

Rev. Proc. 2002-44

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SECTION 1. PURPOSE

On January 15, 2002, Appeals completed an additional one-year test of its mediation procedure. *See* Announcement 2001-9, 2001-1 C.B. 357. This revenue procedure formally establishes the

Appeals mediation procedure; and modifies and expands the availability of mediation for cases that are already in the Appeals administrative process.

This revenue procedure supersedes Announcement 98-99, 1998-2 C.B. 650, and Announcement 2001-9.

SECTION 2. BACKGROUND

The mission of Appeals is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer. Mediation is an extension of the Appeals process and will enhance voluntary compliance. Mediation is a nonbinding process that uses the services of a mediator, as a neutral third party, to help Appeals and the taxpayer reach their own negotiated settlement. (References herein to “mediator” include any non-Internal Revenue Service co-mediator, as appropriate (*see* sections 5.06 and 5.08 of this revenue procedure). To accomplish this goal, the mediator will act as a facilitator, assist in defining the issues, and promote settlement negotiations between Appeals and the taxpayer. The mediator will not have settlement authority in the mediation process and will not render a decision regarding any issue in dispute. The mediator should inform and discuss with Appeals and the taxpayer the rules and procedures concerning the mediation process.

Section 7123(b)(1) of the Internal Revenue Code, as enacted by § 3465 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, provides for expansion of the Appeals mediation program. The Service previously allowed taxpayers to request mediation for factual issues involving an adjustment of \$1 million or more that were already in the Appeals administrative process. *See* Announcements 98-99 and 2001-9.

SECTION 3. SIGNIFICANT CHANGES

The mediation procedure has been modified, and expanded to allow for additional cases in Appeals to be eligible for mediation. Significant changes to Announcements 98-99 and 2001-9 made by this revenue procedure include:

.01 Mediation is no longer limited to issues involving an adjustment of \$1 million or more; it is now available for any qualifying issues, as described in this revenue procedure, that are already in the Appeals administrative process;

.02 Section 4.02(1) provides that legal issues are now eligible for mediation;

.03 Section 4.02(3) provides that Industry Specialization Program (ISP) issues and Appeals Coordinated Issues (ACI) are now eligible for mediation;

.04 Section 4.02(5) provides that mediation is now available for an issue for which the taxpayer intends to seek competent authority assistance, provided a request for competent authority assistance has not as yet been filed;

.05 Section 4.02(6) provides that mediation is now available after unsuccessful attempts to enter into a closing agreement under § 7121;

.06 Section 4.03(2) provides that Collection cases are excluded from mediation;

.07 Section 4.03(3) provides that issues for which mediation would not be consistent with sound tax administration are excluded from mediation;

.08 Section 4.03(4) provides that frivolous issues are excluded from mediation;

.09 Section 4.03(5) provides that cases where the taxpayer did not act in good faith during settlement negotiations are excluded from mediation;

.10 Section 5.02(2) includes new filing requirements;

.11 Section 5.04 includes express time-lines to complete the agreement to mediate and proceed to mediation. A taxpayer's inability to adhere to these timeframes, without reasonable cause, may result in Appeals' withdrawal from the mediation process;

.12 Section 5.06 requires the use of Appeals personnel who are trained mediators. Headquarters Appeals will pay the expenses associated with Appeals mediators. Taxpayers may also elect to use a non-Internal Revenue Service mediator, at taxpayers' expense;

.13 Section 5.11 provides that there will be no *ex parte* contacts with the mediator outside the mediation session, except as provided by that section;

.14 Section 5.16 provides that if the taxpayer and Appeals do not reach an agreement on an issue being mediated, they may then request arbitration for the issue provided the mediation issue meets the requirements for arbitration and the taxpayer acted in good faith during the mediation process.

SECTION 4. SCOPE OF MEDIATION

.01 *In general.* The mediation procedure will attempt to resolve issues in cases that qualify under this revenue procedure while they are in the jurisdiction of Appeals. This procedure may be used only after Appeals settlement discussions are unsuccessful, and, generally, when all other issues are resolved but for the issue(s) for which mediation is being requested.

.02 *Applicability.* Mediation is available for:

- (1) Legal issues;
- (2) Factual issues;
- (3) An Industry Specialization Program (ISP) issue or an Appeals Coordinated Issue (ACI). [ISP issues are listed in Exhibit 8.7.1-1, and ACI issues are listed in section 8.7.1-3, of the Internal Revenue Manual.] However, an ISP or ACI issue will not be eligible for mediation when the taxpayer has declined the opportunity to discuss the ISP or ACI issue with the Appeals ISP or ACI coordinator during the course of the Appeals settlement discussions;
- (4) An early referral issue when an agreement is not reached, provided the early referral issue meets the requirements for mediation (*see* section 2.16 of Rev. Proc. 99-28, 1999-2 C.B. 109, or any subsequent revenue procedure);
- (5) Mediation is now available for an issue for which the taxpayer intends to seek competent authority assistance, provided a request for competent authority assistance has not as yet been filed. In such a case, the taxpayer may not request competent authority assistance until the mediation process is completed. However, competent authority assistance may be requested while mediation is pending if such request is necessary to keep open a statute of limitations in the treaty country. In such a case, the U.S. competent authority will suspend action on the case until mediation is completed. Mediation is not available for an issue for which the

taxpayer has requested competent authority assistance or the simultaneous Appeals/Competent Authority procedure described in section 8 of Rev. Proc. 96-13, 1996-1 C.B. 616, or any subsequent revenue procedure. **Taxpayers are cautioned that if they enter into a settlement with Appeals (including an Appeals settlement through the mediation process), and then request competent authority assistance, the U.S. competent authority will endeavor only to obtain a correlative adjustment with the treaty country and will not take any actions that would otherwise amend the settlement. See section 7.05 of Rev. Proc. 96-13; and**

(6) Unsuccessful attempts to enter into a closing agreement under § 7121.

.03 *Inapplicability.* Mediation will not be available for:

- (1) An issue designated for litigation or docketed in any court. [For the Chief Counsel mediation program involving issues in docketed cases, see Chief Counsel Directives Manual (CCDM)(35) 3(20)0];
- (2) Collection cases;
- (3) Issues for which mediation would not be consistent with sound tax administration, *e.g.* issues governed by closing agreements, by *res judicata*, or controlling Supreme Court precedent;
- (4) Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2001-41, 2001-33 I.R.B.173; and
- (5) Cases where the taxpayer did not act in good faith during settlement negotiations, *e.g.*, failure to respond to document requests, failure to respond timely to offers to settle, failure to address arguments and precedents raised by Appeals.

SECTION 5. MEDIATION PROCESS

.01 *Mediation is optional.* A taxpayer and an Appeals Team Case Leader or Appeals Officer may request mediation after consultation with each other.

.02 *Filing requirements.*

(1) *Where to file.* The taxpayer seeks approval for mediation by sending a written request to the appropriate Appeals Team Manager. The taxpayer should also send a copy of the written request to the appropriate Appeals Area Director and to the Chief Appeals, 1099 14th Street, NW, Suite 4200 — East, Washington, DC

2005, Attn: Appeals LBSP Operations. (See Exhibit 1 of this revenue procedure for a listing of the addresses for each Appeals Area Director.)

(2) *Required information.* The mediation request should:

(a) Provide the taxpayer's name, TIN, address and the name, title, address and telephone number of a person to contact;

(b) Provide the Team Case Leader's or Appeals Officer's name;

(c) Identify the taxable period(s) involved;

(d) Describe the issue for which mediation is being requested, including the dollar amount of the adjustment in dispute; and

(e) Contain a representation that the issue is not an excluded issue listed in the "Scope of Mediation" section above.

.03 *Review of Mediation Request.* Generally, the Appeals Team Manager will respond to the taxpayer and the Team Case Leader or Appeals Officer within two weeks after the Appeals Team Manager receives the taxpayer's request for mediation.

(1) *Request approved.* If Appeals approves the mediation request, the Appeals Team Manager will inform the taxpayer and the Team Case Leader or Appeals Officer, and schedule a conference or conference call that may include a representative from Appeals LBSP Operations, Headquarters Appeals — to discuss the mediation process.

(2) *Request denied.* If Appeals denies the mediation request, the Appeals Team Manager will promptly inform the taxpayer and the Team Case Leader or Appeals Officer. Although no formal appeal procedure exists for the denial of a mediation request, a taxpayer may request a conference with the Appeals Team Manager to discuss the denial. The denial of a mediation request is not subject to judicial review.

.04 *Agreement to mediate.* The taxpayer and Appeals will enter into a written agreement to mediate. See Exhibit 2 of this revenue procedure for a model agreement to mediate. This agreement will be negotiated at an administrative conference or conference call — that may include a representative from Appeals

LBSP Operations, Headquarters Appeals. The agreement to mediate: (a) should be as concise as possible, (b) will specify the issue(s) that the parties have agreed to mediate, and (c) should identify the location and the proposed date of the mediation session.

The Appeals Team Manager, in consultation with the Team Case Leader or Appeals Officer, will sign the agreement to mediate on behalf of Appeals.

Generally, it is expected that the parties will complete the agreement to mediate within three weeks after being notified that Appeals approved the mediation request and proceed to mediation within 60 days after signing the agreement to mediate. A taxpayer's inability to adhere to these timeframes, without reasonable cause, may result in Appeals' withdrawal from the mediation process.

.05 Participants. The parties to the mediation process will be the taxpayer and Appeals. Absent an agreement to the contrary, each party must have at least one participant attending the mediation session with decision-making authority. The mediation agreement will set forth the procedures by which the parties inform the other party and the mediator of the participants in the mediation and will set forth any limitation on the number, identity or participation by such participants. In general, the parties are encouraged to include, in addition to the required decision-makers, those persons with information and expertise that will be useful to the decision-makers and the mediator. In order to minimize the possibility of a last-minute disqualification of the mediator, each party must notify the mediator and the other party no later than two weeks before the mediation, regarding the participants on their mediation team. See Exhibit 3 of this revenue procedure for a model participants list.

.06 Selection of mediator and expenses. The taxpayer and the Appeals Team Manager will select the mediator. A representative from Appeals LBSP Operations, Headquarters Appeals may participate in an administrative conference or conference call to discuss the selection of the mediator by the parties. A mediator shall have no official, financial, or personal conflict of interest with respect to the parties, unless such interest is fully disclosed in writing to the taxpayer and

the Appeals Team Manager, and they agree that the mediator may serve. *See* 5 U.S.C. § 573.

This mediation procedure requires the use of an Appeals employee who is a trained mediator. Headquarters Appeals will pay the expenses associated with the Appeals mediator. The taxpayer may also elect to use a non-Internal Revenue Service co-mediator, at the taxpayer's expense.

.07 Appeals personnel as mediators and conflict statement. The taxpayer and the Appeals Team Manager will select an Appeals mediator from a list of eligible individuals who, generally, will be from the same Appeals office or geographic area, but not the same group, where the case is assigned.

Due to the inherent conflict that results because the Appeals mediator is an employee of the IRS, the Appeals mediator will provide to the taxpayer a statement confirming his/her proposed service as a mediator, that he/she is a current employee of the IRS, that a conflict results from his/her continued status as an IRS employee, and that this conflict will not interfere in the mediator's ability to impartially facilitate the case. The written agreement to mediate will include this statement.

.08 Criteria for selection of non-Internal Revenue Service co-mediator. If the taxpayer elects to use a non-Internal Revenue Service co-mediator, the taxpayer and the Appeals Team Manager should make the selection from any local or national organization that provides a roster of neutrals. Criteria for selecting a non-Internal Revenue Service co-mediator may include: completion of mediation training, previous mediation experience, a substantive knowledge of tax law, or knowledge of industry practices.

.09 Discussion summaries. Each party will prepare a discussion summary of the issues (including the party's arguments in favor of the party's position) for consideration by the mediator. The discussion summaries should be submitted to the mediator and the other party no later than two weeks before the mediation session is scheduled to begin.

.10 Confidentiality. The mediation process is confidential. Therefore, all information concerning any dispute resolution communication is confidential and may

not be disclosed by any party, participant, observer or mediator except as provided by statute, such as in § 6103 of the Internal Revenue Code and 5 U.S.C § 574. A dispute resolution communication includes all oral or written communications prepared for the purposes of a dispute resolution proceeding. *See* 5 U.S.C. § 571(5).

In executing the mediation agreement, the taxpayer consents under § 6103(c) to the disclosure by the IRS of the taxpayer's returns and return information incident to the mediation to any participant or observer identified in the initial lists of participants and observers and to any subsequent participants and observers identified in writing by the parties. (*See* section 5.05 of this revenue procedure.) If the mediation agreement is executed by a person pursuant to a power of attorney executed by the taxpayer, that power of attorney must clearly express the taxpayer's grant of authority to consent to disclose the taxpayer's returns and return information by the IRS to third parties, and a copy of that power of attorney must be attached to the agreement.

IRS and Treasury employees who participate in or observe the mediation process in any way, and any person under contract to the IRS pursuant to § 6103(n) that the IRS invites to participate or observe, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including §§ 6103, 7213, and 7431.

.11 Ex Parte Contacts Prohibited. To ensure that one party is not in a position to exert undue influence on the mediator, there will be no *ex parte* contacts with the mediator outside the mediation session.

The prohibition against *ex parte* communications is intended to apply only to unsolicited contacts from one of the parties outside the mediation session. It ensures the mediator does not receive information or evidence the other party is unaware of and is unable to respond to or rebut.

This provision does not prevent the mediator from contacting a party, or a party from answering a question or request posed by the mediator.

.12 Section 7214(a)(8) disclosure. Under § 7214(a)(8), IRS employees must report information concerning violations

of any revenue law to the Secretary. The agreement to mediate will state this requirement and the parties will acknowledge this duty.

.13 *Disqualification of the non-Internal Revenue Service co-mediator.* The non-Internal Revenue Service co-mediator will be disqualified from representing the taxpayer in any pending or future action that involves the transactions or issues that are the particular subject matter of the mediation. This disqualification extends to representing any other parties involved in the transactions or issues that are the particular subject matter of the mediation. Moreover, the mediator's firm will be disqualified from representing the taxpayer or any other parties involved in the transactions or issues that are the particular subject matter of the mediation in any action that involves the transactions or issues that are the particular subject matter of the mediation.

The mediator's firm will not be disqualified from representing the taxpayer or any other parties in any future action that involves the same transactions or issues that are the particular subject matter of the mediation, provided that (i) the mediator disclosed the potential of such representation to the parties to the mediation conducted by the mediator prior to the parties' acceptance of the mediator, (ii) such action relates to a taxable year that is different from the taxable year that is the subject matter of the mediation, (iii) the firm's internal controls preclude the mediator from any form of participation in the matter, and (iv) the firm does not apportion to the mediator any part of the fee therefrom. In the event the mediator has been selected prior to the mediator learning of the identity of one or more of the parties involved in the mediation, requirement (i) will be deemed satisfied if

the mediator promptly notifies the parties of the potential representation.

While the mediator may not receive a direct allocation of the fee from the taxpayer (or other party) in the matter for which the internal controls are in effect, the mediator will not be prohibited from receiving a salary, partnership share, or corporate distribution established by prior independent agreement. The mediator and his or her firm are not disqualified from representing the taxpayer or any other parties involved in the mediation in any matters unrelated to the transactions or issues that are the particular subject matter of the mediation.

This paragraph 12 only applies to representations on matters before the IRS.

The provisions of this paragraph 12 are in addition to any other applicable disqualification provisions including, for example, the rules of the United States Tax Court and applicable canons of ethics.

.14 *Withdrawal.* Either party may withdraw from the process anytime before reaching a settlement of the issues being mediated by notifying the other party and the mediator in writing.

.15 *Mediator's report.* At the conclusion of the mediation process, the mediator will prepare a brief written report and submit a copy to each party. See Exhibit 4 of this revenue procedure for a model mediator's report.

.16 *Appeals procedures apply.* If the parties reach an agreement on all or some issues through the mediation process, Appeals will use established procedures, including preparation of a Form 906, *Closing Agreement on Final Determination Covering Specific Matters*. See Statement of Procedural Rules, 26 C.F.R. § 601.106. Delegation Order 236 (Rev. 3) may apply to settlements resulting from the mediation process.

If the parties do not reach an agreement on an issue being mediated, they may request arbitration for the issue, provided the mediation issue meets the requirements for arbitration. See Announcement 2002-60, 2002-26 I.R.B. 28, or any subsequent procedure. If arbitration is not requested or approved, Appeals will not reconsider the mediated issue(s), and a statutory notice of deficiency will be issued with respect to all unagreed issues; or for non-deficiency cases, they will be processed using established closing procedures.

.17 *Use as precedent.* A settlement reached by the parties through mediation will not be binding on the parties (or be otherwise controlling) for taxable years not covered by the agreement. Except as provided in the agreement, any party may not use such settlement as precedent.

SECTION 6. EFFECTIVE DATE

This procedure is effective July 1, 2002, the date this revenue procedure is published in the Internal Revenue Bulletin.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Announcement 98-99 and Announcement 2001-9 are superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is Sandy Cohen, of the office of Appeals Large Business and Specialty Programs — Operations, Headquarters Appeals. For further information regarding this revenue procedure, contact Mr. Cohen at (202) 694-1818 (not a toll-free call).

Addresses for Appeals Area Directors

Appeals Large Business and Specialty Programs (LBSP) Operating Unit

Director, Appeals LBSP Area 1
290 Broadway
New York, NY 10007

Director, Appeals LBSP Area 4
1650 Mission Street
San Francisco, CA 94103

Director, Appeals LBSP Area 2
8701 South Gessner Road
Houston, TX 77074

Director, Appeals LBSP Specialty
Programs
1222 Spruce Street
St. Louis, MO 63103

Director, Appeals LBSP Area 3
200 W. Adams Street
Chicago, IL 60606

General Appeals Operating Unit

Director, General Appeals Area 1
290 Broadway
New York, NY 10007

Director, General Appeals Area 5
4050 Alpha Road
Dallas, TX 75244

Director, General Appeals Area 2
31 Hopkins Plaza
Baltimore, MD 21201

Director, General Appeals Area 6
160 Spear Street
San Francisco, CA 94105

Director, General Appeals Area 3
575 North Pennsylvania Street
Indianapolis, IN 46204

Director, General Appeals Area 7
24000 Avila Road
Laguna Niguel, CA 92677

Director, General Appeals Area 4
810 Broadway
Nashville, TN 37203

Model Agreement to Mediate

1. *The Mediation Process.*

The mediation will be an extension of the Appeals process to help [NAME OF TAXPAYER] and Internal Revenue Service (IRS)—Appeals (the PARTIES) reach their own negotiated settlement of the issues to be mediated. See (2) below for the participants in the mediation process. To accomplish this goal, the mediator will act as a facilitator, assist in defining the issues and promote settlement negotiations between the PARTIES. The mediator will inform and discuss with the PARTIES the rules and procedures pertaining to the mediation process. The mediator will not have settlement authority and will not render a decision regarding any issue in dispute. The PARTIES will continue to have settlement authority for all issues considered under the mediation process.

2. *Nature of Process, Participants, Withdrawal.*

- (a) The mediation process is optional.
- (b) Each PARTY must have at least one participant attending the mediation session with decision-making authority. No later than two weeks before the mediation, each PARTY will submit to the other PARTY and the mediator a list of the participants who will attend the mediation session on behalf of or at the request of the PARTY, including a designation of the person with decision-making authority who will represent the PARTY at the mediation session. Each PARTY's list of participants will contain the participant's name, the participant's position with the PARTY or other affiliation (*e.g.*, a member of the XYZ law firm, counsel to the taxpayer), and the participant's address, [telephone number and fax number]. All participants attending the mediation on behalf of or at the request of a PARTY will be listed on the PARTY's list of participants, including witnesses, consultants, and attorneys.

[Insert limitations on the number or types of participants, if any.]
- (c) Either PARTY may withdraw from the process at any time prior to reaching a settlement of the issues to be mediated by notifying the other PARTY and the mediator in writing.

3. *Selection of Mediator and Costs.*

- (a) [NAME OF TAXPAYER] and [NAME], Appeals Team Manager will select an Appeals mediator. If the taxpayer elects to use a non-IRS co-mediator, the taxpayer and the Appeals Team Manager should make the selection from any local or national organization that provides a roster of neutrals. Criteria for selecting a non-IRS co-mediator may include: completion of mediation training, previous mediation experience, a substantive knowledge of tax law, or knowledge of industry practices. A potential mediator must disclose any official, financial, or personal conflict of interest with respect to the PARTIES. Any potential mediator with any such conflict of interest may not serve as a mediator, unless such interest is fully disclosed in writing to the PARTIES and they agree that the mediator may serve. *See* 5 U.S.C. § 573.
- (b) Headquarters Appeals will pay the costs associated with the Appeals mediator. The taxpayer may elect to use a non-Internal Revenue Service co-mediator, at the taxpayer's expense.
- (c) Due to the inherent conflict that results because the Appeals mediator is an employee of the IRS, the Appeals mediator will provide to the taxpayer a statement confirming his/her proposed service as a mediator, that he/she is a current employee of the IRS, and that a conflict results from his/her continued status as an IRS employee.

4. *Issues to be Mediated.*

The mediation session will encompass the following issues in the IRS audit of [NAME OF TAXPAYER]'s federal tax returns for tax year(s) _____:

- (a) Issue #1
- (b) Issue #2

5. *Submission of Materials.*

Each PARTY will present to the mediator a separate written summation not to exceed 20 pages (exclusive of exhibits consisting of pre-existing documents and reports) regarding each issue. The mediator will have the right to ask either PARTY for additional information before the mediation session if deemed necessary for a full understanding of the issues to be mediated. Each PARTY will simultaneously submit a copy of any submission that it gives to the mediator to the other party.

6. *Place of Mediation.*

The PARTIES should attempt to select a site at or near the mediator's office, [NAME OF TAXPAYER]'s office, or an Appeals office.

7. *Proposed Schedule.*

Subject to the approval of the mediator, the mediation session will be conducted according to the following schedule:

Submission of
Materials to Mediator: ***A DATE, WHICH IS NOT LATER THAN TWO WEEKS
BEFORE THE DATE OF MEDIATION SESSION***

Mediation Session: ***By MONTH DAY, YEAR and TIME***

8. *Confidentiality.*

IRS and Treasury employees who participate in or observe the mediation process in any way, and any person under contract to the IRS pursuant to § 6103(n) of the Internal Revenue Code, including the mediator, that the IRS invites to participate or observe, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including §§ 6103, 7213, and 7431. See also 5 U.S.C § 574.

[NAME OF TAXPAYER] consents, under § 6103(c), to the disclosure by the IRS of the taxpayer's returns and return information incident to the mediation to any participant or observer identified in the list of participants. If the mediation agreement is executed by a person pursuant to a power of attorney executed by [NAME OF TAXPAYER], that power of attorney must clearly express the grant of authority by [NAME OF TAXPAYER] to consent to disclose the returns and return information of [NAME OF TAXPAYER] by the IRS to third parties. A copy of that power of attorney must be attached to this agreement.

9. *Ex Parte Contacts Prohibited.*

There will be no *ex parte* contacts from a party to the mediator outside the mediation session. This provision is not intended to prevent the mediator from contacting a party, or a party from responding to the mediator's request for information.

10. *Section 7214(a)(8) Disclosure.*

The PARTIES to this agreement acknowledge that IRS employees involved in this mediation are bound by the § 7214(a)(8) disclosure requirements concerning violations of any revenue law.

11. *No Record.*

There will be no stenographic record, no audio or video tape recording or other transcript of the mediation session(s).

12. *Report by Mediator.*

At the conclusion of the mediation session, the mediator will issue a brief report to the PARTIES identifying each issue described in section 4, above, and whether the PARTIES either agreed to resolve or did not resolve the issue.

13. *Appeals Procedures Apply.*

If the mediation process enables the PARTIES to reach agreement on the issues, Appeals will use established procedures to close the case. Delegation Order 236 (Rev. 3) may apply to settlements resulting from the mediation process. If the parties do not reach an agreement on an issue being mediated, the parties may request arbitration for the issue, provided the mediation issue meets the requirements for arbitration. See Announcement 2002-60, 2002-26 I.R.B. 28, or any subsequent procedure. If arbitration is not requested or approved, Appeals will not reconsider the mediated issue(s), and a statutory notice of deficiency will be issued with respect to all unagreed issues; or for non-deficiency cases, they will be processed using established closing procedures.

14. *Precedential Use.*

A settlement reached by the PARTIES through mediation will not be binding on the parties (or be otherwise controlling) for taxable years not covered by the agreement. Except as provided in the agreement, any PARTY may not use such settlement as precedent.

INTERNAL REVENUE SERVICE,
APPEALS

NAME OF TAXPAYER

By: _____

By: _____

NAME

NAME

Appeals Team Manager

TITLE

Date: _____

Date: _____

Exhibit 3:

Model Mediation Participants List

Case Name: _____

Submitted By: _____

Date: _____

Please list below *all* participants attending the mediation, including witnesses, consultants, and attorneys. This form must be sent to the other PARTY and to the mediator(s) no later than two weeks before the mediation session. Insert an **asterisk (*)** before the name of the person who has decision-making authority at the mediation session:

NAME

***POSITION OR
AFFILIATION***

ADDRESS

***TELEPHONE &
FAX NUMBER***

Exhibit 4:

Model Mediator’s Report

The parties below agreed to mediate their dispute and attended a mediation session on **MONTH DAY, YEAR** in an attempt to settle the following issue(s):

ISSUE:

SETTLEMENT: Yes
 No
 Partial

ISSUE:

SETTLEMENT: Yes
 No
 Partial

Settlement documents will be prepared under established Appeals procedures.

DATED this _____ day of _____

/s/ Mediator

/s/ Party

/s/ Party