provides for determining the proper treatment of transfer pricing issues prior to the filing of returns. In some circumstances the agreed application methods for resolving the transfer pricing issue may also be used to resolve issues present on filed returns currently under examination. For more information see Rev. Proc. 2015-41 or successor and the APA web page at http://msb.irs.gov/international/dir_treaty/treaty/index.asp.

**4.46.5.4.1.3 (03-09-2016)
Compliance Assurance Process (CAP)**

1. Compliance Assurance Process (CAP) is a method of identifying and resolving tax issues through open, cooperative and transparent interaction between the IRS and LB&I taxpayers prior to the filing of a return. Through the CAP program, the taxpayer should achieve tax certainty sooner and with less administrative burden than conventional examinations. CAP is a voluntary program for taxpayers. Taxpayers must apply and be accepted into CAP. For more information see the CAP web page at <http://msb.irs.gov/hq/pftg/CAP/index.asp> and IRM 4.51.8.

**4.46.5.4.1.4 (03-09-2016)
Private Letter Rulings**

1. Private Letter Rulings are written rulings issued by National Office Chief Counsel that apply the tax laws to a taxpayer's specific set of facts. A written ruling is subject to a user fee, issued based on the taxpayer's request, on proposed or completed transactions prior to the filing of the return. The identical issue cannot be on an earlier return that was examined in Appeals or in litigation. For more information see Rev. Proc. 2015-1 or the first revenue procedure of the current year.

**4.46.5.4.2 (03-09-2016)
Taxpayer-Specific Post-Filing Issue Resolution Tools**

1. Taxpayer-specific issue resolution tools include: Technical Advice Memorandums, Delegation Orders, Accelerated Issue Resolution, Early Referral to Appeals and Fast Track Settlement.

**4.46.5.4.2.1 (03-09-2016)
Technical Advice Memorandums**

1. Technical Advice Memorandums are written statements issued by National Office Chief Counsel on technical or procedural questions on the proper application of tax law, treaties, regulations, etc. on a specific set of facts submitted by the IRS and/or taxpayer in a written request. See the TAM web page at <http://msb.irs.gov/hq/pftg/pfts/downloads/tams/tams.asp> and Rev. Proc. 2015-2 or the second revenue procedure of the current year.

**4.46.5.4.2.2 (03-09-2016)
Delegation Orders**

1. Case managers should look to applicable delegation orders for potential issue resolution tools. See IRM 1.2.43.22 and IRM 1.2.43.23 for applicable delegation orders.
2. Area Counsel should be included in all aspects of resolution discussions.

**4.46.5.4.2.3 (03-09-2016)
Accelerated Issue Resolution (AIR)**

1. Accelerated Issue Resolution (AIR) is an examination process to apply the resolution of the same or similar issues arising for an examination of an LB&I taxpayer from one or more tax periods to other tax periods.
2. Issue teams are to refer to Rev. Proc. 94-67 and Rev. Proc. 68-16 when considering the utilization of AIR procedures.
 - A. AIR does not include settlement authority for managers.
 - B. AIR does not alter in any way the authority case managers have to resolve issues.
 - C. Counsel assistance is mandatory when using AIR.
 - D. An AIR agreement is generally limited in scope to issues on filed returns arising from an audit of specific taxpayers under the jurisdiction of the Director of Field Operations. Certain issues are excluded or require additional approvals. See [Rev. Proc. 94-67, SECTION 3. SCOPE OF AN AIR AGREEMENT](#)

Note:

For non-filed years, a taxpayer should request a Pre-Filing Agreement (PFA). See <http://msb.irs.gov/hq/pftg/pfts/pfa/preagree.asp>.

**4.46.5.4.2.3.1 (03-09-2016)
Executing an Agreement**

1. The AIR process uses either a Closing Agreement, Form 906 or standard partial and/or full agreed deficiency procedures. See IRM 8.13.1, *Closing Agreements or Procedures for Requesting Partial or Manual Assessments*, at http://lmsb.irs.gov/hq/pqa/3/Case_Closing/Partial_&_Manual_Assessments_Procedures.asp for procedures.
2. Delegation Order 8-3 (formerly DO-97, Rev. 34) delegates authority for closing agreements concerning internal revenue tax liability in cases under examination jurisdiction (but excludes cases docketed before the United States Tax Court). See IRM 1.2.47.4.
3. A closing agreement can cover the entire tax liability or a year or years, or be limited to a specific tax item.

4.46.5.4.2.3.2 (03-09-2016)

Case Control

1. Although the AIR process does not constitute a formal examination of the taxpayer's books and records, examiners should follow normal procedures for the control of tax periods on the Audit Information Management System (AIMS).
2. The AIR process should be limited in examinations where it is not practical to include subsequently filed tax return years as part of the current examination cycle.
3. If the AIR process includes subsequently-filed years, per IRM 8.13.1.4.1.1, the case manager:
 - A. Should establish sufficient controls to ensure that needed follow-up actions are taken with respect to all the terms of closing agreements affecting or relating to tax liability for later unexamined (or future) periods or related entities
 - B. Should consider utilizing Information Report procedures
 - C. Should take whatever action is needed to facilitate follow-up
4. AIR does not affect Policy Statement P-4-5 for subsequent years included in the AIR agreement but not examined. (See Policy Statement P-4-5 at IRM 1.2.13.1.3.)

4.46.5.4.2.3.3 (03-09-2016)

Payments

1. When closing agreements are executed the examiner should attempt to secure and process payments for both examined and non-examined years.
2. Submit payments and Form 3244-A with Form 3210 to the designated Submission Processing Center. See http://lmsb.irs.gov/hq/pqa/downloads_PFA/LargeDollarRemittances.asp.
 - A. The newest revision of Form 3244-A contains a check box on the form to designate a payment as a IRC 6603 deposit.
 - B. If you are completing the form on the publishing website and check the 6603 box, the form will automatically populate with Designated Payment Code (DPC) 12, Cash bond credit / 6603 deposit.
 - C. If you are hand writing the form, manually enter DPC 12.
3. Record the amount under TC 640, Advance Payment on Deficiency. The TC 640 will freeze the refund.
4. The examiner is responsible for monitoring the posting of the TC 640 payment to verify the full amount was paid.

4.46.5.4.2.3.4 (03-09-2016)

Returns and Files

1. An executed original of the closing agreement will be mailed to the taxpayer (or to the representative) with Letter 1995-E.
2. Along with the procedures identified in IRM 8.13.1.4.5, examiners are to place a copy of the following documents in the case:
 - A. Letter 1595-E , inside the case folder on the top right side
 - B. Form 3244-A and a copy of the check on front of the return or BRTVUE
 - C. Form 906, back of return or BRTVUE (face in)
 - D. Transcripts with the TC640 posting (if applicable), back of return or BRTVUE (face out)

4.46.5.4.2.4 (03-09-2016)

Early Referral to Appeals

1. Early Referral to Appeals is a process to resolve cases more expeditiously through LB&I and Appeals working simultaneously. Appeals can consider a fully developed unagreed issue while exam is developing other issues. This process is optional and may be requested by the taxpayer or the examiner. An early referral may be requested on one or more unagreed issues.
2. Rev. Proc. 99-28, 1999-2 C.B. 109, sets forth the procedures to request early referral. More information can be found at IRM 8.26.4 , *Early Referral Procedures* or on the Appeals web site at http://appeals.web.irs.gov/tech_services/adr/early-referral.htm.

4.46.5.4.2.5 (03-09-2016)

Fast Track Settlement (FTS)

1. **FTS must be considered for all unagreed issues.** The program is not right for every situation, but when properly applied, it can save significant time and administrative burden for the service and the taxpayer. Issues should be fully developed prior to consideration of FTS. A fully developed case is one without any significant unresolved factual differences.
2. FTS is a collaborative effort where the taxpayer, the LB&I members of the issue team and Appeals agree to participate and work toward a mutual resolution based on an agreed set of facts.

Note:

1. All examiners must provide Pub. 4539, *Fast Track Settlement* brochure to the taxpayer at the opening interview and discuss the program with the taxpayer.
2. FTS is designed to utilize the mediation skills and designated settlement authority of Appeals to resolve issues while the case is still in the examination cycle.
3. Appeals acts as a facilitator to arrive at and execute a resolution/settlement that is mutually agreed upon by both the taxpayer and the LB&I issue team.
4. Ex Parte communication prohibition does not apply to communications arising in the FTS process, because Appeals personnel are not acting in their traditional settlement role.
5. Documentation that fast track settlement was considered will be recorded in the case file.

4.46.5.4.3 (03-09-2016)

Generic Issue Resolution Tools

1. Generic Issue resolution tools include: Industry Issue Resolution (IIR), LB&I Administrative Guidance and LB&I Published Guidance Recommendations.

4.46.5.4.3.1 (03-09-2016)

Industry Issue Resolution (IIR)

1. Industry Issue Resolution (IIR) is a process that involves frequently disputed/burdensome business tax issues common to a significant number of taxpayers. The focus is on resolving issues arising in future years. The process will likely result in the issuance of published guidance in the form of a revenue procedure or revenue ruling. A request for guidance can be submitted at any time. For more information see the Industry Issue Resolution web page at <http://msb.irs.gov/hq/pftg/pfts/iir/iir.asp>.

4.46.5.4.3.2 (03-09-2016)

LB&I Administrative Guidance

1. LB&I Administrative Guidance (issued as directives) provides operational instructions for planning and conducting examinations in areas of unsettled law. See the LB&I Administrative Guidance web page at <http://msb.irs.gov/hq/pftg/pfts/adminguidance/admin.asp> for more information.

4.46.5.4.3.3 (03-09-2016)

LB&I Published Guidance Recommendations

1. LB&I Published Guidance Recommendations focus on both resolving issues arising in future years and under examination. Issue recommendations are submitted through LB&I Counsel for inclusion in the Guidance Priority List (GPL). The GPL sets forth guidance that the Service intends to issue from July 1 through June 30 of the following year. See Process for Recommending LB&I Issues for Published Guidance web page at <http://msb.irs.gov/hq/pftg/pfts/OtherPrograms/PublishedGuidance.asp> for more information.

4.46.5.5 (03-09-2016)

Management Involvement in the Issue Resolution Process

1. The issue manager is responsible for resolving the issue at the earliest appropriate point using an appropriate resolution tool.
2. The issue manager should collaborate with the case manager when resolving the issue with the taxpayer and keep the issue team apprised of the status of the issue resolution.
3. Any differences among managers regarding the resolution of the issue should be elevated to their respective managers.
4. Issue manager must review and approve the NOPAs before issuance to the taxpayer. Approval should be documented in the case file. The case file should document all meaningful efforts by both the issue manager and the case manager to resolve issues.
5. The NOPA will be shared and discussed with the taxpayer upon issuance. A management conference will be held as needed.
6. The issue manager will engage in a collaborative discussion with the taxpayer when a timely response to the NOPAs has not been received.
7. The taxpayer has the option to agree or disagree with the NOPA presented. If agreement is reached, ask the taxpayer to approve and sign the Form 5701.

Note:

The status and taxpayer's position should be updated in IMS.

8. If taxpayer does not agree with the NOPA as presented, the issue manager should:
 - A. Determine which aspects of the issue may be agreed and which aspects are unagreed.
 - B. Determine the strengths and weaknesses of each side's tax positions.
 - C. Use issue resolution tools to assist in the resolution of the unagreed issue.
 - D. Must consider Fast Track as an issue resolution tool.
 - E. Begin unagreed procedures, if an agreement cannot be reached.
 - F. Support the Appeals pre-conference.
9. The issue manager is responsible for review and approval of the LB&I issue team's rebuttal to the taxpayer's protest to ensure that all arguments raised in the protest are fully addressed.

4.46.5.6 (03-09-2016)

Closing Agreements

1. Treas. Reg. 301.7121-1(a) provides that a closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of an agreement.
2. IRM 8.13.1, *Closing Agreements*, provides instructions and prescribes procedures for Service personnel handling closing agreements entered into under IRC 7121.
3. IRM 8.13.1 contains a number of examples of closing agreements. The LB&I issue team should be able to effectively prepare a customized closing agreement based on the particular fact pattern unique to the issue(s) being resolved after consulting this section and Area Counsel.
4. A closing agreement terminates an existing Form 872A (*Special Consent to Extend the Time to Assess Tax*) if language in the agreement could be construed to be the final determination of tax and final administrative Appeals consideration. It is important that a Form 906, *Closing Agreement on Final Determination Covering Specific Matters*, be used to limit the agreement to only those issue(s) that are being resolved. The closing agreement should specifically state that the agreement is not a final determination of tax and final administrative Appeals consideration of any remaining issues.
5. Deputy Commissioner, International must provide concurrence on cases which U.S. competent authority assistance has been requested, or is intended to be requested, under Rev. Proc. 2015-40 or successor, and on closing agreements that provide relief under Rev. Proc. 65-17 (as amended) or Rev. Proc. 99-32 for issues involving allocations of income under IRC 482.

4.46.5.6.1 (03-09-2016)

Closing Agreement - Joint Committee Aspects

1. The examination issue team, with Area Counsel's assistance, is responsible for preparing the closing agreement. However, closing agreements involving any Joint Committee jurisdictional years should not be signed by or on behalf of the Service until the case manager is notified by the Joint Committee Specialist Group that the Joint Committee's views have been received and considered. IRM 4.36.3.6.2 provides guidance for requesting Joint Committee review of closing agreements. These procedures should also be referred to where issues are resolved early in the examination process, such as through Fast Track Settlement or Early Referral to Appeals.
2. Closing agreements on Joint Committee cases, including those based on Competent Authority determinations, must not be executed on behalf of the Government until reviewed and cleared by the Joint Committee on Taxation. See IRM 4.36.4.7.
3. If a resolution is reached on an issue near the completion of the LB&I examination, the closing agreement should be submitted with the Revenue Agent's Report to the local Joint Committee Coordinator for preparation of the Joint Committee Report.
4. If a resolution is reached on an issue near the beginning of the LB&I examination, there could be substantial delay in executing the closing agreement if the closing agreement is not reviewed by the Joint Committee until the examination is completed. In this situation:
 - A. The case manager should consider asking the Joint Committee Refund Counsel to review the issue.
 - B. Assuming the Joint Committee Refund Counsel raises no objection, the closing agreement may then be executed by or on behalf of the Service. The examiner should refer to IRM 4.36.3.6.2 for further guidance in situations where an issue is resolved early in the examination, such as through Fast Track Settlement or Early Referral to Appeals.

4.46.5.6.2 (03-09-2016)

Closing Agreements - TEFRA Partnership Considerations

1. Due to the complexities in attempting to resolve TEFRA partnership issues and the technical administrative procedural requirements involved in processing, closing agreements must be thoroughly vetted through senior management and Counsel.

4.46.5.7 (03-09-2016)

Completing the Examination

1. In the issue-based approach teams and/or members within a team may complete their role at different points in the issue/case timeline. Upon the completion of any examiner's assignment, that team member should:
 - Discuss the issue with the issue manager and case manager to obtain concurrence
 - Discuss any pending proposed issues with the issue team depending upon the communications agreement and instructions to issue team members established during planning
 - Complete their portion of the examination report

4.46.5.7.1 (03-09-2016)

Types of Examination Reports Based on Agreement

1. See IRM 4.46.6 for workpaper and report guidelines. The following are the different types of reports that are issued to close a case from Exam:
 - **No-change report** - Report is issued when there are no adjustments and the return is accepted as filed. Most LB&I IC examinations resulting in no change with no adjustments and disposal code 02, do not require a "no-change" report. See IRM 4.46.6.5.1, *No-Change Examination (Disposal Code 02) Procedures*.
 - **No-change with Adjustments Affecting Other Tax Years Report** - Report is issued if the adjustment results in no-change to the current year's tax, yet they affect other tax years that are not under examination.
 - **Agreed Report** - this report is issued when the taxpayer agrees with all the issues.
 - **Unagreed Report** - The report contains unagreed issues that the taxpayer has taken exception to in the issue team's findings. Prepare unagreed report and if sufficient time remains on the statute issue Letter 950-Z (30-day letter). If a consent is solicited and not received to enable the issuance of a 30-day letter a statutory notice of deficiency may need to be issued.
 - **Partially-Agreed Report** - This report is issued when the taxpayer agrees to some, but not all issues. In this instance the exam team will prepare two reports, one for the agreed portion and the other will reflect the unagreed issues.

4.46.5.7.2 (03-09-2016)

Key Points to Consider and Verify in Preparing an Unagreed Issue Report

1. Report Clarity and Logic - review to ensure the following:

- The report is clear, concise and presented in a logical order
- The issue statement is straightforward and easy to read
- All relevant factual information is clearly documented in the examiner's report

In addition,

- Proof for typographical and grammatical issues
- Include schedules and other supplemental information that are essential for Appeals
- See IRS Plain Writing Toolkit for more information about using plain language

2. Report Elements - review to ensure the following:

- The unagreed report provides the issue, facts, law and arguments, taxpayer's position and conclusion
- The report clearly presents the issue(s), the proposed adjustment amount(s) and the reasons for the adjustment(s)
- The issue team secures acknowledgment to facts prior to closing the unagreed issue to Appeals
- All additional and disputed facts have been appropriately addressed and documented

Caution:

Appeals may return the case to exam if new information is presented to Appeals. See IRM 8.7.11.5.3. The process of securing the acknowledgment to facts from the taxpayer must be documented in the case file. See IRM 4.46.4.9 for documentation for acknowledgment to facts.

- Ensure The Service's position is adequately substantiated based on the tax law

- The pertinent legal arguments and current legal citations are included
- The report addresses the taxpayer's position

3. **Statute of Limitations:** Before a 30-day letter is issued there must be sufficient time remaining on the statute to allow the taxpayer to respond, the protest to be addressed and sufficient processing time to ensure that the statute will have at least 365 days (one year) remaining when the case is received in Appeals. See IRM 25.6.23.8.1.

Caution:

Because of the extra processing time needed for TEFRA procedures, Technical Services requires at least 600 days on the assessment statute for unagreed TEFRA key entity cases going to Appeals. The 600 days includes the 365 day Appeals requirement. See <http://tefra.web.irs.gov> for more information.

4. The case manager has responsibility for the preparation and delivery of the 30-day letter to the taxpayer. See IRM 4.10.8.13.4 for guidance on form letters. 30-day letters will be expeditiously prepared and mailed in accordance with existing procedures. The case will be included in the 30-day letter suspense files at the group level and updated to status 13 on ERCS after the mailing of the 30-day letter to the taxpayer.
5. The taxpayer may request an extension of time in which to file a protest; before it is granted, determine if a statute extension should be solicited to ensure adequate time to address the protest and still meet the remaining time on the statute requirements set by Appeals. The case manager, in collaboration with the issue manager(s), may approve the request based on the facts and circumstances in each case. Letter 686 may be used for this purpose.

6. **Taxpayer's Protest:** Ensure the protest is in accordance with IRM 4.10.8.13.

7. Rebuttal - review to ensure the following:

- The issue team prepares a rebuttal on the unagreed issue.
- The rebuttal addresses/resolves factual differences between the protest and audit report.
- The rebuttal addresses any new arguments or legal positions presented by the taxpayer.
- The rebuttal should have the same clarity and logic as stated in paragraph (1) above.

8. TEFRA:

- If the unagreed case is TEFRA, see IRM 25.6.23.8.1.
- If the case is a key TEFRA case, ensure the PCS linkage requirements for investors has been completed See IRM 4.31.2.6.

9. Other Issues:

- Ensure claims and other affirmative issues are addressed. See IRM 4.10.8.9.
- If the case is Joint Committee, ensure requirements for "minimum refund" have been properly considered. See IRM 4.36.3.7.1.

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