

You've Been Audited!

NOW WHAT ?

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Types of Audits



- Correspondence Audit - via mail and phone
- Office Audit – You visit the IRS office
- In Person Examination – Revenue Agent visits you or your business, or your accountant

Regardless of the type of audit your appeals rights are the same

Here Are Your Options



- Agree with the Audit Results
- Appeal the Audit results with a written protest in response the auditor's "30 Day letter"
- Request a Fast Track Settlement (more on this later)
- Do nothing, triggering a "Notice Of Deficiency" with 90 days to file a Tax Court petition
- Sign nothing, pay the liability, file in District Court

What Is Appeals?



- An Independent Organization within the IRS whose mission is to resolve disputes fairly
- It's an hearing with you or your representative
- Considers hazards of litigation
- Most disputes are successfully resolved at the Appeals level
- Unresolved cases can seek post-appeals mediation (more on this later)
- Petition tax Court

Your obligation



- Prepare a written protest that clearly supports of your position
- Provide the appeals officer with all relevant documentation
- Consider settlement alternatives
- Consider the option to make a payment to stop accrual of interest

Keep in Mind

- New information presented to Appeals will be forwarded to Compliance for their consideration
- Entire case may be returned to Compliance to consider the new information
- Interest accrues on unpaid balance

The Appeals Officer Will:



- Review the agreed and disputed facts of the case
- Review how the law applies to the facts of your case
- Review court rulings similar to yours
- Determine if the facts/law are unclear
- Determine if courts have inconsistent rulings
- Fully concede the case in your favor if appropriate
- Fully sustain tax adjustments if appropriate
- Determine there's a "gray area" and offer to settle the case for a percentage of the proposed tax based on the hazards of litigation

The Appeals Officer Will

- Approach Each Case with a Judicial Attitude
- Settle on the merits of the case, not the cost of litigation
- Correct tax liability is not always a precise amount, considers a “settlement range”
- Legislative History
- Congressional Intent
- Consider Various Court Cases and assign weight to them
- Consider Action on Decision (AOD)

What Appeals Will Not Do



- Appeals officers are not fact finders. They will not develop the case
- Will not return the case to Compliance for further development
- Will not discuss the issue with the auditor without the taxpayer's approval, or without the taxpayer being part of the conversation under ex parte rules
- Will not raise new issues

If a settlement reached



- Agreement Form is signed. Taxpayer may pay the mutually agreed tax and interest
- Make a Partial Payment
- Enter into an installment agreement (with a collection or revenue officer brought in to assist)
- Offer –In-Compromise may be considered if appropriate
 - Application fee is charged but can be waived

Types of Cases Heard in Appeals



- Audits – (as we've just discussed)
- Docketed cases – where the taxpayer filed a petition in tax court without an Appeals hearing
- Collection Cases – pertaining to Outstanding taxes due
- Trust Fund Recovery Penalty cases

Other Appeals Alternatives



- Fast Track Settlement (FTS)
- Early Referral
- Rapid Appeals Process
- Post Appeals Mediation

Fast Track Settlement



- Case remains under Compliance jurisdiction; Appeals Officer is brought in as a mediator
- Appeals Officer works collectively and separately with each side to reach a resolution
- Considers factual and legal disputes and allows for hazards of litigation settlement
- Both the taxpayer and Compliance need to agree to enter Fast Track Settlement program
- Ex parte is waived

Fast Track Settlement



- If parties at impasse, Appeals Officer may recommend a settlement offer
- If AO's offer is acceptable to Compliance but not the taxpayer, FTS is over; taxpayer may proceed to regular appeals with a different appeals officer
- If AO's offer is accepted by taxpayer but not Compliance, case is elevated to Territory Manager

Cases and Issues Not Appropriate for FTS



- Docketed issues
- Issues challenging the constitutionality of tax laws
- Cases/issues for which the taxpayer has expressed unwillingness to compromise or explore a mutual concession resolution
- Issues designated for litigation

Early Referral



- Case remains in Compliance but transfers one or more fully developed disputed issues to be heard by Appeals while other issues remain with the examiner

Rapid Appeals Process



- The mirror image of Fast Track Settlement
- Case under Appeals jurisdiction. Holds a pre-conference meeting with the taxpayer/rep and the examiner. Pre-conference may convert into a mediation session where Appeals helps the parties resolve disputed issues.
- If this mediation is unsuccessful, case reverts to the traditional Appeals process with the same Appeals Officer

Post Appeals Mediation



- If settlement is not reached with the Appeals Officer, the taxpayer may request Post Appeals Mediation. Case remains under Appeals jurisdiction with the same AO
- Appeals selects another Appeals Officer trained in mediation to be its mediator
- The taxpayer may also select its own non-IRS mediator at its own expense
- Yes, two mediators

Post Appeals Mediation



- Both legal and factual disputes can be mediated
- If Post Appeals Mediation fails, Appeals will not re-hear the case
- May go to arbitration, but rarely
- Statutory Notice of Deficiency issued 90 days to file tax court petition

Cases Not Eligible for PAM



- Cases docketed in any court
- Issues designated for litigation
- "Whipsaw" issues, which may affect another party.
- Collection cases, except for certain Offer –In-Compromise and Trust Fund Recovery Penalty cases

Collection Appeals Process



If a taxpayer has unpaid tax liabilities the IRS has numerous tools at its disposal to collect the outstanding liability

- Levy (on bank accounts, wages)
- Notice of Tax Lien
- Seizure of personal property (ie vehicle)
- Installment Agreement
- Offer-in-Compromise

Collection Appeals Process



Collection Issues Come to Appeals in several ways:

- Collection Appeals Program (CAP): determination made in a few days; cannot go to court
- Collection Due Process (CDP): must be requested w/i 30 days to preserve you right to go to court
- Equivalency Hearing: requested after 30 days with no right to go to court
- Offer-in-Compromise, not court reviewable

In CDP cases Appeals Considers



- Required procedures took place
- Appropriateness of collection action
- Appropriate Alternatives offered
- Efficiency of Action Outweighs Intrusiveness
- If no resolution achieved, taxpayer can go to court for determination of whether the Appeals Officer abused his/her discretion

Appeals Consideration of Trust Fund Recovery Penalties



- FICA and Federal taxes withheld by an Employer but not paid over to the IRS
- Considers hazards of litigation (responsible and willfulness)
- Attempt to reach a mutually acceptable settlement

Publications



- Pub 594 – IRS Collection Process
- Pub 4227 – Overview of Appeals Process
- Pub 1660 – Collection Appeals Right
- Pub 3498a – Audit by Mail
- Pub 3499 – The Examination Process

Where you can find me



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