



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.7.1

MARCH 10, 2025

EFFECTIVE DATE

(03-10-2025)

PURPOSE

- (1) This transmits revised IRM 8.7.1, Technical and Procedural Guidelines, Guidelines for Cases with Special Issues.

MATERIAL CHANGES

- (1) Removed IRM 8.7.1, Introduction to Cases with Special Issues, and added new IRM 8.7.1.1, Program Scope and Objectives, and its related subsections, with internal control information required by IRM 1.11.2.2.4, Address Management and Internal Controls. Included in new IRM 8.7.1.1.6, Related Resources, the following:
 - a. Information on the Taxpayer Bill of Rights (TBOR), based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration).
 - b. Referenced IRM 25.30.2, Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service.
- (2) Revised IRM 8.7.1.2, Personal Holding Company Tax Alleviated by Deficiency Dividend, by moving procedural guidance from paragraphs (2) and (3) to new IRM 8.7.1.2.1, Appeals Technical Employees, and new IRM 8.7.1.2.2, Tax Computation Specialists, rearranging other guidance, and including additional tax law and regulatory guidance. For PHC tax determinations under IRC 547(c)(3), identified Letter 1152, Agreement Transmittal for Signed PHC / Determination Liability for PHC Tax, for notifying taxpayers of procedures for filing claims for a deduction of deficiency dividends after timely paying such dividends.
- (3) Revised IRM 8.7.1.3, to change title from "Accumulated Earnings Tax IRC Notification" to "Accumulated Earnings Tax - IRC Notification Procedures Prior to Notice of Deficiency." Added tax law requirements and IRM references regarding the imposition of the accumulated earnings tax and statutory notification requirements to take place prior to IRS mailing a notice of deficiency with the accumulated earning tax issue. Also, identified the availability of Letter 572, Proposal to Issue a Notice for Excess Accumulated Earnings Under IRC Section 531.
- (4) Revised IRM 8.7.1.4, Credit for Increasing Research Activities - IRC 41, to update links to SharePoint sites.
- (5) Revised IRM 8.7.1.5.1, Requests for Art Appraisal Service Assistance, for consistency with guidance in IRM 8.18.1, Valuation Assistance Procedures, regarding how employees can informally seek assistance by contacting the "AAS Director or Lead Appraiser," instead of "valuation specialists." Also, referenced IRM 4.48.2, Valuation Assistance for Cases Involving Works of Art.
- (6) Revised IRM 8.7.1.6, to change title from "Jeopardy and Termination Assessments Cases" to "Review of Jeopardy/Termination Assessment Cases," and included tax law guidance from IRC 7429, Review of Jeopardy Levy or Assessment Procedures.
- (7) Revised IRM 8.7.1.6.1, Jeopardy Assessments, to rearrange information and reference "IRC 6211, Definition of a Deficiency," in relation to expedited assessments under IRC 6861, Jeopardy Assessments of Income, Estate, Gift, and Certain Excise Taxes.
- (8) Revised IRM 8.7.1.6.2, to change title from "Jeopardy Assessment Procedures for Compliance" to

“Compliance’s Jeopardy and Termination Assessment Procedures,” to rearrange information, and to identify Compliance’s letters sent to taxpayers for timely requesting administrative reviews of jeopardy and termination assessments.

- (9) Revised IRM 8.7.1.6.3, to change title from “Jeopardy Assessments on Cases Pending in Appeals” to “Review of Jeopardy Assessments,” and rearranged information.
- (10) Revised IRM 8.7.1.6.4, to change title from “Termination Assessments” to “Review of Termination Assessments,” and included additional IRM references.
- (11) Revised IRM 8.7.1.9.1, Appeals Jurisdiction in Criminal Cases, to identify the current IRS delegation order number 8-8, instead of delegation order 66, that addresses restrictions on Appeals actions in respect to criminal cases.
- (12) Revised IRM 8.7.1.10, Disaster Relief Cases, to reflect that the IRS Disaster Assistance and Emergency Relief Program is administered by the IRS Disaster Program Office (DPO), overseen by the SB/SE Human Capital Office, Organizational Support and Continuity of Operations Office. Revised other information for clarity and consistency with service-wide guidance in IRM 25.16.1, Program Guidelines.
- (13) Revised IRM 8.7.11.2, Restitution Debt Assessed as a Tax under IRC §6201(a)(4), to
 - a. Deleted paragraph (4)g regarding Title 26 interest and Title 18 interest on restitution-based assessments (RBAs) and replaced this deleted language with the following IRS wide guidance: *“The IRS is authorized to assess only court-ordered interest (and penalties) on RBAs. See IRM 20.2.11.13.1, Interest Computation on RBAs.”*
 - b. In paragraph (5), deleted reference to IRS Chief Counsel Notice CC-2011-08, The Assessment and Collection of Criminal Restitution, because the IRS no longer follows the position that Title 26 interest can accrue on unpaid RBAs. While IRC §6201(a)(4) provides that an RBA will be assessed as a tax, it is not a tax that allows for interest accrual under Title 26. Only Title 18 interest can accrue, if ordered by the criminal court.
- (14) Revised IRM 8.7.1.11.3, Identifying Restitution-Based Assessments on IDRS, by updating the paragraph (2) table, covering IDRS indicators of an RBA, for consistency with IDRS/RBA-related information in IRM 4.8.6, Criminal Restitution and Restitution-Based Assessments.
- (15) Revised IRM 8.7.1.11.4, Civil Actions on Cases with Restitution-Based Assessments, for alerting SBSE Technical Services with the Appeals point of contact information for sending their email notifications of condition of probation/restitution-based assessment (COP/RBA) cases to Appeals for tracking in order to notify Technical Services of the COP/RBA case closing.
- (16) Made editorial changes and updated references throughout this IRM section.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 8.7.1, Guidelines for Cases with Special Issues, dated February 24, 2017.

AUDIENCE

IRS Independent Office of Appeals

Patrick E. McGuire
Acting Director, Operations Support

8.7.1

Guidelines for Cases with Special Issues

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8.7.1.1
(03-10-2025)
Program Scope and Objectives

- (1) **Purpose:** This IRM section provides the IRS Independent Office of Appeals (Appeals) employees with general information on special case-related topics as shown in the table of contents.
- (2) *Audience:* Appeals Technical Employees and Tax Computation Specialists
- (3) *Policy Owner:* Director, Operations Support
- (4) *Program Owner:* Director, Policy, Planning, Quality, and Analysis
- (5) *Contact Information:* Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM section.

8.7.1.1.1
(03-10-2025)
Background

- (1) The mission of Appeals is to resolve federal tax controversies without litigation on a basis which is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the federal tax laws, and enhances public confidence in the integrity and efficiency of the IRS. Appeals accomplishes this mission by considering protested and Tax Court cases and negotiating settlements in a manner which ensures Appeals employees act in accordance with the Taxpayer Bill of Rights (TBOR) in every interaction with taxpayers. See IRM 8.1.1.2, Accomplishing the Appeals Mission.

8.7.1.1.2
(03-10-2025)
Authority

- (1) IRC 7803(e), Independent Office of Appeals
- (2) 26 CFR 601.106, Appeals Functions
- (3) IRM 1.2.1.9, Policy Statement for the Appeals Process
- (4) IRM 1.2.2.9, Delegations of Authority for the Appeals Process
- (5) The following are authorities and IRM resources for some of the topics covered in this IRM section. See each IRM subsection for more information.

Issue	Authority	Policy Statement or Delegation Order	IRM Resource
Accumulated earnings tax - IRC notification before notice of deficiency	IRC 534(b)	Delegation Order 4-8	IRM 1.2.2.5.8 IRM 4.8.8.2 IRM 4.10.13.2.8
Cases involving criminal prosecution		Policy statement 4-26	IRM 1.2.1.5.11
Credit for increasing research activities	IRC 41		
Criminal restitution based assessment	IRC 6201(a)(4) 18 U.S.C. §3556		IRM 4.8.6 IRM 25.26.1.2 IRM 25.26.1.3.1

Issue	Authority	Policy Statement or Delegation Order	IRM Resource
Disaster assistance and emergency relief	IRC 7508A	Delegation Order 25-11	IRM 1.2.2.15.11 IRM 25.16.1
Jeopardy assessments	IRC 6861 IRC 7429	Policy Statement 4-88 Delegation Order 8-7	IRM 1.2.1.5.27 IRM 1.2.2.9.7 IRM 4.15.1 IRM 5.1.4 IRM 8.20.7.60
Personal holding company tax alleviated by deficiency dividend	IRC 541	Delegation Order 4-1	IRM 1.2.2.5.1 IRM 4.8.8.4 IRM 4.10.8.11 IRM 4.10.13.10 IRM 8.6.4.8.1
Recommendation letter, from Associate Chief Counsel to the Department of Justice (DOJ), concerning Appeals settlement offer for persons or periods not in suit that are related to a pending refund case or other matter referred to DOJ		Delegation Order 30-2	IRM 1.2.2.16.2 CCDM 34.8.1.3.1
Termination assessments	IRC 6862	Policy Statement 4-89 Delegation Order 8-7	IRM 1.2.1.5.28 IRM 1.2.2.9.7
Valuation assistance			IRM 4.48.2 IRM 8.18.1

8.7.1.1.3 (03-10-2025)

Responsibilities

- (1) The Director, Operations Support, is the executive responsible for Appeals' policy and procedural guidance.
- (2) The Director, Policy, Planning, Quality and Analysis (PPQA) is responsible for program oversight.

8.7.1.1.4 (03-10-2025)

Program Reports

- (1) PPQA provides trend and data analyses and detailed summary reports for Appeals.

8.7.1.1.5 (03-10-2025)

Terms and Acronyms

- (1) The following table lists commonly used acronyms and their definitions:

Term or Acronym	Definition
ATE	Appeals Technical Employee is an umbrella term used to refer to any Appeals employee who is assigned a case for settlement consideration.
IDRS	Integrated Data Retrieval System
PHC	Personal Holding Company
TCS	Tax Computation Specialist

- (2) See Exhibit 8.1.1-1, Common Terms Used by Appeals.

8.7.1.1.6
(03-10-2025)

Related Resources

- (1) See IRM 8.7.1.1.2, Authority, for related IRM guidance on topics covered in this IRM section.
- (2) Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. Refer to the *TBOR website*, for additional information.
- (3) In accordance with IRM 25.30.2.3, Statement of Commitment, Appeals and the Taxpayer Advocate Service (TAS) will work collaboratively to enhance the taxpayer experience. See IRM 25.30.2, Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service.

8.7.1.2
(03-10-2025)

**Personal Holding
Company Tax Alleviated
by Deficiency Dividend**

- (1) IRC 547, Deduction for Deficiency Dividends, provides a method for relieving a personal holding company (PHC) from payment of tax imposed under IRC 541, Imposition of Personal Holding Tax, by paying deficiency dividends. If the taxpayer agrees to a deficiency in PHC tax, the ATE will advise the taxpayer of the procedures required to secure the benefits of IRC 547.
- (2) If a “determination” (as defined in IRC 547(c)) with respect to a taxpayer establishes liability for PHC tax imposed by IRC 541 (or by a corresponding provision of a prior income tax law) for any taxable year, a deduction will be allowed to the taxpayer for the amount of deficiency dividends (as defined in IRC 547(d)) for the purpose of determining the PHC tax for such year, but not for the purpose of determining interest, additional amounts, or assessable penalties computed with respect to such PHC tax. (See IRC 547(a) General rule). For the purposes of IRC 547, the term “determination” means:
- A decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final (IRC 547(c)(1))
 - A closing agreement made under IRC 7121 (IRC 547(c)(2)); or
 - Under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the taxpayer relating to the liability of such taxpayer for PHC tax (IRC 547(c)(3)).
- (3) The deficiency dividend deduction will be allowed as of the date the claim for the deficiency dividend deduction is filed. If the allowance of a deficiency dividend deduction results in an overpayment of PHC tax for any taxable year, credit or refund with respect to such overpayment will be made as if on the date of the determination two years remained before the expiration of the period of limitation on the filing of claim for refund for the taxable year to which

the overpayment relates. No interest will be allowed on a credit or refund arising from the application of this section. (See IRC 547(b), Rules for Application of Section).

- (4) For purposes of IRC 547, the term “deficiency dividends” means the amount of the dividends paid by the corporation on or after the date of the “determination” and before filing claim under IRC 547(e), which would have been includible in the computation of the deduction for dividends paid under IRC 561 for the taxable year with respect to which the liability for PHC tax exists, if distributed during such taxable year. No dividends will be considered as deficiency dividends for purposes of IRC 547(a) unless distributed within 90 days after the “determination.” See IRC 547(d)(1) and IRC 547(d)(2), Effect on Dividends Paid Deduction.
- (5) No deficiency dividend deduction will be allowed under IRC 547(a) unless (under regulations prescribed by the Secretary) the claim (Form 976) is filed within 120 days after the “determination,” as described in paragraph (4) above. See IRC 547(e), Claim Required, and 26 CFR 1.547-2, Requirements for Deficiency Dividends.
- (6) For “determinations” under IRC 547(c)(3), Letter 1152, Agreement Transmittal for Signed Personal Holding Company/Determination of Liability for Personal Holding Company Tax, is available for notifying the taxpayer of procedures for filing Form 976 for a deduction for deficiency dividends. For a determination under IRC 547(c)(3), the IRS secures a signed Form 2198, Determination of Liability for Personal Holding Company Tax, **and** a Form 870 type agreement. See IRM 8.7.1.2.1, Appeals Technical Employees.
- (7) For “determinations” made by Tax Court decision or IRC 7121 closing agreement, under IRC 547(c)(1) or IRC 547(c)(2), the ATE may prepare a taxpayer notification letter using claim filing instructions from Letter 1152 to inform the taxpayer of the procedures required for timely paying the deficiency dividends and filing the claim (Form 976), with the required information, as shown in 26 CFR 1.547-2, Requirements for Deficiency Dividends.
- (8) For additional information on PHC tax procedures, including Form 2198 and Form 3189, Deficiency Dividend Deduction Case Transmittal, see the following:
 - a. IRM 1.2.2.5.1, Delegation Order (formerly DO-8, Rev. 11), Agreements as to Liability for Personal Holding Company Tax
 - b. IRM 4.8.8.4, Deficiency Dividends of a Personal Holding Company
 - c. IRM 4.10.8.11, Personal Holding Company (PHC) - Deficiency Dividends
 - d. IRM 4.10.13.10, Personal Holding Company Deficiency Dividends
 - e. IRM 8.4.1.22.2, Docketed Personal Holding Company Tax Cases
 - f. IRM 8.6.4.8.1, Form 2198 Agreement - Personal Holding Company Tax
 - g. IRM 8.20.6.30, Personal Holding Company (PHC) Tax Alleviated by Deficiency Dividend
 - h. IRM 8.20.7.24.6, Docketed Personal Holding Company Tax Cases
- (9) Deduction denied in case of fraud, etc. — No deficiency dividend deduction shall be allowed under IRC 547(a) if the determination contains a finding that any part of the deficiency is due to fraud with intent to evade tax, or to wilful failure to file an income tax return within the time prescribed by law or prescribed by the Secretary in pursuance of law. (See IRC 547(g)).

- (10) Suspension of statute - If the corporation files a claim, as provided in IRC 547(e), the running of the assessment statute expiration date under IRC 6501 in respect to the deficiency and all interest, additional amounts, or assessable penalties, will be suspended for a period of two years after the date of the “determination.” (See IRC 547(f)(1)).
- (11) Termination of Form 872-A, Special Consent to Extend the Time to Assess Tax, by the taxpayer is rare. For special rules concerning the termination of a special consent on a PHC tax case, see IRM 25.6.22.7.1.9, Personal Holding Company Tax.

8.7.1.2.1
(03-10-2025)
**Appeals Technical
Employees**

- (1) For the purposes of IRC 547, the term “determination” means:
 - a. A decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final (IRC 547(c)(1))
 - b. A closing agreement made under IRC 7121 (IRC 547(c)(2)); or
 - c. Under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the taxpayer relating to the liability of such taxpayer for PHC tax (See IRC 547(c)(3)).
- (2) Use Form 2198, Determination of Liability for Personal Holding Company Tax, as an informal agreement for liability of PHC tax under IRC 547(c)(3). For authority to enter into such agreements, see Delegation Order No. 4-1 [formerly Delegation Order 8 (Rev. 11)] in IRM 1.2.2.5.1, Delegation Order 4-1 (formerly DO-8, Rev. 11), Agreements as to Liability for Personal Holding Company Tax.
- (3) Do not accept Form 2198 unless sufficient time remains to make an assessment, taking into consideration the taxpayer is allowed 120 days. See IRM 25.6.22.7.1.9, Personal Holding Company Tax.
- (4) Do not accept this agreement form on behalf of the IRS unless the taxpayer executes an appropriate agreement/waiver form, such as Form 870 or Form 870-AD, covering the proposed adjustments to both income tax and PHC tax for the years involved. Form 870 must contain conditional paragraphs as shown in IRM 4.10.8.11, Personal Holding Company (PHC) - Deficiency Dividends. Ordinarily it is not necessary to insert conditional paragraphs on Form 870-AD since the acceptance of Form 870-AD **and** Form 2198 are concurrent. See also Rev. Proc. 63-1, 1963-1 C.B. 471.
- (5) When using closing agreements as determinations under IRC 547(c)(2), see IRM 8.13.1, Closing Agreements, and Rev. Proc. 68-16, 1968-1 C.B. 770.
- (6) If Form 2198 is accepted, solicit taxpayer’s claim (Form 976) and secure necessary substantiating evidence.
- (7) Claim filing deadlines include the following, as set forth in 26 CFR 1.547-2, Requirements for Deficiency Dividends:
 - a. The taxpayer has 90 days after the date of the “determination” (generally, the date the signed Form 2198 is mailed with Letter 1152 to the taxpayer by registered or certified mail) to distribute the deficiency dividend.
 - b. The taxpayer has 120 days after the date of the “determination” to file a claim on Form 976, Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

- (8) If no unusual circumstances are involved and verification of payment of dividends can easily be made, verify the claim. Prepare Form 3189, Deficiency Dividend Deduction Case Transmittal, and Form 5402, Appeals Transmittal and Case Memo, and close the case.
- (9) If unable to easily verify the claim, send the substantiating evidence and administrative file to Compliance to verify the claim and prepare the report. Clearly state on the transmittal that the entire case file must be returned to Appeals, including the Revenue Agent Report (RAR) reflecting the recommendation to allow or disallow the claim. See IRM 4.10.8.11, Personal Holding Company (PHC) - Deficiency Dividends, that covers Compliance's considerations of Form 976 claims involving Appeals acceptance of Form 2198.
- (10) The ATE is responsible for providing the Tax Computation Specialist with PHC tax case information needed for preparing computations and agreement forms, including Form 2198. See IRM 8.7.1.2.2, Tax Computation Specialists.
- (11) Depending on local procedures, either APS or the ATE controls the 120 days. APS must notify the ATE of the date Form 2198 is mailed. See related IRM guidance in IRM 8.7.1.2, Personal Holding Company Tax Alleviated by Deficiency Dividend.

8.7.1.2.2
(03-10-2025)
**Tax Computation
Specialists**

- (1) Because the amount of the PHC tax is embedded in the body of the settlement computation and hard to see, the Tax Computation Specialist (TCS) or other employee preparing the settlement computations must provide the amount in "reference number 321 field" of the Form 5403 Worksheet. This requirement is valid for MFT 02 returns.
- (2) The ATE or TCS, whomever prepares the settlement computations, is responsible for preparing a computation of the PHC tax.
- (3) Interest is restricted for PHC tax underpayments under IRC 547(f)(2) and on overpayments under IRC 547(b)(2). This information is annotated in the settlement computation (on Form 3610, 5278, etc.) when applicable.

8.7.1.3
(03-10-2025)
**Accumulated Earnings
Tax - IRC Notification
Procedures Prior to
Notice of Deficiency**

- (1) IRC 531, Imposition of Accumulated Earnings Tax, imposes a 20% accumulated earnings tax on the accumulated taxable income of a corporation which accumulates its earnings and profits beyond the reasonable needs of the business for the purpose of avoiding U.S. income taxes on its shareholders. See the following related tax provisions:
 - a. IRC 532, Corporations Subject to Accumulated Earnings Tax
 - b. IRC 533, Evidence of Purpose to Avoid Tax
 - c. IRC 534, Burden of Proof
 - d. IRC 535, Accumulated Taxable Income
 - e. IRC 536, Income Not Placed on Annual Basis
 - f. IRC 537, Reasonable Needs of the Business
- (2) In any proceeding before the Tax Court involving the allegation that a corporation has permitted its earnings and profits to accumulate beyond reasonable business needs, the burden of proof is on the IRS, unless the IRS sends the taxpayer a notification under IRC 534(b), Notification by Secretary, prior to issuance of a notice of deficiency. However, if such a notification is sent to the taxpayer and the taxpayer timely submits the statement described in IRC 534(c), Statement by Taxpayer, the burden of proof will be on the IRS as to the

grounds given in the statement. IRC 534(b) requires that taxpayers be notified if a proposed notice of deficiency includes an amount with respect to the accumulated earnings tax imposed by IRC 531 so that the burden of proof initially will be on a taxpayer.

- (3) IRC 534(c), Related Statement By Taxpayer — Within such time (but not less than 30 days) after the mailing of the notification described in IRC 534(b) as the Secretary may prescribe by regulations, the taxpayer may submit a statement of the grounds (together with facts sufficient to show the basis thereof) on which the taxpayer relies to establish that all or any part of the earnings and profits have not been permitted to accumulate beyond the reasonable needs of the business.

Note: Letter 572, Proposal to Issue a Notice of Deficiency for Excess Accumulated Earnings Under IRC 531, is available for this notification. See IRM 4.8.8.2, Accumulated Earnings.

- (4) **Appeals officials authorized to sign IRC 534(b) notification** - IRS officials with authority to sign notices of deficiency pursuant to servicewide Delegation Order 4-8 are also empowered to sign notifications under IRC 534(b). See IRM 1.2.2.5.8, Delegation Order 4-8 (Rev. 2), Authority to Issue Notice of Deficiency or Execute Agreements to Rescind Notices of Deficiency, that authorizes Appeals Team Managers and Appeals Team Case Leaders to sign as to their respective cases.
- (5) For additional information and procedural instructions for accumulated earnings tax cases, see IRM 4.10.13.2, Accumulated Earnings Tax (IRC 531), and its related subsections.
- (6) Termination of Form 872-A, Special Consent to Extend the Time to Assess Tax, by the taxpayer is rare. For special rules concerning the termination of a special consent on an accumulated earnings tax case, see IRM 25.6.22.7.1.8, Accumulated Earnings Tax.

8.7.1.4
(02-24-2017)
**Credit for Increasing
Research Activities, IRC
41**

- (1) The research credit is a nonrefundable credit generally allowed for a percentage of expenditures paid or incurred for qualified research. See IRC 41, Credit for Increasing Research Activities, for details.
- (2) The research credit was first enacted in the Economic Recovery Tax Act of 1981 as IRC 44F. Major revisions were made by the Tax Reform Act of 1984 and the section was redesignated as IRC 30 and again by the Deficit Reduction Act of 1986 when it was redesignated as IRC 41, where the authority remains today.
- (3) The research credit has been extended numerous times with one gap: no credit is allowed for amounts paid or incurred after June 30, 1995, and before July 1, 1996. The Protecting Americans from Tax Hikes Act of 2015 made the research credit permanent.
- (4) Use care to ensure the correct law and applicable regulations are applied when computing the research credit for any taxable year.
 - a. See the *Appeals Issue Locator* for more information about the Research Credit.
 - b. Additional information can be found at the *IRS University General Business and Energy Credits Knowledge Base* SharePoint.

Note: The “definition of a qualified activity under Section 41” is an Appeals Coordinated Issue and requires a referral to Technical Guidance, but does not require Review and Concurrence. Two other issues involving the research credit, “extraordinary utilities” and “allocation of indirect costs to self-constructed supplies” require both a referral to Technical Guidance and “review and concurrence.”

- (5) Form 6765, Credit from Increasing Research Activities, provides for the various computations of the research credit, the reduced credit and the amount of the suspended research credit. Refer to the corresponding revision of the form and instructions for the applicable taxable year.

8.7.1.4.1 (02-24-2017)

Research Credit as Component of General Business Credit

- (1) The Tax Reform Act of 1986 added the research credit to the general business credit (GBC) for years beginning after 1985. Prior to that it was a stand-alone credit. As part of GBC, it is subject to the carryback and carryforward provisions of IRC 39(a).
- (2) Special rules apply where both the credit and a deduction is claimed for the same research expenditures.
 - a. IRC 280C(c)(1) provides that no deduction is allowed for that portion of the qualified research expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year.
 - b. The taxpayer must reduce deductions by the amount of the credit computed, regardless of whether the taxpayer is able to utilize the full credit in the credit computation year, unless the taxpayer elects a reduced research credit pursuant to IRC 280C(c)(3).
 - c. This is a yearly election and may be claimed only on an original timely filed return (with extensions).
 - d. See IRC 280C(c) for details and prior law.
 - e. ATEs must take IRC 280C into consideration when providing the TCS with the adjustments to the research expenditures and the research credit.

8.7.1.4.2 (02-24-2017)

Research Credit Suspension

- (1) The Tax Relief Extension Act of 1999 provides for two suspension periods for the research credit. As a result, credit arising from these suspension periods cannot be taken into account on original returns.
 - a. First suspension period is July 1, 1999 – September 30, 2000: The credit cannot be taken into account prior to the later of October 1, 2000.
 - b. Second suspension period is October 1, 2000 – September 30, 2001: The credit cannot be taken into account prior to October 1, 2001.
- (2) No credit involving the two suspension periods may be claimed on a timely filed or late filed original income tax return, even if that original return is filed after the expiration of such suspension period. The amount can only be claimed on a Form 1040X/ Form 1120X or a Form 1045/ Form 1139.
- (3) Further, any claim for refund of an overpayment of tax attributable to a research credit suspension period cannot be filed before the expiration of the applicable suspension period or before the date the original return for the applicable taxable year is filed.

- (4) See Notice 2001-2; 2001-2 IRB 1 (December 6, 2000) and IRM 21.7.4, Income Taxes/Information Returns, for additional information on research credit suspension periods.
- (5) To determine the amount of the credit that is suspended, the taxpayer must first calculate the research credit for the taxable year.
 - a. Because the research credit suspension periods merely delay the use of research credits attributable to a research credit suspension period, the limitations contained in IRC 38(c), IRC 39, and IRC 41(g) on the amounts of research credit allowable to any person as a credit against tax for any taxable year remain applicable.
 - b. Further, taxpayers not electing to take a reduced credit under IRC 280C(c)(3) must continue to reduce applicable deductions, amounts chargeable to capital account, and credits for the taxable year by the full amount of the research credit as required by IRC 280C(c)(1) and IRC 280C(c)(2).
- (6) The amount of the total credit that is suspended is based solely on the number of months in the fiscal year before the suspension date (October 1, 2000 or October 1, 2001) and the number of months after the suspension date, not on the dollar amounts incurred for qualified research activity during the suspension periods. Any adjustment to the credit amount is to be allocated to the different periods before and after the suspension date. See the examples below:
 - a. **Example 1:** If the taxpayer's fiscal year runs from April 1, 1999 through March 31, 2000 and the taxpayer has a \$10,000 research credit, \$2,500 (25% = 3 months for April, May & June out of 12 months) is allowable on the original return and the remaining \$7,500 is suspended until October 1, 2000 (the months covering July through March involve a suspension period). The taxpayer can file a claim for the \$7,500 credit that was suspended on or after October 1, 2000.
 - b. **Example 2:** If the taxpayer's fiscal year runs from December 1, 1999 through November 30, 2000 and the taxpayer has a \$10,000 research credit, no credit is allowable on the original return because all 12 months involve the first or second suspension period. The taxpayer can file a claim for \$8,300 (83% = 10 out of the 12 months involved in the first suspension period, December 1999 through September 2000) after their return is filed for the period ending November 30, 2000; and the taxpayer can file a claim for the remaining \$1,700 (second suspension period for October and November 2000) on or after October 1, 2001.
 - c. **Example 3:** If the taxpayer files a calendar year return for the year 2001 and the taxpayer has a \$50,000 research credit, \$12,500 (25% = 3 months for October, November & December out of 12 months) is allowable on the original return. Even though the due date of the original return (3/15/2002) is after the date the second suspension period expires (10/01/2001), the taxpayer cannot claim the suspended portion of the credit on their original return. The taxpayer can file a claim for the \$37,500 suspended credit anytime after they file their original return.
- (7) Any research credit not allowed in the taxable year that is attributable to a research credit suspension period may not be claimed as a carryback or carry-forward until the day after the end of the applicable research credit suspension period. After the end of the applicable research credit suspension period,

however, research credits attributable to a research credit suspension period not used currently as a credit against tax may be carried to other taxable years under the rules of IRC 39.

- (8) During these suspension periods, the research credit is not used to determine any amount required to be paid for any purpose under the Internal Revenue Code. This restriction extends to the determination of underpayments for the computation of penalties and additions to tax.
- (9) In general, additions to tax for failure to pay estimated tax are made under IRC 6654 or IRC 6655 for any underpayment of income tax imposed by the Code even if the underpayment is created or increased because of the suspension of the research credit. No additions to tax for failure to pay estimated tax, however, are made for any period before July 1, 1999, for any underpayment of income tax imposed by the Internal Revenue Code to the extent the underpayment is created or increased by reason of the suspension of the research credit. See Notice 2001-2.
- (10) In determining estimated tax payments, a credit created by a claim for research credit can only be applied to an estimated tax payment that is due after the suspension period expires. An example of this is a credit attributable to the second suspension period cannot be used to reduce any estimated tax payment due before October 1, 2001.
- (11) Since the taxpayer can apply a credit from a suspension period to an estimated tax payment, pay special attention to the preparation of Sequa worksheets for interest computations. See IRM 8.17.6., Interest Issues in Settlement Computations, for information on preparing the Sequa worksheets when the taxpayer claimed research credits which are subject to the suspension periods.
- (12) The suspension periods also affect the availability dates (e.g. interest computation date) of credits/abatelements against the taxpayer's tax liability, and must therefore be taken into consideration when preparing Form 2285, Concurrent Determination of Deficiencies, for restricted interest computations.

8.7.1.5
(02-24-2017)
**Valuation Issues in
Appeals Cases**

- (1) The purpose of this section is to make ATEs aware of Art Appraisal Services (AAS) and to encourage contact with this office when needed. The office maintains a core of financial analysts and art appraisers to assist service personnel on their cases. In addition, AAS can assist ATEs in locating experts in other fields.

8.7.1.5.1
(03-10-2025)
**Requests for Art
Appraisal Service
Assistance**

- (1) The ATE consults with AAS on any case claiming a value for a single work of art in excess of \$50,000. Telephone discussions with this office are encouraged in order to take advantage of expert advice and to facilitate the handling of all referrals for valuation assistance. To determine information and items necessary to obtain valuation assistance on works of art, see IRM 8.18.1, Valuation Assistance Procedures, for detailed instructions and procedures. Also, see IRM 4.48.2, Valuation Assistance for Cases Involving Works of Art.
- (2) Requests for AAS's assistance must be submitted through the online *Specialist Referral System (SRS)*.
- (3) Requesters are encouraged to contact the AAS Director or Lead Appraiser by telephone and/or email to informally discuss a valuation to determine the type

of assistance required and whether a formal referral is needed. For detailed instructions and procedures, see IRM 8.18.1, Valuation Assistance Procedures.

8.7.1.6
(03-10-2025)
**Review of
Jeopardy/Termination
Assessment Cases**

- (1) IRC 7429, Review of Jeopardy Levy or Assessment Procedures, provides for administrative and judicial reviews of jeopardy and termination assessments. Requirements for jeopardy and termination assessments include the following:
 - a. **Prior approval required** - No jeopardy or termination assessment may be made unless Chief Counsel for the IRS approves in writing such assessment. (See IRC 7429(a)(1)(A)).
 - b. **Information to taxpayer** - Within 5 days after the day on which such assessment is made, the IRS will provide the taxpayer with a written statement of the information upon which the IRS relied in making such assessment. (See IRC 7429(a)(1)(B)).
 - c. **Request for review** - Within 30 days after the day on which the taxpayer is furnished the written statement of information described in (b) above, or within 30 days after the last day of the period within such written statement is required to be furnished, the taxpayer may request a review by the IRS to review the action taken. (See IRC 7429(a)(2)).

Note: For purposes of IRC 7429, Saturday, Sunday, or a legal holiday in the District of Columbia will not be counted as the last day of any period. (See IRC 7429(d), Computation of Days).

- (2) **Redetermination by Secretary**- After the taxpayer's timely request for review, as required by IRC 7429(a)(2), Appeals is responsible for conducting this review in accordance with IRC 7429(a)(3), Redetermination by the Secretary, by considering whether or not:
 - a. The making of the jeopardy or termination assessment is reasonable under the circumstances; and
 - b. The jeopardy or termination amount assessed is appropriate under the circumstances.

Note: See IRM 1.2.2.9.7, Delegation Order 8-7 (formerly DO-160, Rev. 6), Authority of Appeals in Termination Assessments of Income Tax, Jeopardy assessments, and Jeopardy Levies.

- (3) Examination Technical Services will promptly notify Appeals of requests for review under IRC 7429(a)(2) and send to Appeals the jeopardy or termination assessment file that includes the taxpayer's request for administrative appeal. See IRM 4.15.1.10.4.1.3, Request for Administrative Review.
- (4) Appeals will verify whether the request for review was timely made, as required by IRC 7429(a)(2), Request for Review, and follow procedures in IRM 8.20.5, Carding New Receipts, and IRM 8.6.1.2, New Receipts and Initial Case Actions, for non-docketed liability cases.
- (5) Appeals will reconsider the jeopardy or termination assessment, as required by IRC 7429(a)(3), and follow procedures in IRM 8.6.2, Appeals Case Memo Procedures, for documenting the basis and rationale for Appeals' decision whether to sustain the assessment, partially abate or fully abate.

- (6) On Form 5402, Appeals Transmittal and Case Memo, the ATE will document Appeals' decision and the appropriate closing code as follows:
 - a. Compliance action sustained in full (taxpayer does not agree) - **closing code 20**
 - b. Compliance action sustained in part (taxpayer does not agree - **closing code 13**
 - c. Jeopardy/termination assessment not warranted (collection of tax not in jeopardy) - **closing code 03**
- (7) On Form 5402, include the originating function's routing information for APS to return the administrative review case with Appeals' documents (including Form 5402, ACM, computations, etc.). Compliance will complete any jeopardy or termination assessment processing actions. For more information, see the following:
 - a. IRM 8.20.7.60, Termination and Jeopardy Assessment Case Processing
 - b. IRM 4.15.1.10.4.1.4, Redetermination by the Secretary
 - c. IRM 4.15.1.10.4.2.2, Action by Examination
 - d. IRM 4.15.1.10.5, Abatement Procedures
- (8) **Judicial Review** - Under IRC 7429(b) Judicial Review, a taxpayer may bring a civil action against the United States for review of the jeopardy or termination assessment if the suit is brought within 90 days after the **earlier of**:
 - a. The day IRS notifies the taxpayer of the IRS decision described in IRC 7429(a)(3), Redetermination by Secretary, or
 - b. The 16th day after the taxpayer's request for review, described in IRC 7429(a)(2), was made

Note: See IRM 8.7.1.6.2, Compliance's Jeopardy and Termination Assessment Procedures, for Compliance's jeopardy and termination letters that contain instructions to taxpayers for requesting administrative and judicial reviews.

- (9) Appeals procedures for termination assessment cases are in many respects the same as for jeopardy assessments.

8.7.1.6.1 (03-10-2025)

Jeopardy Assessments

- (1) The Code provides an expedited assessment procedure when tax collection is endangered if regular assessment and collection procedures are followed. IRC 6867, Presumptions Where Owner Of Large Amount Of Cash Is Not Identified, allows the IRS to presume that tax collection will be jeopardized in certain circumstances where an individual is in physical possession of an unidentified large amount of cash. The following code sections allow for jeopardy assessment:
 - a. IRC 6861, Jeopardy Assessments Of Income, Estate, Gift, And Certain Excise Taxes. (See IRC 6211, Definition of a Deficiency).
 - b. IRM 6862, Jeopardy Assessment Of Taxes Other Than Income, Estate, Gift, And Certain Excise Taxes.
- (2) For IRS policies on jeopardy assessments, see the following:
 - a. IRM 1.2.1.5.27, Policy Statement P-4-88, Jeopardy assessments to be used sparingly and assessment to be reasonable in amount
 - b. IRM 4.15.1, Jeopardy and Terminations
 - c. IRM 5.1.4, Jeopardy, Termination, Quick and Prompt Assessments

8.7.1.6.2

(03-10-2025)

**Compliance's Jeopardy
and Termination
Assessment Procedures**

- (1) The Compliance Area Director has five days after a jeopardy assessment to furnish the taxpayer with a written statement of the information the IRS relied on in making the assessment, as required by IRC 7429(a)(1)(B), Information to Taxpayer. Compliance will mail the appropriate letter (jeopardy or termination assessment) that notifies the taxpayer of the 30-day deadline for filing a written request for review of the jeopardy or termination assessment action. IRM 4.15.1.9.3.1 , Jeopardy/Termination Letters, identifies these letters as follows:
 - a. Letter 1583, Notice of Termination Assessment of Income Tax Under IRC 6851
 - b. Letter 1584, Notice of Jeopardy Assessment and Right to Appeal

Note: For jeopardy levy notices, Compliance uses Letter 2439, Notice of Jeopardy Levy and Right of Appeal. See IRM 8.24.2, Jeopardy Levy Appeals.

- (2) Approval by Chief Counsel or his/her delegate is required prior to all jeopardy and termination assessments and all jeopardy levies. See IRC 7429(a)(1)(A), Prior Approval Required, and Policy Statement 4-88, Jeopardy assessments used sparingly and assessments to be reasonable in amount.
- (3) Jeopardy assessments initiated by Collection personnel are limited to proposed:
 - a. Trust fund recovery penalty (TFRP) assessments;
 - b. Employment and excise tax assessments, whether or not the return due date expired;
 - c. Partnership penalty assessments;
 - d. Income tax assessment when there is no question about the amount of the liability.
- (4) A jeopardy assessment is requested when:
 - a. Compliance determines collection is in jeopardy;
 - b. One or more of the four conditions outlined in Policy Statement P-4-88 exist;
 - c. For a TFRP or IRC 6020(b) assessment, for which appropriate appeal/protest periods are not expired;
 - d. Assessment/collection action is proposed after the return due date for a signed return for income tax liabilities.

8.7.1.6.3

(03-10-2025)

**Review of Jeopardy
Assessments**

- (1) Examination occasionally investigates the need for a jeopardy assessment for cases pending in Appeals for consideration of the merits of the liability. Examination's jeopardy investigation is limited to whether collection of any proposed deficiency is endangered by any circumstance that might adversely affect the taxpayer's ability to pay or the Government's ability to collect. Appeals is responsible for making the final determination of the tax liability in controversy.
- (2) If Examination determines that a jeopardy assessment is not warranted, the Compliance Area Director returns the tax liability case to Appeals with a notice to that effect.
- (3) When Examination determines that a jeopardy assessment is warranted, it is made by the Compliance Area Director. The tax liability case and jeopardy assessment file are immediately returned to the Examination function that referred the jeopardy assessment case. In income, estate and gift tax cases,

Appeals issues any notice of deficiency required by IRC 6861(b), Deficiency Letters. Send a copy of the notice of deficiency to the appropriate Examination function.

Note: Under IRC 6861(b), Deficiency Letters, if the jeopardy assessment is made before a notice of deficiency has been mailed under IRC 6212(a) in respect to the tax to which the jeopardy assessment relates, then the IRS will mail such notice **within 60 days after the making of the jeopardy assessment**.

- (4) When a tax liability case and jeopardy assessment file are returned to Appeals, only consider the issues in the underlying tax liability case. The taxpayer must follow procedures under IRC 7429(a)(2), Request for Review, for requesting an administrative review of the jeopardy determination and appropriateness of the amount assessed before Appeals can consider the jeopardy case.
- (5) IRC 7429(b) permits a taxpayer to seek judicial review of a jeopardy determination of the appropriateness of the amount of the jeopardy assessment. The period for seeking judicial review is the earlier of the 16th day after requesting Appeals review of the jeopardy assessment or the date Appeals notifies the taxpayer of its determination. Therefore, Appeals should complete its review of the jeopardy determination and the appropriateness of the assessed amount, and should issue a written determination to the taxpayer, within 15 days after the taxpayer makes his request for Appeals review under IRC 7429(a)(2).

Note: See Letter 1584, Notice of Jeopardy Assessment and Right to Appeal.

- (6) Some jeopardy assessments lend themselves to complete resolution of both the merits of the liability and the reasonableness of the jeopardy determination. Therefore, both aspects can be resolved by agreement if the action is taken within 15 days after the taxpayer's request for administrative review is filed or the taxpayer decides not to request judicial review of the assessment in District Court.

8.7.1.6.4 (03-10-2025) **Review of Termination Assessments**

- (1) The Compliance Area Director makes a termination assessment under the conditions found in Policy Statement P-4-89 and the procedures in IRM Part 4. See IRM 8.7.1.6.2, Compliance's Jeopardy/Termination Assessment Cases. Time limitations for holding Appeals conferences, rendering a prompt decision, and statutory provisions for filing suit in the appropriate court are the same as for jeopardy assessment.
- (2) Because of time limitations involved, if the taxpayer provides new information or documentation to the ATE, the Compliance Area Director may need to promptly comment on the new evidence. Appeals retains jurisdiction over the case in instances where the Compliance Area Director comments on the new evidence.
- (3) Inform the taxpayer of the right to judicial review under IRC 7429(b) when a taxpayer does not agree with the Appeals decision. Follow case closing procedures identified in IRM 8.7.1.6, Review of Jeopardy/Termination Assessment Cases.
- (4) At the end of the full tax year, the taxpayer is required to file a full year return. Generally, Examination is responsible for issuing the notice of deficiency

required under IRC 6851(b) for the taxpayer's taxable year. Compliance Area office and Campus controls are established to determine whether or not the taxpayer files a full year return.

- (5) Examination either examines the taxpayer's return or prepares a substitute for the return. The taxpayer may protest the notice of deficiency and come to Appeals. In some cases, it is possible for Appeals to receive the case prior to issuance of the notice of deficiency. In these cases, Appeals issues the notice of deficiency. If Appeals issues the notice of deficiency, a copy of the notice is sent to the appropriate Examination function.
- (6) For IRS policies on jeopardy assessments, see the following:
 - a. IRM 1.2.1.5.28, Policy Statement P-4-89, Termination assessment of income tax to be used sparingly and assessment to be reasonable in amount
 - b. IRM 4.15.1, Jeopardy and Terminations
 - c. IRM 5.1.4, Jeopardy, Termination, Quick and Prompt Assessments

8.7.1.7
(10-01-2012)
**Civil Cases Involving
Department of Justice**

- (1) The Department of Justice (DOJ) has exclusive jurisdiction over any action in which a taxpayer has filed a suit in the United States District Court or in the United States Court of Federal Claims for recovery of taxes paid.
- (2) When a suit for refund of taxes is filed and the taxes at issue are part of a pending Appeals case, further consideration is postponed on the case, including all years under consideration (suit and nonsuit) and on any related cases.
- (3) However, it is not necessary to postpone consideration for years not in litigation if the issues in the nonsuit years are unrelated to the issues in the years under litigation. In such situations, contact the DOJ through local Associate Area Counsel (to obtain permission to consider nonsuit years).
- (4) Either the Campus or Associate Area Counsel notifies the appropriate Appeals office when a suit for refund is filed in a case pending in Appeals. See IRM 5.8.1.6.1, Tax Cases Controlled by Department of Justice, Offer in Compromise, for suits involving offers in compromise.

8.7.1.7.1
(02-24-2017)
**Closing Department of
Justice Cases**

- (1) Appeals is notified when the case jurisdiction exclusively changes to Department of Justice (DOJ).
- (2) After the ATE prepares the case for release to DOJ, APS will close the case off AIMS and ACDS, recharge the administrative file and send it to Counsel.

8.7.1.8
(11-06-2007)
**Appeals Procedures on
Refund Suits**

- (1) This section explains procedures for handling refund suits in various scenarios. It provides information on the following:
 - When to issue the notice of claim disallowance
 - What to do if the case involves an application to reconsider a claim previously disallowed
 - What information should go in the ACM
 - What to do before issuing a statutory notice of deficiency on the suit years
 - What happens if the taxpayer files a petition with the Tax Court
 - How to handle related cases that are under Appeals jurisdiction

- (2) See CCDM 35.4.1.5.2, Coordination with Refund Cases.
- 8.7.1.8.1
(02-24-2017)
Refund Suits with No Deficiency in Appeals Cases
- (1) After notice that a suit has been filed in an Appeals case involving no deficiency, issue the notice of claim disallowance (when required), prepare Form 5402, Appeals Transmittal and Case Memo, and identify the case as a court case.
- (2) Forward the case file for processing to APS, who will complete the appropriate actions and promptly send the administrative file to Counsel.
- (3) However, if the Campus maintains a follow-up control on the refund litigation file, APS will forward the administrative file to the Campus, referring in the transmittal to the Campus's Refund Litigation control number.
- 8.7.1.8.2
(02-24-2017)
Refund Suits with Disposition of Pending Claims
- (1) If a claim has not previously been disallowed or Form 2297, Waiver of Statutory Notification of Claim Disallowance, was not signed by the taxpayer, issue a statutory notice of claim disallowance. See IRM 8.7.7.5, Closing Refund Claim Cases (No Additional Tax).
- (2) If the case involves an application for reconsideration of a claim previously acted upon, prepare Form 5402, Appeals Transmittal and Case Memo, to transmit the case file to APS and enter the date the notice of claim disallowance was issued or the date Form 2297 was filed. Finally, advise the taxpayer that, because of filing suit, the case is under jurisdiction of the DOJ and Appeals will give no further consideration to the case.
- 8.7.1.8.3
(02-24-2017)
Refund Suits with Statutory Notice of Deficiency Issued
- (1) Before issuing a notice of deficiency on the suit years, consult with the DOJ through Counsel, for advice and concurrence. If the DOJ concludes a notice of deficiency should be issued, they notify Counsel, who notifies the appropriate Appeals office.
- (2) If the notice of deficiency raises an issue under a specific Internal Revenue Code section or Tax Court Rule 142 that places the burden of proof on the Government with respect to the issue, consider sending the proposed notice to Counsel for consideration. There is no need to consider sending the proposed notice to Counsel if the burden of proof issue involves only IRC 7491, Burden of Proof.
- (3) Notify Counsel if the ATE has information that the taxpayer intends to petition the Tax Court after receiving a notice of deficiency.
- 8.7.1.8.4
(02-24-2017)
Refund Suits with Deficiency in Appeals Cases
- (1) If there are proposed deficiencies before Appeals for years involved in the suit, Form 5402, Appeals Transmittal and Case Memo, and accompanying ACM, must include the following:
- The amount of the proposed deficiency;
 - The basis for determination;
 - If possible, an expression of Appeals' views on whether a notice of deficiency should be issued; and
 - The date of expiration of statutory period of limitations

- 8.7.1.8.5
(02-24-2017)
**Refund Suits When
Petition is Filed with US
Tax Court**
- (1) If the Tax Court acquires jurisdiction, process the case the same as other docketed cases. Chief Counsel notifies the DOJ that a petition was filed. See IRM 8.4.1, Procedures for Processing and Settling Docketed Cases.
- 8.7.1.8.6
(02-24-2017)
**Refund Suits Affecting
Related Appeals Cases**
- (1) Appeals may have pending cases related to issues in suit involving either the same or different taxpayers. Use Form 5402, Appeals Transmittal and Case Memo, to transmit the years in suit, indicating the related cases are pending before Appeals, the issue involved, and the relationship with the years in suit. Also request prompt advice on disposition of the years in suit.
- (2) If further consideration of related cases appears warranted, ask Counsel to determine whether the DOJ has any objection to adjusting the nonsuit year(s). Before taking final action on any related case covering the nonsuit year(s), ask Counsel to determine if the DOJ has any objection to the proposed disposition. If the Appeals case covering the nonsuit year(s) is docketed in the Tax Court, Counsel (rather than Appeals) coordinates action with the DOJ.
- (3) For Department of Justice cases (or related issues or cases) involving closing agreements, see IRM 8.13.1, Processing Closing Agreements in Appeals.
- 8.7.1.8.7
(02-24-2017)
**Settlements by
Department of Justice
(DOJ)**
- (1) This section covers the different settlements handled by the DOJ; specifically, those where the settlement affects cases pending in Appeals.
- (2) If the DOJ receives a proposal of settlement in a case previously considered by Appeals that affects only years in suit, Counsel does not refer the proposal to Appeals for comment unless circumstances warrant coordination.
- 8.7.1.8.7.1
(02-24-2017)
**DOJ Settlements
Affecting Appeals Cases**
- (1) If the proposal of settlement affects cases pending before Appeals, other than docketed Tax Court cases, Counsel refers the proposal directly to Appeals for comment. Comments furnished to Counsel must be limited to adequacy of the proposal. If there is an issue in the Appeals case not present in the years in suit and not covered by the proposal of settlement, call the issue to the attention of Counsel. Also, mention any other factor which might cause problems with acceptance of the proposal. Do not enter into further settlement negotiations with the taxpayer without specific authorization.
- (2) Delegation Order 30-2, delegates authority to Chief Counsel and the Associate Chief Counsels, to sign recommendation letters to the DOJ concerning settlement offers for years or parties not in suit, but related to pending refund suits for other years or parties. See IRM 1.2.2.16.2, Delegation Order 30-2 (formerly DO-155), Recommendation Letters to the Department of Justice Concerning Settlement Offers Covering Persons or Periods Not in Suit.
- (3) In exercising this authority, consider the advice of the Appeals Area Director with jurisdiction over the nonsuit years or parties.
- 8.7.1.8.7.2
(02-24-2017)
**Disposition Based Upon
Department of Justice
Settlement**
- (1) When Counsel notifies Appeals a settlement is accepted by the DOJ, dispose of the case for the nonsuit year(s) in the usual manner. Counsel will dispose of the refund suit years. ATE's should resolve issues not covered in the settlement following normal procedures and avoid entering into any agreement before the settlement of the years in suit is effective.

8.7.1.9
(02-24-2017)

Cases Involving Criminal Prosecution and Restrictions on Appeals Jurisdiction in Criminal Cases

- (1) Appeals **does not act** on civil liability in a pending criminal prosecution case without concurrence of Criminal Investigation (CI).
- (2) In any case in which prosecution for criminal fraud is recommended to the DOJ, or in which the question of liability for criminal fraud remains under investigation, treat criminal prosecution as pending until a final disposition is made on the criminal aspects. IRM Part 4 and the Policies of the Internal Revenue Service Handbook, contain text relative to cases with criminal fraud implications.
- (3) Appeals **may act** on civil liability when notified in writing by Criminal Investigation that:
 - a. Recommended criminal prosecution was declined and no court proceedings will be instituted; or
 - b. All court proceedings which were instituted as the result of the recommendation for criminal prosecution are complete.
- (4) Appeals **may act** on civil liability when court proceedings on criminal prosecution are not fully completed, but only if the DOJ has given clearance for a determination or a settlement, in whole or in part.
- (5) Under Policy Statement P-4-26, Appeals takes no action that would imperil successful criminal investigation or prosecution. Coordinate with Criminal Investigation on intended actions on criminal tax and tax-related violations under the investigative jurisdiction of CI. See IRM 1.2.1.5.11, Policy Statement 4-26 (formerly P-4-84), Criminal and Civil Aspects in Enforcement.

8.7.1.9.1
(03-10-2025)

Appeals Jurisdiction in Criminal Cases

- (1) The notice of criminal investigation referred to above releases Appeals from the restriction to act on criminal cases. See IRM 1.2.2.9.8, Delegation Order 8-8 (Rev. 1) (formerly DO-66, rev. 15), Authority of Appeals in Protested and Tax Court Cases. However, the notice received from Criminal Investigation in pending criminal cases may have limitations or qualifications. Appeals authority is subject to any of these restrictions.

8.7.1.9.1.1
(11-06-2007)

Appeals Case Memo or Status Report on Pending Criminal Case

- (1) State in the ACM that there are criminal aspects in the case and indicate whether or not such aspects were completed.
- (2) If Criminal Investigation's notice of clearance is prior to the completion of final criminal action and:
 - a. Appeals action is completed within 45 days from the date of notice, give Criminal Investigation four extra copies of the ACM.
 - b. Appeals action is not completed within 45 days from the date of notice, forward a status report (with four copies) at the end of that period to Criminal Investigation and send a similar report every 30 days until completion. Document the status report with any lack of cooperation or good faith on the part of the taxpayer or taxpayer's Counsel. Upon completion, give the ACM (with four extra copies) to Criminal Investigation.

- 8.7.1.9.2
(11-06-2007)
Report to Criminal Investigation When Convicted Taxpayer on Probation
- (1) Appeals may consider the civil liability of a taxpayer convicted of violating the internal revenue laws and placed on probation for a specified period of time conditioned upon satisfactory settlement and/or payment of civil liability for taxes and penalties.
 - (2) Promptly inform the Special Agent in Charge, Criminal Investigation, for the originating field office of any lack of cooperation, or any other act of the taxpayer, that appears intended to delay or to interfere with an orderly determination of liability. Also, give a status report on the case to the Special Agent in Charge, Criminal Investigation, no later than 60 days before the expiration of the probationary period or upon completion of the case, whichever occurs first.
- 8.7.1.9.3
(02-24-2017)
Civil Liabilities After Criminal Aspects Closed
- (1) After disposition of criminal aspects of a case, Compliance forwards to Appeals the administrative file for consideration of any unsettled civil liabilities following regular protested/petitioned procedures for sending liability cases to Appeals.
 - (2) Compliance's liability case sent to Appeals reveals any additional facts or evidence obtained by Criminal Investigation or developed in any pretrial investigation by a special agent. It also reveals whether or not the case was tried. If tried, or if additional evidence was developed, there is a special agent's summary report, prepared in accordance with instructions in IRM Part 9, Criminal Investigation. If the file does not contain the required report, request it from the area Criminal Investigation function, consistent with the limitations set forth in Federal Rule of Criminal Procedure 6(e) relating to grand jury investigations.
 - (3) Include a concise statement in the ACM about the joint investigation by a special agent and revenue agent, the results, and the disposition of any recommendations for criminal prosecution.
 - (4) Refer to IRM 8.11.1.6 , Processing Fraud Penalty Cases, regarding the requirement to secure Area Counsel concurrence if Appeals proposes to remove fraud penalties under IRC 6663(a) or IRC 6651(f) when reaching a settlement on a case which was successfully prosecuted under Title 26. Also, see IRM 1.2.2.9.8 ,Delegation Order 8-8 (Rev. 1) (formerly DO-66, Rev.15), Authority of Appeals in Protested and Tax Court Cases.
- 8.7.1.10
(03-10-2025)
Disaster Relief Cases
- (1) If a disaster occurs and the President declares the area to be a "federally declared disaster area," the Federal Emergency Management Agency (FEMA) will designate certain areas within the disaster area to be eligible for individual and/or public assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C., Sections 5121-5206 (Stafford Act).
 - (2) Because taxpayers and tax practitioners may require disaster/emergency relief measures to enable them to meet their tax obligations for filing returns or paying taxes without being penalized, the IRS will provide filing and payment relief to affected taxpayers located in the areas designated by FEMA to be eligible for individual assistance. Certain compliance actions may be temporarily suspended in accordance with IRC 7508A, Authority to Postpone Certain Deadlines by Reason of Presidentially Declared Disaster or Terroristic or Military Actions.
 - (3) The Disaster Assistance and Emergency Relief Program is a service-wide program administered by the IRS Disaster Program Office (DPO) and overseen

by the SB/SE Human Capital Office, Organizational Support and Continuity of Operations Office. The DPO has overall responsibility for coordinating disaster relief efforts with the IRS operating divisions and functions, who will provide the DPO with at least one point of contact (POC) to receive email notification of federally declared disasters. See IRM 25.16.1, Program Guidelines. The DPO administers the IRS administrative tax relief by:

- a. Ensuring eligible taxpayers, impacted by a federally declared disaster, receive the appropriate level of federal administrative tax relief
 - b. Coordinating with Information Technology to input the proper IDRS disaster freeze code (-O or -S) on affected taxpayer accounts
 - c. Communicating timely and effectively the IRS disaster relief decisions to external and internal stakeholders
- (4) The Director of FEMA appoints a *Federal Coordinating Officer (FCO)* to coordinate FEMA's disaster assistance efforts and work with other federal agencies on relief issues. FEMA assigns a designation of individual and/or public assistance to define the type of relief offered to a specific disaster area. The DPO uses this information when applying administrative tax relief. See IRM 25.16.1.2, Federal Disaster Declaration Process. When IRS provides administrative tax relief, the DPO will prepare an **IRS disaster declaration notice** to identify the areas/counties within a state impacted by the disaster. The notice will include the four-digit federal declaration number assigned by FEMA, the date, a brief description of the disaster, duration of the disaster event (known as the incident period), and the covered disaster areas/counties. The **IRS disaster declaration notice** can be amended, if additional designations are made after further evaluation.
- (5) The DPO will also prepare a disaster relief **memorandum for distribution**, signed by the SB/SE HCO Chief of Organizational Support and Continuity of Operations Office. However, the **memorandum for distribution** (previously issued by the DPO) is not changed as a result of additional designations.

Reminder: Do not forward or use the disaster relief memorandum, an internal memorandum, as notification to taxpayers or other federal/state agencies. Taxpayers can obtain external notices on the *tax relief in disaster situations website*.

- (6) The disaster assistance program uses IDRS to ensure affected taxpayers identified within a covered disaster area receive systemic relief. Indicators are posted on IDRS, via IT systemic programming, using computer transaction code (TC) 971. The DPO will determine the appropriateness of the -S freeze or -O freeze. *TC 971, with action code 087*, will post a corresponding -O freeze on the tax account of an affected taxpayer. *TC 971, with action code 688*, will post a corresponding -S freeze on the tax account of an affected taxpayer.
- (7) **-O Freeze** - The use of the -O freeze allows the IRS to systemically provide special processing related to any filing, payment, or interest relief, granted for a geographic area for the disaster postponement period. The DPO recommends the -O freeze only in the most catastrophic disasters and for the areas suffering the most damage. See IRM 25.16.1.7.2, -O Freeze.
- (8) **-S Freeze** - The -S freeze, a systemic disaster indicator, gives the IRS the flexibility to grant filing and payment relief without suspending compliance activities. It is appropriate when the disaster declaration impact and scope

does not warrant use of the -O freeze. The -S freeze does not suspend compliance activity but requires *soft contact procedures*. See IRM 25.16.1.7.1, -S Freeze.

- (9) As shown in IRM 25.16.1.7, Disaster Systemic Account Indicators, the disaster victim code posts on the entity portion of IDRS. Employees can view the taxpayer's entity portion of IDRS by using command code IMFOL or BMFOL with definer "E." The disaster victim code is a value indicator that is defined as follows:

- a. 1 = -S freeze active
- b. 2 = -O freeze active
- c. 3 = both -S and -O freeze active
- d. 4 = historical indicator reflecting -S or -O freeze was active at some time in the past but is not currently active

Note: The *Disaster Assistance website*, describes relief disaster victims may be provided by the federal government. Advising taxpayers of its existence may assist them in their recovery efforts.

- (10) **Role of Appeals** - Appeals employees will follow the guidelines contained in the DPO's *memorandum for distribution* and the *IRS disaster declaration notice* to determine the specific acts postponed, account freezes, and requirement for soft contact letters.

- a. After IT identifies the taxpayers within the designated disaster areas by zip codes, a designated PPQA analyst (Appeals POC) will prepare a list of Appeals inventory identifying taxpayers located in the IRS covered disaster area(s) and forward via email the inventory list and attachments received from the DPO to the area technical advisor to ensure appropriate action is taken.
- b. Area technical advisors will determine the need to forward the above information to the Appeals team level to perform the appropriate action, as instructed in the email and attachments.
- c. The ATE will consider the need for soft contact procedures. Letter 6260, Case Under Consideration - Disaster Declaration (Soft Contact) is available for this purpose.
- d. Appeals policy requires the input of the "DR" (Disaster Relief) feature code on ACDS for "affected taxpayers" *identified for suspension*.
- e. The ATE can determine the need to suspend action by sending the taxpayer a "soft contact letter" to determine the effect of the disaster on the taxpayer. The ATE should consult with the ATM to determine the need to suspend action on a case. Also, the ATE should review the DPO's *memorandum of distribution* to determine the specific acts eligible for postponement under the service-wide guidelines. The ATE's decision to allow additional time would be based on local procedures.

Note: If the ATE has not identified the taxpayer for suspension, the **DR** feature code should not be added.

- (11) Appeals employees should become familiar with specific disaster relief "freeze" codes on IDRS, including IRM guidance in those instances where an employee receives a taxpayer's request to *self-identify* for disaster relief. Affected taxpayers who reside or have businesses located outside the designated disaster area **MUST** call 1-866-562-5227 to self-identify for disaster relief. After

they have self-identified, a *TC 971, with action code (AC) 688*, will post to IDRS. See IRM 25.16.1.7.1, -S Freeze, and IRM 25.16.1.7.2, -O Freeze.

- (12) Appeals employees can obtain additional information on Appeals *Disaster Assistance and Emergency Relief* intranet page.

8.7.1.11
(02-24-2017)
**Overview of Criminal
Restitution-Based
Assessment Process**

- (1) In a criminal tax case, a court may order a defendant to pay restitution to the IRSe for tax related losses. Criminal Investigation (CI) provides evidence to the courts for the amount of restitution to be ordered. The amount of the restitution ordered by the court is calculated from evidence submitted at trial or from information contained in the plea agreement and presented to the court at sentencing. The court issues a Judgment and Commitment Order (J&C) shortly after the sentencing hearing.
- (2) CI is required to close its case and notify the IRS civil functions within 30 days of final adjudication of the amount of restitution ordered. Final adjudication occurs the day after all appeals have been exhausted for the criminal case. The J&C often only specifies a single amount of restitution that covers multiple tax years or periods. When notifying the civil functions of the amount of restitution via Form 14104, Notification of Court Ordered Criminal Restitution Payable to IRS, it is the responsibility of the CI special agent to specify whether the restitution is assessable as a tax and how it should be assessed. See IRM 25.26.1.3.1, Criminal Investigation, for more information.
- (3) When the criminal aspects of the case have been completed, e.g., criminal prosecution is concluded or the criminal investigation is discontinued, CI will notify the IRS civil functions, including Examination Technical Services, of the formal closing of the criminal case by issuing Form 13308, Criminal Investigation Closing Report, and refer the case for appropriate civil action. When a criminal case includes court ordered restitution payable to the Service, the referral from CI will also include Form 14104, Notification of Court Ordered Criminal Restitution Payable to IRS, Judgment and any other applicable supporting documents.
- (4) IRC 6201(a)(4) provides that the IRS will assess and collect the amount of restitution under an order pursuant to **Section 3556 of Title 18, United States Code**, for failure to pay any tax imposed under this title *in the same manner* as if such amount were tax. This law applies to restitution orders entered after August 16, 2010.
- (5) Appeals is not authorized to consider or process criminal restitution appeals. Appeals must not abate or adjust any restitution-based assessment. If Appeals considers the civil liability for the taxpayer, Appeals will not disturb the criminal restitution-based assessment. Before sending the case to Appeals, TS will ensure that all applicable RBA transaction codes are posted on the affected module(s). The linkages are updated as needed whenever the module is adjusted.
 - See IRM 8.7.1.11.1, Criminal Restitution Debt, for more information about this court-ordered debt.
 - See IRM 8.7.1.11.3, Identifying Restitution-Based Assessments on IDRS, for information on how TS links the civil modules to the MFT 31 RBA module.
 - See IRM 8.7.1.11.4, Civil Actions on Cases with Restitution-Based Assessments, for Appeals involvement.

8.7.1.11.1
(02-24-2017)
**Criminal Restitution
Debt**

- (1) The amount of restitution ordered payable to the IRS creates two separate debts for the same liability. These two separate debts provide two different means for collection, but the same liability cannot be collected twice. See IRM 21.6.8, Split Spousal Assessments, for more information on splitting accounts and applying payments.
- The first debt is the “restitution judgment” which the Department of Justice Financial Litigation Unit (DOJ FLU) is responsible for collecting.
 - The second debt is the criminal “restitution-based assessment” (RBA) which will be assessed and collected by the IRS *in the same manner* as if it was a tax. See IRM 8.7.1.11.2, Restitution Debt Assessed as a Tax under IRC §6201(a)(4).

Note: While an RBA is collected *in the same manner* as if it was a tax, special rules apply if the taxpayer submits an Offer in Compromise. See IRM 5.8.4.24.1 , Offers in Compromise Submitted that Include Restitution.

Caution: The two debts above are in addition to the proposed civil tax liability for the tax period(s) at issue in Appeals. The DOJ debt is not reflected in any IRS records, but is the full amount of restitution ordered by the criminal court.

- (2) The defendant ordered to pay restitution may be one or more of, but is not limited to, the following:
- Individual taxpayer (e.g., filing an individual return, a separate return, or a joint return)
 - Officer or employee of a corporation
 - Partner or employee of a partnership
 - Employee of a sole proprietorship
 - Corporate director
 - Client of a return preparer
 - Return preparer
 - Tax shelter promoter
 - BMF entities (corporations, partnerships, trusts etc.).
- (3) Because restitution debts stem from the same underlying tax liability, the full amount can only be collected once. Any payments that wholly or partially satisfy the restitution-based assessment (as a result of the criminal case) will also be applied against the underlying tax liability (if assessed) provided that the restitution-based assessment is attributable to the underlying civil liability. If the liability is not the same as the amount ordered by restitution, they will not be mirrored.

Example: If the restitution is for tax period X but relates to the defendant’s business income tax and not his own personal income tax for the same period, the payment would be credited to his RBA and the business income tax liability. It would not be credited to his personal income tax liability for the same period.

- (4) Duplicate assessments include the RBAs made on the appropriate MFT 31 account, and civil tax and/or penalties assessed on each respective party’s underlying tax account.

- (5) Two responsible parties may owe different duplicate assessments amounts for the same period. The duplicate assessments may or may not be equal to the RBA amount and can be identified by a TC 971 AC 188 or TC 971 AC 189. Those accounts include, but are not limited to, the following:

- Form 1040, U.S. Individual Income Tax Return (MFT 30)
- Form 941, Employer's Quarterly Federal Tax Return (MFT 01, 17*)
- Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return (MFT 10)
- Form 1120, US Corporation Income Tax Return (MFT 02)

Note: *Indicates Non-Master File (NMF)

- (6) See IRM 4.8.6, Criminal Restitution and Restitution-Based Assessments, and IRM 25.26.1.2, Restitution Debt, for more information.

8.7.1.11.2
(03-10-2025)
**Restitution Debt
Assessed as a Tax
under IRC §6201(a)(4)**

- (1) Examination Technical Services (TS) has exclusive responsibility for completing, revising, and/or abating assessments. Whether a criminal restitution order can be assessed as a tax depends on the nature of the criminal offense for tax purposes. If the restitution ordered is traceable to a tax imposed on the defendant under Title 26 (e.g., cases stemming from an underreporting of income, an inflated credit or expense, or an alleged overpayment of tax that results in a false refund), then the restitution may be assessed as a tax.
- (2) Criminal Investigation (CI) in coordination with Criminal Tax (CT) Counsel will make a case-specific determination whether a restitution order relates to a tax imposed under Title 26. Restitution ordered for a criminal violation of the following statutes may meet the requirements necessary to be assessed as a tax: IRC sections 7201, 7202, 7203, 7205, 7206(1), 7206(2), 7206(4), 7206(5), 7207, and 18 USC sections 286, 287, and 371. This is not an all-inclusive list, but is representative of the most frequently encountered criminal statutes that may result in a restitution-based assessment.
- (3) A criminal restitution is also referred to as a restitution-based assessment (RBA). Examination Technical Services (TS) has exclusive responsibility for completing assessments on criminal restitution cases where IRC 6201(a)(4), Assessment Authority, is applicable.
- (4) The following provisions are helpful in interpreting IRC 6201(a)(4):
- a. The RBA is assessed as if it was a directly assessable tax and does not require the issuance of a statutory notice of deficiency (SNOD). (See IRC 6213(b)(5), Certain Orders of Criminal Restitution).
 - b. The amount of the restitution cannot be challenged in a civil administrative or judicial proceeding based on the existence or amount of the underlying tax liability. (See IRC 6201(a)(4)(C), Restriction on Challenge of Assessment).
 - c. Appeals does not consider appeals of RBAs.
 - d. If an appeal is filed on the criminal restitution determination, it is under the sole jurisdiction of the DOJ.
 - e. The assessment of the restitution *as if it were a tax* can be made at any time and is not subject to a statute of limitations. (See IRC 6501(c)(11), Certain Orders of Criminal Restitution).
 - f. An RBA can be no greater than the amount ordered as restitution.

- g. The IRS is authorized to assess only court ordered interest (and penalties) on RBAs on MFT 31. See IRM 20.2.11.13.1, Interest Computation on RBAs.

- (5) For more information, refer to IRS Chief Counsel Notice CC-2013-012, Deficiency and Litigation Issues Concerning Tax Periods For Which Criminal Restitution Has Been Ordered.

8.7.1.11.3
(03-10-2025)
**Identifying
Restitution-Based
Assessments on IDRS**

- (1) The criminal RBAs against an individual are posted on the individual defendant's MFT 31 module(s). The duplicate civil assessments (when applicable) are posted on the appropriate module for the type of civil tax on which the criminal restitution is based (MFT 30, MFT 02, MFT 01, etc.). Refer to IRM 4.8.6.2.2.2, Assessing Restitution, for more information on cases where the restitution may be ordered against an entity.

Note: For BMF assessments not assessed on MFT 31, be careful not to abate any portion of the actual restitution assessment amount if you are considering any adjustments to the civil assessment(s). While there may be abatements, either due to added expenses, less income, or Net Operating Loss carry-backs, do not abate more than the non-restitution assessments (TC 150, TC 290, TC 298, TC 300, TC 308, etc.). A restitution assessment is court ordered, and cannot be reduced without the court issuing an order. If there are any questions, contact the Technical Services (TS) office in Los Angeles, CA (at *SBSE TECH Svc Criminal Restitution).

- (2) Also, the following are IDRS indicators of an RBA:

IDRS Posting	Explanation
TC 971 AC 102	A Transaction Code (TC) 971 with action code 102 will always appear on the criminal restitution module (MFT 31) and may also appear on the appropriate module for the type of civil tax on which the criminal restitution is based (MFT 30, MFT 02, MFT 01, etc.). The TC 971 AC 102 will identify that the affected modules include criminal restitution (effective 03/23/2011). Refer to paragraph (3) of IRM 21.6.8.4.
TC 290 or TC 298	The RBA will generally be posted on MFT 31 as a TC 290 for IMF tax and a TC 298 for a BMF tax with an adjustment reason code in the range of 141 through 146. See also IRM Exhibit 4.8.6-2, RBA Reason Codes. Up to three adjustment reason codes may be applied to an assessment. If a corporation is the defendant ordered to pay restitution, the assessment will be made directly on the BMF (MFT 02, 01, 10, etc.) module, using TC 290. You will need to look for the TC 971 AC 102 and TC 971 AC 18X for indicators that an assessment on a BMF module is a restitution assessment.
TC 971 AC 18X	The affected modules will also be cross-referenced by a TC 971 with an action code in the range of 180 through 189. In IRM 4.8.6, see Exhibit 4.8.6-3, TC 971 Definitions and Examples, and IRM 4.8.6.2.2.4.2, Cross Referencing for RPP Cases

IDRS Posting	Explanation
MEMO MONEY AMT (MMA)	The Memo Money Amount (MMA) field of the TC 971 AC 18X is used to identify the amount of the RBA and/or penalty that is a duplicate. The dollar amount of the MMA is displayed on CC TXMOD, IMFOLT and BMFOLT only when an amount greater than \$0.00 has been entered. See IRM 4.8.6.2.2.4, Cross Referencing Accounts. Also, see examples in Exhibit 4.8.6-3.

Note: **RPP** = Return Preparer Project (RPP) Cases. See IRM 25.26.1, Criminal and Restitution-Based Assessments, and IRM 4.8.6.3.2.3, *RPP Cases*.

8.7.1.11.4
(03-10-2025)

**Civil Actions on Cases
with Restitution-Based
Assessments**

- (1) After the restitution assessment process has been completed, an Examination Technical Service employee will review the referral package from Criminal Investigation and determine whether civil examination actions are warranted. Field Examination is responsible for reviewing case files forwarded by Technical Service to complete the following actions:
 - a. Take appropriate civil actions, including the recommendation not to take further civil action, to conduct a limited or in-depth civil examination, and/or prepare applicable audit reports as warranted based on the facts and circumstances of the case
 - b. Recommend the assertion of any applicable civil penalties
 - c. Forward the completed examination case through Technical Service for mandatory review prior to closure
- (2) A restitution case may also be a Condition of Probation (COP) case. Criminal Investigation and Compliance (Examination/Collection) share primary responsibility for monitoring tax-related COP for the IRS. See IRM 25.1.4.6, Special Conditions of Probation, IRM 8.7.1.9.2, Report to Criminal Investigation When Convicted Taxpayer on Probation, and IRM 4.8.2, Case Processing.
- (3) On unagreed protested cases and petitioned statutory notice of deficiency cases, Technical Service will send notification of an RBA and/or COP case sent to Appeals by sending an email to the Appeals "Condition of Probation Case Coordinator". The COP Case Coordinator is identified at the bottom of *Appeals Condition of Probation / Restitution-Based Assessment* intranet page. This email is forwarded to an Account and Processing Support (APS) delegate who will search Appeals Centralized Database System (ACDS) for the Appeals' COP/RBA new receipt. After the case is added to ACDS, APS inputs the "PB" feature code on ACDS to allow for Appeals COP/RBA case tracking.
- (4) During the consideration of the civil tax liabilities, ATEs should refer to the following IRM sections (as appropriate):
 - a. IRM 8.11.1.3.6 , Processing Fraud Penalty Cases
 - b. IRM 8.17.4.31, Counsel Review of Notices; and
 - c. IRM 25.1.6.3 , Procedures, in regard to the requirement for Area Counsel's approval for removal/non-assertion of the civil fraud penalty (under IRC 6663 and/or IRC 6651(f)).
- (5) Upon conclusion of Appeals' consideration (or Counsel's jurisdiction for a docketed case), an Appeals Policy analyst will send an email notification of the final results of the case to the following:

- Criminal Investigation (CI) (*CI-HQ-Financial Crimes-Criminal Restitution)
- SBSE Collection Advisory (*SBSE EEF Dallas Restitution)
- Technical Services (*SBSE TECH Svs Criminal Restitution)

