

Announcements

Announcement 2008-105, 2008-48 IRB 1219, 11/28/2008, IRC Sec(s). 7802

Organization of IRS—Tax Exempt and Governmental Entities Division—Fast Track Settlement program.

Headnote:

IRS established FTS for TE/GE Taxpayers program, which is based on the LMSB and SB/SE FTS programs. Existing FTS programs promote early and timely settlements with taxpayers through use of alternative dispute resolution techniques. LMSB and SB/SE programs are designed to commence prior to issuance of 30-day letter and to reach result within 120 days and 60 days respectively. TE/GE FTS program will use same procedures and have 60-day period within which to reach settlement.

Reference(s): ¶ 78,025.02(230); Code Sec. 7802;

Full Text:

Description Of TE/GE Fast Track Settlement

This announcement provides an opportunity for entities with issues under examination by the Tax Exempt and Governmental Entities Division (TE/GE) to use Fast Track Settlement (FTS) to expedite case resolution. The TE/GE FTS will enable TE/GE entities that currently have unagreed issues in at least one open period under examination to work together with TE/GE and the Office of Appeals (Appeals) to resolve outstanding disputed issues while the case is still in TE/GE jurisdiction. TE/GE and Appeals will jointly administer the TE/GE FTS process. TE/GE FTS will be used to resolve factual and legal issues, and it may be initiated at any time after an issue has been fully developed, but before the issuance of a 30-day letter (or its equivalent). TE/GE FTS will be available to taxpayers for a pilot period of up to two years, beginning upon the date of publication of this announcement. Upon completion of the two-year pilot period, TE/GE and Appeals will evaluate the program, consider necessary adjustments, and determine whether to make the program permanent.

Reliance On And Differences From LMSB And SB/SE Fast Track Settlement

The procedures for using TE/GE FTS rely on the provisions of Revenue Procedure 2003-40, 2003-1 C.B. 1044, and Announcement 2006-61, 2006-2 C.B. 390, which implement Large and Mid-Size Business (LMSB) and Small Business/Self-Employed (SB/SE) Taxpayer FTS Dispute Resolution Programs, respectively.

TE/GE FTS, during the two-year pilot period, extends the provisions of the LMSB and SB/SE FTS programs to TE/GE cases and provides for direct oversight of the program by TE/GE and Appeals. TE/GE FTS therefore involves procedures almost identical to the LMSB and SB/SE FTS procedures described in Rev. Proc. 2003-40 and Ann. 2006-61. The key differences between the LMSB, SB/SE and TE/GE FTS procedures are as follows:

- The TE/GE Group Manager or designee fulfills the duties of the LMSB Team Manager or SB/SE Group Manager;
- The Appeals FTS Program Manager, after consultation with the TE/GE Group Manager, selects and manages cases eligible for TE/GE FTS. The Appeals Team Manager responsible for TE/GE Programs serves as the FTS Program Manager; and
- The TE/GE FTS process is designed to be completed within 60 days of acceptance of the TE/GE FTS Application. The process can be extended beyond the 60-day period if agreed to by all parties.

Case Eligibility And Exclusions

Generally, TE/GE FTS is available for cases involving: income tax, exclusion of income from interest paid on municipal obligations, employment tax, estate and gift tax, excise tax, and exemption, foundation or qualification issues or other such TE/GE functional issues as appropriate when:

- Issues are fully developed;
- The taxpayer has stated a position in writing; and
- There are a limited number of unagreed issues.

TE/GE FTS will *not* be available for:

- Issues that can be resolved through other established settlement initiatives, such as, but not limited to, the Self Correction Program "SCP", the Audit Closing Agreement Program "Audit CAP", or other programs described in Rev. Proc. 2006-27, 2006-1 C.B. 945;
- Correspondence examination cases;
- Cases in which the taxpayer has failed to respond to IRS communications and no documentation has been previously submitted for consideration by TE/GE;
- Cases in which Appeals does not have jurisdiction (including determination of penalties under § 6700 of the Code);
- Listed Abusive Tax Avoidance Transactions (ATAT);
- Cases involving potential for civil or criminal fraud;
- Rebate claim cases;
- Selected initiatives as determined on an annual basis by the TE/GE Commissioner or his delegate;
- Tax Equity & Fiscal Responsibility Act (TEFRA) partnership cases;
- Issues designated for litigation;
- Issues under consideration for designation for litigation;
- Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2008-2, 2008-1 I.R.B. 90, or any successor guidance;
- "Whipsaw" issues, *i.e.*, issues for which resolution with respect to one party might result in inconsistent treatment in the absence of the participation of another party; or
- Issues that have been identified in a Chief Counsel Notice, or equivalent publication, as excluded from the FTS process.

If an issue is determined not to be eligible for the FTS program, all issues in the case are not eligible for the FTS program. Additionally, the Appeals FTS Program Manager will determine whether Appeals has the necessary staffing resources before accepting the case into the program.

TE/GE FTS will not be the appropriate dispute resolution process for all cases involving TE/GE taxpayers. The TE/GE Group Manager or designee and the taxpayer will evaluate their individual circumstances of their case to determine if this process meets their needs.

Application Process

A taxpayer that is interested in participating in TE/GE FTS, or that has questions about the program and its suitability for the taxpayer's case, may contact the TE/GE Group Manager of the Examining Agent conducting the audit for the period(s) currently under examination. Either the taxpayer, Examining Agent or the TE/GE Group Manager may initiate an application to the TE/GE FTS process at any time after an issue has been fully developed but before a 30-day letter (or its equivalent) is issued.

A FTS Application, attached as Exhibit 1, should be submitted. A Form 5701, (*Notice of Proposed Adjustment*) or a Revenue Agent Report will be prepared by the TE/GE Examining Agent. To facilitate the understanding of the parties' opposing views, a written response from the taxpayer must be included with the FTS Application.

If the case is not accepted for inclusion in TE/GE FTS, the TE/GE or Appeals representative will discuss other dispute resolution opportunities with the taxpayer, including 30-day letter procedures contained in IRS Publications 1, *Your Rights As A Taxpayer*, or 5, *Your Appeal Rights and How To Prepare a Protest If You Don't Agree*. The decision not to accept a case into the TE/GE FTS program is not subject to administrative appeal or judicial review.

Settlement Process

TE/GE FTS employs various alternative dispute resolution techniques to promote agreement. An FTS Appeals Official will serve as a neutral party. The FTS Appeals Official will not perform in a traditional Appeals role, but will use dispute resolution techniques to facilitate settlement between the parties. A TE/GE Appeals Officer trained in mediation or, in limited cases, a mediation-trained Appeals Team Case Leader, will serve as the neutral FTS Appeals Official.

During TE/GE FTS, the taxpayer (or taxpayer's authorized representative) and TE/GE representatives, including at least one representative with decision-making authority from both TE/GE and the taxpayer, will meet with the FTS Appeals Official. Any person engaged in practice before the IRS must have a power of attorney from the taxpayer (Form 2848, *Power of Attorney and Declaration of Representative*). The taxpayer and TE/GE representatives should

include individuals with the information and expertise necessary to assist the parties and the FTS Appeals Official during the settlement process. The FTS Appeals Official may ask the parties to limit the number of participants to facilitate the process.

The FTS Appeals Official will hold the FTS session at the date and location agreed to by both parties. Prior to the FTS session, the FTS Appeals Official will advise the participants of the procedures and establish ground rules. The FTS Appeals Official may modify the rules and procedures during the session to adapt to changes in circumstances. The FTS session may include joint sessions with all parties, separate meetings, or both as determined appropriate in the sole judgment of the FTS Appeals Official.

The FTS Appeals Official will use a FTS Session Report to assist in planning the FTS session and to report on developments during the session. The FTS Session Report will include a list of all issues approved for the FTS program, a description of the issues, the amounts in dispute, conference dates, a plan of action for the FTS session and other information useful to the process as determined by the parties and the FTS Appeals Official. The FTS Appeals Official also will prepare and update an Agenda to guide the communication, set the order of issue discussion, and pose questions to clarify the issues. During the session, the FTS Appeals Official will provide decision makers from both parties with copies of the Agenda and the FTS Session Report.

Generally, the FTS Appeals Official will consider only those issues outlined in the FTS Session Report, except by mutual agreement of the parties. If the taxpayer presents information during the session that the taxpayer had not previously presented during the audit, the FTS Appeals Official will adjust the targeted completion date to give the appropriate IRS officials time to evaluate the information.

During the session, the FTS Appeals Official may propose settlement terms for any or all issues. If the taxpayer accepts the FTS Appeals Official's settlement proposal, but the TE/GE Group Manager rejects it, the TE/GE Area Manager or equivalent TE/GE management official with jurisdiction for the case must review the rejection of the settlement proposal and either concur in writing with the rejection or accept the settlement proposal on behalf of TE/GE. If the TE/GE Area Manager or equivalent TE/GE management official concurs with the Group Manager's rejection of the settlement proposal, and an acceptable alternative settlement cannot be reached, the issue will be closed out of the FTS program as unagreed.

If the parties resolve any of the disputed issues at the conclusion of the session, the parties and the FTS Appeals Official shall sign the FTS Session Report acknowledging acceptance of the terms of settlement for purposes of preparing computations. The signature of the parties on the FTS Session Report does not constitute a final settlement, nor does it waive restrictions on assessment, terminate consents to extend periods of limitation, start the running of any periods of limitation, or constitute agreement to close the case. Post-settlement procedures are described below.

The TE/GE FTS process is confidential. IRS employees involved in any way with the TE/GE FTS process are subject to the confidentiality and disclosure provisions of the Internal Revenue Code. By signing the FTS Agreement, attached as Exhibit 1, the taxpayer consents, pursuant to section 6103(c), to the disclosure of the taxpayer's returns and return information pertaining to the issues being considered in the TE/GE FTS process to those persons named on the Agreement as participants in the process. IRS employees, the taxpayer and persons invited to participate by the IRS or the taxpayer shall not voluntarily disclose information regarding any communication made during the TE/GE FTS session, except as provided by statute.

The prohibition against *ex parte* communications between Appeals Officers and other IRS employees provided by § 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to the communications arising in the TE/GE FTS process because the Appeals personnel are facilitating an agreement between the taxpayer and TE/GE and are not acting in their traditional Appeals settlement role.

Any recommended settlement by the FTS Appeals Official of an issue in FTS shall be subject to the procedures including procedures in the Internal Revenue Manual and existing published guidance, which would be applicable if the issue was being considered by Appeals. FTS therefore creates no special authority for settlement by the FTS Appeals Official. For example, if the FTS issue is coordinated in either the Technical Advisor Program or the Appeals Technical Guidance program, the proposed settlement of that issue is subject to established procedures, including submission of the proposed settlement to the Appeals Coordinator for review and concurrence.

If the parties fail to resolve any issue in FTS, the taxpayer retains the option of requesting that the issue be heard through the traditional Appeals process.

Except as specifically provided above, both parties retain the right to withdraw throughout the entire TE/GE FTS process. A party wishing to withdraw should provide written notice to the FTS Appeals Official and the other party.

Post-Settlement Procedure

If the parties reach an agreement on all or some issues through the TE/GE FTS process, the TE/GE or Appeals FTS Official, as appropriate, will use established issue or case closing procedures and applicable agreement forms, including preparation of a Form 906, *Closing Agreement On Final Determination Covering Specific Matters*, if appropriate.

If applicable, the IRS will report a proposed resolution reached as a result of TE/GE FTS to the Joint Committee on Taxation in accordance with section 6405. The IRS may reconsider a proposed settlement, as reflected in a signed FTS Session Report, upon receipt of comments on the proposed settlement from the Joint Committee on Taxation. If the taxpayer declines to agree with any changes by the IRS upon reconsideration, TE/GE will close the case unagreed, and the taxpayer will retain all the usual rights to request Appeals consideration of any unagreed issues.

Unresolved Cases

With respect to TE/GE FTS cases that are returned for traditional Appeals consideration for any reason, *ex parte* restrictions will not be imposed on intra-Appeals communications. Appeals management will take appropriate measures to ensure these cases are handled impartially.

Precedential Value Of Settlement Agreements

A resolution reached by the parties through the TE/GE FTS process will not bind the parties for taxable periods or issues not covered by the TE/GE FTS agreement, unless such taxable periods or issues are addressed expressly in a closing agreement reached as part of the TE/GE FTS process.

Delegation Of Authority

This announcement constitutes a delegation by the Commissioner of Internal Revenue of settlement authority to Grade 14, 13 and 12 Appeals Officers who are assigned to be Appeals FTS Officials for TE/GE FTS cases described in this announcement. This delegation of settlement authority includes the responsibility for arriving at the final disposition from the Government's perspective, approving the final settlement in accordance with the delegated authority, and executing the appropriate closing documents. This authority may not be redelegated.

Effective Date

TE/GE FTS is effective upon publication of this announcement in the Internal Revenue Bulletin.

Comments

The IRS invites interested persons to comment on this program. Send submissions to:

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Further Information

For further information regarding this announcement, contact either: Charles F. Fisher, TE/GE Team Leader, at (302) 286-1510 (not a toll-free number), Charles.F.Fisher@irs.gov or Leonard C. Horton, Appeals Program Analyst, Tax Policy & Procedure (Alternative Dispute Resolution) at (972) 308-7330 (not a toll-free number), Leonard.C.Horton@irs.gov.