

Rev. Proc. 2003-40

LMSB/Appeals Fast Track Settlement Procedure

SECTION 1. PURPOSE

This revenue procedure formally establishes the Fast Track Settlement (FTS) program to expedite case resolution and to expand the range of dispute resolution options

available to taxpayers. The Large and Mid-Size Business Division and the Office of Appeals will jointly administer the FTS program. FTS will allow LMSB personnel and LMSB taxpayers an opportunity to mediate their disputes with an Appeals Official acting as a neutral party. In addition, in certain circumstances, other Service Operating Divisions and taxpayers may participate in the FTS program.

SECTION 2. OVERVIEW

.01 In furtherance of the Service's goal of resolving tax controversies on a basis that is fair and impartial to both the government and the taxpayer, the Service implemented an LMSB Fast Track Dispute Resolution Pilot Program in Notice 2001-67, 2001-2 C.B. 544. The pilot program demonstrated that the Service can successfully use dispute resolution techniques within LMSB to promote issue resolution at earlier stages and decrease the overall time from return filing to ultimate issue resolution. The FTS program, which the Service has structured to promote resolution within 120 days of acceptance into the program, builds on the success of the pilot program.

.02 FTS is optional for the taxpayer. FTS does not eliminate or replace existing dispute resolution options, including the taxpayer's opportunity to request a hearing before Appeals or a conference with a manager. The FTS Appeals Official, serving as a neutral participant in the FTS process, will assist LMSB and the taxpayer to understand the nature of the dispute and to reach a mutually satisfactory resolution consistent with applicable law. The FTS Appeals Official also may recommend a settlement based on the FTS Appeals Official's analysis of the issues. *See* Section 2.03. The taxpayer may withdraw from the FTS process at any time by notifying in writing the LMSB Team Manager and the FTS Appeals Official of the withdrawal. The FTS Appeals Official or the LMSB Team Manager also may terminate the LMSB Fast Track process, by notifying the taxpayer in writing, if either one determines that meaningful progress toward resolution of the issues has stopped. If any issues remain unresolved at the conclusion of the FTS process, the taxpayer retains all of its otherwise applicable appeal rights.

.03 Any recommended settlement by the FTS Appeals Official of an issue in FTS

shall be subject to the procedures that would be applicable if the issue were being considered by Appeals, including procedures in the Internal Revenue Manual and existing published guidance. FTS therefore creates no special authority for settlement by the FTS Appeals Official. For example, if the FTS issue is coordinated in either the Technical Advisor Program or the Appeals Technical Guidance program, the proposed settlement of that issue is subject to established procedures, including submission of the proposed settlement to the Appeals Coordinator for review and concurrence

SECTION 3. CASE ELIGIBILITY AND EXCLUSIONS

.01 The parties should initiate FTS only after the Service issues the Form 5701 (*Notice of Proposed Adjustment*) and the taxpayer provides a written response, but before the date on which the Service issues the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Office of Appeals (30-day letter). Notwithstanding the issuance of a Form 5701 and the receipt of a written response from the taxpayer, the Appeals and LMSB Fast Track Program Managers (collectively, Fast Track Program Managers) shall accept an issue into the FTS program **only** if they are satisfied that the issue is sufficiently developed to permit resolution within the framework of the FTS program.

.02 FTS is generally available for all cases within LMSB Compliance jurisdiction. In addition, the Fast Track Program Managers and the Compliance manager from a Service Operating Division other than LMSB may agree to include a taxpayer or issue not under LMSB jurisdiction in the FTS program, depending on the circumstances and operational needs of the case. For example, SBSE Examination Specialization and Abusive Schemes cases may be accepted in the FTS program upon agreement of the Fast Track Program Managers and the SBSE manager. The taxpayer must also agree to the inclusion into the FTS program. FTS is not well suited for all cases, however, so the respective managers and the taxpayers must evaluate their individual circumstances to determine if the FTS program meets their needs, *e.g.*, whether the number of issues is manageable within a 120 day time frame. For non-LMSB cases or issues accepted into the FTS program, the appropriate Compliance

manager in the non-LMSB Operating Division will carry out the responsibilities of the LMSB Team Manager under this revenue procedure. An issue that is excluded from a similar alternate dispute resolution program in another Operating Division, such as the SBSE — Appeals Fast Track Mediation Procedure, usually also will be excluded from the FTS program.

.03 The following issues are *not* eligible for inclusion into the FTS program:

1) issues in a taxpayer's case designated for litigation;

2) issues in a taxpayer's case under consideration for designation for litigation;

3) issues for which the taxpayer has submitted a request for competent authority assistance;

4) issues for which the taxpayer has requested the simultaneous Appeals/Competent Authority procedure described in section 8 of Rev. Proc. 2002–52, 2002–31 I.R.B. 242, or the corresponding provision of any successor guidance;

5) issues outside LMSB jurisdiction, except as permitted under section 3.02;

6) “whipsaw” issues, *i.e.*, issues for which resolution with respect to one party might result in inconsistent treatment in the absence of the participation of another party;

7) issues for which mediation would not be consistent with sound tax administration, *e.g.*, issues governed by closing agreements, by *res judicata*, or by controlling precedent; and

8) issues that have been identified in a Chief Counsel Notice, or equivalent publication, as excluded from the Fast Track Settlement process.

If an issue is determined not to be eligible for the FTS program, all issues in the case shall not be eligible for the FTS program.

SECTION 4. APPLICATION PROCESS

.01 Either the taxpayer or the LMSB Team Manager may suggest participation in the FTS program. If the other party agrees, the parties may contact the LMSB or Appeals Fast Track Program Managers who will assist the parties in determining whether the issue is appropriate for the FTS program. If the parties determine that the issue is appropriate for FTS, the parties must apply to the program by completing and executing a LMSB Fast Track Agreement form. The parties must include the *Notice of Proposed Adjustment* (Form 5701) and the written response from the taxpayer

with the LMSB Fast Track Agreement to complete the package. Taxpayers do not need to submit a formal protest for FTS. The LMSB Team Manager will coordinate preparation and submission of the application package.

.02 All applications to the FTS program require the approval of the Fast Track Program Managers before acceptance into FTS. If the Fast Track Program Managers approve the application, the FTS Appeals Official (*see* section 5.01 below), will notify the taxpayer and the LMSB Team Manager. If the Fast Track Program Managers do not approve the application, the Appeals Fast Track Program Manager will notify the LMSB Team Manager within ten days of receipt of the application. The LMSB Team Manager will, in turn, notify the taxpayer. The decision not to approve an application for the FTS program is final and not subject to administrative appeal or judicial review.

.03 The parties and the FTS Appeals Official will agree to and document a projected completion date on the LMSB Fast Track Agreement form. The goal of the FTS program is to complete the entire FTS process in approximately 120 days. The LMSB Team Manager and the taxpayer will also identify a preferred conference site.

SECTION 5. SETTLEMENT PROCESS

.01 FTS employs various alternative dispute resolution techniques to promote agreement. An FTS Appeals Official will serve as a neutral party. The FTS Appeals Official will not perform in a traditional Appeals role, but will use dispute resolution techniques to facilitate settlement between the parties. An Appeals Team Case Leader, trained in mediation or, in limited cases, an Appeals Officer, trained in mediation, in conjunction with an Appeals Team Manager, will serve as the neutral FTS Appeals Official.

.02 During FTS, the taxpayer and LMSB representatives, including at least one representative with decision-making authority, from both LMSB and the taxpayer, will meet with the FTS Appeals Official. The taxpayer and LMSB representatives should include individuals with the information and expertise necessary to assist the parties and the FTS Appeals Official during the settlement process. The FTS Appeals Official may ask the parties to limit the number of participants to facilitate the process. Any person engaged in practice before the Ser-

vice, as defined in Publication 216, *Conference and Practice Requirements*, must have a power of attorney from the taxpayer (Form 2848, *Power of Attorney and Declaration of Representative*).

.03 The FTS Appeals Official will hold the FTS session at the date and location agreed to by both parties. Prior to the FTS session, the FTS Appeals Official will advise the participants of the procedures and establish ground rules. The FTS Appeals Official may modify the rules and procedures during the session to adapt to changes in circumstances. The FTS session may include joint sessions with all parties, separate meetings, or both as determined appropriate in the sole judgment of the FTS Appeals Official.

.04 The FTS Appeals Official will use a FTS Session Report to assist in planning the FTS session and to report on developments during the session. The FTS Session Report will include a list of all issues approved for the FTS program, a description of the issues, the amounts in dispute, conference dates, a plan of action for the FTS session, and other information useful to the process as determined by the parties and the FTS Appeals Official. The FTS Appeals Official also will prepare and update an Agenda, which guides the communication, sets the order of issue discussion, poses questions to clarify the issue and guides the meetings. During the session, the FTS Appeals Official will provide decision makers from both parties with copies of the Agenda and the FTS Session Report.

.05 Generally, the FTS Appeals Official will consider only those issues outlined in the FTS Session Report, except by mutual agreement of the parties. If the taxpayer presents information during the session that the taxpayer had not previously presented during the audit, the FTS Appeals Official will adjust the targeted completion date to give the appropriate Service officials time to evaluate the information/documentation.

.06 During the session, the FTS Appeals Official may propose settlement terms for any or all issues. If the taxpayer accepts the FTS Appeals Official's settlement proposal, but the LMSB Team Manager rejects it, the LMSB Territory Manager must review the rejection and either concur in writing, or accept the settlement proposal on behalf of LMSB. If the LMSB

Territory Manager concurs with the Team Manager's rejection of the settlement proposal, and an acceptable alternative settlement cannot be reached, the issue will be closed out of the FTS program as unagreed.

.07 If the parties resolve any of the disputed issues at the conclusion of the session, the parties and the FTS Appeals Official shall sign the FTS Session Report acknowledging acceptance of the terms of settlement for purposes of preparing computations. The signature of the parties on the FTS Session Report does not constitute a final settlement, nor does it waive restrictions on assessment, terminate consents to extend periods of limitation, start the running of any periods of limitation, or constitute agreement to close the case.

.08 If applicable, the Service will report a proposed settlement reached as a result of FTS to the Joint Committee on Taxation in accordance with section 6405. The taxpayer acknowledges that the Service may reconsider a proposed settlement, as reflected in a signed FTS Session Report, upon receipt of comments on the proposed settlement from the Joint Committee on Taxation. If the taxpayer declines to agree with any changes by the Service upon reconsideration, LMSB will close the case unagreed and the taxpayer will retain all the usual rights to request Appeals consideration of any unagreed issues.

.09 If the parties fail to resolve any issue in FTS, the taxpayer retains the option of requesting that the issue be heard through the traditional Appeals process.

.10 Communications made during an FTS session are confidential. Employees of the Service involved with the FTS process must adhere to the confidentiality and disclosure provisions of the Internal Revenue Code, including sections 6103, 7213, and 7431. By signing the LMSB Fast Track Agreement, the taxpayer consents, pursuant to section 6103(c), to the disclosure of the taxpayer's returns and return information pertaining to the issues considered in the FTS process to those persons named on the Agreement as participants in the process. Employees of the Service, the taxpayer and persons invited to participate by the Service or the taxpayer shall not voluntarily disclose information regarding any communication made during the FTS session, except as provided by statute, such as in sections 6103 and 7214(a)(8) and 5 U.S.C. § 574.

.11 The prohibition against *ex parte* communications between Appeals Officers and other Service employees provided by section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to the communications arising in FTS because Appeals personnel, in facilitating an agreement between the taxpayer and LMSB, are not acting in their traditional Appeals settlement role.

SECTION 6. POST-SESSION PROCEDURE

.01 Unless specific conditions warrant altering the agreement, *e.g.*, a subsequent authoritative decision that materially alters the basis for the agreement, the basis of settlement shall not be modified after the FTS Session Report is signed. Nor may either party raise a new issue for FTS consideration after the FTS Session Report is signed unless both parties and the FTS Appeals Official agree. New issues not accepted for consideration under FTS may still be raised and considered outside the FTS program.

.02 After the parties and the FTS Appeals Official sign the FTS Session Report acknowledging a basis of settlement, the FTS Appeals Official will draft the appropriate settlement document to reflect the agreed upon treatment of the issue. The FTS Appeals Official may use delegated settlement authority to enter into and approve any Fast Track settlement agreement (*e.g.*, specific matter closing agreement or Form 870-AD). Alternatively, LMSB and the taxpayer may resolve an issue using LMSB resolution authority and LMSB will include the issue as an agreed issue in the Revenue Agent's Report. LMSB will then close the case using established case closing procedures.

.03 If one or more issues remain unsettled at the end of FTS, the FTS Appeals Official will send a letter to both the taxpayer and LMSB, stating who participated in the program, listing any unresolved issues, and explaining the taxpayer's rights to appeal unresolved issues.

SECTION 7. GENERAL PROVISIONS

.01 A resolution reached by the parties through FTS will not bind the parties for taxable years not covered by the FTS Session Report. Except as provided in the Fast Track settlement agreement or Delega-

tion Order 236, any such resolution shall not be used as precedent.

.02 With respect to FTS cases that are returned for traditional Appeals consideration, *ex parte* restrictions will not be imposed on intra-Appeals communications. Appeals management will take appropriate measures to ensure these cases are handled fairly and impartially.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective June 3, 2003.

SECTION 9. CONTACTS

A taxpayer who wants to submit a case to the FTS program, or that has questions about the program and its suitability for the taxpayer's case, may contact the LMSB Team Manager for the tax year currently under examination. For further information, taxpayers may contact J.W. Wyatt at (314) 612-4639 (not a toll-free number) or by email at j.w.wyatt@irs.gov or James Fike at (202) 283-8353 (not a toll-free number) or by email at james.o.fike@irs.gov. Taxpayers may also consider other available alternate dispute resolution programs, including SBSE — Appeals Fast Track Mediation.