



INDEPENDENT OFFICE
OF APPEALS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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MEMORANDUM FOR APPEALS EMPLOYEES

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

SUBJECT: Trust Fund Recovery Penalty (TFRP) procedures update

This memorandum issues guidance to update the Trust Fund Recovery Penalty (TFRP) Taxpayer Bill of Rights 2 (TBOR2) procedures for Appeals Technical Employee (ATE), Appeals Team Manager (ATM) and Account & Processing Support (APS). Please ensure that this information is distributed to all affected employees within your organization.

Purpose: This guidance makes the TFRP procedures more efficient, from carding in cases to the closing actions necessary to transmit the determination to the IRS Control Point Monitor (CPM). This guidance also includes the TFRP closing to the established procedures in IRM 8.20.7.2.4, Electronic Case Closures (ECC), which eliminates the mailing/shipping of the physical case file between the ATE/ATM and APS.

Background/Source(s) of Authority: Prior TFRP procedures required the physical case file to be shipped from the ATE, to the ATM, to APS, and then APS would mail the physical file to either Appeals Quality Measurement System (AQMS) for review or to the designated CPM to process the Appeals' determination.

ACDS was modified to systemically notify APS of the Electronic Case Closure when the feature codes for Paperless (PL) and Electronic Closing (EC) were entered to ACDS. The ATMs are not required to email APS to alert them of the ECC closure. The use of feature code PL in conjunction with feature code EC does **NOT** make the file a true paperless case.

Procedural Change: This guidance updates the IRM to include TFRP cases into the established ECC procedures. When carding in a TFRP case to ACDS: APS will add feature Codes PL and EC and upload the following to ACDS: Form 4183 (including page 4), Form 2749, and the dated copy of Letter 1153 including a copy of the certified mail list (CML) or certified mail receipt (if sent via certified mail). When the taxpayer does not respond to the initial conference letter/substantive contact letter (SCL), then the ATE will make a second attempt to contact tp/poa before the case can be closed. The ATE/ATM will no longer mail the physical TFRP case file to APS for processing. The ATE/ATM will ensure the signed/dated closing letter is mailed to the taxpayer and to the representative if applicable. The ATE/ATM will ensure the approved Form 5402 is emailed to the Control Point Monitor's organizational mailbox *CEASO ADVISORY CPM.

The ATE/ATM will hold onto the physical case file until APS inputs the ACDS required closing actions that will indicate if the case was selected for AQMS review. APS will upload Form 3210/e3210 to ACDS and provide shipping instructions to the ATE/ATM. APS will email the ATE/ATM to notify them that Forms 3210/e3210 have been uploaded. The ATE/ATM will ensure the physical TFRP case file is mailed to either the AQMS reviewer or to the centralized CPM group **(CPM Site Manager 3211 S. Northpointe Drive Stop 22001, Fresno CA 93725).**

Note: The physical TFRP case file includes the original TFRP file and any related TFRP records that have been secured/reviewed by Appeals. The ATE/ATM will send the entire physical case file to either AQMS or to the CEASO CPM Group in Fresno CA 93725.

See the attachment below with the specific ATE, ATM, and APS responsibilities and affected IRM sections.

Effect on Other Documents: This guidance will be incorporated into the affected IRMs within 2 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): Updated

Guidance cc:

www.irs.gov

ATE Responsibilities:

Initial Analysis:

- Ensure PL and EC Feature Codes are entered to ACDS.
- Verify and document the case activity record with the date Letter 1153 was either mailed certified and or was hand delivered.
- Verify the protest letter is valid and timely.
- Verify Form 4183 including page 4, Form 2749, and Letter 1153 with the certified mail list (CML) number (if mailed) has been uploaded to ACDS.

Working the protest:

- Make a second attempt to contact the taxpayer/representative when there is no response to the substantive contact letter (SCL).

Closing Actions Form 5402:

The ATE must verify that ACDS and Form 5402 include the same earliest statute date. It is recommended the ATE use the ACDS validation button to update the statute date before the Form 5402 is generated. This establishes the ACDS statute date and will auto populate the earliest statute date onto Form 5402 when it is generated. This overrides the 30 days that are normally added to the ACDS ASED from the ATM's approval.

- To input the earliest statute date on Form 5402 – This should be completed by clicking the ACDS validation button to update the statute date. **This validation must be done before the Form 5402 is generated for the earliest statute date to auto populate on Form 5402.**
- The Form 5402 revised penalty section cannot be rounded. The ATE must include the exact dollars and cents that are to be assessed per tax period.
- Verify the Form 5402 resolution reason and the revised penalty sections are accurate. For example: if the resolution is to sustain the proposed penalty, then the revised penalty section must include the exact dollars and cents that are to be assessed per tax period.

After Form 5402 is approved:

- Verify the same earliest statute date is listed on Form 5402 and to ACDS.
- Ensure the approved Form 5402 is emailed to *CEASO ADVISORY CPM and document the case activity record. If something prevents the ATE from transmitting this (technical issues etc.), then document Form 5402 with APS instructions to transmit Form 5402.

Attachment AP-08-0724-0015, Trust Fund Recovery Penalty (TFRP) procedures update

- Ensure the closing letter is dated and mailed to the taxpayer/representative. Document the case activity record and upload the signed/dated letter to ACDS. If something prevents the ATE from transmitting this (no printer, technical issues etc.), then document Form 5402 with APS instructions to date and mail the closing letter.
- Ensure all applicable documents are uploaded to ACDS: Form 4183 including page 4, Form 2749, and the dated copy of Letter 1153 including a copy of the certified mail list (CML) or certified mail receipt (if sent via certified mail), along with the closing documents (Form 5402, Form 866, closing letter, and ACM).
- Hold onto the physical case file until APS inputs the ACDS closing actions that will indicate if the case was selected for AQMS review. APS will upload F3210/e3210 to ACDS and email the ATE with instructions to send the physical case file to either the AQMS Reviewer or to the **CPM Site Manager 3211 S. Northpointe Drive Stop 22001, Fresno CA 93725**.

ATM Responsibilities:

- Ensure PL and EC Feature Codes are entered to ACDS before the ACAP date is entered.
- Enter the ACAP date and approve Form 5402 on the same date.
- Verify that the same earliest statute date is listed on ACDS and on Form 5402. The statute date is no longer TBOR2 after the ATM signs/date Form 5402 & enters the ACAP Date.
- Ensure closing letters are mailed to the taxpayer and representative (if applicable).
- Ensure Form 5402 is emailed to *CEASO ADVISORY CPM.
- Ensure all applicable documents are attached to ACDS (Form 4183 including page 4, Form 2749, the dated copy of Letter 1153 including a copy of the certified mail list (CML) or certified mail receipt (if sent via certified mail), along with the closing documents (Form 5402, Form 866, closing letter, and ACM).
- Ensure the physical case file is mailed to either AQMS or the CPM group. The ATE/ATM will hold onto the physical case file until APS inputs the ACDS closing actions that will indicate if the case was selected for AQMS review. APS will upload the F3210/e3210 to ACDS and email the ATE/ATM with instructions to send the physical case file to the AQMS Reviewer or to the **CPM Site Manager 3211 S. Northpointe Drive Stop 22001, Fresno CA 93725**.

APS Responsibilities:

Carding in:

- Add ACDS feature codes PL and EC.
- Include all the tax periods listed on Letter 1153 to the ACDS case summary card unless a period(s) were specifically excluded.

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- Include the proposed penalty amount per tax period to ACDS that is listed on Form 2749.
- Upload to ACDS: Form 4183 (including page 4), Form 2749, the dated copy of Letter 1153 including a copy of the certified mail list (CML) or certified mail receipt (if sent via certified mail).

Closing:

- APS will review the ACDS uploaded dated closing letter to input the necessary closing data.
- APS will follow the established ECC procedures under IRM 8.20.7.2.4 along with the items listed below: (The physical case file will not be sent to APS).
- APS will enter the required closing data to ACDS which will indicate if the case has been selected for AQMS review:
 - 1) APS will generate and upload F3210/e3210 to ACDS, which will be used by the ATE/ATM to mail the physical case file to either AQMS or to the CPM group.
 - 2) APS will email the ATE/ATM to notify them where to mail the physical case file (AQMS or CPM Group).

APS will email the CPM Group when a case is selected for AQMS review to let them know the physical case file is being mailed to the AQMS reviewer and that the reviewer will forward the case file to the CPM group when the review is completed.

Note: If the ATE/ATM were not able to transmit the Form 5402 or mail the closing letter; then the Form 5402 will include APS instructions, such as:

- For APS to transmit the ACDS uploaded approved Form 5402 to *CEASO ADVISORY CPM or to mail the closing letter to the taxpayer/representative.
- APS will upload a copy of the signed/dated closing letter to ACDS.

Mailing the closing letter and case file:

Conditions vary greatly between PODs including access to printers and postage. Follow local management instruction on how to mail the closing letter/case file. This may include preparing a request on the STARS SharePoint site. The ATE must document the case activity record with the date the closing letter/case file are mailed by STARS. The ATE can attach Form 3210 to the front of the closed case file and provide the file to a Case Processor for shipping to the appropriate CPM group or to the AQMS reviewer. If no Case Processor is available at the ATE's location, the ATE/ATM will ensure the case file is shipped to the CPM group or to the AQMS reviewer.

8.20.5.38.2 (MM-DD-YYYY)
TFRP Case Carding

- (3) Add ACDS feature codes Paperless (PL) and Electronic Closure (EC).
- (4) To determine the tax periods and the proposed penalty amounts that must be included on the ACDS case summary card for a TFRP/TBOR2: The TE will review Letter 1153 and Form 2749.
 - APS TE will include the tax periods listed on Letter 1153, Proposed Trust Fund Recovery Penalty Notification unless a period(s) were specifically excluded.
 - APS TE will include the proposed penalty amount per tax period that is listed on Form 2749, Request for Trust Fund Recovery Penalty Assessment(s) to ACDS.
 - APS TE will upload to ACDS: Form 4183 including page 4, Form 2749, and the dated copy of Letter 1153 including a copy of the certified mail list (CML) or certified mail receipt (if sent via certified mail).

Note: It is possible for Letter 1153 to include more tax periods than Form 2749, but any tax period that is listed on Form 2749 must be included on Letter 1153. APS TE should contact the CPM for clarification if needed.

8.20.7.2.4 (MM-DD-YYYY)
Electronic Case Closures (ECC)

APS will follow the established procedures under ECC. The TFRP workstream/case type will be added to the current table in 8.20.7.2.4 (3) Case Eligibility and Required Documentation.

Case Type	Disposition	Required Documents
TFRP/ TBOR2	All	Form 5402/Form 866, ACM and appropriate closing letter 1536, 5123 or 5124

8.20.7.62 (MM-DD-YYYY)
Trust Fund Recovery Penalty (TFRP) Cases

- (1) The ATE/ATM will return the physical TFRP case file to the **CPM Site Manger 3211 S. Northpointe Drive Stop 22001, Fresno CA 93725** or to

Attachment AP-08-0724-0015, Trust Fund Recovery Penalty (TFRP) procedures update the AQMS Reviewer when the case has been selected for review.

- Reference files are associated/kept with the original case file and are returned by the ATE/ATM to either AQMS or to the CPM Group in Fresno CA. APS notifies the ATE/ATM by email with directions to mail the physical case file to AQMS or the CPM Group in Fresno CA.

Reminder: Only Collection has the authority to make assessments or adjustments to trust fund recovery penalties.

8.20.7.62.1 (MM-DD-YYYY)

TFRP Closing Actions -TBOR2 (pre-assessment) Appeals

(1) In closing a TBOR2 (pre-assessment) appeals, ATE completes the customized Form 5402, for each potentially responsible individual. ATE/ATM will hold onto the physical case file until APS provides shipping instructions. APS will notify the ATE/ATM by email when the F3210/e3210 has been uploaded to ACDS for the ATE/ATM to forward the case to either AQMS or to the CPM group (**CPM Site Manger 3211 S. Northpointe Drive Stop 22001, Fresno CA 93725**). The revised penalty section will reflect the exact dollars and cents of the trust fund recovery penalty to be assessed per tax period. The revised penalty amount on Form 5402 cannot be rounded.

Update ACDS following the closing instructions provided below:

ACDS CLOSINGCD 03, 13, or 20	Action
STATDATE =	the Form 5402, or Form 866 approval date plus 30 days, or the normal statute, whichever is later.
REVSDPEN =	the exact trust fund in dollars and cents to be assessed per tax period.

Note: ACDS is programmed to remove the TBOR2 statute code when the ACAPDATE is entered by the ATM. ACDS adds 30 days to the ACAPDATE to set the ACDS Statute Date. This date is entered in the Earliest Statute Date field and covers all tax periods. The ATM should ensure that the approval signature dates on Form 5402 and Form 866, match the Appeals Closing Approval (ACAPDATE).

Note: *If local agreement does not specify that the ATM will complete steps 1 and 2, or the case arrives in APS for processing without these steps completed, then APS is responsible for ensuring these steps are taken.*

ATE/ATM ensures the final Form 5402 is submitted to *CEASO ADVISORY CPM and to ensure the closing letter is mailed to the taxpayer/representative. If the ATE/ATM are prevented from submitting Form 5402 and or the closing letter (unable to print, technical issues etc.); then the ATE must clearly document Form 5402 that provides instructions for APS to follow.

APS Tax Examiner (TE) assigned to process the case will:

Step	Action
1	If the ATE/ATM is prevented from transmitting Form 5402 to CEASO. The ATE/ATM will upload the approved Form 5402 that is signed and dated to ACDS and include APS instructions to transmit the Form 5402 to *CEASO ADVISORY CPM. APS will upload a copy of the email used to transmit the Form 5402 to ACDS.
2	If the ATE/ATM was prevented from mailing the closing letter to the taxpayer. The Form 5402 will include APS instructions to mail the closing letter. The ATE/ATM will have uploaded the signed closing letter to ACDS and if applicable any Letter 937 for the representative. APS will date and mail the closing letter to the taxpayer/representative. APS will upload a copy of the final closing letter to ACDS that is signed and dated.

8.20.7.62.1.1 (MM-DD-YYYY)

TFRP TBOR2 Cases for Appeals Quality Measurement System (AQMS) Review

(1) If the TFRP TBOR2 case is selected by AQMS for review:

- a. APS will include the following statement on a fax/email transmittal to the CPM Advisory: "The TFRP case was systemically selected for review by Appeals Quality Measurement System (AQMS). AQMS will complete its review expeditiously, (normally within 30 days), and then mail the TFRP case file to the attention of (**CPM Site Manger 3211 S. Northpointe Drive Stop 22001, Fresno CA 93725**).
- b. The ATE/ATM will either transmit or request APS immediately transmit Form 5402 by email to *CEASO ADVISORY CPM.
- c. At the conclusion of the review, AQMS will mail the TFRP TBOR2 case, via ground mail, to (**CPM Site Manger 3211 S. Northpointe Drive Stop 22001, Fresno CA 93725**). AQMS will inform Advisory via Form 3210/E3210, that the Form 5402 was previously faxed to the CPM by Appeals and the case file was delayed due to Appeals' Quality Review random selection process.
- d. APS will verify Form 5402 receipt from CEASO ADVISORY CPM via email and the date confirmation is received will be entered as the FROMDATE on ACDS.
- e. APS will maintain receipt of acknowledged Form 3210/E3210's.

8.25.2.3 (MM-DD-YYYY)

TFRP Initial Statute Verification Requirements

add paragraphs (5) and (6)

(5) ATE will verify and or input feature codes Paperless (PL) and Electronic Closing (EC) to ACDS.

(6) ATE will verify and or upload to ACDS: Form 4183 (including page 4), Form 2749, and the dated copy of Letter 1153 including a copy of the certified mail list (CML) or certified mail receipt (if sent via certified mail).

8.25.2.5.1 (MM-DD-YYYY)

No Response Cases

- (1) If a taxpayer does not respond to the Substantive Contact Letter (SCL), the ATE **must** make a second attempt at contact the taxpayer/representative before the case can be closed. In such instances, your case history must reflect a minimum of 2 contact attempts.
- (2) [Letter 4000](#), Last Opportunity Letter, is the preferred method for the second attempt to contact. If the second attempt is made by telephone, document this attempt in the Case Activity Record (CAR).
- (3) For the second contact attempt:
 - a) Give the taxpayer a reasonable and specific deadline to respond. Generally, allow 14 calendar days.
 - b) Ask the taxpayer if he/she has any further information for consideration.
 - c) Inform the taxpayer that Appeals must proceed with its determination(s) based on the administrative file and whatever other information the taxpayer previously provided if the taxpayer does not respond.
 - d) The issuance of Letter 4000 does not preclude giving the taxpayer a second opportunity for a TFRP conference **if** the circumstances warrant.
- (4) A well-documented administrative file with copies of all correspondence is critical in such cases. If a taxpayer later petitions claiming you did not allow a reasonable opportunity to participate or respond, the Tax Court relies on the administrative file to evaluate whether you abused your discretion.

8.25.2.8 (MM-DD-YYYY)

Closing Actions for the Appeals Technical Employee (ATE)

Replace (1) with the following and renumber.

1) TFRP closed cases are included under IRM 8.20.7 Electronic Case Closures (ECC).

- The ATE will ensure feature codes for paperless (PL) and Electronic Closing (EC) are added to ACDS.
- The physical case file is not sent to APS for processing.
- The ATE/ATM will retain possession of the physical case file until APS provides the shipping instructions. APS will upload Form 3210/e3210 to ACDS and email the ATE/ATM with instructions where to send the physical case file. The ATE will mail the physical case file to either the CPM Group or to the AQMS reviewer.

2) The ATE must verify the same earliest statute date is listed on ACDS and on Form 5402. **It is recommended the earliest statute date be updated on ACDS before the Form 5402 is generated by selecting the ACDS validation button to enter the statute date.** This will update the ACDS statute date and auto populate the earliest statute date on Form 5402 when the form is generated. The ATE must manually update Form 5402 if the validation button is not used.

Note: When the ACDS validation is used to update the statute date; it will also override the ACDS statute date that normally adds 30 days from the ATM's ACAP date.

3) The ATE working the case will complete the customized Form 5402 for each responsible person.

4) The Form 5402 revised penalty section cannot be rounded. The ATE must include the exact dollars and cents that are to be assessed per tax period.

5) Verify the Form 5402 resolution reason and the revised penalty sections are accurate. For example: if the resolution is to sustain the proposed penalty; then the revised penalty section must include the exact dollars and cents that are to be assessed per tax period.

6) The ATE will only enter Expedite in remarks section of Form 5402 when the earliest statute date expires 30 days from the ATM's ACAP date.

7) Once the ATM approves Form 5402 and inputs the ACAP date the ASED is no longer suspended by TBOR2. ACDS automatically adds 30 days from the ATM's approval for the ACDS ASED statute date. The ATE must verify that ACDS and Form 5402 include the same earliest statute date.

After Form 5402 is approved:

- Verify the same earliest statute date is listed on ACDS and on Form 5402.
- Ensure the final Form 5402 is emailed to *CEASO ADVISORY CPM and document the case activity record. The ATE does not have to wait for APS closing procedures to transmit the Form 5402.
- Ensure the closing letter is mailed to the taxpayer/representative and document

Attachment AP-08-0724-0015, Trust Fund Recovery Penalty (TFRP) procedures update the case activity record. Upload the signed/dated letter to ACDS. The ATE does not have to wait for APS closing procedures to mail the closing letter.

- Ensure all applicable documents are uploaded to ACDS: (Form 4183 including page 4, Form 2749, and the dated copy of Letter 1153 including a copy of the certified mail list (CML) or certified mail receipt (if sent via certified mail)), and the closing documents (Form 5402, Form 866, Closing letter, and ACM).
- Hold onto the physical case file until APS inputs the ACDS closing actions that will indicate if the case was selected for AQMS review. APS will upload F3210/e3210 to ACDS and email the ATE/ATM with instructions to either send the physical case file to the AQMS Reviewer or to the **CPM Site Manager 3211 S. Northpointe Drive Stop 22001, Fresno CA 93725**.
- If the ATE is prevented from transmitting (no printer, technical issues etc.) Form 5402 or mailing the closing letter: Then the ATE MUST clearly document Form 5402 with the necessary APS instructions.

Note: Once the ATM approves Form 5402 and signs the required closing documents, the ATE does not have to wait for APS to input the ACDS closing actions and can immediately transmit the approved Form 5402 to *CEASO ADVISORY CPM and mail the closing letter to the taxpayer.