

Fast Track Settlement for Small Businesses and Self-Employed

The IRS has expanded the Fast Track Settlement Program, making it fully available for small businesses and the self-employed. The process is designed to simplify and speed up the appeals process.

On December 1, 2010, the Internal Revenue Service (IRS) initiated a pilot program for small businesses and the self-employed (SB/SE) modeled after the Fast Track Settlement (FTS) program for large and mid-size businesses (those with more than \$10 million in assets). On November 6, 2013, IR News Release 2013-88 announced that the program has been expanded nationwide. The purpose of the SB/SE FTS program is to make it faster and easier for small businesses and self-employed taxpayers to resolve their audit issues with the IRS.

Taxpayers who have audit disputes with the IRS must go through a lengthy appeals process to resolve them. Without the FTS program, the process can take many months or years to complete. It begins when the taxpayer and IRS examination agent are unable to agree on issues identified during the audit process. The first step is for the taxpayer to request a review of the issues by the agent's supervisor. If the review

does not result in an agreement, the taxpayer must write a protest letter to the Appeals Office of the IRS, identifying and explaining the issue and the support for the position taken. The Appeals Office reviews the issue and the evidence provided by both the taxpayer and the examination agent, researches the issue further, determines the hazards of litigation to the Service, and may provide an offer to reduce the amount of tax owed on that issue based on the litigation risk. If the taxpayer disagrees with the Appeals Office's assessment, the next step is litigation.

Fast Track Settlement Program

The SB/SE FTS program is designed to help avoid the formal appeals process, including litigation, and reduce the time it takes to resolve a dispute. The taxpayer works directly and simultaneously with representatives from the SB/SE Examination Division and the Appeals Office in a mediation format to resolve fully developed issues before the issuance of a 30-day letter. The Appeals member acts as a neutral party and, therefore, as the mediator. The expected time frame from acceptance of the application to settlement is 60

days. In addition to the time savings from this process, there are other advantages of the FTS program, such as:

- ◆ The application (Form 14017) is one page,
- ◆ Either party has the ability to withdraw from the process at any time with no loss of rights,
- ◆ All traditional appeals rights are retained during and after the process,
- ◆ Issues covered by the process are considered closed with all divisions of the IRS, and
- ◆ There is no interest on underpayments for the issues covered.

FTS Process

The FTS process begins with the submission of Form 14017. This form, which can be initiated by the taxpayer, the examining agent, or the SB/SE group manager, asks only for taxpayer contact information and Employer Identification Number (EIN), the taxpayer's representative contact information, the Examination group manager's contact information, the type of industry, the type of tax, and tax years involved. The taxpayer isn't required to have legal representation, but it is wise to have a legal advisor or tax professional present to ensure the proper supporting

documents are available for review. Not having representation can quickly turn a winning position for the taxpayer into a losing one.

Form 14017, a summary of the issues, and the taxpayer's written position are sent to the Appeals team manager for the FTS program at the local Appeals Office. As mediator, Appeals facilitates the

manager in writing or accept the terms on behalf of the SB/SE Division. If no agreement is reached—whether because one of the parties decides to withdraw from the process before terms are proposed or because the terms are unacceptable to one of the parties—the taxpayer retains the right to use any of the other dispute resolution processes, including the traditional

partnership cases; cases outside SB/SE jurisdiction; anything designated for litigation or under consideration for litigation; cases for which the taxpayer has requested competent authority assistance; simultaneous appeals as described in Rev. Proc. 2002-52 (2002-2 CB 242); cases where resolution for one taxpayer might result in inconsistent treatment for another taxpayer if that taxpayer isn't a party to the case (i.e., whip-saw issues); and issues identified in a Chief Counsel Notice, or equivalent publication, as excluded. Also excluded are frivolous issues such as, but not limited to, those identified in Rev. Proc. 2006-2, 2006-1 IRB 89, or any successor guidance. For more information, see Announcement 2001-5, 2001-4 IRB 430, for additional background information on the FTS and the IRS website for alternative dispute resolutions.

The FTS process has the potential of reducing the stress of dealing with an IRS issue over a prolonged period. As mentioned previously, however, taxpayers foolish enough to venture into this process without professional assistance, easier and maybe friendlier as the process may be, are begging for problems. The Service can be friendly, but if proper documentation is missing, the taxpayer is likely to lose when a victory was likely. **SF**

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process, which includes preparing an FTS Session Report that lists and describes the issues approved for the session and the amounts in dispute, sets the conference dates, and outlines the plan of action. Generally, only the issues outlined in the Sessions Report are considered during the process, but others may be added if all the parties agree. The Appeals Office generally proposes the settlement terms for each issue, but it may consider terms proposed by the taxpayer and/or the SB/SE team member. In addition, the proposed resolution may be reported to the Joint Committee on Taxation (JCT) for comment, and Appeals may reconsider the proposed terms based on those comments.

Rejection of Terms or Withdrawal from Process

Either party may reject the proposed terms. If the terms are rejected by the SB/SE group manager, they are reviewed by the SB/SE territory manager, who must either agree with the group

appeals process. For cases returned to the traditional appeals process, the ex-parte communication restrictions are not imposed within Appeals, but communications will be handled impartially (Rev. Proc. 2009-44 (2009-40 CB 462)).

Settlement

Once an agreement has been reached, the normal issue- or case-closing procedures apply. Although using FTS closes the issues under an agreement, the resolution applies only to those issues and tax years in the agreement.

Issues Not Acceptable for FTS

Not all issues are acceptable for SB/SE FTS. Those that can't go through FTS include issues in the Collections Appeals or Collection Due Process, Offer in Compromise, Trust Fund Recovery; Correspondence Exam worked solely by computer or service center sites; cases where the taxpayer has failed to respond to IRS communications; TEFRA (Tax Equality and Fiscal Responsibility Act)