

SECTION 4. PROCESSING AN EARLY REFERRAL REQUEST

- .01 Approving or denying the request for early referral
- .02 Notification of action
- .03 No appeal

SECTION 5. TRANSFERRING THE ISSUE FROM EXAMINATION TO APPEALS

- .01 In General
- .02 Examination issues Notice of Proposed Adjustment (Form 5701)
- .03 Taxpayer response to Form 5701
- .04 Early referral file sent to Appeals

SECTION 6. RESOLVING THE EARLY REFERRAL ISSUE(S)

- .01 In general
- .02 Agreement reached
- .03 Agreement not reached

SECTION 7. EFFECT OF ISSUANCE OF A 30-DAY LETTER BY EXAMINATION

SECTION 8. WITHDRAWAL FROM THE EARLY REFERRAL PROCESS

SECTION 9. NO USER FEE

SECTION 10. EFFECT ON OTHER DOCUMENTS

SECTION 11. EFFECTIVE DATE, FUTURE ACTION

SECTION 1. PURPOSE

Early referral is a process to resolve Coordinated Examination Program (CEP) cases more expeditiously through Examination and Appeals working simultaneously. This revenue procedure describes the method by which a taxpayer requests early referral of one or more unagreed issues from Examination to Appeals. This revenue procedure does not alter the District Director's authority to audit the returns of a taxpayer nor limit or expand the District Director's authority to resolve any issues, including the authority in Delegation Order No. 236, 1991-1 C.B. 313.

SECTION 2. SCOPE OF EARLY REFERRAL PROCEDURES

.01 **In general.** Except as provided in section 2.03, a taxpayer may request early referral of any developed, unagreed issue under the jurisdiction of the District Director arising from an examination (audit). Examination will continue to develop other issues arising in the audit. Early referral is:

- (1) optional;
- (2) initiated by the taxpayer;
- (3) subject to the approval of both the District Director and the Assistant Regional Director of Appeals-Large Case (ARDA); and
- (4) limited to CEP taxpayers.

.02 **Appropriate issues for early referral.** Appropriate issues for early referral include those that:

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, Section 7121; 301.7121-1.)

Rev. Proc. 96-9

TABLE OF CONTENTS

SECTION 1. PURPOSE

SECTION 2. SCOPE OF EARLY REFERRAL PROCEDURES

- .01 In general
- .02 Appropriate issues for early referral
- .03 Issues excluded from early referral

SECTION 3. PROCEDURES FOR REQUESTING EARLY REFERRAL

- .01 Initiating the early referral request
- .02 Statement of issues and position
- .03 Perjury statement
- .04 Signatures

(1) if resolved, can reasonably be expected to result in a quicker resolution of the entire case; and

(2) both the taxpayer and the District Director agree should be referred to Appeals early.

Industry Specialization Program (ISP) and Appeals Coordinated Issues (ACIs) can be referred to Appeals for early resolution under these early referral procedures. ISP issues are listed in Exhibit 8700-1 and ACIs are listed in Exhibit 8700-4 of the Internal Revenue Manual.

.03 Issues excluded from early referral. Early referral does not apply to:

(1) an issue designated for litigation by the Office of Chief Counsel; or

(2) issues for which the taxpayer has filed a request for Competent Authority assistance, or issues for which the taxpayer intends to seek Competent Authority assistance. Taxpayers are encouraged to request the simultaneous Appeals/Competent Authority procedure described in section 8 of Announcement 95-9, 1995-7 I.R.B. 57 or a subsequent revenue procedure. If a taxpayer enters into a settlement with Appeals (including an Appeals settlement through the early referral process), and then requests Competent Authority assistance, the U.S. competent authority will endeavor only to obtain a correlative adjustment with the treaty country and will not take any actions that would otherwise amend the settlement. See section 7.05 of Announcement 95-9.

SECTION 3. PROCEDURES FOR REQUESTING EARLY REFERRAL

.01 Initiating the early referral request. A request for early referral must be submitted in writing by the CEP taxpayer to the CEP case manager. The CEP case manager may suggest that a CEP taxpayer make such a request.

.02 Statement of issues and position. An early referral request must:

(1) state the issues for which early referral is requested;

(2) identify the taxpayer (and, where applicable, all related persons involved in the issue(s)) and the tax period(s) to which those issues relate; and

(3) describe the taxpayer's and the Service's position with regard to the relevant early referral issues. This

statement must contain a brief discussion of the material facts and an analysis of the facts and law as they apply to the early referral issues.

.03 Perjury Statement. The early referral request, and any supplemental submission (including additional documents), must include a declaration in the following form:

Under penalties of perjury, I declare that I have examined this request [or submission], including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.

This declaration must be signed by any person currently authorized to sign the taxpayer's federal income tax returns.

.04 Signatures. A request for early referral must be signed by the taxpayer or the taxpayer's authorized representative. It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used with regard to an early referral request under this revenue procedure.

SECTION 4. PROCESSING AN EARLY REFERRAL REQUEST

.01 Approving or denying the request for early referral. An approval of an early referral request requires the concurrence of both the District Director and the ARDA. The early referral request will be processed as follows:

(1) The CEP case manager will send the taxpayer's request for early referral to the District Director. The CEP case manager also may include a recommendation that the early referral request be approved or denied.

(2) The District Director will note the district's approval or denial and forward the request, whether approved or denied, to the ARDA for consideration.

(3) The ARDA will note his or her approval or denial of the early referral request and will return the request to the CEP case manager.

.02 Notification of action. The CEP case manager will advise the taxpayer of the decision generally within 45 days of receipt of the request. If any issue is approved, the CEP case manager will forward the early referral file for this issue to Appeals as described in section 5 below. If the request for early referral is denied with respect to

any issue, the taxpayer retains the right to pursue the administrative appeal of any proposed deficiency related to that issue at a later time.

.03 No Appeal. There is no formal taxpayer appeal if the early referral request is denied in whole or in part; however, the taxpayer can request a conference with the organization(s) that denied the early referral request.

SECTION 5. TRANSFERRING THE ISSUE FROM EXAMINATION TO APPEALS

.01 In General. Jurisdiction over the issues accepted will be transferred from Examination to Appeals, and the procedures set forth in sections 5.02 through 5.04 will apply.

.02 Examination issues Notice of Proposed Adjustment (Form 5701). Examination will complete a Notice of Proposed Adjustment (Form 5701), for each approved early referral issue, generally within 30 days after the CEP case manager advises the taxpayer of the approved early referral request. Examination will send the Form 5701 to the taxpayer. The Form 5701 will describe the issue and explain Examination's proposed adjustment.

The issuance of the Form 5701 for the early referral issue is not treated as the first letter of proposed deficiency for purposes of computing increased interest under § 6621(c).

.03 Taxpayer response to Form 5701. The taxpayer must respond in writing to Examination's proposed adjustment to each issue set forth in the Form 5701. The response must contain an explanation of the taxpayer's position regarding the issues, similar to that which would be provided in an Appeals protest. The response shall be submitted to the CEP case manager within 30 days (unless extended by the CEP case manager) from the date that the proposed adjustment (Form 5701) is sent to the taxpayer. The procedural requirements of sections 3.03 and 3.04 of this revenue procedure (perjury statement and signatures) also apply to the taxpayer's response to the Form 5701. If a response is not received for any issue within the time provided, the taxpayer's early referral request will be considered withdrawn regarding that particular issue without prejudice to the taxpayer's right to an administrative appeal at a later date. See section 8, Withdrawal from the Early Referral

Process, regarding withdrawal after Appeals has taken jurisdiction over an early referral issue.

.04 Early referral file sent to Appeals. Once the taxpayer has responded to the Form 5701, Examination will send the early referral file to Appeals. Appeals will then take jurisdiction over the issues accepted for early referral. All other issues in the case remain in Examination's jurisdiction. The early referral file should include copies of:

- (1) applicable portions of tax returns and workpapers;
- (2) the approved early referral request;
- (3) the Form 5701;
- (4) the taxpayer's written response to the Form 5701;
- (5) Examination's response to the taxpayer's position, if any; and
- (6) an estimate of the potential tax effect of the proposed adjustment.

SECTION 6. RESOLVING THE EARLY REFERRAL ISSUE

.01 In general. The taxpayer's written response to the Form 5701 generally serves the same purpose as an Appeals protest. Established Appeals procedures, including those governing submissions and taxpayer conferences, apply to early referral issues. See § 601.106 *et seq.* of the Statement of Procedural Rules.

.02 Agreement reached.

(1) If an agreement is reached with respect to an early referral issue, a specific matters closing agreement (Form 906) will be prepared. See § 7121 and also Rev. Proc. 68-16, 1968-1 C.B. 770, which describes the preparation of closing agreements. The closing agreement will be used to compute the corrected tax as a partial agreement prior to or concurrently with the resolution of any other issues in the case.

(2) If an early referral issue results in a refund or credit requiring a report described in § 6405 that must be submitted to the Joint Committee on Taxation, the report must include a copy of the proposed closing agreement signed by or for the taxpayer, but not signed by or on behalf of the Commissioner. The Service will not sign the proposed agreement until after review by the Joint Committee.

.03 Agreement not reached. If an agreement is not reached with respect to an early referral issue:

(1) Appeals will close the early referral file and return jurisdiction over the issue to Examination. Appeals will send a copy of the Appeals Case Memorandum for the issue to the CEP case manager.

(2) Appeals will not reconsider an unagreed early referral issue if the entire case is later protested to Appeals, unless there has been a substantial change in the circumstances regarding the early referral issue.

SECTION 7. EFFECT OF CONCLUSION OF EXAMINATION

If Examination issues a preliminary notice of deficiency ("30-day letter") with respect to any issue that is not accepted for early referral, all unagreed issues, including any early referral issues that have not yet been settled by Appeals, will be combined in the 30-day letter. Likewise, if no issues in the case remain unagreed except for the early referral issues that are pending in Appeals, a 30-day letter will be issued solely with respect to the early referral issues. The issuance of the 30-day letter generally will constitute the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review for purposes of the increased underpayment rate for large corporate underpayments under § 6621(c).

Except as provided in section 6.03(2), once Appeals assumes jurisdiction over the case, all issues, including all early referral issues that have not yet been settled by Appeals, will be considered under established Appeals procedures.

If no issues in the case remain unagreed except for an early referral issue that could not be settled by Appeals and has been returned to Examination, no 30-day letter will be issued. Rather, a statutory notice of deficiency ("90-day letter") will be issued, which will start the period for the increased underpayment rate for large corporate underpayments under § 6621(c).

SECTION 8. WITHDRAWAL FROM THE EARLY REFERRAL PROCESS

If the taxpayer withdraws its early referral request with respect to one or more of the early referral issues after Appeals has taken jurisdiction over the issues, such withdrawal will be treated

in the same manner as if no agreement of those early referral issues was reached. See section 6.03, Agreement not reached. The withdrawal request must be communicated in writing to the ARDA. See section 5.03, Taxpayer response to Form 5701, regarding a withdrawal without prejudice prior to Appeals taking jurisdiction over the issue(s).

SECTION 9. NO USER FEE

There is no user fee for an early referral request.

SECTION 10. EFFECT ON OTHER DOCUMENTS

Announcement 94-41, 1994-12 I.R.B. 7, is superseded.

SECTION 11. EFFECTIVE DATE, FUTURE ACTION

This revenue procedure is effective for requests for early referral filed after January 8, 1996, the date this revenue procedure is published in the Internal Revenue Bulletin. Additional guidance may be issued to supplement or modify the procedures set forth in this revenue procedure in order to extend the early referral program.

DRAFTING INFORMATION

The principal author of this revenue procedure is Thomas C. Louthan, Director, Office of International, TEFRA, and Dispute Resolution Programs, National Office Appeals. For further information regarding this revenue procedure, please contact Mr. Louthan at (202) 401-4098 (not a toll-free number).