

Notice 2001-67

1. ANNOUNCEMENT OF THE LMSB FAST TRACK DISPUTE RESOLUTION PILOT PROGRAM

This Notice announces the LMSB Fast Track Dispute Resolution Pilot Program (LMSB Fast Track) which establishes new opportunities for large and mid-size business taxpayers, with the assistance of the IRS Office of Appeals (Appeals), to expedite case resolution at the lowest level within the IRS's Large and Mid-Size Business organization (LMSB). The purpose of the LMSB Fast Track program is to enable taxpayers and the IRS to work together in a concentrated and expedited fashion to resolve outstanding issues while the case is still in LMSB jurisdiction. The purpose of the pilot phase of the program is to test, measure, and explore whether the process described in this Notice, in fact, reduces cost and time to the parties.

The program is jointly administered by LMSB and Appeals. In the pilot phase, the program is available to large and mid-size businesses under LMSB jurisdiction that currently have unagreed issues in at least one open year under examination. LMSB Fast Track is a collaborative process among the taxpayer, LMSB, and Appeals. LMSB Fast Track is one process with two options for dispute resolution: Fast Track Mediation and Fast Track Settlement. Under Fast Track Mediation, an Appeals Officer or an Appeals Team Case Leader will act in the role of mediator to help the parties resolve factual issues. Under Fast Track Settlement, an Appeals Team Case Leader will facilitate communications to help the taxpayer and LMSB resolve factual and legal issues. During the pilot phase of the program, the program managers for LMSB and Appeals plan to select, from cases for which the taxpayer and the LMSB Team Manager agree that LMSB Fast Track might be beneficial, a minimum of one case from each of the five LMSB industry groups for Fast Track Mediation and a

minimum of one case from each of the five LMSB industry groups for Fast Track Settlement.

The IRS believes that LMSB Fast Track has the potential to offer significant benefits for taxpayers as well as the IRS, and invites large and mid-size business taxpayers to participate.

2. DESCRIPTION OF THE LMSB FAST TRACK DISPUTE RESOLUTION PILOT PROGRAM

LMSB Fast Track establishes new opportunities designed to expedite case resolution at the lowest level within the LMSB organization. LMSB Fast Track offers two options using Alternative Dispute Resolution (ADR) techniques. The first option, Fast Track Mediation, involves an Appeals Officer or an Appeals Team Case Leader who has been trained in mediation techniques acting as a mediator between the taxpayer and the LMSB audit team.

The second option, Fast Track Settlement, involves an Appeals Team Case Leader who assists the parties to reach a resolution of the disputed issues.

Although the two options have many similarities, Fast Track Settlement is different from Fast Track Mediation because Fast Track Settlement allows the parties to consider both factual and legal issues and to take Appeals' assessment of the hazards of litigation into account in resolving disputes. Both options, Fast Track Settlement and Fast Track Mediation, take place prior to the issuance of the 30-day letter to the taxpayer, and each is designed to be completed in approximately 120 days.

3. SUBJECT MATTER FOR THE LMSB FAST TRACK DISPUTE RESOLUTION PILOT PROGRAM

The LMSB Fast Track process will assist taxpayers and Compliance to resolve factual and/or legal issues and is generally available to all LMSB taxpayers. Fast Track Mediation or Fast Track Settlement may be initiated at any time after an issue has been fully developed,

the Form 5701 (*Notice of Proposed Adjustment*) has been issued, and a written response has been provided by the taxpayer, but before the issuance of the 30-day letter.

LMSB Fast Track is generally available for all LMSB cases within Compliance's jurisdiction. LMSB Fast Track is appropriate for cases where:

- Issues are fully developed;
- The taxpayer has stated its position in writing; and
- There are a limited number of unagreed issues.

LMSB Fast Track will not be available for:

- Issues designated for litigation by Chief Counsel;
- An issue that is the subject of a request for competent authority assistance;
- An issue for which the taxpayer has requested the simultaneous Appeal/Competent Authority procedure described in section 8 of Rev. Proc. 96-13 (1996-1 C.B. 616);
- Issues outside LMSB's jurisdiction; or
- Issues outside Appeals' settlement authority (*e.g.*, application of certain international penalty provisions under Chapter 61 of the Internal Revenue Code (Code)).

LMSB Fast Track may not be the appropriate dispute resolution process for all cases. The LMSB Team Manager and the taxpayer will evaluate their individual circumstances to determine if this process meets their needs.

4. PROCEDURES FOR REQUESTING PARTICIPATION IN THE LMSB FAST TRACK DISPUTE RESOLUTION PILOT PROGRAM

A taxpayer that is interested in participating in LMSB Fast Track, or that has questions about the program and its suitability for the taxpayer's case, may contact the LMSB Team Manager for the year currently under examination. Taxpayers may also contact Jim Fike, LMSB Fast Track Program Manager, at (202) 283-8353 (not a toll-free number), or

J.W. Wyatt, Appeals Fast Track Acting Program Manager, at (314) 612-4639 (not a toll-free number), for further information about the pilot program.

Initiating the Request for Participation in the Pilot Program

Either the taxpayer or the LMSB Team Manager can suggest the use of LMSB Fast Track procedures. A request to participate in the LMSB Fast Track pilot program must be initiated before a 30-day letter is issued, and both parties must enter into an agreement to participate in the process by executing an LMSB Fast Track Agreement.

Contents of the Request

The LMSB Fast Track Agreement form used to request either Fast Track Mediation or Fast Track Settlement is attached to this Notice. The LMSB Team Manager and the taxpayer together indicate which LMSB Fast Track option, Fast Track Mediation or Fast Track Settlement, they believe is best suited for the case.

The goal is to complete the entire LMSB Fast Track process in approximately 120 days. A projected process ending date is agreed to and documented on the LMSB Fast Track Agreement form. The LMSB Team Manager and the taxpayer will identify a preferred conference site. The Notices of Proposed Adjustment (Forms 5701) and a written response from the taxpayer should be included with the LMSB Fast Track Agreement to complete the package. A formal protest is not required.

If the case is not accepted for inclusion in the LMSB Fast Track pilot program, the LMSB Team Manager will discuss other dispute resolution opportunities with the taxpayer. A taxpayer is not entitled to a conference to appeal a decision not to accept a case into the LMSB Fast Track pilot program.

5. SELECTION OF TAXPAYERS FOR THE LMSB FAST TRACK DISPUTE RESOLUTION PILOT PROGRAM

In general, LMSB Fast Track requests will be evaluated and selected for inclusion in the pilot program by applying criteria that include the following:

- LMSB Team Manager and taxpayer: Ensure that the issues identified for the process qualify for inclusion in the program.
- Appeals Officer or Appeals Team Case Leader and the Appeals Fast Track Program Manager: Concur with the taxpayer and LMSB Team Manager that the issues are appropriate for LMSB Fast Track under the option selected, and confirm that a different Appeals Officer will be able to handle any unagreed issues following the LMSB Fast Track process.
- LMSB Fast Track Program Manager and Appeals Fast Track Program Manager: Ensure that a cross-section of taxpayers of varying sizes and representing different industry lines, a geographical dispersion of cases and a variety of issues are included in the program.

6. CONDUCTING THE LMSB FAST TRACK PROCESS

LMSB Fast Track is one process with two options for dispute resolution: Fast Track Mediation and Fast Track Settlement.

Fast Track Mediation is designed to expedite case resolution using mediation techniques. An Appeals Officer or an Appeals Team Case Leader trained in mediation techniques acts as a mediator between the taxpayer and LMSB. The purpose is to facilitate communication and to help the parties resolve factual issues. The mediator will not have settlement authority and will not render a decision regarding any issue subject to the Fast Track Mediation process.

Fast Track Settlement involves an Appeals Team Case Leader who will use various dispute resolution techniques to propose solutions. The Appeals Team Case Leader will first attempt to facilitate an agreement between LMSB and the taxpayer regarding the Fast Track Settlement issues, and may ultimately make a recommendation regarding the settlement of any or all issues (both factual and legal). If the recommendation is acceptable to LMSB and the taxpayer, the settlement proposal may be adopted. The Appeals Team Case Leader will have settlement authority and may exercise that authority

to write up the settlement of Fast Track Settlement issues agreed to by the parties.

Participants

During the LMSB Fast Track process, taxpayer and LMSB representatives, including a representative with decision-making authority from both the taxpayer and LMSB, will meet with the Appeals representative. The taxpayer and LMSB representatives should include persons with the information and expertise that will aid the decision-makers for the taxpayer and LMSB as well as the Appeals representative. In some cases, the Appeals representative may ask that the number of participants be limited.

Time Frames

Stringent time frames have been established in order to provide taxpayers an expedited resolution of tax disputes. The LMSB Fast Track process is designed to be completed within an average of 90 to 120 days.

Site, Date and Agenda

The LMSB Fast Track session will be held at a date and location agreeable to the parties. The representatives with decision-making authority for the taxpayer and LMSB must be present during the LMSB Fast Track session. Prior to or during the LMSB Fast Track session, the Appeals representative will advise the participants of the procedures and establish ground rules.

Confidentiality

The LMSB Fast Track process is confidential. IRS employees involved in any way with the LMSB Fast Track process are subject to the confidentiality and disclosure provisions of the Code. By signing the Fast Track Agreement, the taxpayer consents, pursuant to § 6103(c) of the Code, to the disclosure of the taxpayer's returns and return information pertaining to the issues being considered in the LMSB Fast Track process to those persons named on the agreement as participants in the process. If any person will be engaging in practice before the IRS, as defined in Publication 216, *Conferences and Practice Requirements*, a power of attorney, such as IRS Form 2848 (*Power*

of Attorney and Declaration of Representative) will be required in addition to the Fast Track Agreement, unless such person has already been designated as the taxpayer's representative under a valid power of attorney.

IRS employees, the taxpayer and persons invited to participate by the IRS or the taxpayer shall not voluntarily disclose information regarding any communication made during the LMSB Fast Track session, except as provided by statute, such as in § 6103 of the Code and 5 U.S.C. § 574.

Ex Parte

Generally, the prohibition of *ex parte* communications between Appeals Officers and other IRS employees provided by § 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to the communications arising in the LMSB Fast Track process because the Appeals personnel are facilitating an agreement between the taxpayer and LMSB and are not acting in their traditional Appeals' settlement role. In some circumstances, the role the parties are asking Appeals to play may begin to resemble Appeals' traditional settlement role. In that case, Appeals may request that the taxpayer waive the *ex parte* rules if Appeals determines such a waiver is necessary in order for Appeals to fulfill its role in the LMSB Fast Track process. Regardless of whether a waiver is obtained, the LMSB Fast Track process may still continue if the taxpayer is present at any discussion that the Appeals representative has with LMSB.

Closing Procedures

If the parties reach an agreement on all or some issues through the Fast Track Mediation or the Fast Track Settlement process, LMSB or Appeals, as appropri-

ate, will use established issue or case closing procedures, including preparation of a specific matters closing agreement.

7. WITHDRAWAL FROM THE LMSB FAST TRACK DISPUTE RESOLUTION PILOT PROGRAM

The taxpayer may withdraw from the LMSB Fast Track process at any time by notifying the LMSB Team Manager and the Appeals representative in writing. The Appeals representative or the LMSB Team Manager also may terminate the LMSB Fast Track process if it becomes apparent that meaningful progress toward resolution of the issues has stopped.

8. MISCELLANEOUS

Precedent

A resolution reached by the parties through the LMSB Fast Track process will not be binding on the parties for taxable years not covered by the LMSB Fast Track Agreement. Except as provided in the LMSB Fast Track Agreement, Delegation Order 236 (relating to the authority delegated to an Examination Team Manager in a CIC case to settle issues where a settlement has been effected by Appeals in a prior, subsequent or the same tax period on the same issue) and Delegation Order 247 (relating to the authority delegated to an Examination Team Manager for coordinated issues in the Office of Pre-Filing and Technical Guidance for which Appeals has approved settlement guidelines or positions), any such resolution shall not be used as precedent.

Appeals Rights

If any issues remain unresolved after the LMSB Fast Track process, the taxpayer will retain all the usual rights to

request Appeals consideration of such unagreed issues. Appeals will assign a different Appeals Officer to handle the unagreed issues unless the taxpayer agrees otherwise.

Term of Pilot Program

The LMSB Fast Track Dispute Resolution Pilot Program will accept applications through November 14, 2002.

9. EFFECTIVE DATE

The LMSB Fast Track Dispute Resolution Pilot Program is effective beginning November 14, 2001.

10. COMMENTS

The IRS invites interested persons to comment on this program. Send submissions to:

Internal Revenue Service
Attn: Jim Fike
Large and Mid-Size Business Division LM:Q
Mint Building, 3rd Floor, M-3-148
1111 Constitution Avenue, NW
Washington, D.C. 20224

11. FURTHER INFORMATION

For further information regarding this notice, contact either: Jim Fike, LMSB Fast Track Program Manager, at (202) 283-8353 (not a toll-free number); or J.W. Wyatt, Appeals Fast Track Acting Program Manager, at (314) 612-4639 (not a toll-free number).

LMSB Fast Track Agreement

To: Local Appeals Office _____ Date _____

The undersigned request Appeals assistance in the LMSB Fast Track process as described in Notice 2001-67. The issues for which this assistance is requested are described in the Form(s) 5701 and Taxpayer written response thereto attached to this agreement. The following is the option selected for this process:

Fast Track Mediation

Fast Track Settlement

This case is an Industry, or a Coordinated Industry case. (check one)

Estimated Fast Track Process End Date _____ Preferred Conference Site _____

LMSB Team Manager Name _____

Telephone (____) _____ FAX (____) _____ Industry _____

Taxpayer Name _____

Taxpayer EIN _____ Year(s) _____

Address _____

Corporate Officer _____ Title _____

Telephone (____) _____ FAX (____) _____

Taxpayer Representative _____

Name of Firm _____

Address _____

Telephone (____) _____ FAX (____) _____

s/ _____ s/ _____
Taxpayer Date LMSB Team Manager Date

s/ _____
Representative Date

Comments and Other Expected Participants (attach additional sheets as necessary)

| Name | Position or Affiliation | Phone |
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Accepted by Appeals Yes No Appeals Team Manager _____ Date _____