



INDEPENDENT OFFICE  
OF APPEALS

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

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MEMORANDUM FOR IRS INDEPENDENT OFFICE OF APPEALS (APPEALS)  
EMPLOYEES

FROM: Patrick E. McGuire /s/ *Patrick E. McGuire*  
Acting Director, Case and Operations Support

SUBJECT: Non-Docketed Syndicated Conservation Easement Case Resolution

**Purpose:** This memorandum provides interim guidance to Appeals employees on a 2024 IRS non-docketed Syndicated Conservation Easement Resolution (SCER). Please ensure this information is distributed to all affected employees within your organization.

**Background/Source(s) of Authority:** The IRS announced a non-docketed SCER on June 26, 2024. Pursuant to IRM 8.7.3.7.2, Appeals may offer the terms of a settlement initiative authorized by the Commissioner for a coordinated issue.

Non-docketed syndicated conservation easement (SCE) cases in Appeals' jurisdiction will generally be eligible for settlement pursuant to the SCER. Taxpayers previously offered a SCER settlement by Compliance will not be eligible for SCER settlement in Appeals. In addition, SCE cases docketed in the United States Tax Court will not be eligible for SCER settlement.

**Procedural Change:** The Appeals Technical Employee (ATE) assigned an eligible non-docketed syndicated conservation easement case will offer a SCER settlement to the taxpayer. The attached guidance sets forth detailed case processing procedures.

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

**Contact:** If you have questions or need additional information, please contact Margaret Harris, Director Technical Guidance, or Joseph Chappell, Technical Guidance Team 6 manager.

**Distribution:**

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

## **Syndicated Conservation Easement Resolution Procedures**

The following procedures implement the Syndicated Conservation Easement Resolution in Appeals. SCER procedures vary depending on whether the taxpayer is a partnership subject to the legal provisions of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) or the Bipartisan Budget Act of 2015 (BBA) (a TEFRA partnership or a BBA partnership, respectively). Taxpayers must fully cooperate with the Service during the resolution process, which includes, but is not limited to, providing additional information, and extending the statute of limitations, as required.

Because SCE is a coordinated issue requiring mandatory referral, each SCE case has an assigned a Team 1 Technical Guidance Coordinator (TGC). The Team 1 TGC will notify the ATE if a taxpayer is eligible for a SCER settlement. If an ATE has questions about whether a taxpayer is eligible, they should contact the assigned Team 1 TGC for assistance. A Team 6 TEFRA/BBA specialist is assigned to all TEFRA and BBA partnership cases. An ATE can identify the assigned Team 6 Appeals TEFRA/BBA Team specialist (Team 6 ATT) by clicking on "ATT (W)R Info" in the Appeals Centralized Database System (ACDS) Case Summary Screen.

ATEs with non-docketed Investor Level Statute Control SCE cases (e.g., partnerships that have elected out of BBA or non-TEFRA pass-through entities) should contact the Technical Guidance Team 6 manager before proceeding with any SCER settlement offer.

### **TEFRA Partnership Cases**

#### **(1) Ineligible TEFRA Partnership Cases**

Non-docketed TEFRA partnership cases are ineligible for a SCER settlement if:

- a. a Notice of Final Administrative Adjustment (FPAA) has been mailed to the taxpayer's Tax Matters Partner (TMP) or
- b. there are less than 15 months remaining on the period of limitations for assessment as of the date the offer letter is sent, and the taxpayer refuses to extend the period of limitations using Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Partnership Items.

#### **(2) SCER Settlement Offer Documents**

ATEs must prepare SCER offer letters (Offer Letter), each of which must be signed by an Appeals Team Manager (ATM). For each eligible taxpayer, the ATE must mail a copy of the Offer Letter to the taxpayer, the generic and named Tax Matters Partner (TMP), and the Power of Attorney (POA), if any, enclosing Attachment 1 - Syndicated Conservation Easement Resolution Terms and Election. ATEs should also enclose a Form 872-P if the period of limitations for assessment expires less than 15 months from the date the Offer Letter is sent.

Please see the ATT SharePoint Library for sample documents. ATEs must upload all documents to ACDS.

### **(3) Electing to Participate in the Syndicated Conservation Easement Resolution Program**

To elect to participate in the SCER program, taxpayers must notify the IRS within 30 days from the date of the Offer Letter by returning a signed copy of the Syndicated Conservation Easement Resolution Terms and Election (the SCER Terms Sheet). The taxpayer's TMP must sign and date the last page of the SCER Terms Sheet and initial each page. The taxpayer must also enclose a signed Form 872-P with the signed SCER Terms Sheet, if applicable. Taxpayers may request a one-time 30-day extension to make an election. The ATE must notify the taxpayer in writing that a request for extension has been granted and must specify a firm election deadline. Please see the ATT SharePoint Library for sample extension letter.

Upon receipt of the signed SCER Terms Sheet (and signed Form 872-P, if applicable), the ATE, must:

- a. Verify the SCER Terms Sheet has not been altered and is signed by the TMP;
- b. Date stamp the signed SCER Terms Sheet;
- c. If a statute extension (Form 872-P) was secured, contact the assigned Team 6 ATT for review before countersigning;
- d. Upload all documents to ACDS; and
- e. Notify the assigned Team 1 TGC by email that the taxpayer elected to participate in the SCER program.

The election to participate in the SCER program is non-binding. A taxpayer may withdraw at any time by providing a written statement to the ATE. The ATE must document the withdrawal in the case activity record and notify the assigned Team 1 TGC.

### **(4) Settlement Calculation Worksheet**

After receiving a valid taxpayer election, the ATE must work with the assigned Team 1 TGC to prepare a Settlement Calculation Worksheet. The ATE uses the Settlement Calculation Worksheet to calculate the settlement adjustments for the taxpayer.

To prepare a Settlement Calculation Worksheet, the ATE must perform the following actions:

- a. Complete the "Input - Taxpayer Information" section by inserting:
  - Taxpayer Name
  - Taxpayer TIN
  - Tax Year
  - Total SCE Non-Cash Contribution Deducted. This amount is equal to the non-cash contribution claimed by the taxpayer and deducted on its Form 1065, Schedule K, Charitable Contribution line. This amount does not

include cash contributions. If the fair market value reported on Form 8283, Noncash Charitable Contributions, differs from the amount deducted on Form 1065, input the amount deducted on Form 1065.

b. Complete the "Input - Investment Cost Calculation" section.

This section details how the ATE calculated investment costs. In general, this amount represents the taxpayer partners' costs to enter into the SCE transaction.

- The ATE will use the investment tier tax returns provided by the taxpayer. The ATE must verify such tax returns are the correct returns for the SCE transaction.
- Ensure the returns match those previously filed with the IRS. For example, the ATE may compare amounts reported on the Schedule M-2 Capital Contributed (Cash) line of both returns.
- Calculate allowable investment costs. In general, the allowable deduction is the amount reported on the taxpayer's (or investment-tier partnership's) Schedule M-2, Capital Contributed (Cash). If there are multiple investment tiers or multiple top tiers per investment tier partnership, the ATE should contact the assigned Team 1 TGC.

After the assigned Team 1 TGC reviews the Settlement Calculation Worksheet, the ATE will share the details of the settlement adjustments, including the investment cost calculation, with the taxpayer. Within 14 days of receiving the details of the settlement adjustments, the taxpayer must confirm in writing that they want to proceed with a SCER settlement. The ATE will then prepare a closing package, including Form 906, Closing Agreement on Final Determination Covering Specific Matters.

#### **(5) Preparing the TEFRA Form 906**

The Team 6 ATT will work with a Tax Computation Specialist (TCS) to prepare a TEFRA report (Form 4605-A and Form 5278). To make a TCS request, the ATE will prepare a Form 5402, which will be signed by the ATE's ATM. The ATM will forward the TCS request to the Team 6 ATT mailbox \*AP TEFRA/BBA Team. Please see the ATT SharePoint Library for a TEFRA Form 5402 template.

With respect to the TEFRA report, note the following:

- Form 5278 will include the following statement on the top of the first page: ***"Do Not Process - Prepared for Computational Purposes Only - Based on F-906."***
- Interest should be calculated for 90 days after the date the report will be sent to the taxpayer.

A TEFRA Closing Agreement (Form 906) template has been prepared and approved for use by Compliance and Appeals. The ATE will use the Form 4605-A and Form 5278 to prepare the Form 906 Closing Agreement. Pursuant to the SCER settlement, the taxpayer will pay an amount equal to the net adjustments at the settlement initiative tax rate.

Do not modify the SCER Form 906. If the SCE case involves unusual circumstances, the ATE should contact the assigned Team 6 ATT for further guidance. If the ATE receives instructions to make modifications to the Form 906, the ATE must include such instructions in the case file.

The Form 906 must be reviewed and approved by the assigned Team 6 ATT prior to issuance to the taxpayer. The ATE will include any correspondence or guidance received regarding changes to the Form 906 when sending the draft for review.

#### **(6) Effectuating a SCER Settlement**

After the assigned Team 6 ATT reviews and approves the Form 906, the ATE will send to the taxpayer and the TMP (with a copy to the Power of Attorney, if any): (1) Letter 5090, Sending Closing Agreement to Taxpayer – Cover Letter, and (2) three copies of the Form 906 for original signatures.

Within 14 days from the date on the Letter 5090, the taxpayer must return three signed copies of the Form 906. All direct partners and spouses, if their return filing status during the tax year(s) at issue was Married Filing Jointly, must sign the Form 906. If the taxpayer did not return all three copies, the ATE will return the appropriate number of copies to the taxpayer for signature.

Note: Revenue Procedure 68-16 provides guidelines addressing the number of required copies for signatures. There must be original signatures on each original Form 906.

The ATE must review the Form 906 after receipt to ensure no changes were made and all copies have original signatures. The ATE must date stamp the back of the last page of each signed Form 906 the day it is received from the taxpayer. Note: Do not date stamp in any signature area.

The ATE will sign all original copies of the Form 906 as the "Receiving Officer," the ATE's ATM will sign as the "Reviewing Officer," and the Team 6 ATT ATM will sign as the "Commissioner of Internal Revenue Service." The Team 6 ATT ATM will upload the fully executed Forms 906 to ACDS.

The taxpayer must submit full payment with the signed Forms 906. The ATE will post the taxpayer's payment to the TEFRA partnership tax module (MFT 06) and process the payment to the local Field Office Teller by submitting Form 3244-A, Payment Posting Voucher Examination. Record the amount under TC 640, Advance Payment on Deficiency. The TC 640 will freeze the refund.

The ATE is responsible for monitoring posting of the payment. A TC 640 will post

showing the full amount paid. Copies of the Form 3244-A and the proof of payment should be maintained in the case file and a scanned copy uploaded to ACDS. The ATE must include a copy of the transcripts with the posted TC 640.

**(7) Closing the TEFRA Case**

The ATE will mail Letter 1595-E, Executed Closing Agreement Transmittal Letter, and fully executed Form 906 to the taxpayer, with a copy to the TMP and POA, if any.

ATEs must include a copy of a completed and signed Form 4222, Closing Agreement Checklist, in the case file.

The ATE will notify the Team 6 ATT when the following documents have been uploaded to ACDS:

- Fully executed Form 906
- Copy of the settlement payment
- Form 3244-A
- Form 5402
- Signed and dated Letter 1595-E
- IDRS print with posted TC 640
- Form 4222

The Team 6 ATT will perform the following actions to close the case:

- Prepare and process Form 2424 to transfer payment to the Miscellaneous Revenues Account;
- Notify the ATE and ATM to AC/FR and ACAP the case on ACDS and provide shipping instructions for the administrative file;
- Prepare the campus transmittal; and
- Assemble and upload the closing package to the campus server.

## **BBA Partnership Cases**

### **(1) Ineligible BBA Partnership Cases**

Non-docketed BBA partnership cases are ineligible for a SCER settlement if:

- a. a Notice of Final Partnership Adjustment (FPA) has been mailed to the taxpayer or its partnership representative (PR) or
- b. there are less than 15 months remaining on the period of limitations for adjusting partnership-related items as of the date the offer letter is sent, and the taxpayer refuses to extend the period of limitations using Form 872-M, Consent to Extend the Time to Make Partnership Adjustments.

### **(2) SCER Settlement Offer Documents**

ATEs must prepare SCER settlement offer letters (Offer Letter), each of which must be signed by an Appeals Team Manager (ATM). For each eligible taxpayer, the ATE must mail a copy of the Offer Letter to the taxpayer, the Partnership Representative (PR), and the Power of Attorney (POA), if any, enclosing Attachment 1 - Syndicated Conservation Easement Resolution Terms and Election. ATEs should also enclose a Form 872-M if the period of limitations for assessment expires less than 15 months from the date the Offer Letter is sent. Please see the ATT SharePoint Library for sample documents. ATEs must upload all documents to ACDS.

### **(3) Electing to Participate in the Syndicated Conservation Easement Resolution Program**

To elect to participate in the SCER program, taxpayers must notify the IRS within 30 days from the date of the Offer Letter by returning a signed copy of the Syndicated Conservation Easement Resolution Terms and Election (the SCER Terms Sheet). The partnership's PR must sign and date the last page of the SCER Terms Sheet and initial each page. The taxpayer must also enclose a signed Form 872-M with the signed SCER Terms Sheet, if applicable. Taxpayers may request a one-time 30-day extension to make an election. The ATE must notify the taxpayer in writing that a request for extension has been granted and must specify a firm election deadline.

Upon receipt of the signed SCER Terms Sheet (and signed Form 872-M, if applicable), the ATE, must:

- a. Verify the SCER Terms Sheet has not been altered and is signed by the PR;
- b. Date stamp the signed SCER Terms Sheet;
- c. If a statute extension (Form 872-M) was secured, contact the Team 6 ATT for review before countersigning;
- d. Upload all documents to ACDS; and



- e. Notify the assigned Team 1 TGC by email that the taxpayer elected to participate in the SCER program.

The election to participate in the SCER program is non-binding. A taxpayer may withdraw at any time by providing a written statement to the ATE. The ATE must document the withdrawal in the case activity record and notify the assigned Team 1 TGC.

#### **(4) Settlement Calculation Worksheet**

After receiving a valid taxpayer election, the ATE must work with the assigned Team 1 TGC to prepare a Settlement Calculation Worksheet. The ATE uses the Settlement Calculation Worksheet to calculate the settlement adjustments for the taxpayer.

To prepare a Settlement Calculation Worksheet, the ATE must perform the following actions:

- a. Complete the “Input-Taxpayer Information” section by inserting:
  - Taxpayer Name
  - Taxpayer TIN
  - Tax Year
  - Total SCE Non-Cash Contribution Deducted. This amount is equal to the non-cash contribution claimed by the taxpayer and deducted on its Form 1065, Schedule K, Charitable Contribution line. This amount does not include cash contributions. If the fair market value reported on Form 8283, Noncash Charitable Contributions, differs from the amount deducted on Form 1065, input the amount deducted on Form 1065.
- b. Complete the “Input - Investment Cost Calculation” section. This section details how the ATE calculated investment costs. In general, this amount represents the taxpayer partners’ costs to enter into the SCE transaction.
  - The ATE will use the investment tier tax returns provided by the taxpayer. The ATE must verify such tax returns are the correct returns for the SCE transaction.
  - Ensure the returns match those previously filed with the IRS. For example, the ATE may compare amounts reported on the Schedule M-2 Capital Contributed (Cash) line of both returns.
  - Calculate allowable investment costs. In general, the allowable deduction is the amount reported on the taxpayer’s (or investment-tier partnership’s) Schedule M-2, Capital Contributed (Cash). If there are multiple investment tiers or multiple top tiers per investment tier partnership, the ATE should contact the assigned Team 1 TGC.

After the assigned Team 1 TGC reviews the Settlement Calculation Worksheet, the ATE will share the details of the settlement adjustments, including how investment costs were calculated, with the taxpayer. Within 14 days of receiving the details of the

settlement adjustments, the taxpayer must confirm in writing that they want to proceed with a SCER settlement. The ATE will then prepare a closing package, including Form 906, Closing Agreement on Final Determination Covering Specific Matters.

### **(5) Preparing the BBA Form 906**

The Team 6 ATT will work with a Tax Computation Specialist (TCS) to prepare a BBA report (Form 14791). To make a TCS request, the ATE will prepare a Form 5402, which will be signed by the ATE's ATM. The ATM will forward the TCS request to the Team 6 ATT mailbox \*AP TEFRA/BBA Team. Please see the ATT SharePoint Library for a BBA Form 5402 template.

With respect to the BBA report, note the following:

- Form 14791 will include the following statement on the top of the first page: ***“Do Not Process - Prepared for Computational Purposes Only - Based on F-906.”***
- Interest should be calculated for 90 days after the date the report will be sent to the taxpayer.

A BBA Closing Agreement (Form 906) template has been prepared and approved for use by Compliance and Appeals. The ATE will use the Form 14791 to prepare the Form 906 Closing Agreement. Pursuant to the SCER settlement, the taxpayer will pay an amount equal to the net adjustments at the settlement initiative tax rate.

Do not modify the SCER Form 906. If the SCE case involves unusual circumstances, the ATE should contact the assigned Team 6 ATT for further guidance. If the ATE receives instructions to make modifications to the Form 906, the ATE must include such instructions in the case file.

All Forms 906 must be reviewed and approved by the Team 6 ATT prior to issuance to the taxpayer. The ATE will include any correspondence or guidance received regarding changes to the Form 906 when sending the draft for review.

### **(6) Effectuating a SCER Settlement**

After the Team 6 ATT reviews and approves the Form 906, the ATE will send to the taxpayer and the PR (with a copy sent to the Power of Attorney, if any): (1) Letter 5090, Sending Closing Agreement to Taxpayer – Cover Letter, and (2) three copies of the Form 906 for original signatures.

Within 14 days from the date on the Letter 5090, the taxpayer must return three copies of the Form 906 signed by the PR. If the taxpayer did not return all three copies, the ATE will make an appropriate number of copies and return to the taxpayer for signature.

Note: Revenue Procedure 68-16 provides guidelines addressing the number of required

copies for signatures. There must be original signatures on each original Form 906. The ATE must review the Form 906 after receipt to ensure no changes were made and all copies have the PR's original signature. The ATE must date stamp the back of the last page of each signed Form 906 the day it is received from the taxpayer. Note: Do not date stamp in any signature area.

The ATE will sign all original copies of the Form 906 as the "Receiving Officer," the ATE's ATM will sign as the "Reviewing Officer," and the Team 6 ATT ATM will sign as the "Commissioner of Internal Revenue Service." The Team 6 ATT ATM will upload the fully executed Forms 906 to ACDS.

The taxpayer must submit full payment with the signed Forms 906. The ATE will post the taxpayer's payment to the BBA partnership tax module (MFT 06) and process the payment to the local Field Office Teller by submitting Form 3244-A, Payment Posting Voucher Examination. Record the amount under TC 640, Advance Payment on Deficiency, and 72 in the DPC field. The TC 640 will freeze the refund.

The ATE is responsible for monitoring posting of the payment. A TC 640 will post showing the full amount paid. Copies of the Form 3244-A and the proof of payment should be maintained in the case file and a scanned copy uploaded to ACDS. The ATE must secure a copy of the transcripts with the posted TC 640.

### **(7) Closing the BBA Case**

The ATE will mail Letter 1595-E, Executed Closing Agreement Transmittal Letter, and fully executed Form 906 to the taxpayer, with a copy to the PR and POA, if any.

ATEs must include a copy of a completed and signed Form 4222, Closing Agreement Checklist, in the case file.

The ATE will notify the assigned Team 6 ATT when the following documents have been uploaded to ACDS:

- Fully executed Form 906
- Copy of the settlement payment
- Form 3244-A
- Form 5402
- Signed and dated Letter 1595-E
- IDRS print with posted TC 640
- Form 4222

The Team 6 ATT will perform the following actions to close the case:

- Notify the ATE and ATM to AC/FR and ACAP the case on ACDS and provide shipping instructions for the administrative file;
- Prepare campus transmittal; and
- Assemble and upload the closing package to the campus server.