

General – Frequently Asked Questions

Announcement 2005-80 Settlement Initiative

(These FAQs are grouped and numbered by the sections of Announcement 2005-80 to which they refer.)

Section 2 – Eligible Taxpayers

Q.2.1. What if a taxpayer has already resolved the case and paid in full. Can a taxpayer now deduct transaction costs if the period of limitations has not expired?

A.2.1. Yes, if the taxpayer did not otherwise enter into a closing agreement or a Form 870-AD that was executed by the Service on this transaction, and no decision or judgment has been entered by a court with respect to the year(s) at issue. If the taxpayer is now asking for a refund – for example, because of the deduction for transaction costs or the partial refund of an accuracy-related penalty – the payment of that refund may be subject to Joint Committee review pursuant to IRC Section 6405(a). The taxpayer should prepare and submit Form 13750, and attach a copy of an appropriate claim for refund (e.g. 1040X, 1120X). Taxpayers should be aware, however, that merely submitting the Form 13750 without filing an additional claim for refund attributable to the transaction costs will not suspend the period of limitations for claiming a refund of the transaction costs. If the taxpayer fails to submit a claim for refund in this situation, and the period of limitations expires, the Service will not be able to provide a refund to the taxpayer. See IRC Section 6514.

Q.2.2 A taxpayer entered into an abusive tax transaction included in the Announcement and reflected the transaction on his or her return, but received no current benefit due to a net operating loss (NOL). Is the taxpayer eligible for the settlement?

A-2.2 Yes, even though the taxpayer received a tax benefit of only an increased NOL, the taxpayer may still elect to participate and claim transaction costs under the terms of the settlement initiative. The NOL will be adjusted in the closing agreement to account for the disallowance of any losses from the abusive tax transaction.

Q.2.3 Does Section 2.3 of Announcement 2005-80 preclude a partner from participating in this initiative if any other partners in the partnership are described in Section 2.1?

A.2.3 Under Section 2.1, any person who organized or participated directly or indirectly in the sale of an eligible transaction or received fees for organizing, selling, or managing (a promoter) such transaction is not eligible for the settlement initiative. Under Section 2.2, if a person who engaged in such a transaction was a partner in a partnership that was a promoter of an abusive tax transaction, that person is not eligible for the settlement initiative.

If an ineligible person (a promoter, as described in Section 2.1, or a person related to a promoter, as described in Section 2.2) is a partner in partnership as defined in IRC Section 6231(a) (“TEFRA partnership”) and that person directly or indirectly claimed tax benefits in a manner described in Announcement 2005-80 with respect to that TEFRA partnership, then no partners in the partnership are eligible for the settlement initiative under section 2.3, **except as described in Q&A-2.4 and Q&A-2.5.**

Q.2.4 What are the circumstances under which a partner in a TEFRA partnership, who is neither a promoter nor a partner in a promoter partnership, may participate in the settlement initiative despite that partner’s participation in a partnership that has an ineligible partner as described in Section 2.1 or 2.2?

A.2.4 In either of the following situations, partners (other than ineligible partners) may participate in the settlement initiative:

(1) No ineligible person claimed more than two percent of the improper tax benefits from the transaction with respect to the partnership and the total improper tax benefits claimed by all ineligible partners in the partnership were less than five percent of the tax benefits.

A partner that believes that these conditions are satisfied should include with the Election: (i) a statement that the taxpayer was a partner in a partnership in which one or more ineligible partner held an interest; (ii) a statement that, to the best of the taxpayer's knowledge, no ineligible partner claimed more than two percent of the improper tax benefits with respect to the partnership and all ineligible partners collectively claimed less than five percent of the improper tax benefits; and (iii) as much of the following information for each ineligible partner that is known to the taxpayer: name, taxpayer identification number (TIN), current address, daytime telephone number, and claimed percentage of the improper tax benefits.

(2) All ineligible partners waive their right to a consistent settlement under § 6224(c)(2). The § 6224(c)(2) waiver must be executed in the manner prescribed under Treas. Reg. § 301.6224(b)-1. However, instead of filing the waiver with the Service Center where the partnership return is filed (as provided by Treas. Reg. § 301.6224(b)-1(b)(5)), the waiver must be sent to: INTERNAL REVENUE SERVICE, Attn: Announcement 2005-80, MS1505, 24000 Avila Road, Laguna Niguel, CA 92677. The Service must **receive** the waiver on or before January 23, 2006.

Q.2.5 If a partner in a TEFRA partnership is excluded from the settlement initiative under Section 2.2 of Announcement 2005-80, are there any other circumstances in which such partner may participate in the settlement initiative?

A.2.5 Yes. The Service will review requests to participate by partners and may allow participation on a case-by-case basis. Furthermore, the Service will take steps to prevent ineligible partners from benefiting from this settlement initiative where it would not be appropriate to allow them to do so.

Partners desiring to participate in the settlement initiative must file the Election in a timely manner to be considered under this Q&A-2.5. In the Election, the partner should include: (i) a statement as to why the partner believes that participation in the settlement initiative is appropriate, and (ii) as much of the following information concerning each ineligible person as is known to the taxpayer: name, taxpayer identification number (TIN), current address, daytime telephone number, and percentage interest held in the partnership. To ensure consistent treatment of such elections, the Service will centralize the evaluation of requests to participate filed under this Q&A-2.5.

Q.2.6 If the taxpayer already filed an amended return reversing the transaction, can the taxpayer now claim transaction costs under the provisions of this Announcement?

A.2.6 Yes, as long as the refund period of limitations for the affected year remains open. See Q&A 2.1, above.

Q.2.7 Can a partner in a TEFRA partnership participate in the settlement initiative independently of any other partners in the partnership?

A.2.7 Yes, a partner in a TEFRA partnership can enter into a closing agreement independently of the other partners. But see Q&A 2.3, 2.4, and 2.5.

Q.2.8 Can a partner in a TEFRA partnership that has received a Notice of Final Partnership Administrative Adjustment on or before January 23, 2006, participate in the settlement initiative?

A.2.8 Partners in a partnership that has received a Notice of Final Partnership Administrative Adjustment (FPAA) on or before January 23, 2006, may participate in the settlement initiative so long as no partner has petitioned the FPAA in court at the time the partner elects to participate in the settlement and the petition period has not already expired. Partners that decide to elect must follow the election procedures in Announcement 2005-80. In the Election, they should indicate that they have received an FPAA. If the period for obtaining judicial review of the FPAA will expire before the execution of the closing agreement is completed, the partner may preserve the right to judicial review by petitioning a court. In cases in which the taxpayer filed an election to participate before any partner filed a petition (and so long as the partner is otherwise eligible for the settlement initiative), the petition should be filed in the Tax Court. In this situation, Chief Counsel will accept a settlement offer consistent with the terms of this initiative. If the petition is brought in a court other than the Tax Court, Chief Counsel can only recommend that the Department of Justice accept a settlement offer consistent with the terms of this initiative.

Q.2.9 Can a taxpayer who has received a Statutory Notice of Deficiency on or before January 23, 2006, participate in this initiative?

A.2.9 A taxpayer that has received a Statutory Notice of Deficiency (SND) on or before January 23, 2006, may participate in the settlement initiative if the taxpayer has not yet filed a petition in the United States Tax Court and has not filed a suit for refund in any other court. The taxpayer must follow the election procedures in Announcement 2005-80. In the Election, the taxpayer should indicate that the taxpayer has received a SND. If the taxpayer is within the 90-day (or 120-day, if applicable) period for filing a petition in Tax Court and there is sufficient time remaining on the period of limitations on assessment (taking extensions into account), the revenue agent will consider withdrawing the SND in accordance with Rev. Proc. 98-54, 1998-2 C.B. 531.

Q.2.10 May the taxpayer in a docketed court case elect to participate in the settlement initiative?

A.2.10 Under Section 2.5, a taxpayer who is a party to a court proceeding to determine the tax treatment of the transaction is not eligible to participate in the initiative. However, the taxpayer may propose a settlement on the same terms as in Announcement 2005-80, and the Office of Chief Counsel will consider that offer.

(New – 12/12/05) Q.2.11 Under section 2.4 of Announcement 2005-80, a person who directly or indirectly engaged in a transaction is an ineligible person if, before the date on which the election is filed, the Service has informed the person (or the tax matters partner or notice group of the TEFRA partnership of which the person was a partner) that the Service has designated or is considering designating the transaction for litigation. When will a taxpayer be considered to have been informed that the Service is considering designating a transaction for litigation?

A.2.11 For purposes of section 2.4, a taxpayer has been informed of the designation or potential designation on the earlier of the mailing date of (a) the notice of designation, or (b) a letter indicating that the Service is considering designating the transaction or issue.

Section 3 – Eligible Transactions

Q.3.1 If the taxpayer's transaction is not the same as one described in the Announcement, and is not one otherwise excluded from the settlement initiative, is the taxpayer still eligible to participate?

A.3.1 The initiative is designed to be taxpayer-friendly, all-inclusive and to reach out to as many taxpayers as possible. Therefore, the transaction need only be substantially similar to one described in the notice and can include one that is expected to obtain similar tax consequences and is either factually similar or based on a similar tax strategy. Just as taxpayers are advised to construe the term "substantially similar" broadly in favor of disclosure, the Service will construe this term broadly in favor of eligibility. Any filed election to participate will carry a strong presumption that the selected transaction is an eligible one.

(New – 11/14/05) Q.3.2 If a taxpayer participated in a transaction that is the same as or substantially similar to the transaction described in Notice 2000-44, but did not participate in the settlement initiative for that transaction (Announcement 2004-46), can the taxpayer participate in this settlement initiative?

A.3.2 No. The transaction described in Notice 2000-44 (Son of BOSS) is not a transaction eligible for settlement under Announcement 2005-80.

Section 4 – Settlement Terms

(Updated – 12/6/05) Q.4.1 How should a taxpayer that received a refund or reimbursement of the fees paid to the accounting firm or other party relating to the transaction treat the refund?

A.4.1 If the refund (which, for purposes of these FAQs, includes any reimbursement or reduction) was received before the taxpayer and the Service execute the closing agreement, the refund reduces the amount of fees paid. The closing agreement will provide that, if the refund is received after the taxpayer and Service execute the closing agreement, the taxpayer must recognize income from the refund in the tax year the amount was received.

Q.4.2 If a taxpayer made a proper and timely disclosure under Announcement 2002-2, will the Service assert that the taxpayer is subject to penalties if the taxpayer does not elect to participate in the settlement initiative?

A.4.2 A taxpayer that made a proper and timely disclosure (for which the taxpayer was eligible) under Announcement 2002-2 will not be subject to the accuracy-related penalty as provided in that announcement, regardless of whether the taxpayer elects to participate in the settlement initiative.

Q.4.3 Does the fact that a tax shelter registration number was shown on the return provide the taxpayer with a penalty waiver?

A.4.3 No. Reporting a tax shelter registration number on the return does not affect the applicability of the accuracy-related penalty.

Q.4.4 Are amended returns filed after the release of Announcement 2005-80 eligible to be “qualified amended returns” within the meaning of Treas. Reg. § 1.6664-2(c), if they otherwise satisfy the conditions of a qualified amended return?

A.4.4 Amended returns for years reflecting a listed transaction within the scope of Announcement 2005-80, or within the scope of another settlement initiative, may not be qualified amended returns. See Temp. Treas. Reg. § 1.6664-2T(c)(e)(i)(E), which applies to amended returns and requests for administrative adjustment filed on or after March 2, 2005. That provision does not allow an amended return to be qualified if it is filed on or after the date on which the Commissioner announces a settlement initiative to compromise or waive penalties with respect to a listed transaction. Announcement 2005-80 is a settlement initiative that triggers that rule, and the announcement does not waive this rule for any period of time after the date of its publication.

Q.4.5 Can a taxpayer participate in the settlement initiative if the taxpayer offers to pay the underpayment from the transaction, but does not want to pay the penalties?

A.4.5 No. The terms of the initiative include a concession of the reduced accuracy-related penalty amount and all other applicable penalties relating to the transaction. The taxpayer may be entitled to a waiver of the

accuracy-related penalty in certain situations. If the Service does not agree that the taxpayer is entitled to a waiver of the accuracy-related penalty, however, the taxpayer must accept the terms of the settlement in their entirety in order to participate in the initiative.

Q.4.6 If the taxpayer participates in the initiative but does not agree with the penalty, can the taxpayer appeal the penalty?

A.4.6 No. The settlement initiative is offered as an alternative to conventional Service resolution procedures. This is an administrative settlement intended to reduce the burden on both taxpayers and the Service, and completely resolve all aspects of the issues covered in the announcement.

Q.4.7 If the taxpayer attempts to work out alternative payment arrangements and is unsuccessful, may the taxpayer appeal the alternative payment arrangement decision?

A.4.7 No. A taxpayer that wishes to participate in the settlement initiative must fully pay all tax, interest, and penalties. Any person unable to fully pay must make payment arrangements acceptable to the Service prior to execution of the closing agreement prescribed by this announcement. The Collection Officer's determination of taxpayer's eligibility for other payment arrangements may not be reviewed by Appeals. If no agreement for alternative payment arrangements can be reached, the taxpayer cannot participate in this initiative.

Q.4.8 If the taxpayer does not elect the settlement initiative, can the taxpayer use the Fast Track Settlement Appeals Process?

A.4.8 Yes. If a taxpayer does not elect the settlement initiative, Fast Track Settlement is one of the alternative dispute resolution options available as a part of the administrative appeals process. However, all of the terms of Revenue Procedure 2003-40 will apply. For example, the taxpayer must elect fast track under Revenue Procedure 2003-40 and LMSB must agree to accept the case or issue for Fast Track consideration.

Q.4.9 If a taxpayer's case is already in Appeals, can the taxpayer participate in this settlement initiative? Whom does the taxpayer notify?

A.4.9 Yes. A taxpayer who otherwise meets the eligibility requirements may participate in this settlement initiative. The taxpayer must notify the Appeals Officer assigned to the case, and complete the election form and provide the requested information. See Section 5 of Announcement 2005-80.

Q.4.10 If the taxpayer and the Service cannot agree to the terms of the closing agreement, will mediation with Appeals be an option?

A.4.10 No.

Q.4.11 A taxpayer is currently under examination and is unsure whether to take advantage of the settlement. May the taxpayer request a suspension of the examination until the taxpayer determines whether to participate? If so, for how long may the taxpayer request a suspension of the examination?

A.4.11 Examination of transactions will not be suspended while the settlement offer time frame is open for consideration. However, cases involving transactions covered by Announcement 2005-80, and where the statutory period of limitations will not expire, will remain open until at least January 23, 2006, when the election is otherwise required to be filed and will have those eligible transactions addressed accordingly thereafter.

(New – 11/14/05) Q.4.12 Are a taxpayer's legal fees associated with bringing legal action against a promoter treated as transaction costs for purposes of this settlement initiative?

A.4.12 No.

(New – 11/14/05) Q.4.13 For a taxpayer that engaged in a transaction covered by Announcement 2005-80 and was in Appeals, including Fast Track Settlement, as of October 27, 2005 (the date Announcement 2005-80 was released), will Appeals continue to consider the merits of the taxpayer's transaction during the election period for Announcement 2005-80?

A.4.13 Yes. Appeals will not suspend its consideration of a case in Appeals, including Fast Track Settlement, as of October 27, 2005, during the election period for Announcement 2005-80 (the settlement election period). If the taxpayer wants to participate in the settlement initiative, the taxpayer must file the election by January 23, 2006. An electing taxpayer should provide the Appeals Officer with a copy of the election. Once the election is made, Appeals will proceed in accordance with the settlement initiative. For taxpayers who do not participate in the settlement initiative, Appeals is under no obligation to offer settlement terms similar to the terms set forth in Announcement 2005-80 for all or any part of the case before Appeals.

(New – 11/14/05) Q.4.14 If a taxpayer requested Fast Track Settlement consideration before October 27, 2005, will the IRS allow the taxpayer to have Fast Track Settlement consideration during the settlement election period?

A.4.14 Yes.

(New – 11/14/05) Q.4.15 If a taxpayer had not requested Fast Track Settlement consideration before October 27, 2005, can the taxpayer go to Appeals or participate in Fast Track Settlement during the settlement election period (which ends on January 23, 2006) and still participate in the settlement offer after going to Appeals or participating in a Fast Track Settlement?

A.4.15 No, a taxpayer who was not in Appeals and had not requested a Fast Track Settlement before October 27, 2005, can not elect to participate in the settlement after receiving Appeals' consideration of the merits of the taxpayer's case. A taxpayer can request conventional Appeals consideration or Fast Track Settlement during the settlement election period. (See Q&A 4.8.) But if the taxpayer's case goes to Appeals or the IRS agrees to Fast Track Settlement before the expiration of the settlement election period, the Service will treat the taxpayer as having irrevocably decided not to participate in the Announcement 2005-80 settlement, even if the taxpayer would otherwise be eligible to participate in the settlement initiative.

(New – 11/14/05) Q.4.16 If a taxpayer elects to participate in the settlement initiative but does not settle the transaction under the initiative, will the taxpayer have Appeals rights?

A.4.16 Yes, the taxpayer will have all existing Appeals rights but the terms of the settlement initiative will no longer be available.

(New – 12/12/05) Q.4.17 What is included in the phrase "improperly claimed tax benefits"?

A. 4.17 The benefits included in the phrase "improperly claimed tax benefits" will depend on the transaction at issue. For example, the term could include understated income, overstated deductions or credits, or the reduction of gain (or creation of a loss) on the sale of an asset with an artificially inflated basis. The relevant published guidance and any Q&As for the specific transaction will provide the Service's view of what the improper tax benefits are for a particular transaction. Also see the [transaction-specific details](#) on the IRS website.

(New – 12/12/05) Q.4.18 How are amounts paid for legal or tax opinions secured in connection with the transaction treated under the settlement initiative?

A.4.18 Amounts paid for legal or tax opinions secured in connection with the decision to enter into the transaction or the manner in which to report the transaction are transaction costs and thus allowed as an ordinary loss in the year paid. However, professional fees incurred with respect to subsequent compliance issues are not within the scope of Announcement 2005-80, and are deductible, if at all, subject to the rules and limitations generally applicable to such fees.

(New – 12/12/05) Q.4.19 What other items are included in computing the transaction costs?

A.4.19 Other items included in computing the transaction costs will depend on the transaction, but include fees paid to promoters, fees paid to trustees or investment advisors, and costs relating to securing financing for the transaction. The relevant published guidance and the Q&As for the specific transaction may indicate what transaction costs may be involved in a particular transaction.

(New – 12/12/05) Q.4.20 What is the significance of a “qualified amended return” filed by an eligible taxpayer?

A.4.20 A taxpayer that filed a qualified amended return that reduced or eliminated the underpayment on which the penalty is calculated has reduced or eliminated the accuracy-related penalty that the taxpayer must pay under the initiative. Treas. Reg. § 1.6664-2(c)(2) provides that the amount shown as tax on the taxpayer's return includes amounts reported as additional tax on a qualified amended return for purposes of determining whether there is an underpayment of tax subject to an accuracy-related penalty under IRC Section 6662.

(New – 12/12/05) Q.4.21 What is the cutoff date for an eligible taxpayer to file a qualified amended return?

A.4.21 It depends upon the type of transaction. For listed transactions, the date of the settlement initiative (October 27, 2005) cut off the period during which the taxpayer could file a qualified amended return. In many cases, however, the qualified amended return period for these years may have ended earlier. See Temp. Treas. Reg. § 1.6664-2T(c)(3) for a full discussion of the rules applicable to qualified amended returns. For nonlisted transactions, it may still be possible for the taxpayer to file a qualified amended return if, for example, the IRS has not yet contacted the taxpayer or the promoter concerning an exam of the year, and the IRS has not issued a John Doe summons relating to the tax liability of a group that includes the taxpayer.

(New – 12/12/05) Q.4.22 If the period of limitations on assessment will expire within 12 months of the taxpayer's filing of the election, until what date will the Service expect the taxpayer to extend the period of limitations?

A.4.22 The examiner will request an extension of, at a minimum, one year.

(New – 12/12/05) Q.4.23 Will the Service agree to a restricted consent?

A.4.23 Generally no. As a general rule, the Service will not give the taxpayer a restricted consent. Unless the case previously had a restricted consent, the examiner will request an unrestricted Form 872-I. If the taxpayer refuses to sign the unrestricted consent, the examiner will consult with the designated contact person for the taxpayer's transaction to determine whether the Service will allow the taxpayer to participate in the settlement initiative.

(New – 1/17/06) Q.4.24 How will participation in the settlement initiative affect the amount of interest that the taxpayer owes with respect to the transaction?

A.4.24 As a result of the Gulf Opportunity Zone Act of 2005 (GOZA), P.L. 109-135, there may be a significant reduction in the amount of interest owed by individuals participating in the Announcement 2005-80 settlement initiative.

Underpayment interest generally accrues during the time taxes are owed and unpaid, unless one of the specific exceptions under IRC Section 6404 applies. One of the specific exceptions is IRC Section 6404(g), which generally suspends the accrual of underpayment interest 18 months after an income tax return is timely filed if the Service has not sent the taxpayer a notice specifically stating the taxpayer's liability and the basis for the liability. Interest resumes 21 days after the Service sends the required notice to the taxpayer. Section 903 of the American Jobs Creation Act (AJCA) modified IRC Section 6404(g) to provide that interest is not suspended after October 3, 2004, on underpayments attributable to undisclosed reportable transactions or listed transactions.

GOZA modifies section 903 of the AJCA to provide that interest is not suspended for periods ending on or before October 3, 2004, for underpayments attributable to undisclosed reportable transactions or listed transactions, except for in certain cases. Accordingly, some taxpayers had a "no interest window" – from 18 months after filing their returns until the earlier of October 3, 2004, or 21 days after the Service sent the required notice to the taxpayer – for interest on underpayments resulting from listed transactions or undisclosed reportable transactions. GOZA generally eliminates that "no interest window."

GOZA, however, provides a special rule for those participating in the Announcement 2005-80 settlement initiative. If a taxpayer settles under Announcement 2005-80, GOZA retains the "no interest window." Thus, taxpayers may remain eligible for the pre-GOZA suspension of interest rules by settling under Announcement 2005-80. A taxpayer who terminates participation in this settlement initiative, however, will lose the interest suspension, and thus will owe interest for periods before October 3, 2004. Similarly, interest will also accrue for periods before October 3, 2004, for a taxpayer participating in this settlement initiative if the Service determines that a settlement agreement will not be reached within a reasonable period of time.

(New – 1/17/06) Q.4.25 Is this special rule applied on a return basis or a transactional basis?

A.4.25 The special rule applies on a transaction-by-transaction basis. Thus, participation in the settlement initiative with respect to an individual transaction qualifies the taxpayer for the pre-GOZA suspension of interest rules only with respect to interest on underpayments resulting from that transaction. If the taxpayer has entered into other listed transactions or reportable transactions and is not participating in the settlement initiative with respect to those transactions, the special rule does not apply to interest on underpayments resulting from those transactions.

(New – 1/19/06) Q.4.26 Will a taxpayer who was required to, but did not, disclose a listed transaction on a return or statement filed on or after October 22, 2004, have any relief from the IRC Section 6707A penalty if the taxpayer elects to participate in the settlement initiative?

A.4.26 No. See section 4.E.4 of Announcement 2005-80.

(New – 1/19/06) Q.4.27 If a taxpayer participated in a transaction that the taxpayer does not believe is "substantially similar" to a listed transaction (and, therefore, may not have disclosed the transaction), can the taxpayer participate in the settlement initiative?

A.4.27 The Service will review a taxpayer's election to settle under the announcement. If the Service concludes that the transaction is not described in the announcement and is not substantially similar to one of the 16 listed transactions described in the announcement, then the Service will treat the taxpayer's election as a request to settle the transaction and will consider whether settling along the terms described in the announcement is appropriate

Section 5 – Application Process

Q.5.1 How does a taxpayer make the election? What formats are acceptable and what is required?

A.5.1 Form 13750 (Election to Participate in Announcement 2005-80 Settlement Initiative) has been created for this announcement and may be found on the IRS Web site at <http://www.irs.gov>. Revenue agents will also have copies of this form. The forms must contain original signatures and must be sent to **both** the examining agent (if the taxpayer is currently under examination or any TEFRA partnership in which the taxpayer is (or was) a partner is under examination) and to the address listed in the announcement. If the taxpayer is not currently under examination, the taxpayer only has to send the Election to the address listed in the announcement. The Election should be sent to the Service via certified mail or designated delivery service (within the meaning of § 7502(f)). The Election must be complete (as required by Announcement 2005-80) and submitted on or before January 23, 2006. Incomplete forms will be rejected and must be re-submitted on or before January 23, 2006, to be considered. The Election must be signed under penalties of perjury.

Q.5.2 For purposes of Form 13750, what is considered a 'relevant tax return'?

A.5.2 A 'relevant tax return' is generally any return open under the statute of limitations where a tax benefit was claimed.

Q.5.3 Does a taxpayer that is currently under examination need to submit copies of tax returns required under this initiative?

A.5.3 No.

Q.5.4 Does the power of attorney for a partner in a TEFRA partnership need any special language?

A.5.4 Yes. In the case of taxpayers that engaged in a transaction through a TEFRA partnership, the power of attorney must contain the following language under Number 3 or Number 5 of Form 2848 to qualify under IRC Section 6223:

"The acts authorized by this power of attorney include representation for the purposes of Subchapter C of Chapter 63 of the Internal Revenue Code."

Q.5.5 Does the Election require the taxpayer to settle the transaction?

A.5.5 No. The terms of the settlement are not binding on either the Service or the taxpayer until execution of the closing agreement. The filing of the Election does not obligate or bind the taxpayer to enter into the closing agreement.

Q.5.6 What information is requested regarding out-of-pocket expenses?

A.5.6 Taxpayers will use Form 13750 to attest, under penalties of perjury, to the total transaction costs paid by the taxpayer. Taxpayers will be asked to provide the amount of costs related to the transaction, the tax year in

which the taxpayer paid those costs, and the manner and year in which the taxpayer claimed those costs for tax purposes. They will be asked to provide specific information regarding fees paid to financial advisors, accountants, attorneys, and others, the identity of parties to whom the fees were paid, and any refund or reimbursement of fees. In addition, the Service may request specific documentation to support the fees paid, including promotional materials in the taxpayer's possession, if not previously provided.

Q.5.7 What is the period for providing additional information and documentation? Under what circumstances will an extension of this period be granted to the taxpayer to submit requested information and documentation under Section 5.B of Announcement 2005-80?

A.5.7 Announcement 2005-80 allows the taxpayer 30 days to submit additional materials after the Service has requested them. To obtain an extension of this 30-day period, the taxpayer must show, to the satisfaction of the Service, that there is good cause for the need for an extension. The Service has the discretion to grant or to refuse an extension.

Q.5.8 What if the taxpayer has unfiled tax returns?

A.5.8 The taxpayer will not be able to reach an acceptable arrangement with Collection unless all delinquent returns have been filed. Any liability in the years with unfiled returns will need to be paid or included in the arrangement to resolve the account.

Q.5.9 If the taxpayer is unable to fully pay immediately and requests additional time to pay the account, will the Service charge the taxpayer interest?

A.5.9 Yes. Interest will continue to accrue on the account until it is fully paid. Interest is calculated on the entire unpaid liability. In addition, any failure to pay penalty may continue to accrue on the unpaid tax portion of the account. Depending on the circumstances, other penalties may also apply.

Q.5.10 When will the interest suspension period under IRC Section 6404(g) end for taxpayers who participate in the settlement initiative?

A.5.10 Section 903 of the American Jobs Creation Act of 2004 removed listed transactions from eligibility for interest suspension effective for interest accruing after October 3, 2004. Interest on listed transactions, to the extent IRC Section 6404(g) had suspended interest, began to accrue again on October 4, 2004.

Q.5.11 Will a Notice of Federal Tax Lien be filed if full payment is not returned with signed closing agreement?

A.5.11 Generally, a Notice of Federal Tax Lien will be filed if the liability is not fully paid. An extension of time to fully pay the liability can be granted for up to 120 days. Under these circumstances, the filing of a Notice of Federal Tax Lien can be withheld. The Service will not grant an extension of time if the taxpayer has not provided complete financial information. The filing of a Notice of Federal Tax Lien can be withheld if the taxpayer posts a bond or other acceptable collateral security.

(Revised – 1/20/06) Q.5.12 The announcement requires either full payment at the time of signing the closing agreement or that the electing taxpayer make other arrangements. How does a taxpayer make other arrangements if the taxpayer cannot make full payment?

A.5.12 At the time a taxpayer submits the signed closing agreement, if the taxpayer does not make payment, the taxpayer must submit complete financial statements within 30 days. The taxpayer will be referred to a

Collection Revenue Officer who will determine, within 30 days of receipt of all necessary financial information, the taxpayer's eligibility for other payment arrangements. The Collection Officer's determination of taxpayer's eligibility for other payment arrangements may not be reviewed by Appeals. Once the alternative payment arrangements are finalized, the closing agreements will be executed by the Service and assessment will be made. Failure to reach acceptable financial arrangements will make the taxpayer ineligible to participate in this settlement initiative. Taxpayers making other payment arrangements with the Service will be required to waive all rights to Collection Due Process (CDP) and Collection Appeals Program (CAP) consideration with respect to the filing of a notice of federal tax lien and notice of intent to levy in connection with the agreed-upon payment arrangements.

Taxpayers making other payment arrangements with the Service also will be required to waive rights to Appeals consideration of the collection of the liability, including CDP hearings, consideration under CAP, and Appeals consideration of the rejection by the Service of any alternative payment proposal in the future. This waiver of appeal rights extends to actions such as liens or levies that result as a consequence of a taxpayer default of an installment agreement, payment extension, or other promises regarding payment. Taxpayers further waive their right to receive notice of appeal rights that have been waived under the settlement initiative.

The preceding waiver of rights does not apply to collection of the liability prompted by a default by a taxpayer under the agreed-upon payment arrangement if the taxpayer can show to the Commissioner's satisfaction that the default was the result of an unanticipated significant economic hardship due to circumstances beyond the taxpayer's control or was the result of procedural error on the part of the Service. In any Appeals hearing or consideration excepted from waiver, taxpayers have no right to dispute the liability established under the final, executed closing agreement.

(New – 11/14/05) Q.5.13 May a taxpayer request that the closing agreement include language pertaining to “innocent spouse” relief under IRC Section 6015?

A.5.13 Yes. Information relating to “innocent spouse” provisions can be included in the Form 906 (Closing Agreement On Final Determination Covering Specific Matters). This situation will be handled on a case-by-case basis and determined on the facts of the particular case. Appropriate language will be put in the closing agreement. The taxpayer should inform the Service of his or her desire to claim “innocent spouse” relief when submitting the additional information.

(New – 11/14/05) Q.5.14 In the case of joint returns, will the Service accept participation by only one of the joint filers?

A.5.14 The Service will generally accept an election from an individual taxpayer who filed a joint federal income return. The electing taxpayer must comply with all settlement terms of Announcement 2005-80. The Service will accept the election unless it determines that it is not in the interest of sound tax administration to do so. A joint filer who participates in the settlement without the filer's spouse must satisfy paragraph D of Section 5 of Announcement 2005-80 by either paying or agreeing to financial arrangements acceptable to the Service to pay all tax, interest, and penalties due under the settlement.

(New – 11/14/05) Q.5.15 What are some examples of additional information that the Service might request after a taxpayer has filed the election to participate in the settlement initiative?

A.5.15 Some examples of additional information that the Service might request after a taxpayer has filed the election to participate in the settlement initiative are: transaction-related documents such as marketing materials, plan documents, and documents substantiating transaction costs paid by the taxpayer; copies of administrative documents such as a statutory notice of deficiency or a notice of final partnership administrative adjustment; and copies of related tax returns that were not originally submitted with the election.

(New – 12/12/05) Q.5.16 Does the settlement initiative preclude the resolution of issues pursuant to Delegation Order 4-25 (Rev. 1), which relates to the review and approval of proposed settlements of Appeals Coordinated Issues for which Appeals has approved settlement guidelines or approved settlement ranges or positions?

A.5.16 No. As stated in Section 5.E of Announcement 2005-80, the settlement initiative does not affect the availability of conventional Service resolution procedures to eligible persons that do not settle under the initiative. Service personnel applying resolution procedures set forth in Delegation Order 4-25 must continue to adhere to the terms of those procedures.

(New – 12/12/05) Q.5.17 What information must be submitted if a taxpayer is requesting a waiver of the accuracy-related penalty under Section 4.E.3 of Announcement 2005-80?

A.5.17 When the taxpayer files the Election, the taxpayer must submit all tax opinions received and relied upon by the taxpayer in connection with the transaction. The Service may request that the taxpayer provide other tax, legal, and financial advice received by the taxpayer.

(New – 12/12/05) Q.5.18 How does the recent hurricane disaster relief apply to the settlement initiative?

A.5.18 Taxpayers who have been affected by Hurricanes Katrina, Rita, or Wilma may have additional time to file the Form 13750, Election to Participate in Announcement 2005-80 Settlement Initiative. If the taxpayer is described in the disaster relief notices – IR-2005-110 (Rita), IR-2005-112 (Katrina), IR-2005-128 (Wilma) – the taxpayer has until February 28, 2006, to file the Election. These taxpayers must write in red ink at the top of the Election “Hurricane Katrina,” “Hurricane Rita,” or “Hurricane Wilma,” as appropriate.

(New – 12/12/05) Q.5.19 Will electing taxpayers be notified of their eligibility to participate in the settlement initiative?

A.5.19 An ineligible taxpayer will receive a specific notice of ineligibility (Letter 3869-A). An eligible taxpayer will not receive a specific letter notifying the taxpayer of eligibility. The Service may require additional information to determine eligibility, but until the Service has informed a taxpayer that he or she is ineligible with a Letter 3869-A, the Service has not determined that the taxpayer is ineligible.

(New – 12/12/05) Q.5.20 Once a taxpayer has submitted the Election and all required additional information, when can the taxpayer expect to receive the revenue agent's report and closing agreement?

A.5.20 The examiner will review the documents provided. If they are complete and sufficient for the purpose, the examiner will prepare a report and closing agreement for the taxpayer's signature. In general, a taxpayer can expect to receive the report and closing agreement within 75 days of receipt of the election or, if requested, the additional information. If the taxpayer has not received the report and closing agreement within 75 days, or if the taxpayer has any questions on the status of the election, the taxpayer should contact the Service.

(New – 12/12/05) Q.5.21 Under what circumstances will the Service grant an extension to the taxpayer to submit the signed closing agreement?

A.5.21 The announcement allows the taxpayer 30 days for submission. Only under unusual circumstances will an extension be granted, and the extension must be approved by the examiner's manager. Extensions will not be automatic, and the taxpayer must explain to the satisfaction of the Service the reasons an extension is being requested. The Service has the discretion to grant or to refuse an extension.

(New – 12/12/05) Q.5.22 If the taxpayer submitted an election to participate in the settlement initiative, but the audit is still in process for unrelated issues, how will the Service treat the case?

A.5.22 The Service will treat the case as a partially agreed case and the settlement will be processed following the time requirements set forth in the announcement. The taxpayer will be asked to submit a partial agreement with appropriate modification to the closing agreement language for a partial agreement. The taxpayer retains Appeals rights for any unagreed, unrelated issues.

(New – 1/19/06) Q.5.23 What IRS telephone number do I use if one is required by a public delivery company for purposes of sending my election?

A.5.23 (949) 389-5065