

IRS Fast-Track Settlement Has Been Refined to Improve Accessibility

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Taxpayers whose tax returns the IRS examines may experience long administrative delays in working with the IRS to resolve unagreed issues. About twenty years ago, the IRS developed a procedure – fast track settlement – to accelerate resolution.[1] The IRS recently made three refinements to the procedure that may increase its attractiveness for some taxpayers.[2]

Fast-Track-Settlements: After examining an issue, the examination team[3] furnishes a taxpayer with a notice of a proposed adjustment if the team determines that a tax adjustment should be made.[4] Each proposed adjustment results in a such a notice. A large taxpayer may receive hundreds of notices of proposed adjustments over the course of the examination, which may take months or years until all the notices of proposed adjustments are received and the examination is concluded.[5]

Absent the fast-track process, a taxpayer must wait to dispute a proposed adjustment until it receives all the notices of proposed adjustment that the team will issue, and then further wait to dispute a proposed adjustment until the taxpayer receives a notice of proposed deficiency (“Thirty-Day Letter”).[6] The taxpayer can then protest the proposed adjustment and request a conference with the Independent Office of Appeals on each issue that the taxpayer disputes. Thereafter, the taxpayer will present its case for all disputed issues to the assigned appeals officer and await the appeals officer’s dispositive recommendation.[7]

Fast-track settlement is designed to cut through these delays. In essence, an IRS appeals officer, trained in mediation, mediates the issue on which the taxpayer and IRS examination division cannot agree. The appeals officer may recommend settlement of the issue, which is subject to the typical procedures that would be applicable if the appeals office had jurisdiction over the issue pursuant to a taxpayer’s protest.[8]

Fast-track may be requested by either the taxpayer or the IRS examining division. If the case is accepted for mediation, the objective is to resolve the issue within 120 days of acceptance.

Process Refinements:

Refinement Number One: A fast-track application will not be rejected even if the case has an issue not eligible for fast-track. Previously, an entire case[9] was ineligible for fast-track if it contained even a single issue ineligible for fast-track. Ineligible for fast-track settlement were issues that the IRS designated for litigation or considered for litigation, issues involving negotiations with foreign tax authorities through the competent authority process, and whipsaw issues.[10] Now, an ineligible issue in the case will not disqualify all other issues in the case for fast-track.

Furthermore, the refinement makes rejection of an application for fast-track more difficult. Previously, an IRS employee designated as a fast-track manager could reject the application. Now, a first-line executive – like the Director, Examination Appeals or the Director, Field Operations for the Large Business and International Division – must agree to rejection of a fast-track application. Finally, if the application is rejected, the executive must explain the reason for rejection to the taxpayer to enhance transparency of the fast-track process.

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Refinement Number Two: The Appeals Office is required to call a taxpayer that files a protest with the Appeals Office to remind the taxpayer that fast-track is available. The Appeals Office will take this action prior to accepting Appeals jurisdiction of the case. The IRS apparently believes that publication of the procedure is not enough for taxpayers and their representatives to know about fast-track or focus on it as a viable method to resolve unagreed issues.

Refinement Number Three: A taxpayer who participates in a fast-track procedure that fails to resolve the unagreed issue may request post-appeals mediation.^[11] Previously, post-appeals mediation was not available if a taxpayer had participated in fast-track. Post-appeals mediation allows the taxpayer to select a co-mediator who will mediate the issue along with the appeals office mediator. In fast-track, the only mediator is the IRS appeals officer.

Success of Fast-Track: Fast-Track appears to have had a reasonable degree of success. The IRS has invested resources in the process, which suggests that it is attempting to overcome some recalcitrance in the examination divisions to “give away” an issue. That is not to say, of course, that the taxpayer should expect the appeals officer to have a “fire sale” mentality in an overeager effort to achieve resolution of issue. Nonetheless, the new enhancements should make the procedure more accessible and workable.

Considerations: A taxpayer substantially discloses its defense in fast-track for an unagreed issue. The scope of the disclosure may influence how the taxpayer tries the case if the taxpayer proceeds to litigation. If litigation appears most probable, a taxpayer might decide that taking a chance on fast-track is not worth providing the IRS with an early education of the defense. There are obviously many procedures and approaches to be weighed in choosing the optimal means to resolve an unagreed issue. Fast-track clearly is one procedure that should be considered.

[1] Rev. Proc. 2003-40, 2003-1 C.B.1044 (June 3, 2003).

[2] Announcement 2025-6 (Jan. 15, 2025). Other procedures to accelerate issue resolution and avoid litigation include pre-filing agreements, early referral to appeals, the compliance assurance process, and advance transfer pricing agreements.

[3] The examination team is assigned to one of the examination divisions. Large Business and International, Small Business and self-Employed, and Tax Exempt and Government Entities are the divisions subject to the fast-track settlement procedure.

[4] Taxpayers within the jurisdiction of the Large Business and International Division typically receive Form 5701 for each proposed adjustment.

[5] The taxpayer may respond to a notice of proposed adjustment, which the examination team typically records in the Form 5701 along with its rejoinder to the taxpayer’s response.

[6] Treas. Reg. §601.105(d).

[7] I.R.C. §7803(e).

[8] Re. Proc. 2003-40, §2.03. The customary role of an appeals officer is not mediation. An appeals officer who hears a taxpayer’s protest of a proposed deficiency is trained to assess the IRS’s litigation risk on the unagreed issues and propose resolution based on the litigation risk.

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[9] The case is composed of all adjustments proposed for the taxable year or years under examination.

[10] A whipsaw issue occurs when the taxpayer engaged in a transaction with a third party and resolution with the taxpayer may have an opposite effect on the tax treatment of the third party.

[11] As the name implies, post-appeals mediation occurs after the appeals officer hears the taxpayer's protest and recommends resolution of the unagreed issues in the protest.