Part 4. Examining Process

Chapter 8. Technical Services

Section 9. Statutory Notices of Deficiency Issued by Area Offices (Cont. 2)

4.8.9 Statutory Notices of Deficiency Issued by Area Offices (Cont. 2)

4.8.9.19
Protests, Correspondence and Waivers Received After Issuance of Notice of Deficiency

4.8.9.19.2
Additional Information and Reconsideration Requests

4.8.9.19.2.2 (10-30-2004)
Delinquent Return Secured

1. If the taxpayer provides a completed tax return once the notice of deficiency is issued, treat the return as "substantial documentation" and follow normal examination reconsideration procedures. This applies whether or not an assessment has been made (TC 290 or 300), unless a petition has been filed with the Tax Court.
2. If a petition has been filed with the Tax Court, the delinquent return will be transmitted to the appropriate Appeals Office that serves the area making the determination of the tax liability.
3. The statute of limitations must be updated to correctly reflect the receipt of the delinquent return.

4.8.9.19.2.3 (12-01-2006)
Information Results in Decrease to Deficiency

1. The following actions will be taken.
    1. Prepare a revised examination report. On the revised report, adjust the amounts shown on the original return. Clearly label the top of the revised report "Supplement to the Notice of Deficiency." This revised report does not nullify or supersede the original notice of deficiency, nor does it extend the period for filing a petition with the Tax Court.
    2. Send Letter 555 (DO), Reconsideration After Statutory Notice, to the taxpayer.
    3. Assess tax shown on delinquent return and applicable delinquency and estimated tax penalties.
    4. Return case file to suspense files.

4.8.9.19.2.4 (10-30-2004)
Information Results in No Change to Deficiency

1. The following actions will be taken:
    1. Send Letter 555 (DO) to the taxpayer.
    2. Return case file to 90-Day suspense files.

4.8.9.19.2.5 (12-01-2006)
Information Results in No Deficiency

1. Send Letter 645 (DO), No Change - After Statutory Notice Issued, to the taxpayer and close case as "no change" .

4.8.9.19.3 (12-01-2006)
Waivers of Restriction on Assessment

1. When a signed agreement or waiver form is received, the 90-day suspense period is terminated. The following forms are considered agreements:
    - Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment — used for individuals, corporations and fiduciaries
    - Form 890, Waiver of Restrictions on Assessments and Collection of Deficiency and Acceptance of Overassessment
    - Form 4089, Notice of Deficiency - Waiver
    - Form 4549, Income Tax Examination Changes
    - Form 5564–A, Notice of Deficiency - Waiver

2. If the taxpayer(s) waives the restrictions upon assessment and collection of the deficiency in whole during the 90-day period, the case will be transmitted immediately to Centralized Case Processing for assessment of the deficiency.

   1. Recompute the statute date based on the agreement receipt date. See Exhibit 4.8.9–5 for the steps on recomputing the statute date. Enter the new statute date on the control card and Form 895, Notice of Statute Expiration.
   2. Annotate the control file to show that a full agreement was received and close out all controls.
   3. Clearly identify or flag all statute cases. The AIMS database should be updated to reflect the new statute date. Notify the statute control employee of the new statute date.

3. If the taxpayer waives the restrictions upon assessment and collection of the deficiency in part, the waiver and the return will be transmitted to Centralized Case Processing for assessment of the agreed portion of the deficiency.

   1. Flag these cases as partial agreement cases for identification and processing purposes.
   2. Clearly identify or flag all statute cases.
   3. Forward copies of the examination report, the agreement and Form 5344 to Centralized Case Processing requesting that a verification of the partial assessment be returned to the 90-day suspense file area.
   4. The case will remain in the suspense file awaiting either further correspondence, petition, or default.
   5. The designated technical person will ensure that the waiver and tax return is restored to the suspensed case file.
   6. If the case has been transmitted to Appeals, the waiver will be transmitted to that office upon receipt.

4.8.9.19.3.1 (10-30-2004)
Signed Waiver or Agreement

1. When a signed waiver or agreement form is received, the 90-day or 150-day suspense period is terminated from the date of the agreement.
2. An assessment must be made within 60 days, plus the days remaining on the statute at the time the statutory notice of deficiency was issued. Refer to Exhibit 4.8.9–5 for computation of the assessment statute. The following forms are considered agreements.

   - Form 4089, Notice of Deficiency–Waiver
   - Form 5564–A, Notice of Deficiency–Waiver
   - Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment — used for individuals, corporations and fiduciaries
   - Form 890, Waiver of Restrictions on Assessment and Collection of Deficiency and Acceptance of Overassessment — used for estate and gift tax
   - Form 4549, Income Tax Examination Changes

4.8.9.19.3.2 (12-01-2006)
Receipt of Waiver or Agreement

1. Upon receipt of a signed waiver or agreement, the following actions must be taken:

   1. Date stamp the waiver or agreement form and associate it with the case file. If an agreement is received prior to the closing of the case (status 90), use an agreed disposal code.
   2. Examine the waiver or agreement form to determine if it is properly signed by the taxpayer(s).
   3. Compute the new statute date for assessment. Refer to Exhibit 4.8.9–5 for computation of the assessment statute.
   4. Close the case agreed to Centralized Case Processing for assessment of the deficiency.

2. The processing procedures reflected in IRM 4.8.9.13.8(3)(c) should be followed for all Quick Assessments and partial assessments. Quick Assessments include the following cases:

   1. Over $100,000 agreed assessments where the assessment made is greater than 30 days from the report signed date,
   2. Less than 60 days remaining on the statute,
   3. Statutes on defaulted statutory notice cases where the notice was issued within 30 days of the statute date, and
   4. Bankruptcy cases petitioned prior to 10/1/79.

   Note:

   If a waiver of restriction on assessment is received on a docketed case that has already been forwarded to the Office of Appeals, the waiver should be date stamped and transmitted immediately to the Appeals office to which the case was transferred. The waiver should be transmitted with a Form 3210, Document Transmittal, which is annotated to reflect the recomputed ASED and the fact that the waiver relates to a case in 90-day status.

4.8.9.19.3.3 (12-01-2006)
Waiver or Agreement Received on Joint Return When Only One Spouse Has Signed Waiver of Restrictions

1. If the notice of deficiency waiver or agreement form received is signed by one spouse, the 90 or 150-day period is terminated for the signing spouse only.

   1. Compute the new statute date for assessment. Refer to Exhibit 4.8.9–5 for computation of the assessment date.
   2. Assess deficiency for signing spouse using MFT 31 procedures. See IRM 21.6.8, Split Spousal Assessment (MFT 31), for additional information. No assessment may be made for non-signing spouse before expiration of 90 or 150-day suspension period.
   3. Suspense cases pending agreement, default, or petition from non-signing spouse.
   4. Upon default, compute the new statute date for the assessment. Close the case for assessment of non-signing spouse using MFT 31 procedures .

2. If the notice of deficiency waiver or agreement form received is signed by one spouse and the deficiency is paid in full, the 90 or 150-day period is terminated for the signing spouse only.

1. Assess deficiency for signing spouse on MFT 31 procedures.
2. No assessment may be made for non-signing spouse before expiration of 90 or 150-day suspension period.
3. Suspense case awaiting agreement, default, or petition from non-signing spouse.
4. Upon default, compute new statute date for the assessment. Close case for assessment of non-signing spouse using MFT 31 procedures.

4.8.9.19.3.4 (12-01-2006)
Full Payment of Deficiency And No Waiver or Agreement Received

1. Assess deficiency (jointly, if joint return) **upon default** and close the case. This procedure cannot be used if the taxpayer designates the payment as a cash bond. See Rev. Proc. 2005-18, 2005-1 C.B. 798.

4.8.9.20 (10-30-2004)
Appeals Waiver of Jurisdiction in Notice of Deficiency Cases

1. Delegation Order 66 vests settlement jurisdiction in Appeals offices during the 90/150-day period in all protested (to Office of Appeals) cases in which the Area Director issued the notices of deficiency.
2. The delegation order permits the Chief Appeals to release jurisdiction by waiver to the office of the Area Director, which issued the notice, except in cases in which criminal prosecution has been recommended and not finally disposed of or the notice of deficiency includes the fraud penalty.
3. Appeals may waive jurisdiction in examination cases regardless of the amount involved.
4. When Appeals releases jurisdiction to the Area Director, the Area Director assumes complete jurisdiction of the case during the 90-day or 150-day period. This includes the authority to transfer the case to another area.
5. Waiver of jurisdiction by Appeals does not increase the authority of an Examination function examiner. The authority of an examiner is the same in a 90-day case as in any other case.

4.8.9.20.1 (12-01-2006)
Communications with Taxpayers

1. The taxpayer must be clearly informed that reconsideration of the case will in no way serve to suspend or extend the period for filing a petition with the Tax Court.
2. If sufficient time remains during the 90/150 day period, the taxpayer will not be denied a hearing before Appeals, if an Appeals conference is specifically requested by the taxpayer. The request for an Appeals conference will be coordinated with Appeals on a case-by-case basis to determine if Appeals will conference the case or will release jurisdiction to the Area Office.
3. If additional information is received that would decrease the deficiency amount on the notice of deficiency, a supplemental report to the notice of deficiency will be prepared. Refer to IRM 4.8.9.19.2.3, Information Results in Decrease to Deficiency.

4.8.9.20.2 (10-30-2004)
Agreement Secured

1. If the taxpayer's liability is adjusted and an agreement is reached and signed, the taxpayer will be advised that there is no need to file a petition with the Tax Court.
2. When a waiver or agreement is received, the case can be closed as outlined in IRM 4.8.9.19.3 above.

4.8.9.21 (12-01-2006)
United States Tax Court Petition Filed

1. An electronic list of cases that have been docketed in Tax Court must be obtained daily by accessing the Appeals Centralized Database System, ACDS/DIMS, which is available on the IRS Intranet for:
   - regular examination cases petitioned to Tax Court, and
   - TEFRA partnership/S-corporation cases petitioned to Tax Court, or suits filed in District Court and Claims Court.
2. The docketed case list reflects the following information regarding the Tax Court petition:
   - Docket Number
   - Name and Address of Petitioner(s)
   - TIN (if known)
   - Name of office issuing Notice of Deficiency
   - Date of Notice of Deficiency
3. Upon retrieval, immediately date stamp the docket list.
4. Determine the taxpayer(s) who have filed timely petitions. Perform research on all of the taxpayers containing their unique office code as well as the "unknowns" . Unknowns are taxpayers without a pre-determined Area office code.
5. Within ten (10) calendar days of the receipt of the docket list, the cases must be located, processed for closing and transmitted through Technical Services to the Office of Appeals.
   A. The notices clerk will locate the case file, close out all controls and forward the case file to the appropriate closing program. The docket list will be annotated to indicate the specific action taken on the case and the date.
   B. If a case has been transferred to another area, notify the area where the case was transferred. Give them the date the petition was filed, name of petitioner, and years involved. A copy of the page of the docket list identifying the taxpayer and the tax years should be forwarded to the area where the case was transferred.
   C. If it is determined that the case is physically located in another area or campus, the office having physical possession of the case will be notified telephonically that the taxpayer has petitioned the Tax Court. The docket list number and petition date will be provided.
6. After closing the case, it must be forwarded immediately to Appeals (hand carried whenever possible) to obtain immediate acknowledgement of transmittal, via a Form 3210.

7. At the end of each month, the tickler file for Form 3210 will be checked and follow-up action taken on any Form 3210 for which Part 4 has been outstanding for 30 days or longer. This is done to determine whether the cases were received by Appeals or why Part 4 was not returned.

8. When the Appeals acknowledgment copy is received from Appeals, destroy the suspensed copy and replace it with the Appeals acknowledgment copy. The Appeals Acknowledgment copy will be kept for one year from the date of receipt.

4.8.9.21.1 (10-30-2004)
Electronically Filed Returns

1. If the return was electronically filed, Examination has the responsibility to request the signature document, Form 8453, and original Forms W-2 (if the electronically filed return required such forms to be submitted) before the case is forwarded to Appeals. See Exhibit 4.4.1-1 (Form 8453) for information about requesting these documents. Make arrangements with the local Appeals Office as to the designated person (and address) to whom Form 8453 should be forwarded. Exam will print a copy of the ELFRQ or ESTAB request and attach it to the case file before forwarding the case to Appeals.

2. For electronically filed returns using PIN signatures, use command code TRDBV to research specific information on electronically filed returns and TRPRT to request prints of electronically filed returns.

4.8.9.21.2 (12-01-2006)
Unlocatable Case Files

1. If the case cannot be physically located within three days of receipt of the docket list, prepare Form 5348, AIMS/ERCS Update (Examination Update), to input Freeze Code "Q" on AIMS. Any area attempting to update the status of the "Q" freeze identified case will forward the case to Technical Services' suspense file area upon notification of the freeze code. When the case is located, reverse the " Q" freeze code via a Form 5348.

4.8.9.21.3 (12-01-2006)
Status 90 Cases

1. Occasionally, a case appearing on the docket list may have been defaulted, tax assessed and closed to the files area in the campus before the docket list was received. AIMS research will indicate status code 90. If this occurs, Technical Services is responsible for preparing Form 3177, Notice of Action for Entry on Master File, to input CC STAUP (15 cycles) to prevent the issuance of balance due notices to the taxpayer.

2. When a docketed case that is in AIMS status code 90 is identified, a current print of a full AMDISA or TXMOD must be secured. This print will be attached to a copy of the appropriate page of the docket list and will be forwarded to Appeals via Form 3210. Appeals will also be notified that the STAUP has been input to stop the notices. APPEALS WILL BE RESPONSIBLE FOR MONITORING THE STAUP TO INCREASE/DECREASE THE NOTICE SUPPRESSION TIME FRAME AND RETRIEVAL OF THE CASE FILE FROM THE CAMPUS.

3. Exam must build a file which will include:

   A. Full AMDISA and TXMOD prints of all docketed tax periods;

   B. A copy of the page in the docket list identifying the taxpayer, tax periods, docket number and Appeals Office;

   C. Photocopy of the closed control card showing the date the 90-day letter was issued; and

   D. Form 5348 requesting CC AMSTUR, status code 24.

4. If no data is available, the file will include:

   A. TXMOD and/or MFTRA print of the docketed tax periods which verify the TIN and reflects an Examination closure,

   B. Record of CC AM424 request to create an AIMS database,

   C. A copy of the page on the docket list identifying the taxpayer, tax periods, docket number, and Appeals Office.

5. The file will be sent to the closing function for suspense until 40 days from the Status 90 date.

6. At the end of the 40-day period, the closing function will:

   1. Reestablish the case using Form 5348, CC AMSTUR

   2. Prepare Form 5344, Examination Closing Record, to close the return to Appeals. Since the Exam results contain the assessment which is now unagreed, an amount of $1 must be entered in Item 18 to prevent a duplication of Exam results.

   3. Route the AIMS print, verifying Appeals status, to Appeals for association with the file.

   4. APPEALS WILL REQUEST ABATEMENT OF THE ASSESSMENT.

4.8.9.21.4 (10-30-2004)
Non-Petitioning Spouse

1. A non-petitioning spouse case occurs when one spouse files a petition with the Tax Court or otherwise avails himself/herself of the appeal rights on a proposed joint return deficiency and the other spouse agrees to the deficiency or does not take appeal action.

2. Where it appears that only one spouse has petitioned the Tax Court, review the statute date for the cases suspended in the 90-day files.

4.8.9.21.4.1 (10-30-2004)
Imminent Statute

1. If the statute will expire within 120 days (imminent) and it appears that only one spouse has petitioned the Tax Court, contact Appeals and ask them to review the petition. If Appeals determines there is a non-petitioning spouse, then the following procedures apply:

IF the 90-day period for the non-petitioning spouse has:	**THEN**
expired	Process a MFT 31 assessment on the non-petitioning spouse. See IRMs 4.4.2 and 4.4.12.4.45.6 .
not expired	Prepare a "dummy" case file and retain it in the 90 day suspense file. MAINTAIN STATUTE CONTROL. If an agreement for the non-petitioning spouse is received, make a MFT 31 assessment for that spouse.

2. Forward to Appeals the petitioned case and include the following information on a routing slip attached to the case file:

   A. "Non-Petitioning Spouse Case"

   B. Petitioning spouse's name

C. Status Date for non-petitioning spouse's name

D. Status Date

E. Indicate whether assessment has been made against the non-petitioning spouse

3. After the non-petitioning spouse case has been assessed, forward to Appeals any "dummy" case file that was prepared and include the following information on a routing slip attached to the file:

   A. "Non-Petitioning Spouse Case"

   B. Non-petitioning spouse's name

   C. Indicate that the assessment has been made against the non-petitioning spouse.

4.8.9.21.4.2 (10-30-2004)
Statute not Imminent

1. For those cases, suspended in the 90-day suspense files, where more than 120 days remain on the statute and it appears that only one spouse has petitioned the Tax Court, flag the case "Possible Non-Petitioning Spouse Case" and forward the case to Appeals. Do not make a MFT 31 assessment unless it is requested by Appeals.

4.8.9.21.4.3 (10-30-2004)
Petitioned Case Settled

1. When the petitioned case is subsequently settled, whether by the Tax Court or by separate agreement, Appeals will submit Form 3198 and Form 5403, Appeals Closing Record, as follows:

IF:	THEN:
The deficiency is upheld by Tax Court	Appeals will request a MFT 31 assessment for petitioning spouse. This assessment becomes the overriding assessment, however, the tax is collected only once.
The tax has been overassessed	Appeals will request a partial or total abatement of the previous MFT 31 assessment made against the non-petitioning spouse. (A Form 1331, Notice of Adjustment, must be prepared.)

2. A Form 5403 will also be submitted to request a no-change with Appeals results for the MF joint account. Process this Form 5403 through the terminal.

4.8.9.21.4.4 (10-30-2004)
NMF Spousal Assessments

1. There are several situations (for example, bankruptcy or Tax Court cases) in which only one spouse petitions and we assess the "same tax" against both the husband and the wife as separate assessments. Use MFT 31 procedures for this purpose.

2. When a joint return is ready to be closed, prepare a joint Form 5344. If the same tax will be assessed against both taxpayers, such as petitioning/non-petitioning cases, DO NOT enter the NMF Assessment amount in Item 35, otherwise enter the NMF tax assessment amount in Item 35, see IRM 4.4.12.4.45.5, MFT 31.

4.8.9.21.4.5 (10-30-2004)
Closing Related Returns

1. See IRM 4.4.12 for procedures on closing related returns.

4.8.9.22 (10-30-2004)
Defaulted Notices

1. It is the responsibility of Technical Services to take the necessary actions to ensure the assessment of the deficiency on any defaulted notice of deficiency is made within the statutory period for assessment.

2. If the taxpayer does not petition the Tax Court or agree to the deficiency within 105 (165 if addressed to a person outside the United States) days, the case is considered to be defaulted. The deficiency is to be assessed immediately after the requisite number of days (105 or 165) have passed from the date of the issuance of the notice.

3. Assessment of the deficiency on any defaulted case must be made within the statutory period. Per Treas. Reg. section 301.6503(a)-1, the period of limitation on assessment and collection of any deficiency is suspended for 90 days after the mailing of a notice of such deficiency if the notice of deficiency is addressed to a person within the States of the Union and the District of Columbia, or 150 days if such notice of deficiency is addressed to a person outside the States of the Union and the District of Columbia (do not count Saturday, Sunday, or a legal holiday in the District of Columbia as the 90^{th} or 150^{th} day) plus an additional 60 days thereafter in either case.

4. Recompute the new statute date for defaulted cases. Refer to Exhibit 4.8.9–5 for computation of the new statute date. Notify the statute control employee of the new statute date.

5. Enter the new statute date on the control card and on the case file.

6. Close out all controls and forward the defaulted case for closure.

4.8.9.22.1 (10-30-2004)
Defaulted Notices: Duplicate Notices Sent to Addresses Both Inside and Outside the United States

1. When duplicate original notices of deficiency are sent to addresses both inside and outside of the United States and the Commissioner does not know the location of the taxpayer's residence on the date the notices are mailed, and the taxpayer does not file a petition within 90 days, a "protective" assessment of the deficiency will be made after 105 days (90 +15). In such cases, all billing and collection activity should be suspended until the domestic-foreign address issue is resolved; i.e., the taxpayer agrees, files a petition within the 150 day period, or the notice defaults after 150 days (see Polo v. Commissioner, T.C. Memo. 1991–16).

2. Area Counsel should be consulted in all cases where there is doubt about whether the 90 or 150 day period for filing a Tax Court petition may apply.

4.8.9.23 (10-30-2004)
Notice of Deficiency Involving a Non-Extending Spouse

1. A notice of deficiency will be issued to a non-extending spouse in situations when one of the spouses will not consent to extend the assessment statute of limitations:

   - A spouse cannot be located to secure a statute extension, or
   - A spouse refuses to sign a statute extension.

2. The examiner will prepare a duplicate file for the non-extending spouse.

   A. The duplicate file should contain all information required to issue the notice of deficiency, including a copy of the joint return and workpapers.

   B. The case file will be flagged as follows:

      "Notice of Deficiency on Non-Extending Spouse — Duplicate File"

   C. The transmittal letter for the non-extending spouse should reflect the status and statute date for the extending spouse.

   D. The notice of deficiency will be issued in the non-extending spouse's name and a copy of the notice of deficiency should be associated with the extending spouse's file.

4.8.9.23.1 (10-30-2004)
Non-Extending Spouse Petitions

1. If the non-extending spouse petitions the Tax Court, the case file will be forwarded to Appeals.

4.8.9.23.2 (10-30-2004)
Non-Extending Spouse Defaults

1. If the non-extending spouse defaults on the notice of deficiency, an assessment will be made for the non-extending spouse.

4.8.9.23.3 (10-30-2004)
Closure of Extending Spouse

1. Any deficiency assessed for the extending spouse must be made using MFT 31. The extending spouse can separately request an Appeals hearing.

4.8.9.24 (10-30-2004)
Rescinding Notices Of Deficiency

1. The Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to the taxpayer. Whether or not a notice is rescinded is discretionary on the part of the Secretary. A notice of deficiency may only be rescinded with the consent of the taxpayer.

2. The taxpayer or the Service may initiate rescission of a notice.

4.8.9.24.1 (10-30-2004)
Criteria for Rescinding

1. The determination to rescind a notice of deficiency is made on a case-by-case basis. A rescission may be agreed to if:

   - A notice of deficiency has been issued for an incorrect amount. The taxpayer must be advised that, once rescinded, another notice may be issued for a greater amount.
   - The notice was issued to the wrong taxpayer.
   - The notice was issued for the wrong tax period.
   - The notice was issued without considering a properly filed Form 872, Consent to Extend the Time to Assess Tax, , or Form 872 –A, Special Consent to Extend the Time to Assess Tax.
   - The taxpayer submits information establishing the actual tax due is less than the amount shown in the notice. Rescission is generally unnecessary in such cases because supplemental deficiency procedures can be used to resolve the case within the time allowed to file a petition with the Tax Court. See IRM 4.8.9.19.2. However, rescission may be considered on a case-by-case basis. For example, if the information submitted results in no change to the taxpayer's return, the taxpayer may still wish to rescind the notice of deficiency to preserve the right of Tax Court appeal in the unlikely event the case is reopened.
   - The taxpayer requests a conference with the appropriate Appeals office. However, the notice may be rescinded only if the Appeals office first decides that the case is susceptible to agreement.

4.8.9.24.2 (12-01-2006)
Statute of Limitations Considerations Before Rescinding Notice (Rev. Proc. 98–54)

1. Since the rescission agreement returns the case back to its original state before the notice was issued, careful consideration must be given to the statute before such agreement is executed. However, a valid notice does suspend the assessment statute for the period of time the notice was outstanding prior to being rescinded.

2. Since a valid notice, which has been rescinded, suspends the running of the statute of limitations only for the period during which the notice is outstanding, a new statute date must be determined for purposes of issuing another notice of deficiency, if necessary, and making assessments.

3. If there is at least ninety days remaining on the statute, a rescission may be entered into. If less than ninety days remains on the statute, the notice will be rescinded only if the taxpayer executes a Form 872 or Form 872–A to extend the statute. The Form 872 or Form 872-A must be executed by both the taxpayer(s) and the Service prior to rescission.

4. If there was a Form 872–A on the case prior to the issuance of the notice of deficiency, the rescission will not be granted unless the taxpayer signs another Form 872–A prior to rescission.

4.8.9.24.3 (10-30-2004)
Other Considerations Before Rescinding

1. A rescission will not be entered into if:

   - It has been 90 days (150 days for notices mailed to addresses outside the United States) since the notice was issued.
   - The taxpayer has petitioned the Tax Court

4.8.9.24.4 (10-30-2004)
Authority for Agreement to Rescind

1. Area Directors and other delegated officials (see Servicewide Delegation Order 4-8, formerly Delegation Order 77) are authorized to execute a rescission agreement on behalf of the Commissioner.

   Caution:

Even though Servicewide Delegation Order 4-8 presently permits SB/SE Technical Services Revenue Agent Reviewers GS-13 to approve rescission agreements, the Technical Services Area Managers have issued a memorandum to restrict the approval of rescission agreements to the Technical Services Group Manager level and above.

The authority to rescind does not apply to:

- Notice of Final Partnership Administrative Adjustment (FPAA), or
- Notice of Final S–Corporation Adjustment (FSAA).

4.8.9.24.5 (10-30-2004)
Precautions When Rescinding

1. The following information should be carefully checked.
   A. If the notice of deficiency was issued to both a husband and wife,
   B. the rescission agreement must be signed by both spouses or authorized representative(s) for the parties.
   C. The rescission agreement must apply to the same tax periods as the notice of deficiency.
   D. The rescission agreement must reflect the same deficiency and penalties as the notice of deficiency.

4.8.9.24.6 (12-01-2006)
Agreement to Rescind Notice of Deficiency

1. Form 8626, Agreement to Rescind Notice of Deficiency, will be used to secure an agreement between the taxpayer and the Government to rescind a notice of deficiency. The originator of the notice of deficiency is responsible for the control, preparation, and execution of the form.
2. Form 8626 will be prepared in duplicate. Once executed, one copy of the form will be attached to the front of the notice of deficiency. If more than one notice was issued, a photocopy should be attached to each of the additional notices. An executed copy of the Form 8626 is sent to the taxpayer.
3. More than one year can be entered on the rescission agreement form. The agreement must contain all taxable years covered in the notice of deficiency. All tax years covered will be entered below the first paragraph under "Tax Year Ended."
4. The rescission agreement is effective on the date the Commissioner or delegate countersigns the Form 8626.

4.8.9.24.6.1 (10-30-2004)
Rescission Document

1. Although the use of Form 8626 is preferred to rescind a notice of deficiency, a document that reflects the agreement between the Service and the taxpayer may be used in place of the Form 8626. In order to be effective, the document must contain the following:
   - A statement that the taxpayer and the Commissioner or delegate agree to rescind the notice.
   - The date the notice was issued, type of tax, tax periods, and the amount of the deficiency and penalties.
   - Representations that the period of limitations has not expired and that the taxpayers have not petitioned the Tax Court.
   - An agreement that the effect of the rescission is to return the parties to the rights and obligations that existed before the issuance of the notice of deficiency. This includes the right of the Service to issue another notice of deficiency for any amount and the right of the taxpayer to appeal to the Tax Court.
   - The signatures of the taxpayer (or the taxpayer's representative) and the Commissioner or delegate.

4.8.9.24.7 (12-01-2006)
Letters to be Used When Rescinding

1. The following letters are used when considering a rescission.
   - Letter 2264 (DO), Cover Letter for Rescission of Notice of Deficiency, is used to request the taxpayer's concurrence to rescind by signing Form 8626.
   - Letter 2262 (DO), Cover Letter for Transmitting Signed Rescission, is used to send a copy of the executed rescission agreement to the taxpayer.
   - Letter 2263 (DO), Exception Letter to Notice of Deficiency Rescission, is used to advise the taxpayer that the rescission is not being granted and the notice of deficiency will remain in effect.

4.8.9.24.8 (10-30-2004)
Correspondence Received Or Contact Made

1. While corresponding with the taxpayer pending a rescission agreement, all correspondence should state:

   "There is no provision in the law for extending the 90 day period (or 150 day period if the notice was addressed to you outside the United States) in which you may file a petition with the Tax Court and nothing in this letter should be construed as such. The 90 or 150 day period in which you may file a petition with the Tax Court continues to run from the date set forth in the notice of deficiency. "

4.8.9.25 (10-30-2004)
Control File Disposition

1. Closed control files should be destroyed in accordance with IRM 1.15.23, Records Control Schedule for Tax Administration–Examination.

Exhibit 4.8.9-1 (10-30-2004)
Computation of Last Day to File a Petition with United States Tax Court and Computation of Default Date

Computation of Last Day to File a Petition with United States Tax Court

Description	Julian Date	Calendar Date
Notice of Deficiency Issued		
Plus 90/150 days for 90/150-day letter	+_____	+_____

Equals Last Day to File a Petition with Tax Court	========	========

Note:

Saturday, Sunday or a legal holiday in the District of Columbia is not counted as the last day.

Computation of Default Date

Description	Julian Date	Calendar Date
Notice of Deficiency Issued		
Plus 90 (150) days for 90-day letter	+	+
Plus 15 days for Notification of Tax Court Petition	+_____	+_____
Equals Default Date	========	========

Exhibit 4.8.9-2 (10-30-2004)
Pattern Letter A

Date of this Letter:

Taxpayer Identifying Number:
Tax Year Ended:
Person to Contact:
Telephone Number:
Employee Identification Number:
Refer Reply to:

Dear [insert name of taxpayer]

Since you have not granted a power of attorney to your authorized representative to represent you for all of the tax periods included in the enclosed Notice of Deficiency, a copy of the Notice of Deficiency has not been sent to the representative that you appointed for some of the tax periods.

You may want to consider providing a copy of the Notice of Deficiency to your representative, if you deem appropriate.

Sincerely,

Signature of Delegated Official

Exhibit 4.8.9-3 (10-30-2004)
Pattern Letter 572

(Use Appropriate Letterhead)

Date of this Letter:

(Name and Address of Taxpayer)

Taxpayer Identifying Number:
Tax Year Ended:
Person to Contact:
Telephone Number:
Employee Identification Number:
Refer Reply to:

We propose to issue you a Notice of Deficiency for the above year for the tax that section 531 of the Internal Revenue Code requires be paid on accumulated earnings.

If you believe your earnings and profits did not accumulate beyond the reasonable needs of your business, you may submit a statement explaining your reasons and include facts sufficient to show the basis for them. We will then determine whether the Notice of Deficiency should be issued. The statement should be in triplicate, and an authorized officer of your corporation must certify the original as true and correct. Please submit it to us within 60 days of the date of this letter.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,
Commissioner
By
Delegated Official

Exhibit 4.8.9-4 (10-30-2004)
FICA Tax Disclosure Statement

FOR INFORMATIONAL PURPOSES ONLY

The adjustment(s) to your income contained in this report has increased your FICA tax (social security tax plus medicare tax) liability. Therefore, we have assessed (or will assess) the FICA tax and the applicable penalty in the amounts shown below.

A separate notification should have been (or will be) sent to you on the FICA tax and penalty assessment from the Campus of the Internal Revenue Service.

Please note that the FICA tax and penalty assessments from the Campus of the Internal Revenue Service are not part of the deficiency shown in the attached Notice of Deficiency and may not be contested in the Tax Court.

Unreported Tip Income subject to FICA (Social Security)	$____	
Social Security Tax Rate	x____	
Increase in Social Security Tax		____
Unreported Tip Income subject to Medicare	$____	
Medicare Tax Rate	x____	
Increase in Medicare Tax		+____
50% penalty for failure to report tips in accordance with section 6652(b) of the Internal Revenue Code		+____
Total Amount Due		=____

If you wish to make a payment at this time, you must specify the amount of the payment that is for the FICA tax and/or the penalty.

Exhibit 4.8.9-5 (10-30-2004)
Assessment Statutes:

Agreed Case Without Form 872–A Consent
Agreed Case With Form 872–A Consent
Defaulted 90-Day Letter Without Form 872–A Consent
Defaulted 90-Day Letter With Form 872–A Consent

Agreed Case Without Form 872–A Consent: If the taxpayer agrees to the tax before the end of the 90 days, then the statute is extended by the number of days suspended plus 60 days.

Description	Julian Date	Calendar Date
Date Agreement is received	80	March 21
Minus date 90/150 day letter is issued	−15	January 15
Equals number of days suspended from assessing	65	
Plus 60 days to assess	+60	+60
Equals number of days to add to original statute	125	
Julian date of original statute, including any Form 872 extension	+105	April 15
Julian date of corrected statute	230 =======	August 18

Agreed Case With Form 872–A Consent: A notice of deficiency terminates Form 872–A. If the taxpayer agrees, the statute date is extended for 60 days from the agreement received date. This is allowed by law to process the assessment.

Description	Julian Date	Calendar Date
1. Date Agreement is received	194	July 13
2. Plus 60 days to assess	+60	+60
3. Equals Extended ASED	254	September 11

Defaulted 90-Day Letter Without Form 872–A Consent: If the taxpayer does not petition Tax Court or agree to the deficiency by signing a waiver, then the case is closed as unagreed. The deficiency can then be assessed because the taxpayer has defaulted (i.e., has not responded to the Notice of Deficiency (90/150 Day Letter). The statute will be extended for the 90/150 days the case was suspended plus 60 days allowed by law to process the assessment.

Description	Julian Date	Calendar Date
Original statute date	105	April 15
Plus 90 (150) days for 90-day letter	+90 (or 150)	+90 (or 150)
Plus 60 days to assess	+60	+60
Equals extended ASED	255	September 12

Defaulted 90-Day Letter With Form 872–A Consent: A notice of deficiency terminates Form 872–A. If the notice defaults, the statute date is extended for the 90/150 days the case was suspended plus 60 days allowed by law to process the assessment.

Description	Julian Date	Calendar Date
Date 90 (150) Day Letter issued	105	April 22
Plus 90 (150) days for 90-day letter	+90 (or 150)	+90 (or 150)
Plus 60 days to assess	+60	+60
Equals extended ASED	255	September 19