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Annual Conference Scottsdale, AZ

Update on IRS Appeals

Wednesday, October 26

8:30 – 9:30 am



Moderator



Kristen Bauer / Tax
Controversy Lead /
Stripe



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1. Independent Office of Appeals

- **APPEALS MISSION:**

- The Appeals mission is to “resolve federal tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the federal tax laws, and enhances public confidence in the integrity and efficiency of the Service.”

- **Taxpayer First Act (I.R.C. § 7803(e))**

- Name Change: IRS Independent Office of Appeals
- Codification of Mission

2. Sources and Types of Work

WORKSTREAM	EXPLANATION	SOURCE	FY 2020
Collection Due Process (CDP)	Appeals review of proposed levies and filed liens. Must be requested within 30 days of Compliance determination to preserve the taxpayer's right to Tax Court review.	SB/SE, W&I	25,334
Offers in Compromise (OIC)	Appeals review of Compliance rejection of an offer to settle a tax liability for payment of less than the full amount owed. No judicial review.	W&I, SB/SE, TE/GE, LB&I	5,011
Innocent Spouse	Appeals in which taxpayer requested and Compliance denied innocent spouse relief, or a non-requesting spouse disagrees with an IRS determination to grant innocent spouse relief to the requesting spouse. Innocent spouse relief allows a taxpayer who filed a joint return with a spouse or an ex-spouse and who meets certain requirements to apply for relief from tax, interest, and penalties.	SB/SE	1,057
Penalty Appeals	Appeals generally related to requests for abatement of failure to file, failure to pay, and failure to deposit penalties generated via automated compliance mechanisms.	W&I, SB/SE, TE/GE, LB&I	3,581
Coordinated Industry & Industry Cases	Appeals review of audit determinations made in large examination cases, typically involving large business entities. Often reviewed by teams within Appeals that include technical specialists.	LB&I	532
Examination	All other examination-source cases (including docketed/non-docketed cases and TE/GE determinations).	SB/SE, TE/GE	16,884
Other	Includes appeals of cases involving miscellaneous collection items (e.g., CDP timeliness determinations), trust fund recovery penalties, Freedom of Information Act requests, abatement of interest, return preparer penalties, Reports of Foreign Bank Accounts (FBARs).	W&I, SB/SE, TE/GE, LB&I	5,174

3. Statute of Limitations

- Nine months (270 days) left when case gets to Appeals for estate and excise tax cases
- 12 months (365 days) left for other non-TEFRA cases
 - Reduced to six months (180 days) when the originating function returns a case that was previously returned to them for consideration of new information or a new issue
- 20 months (600 days) for TEFRA cases
- BBA cases?

IRM §§ 8.20.5.3.1.3 (Cases Not Accepted by Appeals), 8.21.2.3 (Cases Not Accepted by Appeals), 25.6.23.7.1 (Minimum Time Remaining on ASER)

4. Impact of COVID-19

- Working through backlog
- No in-person meetings
- Expectations for virtual conferences
 - WebEx
 - Zoom
- Video conferences vs. telephone conferences
- LIFO processing

5. Post-COVID Conferences: Expectations

- Return to office
- Telephone vs. Zoom vs. in-person
- No longer expect to have list of factors to be granted in-person conference – will be granted upon taxpayer's request. *See* IRM § 8.6.1.5.1 (Conference Practice).
- Contact letter

6. Expectations for Timeline

- From when protest is filed to time case transferred to Appeals
- Once at Appeals, how long before hearing from Appeals officer
- Once hear from Appeals officer, how long until the conference
- Expectation for one conference or series of conferences
- Time from first conference to agreement/resolution
- Link to check status: <https://www.irs.gov/appeals/what-is-the-status-of-my-appeal-request>

7. Role of Specialists and/or Counsel

- Appeals has the right to seek legal assistance and advice from chief counsel attorneys independent from those assisting Exam. I.R.C. § 7803(e)(6)(B).
- Parameters on their involvement (*e.g.*, when/why/taxpayer notice/decision-maker)
 - See IRM §§ 8.6.1.5.4 (Participation in Conferences by IRS Employees), 8.7.11.12.1 (Review and Concurrence by Technical Guidance or International), 8.7.3.3 (Appeals Technical Specialists' Roles and Responsibilities)
- Coordinated issue cases
 - See IRM §§ 8.7.3.2.1 (Compliance Coordinated Issues), 8.7.3.2.2 (Appeals Coordinated Issues), 8.7.3.2.3A (Appeals Emerging Issues), 8.7.11.12.1 (Review and Concurrence by Technical Guidance or International)
- Impact if person is not in the room or participating at the conference

8. Docketed Appeals

- Rev. Proc. 2016-22 provided an update to Appeals procedures for consideration by Appeals of cases docketed in Tax Court
 - Generally, automatic referral to Appeals if not previously considered and taxpayer agrees
 - Appeals may be denied for cases Designated for litigation
 - Appeals may also be denied if referral to Appeals “is not in the interest of sound tax administration”
 - Decision made by Counsel, not Appeals
- Taxpayer First Act
 - Taxpayer provided “detailed explanation” for decision
 - Annual report to Congress number of requests denied and reasons for denial

9. Settlement Approvals

- Generally, ATCL has settlement authority while other Appeals Officers must have the settlement approved by their manager
- 2017 Interim Guidance required ATCL managers to concur in settlements by ATCLs
 - ATCL Manager could propose changes
 - If ATCL does not agree, Area Director resolves issues
- More recently, move away from prior review of ATCL settlements by management – authority remains with ATCL
- Institution of briefing process for large cases

10. Requests for Case File

- Specified taxpayers under the Taxpayer First Act have the right to non-privileged portion of case file regarding disputed issues at least 10 days before the Appeals conference. I.R.C. § 7803(e)(7).
 - Natural persons with AGI of \$400,000 or less
 - Other taxpayers with gross receipts of \$5 million or less
- Other taxpayers – FOIA request (<https://www.irs.gov/privacy-disclosure/freedom-of-information-act-foia-guidelines>) and FOIA suits
- Direct requests to Appeals

11. Proposed Regulations

- Issued on September 9th to implement changes made by Taxpayer First Act of 2019. Comments are due November 14th. See REG-125693
 - TFA codified Appeals name, mission, and key personnel
- Appeals process is generally available to all taxpayers to resolve “federal tax controversies”
 - 24 exceptions to the general availability of Appeals are listed
- Establishes requirements before Appeals may consider the federal tax controversy
 - Originating office has completed action and issued a final administrative decision. Also, specified procedures must be followed by taxpayer
- Special notification and procedure when a referral to Appeals is denied

