

**ACCOUNTAX SCHOOL OF BUSINESS,  
INCORPORATED**

**A Profile in Continuing Professional  
Education**

**Representing Clients During An Appeal**

# Part I Where Did It All Begin?

If an audit adjustment cannot be resolved at the Examination level, the Internal Revenue Service provides a further opportunity to resolve tax controversies without litigation. This activity is conducted by the Appeals Office. As part of IRS Restructuring and Reform Act of 1998 (The Act), the IRS Appeals Office realigned itself to coordinate with the new operating divisions of the IRS. However, while the Appeals Office continues to consider cases from each of the new operation divisions of the IRS, the Appeals Office recently realigned itself a second time.

## *Part II. What Promotes an Appeal?*

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- After an audit or examination has been conducted Revenue Agent Reports (RARs) are issued to the taxpayer. These reports contain all the information necessary to provide the taxpayer with an understanding of any adjustments or changes that have been made to a return and an understanding of how a tax liability was computed.

- **A. Issuance of the 30-day letter**

- The 30- Day Letter is a computation report of proposed adjustments to the tax return.
- It outlines the options the taxpayer has if they do not agree with the proposed adjustments or proposed changes to the return. If the taxpayer agrees with the adjustments, they may sign and return the agreement form. If the taxpayer does not agree, they can request for appeal to the office/individual that sent the letter.

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- The letter contains information and lists IRS
- publications providing information on how to file an appeal/protest. The appeal protest needs to be filed within 30 days from the date of the letter in order to appeal the proposed adjustments with the Office of Appeals.

- **B. Issuance of the 90-Day Letter Notice of Deficiency (Letter 3219 SC/CG)**
- If the 30- Day letter is not responded to within the time indicated on the letter the taxpayer's case is processed with the information contained in the report. A Notice of Deficiency, referred to as a 90-day letter, is processed. The Notice of Deficiency informs the taxpayer of the tax assessed plus the interest and penalties owed. A Notice of Deficiency is required by law and is used to advise the taxpayer of the appeal rights to the U.S. Tax Court.

## Part III How Do You Protest for an Appeal?

Early referral to Appeals is optional, available to any taxpayer, and is intended to resolve cases more expeditiously through the operating divisions and appeals working together. The procedures are effective for request filed after July 19, 1999. Early referral may be made with respect to issues involving involuntary change of accounting methods, employment tax, employee plans, exempt organizations, as well as income matters.

Early referral is initiated by the taxpayer with reference to any developed unagreed issue under the jurisdiction of an operating division. The operating division will continue to develop other issues that have not been referred to appeals.

## **A. Request for Appeals Consideration (e.g., preparation, elements contained)**

The Appeals Division possesses more flexibility than an agent in settling tax disputes. This added flexibility primarily is attributable to their ability to assess the hazards of litigation, that is, the probabilities of winning or losing in a court proceeding.

Failure at the Appeals level may take the parties to litigation.

a. Most tax litigation takes place in the Tax Court.

b. The Small Cases division of the Tax Court is available if no more than \$50,000 in tax is under dispute. Neither party can appeal a Small Cases decision.

- Before the taxpayer prepares a request for Appeals, they should refer to the Appeals homepage to decide if Appeals is the right place. If the taxpayer decides to present a dispute to Appeals, they will need to prepare a request for Appeals and mail it to the office where the decision letter as mailed.

- **C. Preparing A Request For Appeals- Let's Take a Close Look At This.**
- **Small Case Request**
- You can prepare a small case request instead of a written protest if the total amount for any one tax period is \$25,000 or less.
- Send a letter requesting Appeals consideration.
- Indicate the changes you do not agree with and the reason you don't agree.

- **Formal Written Protest**

- You can prepare a formal written protest for all of the following situations:
- If the total amount for any one tax period is greater than \$25,000.
- Employee plan and exempt organization cases without regard to the dollar amount at issue.
- Partnership and S corporation cases without regard to the dollar amount at issue.

## IV. The Appeal Process and Procedures

- Proceedings before the Appeals Office are informal. Testimony is not taken under oath, although the Appeals Office may require matters alleged to be true to be submitted in the form of affidavits or declarations under the penalties of perjury. The taxpayer or the representative will meet with the appeals officer and informally discuss the pros and cons of the various positions taken by the taxpayer and the IRS.

- Under the Regulations, Appeals will follow the law and the recognized standards of legal construction in determining fact and applying the law. Appeals will determine the correct amount of the tax with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination between taxpayers. The Appeals Officer has a duty to protect the interest and the rights of the IRS and act as an advocate between the IRS and the taxpayer. Therefore, the appeals office can raise a new issue or propose a new theory in support of the examining agent's proposed adjustment. However, an appeal's office should not do so unless the grounds for raising new issues are substantial and the effect on the tax liability is material.

- **Who can represent taxpayers and appear at the appeals conference?**

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- Taxpayers can represent themselves in Appeals, and may bring another person with them to support the position. If taxpayers want to be represented by someone, the person they choose to represent must be an attorney, a certified public accountant, or an enrolled agent authorized to practice before the IRS. These professionals can practice before the IRS.

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- However, any individual who is recognized to practice (a recognized representative) must be designated as the taxpayer's power of attorney and file a written declaration with the IRS stating that he or she is authorized and qualified to represent a particular taxpayer. Form 2848 , *Power of Attorney and Declaration of Representative* can be used for this purpose

## **B. Right to Appeal Revenue Agent Findings**

If a taxpayer is not satisfied with the results reached at the agent level, the next step is to proceed to the Appeals Division of the IRS. Such a request must be accompanied by a written protest, except in the following cases.

- Proposed tax deficiency does not exceed \$10,000 for any of the tax periods involved in the audit.
- Deficiency resulted from a correspondence or office type audit (i.e., not as a result of a field audit).

- **V. Settlement Function of the Appeals Process**

Delegation Order 4-24 settlement authority may be exercised only if all of the following factors are present.

The facts surrounding a transaction or taxable event in the tax period under examination are substantially the same as the facts in the settled period;

The legal authority relating to such issue must have remained unchanged;

The underlying issue must have been settled by Appeals independently of other issues (e.g. no trading of issues) in the settled tax period; and The issue must have been settled in Appeals with respect to the same taxpayer (including consolidated and unconsolidated subsidiaries) or another taxpayer who was directly involved in the transaction or taxable event in the settled period.

- **A. Settlement Agreements**

- The mission of the Appeals division is to resolve tax controversies on a basis which is fair and impartial to both the government and the taxpayer. The appeals officer can split or trade issues where there are substantial uncertainties as to the law, the facts or both. In splitting “legal issue” the appeals officer will consider the hazards which would exist if the case were litigated. This procedure calls for weighing the testimony of witnesses, judging the trends the court has been following in similar cases, and trying to predict the outcome of the matter if the case were actually tried in tax court.

- **B. Closing Agreements**

- Some tax cases may involve matters which have a direct effect on other taxes related taxpayers or other years. Settlement of this type of case may require an additional agreement. **Sec. 7121 of the tax Code** authorized the Secretary to enter into an agreement in writing with any person regarding that person's liability for any period.