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LB&I Updates Publication 5125 and the Internal Revenue Manual

In February 2016, the IRS revised [Publication 5125](#), which provides guidance on changes to the Large Business and International (“LB&I”) examination process following the recent restructuring of LB&I. In March 2016, the IRS began updating the controlling sections of the [Internal Revenue Manual](#) (“the Manual” or “IRM”) to reflect and detail these changes to the examination process. This article highlights the material changes to chapter 4.46, *LB&I Examination Process*, of the Manual.

Interested practitioners and taxpayers should monitor the IRS website for further changes during the coming weeks and months as the IRM specifically states that LB&I is continuing to evaluate its exam processes and that the IRM will undergo further change as LB&I’s initiatives progress. LB&I employees are in the midst of internal training on the changes. LB&I plans to “go live” with the changes in May 2016.

Issue Focus

The major change to the LB&I examination process is the long-heralded shift to [issue-based examinations](#). Rather than focus on a taxpayer’s entire tax return, it is anticipated that the majority of examinations will now focus on issues that have been centrally selected based on material risk and significant compliance challenges and impact.

It is anticipated that when this process becomes fully operational, LB&I examinations will be run by [issue teams](#). Each issue team will consist of at least one examiner and one case manager, although larger issue teams may have multiple agents, specialists, and managers. Some taxpayers will have to contend with several different issue teams within the context of one examination. The [case manager](#) will continue to be responsible for the

overall administration of the examination. Once an issue has been identified, one manager will be designated as the [issue manager](#). In some cases, a manager will be both the case manager and the issue manager. The issue manager is selected from all managers working on the case. Both the case manager and the issue manager will work collaboratively to resolve the issue under examination.

In addition to creating issue teams, the IRS hopes to make large-case examinations more efficient by utilizing [issue-driven risk analysis](#), [issue discussion meetings](#), and [issue timelines](#). As the issues selected for examination are developed, the issue team will review and update the initial risk analysis accordingly. Risk analysis is to occur on an ongoing basis throughout the examination as new information is identified or produced, and a mid-cycle risk analysis is to be considered (required on coordinated industry case exams). This approach is designed to allow LB&I to make the most use of its resources. Issue discussion meetings will be conducted with taxpayer input and will be used as part of the risk analysis. Complex issues may require multiple issue discussions. Issue timelines are important to establish the overall scope of the audit. Generally, the issue expected to take the longest time will be used to establish the overall case timeline. Multiple issues may use the same issue timeline. A particularly complex issue, however, may have its own issue timeline.

Issue teams guidance includes embracing a spirit of [mutual cooperation](#) and the [principles of collaboration and communication](#). The issue teams are encouraged to work with taxpayers to ensure that both sides have an understanding of each other's priorities and resources throughout the examination. Candid discussions and transparency between taxpayers and issue teams are intended to allow for the most appropriate allocation of resources to help establish an effective timeline. Everyone within the examination process is instructed to work together through collaboration to ensure that all issues are well developed and technically sound. The IRM acknowledges that taxpayers often look to one point of contact for communication and suggests that LB&I and the taxpayer establish that single point of contact during the planning discussions.

Ultimately, the resolution of a particular issue lies with the designated issue manager. If there is a disagreement within the issue team, however, the issue team is encouraged to [elevate its concerns](#) to the next level of management. Likewise, if disagreements arise between several issue teams that cannot be resolved between the case manager and the designated issue managers, these concerns will also be elevated to the next level of management. Interestingly, LB&I has not yet updated its so-called “Rules of Engagement,” which date back to 2007. The Rules of Engagement explain how to elevate and resolve internal IRS disputes.

Planning Phase

LB&I must prepare an [examination plan](#) for every return selected for examination. The examination plan must include certain mandatory items, such as detailed audit steps for each selected issue, the case and issue timelines, the issue team members including the designated issue team managers for each issue, and established dates and/or decision points to perform a risk assessment on the issues being examined. The issue teams and issue team manager will work with the taxpayer to develop the examination plan. LB&I expects primarily to use two types of examination plans: the [issue-based examination plan](#) and the [industry case examination plan](#). The [coordinated industry case](#) is still a valid examination plan option, although the IRS is still considering how these cases fit within the issue-based examination initiative.

One major change to the examination process is how the IRS plans to deal with [refund claims](#) consistent with the guidance set forth in Publication 5125. Historically, an exam team would accept informal claims during the course of the examination. Now, taxpayers will only have a [30-day window](#) to submit informal claims, beginning with the date of the opening conference. Note that an opening conference can occur prior to the IRS’s internal planning meeting, and that if a taxpayer’s particular organizational circumstances require multiple opening conferences then the 30-day window begins to run from the first opening conference. Claims received within the 30-day window will be reviewed by the exam team. After the 30-day window closes, claims generally must be submitted through the formal claims process and filed with an Internal Revenue Service Center.

Limited exceptions may be granted to accept informal claims after the 30-day window, including if the issue is already identified for examination or if an exception is granted by the territory manager. All claims must meet the requirements of Treasury regulation 301.6402-2. With typical IRS understatement, a new Manual provision notes: "A taxpayer's failure to timely notify the teams of anticipated claims, timely submit claims, or provide supporting information with the claims could lead to unnecessary refund litigation."

Execution Phase

During the implementation of the examination plan, both the issue team(s) and the taxpayer will work together to develop the facts for each issue. This is accomplished through the Information Document Request (["IDR" process](#)), which is described in Publication 5125. With the exception of the initial set of IDRs relating to general information about a taxpayer and the taxpayer's books and records, the examiner must discuss the issue related to any subsequent IDR before the IDR is sent to the taxpayer. IDRs should be limited to one issue per IDR. The examiner should provide the taxpayer with a draft of the IDR prior to issuance and allow the taxpayer around 10 business days to review and comment on the IDR. After the discussion is complete, the examiner will work with the taxpayer to determine a reasonable time frame to respond to each IDR. The examiner will also commit to a date to review each IDR to determine whether the information provided by the taxpayer satisfies the IDR.

If the taxpayer fails to timely respond or fails to completely respond to an IDR, there is a mandatory three-step [IDR enforcement process](#). There are no exceptions to this process. Before the IDR enforcement process is initiated, the examiner should contact the taxpayer within five business days after the IDR's due date to determine the taxpayer's reasons for failing to appropriately respond. If the examiner believes that the taxpayer's reasons warrant an extension, then the examiner has the ability to grant an extension of up to 15 business days after such decision is communicated to the taxpayer. Note that very few taxpayers have been subject to the IDR enforcement process.

- If the taxpayer has not responded to an IDR within the agreed timeframe, plus extension, the team manager will issue a delinquency notice to the taxpayer after discussing the IDR

enforcement process with the taxpayer. A taxpayer typically will have 10 business days to respond to a delinquency notice.

- If the taxpayer does not respond to the delinquency notice, the examiner will prepare a pre-summons letter, which is reviewed by the territory manager. The territory manager will review the pre-summons letter with the taxpayer, issue the pre-summons letter, and give the taxpayer a deadline to respond (typically 10 business days). A director of field operations (“DFO”) should also be made aware of the pre-summons letter.
- If the taxpayer still does not respond to the pre-summons letter, the exam team, the territory manager, and the DFO(s) will coordinate the issuance of a formal summons with IRS Counsel.

If, after the issue team has completed the IDR process, an issue seems likely to close unagreed and likely to go to Appeals, then the issue team is required to solicit a written [acknowledgement of the facts](#) (“AOF”) from the taxpayer. To do this, the issue team will prepare Form 886-A to document all relevant facts in favor of both the government and the taxpayer. Form 886-A will be issued to the taxpayer along with a [pro-forma IDR](#) and will ask the taxpayer to respond and indicate whether (1) the taxpayer agrees to the facts as written; (2) the taxpayer will provide additional relevant facts and supporting documentation; or (3) the taxpayer identifies disputed facts and will provide clarification and/or supporting documentation. The issue team will [incorporate the taxpayer’s response](#) to Form 886-A in the final notice of proposed judgment (“NOPA”) and will explain whether the issue team agrees or disagrees with the taxpayer’s additional or disputed facts. If the taxpayer refuses to provide a response, this is to be noted together with the taxpayer’s reason for not responding. The IDR enforcement process described above does not apply to the AOF pro-forma IDR. Whether a taxpayer elects to provide an AOF, and the level of detail provided in an AOF, will be important considerations for the taxpayer depending on their overall resolution strategy.

After an issue is fully developed, including the taxpayer’s AOF (if necessary), then the issue manager will issue NOPAs for all adjustments. Before issuing a NOPA, the issue manager and the issue team must discuss all issues with the taxpayer, including the IRS’s position and an explanation of the law as well as a NOPA response date.

Resolution Phase

The goal of the examination team during the [resolution phase](#) is to resolve issues at the earliest appropriate point in the examination in a quality manner. The [issue manager is responsible](#) for utilizing proper issue resolution tools and resolving the case at the earliest point. The issue manager is encouraged to collaborate with the case manager. If there are disagreements between the issue manager and the case manager, the issue should be elevated to their respective managers.

The issue manager is responsible for reviewing and issuing NOPAs to taxpayers. If the taxpayer does not agree with a NOPA, then the issue manager should determine which aspects of the NOPAs are agreed and which are unagreed. The issue manager should also determine the strengths and weaknesses of each side's position. The issue manager should use relevant issue resolutions tools to resolve the unagreed issue, and the issue manager must consider fast track as a resolution tool.

There are many issue resolution tools. Taxpayer-specific pre-filing resolution tools include [pre-filing agreements](#), [advanced pricing agreements](#), the [compliance assurance process](#), and [private letter rulings](#). Taxpayer specific post-filing resolution tools include [technical advice memoranda](#), [delegation orders](#), [accelerated issue resolution](#), [early referral to appeals](#), and [fast track settlement](#). Generic issue resolutions also exist and include [industry issue resolution](#), [LB&I administrative guidance](#), and [LB&I published guidance recommendations](#).

If an examination involves a [recurring issue](#) (i.e., an issue resolved in the current cycle but that impacts future cycles), then the issue team should attempt to address the issue and reach an agreement with the taxpayer as to how to treat the issue going forward. The IRS and the taxpayer should review prior reports noting areas of agreement. The parties are encouraged to reach similar agreements in subsequent cycles.

APPENDIX

This appendix includes portions of chapter 4.46, *LB&I examination Process*, from the Internal Revenue Manual that are referenced above in the article.

4.46.1 General Information and Definitions

4.46.1.3.1 Issue-Based Principles

1. The issue-based principles require LB&I to focus on issues with material risk and significant compliance impact throughout the examination process. Using an issue-driven risk analysis, issue teams, issue-discussion meetings and issue timelines will enable LB&I and the taxpayer to accomplish a more efficient examination. By working the issues selected for examination collaboratively, we can better estimate our case completion date based on the issue timeline that is expected to take the longest to complete.

4.46.1.3.1.1 Issue-Driven Risk Analysis

1. Risk Analysis is an on-going process that engages managers, examiners and the taxpayer from the earliest stage of the examination through the resolution phase. This process should be conducted collaboratively by the exam team with the initial risk being developed in the planning stage by working with the taxpayer. To leverage and effectively utilize our resources, a risk analysis should be issue driven with consideration given to available resources, materiality, timing and other factors that will impact voluntary compliance. As the examination progresses and issues are developed, the risk analysis should be reviewed and updated accordingly. In addition, the taxpayer should be timely advised of any changes.

4.46.1.3.1.2 Issue Teams

1. An issue team is comprised of LB&I personnel who will be responsible for the successful development and management of each issue selected for examination. Issue teams can range from a revenue agent and his/her case manager to multiple revenue agents, specialists, and managers depending upon the complexity of an issue. The issue team will work collaboratively with taxpayer personnel who have knowledge of the issue, and can assist in

determining the information available and most efficient audit steps to develop the issue.

2. Issue teams should improve the utilization of LB&I resources through knowledge sharing, transfer of skills, coordinated document requests, issue continuity, and more efficient fact development.

4.46.1.3.1.3 Issue Discussions

1. Issue-discussions are conducted with the taxpayer to seek taxpayer input and suggestions, so that all examiners assigned to that issue team can collaborate to risk assess issues and determine effective and efficient audit procedures for issues selected for examination. Large or complex issues may require multiple issue discussions to achieve the desired objectives. A successful issue discussion occurs when both sides are transparent and collaborate to leverage resources, establish examination procedures and develop a timeline specific to each issue.

4.46.1.3.1.4 Issue Timelines

1. The issues selected for examination drive the scope and length of the audit. It is important to leverage our knowledge and experience of the issues in collaboration with the taxpayer to establish issue timeline(s). The issue that is expected to take the longest to develop will determine the ECD for the case. It is to the advantage of each issue team to review the issue's audit steps and resource needs to determine important milestone dates such as: issue discussions, completion of examination procedures, the date to issue the Form 5701, and other issue-related activities to determine the expected issue completion date. Once issue timelines have been estimated by the issue team(s), the overall case timeline and the case estimated completion date (ECD) can be established. One issue timeline may be used for multiple issues, while a complex issue may require a separate timeline.
2. To avoid delays during the audit, the exam team will share, solicit and consider input from the taxpayer when planning the timelines for audit issues to consider availability of taxpayer and examination team resources.

3. The principles of collaboration will be timely considered, and used as appropriate, when impasses and significant concerns arise that cannot be resolved at the IRS issue/case manager and taxpayer audit manager level, so the concerns will not cause delays that impact the case timeline.

4.46.1.3.2 Mutual Cooperation and Benefits

1. Mutual Cooperation - The examination should be conducted in the spirit of mutual cooperation. Both LB&I and the taxpayer can benefit if each works toward a candid and professional relationship. This can be achieved when:
 - A. Each party understands, at the beginning of the process, each others' priorities, resources, and available time frames.
 - B. Both parties make a clear commitment as to the resources they will be providing throughout the exam process.
 - C. Steps are taken to mutually apply resources to ensure minimum down time for both the taxpayer and the examination team.
 - D. Both parties have responsibilities for how the audit is planned and executed.
 - E. Both parties assign personnel having the most relevant knowledge to work together to develop an efficient issue focused examination.
2. Open and Candid Communication - Interaction internally as well as with the taxpayer will be conducted to foster open and candid communication between the parties. This is achieved when both parties understand that the examination is to be conducted in an efficient manner that will minimize the impact on both party's resources. Committing the necessary resources and working together will expedite the examination resulting in the reduction of the overall cycle time. Communications throughout the entire examination should include:
 - A. Candid discussion about new issues, affirmatives, and

claims for refund that allow for the allocation of resources needed to establish an effective timeline

B. Assignment of personnel to the issue team that have knowledge about the issue

3. Mutual Understanding of Processes and Procedures - The taxpayer and LB&I should agree to develop an understanding of each other's processes and procedures early in the planning process. This will include a study of the taxpayer's accounting system including tax accounting organization chart, commercial framework, tax return preparation methodology, industry practices, language and terminology, and LB&I examination procedures

4.46.1.3.3.1 Case Manager Roles and Responsibilities

1. The case manager is the manager of the team who has the AIMS controls of the open examination. The case manager maintains the responsibility for the overall management of the case and must collaborate with issue managers to ensure execution of the exam plan.
2. The case manager may also serve as the issue manager for all or some of the issues on the case. For issue-specific duties when the case manager also serves as the issue manager refer to IRM 4.46.1.3.3.2, *Issue Manager Roles and Responsibilities*.
3. The following duties are specific to the case manager:
 - A. Ensure that ERCS, IDRS, and IMS are timely updated and accurate.
 - B. Protect all statutes of limitations.
 - C. Oversee initial risk assessment to determine potential issues.
 - D. Collaborate with peer managers for the appropriate staffing of the case.
 - E. Ensure all financial disclosures (Form 13664) are properly documented.

- F. Ensure appropriate opening conference and issue meetings are held.
- G. Ensure taxpayer contacts are duly authorized; such as, corporate officers or delegates who can provide information and enter into agreements regarding the examination.
- H. Facilitate the selection of issue manager(s).
- I. Ensure that the claims process is consistently applied.
- J. Collaborate with and support the issue managers, and if conflicts arise, elevate to all chains of command.
- K. Ensure proper approvals are secured for exam plan/agreements.
- L. In collaboration with the issue manager(s), set the overall case timeline and ECD based on the issue timeline(s).
- M. Monitor the overall case progress and support the issue manager with IDR and 5701 procedures.
- N. In collaboration with the issue manager(s) and taxpayer, modify the case timeline and extend the ECD and statutes when warranted.
- O. Participate in the ongoing risk assessment performed by issue managers and coordinate collaboration of a mid-cycle review as necessary.
- P. Support the issue manager(s) in pursuing issue resolution at the earliest appropriate point using the tools available to resolve tax controversies.
- Q. Ensure timely issuance of the RAR and if warranted, a 30-day letter.
- R. Collaborate with issue manager(s) to ensure the rebuttal appropriately addresses the taxpayer's protest.
- S. Coordinate a post-audit critique when warranted.

T. Coordinate and encourage consideration of issue exit strategies.

U. Coordinate all meetings with Appeals.

4.46.1.3.3.2 Issue Manager Roles and Responsibilities

1. The issue manager will be one of the managers with an examiner or technician assigned to the issue; the managers collaborate on which one will be designated as the issue manager. The designated issue manager should be determined in planning discussions based on the specific tax issue and the experiences and availability of the managers. The issue manager is responsible and accountable for approving the scope and depth of the issue, securing and maintaining the appropriate resources, determining the issue timeline, the issue development and disposition according to their issue timeline. During all phases of the examination, the issue manager and case manager will collaborate on behalf of the government's position.
2. The following duties are specific to the issue manager:
 - A. Coordinate the formation of the issue team by bringing together the appropriate resources to examine the issue.
 - B. Promote communication, collaboration and cooperation among LB&I issue team members and with the taxpayer.
 - C. Before approving the risk analysis, ensure that the issue is risked appropriately and that the audit steps are efficient.
 - D. Determine the issue timeline and if the case has multiple issues, coordinate with the case manager on overall impact to case ECD.
 - E. Ensure the claims process is followed.
 - F. Coordinate with counsel, subject matter experts, competent authority and/or Appeals when appropriate to support development of the issue.
 - G. Conduct ongoing risk assessment.

- H. Ensure issue team members adhere to the issue timeline and milestone dates.
- I. Update the case manager and ensure changes that may impact the overall case are timely shared and addressed.
- J. If issue team resources change, timely replace them or modify the issue scope to ensure every effort is made to achieve the timeline.
- K. If an issue timeline extension is warranted and the ECD extension is beyond the current statute, the issue manager will collaborate with the taxpayer and the case manager to secure appropriate extensions.
- L. Ensure the IDR Process is followed and lead discussions when appropriate.
- M. Promote interactive discussions to obtain and document the facts provided on the issue.
- N. Facilitate issue resolution discussions at the earliest appropriate point and determine the strengths and weaknesses of each side's tax positions and consider the tools available to engage in an issue resolution discussion.
- O. Discuss, review and approve assertion of penalties as appropriate.
- P. Follow the acknowledgment of facts process and lead discussions when appropriate.
- Q. Review and ensure the appropriate approvals are secured for Form 5701/886-A.
- R. Facilitate a discussion with the taxpayer prior to issuing any Form 5701/886-A.
- S. Consider appropriate issue exit strategies.
- T. Participate in and provide feedback on improvement opportunities if a post-audit critique is held.

- U. Review the rebuttal to ensure it appropriately addresses the taxpayer's protest.
- V. Participate in issue meeting(s) held with Appeals.

4.46.1.4 Principles of Collaboration

1. Issue or case interactions can be initiated by taxpayers, examiners or LB&I leadership for a variety of reasons. In the issue-based approach, the issue team may request LB&I leadership to address a particular need or concern. In other instances, LB&I leadership may proactively become involved in an issue with a strategic opportunity that broadly impacts tax compliance. Taxpayers may also request LB&I leadership involvement during an examination. Under the Taxpayer Bill of Rights, taxpayers have a right to quality service, and they have the right to speak to a manager about inadequate service. Typical interactions start with the issue manager or case manager before elevating to senior managers and executives. Regardless of how interactions are initiated, it is essential that all parties involved interact in a collaborative manner and timely elevate concerns.
2. In order to facilitate success the principles of collaboration are designed to:
 - A. Clarify individual roles, responsibilities and lines of authority to help ensure end-to-end accountability, and provide clear procedural guidance for elevating concerns
 - B. Facilitate getting to the right answer for a particular issue or case
 - C. Encourage engagement with subject matter experts in Practice Area(s) and Counsel
 - D. Promote consistent tax treatment between similarly situated taxpayers or cases
 - E. Reinforce the importance of transparency
3. Taxpayers should be willing to disclose the facts for issues that have been identified. LB&I must be transparent regarding issues and positions that are being considered. All parties must be

objective when considering the facts and legal positions and should be willing to resolve issues through the appropriate dispute resolution tools when appropriate.

4. An issue team manager may identify a need to invite senior manager or executive interaction. Typical needs identified may include:
 - A. Questions regarding availability of team resources
 - B. Concern or disputes at the issue team level
 - C. Appropriate points during IDR enforcement process
 - D. High level discussions with taxpayers not adhering to the claims expectations
 - E. Appropriate points during the NOPA process
 - F. Disputes when dealing with taxpayers
 - G. Taxpayer requests for senior leader or executive interactions
 - H. Potential compliance impact or visibility of an issue
 - I. Strategic input or assistance to ensure consistent treatment of an issue
5. Senior managers or executives may determine a reason to initiate interaction. Typical reasons include:
 - A. Taxpayer requests
 - B. Trade Association or Industry Group requests
 - C. Other "relationship management" purposes
 - D. Increasing understanding of a particular issue/case
 - E. Ensuring consistent taxpayer treatment
 - F. Discussing a strategic initiative or issue that has impact to the taxpayer
 - G. Operational or peer reviews

4.46.1.4.3 Elevating Issue Concerns

1. Case decisions will be driven by the issues involved and the availability of resources to work the issues. When there are disagreements within the IRS team that cannot be resolved between the team and managers, the matter will be elevated to the next level of management. Disputes within the IRS will always be addressed internally and resolved outside the scope of taxpayer discussions.
2. The case and issue managers will collaborate on establishing the issues that will drive the overall case timeline. In the planning stage, if there are disputes as to the initial timelines needed for complex issues, those should be elevated to the next level of management.
3. On-going risk review will be performed by the issue manager(s) who will collaborate with the case manager to ensure that the initial and mid-cycle risk analysis is reviewed and approved by all of the appropriate manager(s).
4. Throughout the issue development if disagreements occur within the issue team(s) that cannot be resolved between the case and issue managers, the matter will be elevated to the next level of management.
5. The responsibility for the resolution of an issue resides with the manager designated as the issue manager.

4.46.3 Planning the Examination

4.46.3.6 LB&I Claims Process

1. LB&I spends considerable time and resources in the planning phase to assure that its examinations are effective and efficient. In setting the examination plan, LB&I understands that taxpayers invariably will identify items requiring corrections, including items that could result in an overpayment of tax for which the taxpayer could file a claim. Of course, resources can be best allocated if claims are brought to the attention of the exam team during the planning phase or early in the examination process. In addition,

resources are significantly preserved when a taxpayer submits the supporting documentation upon which it relied in making its claim in order that the exam team can make its tax determination, ideally without issuing a Form 4564, *Information Document Request (IDR)*.

2. Claims submitted after the exam team has completed its examination plan result in inefficiencies because of the need to reallocate resources from other compliance matters and/or increase the anticipated time period for completing the examination.
3. All claims, formal and informal, must meet the standards of Treasury Regulation 301.6402-2 regardless of when submitted. A valid claim must:
 - Set forth in detail each ground upon which credit or refund is claimed
 - Present facts sufficient to apprise the IRS of the exact basis for the claim
 - Contain a written declaration that it is made under penalties of perjury
 - Be in writing
4. LB&I will not require a formal claim if an issue has been identified for examination, unless IRS published guidance specifically requires formal claims to be filed for an issue, for example, Notice 2008-39, (2008-13 IRB 684) for research credit claims.
5. Claims for issues not identified for examination or specifically requiring formal claims must meet the requirement set forth in Treasury Regulation 301.6402-3. In other words, claims will be required to be filed through the Campus on Form 1120X, Form 1040X, or Form 843. See *IRM 4.46.3.6.1.1*.
6. A taxpayer's failure to timely notify the teams of anticipated claims, timely submit claims, or provide supporting information with the claims could lead to unnecessary refund litigation.

7. For an illustration of the LB&I claims process see IRM *Exhibit 4.46.3-7, LB&I Guidelines for Reviewing Claims* and IRM *Exhibit 4.46.3-8, Risk Assessing Claim Issue(s)*.
8. The case manager has the responsibility for reviewing claims to ensure they meet the LB&I expectations for timeliness and completeness and should collaborate with specialist managers when risk assessing claims. If it is determined that a claim needs to be examined it should be added to the exam plan and an issue team should be identified to examine the issue. In appropriate cases, the case ECD and statute of limitations will be extended to allow sufficient time for the issue team(s) to properly examine all claim issues.
9. Examiners should consider IRC 6676, *Erroneous Claim for Refund or Credit*, when examining claims. The penalty applies to all claims, formal and informal, relating to federal income taxes. Refer to IRM 20.1.5.16, *IRC 6676, Erroneous Claim for Refund or Credit Penalty*.
10. For further guidance on processing claims refer to the procedures in IRM 4.10.8.9, *Claims* and/or the *LB&I Reference Guide for Claims, Amended Returns, Tentative Allowances, Quick Refunds, Requests for Abatement and Administrative Adjustment Requests* at http://lmsb.irs.gov/hq/pqa/downloads_LMSB_Ref_Guide/LMSB_Ref_Guide_Home.asp.

4.46.3.6.1.1 The 30-day Window Expectation

1. LB&I has established a 30-day window to allow taxpayers to submit informal claims or affirmatives which should enable LB&I and the taxpayer to more efficiently identify and assign the appropriate resources to address claim issue(s). The 30-day window also provides the taxpayer an opportunity to submit informal claims and may reduce their burden of filing amended returns.
 - A. LB&I will waive the requirement that a formal claim be filed during the 30-day window established at the opening conference (meeting).

- B. The 30-day window is determined to be 30 calendar days from the opening conference (meeting). If the last day of the 30-day window falls on a weekend or holiday, the last day to consider informal claims is the next business day. The specific date identifying the 30-day window should be documented in the agreement section of the exam plan.
 - C. When adding subsequent or prior period(s) to the existing examination, the 30-day window for the new tax period(s) will begin when the taxpayer is notified of the start of the examination of the new tax period(s). The 30-day window for the new tax period(s) should be added to the exam plan after discussing with the taxpayer.
2. LB&I exam teams will consider valid informal claims (i.e. meet the standards in Treasury Regulation 301.6402-2) that are received **within 30 calendar days of the opening conference (meeting)** and respond to the taxpayer within a reasonable time.
- A. If an informal claim is valid and includes sufficient documentation to make a tax determination, it may be accepted or examined. See *IRM 4.46.3.6.3(2)*.
 - B. If an informal claim is valid but does not include documentation to permit the exam team to make a proper tax determination without issuing an IDR, the exam team should remind the taxpayer of LB&I's claim expectation to provide fully documented claims before deciding if an IDR should be issued. See *IRM 4.46.3.6.3(3)*.
 - C. If an informal claim is not valid (does not meet the standards of Treas. Reg. 301.6402-2), the exam team must discuss the deficiencies with the taxpayer. See *IRM 4.46.3.6.2.2 (2)*.
3. All claims received **after the 30-day window** must be filed with the Campus using Form 1120X, Form 1040X or Form 843. Treasury Regulation 301.6402-3 gives the Commissioner the authority to require that a claim for credit or refund be filed on a formal claim. The taxpayer should be informed to file the correct

claim form with the Campus and promptly provide a copy with supporting documentation to the exam team.

- A. If a formal claim is valid and includes sufficient documentation to permit the exam team to make a tax determination, it should be risk assessed before deciding whether to accept or add to the exam plan. See *IRM 4.46.3.6.3(2)*.
- B. If a formal claim is valid but does not include documentation to permit the exam team to make a proper tax determination without issuing an IDR, the exam team should remind the taxpayer of LB&I's claim expectation to provide fully documented claims before deciding if an IDR should be issued. See *IRM 4.46.3.6.3(3)*.
- C. If a formal claim does not meet the Treasury Regulation 301.6402-2 standards, the exam team must discuss the deficiencies with the taxpayer. See *IRM 4.46.3.6.2.2(2)*.

Note:

Only corporate officers who have authority to bind the corporation

- D. If an informal claim is valid and is received after the 30-day window, the territory manager must decide whether the exam team should accept or decline to act on the informal claim. See *IRM 4.46.3.6.2.5(2)*.
4. The formal claim requirement under Treasury Regulation 301.6402-3 may be waived by the exam team if a valid informal claim is received for the following reasons:
- A. Issues already identified for examination, unless a formal claim is specifically required by other IRS guidance
 - B. Schedule K-1's
 - C. Appeals Case Memorandum (ACM) impacting the year(s) under examination
 - D. Published guidance impacting the period(s) under examination with territory manager concurrence

- E. Exception granted by the territory manager. See *IRM 4.46.3.6.2.5(2)*.

4.46.3.8 Examination Plan

1. The examination plan is memorialized at the end of the planning phase; however, it is a living document and may be modified as the examination progresses. In other words, audit steps can be modified, issues can be added or dropped, timelines can be modified as necessary, etc.
2. The ultimate goal of the planning phase is to timely complete an efficient and effective examination plan. While there is no benchmark for when to complete the examination plan, the sooner the plan is completed, the sooner the execution phase can begin. To timely complete the examination plan, issue team members must work together and engage the taxpayer as soon as possible. An effective plan will enable LB&I to use its resources in executing and resolving issue(s) in the most efficient manner. The issue team retains the judgment of when it may be more efficient to issue IDRs, attend a taxpayer presentation(s) or conduct a site visit(s) before the exam plan is completed.
3. The exam plan can be documented using one of three options as described below in *IRM 4.46.3.8.6*.

4.46.3.8.5 Issue-Based Examination Plan

1. The issue-based examination plan is prepared using Form 13744-I, *Issue-Based Examination Plan and Risk Analysis*. Form 13744-I is optional and replaces Forms 4764, 4764-A, 4764-B, 13744, and the examination timeline. Attach the opening conference (meeting) minutes, including any pertinent agreements reached during the opening conference (meeting). See opening conference (meeting) agenda in *IRM Exhibit 4.46.3-3*.
2. A complete issue-based examination plan will include:
 - A. Form 13744-I, *Issue-Based Examination Plan and Risk Analysis*
 - B. Meeting minutes including pertinent agreements reached during the opening conference (meeting)

4.46.3.8.6 IC Examination Plan

1. If this option is selected, a complete IC Examination Plan will include the following:
 - A. Form 4764-IC, *LB&I Examination Plan for Industry Case (IC) Audits*
 - B. Form 13744, *Risk Analysis Worksheet*
 - C. Form 4764-A, *Summary of Assignments* (optional)
 - D. Form 4764-B, *Examination Procedures*

Note:

Also document the issue manager and issue team members, including taxpayer personnel assigned to the issue.

- E. Examination timeline using optional Form 13745, *Examination Timeline*, or similar workpaper.

2. The Administrative Summary Sheet Workpaper for an IC case is available to assist in preparing the examination plan and is not part of the plan given to the taxpayer. See the LB&I IC Re-Engineering home page.

4.46.3.9 Coordinated Industry Case (CIC) Information

1. The following subsections are original CIC procedures from previous revisions of this IRM. The original date of each subsection has been retained. However, citations were updated, obsolete references were removed and other minor editorial changes were made. IC cases are now addressed in IRM 4.46.3.8.6. This part of the IRM is in transition.

4.46.4 Executing the Examination

4.46.4.9 Written Acknowledgment of the Facts (AOF)

1. LB&I requires that all information, including all relevant facts and supporting documentation, be submitted to LB&I for consideration in the development of an issue. The taxpayer has primary responsibility for ensuring the facts have been fully provided to LB&I, so that the law is applied to the full set of facts.

2. The issue team should collaborate with the taxpayer to develop all facts before issuing a NOPA. The issue team is expected to conduct on-going interactive discussions throughout the execution phase to resolve any factual disputes and discuss tax positions on issues examined.
3. Before an unagreed issue is sent to Appeals, the issue team will solicit a written acknowledgment of the facts to ensure all relevant facts, including those favorable to the taxpayer, are fully developed. This process will allow the issue team to address any additional or disputed facts identified by the taxpayer before the case is sent to Appeals.
4. The issue manager should review the taxpayer's response to the acknowledgement of facts to assess the strengths and weaknesses of each side's position and to ascertain if the issue can be resolved at the examination level.
5. The taxpayer must be reminded that the case will be returned to exam's jurisdiction for consideration or examination if new information is provided by the taxpayer after a case is closed to Appeals.

4.46.4.9.3 Issue the Form 886-A with a Pro-Forma IDR

1. Use a pro-forma IDR (see *Exhibit 4.46.4-3*) along with the Form 886-A to solicit a written acknowledgment of the facts (AOF). The contents of the pro-forma IDR and contents of the Form 886-A will be discussed with the taxpayer. The discussion will also establish a reasonable time for the taxpayer to respond.
2. Explain to the taxpayer that the pro-forma IDR will not be followed by a summons and that their response to the IDR does not indicate agreement to the issue or any proposed adjustments. The purpose of the pro-forma IDR is to acknowledge that all relevant facts have been identified and provides the taxpayer the opportunity to submit additional relevant facts and supporting documentation or to identify disputed facts.
3. The taxpayer should review the Form 886-A and respond to the points below in writing within an agreed upon date.
 - A. Taxpayer agrees to the facts as written.

- B. Taxpayer provides additional relevant facts and supporting documentation.
 - C. Taxpayer identifies disputed facts and provides clarification and/or supporting documentation.
4. If the response is not received by the agreed response date, do **not** follow the IDR enforcement process. The issue manager should inquire about the reasons for the delay and determine if the taxpayer intends to respond. The taxpayer's response or lack of response to the IDR will be included in the Form 886-A when the NOPA is issued.
5. To identify this IDR as one that will not be followed by a summons, it is recommended to use the alpha indicator prefix, AOF, in IMS to identify an IDR issued for the purposes of obtaining an acknowledgement of the facts.

4.46.4.9.4 Incorporate the Taxpayer's Response in the Form 886-A Issued with the NOPA

1. A statement indicating the taxpayer's response to the IDR must be included in the opening of the Facts section. The issue team will determine the appropriate method to take when preparing the Form 886-A to ensure that all of the relevant facts have been incorporated and considered.
2. In addition, an explanation of whether the issue team agrees or disagrees with the additional or disputed facts provided by the taxpayer must be included. The issue team will identify the additional or disputed facts provided by the taxpayer in a subsection of the Facts section in the Form 886-A or, if voluminous, include the taxpayer's response as an attachment to the Form 886-A. It is impossible to capture every scenario you may encounter, however, some examples are provided for options to use in documenting the response.
 - A. **Example 1: Taxpayer Agrees with the Facts** "The taxpayer was issued IDR AOF#___ on January 1, 20xx to acknowledge all relevant facts have been provided. The taxpayer agreed with the facts as written."
 - B. **Example 2: Taxpayer Provided Additional Facts** "The

taxpayer was issued IDR AOF# __ on January 1, 20xx to acknowledge all relevant facts have been provided. The taxpayer provided additional facts, which LB&I has taken into consideration. The tax determination was modified to reflect the additional facts provided, however the issue remains unagreed. The additional facts provided by the taxpayer are detailed in the Facts section. " OR "...are included as an attachment."

- C. **Example 3: Taxpayer Identifies Disputed Facts** "The taxpayer was issued the IDR AOF#__ on January 1, 20xx to acknowledge all relevant facts have been provided. The taxpayer identified disputed facts. The disputed facts have been included in a sub-section at the end of the Facts section." OR "...have been included as an attachment to the Form 886-A. "
- D. **Example 4: Taxpayer Did Not Respond to the Pro-Forma IDR** "The taxpayer was provided the IDR AOF#__ on January 1, 20xx to acknowledge all relevant facts have been provided. The taxpayer did not respond to the IDR by the agreed upon response date. A follow up discussion between the taxpayer and the issue manager was held on January 15, 20XX. During the discussion the taxpayer stated that..."
3. The issue manager should ensure that all relevant facts, including additional and/or disputed facts, are appropriately considered in determining LB&I's tax position before the issue team prepares a NOPA.

Exhibit 4.46.4-1 Requirements for Issuing IDRs

IDRs are an important part of the information gathering process during any examination. When issuing IDRs, LB&I examiners and specialists should follow the requirements listed below:

- A. Discuss the issue related to the IDR with the taxpayer.
- B. Discuss how the information requested is related to the issue under consideration and why it is necessary.
- C. After this consultation with the taxpayer, determine what

information will ultimately be requested in the IDR.

- D. Ensure the IDR clearly states the issue that is being considered and that the IDR only requests information relevant to the stated issue. An IDR issued at the beginning of an examination that requests basic books and records and general information about a taxpayer's business is not subject to this requirement. Once this initial IDR has been issued, subsequent IDRs must state an issue to be in compliance with this requirement
- E. Only one issue should be addressed on each IDR.
- F. Utilize numbers or letters on the IDR for clarity.
- G. Ensure that the IDR is written using clear and concise language.
- H. Ensure that the IDR is customized to the taxpayer or industry.
- I. Provide a draft of the IDR and discuss its contents with the taxpayer. Generally this process should be completed in 10 business days.
- J. After this discussion is complete, determine with the taxpayer a reasonable timeframe for a response to the IDR.
- K. If agreement on a response date cannot be reached, the examiner or specialist will set a reasonable response date for the IDR.
- L. When determining the response date, ensure that the examiner or specialist commits to a date by which the IDR response will be reviewed and a response provided to the taxpayer on whether the information received satisfies the IDR. Note this date on the IDR.

Exhibit 4.46.4-2 IDR Enforcement Process

IDRs that are issued in compliance with the requirements of Exhibit 4.46.4-1 are subject to the enforcement process set forth in this Exhibit 4.46.4-2.

The process has three graduated steps:

- A. a Delinquency Notice
- B. a Pre-Summons Letter

C. a Summons

This process is mandatory and has no exceptions. The timing of the application of the enforcement process is set forth below in a separate section.

Extension Authority

Before the Enforcement Process is triggered, an examiner or specialist has the authority to grant a taxpayer an extension of up to 15 business days before the Enforcement Process begins. An examiner or specialist may grant one extension with respect to the same IDR. This extension may be granted in the following two situations:

- A. **Taxpayer Fails to Respond.** If a taxpayer fails to provide any response by the IDR due date, the examiner or specialist should, within 5 business days after the IDR due date, discuss with the taxpayer the cause of the failure to respond and determine if an extension is warranted. If the examiner or specialist determines that the taxpayer's explanation warrants it, the examiner or specialist may grant the taxpayer an extension of up to 15 business days from the date the extension determination is made and communicated to the taxpayer.
- B. **Taxpayer Provides Incomplete Response** If a response is received but the examiner or specialist determines that it is not complete, the examiner or specialist should discuss with the taxpayer the reasons why the response is not complete and determine within 5 business days whether an extension is warranted. If the examiner or specialist determines that the taxpayer's explanation warrants it, the examiner or specialist may grant the taxpayer an extension of up to 15 business days from the time the extension determination is made and communicated to the taxpayers.

Timing of Application of IDR Enforcement Process

The timing of the application of the IDR Enforcement Process is set forth below.

No Response Received by Due Date

- A. If no response is received by the IDR due date and no extension is granted, the IDR enforcement process begins on the date the extension determination is communicated to the taxpayer.
- B. If an extension is granted and no response is received by the extended due date, the IDR enforcement process begins as of the extended due date.

Response Received by Due Date

If a response is received by the due date, the IRS must determine whether the response is complete. This determination should be made on or before the date the examiner or specialist stated in the IDR.

- A. **If the IDR is considered complete upon review**, the examiner or specialist must notify the taxpayer that the IDR is complete and closed.
- B. If the IDR response is not complete, the timing of the enforcement process is as follows:
 - A. **If the IDR response is not complete and no extension is granted**, the IDR enforcement process begins on the date the extension determination is communicated to the taxpayer.
 - B. **If the IDR response is not complete and an extension is granted:**
 - A. If no additional information is received at the end of the extension period (may be up to 15 business days), the IDR enforcement process begins as of the extended due date.
 - B. If additional information is received at the end of the extension period, this information must be reviewed for completeness. This review should be completed as soon as practical but in most cases not more than 15 business days from receipt of the response. If the IDR response is determined to be incomplete, the IDR

enforcement process begins on the date the examiner or specialist notifies the taxpayer that the response remains incomplete. If the IDR is complete, the examiner or specialist should notify the taxpayer and close the IDR.

Delinquency Notice (Letter 5077)

Once the IDR Enforcement Process applies based on the timing described in section titled "Timing of Application of IDR Enforcement Process", the examiner or specialist along with their manager must complete the first phase of the enforcement process, the Delinquency Notice, by following the procedures described below:

- A. Discuss the Delinquency Notice with the taxpayer. During this discussion, ensure that the taxpayer understands the next steps in the enforcement process if the information requested in the IDR is not provided by the response date established in the Delinquency Notice.
- B. Issue the Delinquency Notice signed by the Team Manager to the taxpayer within 10 days of the application of the Enforcement Process.
- C. The Delinquency Notice should include a response date that is generally no more than 10 business days from the date of the Delinquency Notice. A Territory Manager must approve any date beyond 10 business days.
- D. Provide a copy of the Delinquency Notice and the IDR to your assigned Counsel.

Pre-Summons Letter (Letter 5078)

If a taxpayer does not provide a complete response to an IDR by the Delinquency Notice response date, the examiner or specialist must complete the next phase of the enforcement process, the Pre-Summons Letter, by following the procedures described below:

- A. Discuss the lack of a complete response to the Delinquency Notice with the Team Manager, Specialist Manager, the respective Territory Managers and Counsel and prepare the Pre-Summons Letter.

- B. The appropriate Territory Manager must discuss the Pre-Summons Letter with the taxpayer. During this discussion, ensure that the taxpayer understands the next steps in the enforcement process if the information requested in the IDR is not provided by the response date established in the Pre-Summons Letter.
- C. Issue a Pre-Summons Letter signed by the appropriate Territory Manager. This must be done as quickly as possible but generally no later than 10 business days after the due date of the Delinquency Notice. Address this letter to the taxpayer management official that is at a level equivalent to the LB&I Territory Manager. This should be a level of management above the taxpayer management official that received the Delinquency Notice.
- D. Include a response date in the Pre-Summons Letter that is generally 10 business days from date of Pre-Summons letter.
- E. A Director of Field Operations (DFO) must approve any date beyond the 10 business days response period.
- F. Discuss the Pre-Summons Letter with Counsel.
- G. DFO(s) must be made aware of the Pre-Summons Letter prior to issuance.

Summons

If a taxpayer does not provide a complete response to an IDR by the Pre-Summons Letter response date, the examiner or specialist must complete the next phase of the enforcement process, the summons, by following the procedures described below:

- A. Discuss the lack of response to the Pre-Summons Letter with the Team Manager, Specialist Manager, the respective Territory Managers and DFOs, and Counsel and prepare the summons
- B. Coordinate the issuance of the summons with assigned Counsel
- C. Summons procedures can be found in IRM 25.5

4.46.5 Resolving the Examination

4.46.5.1 Overview

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

4.46.5.4.1.1 Pre-Filing Agreements

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

4.46.5.4.1.2 Advanced Pricing Agreements (APA)

1. Advanced Pricing Agreements (APA) is a process that provides for determining the proper treatment of transfer pricing issues prior to the filing of returns. In some circumstances the agreed application methods for resolving the transfer pricing issue may also be used

to resolve issues present on filed returns currently under examination. For more information see Rev. Proc. 2015-41 or successor and the APA web page at http://lmsb.irs.gov/international/dir_treaty/treaty/index.asp.

4.46.5.4.1.3 Compliance Assurance Process (CAP)

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

4.46.5.4.1.4 Private Letter Rulings

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

4.46.5.4.2.1 Technical Advice Memorandums

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

4.46.5.4.2.2 Delegation Orders

1. Case managers should look to applicable delegation orders for potential issue resolution tools. See IRM 1.2.43.22 and IRM

1.2.43.23 for applicable delegation orders.

2. Area Counsel should be included in all aspects of resolution discussions.

4.46.5.4.2.3 Accelerated Issue Resolution (AIR)

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

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

4.46.5.4.2.4 Early Referral to Appeals

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

8.26.4 , *Early Referral Procedures* or on the Appeals web site at http://appeals.web.irs.gov/tech_services/adr/early-referral.htm.

4.46.5.4.2.5 Fast Track Settlement (FTS)

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

Note:

All examiners must provide Pub. 4539, *Fast Track Settlement* brochure to the taxpayer at the opening interview and discuss the program with the taxpayer.

3. FTS is designed to utilize the mediation skills and designated settlement authority of Appeals to resolve issues while the case is still in the examination cycle.
4. Appeals acts as a facilitator to arrive at and execute a resolution/settlement that is mutually agreed upon by both the taxpayer and the LB&I issue team.
5. Ex Parte communication prohibition does not apply to communications arising in the FTS process, because Appeals personnel are not acting in their traditional settlement role.
6. Documentation that fast track settlement was considered will be recorded in the case file.
7. Rev. Proc. 2003-40, 2003-1 C.B. 1044, sets forth the procedures for requesting FTS. More information can be found on the Appeals web site at http://appeals.web.irs.gov/tech_services/adr/fasttrack-lbi.htm and on the LB&I FTS web site at http://lmsb.irs.gov/hq/pqa/Post-filing/pfa_fast_track_home.asp.

4.46.5.4.3.1 Industry Issue Resolution (IIR)

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

4.46.5.4.3.2 LB&I Administrative Guidance

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

4.46.5.4.3.3 LB&I Published Guidance Recommendations

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

4.46.5.5 Management Involvement in the Issue Resolution Process

1. The issue manager is responsible for resolving the issue at the earliest appropriate point using an appropriate resolution tool.
2. The issue manager should collaborate with the case manager when resolving the issue with the taxpayer and keep the issue team apprised of the status of the issue resolution.
3. Any differences among managers regarding the resolution of the issue should be elevated to their respective managers.

4. Issue manager must review and approve the NOPAs before issuance to the taxpayer. Approval should be documented in the case file. The case file should document all meaningful efforts by both the issue manager and the case manager to resolve issues.
5. The NOPA will be shared and discussed with the taxpayer upon issuance. A management conference will be held as needed.
6. The issue manager will engage in a collaborative discussion with the taxpayer when a timely response to the NOPAs has not been received.
7. The taxpayer has the option to agree or disagree with the NOPA presented. If agreement is reached, ask the taxpayer to approve and sign the Form 5701.

Note:

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

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

4.46.5.9.2 Recurring Issues

1. A recurring issue is an issue that has been resolved in the current cycle and continues into subsequent filed returns and/or returns that have not yet been filed. For optimizing resource utilization, the issue team should plan on how that issue could be addressed in any filed returns and when possible reach agreement that the taxpayer will handle the issue properly going forward.
2. In order to minimize burden to the taxpayer and LB&I, discussions to resolve recurring issues are necessary. A joint critique of the exam process may also be performed to recommend improvements. Recommendations should address the future tax treatment of issues to eliminate recurring issues. The following should be addressed for all recurring issues:
 - Identify and discuss all agreed recurring issues.
 - Develop a strategy that could result in agreement with the taxpayer to eliminate the recurring issue(s).
 - If the recurring issue is inadequate records, the taxpayer should be advised in writing relative to the areas where the accounting procedures or practices are inadequate or need to be changed. The letter should be from the Industry Director and should be directed to the principal corporate officer responsible for taxes. See IRM 4.10.8.17.
 - Consider appropriate penalties when the examination of returns filed subsequent to the receipt of the inadequate records notice indicate the taxpayer failed to correct the procedures or practices.
3. For complex tax computations recurring in nature, a reasonable estimate may be used for the RAR with the understanding that exact amounts will be computed and used in all subsequently filed tax returns when possible.

What's News in Tax is a publication from the Washington National Tax practice of KPMG LLP ("KPMG") that contains thoughtful analysis of new developments and practical, relevant discussions of existing rules and recurring tax issues.

Example:

The IRS and taxpayer agree to a methodology to approach the examination of an issue that would save significant resources achieving voluntary compliance for filed and unfiled tax periods.

4. Accounting method issues may be delayed until a subsequent examination cycle, when time does not permit the completion of the issue in the current examination cycle. In addition, accounting method issues that require an extensive amount of factual development may be developed over two examination cycles. The taxpayer should be provided written notification that the issue is under consideration, but is being delayed until a subsequent examination cycle. The taxpayer and the examination team should discuss which facts would be necessary to make a determination of the proper amount. The taxpayer should start to gather these facts and have them available when the IDR is issued in the subsequent examination cycle.
5. The IRS and the taxpayer should review reports from prior cycles noting areas of agreement. If the facts and circumstances haven't changed significantly, similar agreements could be reached in the current cycle. If this is done, the IRS and the taxpayer could substantially reduce the amount of examination time required to resolve these issues. They should also look at areas of prior disagreement to see if they can jointly arrive at a solution that will satisfy both parties.



The information contained in this article is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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