



INDEPENDENT OFFICE  
OF APPEALS

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

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Affected IRM: IRM 8.7.8

MEMORANDUM FOR: Director, Specialized Examination Programs and Referrals  
Director, Examination Appeals  
Director, Appeals Account & Processing Support, East  
Director, Appeals Account & Processing Support, West

FROM: Steven M. Martin /s/ *Steven M. Martin*  
Director, Case and Operations Support

SUBJECT: New Issues, New Information, and New Theories or  
Alternative Legal Arguments Received on Tax-  
Exempt/Government Entities-Sourced Cases

This memorandum issues interim guidance to IRS Independent Office of Appeals (Appeals) employees for working Tax-Exempt/Government Entities (TE/GE)-sourced cases when a taxpayer or representative: (i) raises a new issue in Appeals, (ii) provides new information to Appeals, or (iii) advances a new theory or an alternative legal argument to Appeals. Please ensure that this information is distributed to all affected employees within your organization.

**Purpose:** This guidance is being issued to ensure that Appeals employees work TE/GE-sourced cases with new issues, new information, and new theories or alternative legal arguments consistently.

**Background/Source(s) of Authority:** As explained in IRC 7803(e)(3), Appeals is charged with resolving federal tax controversies without litigation on a basis that: (a) is fair and impartial to both the government and the taxpayer; (b) promotes a consistent application and interpretation of, and voluntary compliance with, the federal tax laws; and (c) enhances public confidence in the integrity and efficiency of the IRS.

To ensure fairness and impartiality, Appeals considers cases using a quasi-judicial approach. This approach generally prohibits Appeals technical employees (ATEs) from undertaking activities that are traditionally performed by examining officers, such as conducting investigative activities. As a result, for cases in which a taxpayer

or representative raises a new issue, provides new information, or advances a new theory or alternative legal argument, Appeals must generally re-involve the originating function to develop the new issue, consider the new information, or evaluate the new theory or alternative legal argument.

**Procedural Change:** For TE/GE-sourced cases in which a taxpayer or representative raises a new issue in Appeals, or provides new information to Appeals, or advances a new theory or an alternative legal argument to Appeals, the Appeals employee will follow the instructions given in the Attachment.

**Effect on Other Documents:** This guidance will be incorporated into IRM 8.7.8, Tax Exempt and Government Entities (TE/GE) Cases, within two years of the date of this memorandum.

**Effective Date:** This guidance is effective as of the date of this memorandum.

**Contact:** Appeals employees should follow existing procedures to elevate questions through their management chain and follow established procedures on [How to Contact an Analyst](#).

Attachment(s): IRM 8.7.8.5, New Issues, New Information, and New Theories or Alternative Legal Arguments – General Guidelines

cc: [www.irs.gov](http://www.irs.gov)

**IRM 8.7.8.5**

**New Issues, New Information, and New Theories or Alternative Legal Arguments - General Guidelines**

- (1) Appeals technical employees (ATEs) working TE/GE-sourced cases are not investigators or examining officers and may not act as such.
- (2) ATEs will conduct a preliminary review of a case as soon as possible to determine whether the case must be returned to TE/GE. While taxpayers may present new information or evidence to Appeals, the presentation of new factual information generally will require that the case be returned to TE/GE. See IRM 8.7.8.5.4, Non-Docketed TE/GE Case Routing Criteria, for a general summary of returning a case.

**IRM 8.7.8.5.1**

**Taxpayer Raises New Issue**

- (1) ATEs generally follow the procedures provided in the following IRMs when a taxpayer raises a new issue in a non-docketed case:
  - IRM 8.6.1.7, New Issues and Reopening Closed Issues;
  - IRM 8.6.1.7.1, Defining a New Issue;
  - IRM 8.6.1.7.2, General Guidelines;
  - IRM 8.6.1.7.3, Burden of Proof when Government Raises New Issues; and
  - IRM 8.6.1.7.4, Taxpayer Raises New Issue.
- (2) For non-docketed cases, ATEs will continue to follow the procedures in (1), above, except that the procedures given in IRM 8.7.8.5.5, Jurisdiction Released, below, will be followed to return a case to TE/GE.
- (3) ATEs will continue to follow the procedures provided in the following IRMs when a taxpayer raises a new issue in a docketed case:
  - IRM 8.4.1.9.3, New Issues in Docketed Cases; and
  - IRM 8.4.4, Examination Assistance Requests.

**IRM 8.7.8.5.2**

**Taxpayer Provides New Information**

- (1) ATEs will continue to follow the procedures provided in IRM 8.6.1.7.5, Taxpayer Provides New Information, when a taxpayer provides new information in a non-docketed case, with the following two exceptions:

- a. If a taxpayer provides information in response to a question or request from Appeals to clarify or corroborate information contained or referenced in the examination report, protest, or rebuttal, Appeals will provide TE/GE with an opportunity to review and comment on the information. To return the information package to TE/GE, the ATE will follow the procedures in IRM 8.7.8.5.3(1), Taxpayer Provides New Theory or Alternative Legal Argument, below. Appeals will allow at least 45 days for written review and comment (subject to ex parte requirements), and grant an extension of time, if mutually agreed.
  - b. If the ATE determines that jurisdiction should be released, the ATE will follow the procedures in IRM 8.7.8.5.5, Jurisdiction Released, below.
- (2) ATEs will continue to follow the procedures provided in IRM 8.4.4, Examination Assistance Requests, when a taxpayer provides new information in a docketed case.

**IRM 8.7.8.5.3**

**Taxpayer Provides New Theory or Alternative Legal Argument**

- (1) ATEs will continue to follow the procedures provided in IRM 8.6.1.7.6, Taxpayer Raises New Theory or Alternative Legal Argument, when a taxpayer raises a new theory or alternative legal argument in a non-docketed case, but will use the following step-action table for routing an information package to TE/GE:

Step	Action
1.	Return the information package to the original TE/GE group.
2.	Prepare an INTERIM customized Form 5402 using ACDS APGolf. Include the following information: <ul style="list-style-type: none"> <li>1. JURISDICTION RETAINED</li> <li>2. Reason for sending information (i.e., Taxpayer is raising a new theory or alternative legal argument.)</li> <li>3. IRS Examination Group address</li> </ul> Note: If <a href="#">Form 5402</a> requires a closing code, use <b>Closing Code 00 – Not Applicable</b> . Do not close the case on ACDS. This is not a closing action.
3.	Update the following in CARATS: <ul style="list-style-type: none"> <li>• <b>Action: SU</b></li> <li>• <b>Subaction: PI</b></li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Suspense Action Reason Code: E/DD</b> – Inactive, waiting for info/action by DD</li> <li>• <b>Feature Code: EA</b> – Examination Assistance Case</li> </ul> <p>Note: If there are other issues that you can continue working, there is no need to put the case in suspense.</p>
4.	<p>Prepare <a href="#">Letter 5209</a> to the taxpayer. Sign it, but do not date or mail it. Letter 5209 advises taxpayers that you are sending their new theory or argument to the original exam group to assign to an examiner for review and comment and retaining jurisdiction of their case.</p> <p><b>If the case has a paper administrative file:</b> Include a copy of Letter 5209 for the file and representative, if any, and envelope(s) for mailing.</p> <p><b>If the case has an electronic administrative file:</b> Upload the signed Letter 5209 to the Appeals Centralized Database System (ACDS) for printing and mailing.</p>
5.	<p>Submit the information package to the ATM for approval. If approved, the ATM or ATE will mail the letter(s) in the file (paper administrative file) or print and mail the letter(s) in ACDS (electronic administrative file). The ATM or ATE will then forward the information package to the original TE/GE group.</p>

(2) For docketed cases in which the taxpayer raises a new theory or alternative legal argument that the ATE believes warrants review and comment by TE/GE before the ATE can fully evaluate the hazards of litigation, the ATE will follow the instructions in IRM 8.4.4.3.1, New Information Received in Appeals, and treat the new theory or alternative legal argument as new information for purposes of determining if the case meets the criteria for making an Examination Assistance Request to TE/GE.

**IRM 8.7.8.5.4  
Non-Docketed TE/GE Case Routing Criteria**

(1) The following table summarizes the routing of non-docketed cases when the taxpayer advances a new theory or alternative legal argument, raises a new issue, or provides new information or evidence that at the discretion of the ATE requires additional analysis or investigative action. Note, however, that a short statute may prevent a case from being returned to TE/GE.

<b>TYPE OF INFORMATION RECEIVED</b>	<b>ACTION TO BE TAKEN</b>
(1) Taxpayer raises a relevant new issue.	Appeals will release jurisdiction of the case to TE/GE.

(2) Taxpayer provides Appeals with information that TE/GE previously requested during the examination.	Appeals will release jurisdiction of the case to TE/GE.
(3) Taxpayer, on its own initiative, provides Appeals with new information not previously shared with TE/GE during the examination.	Appeals will release jurisdiction of the case to TE/GE.
(4) Taxpayer provides information in response to a question or request from Appeals to clarify or corroborate information contained or referenced in TE/GE’s report, the taxpayer’s protest, or TE/GE’s rebuttal.	Appeals will provide TE/GE with an opportunity to review and comment on the information within a specified time frame. Appeals will retain jurisdiction of the case.
(5) Taxpayer advances a new theory or alternative legal argument.	Appeals will provide TE/GE with an opportunity to review and comment on the information within a specified time frame. Appeals will retain jurisdiction of the case.

**IRM 8.7.8.5.5  
Jurisdiction Released**

(1) For non-docketed cases that are being returned to TE/GE with jurisdiction released by Appeals, the ATE will follow these procedures:

<b>Step</b>	<b>Action</b>
1.	<p>Determine where to send the case:</p> <p>a) If the case has a paper administrative file, refer to the link entitled “Points of Contact for Returning Paper Administrative Files to TE/GE” on the <a href="#">Appeals TE/GE website</a> and contact the appropriate point of contact for instruction on where to return the file to TE/GE.</p> <p>b) If the case has an electronic administrative file, transmit the case to TE/GE via the Reporting Compliance Case Management System (RCCMS).</p>
2.	<p>Prepare a customized Form 5402 using ACDS APGolf.</p> <p>a) Include the following information:</p> <p align="center">JURISDICTION RELEASED</p>

	<p>[Reason for releasing jurisdiction (e.g., taxpayer provided new information, taxpayer raised a new issue, etc.)]</p> <p>Return case [to TE/GE's mailing address or via RCCMS].</p> <p align="center">b) Use <b>Closing Code 20</b>.</p>
<p align="center">3.</p>	<p>Prepare <a href="#">Letter 5209</a> to the taxpayer. Sign it, but do not date or mail it. Letter 5209 advises taxpayers that you are returning the case to the originating function and the reason (e.g., because they raised a new issue, submitted new information, etc.), and releasing jurisdiction of their case.</p> <p><b>If the case has a paper administrative file:</b> Include a copy of Letter 5209 for the file and representative, if any, and envelope(s) for mailing.</p> <p><b>If the case has an electronic administrative file:</b> Upload the signed Letter 5209 to the Appeals Centralized Database System (ACDS) for printing and mailing.</p>
<p align="center">4.</p>	<p>Submit the case to the ATM for approval and processing. The ATM approves the case closure and closes the case on the ATM Case closing screen.</p> <p><b>If the case has a paper administrative file:</b> The ATM sends the case to APS. APS closes the case on ACDS, mails Letter(s) 5209, and returns the entire administrative file to the originating function using Form 3210.</p> <p><b>If the case has an electronic administrative file:</b> The ATM mails Letter 5209 and transmits the case electronically to APS. APS then closes the case on ACDS and returns the electronic administrative file to the originating function via RCCMS.</p>

**Reminder:** In order for a case with a new issue or new information to be returned to TE/GE, there must generally be at least 210 days remaining on the statute of limitations when TE/GE receives the case. See IRM 8.6.1.7.4(3), Taxpayer Raises New Issue, and IRM 8.6.1.7.5(4), Taxpayer Provides New Information. In addition, there must be at least 180 days remaining on the statute of limitations when a case is received in Appeals when the originating function returns a case that was previously returned to them for consideration of new information or a new issue. See IRM 8.2.1.4(3), Receipt of New Assignment by an Appeals Technical Employee (ATE).