



Deputy National Taxpayer Advocate

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June 27, 2007

MEMORANDUM FOR ALL TAXPAYER ADVOCATE SERVICE  
EMPLOYEES

FROM: Melissa R. Snell /s/ *Melissa R. Snell*  
Deputy National Taxpayer Advocate

SUBJECT: Interim Guidance on USDA Black Farmers Settlement Claims or  
Pigford Cases

The purpose of this memo is to reissue interim guidance dated May 25, 2006, required for guidance on the identification and handling of cases often referred to as "Pigford" cases. Attached are the original memorandum and attachment.

Please note on page 6, #10 of the original memorandum, the telephone number for Ms. Milta Ortiz, the liaison for USDA cases is (215) 516-7006. Please ensure that this information is distributed to all affected employees within your organization.

**Effect on Other Documents:** This guidance will be incorporated into IRM 13.1.10 by June 30, 2008.

Attachments (2)

**Attachment 1****Deputy National Taxpayer Advocate****MEMORANDUM FOR ALL TAXPAYER ADVOCATE SERVICE EMPLOYEES**

**FROM:** Christopher Wagner */s/* 5/25/06  
Deputy National Taxpayer Advocate

**SUBJECT:** USDA Black Farmers Settlement Claims or Pigford Cases

This memorandum is issued to serve as a refresher to training given to TAS employees at our August 2005 Symposium and to provide further guidance on the identification and handling of cases often referred to as "Pigford" cases. As you may recall, these cases are known by many names: *USDA Black Farmers Settlement Claims, USDA Settlement, Black or African-American Farmer Settlement, Pigford v. Veneman or Glickman, Farmer Debt Forgiveness, or Pigford cases*. These cases, however, should not be confused with the African-American Reparations or Reparations for Slavery Credit scams.

As background, these cases arose as a result of a nationwide class action suit in which the plaintiffs, many of whom were African-American farmers, alleged race-based discrimination on the part of the United States Department of Agriculture (USDA). The plaintiffs prevailed, and many were awarded \$50,000. The USDA also made a \$12,500 tax payment on behalf of each plaintiff, which was sent directly to the IRS. The tax problems of these claimant/taxpayers are rooted in the tax consequences of the \$50,000 cash award to the plaintiff and the \$12,500 estimated tax payment on behalf of the plaintiff to the IRS, and how these items were reported to the IRS.

In order to properly address the tax issues of these taxpayers, case advocates must be able to identify the Pigford cases from among the many cases which are in TAS inventories in each office. Knowledge of the particular facts and issues related to this case will lead to appropriate probing questions. Issues that are often seen in the Pigford cases are listed below:

## **Potential Tax Issues of Pigford Claimants**

*Pigford taxpayers* face a variety of tax issues. Be aware that some of the issues listed below may be a part of your Pigford case:

- Tax consequences of the \$50,000 cash payment
- A \$12,500 estimated tax payment directly deposited into the taxpayer's IRS account is noted on IDRS
- Payment of the \$50,000 award and the \$12,500 estimated tax payment occurred in different years
- Debt forgiveness
- Penalties for late payments
- Estate tax issues
- The farming status of the taxpayer in the year of receipt of the cash award
- Self-employment tax
- Delayed receipts of Form 1099-Misc and potentially incorrect tax years reported on the Forms 1099-Misc for tax payments
- Misunderstanding of the tax consequences of the \$50,000 cash award and failure to report various award items, such as debt forgiveness, in income by taxpayer
- Tax payments incorrectly reported as withholding
- Misapplication of tax payments by the IRS to taxpayers' accounts
- Expired Refund Statute Expiration Date (RSED)
- Substantive tax law issues specific to farmers (such as income averaging, exceptions to the discharge of indebtedness rules, special net operating loss (NOL) periods, etc).

Many of these cases have been handled by the Case Processing Unit at Headquarters over the past five months. From the date of this memorandum, however, all cases which are received in Headquarters will be sent to local offices.

Attached to this memorandum are questions and answers that will provide guidance on how these cases can be identified and what issues may exist. The answers to these questions presume that the taxpayer uses the cash method of accounting.

If you have any questions regarding this subject matter, or for the tax treatment of payments to accrual method taxpayers, please contact Esther Thomas, Supervisory Analyst, Technical Analysis and Guidance, Management, Accountability, Policy and Strategy at (202) 622-6830, or send your inquiries to [Esther.J.Thomas@irs.gov](mailto:Esther.J.Thomas@irs.gov), and Laura Baek, Attorney Advisor, at (202) 622-8368, or [Laura.Baek@irs.gov](mailto:Laura.Baek@irs.gov).

[Attachment](#)

## Attachment 2

### Guidelines for Case Processing

#### 1. How does a case advocate recognize a USDA Black Farmer Settlement Claim case?

A case advocate may receive a call directly from the taxpayer, who is the claimant, the surviving spouse, or the executor/executrix of the decedent's estate. The case advocate may also receive cases through a taxpayer's power of attorney, or through tax professionals in Low Income Tax Clinics (LITCs). The caller may identify the case by various terms, such as USDA case, Pigford case, USDA Farmer Settlement Claims, USDA \$50,000 cash award, USDA \$12,500 tax payment, Black Farmers' case, or by some other designation.

#### 2. Once a case advocate identifies the taxpayer's case as a USDA Black Farmer Settlement Claim case, what information must the advocate obtain from the taxpayer?

The case advocate should secure supporting documentation from the taxpayer to verify the taxpayer's claim. Examples of such documents are the USDA letter, a Form 1099-Misc, and copies of filed tax returns. However, if the taxpayer does not have any documentation, the case advocate can still obtain information by other means. The USDA TAS Liaison may be able to provide assistance (see question 10). Also, if the tax payment has been received by the IRS, the case advocate can locate the payment and the USDA claim number by using Command Code IRPTR (Information Returns Master File Transcript Request).

#### 3. If the taxpayer did not report the \$50,000 cash award and/or the \$12,500 estimated tax payment which USDA directly sent to the IRS on behalf of the taxpayer, what should the case advocate advise the taxpayer to do?

If the taxpayer did not file returns for the tax years in which the taxpayer received the award or the IRS received the tax payment, the case advocate should advise the taxpayer to file tax returns for those years. If the taxpayer timely filed his tax returns, the case advocate should advise the taxpayer to file amended returns.

In both situations, the case advocate must ensure that the taxpayer reports the \$50,000 award as income in the year that the taxpayer received the award and the \$12,500 as an estimated tax payment for the year that the taxpayer received the award. In addition, the taxpayer must report the same \$12,500 estimated tax payment as income, in the subsequent year.

To avoid unnecessary delay in processing these amended tax returns, the taxpayer should be advised to send the returns to the case advocate. The case advocate will then forward the tax returns via the OAR process to the TAS Liaison in (W&I) Account Management for processing.

**4. If the taxpayer was active in his farming business during the tax years in which the award was received, what should the case advocate inform the taxpayer to do?**

In this situation, the taxpayer should be advised to do the following:

- (1) For the year in which the \$50,000 was received, the taxpayer should report this amount as "Other Income" on Schedule F, *Farming Income and Expenses*. Also, the taxpayer should annotate "USDA Settlement" in the margin of Schedule F. The \$12,500 estimated tax payment must be reported as "estimated tax payments" on Form 1040.

In addition, the taxpayer should prepare Schedule SE, *Self-Employment Tax*, to determine whether he is liable for the self-employment tax; and

- (2) For the subsequent year, the taxpayer should report the \$12,500 estimated tax payment as "Other Income", with "USDA Settlement" annotated in the margin on Form Schedule F, *Farming Income and Expenses*.

Also, the taxpayer should prepare Schedule SE, *Self-Employment Tax*, to determine whether he is liable for the self-employment tax.

**5. If the taxpayer was not active in his farming business during the tax year in which the award was issued, what should the case advocate advise the taxpayer to do?**

Under this circumstance, the taxpayer should do the following:

- (1) For the year in which the \$50,000 cash award was received, the taxpayer should report this amount as "Other Income," and the \$12,500 as "estimated tax payments", on Form 1040. The taxpayer should annotate "USDA Settlement" in the margin of the form, and
- (2) For the subsequent year, the taxpayer should report the \$12,500 on Form 1040 under "Other Income," with "USDA Settlement" annotated in the margin.

Note: The taxpayer who was not active in farming business for the tax year would not be liable for self-employment tax.

- 6. If the class member received the \$50,000 cash award while he was alive but died shortly afterwards before year's end, what should the executor do on behalf of the deceased taxpayer to meet the filing requirements?**

The decedent's date of death is the critical factor in determining the manner in which the tax returns should be filed. In this situation, all income and expenses on or before the decedent's date of death should be reported on the decedent's final Federal income tax return. However, all income and expenses incurred after the decedent's date of death should be reported on Form 1041, U.S. Income Tax Return for Estates and Trusts.

7. USDA distributed the \$50,000 cash award to the taxpayer, but it was not received until after the taxpayer's death in that year. The taxpayer died intestate (without a will), and under state law, there is a single heir, who is also the administrator of the taxpayer's estate. USDA issued a Form 1099-Misc to the taxpayer, showing the distribution of the \$50,000 cash award, and sent the \$12,500 estimated tax payment directly to the IRS on behalf of the deceased taxpayer in the following year. The IRS credited the \$12,500 to the account of the taxpayer's estate. Both the cash award and the estimated tax payment were included in the taxpayer's gross estate (and on any filed Form 706, U.S. Estate Tax Return). However, the heir did not report the \$50,000 on his tax return (Form 1040) as income. What should the case advocate advise the heir to do in this situation? The case advocate should advise the heir to either file an amended return (if the heir has already filed a return) or file an original return (if the heir has not yet filed a return), reporting the \$50,000 as "Other Income," and the \$12,500 as an estimated tax payment. The IRS will transfer the \$12,500 from the estate's account to the heir's account. The estate should not include the \$50,000 cash award or the \$12,500 estimated tax payment on the estate's income tax return (Form 1041). The heir is not liable for any self-employment tax because of either payment. The heir must report the \$12,500 as income on his income tax return for the following year. If any estate tax was due, the heir may be entitled to an income tax deduction under Internal Revenue Code (IRC) section 691(c). If this issue arises, further guidance may be necessary.

Assuming the same facts, but multiple heirs, each heir would report a pro rata share of the cash payment and estimated tax payment on the heirs' income tax return as described above. To avoid confusion, the administrator of the estate should be advised to provide documentation to each recipient on their pro rata share of the cash award, which would then be attached to each heir's tax return. The IRS will then transfer a pro rata share of the estimated tax payments to each heir's account.

- 8. USDA distributed the \$50,000 cash award in the name of the taxpayer, but it was not received until after the taxpayer's death in that year. The USDA sent the \$12,500 estimated tax payment directly to the IRS on behalf of the taxpayer in the following year. The taxpayer's will names**

**several individual beneficiaries. The estate did not make any distributions in the year that the \$50,000 cash award was received or the following year, other than distributions of specific property left to a particular person. USDA issued a Form 1099-MISC to the taxpayer for the \$50,000 cash award. The IRS credited the \$12,500 estimated tax payment to the account of the taxpayer's estate. The \$62,500 was included in the taxpayer's gross estate (and on any filed Form 706). No one reported the \$50,000 cash award on any income tax return for the year in which the \$50,000 was awarded. How should the case advocate advise the executor of the taxpayer's estate?**

The case advocate should advise the executor to file either an amended income tax return (Form 1041) for the estate (if the executor has already filed a return for the year in which the \$50,000 cash was awarded) or an original return (the executor has not yet filed the return), reporting the \$50,000 as "Other Income," with the \$12,500 as an estimated tax payment. The estate must report the \$12,500 estimated tax payment as income on its return in the following year. If any estate tax was due because of the taxpayer's death, the estate may be entitled to an income tax deduction under IRC section 691(c). If this issue arises, further guidance may be necessary. None of the individual beneficiaries named in the will is required to report any portion of the \$50,000 cash award or the \$12,500 estimated tax payment on their individual income tax returns for these years.

- 9. The facts are the same as in #8, except that the estate makes cash distributions to the beneficiaries pursuant to the taxpayer's will in the year of the \$50,000 cash award, the following year, or both.**

The case advocate should advise the executor to file amended or original Forms 1041, as in #8 above. The returns will have to include a calculation of the estate's distributable net income (DNI) (see Schedule B of Form 1041) to determine both the estate's income distribution deduction and the amount of income treated as distributed to the beneficiaries and includible on their individual returns, rather than on the estate's return. The executor will have to issue Schedules K-1 to the beneficiaries to inform them of their individual amount of includible income. The amounts treated as distributed retain their character as "income in respect of a decedent" (IRD), so that the beneficiaries will be able to claim an income tax deduction under IRC section 691(c) as in #7 and #8 above, for their portion of the IRD.

- 10. Where should the case advocates send the OARs for these cases?**

The Wage and Investment's Accounts Management at the Philadelphia Campus (PSC) is the processing center for these cases. The case advocates should send the OARs with pertinent taxpayer information, including all returns, to the W&I TAS Liaison at PSC. As of this writing, Ms. Milta Ortiz at (215) 716-7006 is the liaison for USDA cases. Additionally, Ms. Rosemary Wallace, management and program analyst, will answer questions and

provide assistance with these cases. Her telephone number is (215) 516-7606.

**11. Is there a Special Case Code on TAMIS that keeps track of these cases?**

Yes. The case advocate must input "DA" in the Special Case Code (SCC) field on Taxpayer Screen 5 of 5 on TAMIS for tracking purposes, in order to identify the case as a USDA Farmer Settlement claim. This SCC "DA" stands for Department of Agriculture.

**12. Must a case advocate send the taxpayer a closing letter upon completion of case processing?**

Yes. After verifying that all transactions on the taxpayer's account are completed and that the taxpayer received the refund check, if applicable, the case advocate should prepare a closing letter (see Letter 1285, Rev. 2004-09) detailing the adjustments that have been made to the taxpayer's account.