What's New in IRS Appeals and a Review of Appeals Procedures

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What's New in IRS Appeals

• AJAC (2012-2014)
  • “The AJAC Project is reinforcing Appeals’
    • quasi-judicial approach to the way it handles cases,
    • with the goal of enhancing internal and external customer perceptions of a fair, impartial and independent Office of Appeals.”

• Policy changes resulting from AJAC (per 2014 IRS Forum videos)
  • Exam
  • Collections

• Ex-parte communication (2012)
Policy changes in Appeals – Exam
from IRS 2014 Tax Forum

• For taxpayer/rep:
  • No new evidence.
  • No new legal arguments.
  • No withholding info in dealing with Exam. Don't wait for Appeals
  • Fully developed case.
    • Factual hazards if not.
  • Provide all relevant and/or requested information to the auditor (or the revenue officer for collections).
  • Practitioners can lose credibility if they do not.
Key Examination Changes:

Per fact sheet

• Appeals will attempt to settle a case on factual hazards when not fully developed by Examination (i.e., cases will not be sent back to Examination for further development).

• Appeals will not raise new issues or reopen issues on which the taxpayer and Examination have reached an agreement, with limited exceptions.

• Most new case receipts in Appeals must have at least one year remaining on the statute of limitations.

• Appeals will return non-docketed cases to Examination when a taxpayer submits new information or evidence or raises a new issue that merits investigation or additional analysis. (*TP/REP must be timely notified and results communicated to them, per Rev Proc 2012-18.*)

• For most work streams, Appeals will engage Examination for review and comment when a taxpayer raises a relevant new theory or alternative legal argument.

• The Examination interim guidance for 2nd phase of AJAC Project can be found [here](#) AP-08-0714-0004.
  • Changes for docketed cases are in process.
Policy changes in Appeals – Collections

from IRS 2014 Tax Forum

• 2014:
  • CDP revised procedures:
    • Collection Information Statement (CIS).
    • Offers in Compromise.
  • OIC revised procedures.

• 2013:
  • CAP.

• 2012:
  • Trust fund recovery penalties for Exam and Collections.
CDP revised procedures

• Ask Compliance to verify a CIS, if needed;
• Ask Compliance to make the initial decision for all offers submitted during a CDP proceeding;
• Return the offer to Compliance for final decision if CDP is withdrawn; and
• Accept as verified any financial statement Compliance reviewed and is fewer than 12 months old.

• From IRS Forum 2014 for Collections sourced cases (Glossary)
OIC revised procedures

• Identify the disputed issues;
• Ask the taxpayer to substantiate his claim;
• Identify certain compliance issues that must be remedied;
• Refer new information to Compliance for review, if needed; and
• Appeals will sustain a rejection only under the same basis for which the offer was rejected.

• From IRS Forum 2014 for Collections sourced cases (Glossary)
Key Collection Changes:

Per fact sheet

- Appeals will not take investigative actions with respect to financial information provided by taxpayers. Financial information needing investigation or verification will be sent to Collection.
- Appeals will only consider assets that were documented by Collection or introduced by the taxpayer.
- Appeals will accept as “verified” those financial statements reviewed by Collection within the previous 12 months.
- Appeals will not make recommendations to file Notices of Federal Tax Lien.
- All Offers in Compromise (OIC) submitted in Collection Due Process (CDP) or Equivalent Hearings will be reviewed by Collection for a preliminary recommendation or acceptance.
- In non-CDP OIC cases, Appeals will only determine the acceptability of the OIC and will not offer other collection alternatives.
- The Collection interim guidance for 2nd phase of AJAC Project can be found here (AP-08-0714-0005) for:
  - CDP, OIC, and Trust Fund Recovery penalty.
AJAC (2012-2014)

• Interim guidance memoranda over the implementation of the Appeals Judicial Approach and Culture (AJAC) Project:
  • **AP-08-0713-03**, dated July 18, 2013 (1st phase)
    • “The goal of this project is to promote a quasi-judicial approach in how the Appeals office handles its cases. It is part of an effort to improve internal and external customer perceptions of a fair, impartial, and independent Appeals office.”
  • **AP-08-0614-0003**, dated June 16, 2014. ([Incorporated in IRM Part 8.23.3](#))
    • Evaluation of Offers in Compromise.
  • **AP-08-0714-0004** dated July 2, 2014.
    • Examination and General Matters - Phase 2.
  • **AP-08-0714-0005** dated July 10, 2014.
    • Collection - Phase 2.
Ex-parte communication (2012)

• [Latin, On one side only.] Done by, for, or on the application of one party alone.

• Communications between Appeals and others IRS functions without the opportunity for Taxpayer or Rep to participate in the communication with the part of the IRS that originated and worked the case, unless waived. (IRM 8.1.10)
  • Appears to compromise independence.

• Set up by RRA PL # 105 – 206 Sec. 1001 (a)(4)
  • “ensure an independent appeals function within the Internal Revenue Service, including the prohibition in the plan of ex parte communications between appeals officers and other Internal Revenue Service employees to the extent that such communications appear to compromise the independence of the appeals officers.”
Ex-parte communication (2012)

• Revenue Procedure 2000 – 43.
• In Roberts v. the U.S., the Eighth Circuit in 2004 found that the IRS violated the ex-parte communication rule.
  • California Tax Lawyer article in 2007 discussed Roberts and several other cases.
• Revenue Procedure 2012 – 18
  • Guiding principles - tax administration and independence.
  • There are exceptions to ex-parte communications. E.g., rules don’t apply to:
    • Ministerial, administrative, or procedural matters;
    • Communications between Appeals and Counsel in docketed Tax Court cases, or with CI generally, or with TAS, or with D of J.
  • Special rules for CDP cases and ADR proceedings.
  • When there are breaches Appeals needs to notify the Taxpayer/Rep and give them the opportunity to respond to what the appropriate remedy would be.
    • One of the remedies is reassignment of the case.
    • But Appeals has sole discretion.
    • Rules do not create substantive rights affecting the taxpayer’s liability.
  • KPMG article in 2012 (Business as usual!)
A Review of Office of Appeals

• What is Appeals and what is their Mission?
  • “The Appeals Mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.”

• Independent review that is fair and impartial, fresh, objective, neutral - in fact and appearance.
• Administrative dispute resolution.

• Appeals acts as a filter to settle cases or try them.

• Appeals is not subject to judicial rules of evidence or procedure.

• Some history:
  • Appeals formed in 1927;
  • 1998 IRS Restructuring and Reform Act;
  • Recent policy or procedure changes.
IRS Appeals process

• T.P. received a letter that says their case qualifies for review by Appeals and they don't agree and don't sign the form IRS sent them.

• Request Appeals conference for either exam or collections.

• Letter from Appeals after they had been assigned your case.
  • The letter has the contact information.
  • Call them and schedule a conference by phone or mail or face-to-face.
  • How do you wish to resolve your case?
IRS Appeals Process (continued)

• Appeals reviews their case file for facts and requests further information if not provided to Exam.
  • However consider the new rules that they may forward it back to Exam.

• After considering the fact they apply the law and procedures. (F)IRAC:
  • facts
  • issue
  • rules
  • application
  • conclusion

• They consider the outcome if you go to court and discuss hazards of litigation with you.

• Try to find a mutually acceptable resolution.
IRS Appeals Process (continued)

• Appeals team manager approves, or returns if not approved.

• **Agreement forms** to sign:
  • Settlement ([Form 870](#) or Form 870-AD); or
  • Closing agreements ([Form 866](#) or [Form 906](#) or combined);
  • If a Tax Court docketed case there is a Decision Doc to be signed.

• If you disagree they discuss further options and how to pursue.
  • Judicial review.
  • See [Rule of Evidence 408](#) regarding compromise offers and negotiations.

• ADRs in addition to traditional appeals process.
Some question words (in no particular order)

- when
- where
- why
- who
- what
- how
- how long
- how much
- which
Why to appeal

• Appeal is a taxpayer's right

• If you could not resolve in Exam or Collections:
  • try to resolve at the lowest possible level;
  • ask to speak to the person's manager before escalating.
What to appeal – **IRM 8.1.3.1**

- Includes, but not limited to:
  - Examinations / Audits
  - CP2000 / Under-reporter mismatches - [IRM 4.19.3.20.1.8](#)
  - Collection decisions
  - Audit Reconsideration
  - Determination for innocent spouse
  - Trust Fund Recover Penalty
  - FBAR penalties
  - Penalties

- No frivolous grounds!

- Also, see [IRM 8.20.5.3.1.3](#), Cases Not Accepted by Appeals.
## IRS Data Book Table 21. Appeals Workload, by Type of Case, Fiscal Year 2014

<table>
<thead>
<tr>
<th>Type of case</th>
<th>Cases received</th>
<th>Cases closed [1]</th>
<th>Cases pending September 30, 2014</th>
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<tbody>
<tr>
<td>Total cases [2]</td>
<td>113,608</td>
<td>115,472</td>
<td>57,372</td>
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<tr>
<td>Collection Due Process [3]</td>
<td>40,355</td>
<td>41,266</td>
<td>20,545</td>
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<tr>
<td>Penalty Appeals [5]</td>
<td>10,213</td>
<td>9,140</td>
<td>3,688</td>
</tr>
<tr>
<td>Offers in Compromise [6]</td>
<td>9,231</td>
<td>8,987</td>
<td>4,442</td>
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<tr>
<td>Innocent Spouse [7]</td>
<td>3,012</td>
<td>4,018</td>
<td>1,714</td>
</tr>
<tr>
<td>Industry cases [8]</td>
<td>1,469</td>
<td>1,843</td>
<td>1,743</td>
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<tr>
<td>Coordinated Industry cases [9]</td>
<td>129</td>
<td>165</td>
<td>372</td>
</tr>
<tr>
<td>Other [10]</td>
<td>12,280</td>
<td>12,787</td>
<td>1,845</td>
</tr>
</tbody>
</table>
How to appeal

• Most importantly read the notices or letters the IRS sends!

• IRS website for Appeals.
• IRS pubs and forms.
• IRM, Part 8.
• PPC and Checkpoint books, and other treatises.
What to submit to Appeals if you have appeal rights

- A formal written protest letter. Be specific.
- An informal appeal using Form 12203 or a brief written statement for small cases $25k or less in taxes and penalties.
- Consider misinterpretation of law, or misunderstanding of facts, or if the facts are incorrect.
  - Need evidence and records to support your position.
- Consider if IRS is taking inappropriate collection action.
  - Form 12153 for lien and levy notices.
  - Form 9423 for Liens, Levies, Seizures and Installment Agreements.
- File a written protest for appeal of other collection actions, such as:
  - Rejected Offer in Compromise;
  - Proposed Trust Fund Recovery Penalty;
  - Denied Trust Fund Recovery Penalty Claim;
  - Denied request to abate penalties.
When to appeal

• First look at the IRS notice or letter e.g. a 30 day letter.
• Remember the clock keeps on ticking.

• Also see the Checkpoint IRS Response Library;
  • IRS website for notices and letters;
  • IRS pubs and forms.
Where to appeal

• Face-to-face meeting;
• by phone;
• video conference.

• Where to mail or fax the appeal:
  • look at the IRS notice or letter;
  • call IRS if no notice;
  • Hand deliver to the local IRS office (Taxpayer Assistance Center).
    • E.g. 5.19.8.4.7.1.2 for CDP hearing requests.
Who can appeal

• The taxpayer if unrepresented.
• The representative with a POA who is authorized to practice before the IRS.
  • Usually not with a client, but it depends.

• Someone with experience or knowledge.
• Competency can be gained according to Circular 230, §10.35 (if you have the time).
• By consulting with another tax pro.
Which options (see Pub 5)

• If you Do.

• Or if you Don't.
  • Appeal rights can expire.
    • Always remember the taxpayer's rights!
  • Tax Court, but you get kicked back to Appeals if you didn’t go there in the first place.
    • Sometimes this is the only option if no time left but to petition the Tax Court.
  • Audit Recon if taxpayer still owes.
How much and how long?

• How much depends on the issues, the client's behavior and how much they cooperate.

• Remember that interest and penalties continue to accrue.

• How long does it take?
  
  • Could be 90 days to up to a year.
Appeals for Tax Court cases

• Non docketed cases.

• Docketed cases (IRM 8.4.1).
  • Went to appeals previously:
    • no - go to Appeals.
    • yes - IRS Counsel has jurisdiction.
      • pretrial and at trial.
Alternative Dispute Resolution (ADR)

• From IRS Forum 2014 for Exam sourced cases (Glossary):
  
  ➢ **Early Referral** – One of the Alternative Dispute Resolution options, Early Referral is available to taxpayers whose returns are under the jurisdiction of Examination or Collection and who request a transfer of a developed but un-agreed issue to Appeals while the other issues in the case continue to be developed by Examination or Collection.
    • Early Referral can also be requested with respect to issues regarding an involuntary change in accounting, employment tax, employee plans, and exempt organizations.
    • Regular Appeals procedures apply, including taxpayer conferences.
  
  ➢ **Fast Track Settlement** – One of the Alternative Dispute Resolution options, Fast Track Settlement is designed to help the IRS operating divisions and taxpayers expeditiously resolve disputes while their cases are still in the examination or collection process.
    • Appeals resources are used to resolve the dispute generally before the 30-day letter is issued.
    • Fast Track Settlement may be available for factual and legal cases, including listed transactions, Compliance- and Appeals-coordinated issues, and issues that require consideration of the hazards of litigation.
  
  ➢ **Mediation** – One of the Alternative Dispute Resolution options, Mediation is an informal, confidential, and flexible dispute resolution process in which an Appeals officer trained in mediation techniques serves as an impartial third party facilitating negotiations between the disputing parties.

• (Note) Ex-parte rules apply for early referral.  Ex-parte rules don’t apply for fast track and mediation.

• **Online Self-Help Tool**
Resources for Appeals

• **Internal Revenue Code**
  • E.g. Sections 6015, 6320, 6330, 6603, 6621, 7122, 7123, 7430, 7522, 7612.

• **IRS Forms and Publications**

• **IRM Part 8 for Appeals** and **Interim Guidance**

• **IRM Part 1 for policy statements**

• **IRS website for Appeals**

• **IRS Nationwide Tax Forums**

• **ALI annual** [Handling a Tax Controversy Coursebook](#)

• **ABA Effectively Representing** books, Chapter 6

• **PPC Guide to Dealing with the IRS**, Chapter 8, and other treatises

• **Checkpoint IRS Response Library**
IRS Forum videos and podcasts for Appeals

• 2014
  • Policy changes for Exam and Collections

• 2013
  • Post Appeals Mediation (PAM) and
  • Collection Appeal Program (CAP)

• 2012
  • Trust fund recovery penalties for Exam and Collections

• 2011
  • OIC
  • Penalties

• Podcast for ex-parte communications
My recent experience with Appeals

• Tax Court cases:
  • TP amended return after Tax Court petition.
  • 1099-Rs for direct transfers and/or rollovers.
  • Cancellation of debt and insolvency.
    • Also, 2 audit reconsiderations for same TP.
  • Carry-back of NOLs after they lost their case.

• Collection notice after account was locked for investigating ID theft.

• Notice to levy Social Security benefits when the taxpayer is not compliant.

• Notice to discontinue the installment agreement unless balance is paid.
Speaker’s Bio

• CPA since 1967.

• Holds CGMA designation (Chartered Global Management Accountant).

• Experience in public accounting, government, industry, and TurboTax advisors.

• Tax Court exam in 2012 and admitted to practice before the US Tax Court in 2013.

• Villanova Law School Tax Court litigation training in 2014.

• Fellow of NTPI in 2014.

• Participated in the US Tax Court Calendar Call Program 2014 to present, and observer since 2012.