

## IRS Appeals Is No Longer Appealing

To the Editor:

Ten years ago, I would have easily agreed with Joel Cohen that the IRS Independent Office of Appeals is a “taxpayer favorite.”<sup>1</sup> Back then, taxpayers were almost always able to successfully resolve issues with IRS Appeals. It didn’t matter whether it was a simple issue or the most complex of issues. We rarely had in-depth conversations about whether to bypass IRS Appeals and go straight to Tax Court. Instead, we would quickly move on to a meaningful discussion about our strategy to reach a successful outcome with IRS Appeals. Only rarely did we end up in Tax Court.

But over the last five to 10 years, something has changed with IRS Appeals. Now, what used to be a highly effective opportunity to resolve disputes without the expense of litigation is simply no longer the case. More often than not, tax practitioners now consider a very successful settlement at Appeals to be a 50-50 split of the issue. Mr. Cohen discusses the possibility of a “full concession of the revenue agent’s issues.” But in practice, even in the most egregious of cases, it is practically impossible to convince IRS Appeals to fully concede Exam’s position. Because it has become so difficult to reach a timely, positive settlement with IRS Appeals, taxpayers are now considering bypassing IRS Appeals altogether by petitioning Tax Court first, and actually doing so at an increasing rate.

Why is IRS Appeals no longer appealing? There are (arguably) three primary reasons: (1) it takes too long for unacceptable results; (2) the unanimous decision-making process; and (3) the requirement to be consistent across taxpayers.

In recent years, it has taken as long as 18 to 24 months before a taxpayer has an opening conference with IRS Appeals. Consider a taxpayer who filed a protest brief on a significant issue after an already lengthy audit, who then waited six or

more months for the IRS Exam team to complete its rebuttal, and who then has to wait another year for the opening conference with IRS Appeals. In a recent example, we filed a protest brief in September 2022, received the rebuttal in March 2023, and had our opening (and final) conference with IRS Appeals in July 2024 for tax years that were already more than a decade old. When you factor in interest expense and the other current problems with IRS Appeals, it should not be a surprise that taxpayers are considering going straight to Tax Court. If a taxpayer does not go to IRS Appeals before docketing the case in Tax Court, they usually have the opportunity to do so after the case is docketed.

We have also experienced and heard in recent years that the Appeals team on a case has to reach a consensus decision about an issue, meaning that all of the Appeals officers working on an issue have to agree on settlement offers. It used to be that the Appeals team case leader had the discretion to be the final decision-maker for IRS Appeals. The Appeals team case leader would, of course, listen to and take guidance from the other Appeals team members, including the specialists, but they almost always found a way to resolve issues. I’ve sat in meetings where there would be one very vocal advocate for Exam’s position on the Appeals team, but we, nevertheless, found ways to settle the issue. This simply doesn’t happen anymore. Have you ever tried to reach an agreement on pizza toppings with a stubborn kid? Now try to get three stubborn kids who think their position is 100 percent correct to reach a compromise. Good luck.

The third primary reason why IRS Appeals seems to be failing is the requirement, perceived or otherwise, that IRS Appeals has to be consistent across taxpayers. The Taxpayer First Act codified the Independent Office of Appeals in section 7803(e). One of the codified purposes of IRS Appeals is to promote “a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws” (section 7803(e)(3)(B)). In practice, this purpose seems to be applied as equal outcomes — meaning, for example, that all

<sup>1</sup> Joel G. Cohen, “Why Is Appeals So Appealing?” *Tax Notes Federal*, Apr. 14, 2025, p. 355.

taxpayers who come before IRS Appeals on the same issue receive the same settlement offer. If you're the third taxpayer with the issue, you will probably receive the same offer as earlier taxpayers even though your facts and legal arguments may be better. If this is really how IRS Appeals is resolving issues, we'd all be better off if they just published a chart with their settlement offers for each type of issue. This would save us all a lot of time.

There are other reasons beyond these three why IRS Appeals is no longer "enhancing public confidence in the integrity and efficiency of the Internal Revenue Service" (section 7803(e)(3)(C)). Whether it's the increased reliance on specialists, the memos that must be written to Exam afterwards explaining a settlement, the issues that IRS Appeals won't hear, or even the lack of in-person meetings, one thing is clear: IRS Appeals is no longer appealing and no longer fulfilling its mission. Something, or many things, needs to change.

Unwinding these three changes would go a long way toward enhancing confidence in IRS Appeals. By late 2024 we started to see the benefits of increased staffing at Appeals, whereby the time to an opening conference was starting to speed up. Unfortunately, with the recent personnel changes at IRS Appeals, these interim improvements are likely to disappear. But IRS Appeals would benefit from taking a closer look at many of the changes that have been implemented over the last decade and deciding if there is a better, more effective way to approach cases. We all benefit from a strong, functional IRS Appeals that is once again appealing.

Jenny Austin  
Mayer Brown  
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