

*ADMINISTRATIVE APPEALS
WITHIN THE
INTERNAL REVENUE SERVICE*

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March 5, 2010

I. IRS Appeals Office: Overview.

- A.** Since 1927, U.S. taxpayers have been entitled to appeal disputes involving the application of the internal revenue laws, including claims that a taxpayer owes an additional amount of tax, to the IRS Office of Appeals (“Appeals”).
- B.** In general terms, Appeals operates independently from the other IRS functions, such as IRS Examination (“Examination”), and has the “exclusive and final authority” within the IRS to determine liability for most taxes.

IRS Appeals Office: Overview.

1. Appeals' authority is *exclusive* because it is independent of the functions from whose determinations taxpayers appeal, for example, the Examination function.
 2. Appeals' authority is *final* because there is no further appeal from an Appeals proceeding to any other office within the IRS.
- C. As a result, Appeals serves as the administrative appellate forum of last resort within the IRS, with the objective of settling tax controversies without litigation on a basis which is fair and impartial to both the government and the taxpayer.

IRS Appeals Office: Overview.

- D.** In carrying out this duty, Appeals officers hold conferences with taxpayers and negotiate settlements. The next step for a taxpayer who does not settle a case in Appeals is litigation.
- E.** The Appeals function is highly successful.
 - 1.** In tens of thousands of cases each year, Appeals officers negotiate and, in about 85 to 90 percent of the cases considered, settle with taxpayers. If this high rate of settlement were not achieved, the number of unagreed cases would overwhelm the courts.
 - 2.** Additionally, the ability to resolve issues with the IRS short of having to resort to litigation instills a measure of public confidence in the ability of the IRS to fairly administer the internal revenue laws, which furthers the goal of voluntary compliance by the taxpaying public.

II. Appeals Process.

- A.** To obtain an Appeals conference, the taxpayer must generally file a written protest within 30 days of receipt of the report by the examining agent, which is called the “30-day letter.” No written protest is required if the appeal is from an office or correspondence audit.
- B.** Once a timely protest has been received, an Appeals conference is scheduled. At the conference, the taxpayer meets with an Appeals officer (or in large cases, a team of Appeals officers led by an Appeals Team Leader) who has reviewed the file and conducts settlement negotiations on behalf of the IRS.

Appeals Process.

C. Negotiating Process.

- 1.** The IRS has no authority to make the first settlement offer so the taxpayer must make an offer to the Appeals officer.
- 2.** The Appeals officers resolve cases based on the “hazards of litigation,” but they are not permitted to extract or concede nuisance value settlements.

Appeals Process.

D. The Concept of “Hazards of Litigation” is the Basis for Settlements.

- 1.** Appeals Officers must take account of the probable result in litigation for each issue (i.e., “hazards of litigation”).
- 2.** Accordingly, Appeals officers commonly concede issues, in whole or in part, for which the taxpayer’s position is contrary to published revenue rulings, regulations, or the IRS’s litigating positions where the applicable case law supports the taxpayer.

Appeals Process.

3. Appeals Officers may make mutual concession settlements, or “trade” issues, if there is substantial strength to the position of both parties considering the “hazards of litigation.”
4. Appeals Officers also may make so-called “split issue” settlements, compromising issues on which either the taxpayer or the government would prevail in full were the matter litigated.

Appeals Process.

- E.** By statute, Appeals officers are restricted from engaging in certain “ex parte” communications with other IRS employees.
 - 1.** This means they may not discuss the strengths and weaknesses of the IRS’s or the taxpayer’s positions on an issue in the absence of the taxpayer or his or her representative.
 - 2.** An Appeals officer is permitted to ask questions that involve ministerial, administrative or procedural matters outside the presence of the taxpayer or his or her representative.

Appeals Process.

F. Cases Involving Large Corporate Taxpayers.

- 1.** In cases involving large corporate taxpayers, the Appeals officer generally invites personnel from the Large and Mid-Size Business (LMSB) Operating Division to a pre-conference meeting at which Examination personnel may present their position on the audit adjustments that they made.
- 2.** The taxpayer is invited to attend the meeting as an observer, in order to satisfy the ex parte rules.

Appeals Process.

- G.** Following the Appeals conference, the Appeals officer will prepare a memorandum recommending a settlement or requesting further action, including the issuance of a Statutory Notice of Deficiency. An Appeals officer may increase any proposed deficiencies by Examination.

Appeals Process.

H. In conjunction with the Examination function of the IRS, Appeals has also developed a variety of alternative dispute resolution programs that provide taxpayers with other options, outside the traditional examination and appeals route, to resolving disputes with the IRS. Key alternative dispute resolution programs utilized by Appeals are the following:

Appeals Process.

1. Competent Authority (Rev. Proc. 2006-54)
2. Fast Track Mediation (Rev. Proc. 2003-41)
3. Post-Appeals Mediation (Rev. Proc. 2009-44)
4. Post-Appeals Arbitration (Announcement 2008-111)
5. Tax Court Arbitration/Mediation (Tax Court Rule 124; IRM 35.5.5)

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