



Large Business & International Examination Process

The Large Business & International (LB&I) Examination Process provides an organizational approach for conducting professional examinations from the first contact with the taxpayer through the final stages of issue resolution. Our compliance program takes a strategic approach to effective tax administration. Not all examinations are the same in scope, size, and complexity; therefore, portions of this publication may be more applicable to some cases than others. One example is specific guidance in our Internal Revenue Manual for taxpayers who interact with our Withholding Exchange and International Individual Compliance (WEIIC) operation.

The LB&I examination process will be discussed at the initial engagement so that both the taxpayer and LB&I have a clear understanding of the process and expectations. The examination can be efficient if the examination team and the taxpayer work together in a spirit of cooperation, responsiveness, and transparency. There is a greater likelihood that the taxpayer and LB&I will benefit in terms of resource utilization and tax certainty when the parties have open and meaningful discussions of the issues throughout the examination process.

LB&I Exam Team

- Work transparently in a collaborative manner with the taxpayer to understand their business and share the issues that have been selected for examination.
- Engage the taxpayer in the development of the audit steps and potential timeline appropriate for the issues selected in the examination plan; provide a final copy to the taxpayer.
- Follow the IDR procedures by:
 1. Discussing the Information Document Request(s) (IDRs) with the taxpayer before issuing to ensure that requests identify the issue and are properly focused.
 2. Timely reviewing IDR responses and providing feedback to taxpayers regarding the adequacy of their response.
 3. Following the mandatory LB&I IDR enforcement process (unless an exception applies) if complete responses are not received by the agreed date.
- Keep the taxpayer informed of the status of each issue on a regular basis.
- Provide written documentation of all relevant facts, seek taxpayer acknowledgement, and if the issue is unagreed, appropriately document all disputed facts.
- Apply the law to the facts in a fair and impartial manner.
- Consider the applicability of penalties.
- Prepare well-developed Notices of Proposed Adjustment, Forms 5701/Forms 886-A.
- Resolve issues at the earliest appropriate point using the appropriate issue resolution tool.

Taxpayer (or their Representatives)

- Work transparently with the exam team by providing a thorough overview of business activities, operational structure, accounting systems, and a global tax organizational chart.
- Identify personnel for each issue with sufficient knowledge who can provide input when establishing initial audit steps, timelines, and actively assist in the development of the issues selected by the exam team.
- Follow the IDR procedures by:
 1. Reviewing and discussing IDRs with the issue team before issuance to ensure that they are properly focused and identify the issue.
 2. Working with the issue team to reach a reasonable response date for each IDR.
 3. Provide timely written responses to all IDRs issued, including work papers and supporting documents as requested.
- Collaborate with the issue team to arrive at an acknowledgment of the facts for unagreed issues; provide support for any additional or disputed facts.
- To foster early resolution, respond timely to each Form 5701 by providing a written legal position for issues in dispute.
- Resolve issues at earliest appropriate point using an issue resolution tool.

Expectations with Respect to Claims for Refund

To deploy our resources efficiently, all claims for refund must be brought to the attention of the exam team as soon as the taxpayer becomes aware of any potential claim for refund. LB&I will only accept informal claims that are provided to the exam team within 30 calendar days of the opening conference. LB&I will not require a formal claim if an issue has been selected for examination, unless IRS published guidance specifically requires formal claims to be filed for an issue (e.g., Notice 2008-39 for research credit claims). After the 30-day window, claims for refund for issues not selected for examination must be filed using Form 1120X, Form 1040X or Form 843 as required by Treasury Regulations. In limited circumstances, exceptions to the formal claims process may be granted by LB&I senior management. Netting of claims does not preclude the requirement for filing a formal claim for refund.

All claims for refund, formal and informal, must meet the standards of Treasury Regulation Section 301.6402-2, which provides that a valid claim must:

- Set forth in detail each ground upon which credit or refund is claimed
- Present facts sufficient to apprise the IRS of the exact basis for the claim and
- Contain a written declaration that it is made under penalties of perjury

LB&I will discuss deficiencies not meeting the Treasury Regulations and provide the taxpayer an opportunity to correct the deficiencies. LB&I will not act on an incomplete or otherwise invalid claim for refund.

Taxpayers will file a formal claim with the Campus and should concurrently provide a copy of the claim to the LB&I team which is fully documented and factually supported, that may permit LB&I to make a tax determination of the issues on a claim without requiring the use of IDRs. This will allow LB&I to quickly determine whether to accept or examine a claim. Claims will be risk assessed in the same manner as any other audit issue. If an issue on a claim needs to be examined, LB&I and the taxpayer will discuss the potential need for additional resources and extend the statute and examination timeline as necessary.

There are three stages to the LB&I examination process: Planning, Execution and Resolution

PLANNING PHASE

This phase of the examination process determines the scope of the audit. Issues selected for examination should have the broadest impact on compliance regardless of the size or type of entity. Once LB&I determines the issues to be examined, we will work together to establish effective steps to complete the examination in a timely manner. LB&I processes and procedures for conducting an examination will be explained at the opening conference.

Communication

Initial planning discussions lay the groundwork for a mutual exchange of information and understanding that will assist both LB&I and the taxpayer in defining the scope and carrying out the examination process. Working together in a transparent environment will lead to resource savings for both LB&I and the taxpayer. Leveraging technology by transmitting data via a secure messaging application, such as Taxpayer Digital Communication and Secure Email Messaging System, Encrypted Emails, or Electronic Fax can enhance interaction. The exam team will explain to the taxpayer why each issue is being considered. The taxpayer should share their input on how each issue can be effectively examined. Establishing a communication strategy to monitor the progress of the examination provides an excellent opportunity for continued communication and collaboration.

Issue Team Concept

An issue team is comprised of LB&I employees who will work with taxpayer personnel, who are most knowledgeable about a given issue, to ensure the successful development and management of each issue examined.

The size of an issue team will depend upon the complexity of the issue. Each issue team will work with the taxpayer in a transparent manner to develop the examination procedures tailored to the issues selected, in order to establish the relevant facts and ensure that each party's position is fully understood.

Under the LB&I examination process, the case manager will have overall responsibility for the case. Each issue will have a designated manager assigned who will collaborate with the case manager. The issue manager will be a manager of one of the technical team members. The issue manager has oversight over the planning, execution and resolution of the issue. This will include ongoing risk assessment and ensuring coordination with subject matter experts as appropriate. The issue manager will also evaluate the strengths and weaknesses of each side's tax position and seek resolution at the earliest appropriate point.

Examination Plan

At the conclusion of the planning phase, agreements made with the taxpayer will be jointly reviewed and incorporated into the examination plan. The examination plan will be issue focused and also contain the following: the issues selected, audit steps, timeline(s), and communication agreements. The plan is intended to be nimble and agile and when warranted adjusted throughout the examination. Both parties should make a clear commitment of resources to be provided to achieve the established case and issue timelines.

EXECUTION PHASE

Stages of issue development include determining the facts, applying the law to those facts, and understanding the various tax implications of the issue. The parties will conduct interactive discussions, using the IDR process to develop the facts. Every effort should be made to resolve any factual differences. If required, Notices of Proposed Adjustment will be provided throughout this phase to present the government's legal position to the taxpayer. The taxpayer's response to these proposals will allow LB&I to gain an understanding of the taxpayer's position to facilitate issue resolution at the earliest appropriate point.

Issue Development Process

Proper issue development means that all relevant facts are identified, documented and that legal positions are clearly presented. The issue team and the taxpayer should actively discuss their factual differences, legal disputes and other areas of disagreement. The issue team will make timely use of all available tools to resolve issues at the earliest appropriate point and will consider appropriate issue resolution strategies throughout the examination. During issue development, the issue team may consult counsel or other subject matter experts.

A meaningful discussion between the IRS and taxpayers in advance of issuing an IDR will result in a more effective process. After having an initial discussion on the IDR, secure file sharing, secure e-mail and e-fax can be used to make information sharing more efficient. The issue team and the taxpayer will establish reasonable timeframes with firm response dates. Upon receipt of the taxpayer's IDR response, the issue team will review the response and inform the taxpayer, by the date committed, whether the response is complete. Incomplete or late responses to the IDR will require the team to initiate standard enforcement procedures consisting of a Delinquency Notice, a Pre-Summons Letter, and/ or a Summons. IDR enforcement procedures are not required if the examination involves a listed transaction, transaction of interest, or other issues as defined and referenced in IRM 4.46.4.

Penalties

The LB&I issue team must consider the applicability of penalties. The issue team member asserting the penalty must comply with IRC 6751(b) prior to issuing any written communication of penalties that offers the taxpayer an opportunity to sign an agreement or consent to proposal or assessment of the penalty. As with any other issue, the LB&I issue team will provide the taxpayer an opportunity to respond to the assertion of penalties based on facts and law.

Written Acknowledgment of the Facts for Unagreed Issues

LB&I issue team members are responsible for documenting all the facts that they have secured so that they can accurately apply the law. For potentially unagreed issues, the issue team members are expected to seek the taxpayer's acknowledgment on the facts, resolve any factual differences and/or document factual disputes. The issue manager should ensure that all relevant facts, including additional and/or disputed facts, are appropriately considered before a Notice of Proposed Adjustment is issued. If a case is closed to Appeals and the taxpayer provides relevant new information that requires investigation or additional analysis, the case will be returned to the LB&I issue team's jurisdiction for consideration.

RESOLUTION PHASE

The goal of the resolution phase is to reach agreement, if possible, on the tax treatment of each issue examined and if necessary, issue a Revenue Agent's Report (RAR) to the taxpayer. Starting with the development of the issue and continuing through resolution, early and frequent discussions are crucial for a complete understanding of the respective merits of an issue.

Issue Resolution

Many tools are available to resolve issues. These tools, or strategies, are designed to reduce examination time, save resources, and lessen the burden on both parties. LB&I encourages the use of all appropriate issue resolution strategies but requires that the issue team consider Fast Track Settlement for all unagreed issues. Fast Track is a mediated effort where the taxpayer, the issue team and Appeals must agree to participate and agree to a mutual resolution. Other issue resolution strategies may be appropriate depending on the type and timing of the particular issue.

Confirming the facts during execution phase enables the issue team and the taxpayer to work productively using appropriate issue resolution strategies. In all situations, the taxpayer has the primary responsibility to ensure that all facts and legal arguments are provided during the examination process so that the issue team can adequately consider them. The issue team is responsible for ensuring that it documents the facts and arguments, adequately considers them, and presents them objectively to Appeals if it cannot resolve the issue with the taxpayer. To adequately consider both sides of an issue, all cases received in Appeals must have at least 365 days remaining on the statute of limitations. If the taxpayer raises a new issue or submits relevant new information which merits investigation or additional analysis during the Appeals process, the case will be returned to the LB&I issue team's jurisdiction for consideration. If the taxpayer presents a relevant new theory or legal argument during the Appeals process, Appeals will engage the LB&I issue team for their review and comment but will retain jurisdiction of the case.

Exit Strategy

The goal of the resolution phase is to resolve tax controversies so that both the taxpayer and LB&I can achieve tax certainty. Both parties must engage in good faith discussions to do so. In many instances, at the conclusion of this phase, taxpayers and LB&I will perform a joint critique of the exam process and will recommend improvements. Among the items the parties should address is the future tax treatment of agreed issues to eliminate carryover and recurring adjustments.

SUMMARY

LB&I and taxpayers share an interest in obtaining tax certainty by completing examinations in a fair, efficient, and timely manner. The tax returns that LB&I examines are among the most complex returns the IRS receives. This publication provides an overview of the process to execute a professional examination from the first contact through the final stages of issue resolution.

**Additional taxpayer information resources are available on the IRS Website,
www.irs.gov and IRM 4.46 LB&I Examination Process.**