

# **Tax Appeals & Audit Reconsideration**

Robert McKenzie, Esq.

**TAX APPEALS & AUDIT RECONSIDERATION**

**by**

**ROBERT E. MCKENZIE, EA, ATTORNEY**

**ARNSTEIN & LEHR  
SUITE 1200  
120 SOUTH RIVERSIDE PLAZA  
Chicago, Illinois 60606  
(312) 876-7100  
REMCKENZIE@ARNSTEIN.COM  
<http://www.mckenzielaw.com>**

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## TABLE OF CONTENTS

<b>1-1</b>	<b>INTRODUCTION</b>	1
	Administrative Alternative	1
	Appeals Mission	1
<b>1-2</b>	<b>ORGANIZATION STRUCTURE OF APPEALS OFFICE</b>	1
	Operating Units	
	W&I's	1
	LMSB	1
	Organizational Structure	2
	Strategic Priorities	2
<b>1-3</b>	<b>APPEALS OFFICE JURISDICTION</b>	2
	Exclusive Authority	2
	Types of Cases	3
	Jurisdictional Amount	3
	Pre-Assessment Jurisdiction	3
	Post-Assessment Penalty Appeals	4
	Tax Exempt/Government Entities (SB/SE-TE/GE)	4
	Waiver: Tax Court Cases	4
	Tax Court Petition	4
	Fast Track Mediation	4
	Taxpayer May Choose Fast Track or Normal Appeals Process	4
	Specially Trained Mediator Conducts Mediation	5
	Additional Information Available	5
<b>1-4</b>	<b>LIMITATIONS ON APPEALS OFFICE JURISDICTION</b>	5
	Subject Matter Jurisdiction Limitations	5
	Ruling Positions	5
	Joint Committee Cases	5
	Whipsaw Cases	5
	Fraud Penalties	6
	Criminal Cases	6
	Appeals Coordinated Issues	6
	Docketed Cases	6
	Certain Excise Taxes	6
	Tax Protesters	7
	Geographic Jurisdiction	7
	Transfer of Cases	7
<b>1-5</b>	<b>WRITTEN PROTEST REQUIREMENT</b>	8
	30-Day Letters	8
	Taxpayer Options	8
	Option (3)	8
	Factors which Influence Protest Decision	9
	Factors in Favor of Filing Protest	9
	Factors in Favor of Bypassing Appeals Process	10
	Choice of Forum Considerations	11

	Ability to Pay Asserted Deficiency	11
	Jurisdictional Factors	11
	Interest Considerations	11
	Forum Shopping	12
	The Golsen Rule	12
	Increased Deficiency	12
	Discovery Rules	12
	Jury Trial Considerations	12
	Rules of Evidence	12
	When Must Protest Be Filed	13
	Dispute Less Than \$25,000	13
	Formalities of Written Protest	13
	Filing of Protest By Representative	14
	Time Period for Filing; Number of Copies; Where to File	14
	Nature of Protest	14
	Documents and Affidavit	14
	Presentation of Facts	14
	Preparing of Protest	14
	Making Arguments	14
	Burden of Undercutting Determinations	15
	Obtaining Technical Advice	15
	Filing of "Skeleton" Protests	15
<b>1-6</b>	<b>BASIC APPEALS PROCEDURES</b>	<b>15</b>
	Representation	15
	Review of Protest Letter by Area Office	15
	Preliminary Review of Non-Docketed Cases	15
	Return of Case to Area Office	16
	Consents Extending Statutory Period of Assessment	16
	Area Verification of New Information	17
	Appeals Procedure in Docketed Cases	17
	Procedural Guidelines	17
<b>1-7</b>	<b>CONFERENCE PROCEDURE</b>	<b>18</b>
	Conference Proceedings	18
	Request for Additional Information	19
	Failure to Reach Agreement	19
	Presence of Area Manager or Area Counsel	19
	Technical Advice	19
	When Technical Advice Is Not Available	20
	Taxpayer Initiation of Technical Advice	20
	Considerations in Initiating Technical Advice Requests	20
	Technical Advice Decision	20
<b>1-8</b>	<b>SETTLEMENT PRACTICE AND PROCEDURE</b>	<b>21</b>
	Hazards of Litigation Standard	21
	Judicial Attitude of Appeals Officer	21
	Evidential Considerations	21
	Role of Legal Authority	21
	Settlement Offer	22
	Types of Settlements	22

	Mutual Concession Settlements	22
	Split-Issue Settlements	22
	Nuisance Value Settlements	23
<b>1-9</b>	<b>PREPARATION FOR CONFERENCE</b>	<b>23</b>
	Preparing for Conference	23
	Organization of Evidence and Research	23
	Interacting With Client	23
	Presenting Client's Case at Conference	24
	Presentation of Strongest Arguments	24
	Guidelines for Preparing and Arguing Case	24
	Settlement Negotiations	25
	Proposal of Settlement by Taxpayer	26
<b>1-10</b>	<b>SETTLEMENT AGREEMENTS</b>	<b>26</b>
	Settlement of Docketed Cases	26
	Form 870	26
	Form 870-AD	26
	Split in Courts	27
<b>1-11</b>	<b>CLOSING AGREEMENTS</b>	<b>27</b>
	Taxpayer Use of Closing Agreements	27
	Characteristics of Closing Agreements; Finality	27
	When Closing Agreements May Be Used	27
	Closing Agreement Forms	28
	Form 866	28
	Form 906	28
	Combined Agreement	28
	Contents of Closing Agreements	28
	Misrepresentation of Material Facts	28
	IRS Position on Closing Agreements	28
<b>1-12</b>	<b>DUE PROCESS IN IRS COLLECTIONS</b>	<b>29</b>
	RRA 98	29
	CAP Rights to Appeal	29
	Impartial Hearing	29
	Levy Appeals Rights	29
	Notice of Intent to Levy	29
	What Must a Pre-Levy CDP Notice Include	30
	What Must a Taxpayer Do to Obtain a CDP Hearing	30
	Form 12153	31
	Where Should the Written Request for CDP Hearing Be Sent	31
	Post Notice Hearing	31
	Exceptions	32
	Jeopardy	32
	Amount of Liability	32
	Judicial Review	32
	Delays in Collection	33
	Caution	33
	Suspension of Collection in Statute Limitations	33
	Offer Appeal Rights	33

<b>1-13 PENDING AND APPROVED INSTALLMENT AGREEMENTS</b>	<b>34</b>
Proposals for Installment Agreements	34
Situations That Do Result in Identification of Pending Installment Agreements	34
Situations That Do Not Result in Identification of Pending Installment Agreements	35
Managerial Approval	36
Independent Review	36
Independence	37
Determination	38
Collection Appeals Program	39
Levy Restrictions and Installment Agreements	39
Installment Agreements on Specific Balance Due Accounts	40
Standards for Installment Agreements on a Portion of Liabilities	40
Final Decision	40
Collection Statute Expiration Date	41
Multiple Balance Due Accounts	41
Currently Not Collectible	41
Taxpayers Are Notified	42
Managerial Approval	42
Financial Reviews	42
Guaranteed Availability of Installment Agreements	43
<\$25,000 Liabilities	44
In-Business Trust Fund Express Installment Agreements	44
Express Installment Agreements	44
Default, or Termination	45
Criteria for In-Business Trust Fund Installment Agreements	45
In-Business repeaters	46
Application of Payments to Trust Fund Portion	47
Reason for Termination of Installment Agreements Without Notice to Taxpayers	47
Reasons for Proposing Termination (Defaulting) Installment Agreements	47
 <b>EXHIBITS</b>	 <b>49-62</b>

# APPEALS: BUILDING THE PROTEST

## 1-1 INTRODUCTION

**1-1.10** While the process is not mandated by statute, the Service has, for over 60 years, provided taxpayers with an administrative alternative to litigating their tax disputes in court [Reg. § 601.106]. Now commonly referred to as Appeals, this administrative branch of the IRS generally has the final power and authority of the IRS to determine audit liabilities of taxpayers [Reg. § 601.106]. The fact that the Appeals has been able to settle as many as 86% of the cases brought to it in a given year attests to its importance and effectiveness.

**1-1.20** Since its inception, the Appeals has been known by various names and has had differing levels of authority delegated to it. Its main mission, however, has never changed. As stated by the itself, that mission is:

"...to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service".

The mission, if you speak to an IRS employee at Appeals, is one they truly believe in. Aiding a client in his or her appeal of an audit may seem more simple than it actually is. While the Appeals route is often the most efficient and logical step, under certain circumstances it is not.

## 1-2 ORGANIZATION STRUCTURE OF APPEALS OFFICE

**1-2.10** The national headquarters of the Appeals is located in Washington, D.C. and is supervised by the Director of Appeals who reports to the Commissioner's office. There are two operating units: Wage & Investment (W&I)-Small Business/Self-Employed - Tax Exempt/Government Entities (SB/SE-TE/GE) and Large & Mid-Size Business (LMSB).

W & I-SB/SE-TE/GE activities involve cases covering corporations with less than \$10 million in assets, collection issues, estate and gift tax cases, self-employed cases, tax exempt entities, and government entities. This unit will also have responsibility for the current Records and Processing sections. Other program responsibilities include innocent spouse, Freedom of Information Act appeals, excise and employment tax, Alternative Dispute Resolution (ADR) of bankruptcy, dyed diesel fuel and tax exempt bond cases. Initially, all W&I appeal cases will be processed by the SB/SE-TE/GE Appeals organization until the W&I Operating Division is operational.

LMSB activities cover corporate and partnership cases with assets greater than \$10 million with the most complex issues, particularly international issues. It will include such activities as the Industry Specialization Program, Large Case ADR, Joint Committee, international issues and competent authority.

Appeals provides taxpayers with an independent impartial review of their cases after an audit is completed or collection action is proposed. It is the last opportunity for the IRS and the taxpayer to agree before a case goes to court. Appeals plays a critical role in ensuring that taxpayers have an opportunity to resolve their dispute. Keys to the success of the Appeals function include three factors: its independence, impartiality and fairness.

**1-2.20** This organizational structure gives the Appeals a great deal of independence. Often, Appeals, considering the "hazards of litigation" and the costs involved, is willing to offer a settlement extremely favorable to the taxpayer unless it is an issue which, from a policy standpoint, must be litigated. This willingness to settle on favorable terms leads many local Area offices to refer to it as the "gift shop." This derogatory reference derives from the belief of many agents and auditors that the Appeals is much too willing to settle cases with taxpayers. On the other hand, Appeals defends its position by stating they take the "hazards of litigation" into consideration, something the Area Manager cannot.

### **Strategic Priorities**

**1-2.30** Appeals had set forth the following as its strategic priorities:

Address the changing and growing inventory.

- Reduce the length of the Appeals process.
- Improve quality of referrals to Appeals.
- Implement Appeals tax shelter resolution strategies
- Improve stakeholder and customer awareness of Appeal rights and processes.
- Promote employee productivity, engagement and satisfaction.
- Implement Appeals presence in campus environments.

### **PRACTICE TIP**

It has been the experience of some practitioners that "gift shop" may indeed be a correct description of the willingness of Appeals to negotiate or settle favorably with your client. Because of this, it is often wise to protest an initial audit determination at Area, unless undiscovered issues remain that may be raised at Appeals.

## **1-3 APPEALS OFFICE JURISDICTION**

### **Exclusive Authority**

**1-3.10** The authority of Appeals to determine liability for most taxes in cases which originate in a Area located within a region is both exclusive and final. The authority is exclusive because it is delegated directly from the Commissioner of Internal Revenue, and final because there is no administrative appeal from Appeals decision. Again, the appeals function is independent of the examination process. This independence is

necessary because Appeals is supposed to provide a fresh and unbiased perspective when reviewing the findings made on audit.

**1-3.20 Types of Cases.** The mission of Appeals is accomplished by considering taxpayer appeals, holding conferences and negotiating settlements in two broad categories of cases: docketed and non-docketed cases. Non-docketed cases are those in which the Taxpayer has filed a protest to a Area Office's proposed action [Exhibit 1] involving additional taxes, a refund disallowance [Reg § 601.106(a)(1)(ii), (d)(2)(ii)], or a rejection of an offer in compromise [Reg § 601.106(a)(1)(ii)]. Docketed cases are those which a taxpayer has filed a petition for a redetermination in the United States Tax Court. In addition to the foregoing, Appeals also considers claims for refund and over-assessment cases involving income taxes, estate and gift taxes, excise and employment taxes and 100% penalties [IRM 8511 (June 16, 1993)]. The appeal procedures for handling claim and over-assessment cases, including protest requirement and conferences, are similar to those followed in cases when the Service is seeking to assess and recur additional taxes from a taxpayer.

**1-3.30 Jurisdictional Amount.** There is no monetary limit on jurisdiction. However, over-assessments which exceed \$1,000,000 are subject to review by the Chief Counsel and the Congressional Joint Committee on Taxation [IRC § 6405].

#### **Pre-Assessment Jurisdiction**

**1-3.40** The types of pre-assessment cases over which Appeals Office may have jurisdiction involve:

- (1) Federal income, profits, estate, gift and miscellaneous excise tax (whether before or after a notice of deficiency has been issued);
- (2) Employment and certain excise tax liabilities; and
- (3) Additions to the tax, additional amounts and assessable penalties under IRC Chapter 68.

However, the only way the Appeals Office gains authority over a case is if the taxpayer has requested Appeals Office consideration and in most cases, has filed a written protest. The Appeals Office is authorized to hear the taxpayer's appeal in most cases when additional tax liabilities have been prepared, indirectly:

- (1) Federal income, estate, gift and generation-skipping transfer tax cases;
- (2) Employment and certain federal excise tax cases; and
- (3) Cases involving liability under IRC Chapter 68 for additions to the tax, additional amounts and assorted penalties [Reg § 601.106(a)(1)(ii)].

### **Post-Assessment Penalty Appeals**

**1-3.50** Appeals Offices also have jurisdiction over post-assessment cases involving penalties provided in IRC Chapter 68 [See Reg § 601.106(a)(1)(ii)(c), (iii)]. Most of the penalties set forth in Chapter 68 are imposed for a taxpayer's failure to perform some act required by the Code (i.e., failure to file a return, or furnish a statement). These Chapter 68 penalty provisions generally state that the penalty will not be imposed where the taxpayer's failure to act was due to reasonable cause and was not willfully neglectful. Where the taxpayer has such a defense to a Chapter 68 penalty, the taxpayer may have an administrative post-assessment appeal. In all post-assessment penalty appeals, written protests are required, and Technical Advice procedures are not available [Reg § 601.106(a)(1)(iv)].

### **Tax Exempt/Government Entities (TE/GE)**

**1-3.60** Appeals also has jurisdiction over Tax Exempt/Government Entities (SB/SE-TE/GE) cases which involve initial or continuing tax exemption or foundation classification and initial or continuing employee plan qualification, unless the case is covered by a National Office ruling or Technical Advice where the organization or plan has either no appeal right or a limited National Office appeal right [Reg § 601.106(a)(1)(v)].

### **Waiver: Tax Court Cases**

**1-3.70** The Office may shift jurisdiction to the Area Manager if a statutory Notice of Deficiency (90-day letter) was issued by a Area Manager or the Director of Foreign Operations Area [See Exhibit 2]. But this waiver is only effective during the period for filing with the United States Tax Court.

**1-3.80** Once a Tax Court petition is filed by the taxpayer, the Appeals Office retains jurisdiction to settle the case for a limited period of time. The interplay between the Area Counsel and the Appeals Office in these cases will be more fully discussed in the Appeals Procedure section of this material [See Section 1-6.70].

### **Fast Track Mediation**

**1-3.90** Effective June 1, 2002, the Internal Revenue Service Small Business/Self-Employed Division (SB/SE) made available Fast Track Mediation, a new service to assist taxpayers in resolving disputes that arise from examination or collection actions. Fast Track Mediation was developed by SB/SE and the IRS Appeals Division. Fast Track Mediation can be offered to taxpayers with disputes not yet before a court. The program is designed to assist in resolving tax disputes arising from an examination, an offer in compromise, a Collection Due Process, or a trust fund recovery penalty.

### **Taxpayer May Choose Fast Track or Normal Appeals Process**

**1-3.100** The taxpayer can choose either fast track mediation or the normal appeals process. The taxpayer does not forgo any appeal rights during mediation and can withdraw from mediation. If a taxpayer withdraws from mediation, the dispute would follow the normal appeals process. Either the taxpayer or IRS can request mediation,

but both must agree to mediate. On average, the mediation process should be started and completed within about 30-40 days. The normal appeals process can take months.

### **Specially Trained Mediator Conducts Mediation**

**1-3.110** A specially trained IRS mediator from the Appeals Division will conduct the mediation session at a mutually agreed upon site. The mediator will discuss the dispute with both sides and can request additional information from either side. The mediator will not decide anything regarding the dispute. The mediator cannot impose a resolution and will not have settlement authority. The mediator will work to resolve the dispute between the taxpayer and the IRS. The taxpayer and IRS must both agree to any proposed resolution.

### **Additional Information Available**

**1-3.120** For additional information about Fast Track Mediation, see IRS Publication 3605. News Release IR-2002-80 announces that "IRS Offers Faster Resolution of Tax Disputes" For information on how Appeals can assist you in resolving disputes and Alternative Dispute Resolution initiatives you may call toll free 1-877-457-5055.

## **1-4 LIMITATIONS ON APPEALS OFFICE JURISDICTION**

### **Subject Matter Jurisdiction Limitations**

**1-4.10** While an appeal to Appeals may seem to be an attractive avenue for the client, the practitioner should be aware of the limits under which the Appeals Offices operate when considering pursuit of an administrative appeal.

**1-4.20 Ruling Positions.** The Appeals Office is bound to follow IRS Revenue Rulings. Therefore, if a settlement would conflict with a published Revenue Ruling, the probability of settlement is substantially reduced.

**1-4.30 Joint Committee Cases.** If a tax matter involves a refund or overpayment in excess of \$1,000,000, a report must be made to the Joint Committee on Taxation of Congress before the refund or credit can be made [Reg § 601.106(g); IRC § 6405]. While the Joint Committee does not have explicit authority to overrule an administrative decision, as a practical matter the Service considers the Joint Committee to have that authority. (Remember that the IRS budget is determined each year by Congress and the Joint Committee.) Thus, no Appeals Office settlement will be effective until the Joint Committee has notified the Appeals Office that it has no objection to the proposed overpayment [IRC § 6405; Reg § 601.106(g)] or until the expiration of 30 days after the report is submitted [IRM 8910, MT 8-2]. It should also be noted that the Appeals Office (or a Area Counsel attorney, if the case is docketed) prepares a detailed Joint Committee report in these cases, which leads to a much more thorough review of them.

**1-4.40 Whipsaw Cases.** Appeals Officers are required to protect the interest of the government in "Whipsaw Cases." A whipsaw case (also referred to as an interrelated case) is one in which a settlement in one case could have a contrary tax effect in a

different taxpayer's case. Alimony is a common example. Alimony is taxable to the receiving spouse and deductible by the payor spouse; but a property settlement can be neither. Commonly, one spouse claims an alimony deduction while the receiving spouse excludes it from income as a property settlement. A settlement in such a situation will have a detrimental effect on one of the taxpayers. The Service will typically attempt to use the closing agreement to resolve the conflict; if this is not possible, the Appeals will take an inconsistent position to push the taxpayers into court. Both parties could then petition the Tax Court for a redetermination of the matter.

**1-4.50 Fraud Penalties.** Appeals must secure the consent of the Area Counsel before it may concede or eliminate the fraud penalty for a year in which a recommendation had been made to criminally prosecute the taxpayer [Reg § 601.106(a)(2)(v)]. This is true even where the taxpayer has been acquitted of the crime. It makes more sense in this situation to docket the case immediately, since all settlement conferences in docketed cases are attended by a representative of Area Counsel.

**1-4.60 Criminal Cases.** The Appeals Office has no jurisdiction at all in a case where a recommendation of criminal prosecution is pending, unless the Area Counsel agrees to such jurisdiction [Reg § 601.106(a)(2)(vi)].

**1-4.70 Appeals Coordinated Issues.** Appeals Coordinated issues generally involve issues of particular importance to tax administration on which there have been no definitive judicial conclusions. When a matter pending before Appeals is also pending in another court, settlement possibilities may be affected by the stance of the Department of Justice or other branches of the Service in those judicial forums. With consistency as the goal, the proposed dispositions of these issues in Appeals are arrived at with the assistance of the Area Director of the coordinating area. As a result, the taxpayer whose case is before Appeals may have to disclose his or her entire case to achieve a settlement which could subsequently be rejected for reasons other than the merits of the matter in litigation.

**1-4.80 Docketed Cases.** The settlement authority of Appeals Office does not extend to a docketed case if the Notice of Deficiency:

- (1) Was issued by Appeals;
- (2) Was issued by TE?GE after Appeals consideration of all petitioned issues; or
- (3) Was issued by the Area and was based on a ruling or Technical Advice with respect to an issue involving qualification of an employee plan or foundation status of an organization or if the case involves public inspection of a written determination or a declaratory judgment [Reg § 601.106(a)(2)].

**1-4.90 Certain Excise Taxes.** Appeals Office authority does not extend to excise taxes that are predominantly regulatory in nature. Cases involving alcohol, tobacco and firearms excise taxes are therefore not appealable to Appeals.

**1-4.100 Tax Protesters.** Taxpayers whose reasons for refusing to comply with the tax laws are based solely on moral, religious, political, constitutional, conscientious or similar grounds will not be afforded an administrative appeal. These "tax protesters" are commonly fined thousands of dollars for pursuing their cases before the Tax Court. Appeals may also refuse to accept a non-docketed case if they determine it requires further consideration or development on the Area level.

### **Geographic Jurisdiction**

**1-4.110** An Appeals Office has jurisdiction over cases which arise in a Area Office. If a taxpayer moves outside of a region or wishes to have his case transferred to a different Appeals Office, a transfer will be allowed in the following circumstances, providing the taxpayer is not attempting to transfer the case for strategic reasons:

- (1) Non-docketed cases (or those involving excise or employment taxes may be transferred by the current Appeals Office to the region or office locality where the taxpayer resides if his books and records are located or can be made available there; or
- (2) Docketed cases may be transferred to the region where the Tax Court case will be heard, if the taxpayer resides there and his books and records are located or can be made available there [Reg § 601.106(e)].

**1-4.120** A taxpayer may also request a transfer of his case to a more convenient location (even if he resides in the locality with current jurisdiction) if:

- (1) The requested Appeals Office is closer to his residence or place of business (i.e., to where his books and records are currently maintained); or
- (2) Transfer of the case would relieve an undue hardship on the taxpayer created by the location of the Appeals Office currently having jurisdiction of the case. The undue hardship requirement is presumed to be met in small cases (less than \$2500) if the taxpayer's representative regularly practices in the requested locality and the taxpayer's records can be made available in that locality.

### **PRACTICE TIP**

Favorable settlement possibilities may vary depending on which Appeals location hears the case. One practitioner keeps a detailed file on each Appeals Officer by location to help predict settlement potential and perhaps suggest a reason for requesting a transfer.

## **1-5 WRITTEN PROTEST REQUIREMENT**

### **30-Day Letters**

**1-5.10** The beginning of any tax appeal process, whether administrative or judicial, is triggered by the onset of what is commonly known as a "30-day letter" [See Exhibit 1]. These letters are generated by the Examination of the IRS, usually after the taxpayer has failed to agree with an agent or auditor regarding a deficiency. The 30-day letter puts the taxpayer on notice of an Agent's determination of a deficiency or overassessment.

### **PRACTICE TIP**

30-day letters can generally be extended for an additional 30 days to allow you time to prepare a response. As far in advance as possible before the expiration of the initial 30-day period, verbally secure an additional extension of time and follow up with a written confirmation.

**1-5.20** After receipt of the 30-day letter, the taxpayer may do a number of things:

- (1) The taxpayer can bypass the Appeals process by paying the deficiency and subsequently contesting the determination in District Court or in the Claims Court;
- (2) The taxpayer can ignore the letter and file his case in the United States Tax Court following the issuance of a 90-day letter, or the taxpayer can simply request the issuance of a 90-day letter and after its issuance, file a petition.
- (3) The taxpayer can protest the 30-day letter and ask for further Administrative proceedings in the hope of settling the case with Appeals.

**1-5.30** Option (3) above is the one which the Service encourages and which underlies Appeals' mission. If the taxpayer elects to protest the 30-day letter or seeks Tax Court review following the issuance of a 90-day letter, he will have the ability to deal directly with Appeals. In the case of a protest, these dealings are the taxpayer's goal, and therefore are mandatory if he wants to proceed. In the event the taxpayer seeks Tax Court review, he will also have the option to deal with Appeals. Clients should be aware of the fact that administrative appeals are entirely optional. If a client does choose to file a Tax Court petition, Appeals will automatically obtain jurisdiction for a period of time. The taxpayer, however, is not required to deal with Appeals in this situation.

### **PRACTICE TIP**

It is the experience of practitioners that it is usually extremely wise to deal with Appeals once the Tax Court petition is filed. Area Counsel typically

will be less likely to settle on favorable terms in that they enjoy litigation and desire the opportunity to take the case to court. Also, once the case leaves Appeals and the litigation phase begins, professional fees that are generated can often exceed the deficiency at issue! This turn of events will probably not result in return business for you.

### **Factors which Influence Protest Decision**

**1-5.40** The main issue facing the client who has received a 30-day letter is whether to protest the 30-day letter and follow the protest procedure or bypass the protest procedure and file a Tax Court petition. As already mentioned, Appeals will retain jurisdiction even if the Tax Court petition is filed. However, a number of considerations may affect the decision to pursue an administrative appeal.

### **1-5.50 Factors in Favor of Filing Protest**

- (1) A protest will avoid the expense of litigation through settlement procedures. Appeals Officers will weigh the "hazards of litigation" even when no case is actually pending. Hazards of litigation include costs involved both in financial terms and in manpower and the possibility of setting unfavorable precedent.
- (2) Appeals process allows the taxpayer to keep open the option of filing a petition in Tax Court or seeking district court or Claims Court review. This can prove advantageous to the taxpayer by allowing him to see how authority on the issue develops in the different forums. He may then be able to follow the most favorable avenue if settlement cannot be reached.
- (3) Protesting a 30-day letter allows for extended negotiations. When a case is docketed, and a trial status order has been issued by the Tax Court. Appeals cannot consider the case without Area Counsel's consent.
- (4) Protesting allows the taxpayer to defer payment of the deficiency for more time and delays collection proceedings such as levy and lien.

### **PRACTICE TIP**

It may not always be advisable to put off the payment of the deficiency because of the compounding of interest. This cost should always be discussed with your client.

- (5) The taxpayer may use the appeals process to "feel out" the IRS' position on a matter. The taxpayer may be able to prove the Agent or Area was wrong, and avoid a court case entirely, so that for cost containment purposes this may be the preferred procedure.
- (6) An informal opportunity for discovery is inherent in the appeals process, which might not be available under the limited discovery rules of the Tax Court.

(Remember that in tax cases, you control most information. Most discovery is done by the government against you!)

- (7) Protesting allows the taxpayer more time to prepare his case before the suit is started and provides him with an opportunity to judge the reactions of the Appeals Officer in order to evaluate which of his arguments are strongest.
- (8) In Whipsaw cases, there is more flexibility in resolving them before the Appeals Officer than if one of the taxpayers involved goes to court.
- (9) IRC § 7430 may preclude a taxpayer from receiving attorneys' fees even if he should prevail in Tax Court, if he has failed to exhaust his administrative appeals.

### **PRACTICE TIP**

Each case involves different factors and different considerations and all the foregoing considerations should be weighed carefully before proceeding with a course of action.

### **1-5.60 Factors in Favor of Bypassing Appeals Process**

- (1) New issues and grounds are less likely to be raised if the taxpayer goes directly to Tax Court. Appeals Officers have more tax expertise than Revenue Agents, therefore the risk of new issues being raised by them upon their review is possible.
- (2) New issues raised by the Appeals Officer when the 90-day letter was issued by the Appeals Office (as opposed to the Area Office) places the burden of proof on the taxpayer to disprove these issues.
- (3) In Fraud Penalty cases where a criminal prosecution recommendation has been made, settlement must be approved by Area Counsel. In such a situation, therefore, it would be wiser and more efficient to file a Tax Court petition since Area Counsel must be present in all docketed cases.
- (4) In smaller cases, the fact that a taxpayer has filed in Tax Court may indicate to the Appeals Officer that the taxpayer is convinced he is right. Psychologically, this may facilitate settlement. In cases involving larger amounts, however, the validity of this proposal is more questionable.
- (5) The taxpayer may wish to speed up the disposition of the case. Service procedures seem to encourage more expedited case hearings for docketed cases.
- (6) Settlements in docketed cases have more finality than settlements in non-docketed cases. Docketed case agreements are reflected in Tax Court

decisions, while non-docketed settlement agreements are by definition not binding where there is concealment, misrepresentation of material facts, fraud or malfeasance.

- (7) Clients should also be aware of possible trends that may arise by virtue of who is representing them in their appeal. Accountants usually settle with the least litigation costs to the taxpayer. Attorneys may be more prone to consider litigation if they are more sensitive to new issues that might be raised.
- (8) Where the Service is locked into a position on a particular matter which might preclude settlement, it might be more advantageous to fight the issue out in Tax Court if you believe the Service's position is incorrect.
- (9) Appeals is generally a waste of time if the issue is coordinated against you (i.e., IRS is set on litigation and will not settle).

### **Choice of Forum Considerations**

**1-5.70** In evaluating the clients case, all avenues should be examined, including not only the administrative and Tax Court routes, but also the alternative of pursuing a refund suit route in district court, the Court of Claims, or Bankruptcy Court. The following paragraphs will discuss factors that will affect which forum will be most advantageous to the client:

**1-5.80 Ability to Pay Asserted Deficiency.** As a practical matter, the taxpayer is restricted at the outset by his ability to pay the asserted deficiency. If he is unable to do so, he can't petition for a refund in the district court or the Claims Court where payment is required before suit can be instituted (except excise and employment tax cases).

**1-5.90 Jurisdictional Factors.** The type of tax involved also may limit the taxpayer's choice of forum. The Tax Court has no authority to decide cases involving certain excise taxes, employment taxes and certain penalties. The taxpayer must follow refund procedures in cases involving those taxes.

**1-5-100 Interest Considerations.** A taxpayer's ability to file in Tax Court without paying the deficiency does not stop the running of interest on the deficiency if the taxpayer is unsuccessful. In refund cases, this interest will not build as it does in Tax Court cases, since the principal, at least, must be paid before the suit is instituted. Taxpayers can stop the running of interest in Tax Court cases by remitting the deficiency after the 90-day letter is received or post a bond. If he remits the entire deficiency prior to that date, the Tax Court will lose jurisdiction over the case. The taxpayer may wish to make an advanced payment of interest to obtain a current deduction of that amount. Also, a recent Tax Court decision allowed a taxpayer to deduct advance payments designated entirely to interest without paying the underlying tax.

**1-5.110 Forum Shopping.** Only the Tax Court exclusively hears tax cases, so its expertise must be considered in choosing a forum. Technical issues will receive different treatment in the Tax Court than issues with equitable appeal, for example, because the Tax Court has no "equitable" jurisdiction.

### **PRACTICE TIP**

For example, if your client is an elderly lady who has been claiming her cat as a dependent, you don't want to be in Tax Court.

**1-5.120 The Golsen Rule.** Taxpayers choosing between Tax Court, district court and Claims Court must take into account the Golsen Rule. This rule requires the Tax Court to follow the rule adopted by the Court of Appeals to which the taxpayer would appeal an adverse decision. In effect, the Tax Court follows the same Circuit Court as the district court does. But the Circuit Court follows its own decisions! As a result, practitioners must know the law of the Circuit which may affect their client's case. If the law in that Court of Appeals is against your client, perhaps it would be better to pay the deficiency and proceed to Claims Court instead.

**1-5.130 Increased Deficiency.** During the pendency of a Tax Court case, the statute of limitations on assessments is tolled, allowing the Commissioner to claim increased deficiencies so long as the Commissioner bears the burden of proof on these issues. This risk of this occurring is not insignificant.

**1-5.140 Discovery Rules.** Taxpayers may wish to avoid extensive discovery if they do not want the government to have equal knowledge of the facts and witnesses. They may also wish to avoid the expense of extensive discovery. If this is the case, taxpayers should avoid the district courts, where the Federal Rules of Civil Procedure govern and encourage extensive discovery. Discovery in the Claims Court, on the other hand, is somewhat more limited, while the Tax Court rules are the most restrictive and allow discovery through deposition only in very limited situations.

**1-5.150 Jury Trial Considerations.** Jury trials are not available in the Tax Court or Claims Court. Consequently, a taxpayer who feels his case presents an issue to which a jury may be sympathetic should file in district court. On the other hand, tax cases are often complex and may not present appealing jury issues. Furthermore, a wealthy client may have to face the possibility of unsympathetic jurors who are less wealthy, as the recent Leona Helmsley case shows!

**1-5.160 Rules of Evidence.** The Rules of Evidence are strict in jury trials, more relaxed in bench trials (United States District Court, Claims Court and Bankruptcy Court) and very relaxed in Tax Court. If your evidence is questionable, go to Tax Court. If the Government's evidence is hearsay, then get a trial by jury.

### **When Must Protest Be Filed**

**1-5.170** If the taxpayer desires to settle his case with the Appeals Office after receiving a 30-day letter, he is required to protest the Examination's determinations. Generally, this will be done in writing.

**1-5.180** In the event the amount in dispute is less than \$25,000, a formal protest is not necessary, but a brief statement of the disputed issues is required before the case can be forwarded to Appeals. A written protest conforming to IRS guidelines is required if:

- (1) The determination was the result of a field examination case; and
- (2) The total amount of the proposed additional tax (including penalties), proposed over-assessment or claimed refund is greater than \$25,000 for any taxable period.

### **PRACTICE TIP**

Practitioners recommend that a written protest be filed in all cases. This establishes a record that may be reviewed by Appeals and also indicates the taxpayer is serious about protesting the deficiency.

### **Formalities of Written Protest**

**1-5.190** There is no strict form this written protest must take, however it must contain the following information.

- (1) The name and address of the taxpayer;
- (2) The date and symbols on the 30-day letter;
- (3) The tax periods or years involved (note: a single protest is sufficient to cover all years and matters if they are covered on one 30-day letter);
- (4) A statement the taxpayer wishes to appeal the determinations of the Examination Division to the Appeals Office;
- (5) An itemized listing of the adjustments with which the taxpayer disagrees;
- (6) A statement of fact supporting the taxpayer's position in any contested factual issue;
- (7) A statement outlining the law or other authority on which the taxpayer relies; and
- (8) A declaration under penalties of perjury that the statement of facts is true to the best knowledge of the taxpayer. The following language is acceptable for this purpose: "Under penalties of perjury, I declare that the facts presented in

my written protest, which are set out in the accompanying statement of facts, schedules, and attached statements, are to the best of my knowledge and belief, true, correct and complete" [See also Exhibit 3].

**1-5.200** If a representative of the taxpayer prepares or files the protest, a duly executed power of attorney must be attached to the protest, as well as a declaration indicating whether the representative prepared it and whether the representative knows of his own knowledge, that the information contained in the protest is true [See Exhibit 3].

**1-5.210 Time Period for Filing; Number of Copies; Where to File.** The protest must be filed in duplicate with the Area Manager within 30 days of the date of, NOT THE RECEIPT OF, the 30-day letter. Failure to file within 30 days without an extension referred to previously, will cause the matter to be processed for issuance of a statutory notice of deficiency, commonly called a "90-day letter" [See Exhibit 2]. As discussed previously, the taxpayer may request and will generally be allowed a 30-day extension for filing a protest initially. Further extensions are granted at the discretion of the Chief of the Quality Review Staff, who will generally require valid reasons for additional extensions. The probability of obtaining additional extensions is greater when complicated tax issues are involved.

#### **Nature of Protest**

**1-5.220** The protest should be fact-oriented. Facts of the case should be developed and carefully presented, because they will form the foundation for the legal discussion of the issues.

**1-5.230** Documents and affidavits in support of the stated facts should be attached to the protest. This may gain the taxpayer a psychological advantage by showing the Appeals Officer the taxpayer is ready for trial.

**1-5.240** The presentation of facts and law should be aimed at showing the issue is either hazardous or inappropriate for the IRS to litigate. In effect, a wise approach is to show that the IRS stands a substantial chance of losing on the issue in court and/or that failure to settle might give other taxpayers the opportunity to obtain a windfall tax advantage. This can be done, for example, by showing that the Agent failed to consider or give appropriate weight to some fact or legal authority.

**1-5.250** In preparing the protest, the preparer should be sensitive to defects and weaknesses in the examiner's report. Omissions of information on the examiner's report which are adverse to the government should be pointed out. The preparer should also highlight improperly framed issues and misstated facts.

**1-5.260** All possible arguments in the taxpayer's favor should be made, regardless of whether the preparer feels the argument is important or dispositive. The Appeals Officer may feel that such arguments have a cumulative effect in favor of the taxpayer.

**1-5.270** Since the taxpayer bears the burden of undercutting the determinations of the examination division, a "skeleton" protest which contains very few legal and factual arguments should probably be avoided. Such a protest may cause the Appeals Officer to dig in his heels on certain matters, particularly in light of the fact that a flimsy protest robs the Appeals Officer of the opportunity to be fully prepared for the settlement conference.

**1-5.280** The preparer of the protest may need to obtain Technical Advice to clarify the legal issues involved. This advice can be obtained by the preparer by requesting that the Appeals Officer request it from the National Office of the IRS. Obtaining Technical Advice is a very serious maneuver. The Appeals Officer will follow the Technical Advice once issued. Therefore, it should only be requested if you know the Appeals Officer is dead wrong and will not admit it.

**1-5.290** The filing of "skeleton" protests is not advisable since such a protest inhibits the expediency of settlement.

#### **PRACTICE TIP**

The format which the IRS follows in its supporting statements is the arrangement practitioners should follow in putting together their protest.

## **1-6 BASIC APPEALS PROCEDURES**

### **Representation**

**1-6.10** In an Appeals Office conference, the taxpayer may represent himself or may be represented by an attorney, CPA or an individual enrolled to practice before the IRS.

#### **PRACTICE TIP**

It is the experience of one practitioner that unless the issue relates to credibility of the client and the client is, in fact, credible, it is advisable not to have the client present during the Appeals Office conference. Often clients become too emotional and do more harm than good to their case. On the other hand, if credibility is at issue, having the client on hand may help.

### **Review of Protest Letter by Area Office**

**1-6.20** The Area Manager's Office reviews the protest before it is forwarded to Appeals with the case file. If the reviewer feels more facts are needed, he may ask the examiner to obtain them.

### **Preliminary Review of Non-Docketed Cases**

**1-6.30** The quality review staff of Appeals will review the file, the protest and any new facts, arguments or law contained in the protest within seven days of receiving it from the Area Office. This review is done with an eye toward determining if the case should

be referred back to the Area Office. Appeals will return the protest to the taxpayer if it does not include the necessary information, and may return the case to the Area Office if further development is required to warrant appellate review [IRM 4433.3(1); IRM 4433.3(3)]. Additionally, if Appeals feels the case could probably have been disposed of without Appellate review, they will return it to the Area Office.

**1-6.40 Return of Case to Area Office.** Return of a non-docketed case to the Area Office by Appeals is relatively rare; however, some examples of the occurrence of a return are when:

- (1) Additional information is needed to resolve an important issue in the case;
- (2) There are significant unresolved factual differences between the examination report and the protest;
- (3) The protest is seriously deficient in some way, (i.e., it fails to establish the taxpayer's position or lacks sufficient substantive details);
- (4) The examining Agent has clearly misapplied the law, rendering an important issue indefensible;
- (5) The case re-opens a case previously closed;
- (6) The National Office has not completed its consideration of some aspect of the case;
- (7) Timely consent to extend the period of assessment has not been obtained;
- (8) The case includes claims for excise or employment tax abatement, or the "100% penalty"; or
- (9) The parties are waiting for Technical Advice from the National Office.

#### **PRACTICE TIP**

It should be noted that the IRS, and thus Appeals as well, is now, as a policy matter, taking the "economic realities" of a case into consideration when deciding on how to dispose of a case. The "economic realities" test has been announced informally at Area Manager's liaison meetings and town hall meetings and will be applied to all examinations to the extent warranted.

#### **Consents Extending Statutory Period of Assessment**

**1-6.50** Appeals is also concerned about the statutory period of assessment expiring on the case. For this reason, Area Offices are requested to send the case to Appeals at least 120 days before the statute of limitations will expire. Appeals wants to ensure that

there is enough time to negotiate toward a settlement. If it appears, therefore, that the time for appellate review is inadequate (usually, less than 60 days remaining), the taxpayer will be asked to consent to an extension of the statutory period on assessments. This is accomplished by Form 872-A, which extends the statutory period of assessment for an indefinite period of time and may restrict the extension only to assessments arising out of particular matters. Or signing Form 872 instead extends the period only for a specified time. Practitioners faced with the question of whether to consent to such an extension must analyze the pros and cons of such an extension on a case by case basis. Signing Form 872 or 872-A may be wise if a change in the Regulations is expected. Signing Form 872 may also facilitate a settlement.

### **Area Verification of New Information**

**1-6.60** Appeals may return the case to the Area Office to verify or comment on it if there is new information which would have a serious impact on an important issue in the case, or if verification by an Appeals Officer would be too time-consuming.

### **Appeals Procedure in Docketed Cases**

**1-6.70** If a taxpayer does not file a protest to the 30-day letter, the Area Manager will issue a 90-day letter (statutory Notice of Deficiency). The taxpayer then has ninety days to file a Tax Court petition. If the taxpayer does file this petition, his case becomes "docketed," and will be sent to the Area Counsel. The taxpayer at this point, however, may still wish to attempt to settle his case with Appeals.

**1-6.80 Procedural Guidelines.** The IRS has established guidelines to encourage disposition of docketed Tax Court cases, using the administrative appeals process. Therefore, if the taxpayer does wish to investigate a potential settlement, his case will enter a stage in which jurisdiction over his case can shift back and forth between the Area Counsel's Office and Appeals flexibly, at the discretion of one or both of the Offices. The guidelines established by the IRS provide for the following:

- (1) Docketed cases are referred to Appeals. Initially, all docketed cases will be forwarded to Appeals by the Area Counsel in all cases unless Appeals issued the 90-day letter (for an explanation of when this may occur, see Section 1-5.20), or the Area Counsel feels there is little likelihood that the case can be settled.
- (2) Cases listed on trial calendars. When the case has been listed on a trial calendar, Appeals can return the case to Area Counsel. Appeals can keep the case, however, if the Area Counsel agrees to extend the period of consideration by Appeals.
- (3) Cases involving over \$50,000. When the tax deficiency involved, including tax and penalties, is more than \$50,000, the Appeals Officer can return the case to Area Counsel if it becomes clear that no progress toward a settlement is being made (or all or part of a case).

(4) Cases involving under \$50,000. When the deficiency is less than \$50,000, the case will be referred by Area Counsel to Appeals:

- a) For six months;
- b) Until one month before the call of the trial calendar if the case is classified as a regular case by the Tax Court; or
- c) Until 15 days before the call of the trial calendar if the case is classified as an "S case" by the Tax Court.

Once the above dates occur, the case will be returned to Area Counsel, unless both Appeals and Area Counsel agree Appeals consideration could continue.

(5) Settlement Authority in Docketed Cases. Whichever Office is currently considering the taxpayer's case has the sole authority to settle the case without interference from the other Office. However, if the Area Counsel requests the case file to prepare for trial in the Tax Court, Appeals can retain the authority to consider and settle the case if both Area Counsel and Appeals agree to it.

(6) Transfer of Case. Additionally, if both Offices agree, the case can be transferred even if the office it has been transferred to has already considered the case. Decisions to transfer are usually made based on whether transfer will promote settlement. Once an answer has been filed, Appeals and Area Counsel can work together on the case. Under this scenario, Appeals has settlement authority but Area Counsel will act as advisor and attend the conferences. This will often occur in cases involving "significant issues or large deficiencies." Luckily, practitioners and taxpayers should be aware of the fact that they will be informed promptly as to when the case was transferred and to which Office (Appeals or Area Counsel). The taxpayer will also be informed if his case is being prepared for trial or if the settlement authority of Appeals has been revoked.

## **1-7 CONFERENCE PROCEDURE**

### **Conference Proceedings**

**1-7.10** Appeals conferences are informal. They are conducted in a conference room at Appeals and normally only the Appeals Officer and the taxpayer's representative attend, testimony is not taken under oath and discussions of the facts and law are not recorded by a stenographer. Facts which the taxpayer alleges, however, are generally required to be submitted in the form of an affidavit or declared to be true under penalties of perjury. It should be noted that the presentation of information at the Appeals Office which was withheld from the Area Office, or is newly discovered may cause the Appeals Officer to transfer the case back to the Area Office for reconsideration. Alternatively, the new information may be sent to the Area for verification.

## **PRACTICE TIP**

Practitioners should be aware of the practical reality that the Appeals Officer, while more experienced and capable of analyzing tax matters, may not simply conduct an objective review of the taxpayer's case. He is, after all, a representative of the Service and will adhere to IRS policies in negotiating and considering settlement of the case. He will, of course, be arguing on behalf of the IRS. Do not be misled by his friendly and agreeable nature.

**1-7.20 Request for Additional Information.** The Appeals Officer may ask for additional information at the conference if it is needed. Complex cases may require more than one conference with Appeals, but at some point, settlement will be discussed if the Appeals Officer feels the case can be settled. Generally, the Appeals Officer will ask for a settlement offer from the taxpayer or his representative. If the Appeals Officer does not accept the taxpayer's offer, he will generally propose a settlement amount that he would consider. If the taxpayer and the Appeals Officer do reach a settlement agreement, the Appeals Officer prepares a report which sets out the settlement amount, the issues and evidence involved, and the reasons supporting the settlement. This report is then processed and the taxpayer is sent a bill for the agreed upon deficiency.

## **PRACTICE TIP**

You should be very sure that you have authority to settle the case on behalf of your client before you get to the conference. If you are not able to agree to an offer on the spot, the Appeals Officer might change his mind. On the other hand, a common negotiation tactic is, "I have to clear that with the client."

**1-7.30 Failure to Reach Agreement.** If the parties cannot reach agreement, the Appeals Officer prepares a report (called an Action/Transmittal memorandum) which discusses the taxpayer's settlement offer and sets out the settlement range the Appeals Officer considers acceptable. It is at this point that the report is processed and the Appeals Office requests issuance of a 90-day letter. This request is reviewed by the Area Counsel before issuance.

**1-7.40 Presence of Area Manager or Area Counsel.** When the case before Appeals is not docketed, a representative of the Area Manager may be present if both the Appeals Officer and the Area Manager feel his presence is advisable. Where the case involves a fraud penalty for which criminal prosecution has been recommended, the Area Counsel may be represented if he so desires.

## **Technical Advice**

**1-7.50** Technical Advice is guidance from the National Office as to the meaning of the Internal Revenue laws, regulations or related statutes as applied to the facts of a particular case. The questions for which Technical Advice is sought may be procedural

or technical. Both the taxpayer and Appeals (or the Area Office) may initiate a request for Technical Advice.

**1-7.60 When Technical Advice Is Not Available.** Technical Advice is not available when the case being considered by Appeals involves certain penalties or when the case was previously considered by Appeals.

**1-7.70 Taxpayer Initiation of Technical Advice.** The taxpayer may initiate a request for technical advice, though he may not directly request it himself, when he sees a lack of uniformity in the disposition of similar cases, or when the issue of the case is either so unusual or so complex as to require National Office consideration of the case. If Appeals refuses to make the request at the taxpayer's request, the taxpayer can ask the Area Director to review the Appeals Officer's denial of Technical Advice assistance. If the Area Director denies the taxpayer's Technical Advice request, that decision is final, unless the taxpayer petitions the National Office directly for a review of the Area Director's denial. The National Office, however, does not have to review the request, in which case the decision of the Area Director would be final.

**1-7.80 Considerations in Initiating Technical Advice Requests.** Strategically, it is good practice to initiate a request for Technical Advice if the Appeals Officer has totally hardened on an issue in the taxpayer's case. This is because Appeals is not bound by Technical Advice which is adverse to the taxpayer's position, even though Appeals is bound by Technical Advice adverse to its position. In other words, the taxpayer has nothing to lose if there is a deadlock in the case on a particular issue. Taxpayers, when initiating their request for Technical Advice, should also request a conference in the National Office, in the event the Technical Advice issued is adverse to their position. If this request is made, and a tax law specialist in the Technical Division in the National Office decides that advice adverse to the taxpayer's position should be given, a conference will be set up and held within 21 days. The taxpayer will be allowed only one National Office conference and it is usually held at the branch level in the Technical Division. Within 21 days following this conference, the taxpayer will have to forward to the National Office, in writing, any additional facts or legal arguments proposed, discussed or relied upon by the taxpayer orally at the conference to substantiate them and complete the file for the taxpayer.

**1-7.90 Technical Advice Decision.** The National Office will notify the taxpayer of its advice in a Technical Advice Memorandum which sets forth the issues, the facts, the law relied on by the National Office and the conclusion it reached on the matter. As mentioned, if the National Office's advice is in favor of the taxpayer's position, Appeals is bound by it. Additionally, the advice is applied retroactively. Advice adverse to the taxpayer, however, may be disregarded by Appeals, and the case can be settled under existing authority. Even if Appeals decides to apply the decision which is adverse to the taxpayer, the Associate Chief Counsel (Technical) may limit the retroactive effect of the holding. Finally, obtaining Technical Advice is a very slow and costly procedure, which the practitioner should only undertake after careful consideration.

## 1-8 SETTLEMENT PRACTICE AND PROCEDURE

### **Hazards of Litigation Standard**

**1-8.10** The mission of Appeals is to reach a "fair and impartial" resolution of a controversy. What this means in practice is that Appeals will work toward an outcome which takes into account what would probably happen if the case were litigated judicially. Thus, Appeals considers what are known as the "hazards of litigation" when attempting to resolve a case before it. A "hazards of litigation" analysis involves consideration of how an issue (or issues) would be resolved if litigated, and the making or seeking of concessions, taking into account the strength of the parties' positions. More specifically, the Appeals Officer will review the entire file to determine what a court might find, given the proof available and the effect of testimony. Additionally, the Appeals Officer will take into account judicial interpretation of relevant Code provisions in light of similar cases already decided. As a result, the taxpayer who desires to settle his case must show there is substantial uncertainty as to how the law would be applied to their case as a whole. Failure to make this showing prevents Appeals from considering the relative merits of the opposing positions and the attendant hazards that would face them if those positions were litigated.

**1-8.20 Judicial Attitude of Appeals Officer.** The Taxpayer and his representative must be aware of the difference between the Appeals Officer's approach when he is evaluating a case for settlement and when he is hearing the taxpayer's appeal. He is not an impartial judge at the hearing; instead he is arguing the IRS' position. When evaluating for settlement purposes, on the other hand, the Appeals Officer engages in a more objective analysis and looks at the case the way a court might.

**1-8.30 Evidential Considerations.** The Appeals Officer will consider a number of factors to evaluate settlement possibilities. Considerations include:

- (1) how probative the evidence likely to be presented is;
- (2) how credible the witnesses will be;
- (3) whether the witnesses will be available;
- (4) how likely it is that the taxpayer will be able to prove his case;
- (5) whether conclusions of law are doubtful.

A great deal of weight will therefore be given to the evidence which would be available at a trial. Hearsay evidence which might be excluded at trial, however, might be more influential to the Appeals Officer who is not comfortable applying rules of evidence.

**1-8.40 Role of Legal Authority.** The Appeals Officer may exercise independent judgment when settling cases, and may conclude that a court would decide a case differently than the IRS under one of its Revenue Rulings. The decision of a Tax Court

on a particular issue will probably lead to agreement on that issue; however, the Appeals Officer can refuse to concede an issue if the Service wishes to re-litigate that issue in court. The law of the Circuit Court to which the taxpayer would appeal has greater weight for the Appeals Officer because the Tax Court must follow those precedents. Overall, however, the Appeals Officer is not bound by legal precedent if the IRS does not consider itself bound and desires to re-litigate a particular issue or issues.

### **Settlement Offer**

**1-8.50** Practitioners who desire to settle their cases must make settlement offers which demonstrate a good faith effort to settle. Attempts to "bargain" with the Appeals Officer will be rejected. Therefore it will not be advantageous to point out the potential costs of litigation (also called the "nuisance value") in tendering a settlement offer. The starting point for any settlement offer must be based on the hazards of litigation. An offer which the Appeals Officer believes is made in good faith may be rejected by the Appeals Officer. If that is the case, Appeals will either state an acceptable settlement amount or be asked for one by the representative.

### **PRACTICE TIP**

Representatives should initiate settlement proposals. Appeals Officers should accept such proposals if they are within the settlement range. Practitioners who fail to make a settlement offer will then have to work off the proposal made by the Appeals Officer and that proposal will normally be at the high end of the settlement range. As a result, a proposal at the low end of the settlement range, but made by the taxpayer, should be accepted and is to the taxpayer's benefit.

Representatives should put their past dealings with the IRS behind them when they deal with Appeals. Hostility will not facilitate settlement, and the Appeals Officers are there to settle. So be open minded and willing to work with the Appeals Officer.

### **Types of Settlements**

**1-8.60** The IRS and practitioners have identified a number of ways in which to resolve cases, which are explained in the following Sections.

**1-8.70 Mutual Concession Settlements.** Mutual Concession settlements are made when there is substantial uncertainty about how a court would interpret and apply the law or about what facts the court would find if the case were litigated. Thus, neither side will completely concede the issue and both make concessions to reach a settlement.

**1-8.80 Split-Issue Settlements.** Split-issue settlements are reached on issues that would result in a decision completely for one of the parties if the issue were litigated. This type of settlement, then, recognizes the relative merits of both parties' positions resulting in an intermediate solution which could not be reached in court [IRM 8633, MT 8-17].

**1-8.90 Nuisance Value Settlements.** Nuisance value settlements are concessions which are unrelated to the merits and issues of the case and are made only to eliminate the inconvenience or cost which would ensue if further negotiations or litigation were to take place.

## **1-9 PREPARATION FOR CONFERENCE**

### **Preparing for Conference**

**1-9.10** Practitioners should not be lulled into "under-preparedness" by the informality of a conference. Most of the staff assigned to Appeals have been promoted from the local Area Offices and are paid more than front line Revenue Agents. Many of them have advanced degrees, a few are attorneys (especially in estate tax) and some are CPAs. Still, many representatives are unprepared at the initial conference. This is dangerous in light of the fact that the adversary (the Appeals Officer) is also, in effect, the judge, who has a psychological edge with no vocal client to satisfy or fee to earn. Neither is he concerned with the time and expense involved should no settlement be reached. Preparation can offset these advantages. The Appeals Officer has not personally prepared the case and the Revenue Agent who did is more an auditor than an investigator of facts. Thus, preparation by the taxpayer and his representative will result in a better grasp of the facts than the Appeals Officer has.

**1-9.20 Organization of Evidence and Research.** To prepare for the case, the practitioner should first interview his client, searching hard for all details. The facts revealed should then be checked out. Complete reliance on the client is not advisable. The practitioner should also obtain whatever records or other evidence the client has. After researching the relevant legal standards which may apply, the argument or arguments can be formulated. All the elements which the taxpayer must prove should be outlined and the supporting documents and witnesses lined up. It is advisable to prepare both sides of the case, so that surprise is not an element at the conference. The practitioner may also need to determine if more evidence is needed, for example, third party affidavits. The evidence and exhibits should then be organized for presentation at the conference, and the entire presentation and file should be reviewed before the conference. Finally, the client should be consulted about settlement proposals before the conference.

### **PRACTICE TIP**

A basis for settlement on all the issues raised must be presented by the taxpayer. Once an issue has been raised, it cannot be ignored by the taxpayer, regardless of how unimportant or meritorious the taxpayer may feel it is.

**1.9.30 Interacting With Client.** A settlement conference may be useless if the client has not granted permission for you to settle the case. It is advisable, therefore, that the representative get specific settlement authority from his client prior to the conference. If

the proposal of the Appeals Officer exceeds that settlement authority, the representative can defer acceptance of it until the client and the representative discuss the merits of the offer. Taxpayers may have very unrealistic views of the merits of their cases. One of the jobs of the representative during the preparation phase is to fully apprise the client of the strengths and weaknesses of his case. The client should also be fully apprised of the research which has been conducted with respect to the issues in the case. The only way a client may ever be satisfied that a settlement is in his best interest is if he participated in the decisions regarding that settlement. Don't badger the client. If the client is unrealistic in his assessment of the case, perhaps it is wisest to direct a letter to the client setting forth the representative's views and the risks inherent in trying the case. Even this may not satisfy the client, who may only be satisfied if the case is tried in court. Most cases, however, can be and are settled at Appeals.

### **Presenting Client's Case at Conference**

**1-9.40** At the conference, the parties will talk through the issues. Gradually, they will agree on some things and disagree on others. The representative will be asked to propose ways to dispose of unagreed issues. What will follow will either be settlement offers or arguments advancing the client's position.

**1-9.50 Presentation of Strongest Arguments.** The representative should only make his strongest arguments at the conference or his credibility will be lessened. Tangible evidence is important, and should be used as support for arguments. Pointing out authority or facts that the examining Agent failed to disclose or consider is important. Only by presenting the strongest case for the taxpayer, both factually and legally, will the relative merits of the parties' positions emerge. This is necessary as it will provide the Appeals Officer with a basis upon which to evaluate settlement offers. The Appeals Officer must justify his decision in writing, and the practitioner must give him the information with which to do so.

**1-9.60 Guidelines for Preparing and Arguing Case.** A number of things should be taken into account in preparing and arguing the client's case at the conference:

- (1) The rules of evidence do not apply. All evidence should therefore be presented which is favorable to the client's position;
- (2) Statements of fact or concessions made, either in the protest or at the conference, can be used as admissions at a trial if no settlement is reached. Evidence that the taxpayer offered to settle the case and the terms of that settlement are not admissible at a subsequent trial;
- (3) Legal authority on an issue is rarely dispositive and should therefore be emphasized in the protest, not at the conference; and
- (4) IRS pronouncements should be emphasized at the conference, since they will be given more weight by the Appeals Officer than court decisions.

## Settlement Negotiations

**1-9.70** Settlement negotiations will in large part be influenced by the success with which the taxpayer's case was presented. The taxpayer's case must create some doubt as to the probable result if the case were presented in court or a settlement offer will not even be considered. A number of strategies will aid the practitioner in negotiating a favorable settlement for his client apart from a well-prepared case presentation. First, the practitioner should be aware of some of the situations in which reaching a settlement may be difficult, such as:

- (1) where the taxpayer's version of the facts is unclear;
- (2) where the IRS wants a court decision on the issues for other cases (a "coordinated" issue);
- (3) where the Commissioner's policy conflicts with court law;
- (4) where a case was poorly handled in the Area Manager's Office, filling the case file with material which now has to be explained away.

Barring the above difficulties, a practitioner will be able to negotiate effectively if he keeps in mind some of the tenets of successful negotiation:

- a. Establish a reputation as a reasonable negotiator. Do not press beyond the merits of the case, but pursue a case to the bitter end if you are right. In this way you will earn respect;
- b. Assume the Appeals Officer handling the case is capable;
- c. Consider the governmental policy toward taxpayers and prepare a response to it;
- d. Know the governmental procedures and alternatives;
- e. Be completely prepared on the facts and the law, and know the strengths and weakness of the taxpayer's as well as the government's cases;
- f. Remember that almost everything can be negotiated. Be flexible and strive toward settlement, not winning;
- g. Be open-minded. Don't go in with ultimatums and final offers;
- h. Be persistent in negotiating toward a settlement, not in your position;
- i. Recognize that opposing interests may be genuinely felt and don't insult your adversary or claim he is insincere;

- j. Leave your client at home; and
- k. Don't misrepresent.

**1-9.80 Proposal of Settlement by Taxpayer.** Additionally, with regard to the settlement offer itself, the practitioner should remember that the Appeals Officer will not usually institute settlement. It usually must be proposed by the taxpayer. In this regard, the offer should be high enough to indicate a good faith effort to settle, without necessarily being the client's best offer. An offer of 10% of the deficiency will generally be presumed not to be a good faith offer. The offer should be couched in terms which reflect the chances of success in court. This may result in offers which reflect the chance of success in court, or on the percentage of the amount of tax each issue involves. If the taxpayer's initial offer is not accepted, the practitioner should ask the Appeals Officer what amount would be acceptable, if it is not offered. The Appeals conference is a horse trading session. Issues are traded. Risks are evaluated by the respective parties. Concessions must be made on the part of both parties to reach a settlement. Remember, if a settlement is not reached, the taxpayer still has the right to litigate the matter before the Tax Court.

## **1-10 SETTLEMENT AGREEMENTS**

**1-10.10** Settlement of docketed Tax Court cases is reflected in a written stipulation of the parties, which then must be accepted by a Tax Court Judge. If it is signed and filed by the Judge, it becomes the judgment of the Tax Court. Non-docketed case settlements, however, must be reflected in one of two IRS forms which the taxpayer is asked to sign: Form 870 or 870-AD.

### **Form 870**

**1-10.20** Form 870 is a waiver of restrictions on assessment. It is also used to accept over-assessments [See Exhibit 4]. The intended effect of Form 870 is to allow the taxpayer to pay the deficiency, stop the running of interest, and give up the right to go to Tax Court. It is not, by definition, a binding Closing Agreement. As a result, the IRS can assert further deficiencies and/or the taxpayer can file a refund suit even when Form 870 is used. The language of Form 870 permits reopening of issues, by either the taxpayer or the IRS. Therefore, if a taxpayer requests to sign a Form 870, the IRS is on notice that finality is not contemplated. Form 870 is intended to be an informal settlement and is rarely reversed. It is really a "gentleman's agreement" which lets the statute of limitations run out on refund claims or further deficiencies.

### **Form 870-AD**

**1-10.30** Form 870-AD is practically a closing agreement [See Exhibit 5]. The Regulations and Form 870-AD try to make settlement final by providing for the taxpayer's prompt payment of the deficiency, and an agreement not to file suit for a refund or to make an offer in compromise. Additionally, Form 870-AD omits any statement that the government can assert further deficiencies. And while the Form 870 becomes effective when it is received, Form 870-AD must be accepted by or on behalf

of the Commissioner before it becomes effective. The 870-AD also says the taxpayer will sign a closing agreement (which is binding) if asked to, and that the IRS will not reopen the case unless there is fraud, misrepresentation of a material fact or malfeasance.

**1-10-40** While it appears that the Form 870-AD is a final agreement., there is a split in the Courts on the matter. The Ninth Court in 1987 held that Form 870-AD is not a binding settlement agreement. The Third, Sixth, Seventh and Eighth Circuits, however, allow subsequent refund claims to be filed, even after Form 870-AD has been signed and accepted. The Second, Tenth and Federal Circuits take a different approach and only allow closing agreements for settlement of tax controversies.

## **1-11 CLOSING AGREEMENTS**

**1-11.10** Taxpayers seeking finality in their settlement agreements with the IRS should attempt to use a closing agreement. While both Form 870 and Form 870-AD are administrative devices, the closing agreement is expressly provided for by statute in IRC § 7121 [See Exhibits 6 and 7]. As such, closing agreements are the only agreements the Code recognizes as binding on the IRS, absent fraud or misrepresentation.

### **Characteristics of Closing Agreements; Finality**

**1-11.20** Basically, the closing agreement is a statutory agreement between the taxpayer (or a person acting for the taxpayer) and the IRS which fixes liability and prevents the re-opening of a settlement with respect to part or all of the liability in a particular matter. It is not governed by contract law. Even the parties themselves may not cancel or rescind it. Agreements on particular matters as to taxable years ending prior to or at the date of the closing agreement are not affected by subsequent retroactive legislation, if the legislation is silent as to the effect on closing agreements. The closing agreement only determines matters which are stated in it. For example, a closing agreement which only determines tax liability does not also by implication determine the taxpayer's stated gross income for the same taxable year.

### **When Closing Agreements May Be Used**

**1-11.30** Taxpayers who insist on the finality of a closing agreement need to persuade the Appeals Officer that the government will sustain no disadvantage if a closing agreement is used and must show good and sufficient reasons for the agreement. Closing agreements may be requested by the IRS or the taxpayer in a ruling situation. Alternatively, they may be used to clear up a tax matter where a non-tax consideration hinges on the tax consequence of it (for example, a taxpayer wants to complete a sale of stock). In the Appeals situation, a valid reason for entering into a closing agreement is simply the taxpayer's wish to conclusively clear up a controversy he or she has with the IRS.

## **Closing Agreement Forms**

**1-11.40** There are three closing agreement forms: Form 866, Form 906, and the combined agreement [See Exhibits 6 and 7]. Either the taxpayer and his representative or the IRS will draft the closing agreement.

### **Form 866**

**1-11.50** Form 866 is entitled "Agreement as to Final Determination of Tax Liability" [See Exhibit 6]. This form determines the tax and liability for each period and type of tax listed in the agreement.

### **Form 906**

**1-11.60** Form 906 is entitled "Closing Agreement on Final Determination Covering Specific Matters" [See Exhibit 7]. This form would be used, for example, where the parties are unable to agree on an unqualified liability figure and may want to resort to a determination of taxable income only.

### **Combined Agreement**

**1-11.70** When the parties seek to set forth their agreement on both liability and specific matters, they do so in a combined agreement.

## **Contents of Closing Agreements**

**1-11.80** Every closing agreement must contain an identification of the parties, introductory clauses, the agreed determination, an ending clause and the signatures of the parties.

**1-11.90** Any misrepresentation of material fact in a closing agreement will cause the IRS not to be bound to it, so care must be taken in drafting the agreement. The determination of tax should be clearly and unambiguously stated in statutory terms, if necessary. Closing agreements are always signed by or on behalf of the taxpayer first, since it represents an offer by the taxpayer. If the holder of a power of attorney will be signing the closing agreement for the taxpayer, the power of attorney instrument must expressly provide the authority to sign a closing agreement.

## **IRS Position on Closing Agreements**

**1-11.100** While in some cases the IRS encourages the use of closing agreements, the IRS discourages its use as a matter of practice. Because of the closing agreement's finality, a large volume of requests for them would be difficult to process and the IRS will carefully consider whether to enter into a closing agreement. The decision is truly theirs, because the Code permits, but does not require the IRS to enter into closing agreements. As a result, the decision is discretionary with the IRS. Additionally, the procedure for obtaining a closing agreement is burdensome and involves layers of approval, culminating in execution only by relatively high ranking IRS officials. Furthermore, the Internal Revenue Manual encourages Appeals Officers to persuade taxpayers seeking finality to utilize Form 870 or 870-AD [IRM 8815, MT 8-27].

## **1-12 Due Process in IRS Collections**

**1-12.10 RRA 98** established formal procedures designed to insure due process where the IRS seeks to collect taxes by levy (including by seizure). The due process procedures also apply after notice of a Federal tax lien has been filed. The IRS would be required to notify the taxpayer five days after filing a Notice of Lien or before any levy action. During the 30-day period beginning with the mailing or delivery of this notification, the taxpayer may demand a hearing before an appeals officer who has had no prior involvement with the taxpayer's case. These provisions became effective January 18, 1999. ['3401] [IRC '6320]

### **CAP Rights to Appeal**

**1-12.20** Since February 12, 1996 the Internal Revenue Service has had a collection appeals program(CAP) which allows taxpayers to appeal the filing of a lien and other collection actions. This protection however is not statutory. If the IRS chooses not to follow its own procedures, there is no remedy available to the taxpayer.

### **Impartial Hearing**

**1-12.30** §6320 provides statutory appeal rights to taxpayers who are subject to federal tax liens. The provision specifically provides for an impartial hearing officer (which may not have been the case in the past). In the past the Internal Revenue Service collection division engaged in substantial ex parte discussion with the Appeals Officer. Now there are specific statutory protections available to the taxpayer and specific guarantees of independence by the Appeals Officer. Because taxpayers will also have the right to seek judicial review of any determination of the appeals officer, the taxpayer is guaranteed to have better consideration at the appeals level. In the past, if an Appeals Officer ruled against you the matter was referred back to the collection division and it proceeded to file the lien without further rights to the taxpayer. As case law develops in this area, Appeals Officers will also have guidelines from the courts as to appropriate reasons for foregoing liens and releasing liens.

### **Levy Appeal Rights**

**1-12.40** Before the IRS can levy against a taxpayer's property, it would be required to provide the taxpayer with a "Notice of Intent to Levy," similar to that currently required under '6331(d). The notice would not be required to itemize the property the Secretary seeks to levy on. Service by registered or certified mail, return receipt requested, would be required. ['3401(B)] [IRC '6330]

### **Notice of Intent to Levy**

**1-12.50** Subject to the exceptions noted below, no levy could occur within the 30-day period beginning with the mailing of the "Notice of Intent to Levy." During that 30-day period, the taxpayer may demand a pre-levy hearing before an appeals officer who generally has had no prior involvement with the taxpayer's case.

### **What must a Pre-levy CDP Notice Include?**

**1-12.60** Pursuant to section 6330(a)(3), a pre-levy CDP Notice must include, in simple and nontechnical terms:

1. The amount of the unpaid tax.
2. Notification of the right to request a CDP hearing
3. A statement that the IRS intends to levy.
4. The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—
  - a. The statutory provisions relating to the levy and sale of property;
  - b. The procedures applicable to the levy and sale of property;
  - c. The administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals;
  - d. The alternatives available to taxpayers that could prevent levy on the property (including installment agreements); and
  - e. The statutory provisions and the procedures relating to the redemption of property and the release of liens on property.

### **What must a Taxpayer Do to Obtain a CDP Hearing?**

**1-12.70** The taxpayer must make a request in writing for a CDP hearing. A written request in any form which requests a CDP hearing will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. The CDP Notice should include, when appropriate, a Form 12153, Request for a Collection Due Process Hearing, that can be used by the taxpayer to request a CDP hearing.

1. The Form 12153 requests the following information:
2. The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).
3. The type of tax involved.
4. The tax period at issue.

5. A statement that the taxpayer requests a hearing with Appeals concerning the proposed collection activity.
6. The reason or reasons why the taxpayer disagrees with the proposed collection action.

Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll-free, 1-800-829-3676.

The taxpayer may perfect any timely written request for a CDP hearing, which otherwise meets the requirements set forth above and which is made or alleged to have been made on the taxpayer's behalf by the taxpayer's spouse or any other representative, by filing, within a reasonable time of a request from Appeals, a signed written affirmation that the request was originally submitted on the taxpayer's behalf.

### **Form 12153**

#### **1-12.80 Set forth all defenses to levy**

1. Offer in compromise
2. Amount of the liability
3. Spousal defenses
4. Penalties
5. Request for installment agreement

### **Where Should The Written Request For a CDP Hearing Be Sent?**

**1-12.90** The written request for a CDP hearing must be sent, or hand delivered, to the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office does not appear on the CDP notice, the request must be sent, or hand delivered, to the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request must be sent, or hand delivered, to the compliance director, Philadelphia Submission Processing Center, or his or her successor. Taxpayers may obtain the address of the appropriate person to which the written request should be sent or hand delivered by calling, toll-free, **1-800-829-1040** and providing their taxpayer identification number (SSN or TIN).

### **Post Notice Hearing**

**1-12.100** If a return receipt is not returned, the Secretary may proceed to levy against the taxpayer 30 days after the Notice of Intent to Levy was mailed. The Secretary must provide a hearing Aequivalent@ to the pre-levy hearing if later requested by the taxpayer. However, the Secretary is not required to suspend the levy process pending

the completion of a hearing that is not requested within 30 days of the mailing of the Notice. The taxpayer loses at an equivalent hearing she may not file a suit as she could have if a timely appeal had been filed by the taxpayer.

### **Exceptions**

**1-12.110** An exception to the general rule prohibiting levies during the 30-day period would apply in the case of state tax offset procedures, and in the case of jeopardy or termination assessments. However, the Commissioner will prescribe procedures to give the taxpayer notice of the right to, and the opportunity for, a CDP hearing with Appeals with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a levy on a state tax refund is referred to as a post-levy CDP Notice.

### **Jeopardy**

**1-12.120** Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to a levy when there has been a determination that collection of the tax is in jeopardy. However, the Commissioner will prescribe procedures to provide notice of the right to, and the opportunity for, a CDP hearing with Appeals to the taxpayer with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a jeopardy levy also is referred to as post-levy CDP Notice.

### **Amount of Liability**

**1-12.130** The Act also authorizes the taxpayer to challenge the existence or the amount of the underlying tax liability for any tax period that the taxpayer did not receive statutory notice of deficiency for tax or did not otherwise have an opportunity to dispute such tax liability. The Appeals Officer is specifically directed to consider the following factors when considering a collection appeal: the verification presented, the issues raised by the taxpayer and whether any proposed collection action balances the needs for collection of taxes with the legitimate concerns of the person that any collection action be no more intrusive than necessary. [IRC '6330(C)(2)(B)]

### **Judicial Review**

**1-12.140** The rights of taxpayers with respect to liens and levies are greatly extended by the waiver of sovereign immunity contained in IRC '6330 (d). A taxpayer who has exercised her rights to appeal under IRC '6320 and/or IRC '6330 with respect to liens and levies now has specific authority to seek judicial review of an adverse IRS decision. The IRS takes the position that this right may not be exercised after an equivalent hearing). This provision represents a huge expansion of taxpayer rights. A basic presumption of all prior collection proceedings was the right of the IRS to take summary levy and lien actions without judicial intervention. The Tax Court has now been granted specific jurisdiction to hear matters concerning taxes under its jurisdiction. Generally those taxes would include income taxes, gift taxes, excise taxes and with the advent of Taxpayer Act of Rights 3 IRC '6672 Penalties. Other taxes including employment tax

liabilities would be subject to judicial review by a U.S. District Court. If the taxpayer chose the wrong jurisdiction then the taxpayer will be allowed 30 days to seek review of an appeal before the proper court. During the pendency of a judicial appeal the appeals officer will retain jurisdiction of the matter. IRC ' 6330 (d)(2).

### **Delays in Collection**

**1-12.150** The addition of judicial rights to review IRS collection action could result in a substantial delays in collection of taxes by the Internal Revenue Service. It might also encourage some recalcitrant taxpayers to prolong collection of taxes. Congress has chosen to balance protections of well-meaning taxpayers by providing the judicial remedies. One result however may be to encourage non-compliance by less dedicated taxpayers. The addition of judicial review provisions is a reaction to prior IRS abuses in collection matters. Many taxpayers who have legitimately sought payment arrangements and/or offers in compromise from the Internal Revenue Service have been confronted by inflexible collection employees. IRS policies including its allowable expense program (IRM 5323 et seq) have imposed severe constraints on taxpayers who wish to repay their taxes. The Internal Revenue Service over the past several years has become increasingly inflexible in granting installment agreements. In fact for a period of time from 1994 to 1997 the Internal Revenue Service adopted severe restrictions on granting installment agreements with respect to employment tax liabilities. The new collection appeals program prevents the Service from imposing unreasonable restrictions on installment agreements. Taxpayers have the right to seek independent review of a Collection Division decision. If the taxpayer is dissatisfied with that review, '6330(c) grants specific authority to seek judicial review of IRS determinations.

### **Caution**

**1-12.160** A note of caution is merited here because even though IRC ' 6330(c) grants the authority for judicial review there few precedents as to the standards which the courts may apply. Although ' 6330(b) sets forth the standards for appeals review, there can be no certainty as to how those standards may be applied by courts. One would hope that the courts will develop their own bright line tests so that practitioners may judge the appropriateness of judicial relief from IRS collection actions.

### **Suspension of Collection in Statute Limitations**

**1-12.170** If a taxpayer exercises rights pursuant to the Collection Appeals process the Internal Revenue Service is precluded from taking levy or lien action during the pendency of the proceeding except in the event of a jeopardy or a levy upon a state tax refund.

### **Offer Appeal Rights**

**1-12.180** Although the Internal Revenue Service had previously provided for administrative review of Offers in Compromise by the Appeals Division there was no specific statutory requirement for such review. RRA '3462(d) now enacts into law specific rights of independent review of Offers in Compromise by the Internal Revenue Service Office of Appeals.

## 1-13 Pending and Approved Installment Agreements

**1-13.10** Proposals to enter into installment agreements may result from letters, phone contacts, voice-mail, e-mail, or other communications between taxpayers and Service personnel. All taxpayers have the right to request installment agreements. Requests for installment agreements, including those on unassessed modules, must be noted in the case history, and must be identified on IDRS Codes are input in the computer system to prevent levy issuance. Taxpayers must provide specific information for installment agreement requests to be processed. If it is determined the agreement request was made to delay collection action, accounts will not be identified as in pending installment agreement status. To identify accounts as "pending" installment agreements taxpayers must:

- A. Provide information sufficient to identify the taxpayer: generally, the taxpayers name and identification number.
- B. Identify the tax liability to be covered by the agreement;
- C. Propose a monthly or other periodic payment of a specific amount.
- D. Be in compliance with filing requirements.

Requests that meet the criteria are identified as pending installment agreements even if taxpayers are not in compliance with:

- estimated (ES) payment requirements; or,
- federal tax deposit (FTD) requirements,

Acceptance or rejection of proposed agreements is based on analysis of Collection Information Statements.

**EXCEPTION:** (1) If installment agreement requests are made to delay collection action.

**EXCEPTION:** (2) Grant Streamlined, Guaranteed and In-Business Trust Fund Express installment agreements. [IRM 5.14.1.3 ]

### Situations That Do Result in Identification of Pending Installment Agreements

#### 1-13.20

**EXAMPLE: (1)** A taxpayer calls the IRS, provides her name, social security number (SSN), identifies the outstanding liability (or balances due), is in compliance with all filing requirements, fits streamlined installment agreement criteria and states she wants to pay \$500 per month.

**EXAMPLE: (2)** A revenue officer (RO) and taxpayer discuss the taxpayer's financial statement (which has the taxpayer's name and SSN on the form) on the phone. The taxpayer is in compliance with all filing requirements. The bal dues are specifically identified. The RO says the taxpayer needs to pay \$1500 per month. The taxpayer says he will think about it. The revenue officer mails the taxpayer a 433D. TP changes the amount on 433D and mails it back.

**NOTE:** Though in pending status, the agreement (and payment amount) must be approved, unless it is a Streamlined, Guaranteed or In-Business Trust Fund Express agreement.

**EXAMPLE: (3)** A taxpayer wants to make payments. RO completes Collection Information Statement (CIS) including the taxpayer's name and SSN and tells the taxpayer \$500 per month is appropriate. The taxpayer is in compliance with filing requirements. The taxpayer verbally agrees to the payment amount.

#### **Situations That Do Not Result in Identification of Pending Installment Agreements 1-13.30**

**EXAMPLE: (1)** A revenue officer evaluates a taxpayer's collection information statement. The taxpayer's name, social security number and balances due are all known and/or identified. The revenue officer informs the taxpayer that a \$1500 per month installment agreement is appropriate. There is no response from the taxpayer.

**EXAMPLE: (2)** A revenue officer mails a 433D to a taxpayer. The 433D provides a payment amount based on an analysis of the taxpayer's CIS. No response is received by phone, FAX, e-mail or other means of communication. The TP does not respond with a "No" .

**EXAMPLE: (3)** A taxpayer who knows he owes taxes tells his employer to send \$500 per month of his paycheck to the IRS. The taxpayer does not communicate with the IRS. The taxpayer's employer sends \$500 per month referencing the taxpayer's SSN. (Note: if \$500 per month is being received, contact should be attempted prior to taking collection action.)

**EXAMPLE: (4)** A revenue officer begins a trust fund penalty (TFRP) investigation. Meanwhile, an officer of the corporation states he wants an installment agreement, identifies the trust fund portion of the corporation's liability (as the bal due account to be paid) and provides a specific payment amount (to be paid from his own funds and applied to the corporate liability - trust fund only.) However, no liability has been recommended for assessment and/or the officer has not signed Form 2751, indicating responsibility for the trust fund portion of the liability (i.e. there is no bal due account for payment application.) Therefore,

the potentially responsible officer is informed there is no pending installment agreement and payments made are considered voluntary.

**EXAMPLE: (5)** A taxpayer wants to make payments on an installment agreement. The RO completes a Collection Information Statement (CIS) including the taxpayer's name and SSN. RO tells the taxpayer \$500 per month appears to be an appropriate amount for an installment agreement but the taxpayer is not in compliance with filing his form 1040 for the last two years. The taxpayer states that his accountant is away, and that the returns, which are extremely complicated, will take some time to prepare. The revenue officer requests that the taxpayer submit original, signed, returns, and provides a date 60 days hence, by which the returns must be received, along with a \$500 payment (based on the financial statement received.) In addition, the revenue officer requests that a payment of \$500 be received on a date 30 days hence.

[IRM 5.14.1.3]

### **Managerial Approval**

**1-13.40** Group Managers must approve most installment agreements. Specifically, installment agreements must be approved when:

- A. the aggregate unpaid balance of assessments exceeds \$25,000 or will not be fully paid in 60 months or less; or,
- B. an in business trust fund taxpayer is involved (Exception: Express agreements; or,
- C. the taxpayer defaulted on a previous installment agreement; or,
- D. the taxpayer is allowed to skip more than 2 payments in a 12 month period (including systemic skip); or,
- E. there is an extension of the statutory period for collection, regardless of the length of the agreement or the amount of tax at issue; or,
- F. agreements will fully pay one or more bal due accounts (but not all accounts) in accordance. For these cases, managers must approve both the installment agreement and Form 53, Currently Not Collectible.

There is no dollar limit set for group manager approval of installment agreements. For UNPAID INDIVIDUAL INCOME TAX less than \$10,000 managerial approval is not required unless the agreement requires a waiver of the CSED, in which case the waiver and the agreement require managerial approval. [IRM 5.14.9.2 ]

### **Independent Review**

**1-13.50** In accordance with Internal Revenue Code section 7122(d) taxpayers are entitled to independent administrative reviews of rejected requests for installment

agreements. Contact employees (including revenue officers) and managers are required to document all actions relative to this review in case histories, including:

- A. the date the case is sent to the independent reviewer;
- B. the date the case is received from the independent reviewer, and,
- C. the date the case is forwarded for second level review (if applicable.)

When a request for an installment agreement is proposed for rejection the IRS employee must :

- A. Notify taxpayers rejection of the request is being recommended if that is the next planned action, but do not notify taxpayers of actual rejection of the installment agreement request until after independent administrative review.
- B. Managers must review and concur with plans to reject installment agreement requests prior to independent administrative review.
- C. If managers request additional information or action, these should be requested of the taxpayer or gained from the appropriate source, without comment to the taxpayer regarding approval status of the agreement, beyond that the request is being considered.
- D. In addition to exercising care with regard to conveying rejection of requests, also exercise care regarding conveying acceptance. Specifically, though the plan to accept an installment agreement request can be shared, do not convey acceptance if a request requires managerial approval (until after approval.)

If rejection is the next planned action, the installment agreement case file will be sent to the Independent Administrative Reviewer along with:

- A. Form 12233, "Independent Review PRIOR to Rejection of Request of Installment Agreement" ;
- B. a statement regarding the reason(s) for the proposed rejection;
- C. IDRS printouts associated with the case file, including IDRS CC ICOMP. (See 9.2 above regarding approvals); and,
- D. any documentation submitted by the taxpayer in request of an installment agreement. [IRM 5.14.9.3 ]

### **Independence**

**1-13.60** The "Independent Administrative Reviewer" reviews the decision to reject installment agreement requests independent of employees' and managers' opinions.

The reviewer must exercise independent judgment to determine if rejection of the installment agreement request is appropriate. In deciding to uphold or overturn a proposed rejection, reviewers should:

- A. Consider the case as a whole;
- B. Focus on the reasons for the proposed rejection given by the contact employee (or, if appropriate, the reasons for the proposed rejection given by the group manager.);
- C. Determine whether the proposed installment agreement would fully pay the liability before the CSED or within an approved extension. Use IDRS CC ICOMP or other source to support the decision to reject an installment agreement request for this reason;
- D. Review the analysis of the taxpayer's financial condition to determine whether the payment amount requested by the taxpayer is adequate, given the taxpayer's ability to pay;
- E. Determine whether the taxpayer is in compliance with the compliance requirements provided below:

Taxpayers must be in compliance with:

- 1) Filing tax returns

**NOTE:** Installment agreements are not considered "pending" if taxpayers are not in compliance with filing requirements.

- 2) Paying current estimated taxes (if applicable)
- 3) Tax withholding requirements; or
- 4) Federal Tax Deposit requirements.

- F. Determine whether positions expressed by the taxpayer were considered in the interview or review process; and
- G. Determine if reasons for rejection provided by the revenue officer or his/her manager should be provided to the taxpayer.

### **Determination**

**1-13.70** The reviewer may:

- A. recommend taxpayers are granted installment agreements (of the same amount proposed by taxpayers, or a different amount provided agreements will fully pay liabilities prior to CSED (See 2.2 above for exceptions) or within an additional five years, if waivers are signed along with agreements);

- B. concur with decisions to reject agreement requests;
- C. suggest modifications, or conditions, to agreements;
- D. request additional documentation from revenue officers or other contact employees; and/or,
- E. request revenue officers or other contact employees gain additional information or documentation from taxpayers.

### **Collection Appeals Program**

**1-13.80** Along with a rejection of an installment agreement request, taxpayers must be immediately notified of their appeal rights. Taxpayers whose requests are rejected, as well as those whose agreements are in default or have been terminated, must follow the procedures in IRM 5.1.9.4.1"Request for CAP Appeal" . Taxpayers may appeal rejections, defaults, proposed terminations, and terminations within 30 days. The time frame to request these types of appeals cannot be extended. [IRM 5.14.9.4 ]

### **Levy Restrictions and Installment Agreements**

**1-13.90** No levy may be made on taxpayer accounts:

- A. while requests for installment agreements are pending;
- B. while installment agreements are in effect;
- C. for 30 days after requests for agreements are rejected;
- D. for 30 days after agreements are terminated; and
- E. while an appeal of a default, termination or rejection is pending or unresolved.

Levies may be served during the periods described above:

- A. if taxpayers waive the restriction in writing;
- B. if collection is in jeopardy (i.e. if a condition allowing a jeopardy assessment exists.) Unless notice of the right to appeal was previously provided, taxpayers must be notified of their appeal rights after jeopardy levies. (See Policy Statement P-4-88. See also IRM 5.11.1.3.9 and Exhibit 1-1 of IRM 5.11 for approval levels for jeopardy levies. Approval level depends on whether notices described in IRM 5.11.1.2.1 were sent, and if required waiting periods have passed);

- C. for bal due accounts not included in current installment agreements. (The new tax periods are not affected by the appeal period for defaulted installment agreements.) [IRM 5.14.1.5 ]

### **Installment Agreements on Specific Balance Due Accounts**

**1-13.100** With the exception of streamlined, guaranteed and Express agreements, installment agreements may be granted only if taxpayers are unable to fully or partially pay bal due accounts by borrowing upon or liquidating current assets. Taxpayers sometimes have the ability to make payments that satisfy some balance due accounts, but not all balance due accounts, prior to the Collection Statute Expiration Date plus five years. For these agreements, taxpayers must exhaust their ability to make full or partial payment on bal due accounts before an agreement can be approved. It is not in the Service's interest to grant these installment agreements unless taxpayers are unable to fully or partially pay bal due accounts. [IRM 5.14.2.2 ]

### **Standards for Installment Agreements on a Portion of Liabilities**

**1-13.110** In determining whether taxpayers should be considered for one of these agreements the IRS will consider:

- A. the government's potential for eventually collecting more than would be collected if the taxpayer was granted an offer in compromise. In particular, consider the following factors regarding collection potential:
- future collection through refund offsets (offers in compromise provide for only one such refund);
  - an offer in compromise is a permanent settlement for less than full payment of the tax that usually cannot be modified or terminated unless there is a default.
- B. that an installment agreement is more flexible tool for collection than is an offer in compromise. Revisions in installment agreement monthly payment amounts are allowable:
- based on ability to pay determinations; and,
  - without defaulting agreements. [IRM 5.14.2.2 ]

### **Final Decision**

**1-13.120** Considering the above factors, the IRS makes the final decision - installment agreement or offer in compromise - on determining which repayment vehicle is likely to result in the collection of the most revenue over its term. While offers in compromise may generate the most revenue immediately, installment agreements allow for changes in payment amounts and possible full payment. Only those agreements that include balance due accounts that will be fully paid prior to the CSED may be approved. [IRM 5.14.2.2 ]

### **Collection Statute Expiration Date**

**1-13.130** Consideration will be given to extending the Collection Statute Expiration Date. If extending the CSED will result in greater collectibility, the CSED must be extended in connection with these agreements.

### **Multiple Balance Due Accounts**

**1-13.140** If there are multiple balance due accounts, the IRS will establish agreements according to the following priorities:

- A. First include the bal due account with the earliest CSED that can be fully paid.
- B. If the bal due account with the earliest CSED cannot be fully paid prior to the CSED (plus an extension) skip to the bal due with the next earliest CSED.
- C. After including the bal due account with the earliest CSED that can be fully paid, include other accounts if the taxpayer has further ability to pay them.
- D. Choose all later accounts based on "earliest CSED" in connection with "can be fully paid".

**EXAMPLE:** 30-199512 is the earliest CSED, and can be fully paid. 30-199612 cannot be fully paid. Therefore, skip to 30-199712. If it can be fully paid include it in the agreement. If not, skip to the next tax period.

- E. Using the method described in a - d above, continue to add accounts to the agreement until no further balance due periods are left that can be fully paid.
- F. Exception to a - d above : Group managers may approve agreements that include periods that do not have the earliest CSEDs if it is in the government's interest. Examples of such cases include:
  1. the sum of the liability of other tax periods is greater than the sum of the liability of the earliest CSED tax periods.
  2. the collectibility of one of the other tax periods is in greater doubt. [IRM 5.14.2.2]

### **Currently Not Collectible**

**1-13.150** Those bal due accounts not included in agreements will be closed Currently Not Collectible (CNC).

Based on IRS computer closing codes the CNCed bal dues (the bal dues not included in agreements):

- will be systemically reactivated based on income level;

- are subject to systemic State Income Tax Levy.

**NOTE:** These accounts are not uncollectible due to hardship, however, if these agreements are terminated, levies will not include bal dues that are currently in status 53 as a result of input of TC 530. Bal dues reported uncollectible (in accordance with these procedures) must be placed in collection status prior to taking enforcement action and ensure all other appropriate pre-levy actions are taken. [IRM 5.14.2.2 ]

### **Taxpayers Are Notified**

**1-13.160** Taxpayers are notified that these installment agreements are subject to financial review to determine if bal due accounts (both included in, and excluded from, agreements) can be fully paid, through revised or new installment agreements or by some other means. In order to determine the necessity of revising these agreements and including additional balance due accounts:

- A. these installment agreements will be reviewed annually and,
- B. the IMF accounts reported uncollectible may be reissued.

### **Managerial Approval**

**1-13.170** Managerial approval is required for both the installment agreement and accounts reported uncollectible, regardless of dollar amount. Approval of these agreements includes approval of the method by which tax periods were selected for inclusion in agreements.

**NOTE:** Installment agreements of this type may not be input as streamlined installment agreements nor as In Business Trust Fund Express agreements, regardless of dollar amount.

### **Financial Reviews**

**1-13.180** The following procedures apply to the installment agreement financial reviews described above:

- A. L522s will be issued only on installment agreements that do not fully pay all taxpayer accounts. There is currently no other use for L522s.
- B. If taxpayers do not respond to Letters 522 status 26 (field - balance due) accounts will be generated and sent to Case Processing groups for review and possible assignment to field revenue officers.
- C. If taxpayers do respond to Letters 522 and further analysis of financial statements is necessary accounts will be generated and sent to Case Processing groups for review and possible assignment to field revenue officers. In these cases, prior to transfer to field revenue officers, Case Processing will:

- 1) CP 522 must be mailed to the taxpayer's last known address.
  - 2) The taxpayer will be contacted by telephone and request a financial statement.
  - 3) If contact is not made, or a financial statement is not received, or information necessary to verify the financial statement is not received, the IRS will terminate the installment agreement and send the case to the field.
- D. Upon field assignment, the will secure and analyze new financial statements.
- E. At any time, either while the case is assigned to Case Processing or the field, if it is determined there is no change in the taxpayer's financial condition, the IRS will re-report the appropriate accounts uncollectible and, if no longer in installment agreement status, reinstate agreements.
- F. If taxpayer financial conditions are changed, the IRS will consider including additional balance due accounts in agreements, or other necessary collection actions.
- G. If the taxpayer's ability to pay has improved, the IRS will propose changes in the agreement.
- H. If an installment agreement or other disposition is not appropriate, or not immediately appropriate, the IRS will review other collection alternatives prior to re-reporting accounts uncollectible, including taking the accounts into active inventory. [IRM 5.14.2.2 ]

#### **Guaranteed Availability of Installment Agreements**

**1-13.190** The Internal Revenue Service Restructuring and Reform Act of 1998 requires the Secretary to grant an installment agreement, at the taxpayer's option, if:

- 1). the liability is \$10,000, or less (excluding penalties and interest);
- 2). within the previous 5 years, the taxpayer has not failed to file or to pay, nor entered an installment agreement under this provision;
- 3). if requested by the Secretary, the taxpayer submits financial statements, and the Secretary determines that the taxpayer is unable to pay the tax due in full;
- 4). the installment agreement provides for full payment of the liability within 3 years; and
- 5). the taxpayer agrees to continue to comply with the tax laws and the terms of the agreement for the period (up to 3 years) that the agreement is in place.[Act § 3467; IRC § 6159)

**<\$25,000 Liabilities**

**1-13.200** The IRS has chosen to create a more liberal system that allows installment agreements of up to 5 years for balances of less than \$25,000.

**In-Business Trust Fund Express Installment Agreements**

**1-13.210** In-Business Trust Fund (IBTF) Express installment agreements may be granted if:

- A. pre-assessed liabilities plus the unpaid balance of assessments is \$1,500 or less.

**NOTE:** ACS and Service Centers may grant Express installment agreements if pre-assessed liabilities plus the unpaid balance of assessments is \$10,000 or less.

- B. Taxes are fully paid in 24 months, or before the CSED, whichever is earlier. (Use IDRS CC ICOMP to calculate agreement lengths; see section 2.1 above regarding CSED extensions.)

If accounts qualify for IBTF Express agreements:

- A. No financial statement is required.
- B. No lien determination is required. Liens may be filed if they will protect the government's interest (such as if a property sale is imminent).
- C. No Trust Fund Recovery Penalty determination is required.
- D. If not in filing compliance, installment agreements may not be granted.

No managerial approval is required.

**Express Installment Agreements**

**1-13.220** ACS and Service Centers may grant Express installment agreements if pre-assessed liabilities plus the unpaid balance of assessments is \$10,000 or less.

- 1). Taxes are fully paid in 24 months, or before the CSED, whichever is earlier.

- 2). If accounts qualify for IBTF Express agreements:

- A. No financial statement is required.
- B. No lien determination is required. Liens may be filed if they will protect the government's interest (such as if a property sale is imminent). [IRM 5.14.5.4]

## **Default, or Termination**

**1-13.230** If IBTF Express agreements are in default, or are terminated, they may be reinstated or new agreements may be granted immediately if:

- A. The taxpayer re-qualifies for an agreement under the above guidelines, or other guidelines provided in the Internal Revenue Manual.
- B. The Collection Statute Expiration Date (CSED) is considered.

Business accounts over \$1,500 do not qualify for IBTF Express agreements. Streamlined procedures apply for out of business accounts \$25,000 or less. [IRM 5.14.5.4]

## **Criteria for In-Business Trust Fund Installment Agreements**

**1-13.240** The IRS has establish stringent criteria for establishing installment agreements on larger trust fund tax Accounts Above \$1,500. IRS employees are instructed to perform substantial economic review prior to granting an agreement. Among the considerations are:

- 1). Make a lien determination.
- 2). Verify current compliance with filing and deposit requirements.
- 3). Consider the procedures for special deposits and monthly filing.
- 4). Determine the taxpayer's ability to pay.
- 5). Secure Form 433B, Collection Information Statement (CIS) for Businesses and, if appropriate, 433A, CIS for Individuals. (both forms are required for Schedule C businesses) If these in-business taxpayers can fully pay liabilities from current assets and/or income they do not qualify for installment agreements. Full payment will be requested.

**EXCEPTION:** It is not required that Form 433B be secured if taxpayers qualify for Express agreements.

For agreements on accounts up to \$25,000 that will satisfy liabilities within 5 years:

- A. No verification of the CIS is required;
- B. If appropriate, request that taxpayers sell assets or borrow on equity in assets in order to make payment on the delinquent taxes; and,
- C. Ensure that the taxpayer has the ability to pay current operating expenses as well as current taxes.

For all other agreements (those that do not meet Express criteria, or are above \$25,000, [see (6) above]):

- A. Verify income and expenses. Use bank statements to verify both income and expenses;
- B. Request documentation if assets, liabilities, expenses or income appear questionable;
- C. Complete record checks to determine ownership and equity in real and personal property, including motor vehicles;
- D. If appropriate, request that taxpayers sell assets or borrow on equity in assets in order to make payment on the delinquent taxes.
- E. Ensure that the taxpayer has the ability to pay current operating expenses as well as current taxes.

Check corporate officer and partner individual compliance. Although installment agreements are based on the taxpayers' ability to pay, it is the Service's policy to check that the principals of taxpayer businesses are in compliance with their filing requirements when considering an installment agreement for the business.

Consider a Trust Fund Recovery Penalty (TFRP) assessment.

**NOTE:** IBTF Express agreements do not require TFRP consideration, nor cross compliance checks on officers or partners. [IRM 5.14.7.4.1]

### **In-Business Repeaters**

**1-13.250** The Internal Revenue Manual provides the following guidelines for negotiating with in-business repeaters:

"...if taxpayers:

- are in business,
- are currently pyramiding trust fund taxes, and
- have three or more trust fund bal dues assigned to the collection field function, then, they are considered "repeaters." These taxpayers may not -- immediately -- be granted installment agreements.

If, however, after contact, taxpayers originally classified as repeaters:

- do not continue to accrue liabilities; and,
- begin making FTDs; and,

- file all appropriate returns (so that they are in compliance with all filing requirements); then, they are no longer considered repeaters and may qualify for installment agreements." [IRM 5.14.7.2 ]

### **Application of Payments to Trust Fund Portion**

**1-13.260** When businesses enter into installment agreements the entities or individuals liable for the Trust Fund Recovery Penalty may prefer (and request that) the taxpayer's payments be applied to the trust fund portion of the bal due accounts. Unfortunately installment agreement payment application is governed by the terms of agreements and Treasury Regulation 301.6159-1(b)(1)(i). The agreement form states: "We will apply all payments on this agreement in the best interests of the United States." Taxpayers are not permitted to designate installment agreement payments . Installment agreement payments will be applied in the best interests of the United States, regardless of the policy to apply payments to all tax first then penalties and interest when dealing with trust fund modules. The IRS will encourage potentially responsible persons to make from their own resources. These payments are not considered to be installment agreement payments. [IRM 5.14.7.5]

### **Reason for Termination of Installment Agreements Without Notice to Taxpayers**

**1-13.270** The Internal Revenue Service may terminate installment agreements without advance notice for the following reason:

The Secretary (or his duly authorized representative, e.g. revenue officer or other contact employee) believes that collection of the tax covered by the installment agreement is in jeopardy. [ IRM 5.14.11.2 ]

### **Reasons for Proposing Termination (Defaulting) Installment Agreements**

**1-13.280** The Internal Revenue Service may propose termination of (place in default) installment agreements if taxpayers:

- A. fail to pay an installment payment when due under the terms of an agreement;
- B. fail to pay another tax liability at the time such liability is due;
- C. fail to provide a financial condition update upon request;
- D. provide information prior to the date such agreement was entered into that was inaccurate or incomplete; or,
- E. refuse to pay a modified payment amount based upon updated financial information.

The following procedures (if applicable) for defaulting agreements for each of the above reasons.

- A. For fails to pay an installment payment when due under the terms of the agreement: non-receipt of the installment payment is grounds for proposing default.
- B. For fails to pay another tax liability at the time such liability is due: non-receipt of a payment is grounds for proposing default.
- C. For fails to provide a financial condition update upon request): non-receipt of requested information is grounds for proposing default.
- D. For provides information prior to the date such agreement was entered into that was inaccurate or incomplete: document case histories regarding the circumstances of the case.
- E. For refuses to pay a modified payment amount based upon updated financial information): non-receipt of a payment is grounds for proposing default. [IRM 5.14.11.3 ]

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# **EXHIBITS**

# Your Appeal Rights and How To Prepare a Protest If You Don't Agree



Department of the Treasury  
Internal Revenue Service

[www.irs.ustreas.gov](http://www.irs.ustreas.gov)

Publication 5 (Rev. 01-1999)  
Catalog Number 460741

## Introduction

This Publication tells you how to appeal your tax case if you don't agree with the Internal Revenue Service (IRS) findings.

## If You Don't Agree

If you don't agree with any or all of the IRS findings given you, you may request a meeting or a telephone conference with the supervisor of the person who issued the findings. If you still don't agree, you may appeal your case to the Appeals Office of IRS.

If you decide to do nothing and your case involves an examination of your income, estate, gift, and certain excise taxes or penalties, you will receive a formal Notice of Deficiency. The Notice of Deficiency allows you to go to the Tax Court and tells you the procedure to follow. If you do not go to the Tax Court, we will send you a bill for the amount due.

If you decide to do nothing and your case involves a trust fund recovery penalty, or certain employment tax liabilities, the IRS will send you a bill for the penalty. If you do not appeal a denial of an offer in compromise or a denial of a penalty abatement, the IRS will continue collection action.

If you don't agree, we urge you to appeal your case to the Appeals Office of IRS. The Office of Appeals can settle most differences without expensive and time-consuming court trials. [Note: Appeals can not consider your reasons for not agreeing if they don't come within the scope of the tax laws (for example, if you disagree solely on moral, religious, political, constitutional, conscientious, or similar grounds.)]

The following general rules tell you how to appeal your case.

## Appeals Within the IRS

Appeals is the administrative appeals office for the IRS. You may appeal most IRS decisions with your local Appeals Office. The Appeals Office is separate from - and independent of - the IRS Office taking the action you disagree with. The Appeals Office is the only level of administrative appeal within the IRS.

Conferences with Appeals Office personnel are held in an informal manner by correspondence, by telephone or at a personal conference. There is no need for you to have representation for an Appeals conference, but if you choose to have a representative, see the requirements under *Representation*.

If you want an Appeals conference, follow the instructions in our letter to you. Your request will be sent to the Appeals Office to arrange a conference at a convenient time and place. You or your representative should prepare to discuss all issues you don't agree with at the conference. Most differences are settled at this level.

**In most instances, you may be eligible to take your case to court if you don't reach an agreement at your Appeals conference, or if you don't want to appeal your case to the IRS Office of Appeals. See the later section *Appeals To The Courts*.**

## Protests

When you request an appeals conference, you may also need to file a formal written protest or a small case request with the office named in our letter to you. Also, see the special appeal request procedures in Publication 1660, *Collection Appeal Rights*, if you disagree with lien, levy, seizure, or denial or termination of an installment agreement.

## You need to file a written protest:

- In all employee plan and exempt organization cases without regard to the dollar amount at issue.
- In all partnership and S corporation cases without regard to the dollar amount at issue.
- In all other cases, unless you qualify for the small case request procedure, or other special appeal procedures such as requesting Appeals consideration of liens, levies, seizures, or installment agreements. See Publication 1660.

## How to prepare a protest:

When a protest is required, send it within the **time limit specified in the letter you received**. Include in your protest:

- 1) Your name and address, and a daytime telephone number,
- 2) A statement that you want to appeal the IRS findings to the Appeals Office,
- 3) A copy of the letter showing the proposed changes and findings you don't agree with (or the date and symbols from the letter),
- 4) The tax periods or years involved,
- 5) A list of the changes that you don't agree with, and why you don't agree.

- 6) The facts supporting your position on any issue that you don't agree with,
- 7) The law or authority, if any, on which you are relying.
- 8) You must sign the written protest, stating that it is true, under the penalties of perjury as follows:

**"Under the penalties of perjury, I declare that I examined the facts stated in this protest, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete."**

If your representative prepares and signs the protest for you, he or she must substitute a declaration stating:

- 1) That he or she submitted the protest and accompanying documents and
- 2) Whether he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.

We urge you to provide as much information as you can, as this will help us speed up your appeal. This will save you both time and money.

## Small Case Request:

If the total amount for any tax period is not more than \$25,000, you may make a small case request instead of filing a formal written protest. In computing the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund. For an offer in compromise, in calculating the total amount, include total unpaid tax, penalty and interest due. For a small case request, follow the instructions in our letter to you by: sending a letter requesting Appeals consideration, indicating the changes you don't agree with, and the reasons why you don't agree.

## Representation

You may represent yourself at your appeals conference, or you may have an attorney, certified public accountant, or an individual enrolled to practice before the IRS represent you. Your representative must be qualified to practice before the IRS. If you want your representative to appear without you, you must provide a properly completed power of attorney to the IRS before the representative can receive or inspect confidential information. Form 2848, *Power of Attorney and Declaration of Representative*, or any other properly written power of attorney or authorization may be used for this

purpose. You can get copies of Form 2848 from an IRS office, or by calling 1-800-TAX-FORM (1-800-829-3676).

You may also bring another person(s) with you to support your position.

## Appeals To The Courts

If you and Appeals don't agree on some or all of the issues after your Appeals conference, or if you skipped our appeals system, you may take your case to the United States Tax Court, the United States Court of Federal Claims, or your United States District Court, after satisfying certain procedural and jurisdictional requirements as described below under each court. (However, if you are a nonresident alien, you cannot take your case to a United States District Court.) These courts are independent judicial bodies and have no connection with the IRS.

### Tax Court

If your disagreement with the IRS is over whether you owe additional income tax, estate tax, gift tax, certain excise taxes or penalties related to these proposed liabilities, you can go to the United States Tax Court. (Other types of tax controversies, such as those involving some employment tax issues or manufacturers' excise taxes, cannot be heard by the Tax Court.) You can do this after the IRS issues a formal letter, stating the amounts that the IRS believes you owe. This letter is called a notice of deficiency. You have 90 days from the date this notice is mailed to you to file a petition with the Tax Court (or 150 days if the notice is addressed to you outside the United States). The last date to file your petition will be entered on the notice of deficiency issued to you by the IRS. If you don't file the petition within the 90-day period (or 150 days, as the case may be), we will assess the proposed liability and send you a bill. You may also have the right to take your case to the Tax Court in some other situations, for example, following collection action by the IRS in certain cases. See Publication 1660.

If you discuss your case with the IRS during the 90-day period (150-day period), the discussion will not extend the period in which you may file a petition with the Tax Court.

The court will schedule your case for trial at a location convenient to you. You may represent yourself before the Tax Court, or you may be represented by anyone permitted to practice before that court.

**Note:** If you don't choose to go to the IRS Appeals Office before going to court, normally you will have an opportunity to attempt settlement with Appeals before your trial date.

If you dispute not more than \$50,000 for any one tax year, there are simplified procedures. You can get information about these procedures and

other matters from the Clerk of the Tax Court, 400 Second St. NW, Washington, DC 20217.

### Frivolous Filing Penalty

**Caution:** If the Tax Court determines that your case is intended primarily to cause a delay, or that your position is frivolous or groundless, the Tax Court may award a penalty of up to \$25,000 to the United States in its decision.

## District Court and Court of Federal Claims

If your claim is for a refund of any type of tax, you may take your case to your United States District Court or to the United States Court of Federal Claims. Certain types of cases, such as those involving some employment tax issues or manufacturers' excise taxes, can be heard only by these courts.

Generally, your District Court and the Court of Federal Claims hear tax cases only after you have paid the tax and filed a claim for refund with the IRS. You can get information about procedures for filing suit in either court by contacting the Clerk of your District Court or the Clerk of the Court of Federal Claims.

If you file a formal refund claim with the IRS, and we haven't responded to you on your claim within 6 months from the date you filed it, you may file suit for a refund immediately in your District Court or the Court of Federal Claims. If we send you a letter that proposes disallowing or disallows your claim, you may request Appeals review of the disallowance. If you wish to file a refund suit, you must file your suit no later than 2 years from the date of our notice of claim disallowance letter.

**Note:** Appeals review of a disallowed claim doesn't extend the 2 year period for filing suit. However, it may be extended by mutual agreement.

## Recovering Administrative and Litigation Costs

You may be able to recover your reasonable litigation and administrative costs if you are the prevailing party, and if you meet the other requirements. You must exhaust your administrative remedies within the IRS to receive reasonable litigation costs. You must not unreasonably delay the administrative or court proceedings.

Administrative costs include costs incurred on or after the date you receive the Appeals decision letter, the date of the first letter of proposed deficiency, or the date of the notice of deficiency, whichever is earliest.

### Recoverable litigation or administrative costs may include:

- Attorney fees that generally do not exceed \$125 per hour. This amount will be indexed for a cost of living adjustment.

- Reasonable amounts for court costs or any administrative fees or similar charges by the IRS.
- Reasonable expenses of expert witnesses.
- Reasonable costs of studies, analyses, tests, or engineering reports that are necessary to prepare your case.

### You are the prevailing party if you meet all the following requirements:

- You substantially prevailed on the amount in controversy, or on the most significant tax issue or issues in question.
- You meet the net worth requirement. For individuals or estates, the net worth cannot exceed \$2,000,000 on the date from which costs are recoverable. Charities and certain cooperatives must not have more than 500 employees on the date from which costs are recoverable. And taxpayers other than the two categories listed above must not have net worth exceeding \$7,000,000 and cannot have more than 500 employees on the date from which costs are recoverable.

### You are not the prevailing party if:

- The United States establishes that its position was substantially justified. If the IRS does not follow applicable published guidance, the United States is presumed to not be substantially justified. This presumption is rebuttable. Applicable published guidance means regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if they are issued to you, private letter rulings, technical advice memoranda and determination letters. The court will also take into account whether the Government has won or lost in the courts of appeals for other circuits on substantially similar issues, in determining if the United States is substantially justified.

### You are also the prevailing party if:

- The final judgment on your case is less than or equal to a "qualified offer" which the IRS rejected, and if you meet the net worth requirements referred to above.

A court will generally decide who is the prevailing party, but the IRS makes a final determination of liability at the administrative level. This means you may receive administrative costs from the IRS without going to court. You must file your claim for administrative costs no later than the 90th day after the final determination of tax, penalty or interest is mailed to you. The Appeals Office makes determinations for the IRS on administrative costs. A denial of administrative costs may be appealed to the Tax Court no later than the 90th day after the denial.

January 15, 200\_

Area Director  
Internal Revenue Service  
[Address of Area Director's Office]

Re: Protest by Owen A. Buck  
Social Security Number 123-45-6789

Dear Sir:

On behalf of the taxpayers, Owen A. Buck, protest is hereby made of the adjustments in income tax liability set forth in your 30-day letter dated November 7, 200\_, and the examination report transmitted herewith. The following information is submitted in support of this protest.

1. Conference.

The taxpayers want to appeal the findings of the examiner to, and request a hearing before, the Appeals Office.

2. Names and address of taxpayers.

Owen A. Buck  
327 Sycamore  
Bedford Falls, ND 99977

3. Date and symbols from 30-day letter

[Date of 30-day letter]  
[Symbol on 30-day letter]

4. Tax period or years involved.

Taxable year(s)

5. Itemized schedule of unagreed adjustments.

[List separately the adjustments made with which the taxpayers disagree.]

6. Statement of facts.

[Set forth the facts related to each of the adjustments disagreed with. Attach copies of documents or affidavits as deemed appropriate in discretion of taxpayer.]

7. Statement of law.

[State the law applicable to each of the adjustments disagreed with and apply the applicable law to the facts relevant to the adjustments.]

This protest was prepared by the undersigned. The undersigned does not know personally whether the statements of fact contained in the protest and any accompanying documents are true and correct.

Very truly yours,

[Representative]

[Alternatively, or additionally, the taxpayers may sign the protest using the following language:]

Under penalties of perjury, the undersigned declare that the facts presented in the protest, which are set out in the accompanying statement of facts, and any documents or affidavits included herewith, are to the best of their knowledge and belief, true, correct, and complete.

Mr. Owen A. Buck

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# Collection Appeal Rights

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You can appeal many IRS collection actions. There are various collection appeal procedures available to you. The two main procedures are **Collection Due Process (CDP)** and **Collection Appeals Program (CAP)**. There are other collection actions which have their own specific appeal procedures. These other actions are discussed at the bottom of page four of this publication.

**Collection Due Process (CDP)** is available if you receive one of the following notices: *Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 (Lien Notice), a Final Notice - Notice of Intent to Levy and Notice of Your Right to A Hearing, a Notice of Jeopardy Levy and Right of Appeal, a Notice of Levy on Your State Tax Refund - Notice of Your Right to a Hearing (Levy Notices)*. If you disagree with the CDP decision, you can go to court. CDP is more thoroughly described on pages one and two of this publication.

**Collection Appeals Program (CAP)** is generally quicker and available for a broader range of collection actions. However, you can't go to court if you disagree with the CAP decision. CAP procedures are described on pages three and four of this publication.

You may represent yourself at CDP, CAP and other Appeals proceedings. Or, you can have an attorney, certified public accountant, or a person enrolled to practice before the IRS represent you. If you want your representative to appear without you, you must provide a properly completed Form 2848, *Power of Attorney and Declaration of Representative*. This form is available at your local IRS office, or by calling 1-800-829-3676, or from our web site at [www.irs.gov](http://www.irs.gov).

## HEARING AVAILABLE UNDER COLLECTION DUE PROCESS (CDP) For Lien and Levy Notices

You have the right to a CDP hearing by the IRS Office of Appeals for these collection actions: the first time a Notice of Federal Tax Lien is filed on a tax period; before we send the first levy on your property for a tax period; when we levy your state refund; and when we issue a jeopardy levy. You may contest the CDP decision in the Tax Court or an U.S. District Court, as appropriate.

**Lien Notice:** The IRS is required to notify you the first time a Notice of Federal Tax Lien is filed for each tax period. We have to notify you within 5 days after the lien notice filing. You then have 30 days, after that 5-day period, to request a hearing with the Office of Appeals. The lien notice you receive will indicate the date this 30-day period expires.

**Levy Notice:** For each tax period, the IRS is required to notify you the first time we intend to collect a tax liability by taking your property or rights to property. We do this by sending you a levy notice. We can't levy or seize your property within 30 days from the date this notice

is mailed, or given to you, or left at your home or office. During that 30-day period, you may request a hearing with the Office of Appeals. There are two exceptions to this notice of intent to levy provision. We may issue a levy without sending this notice or waiting 30 days when collection of the tax is in jeopardy. We may also levy on your state tax refund without sending a notice or waiting 30 days. You can request a hearing after the levy action for both of these instances.

### ***How do you request a hearing under Collection Due Process with the Office of Appeals?***

Complete Form 12153, *Request for a Collection Due Process Hearing*, and send it to us at the address shown on your lien or levy notice within 30 days. Check the IRS action(s) you disagree with, and explain why you disagree. If you received both a lien and a levy notice, you may appeal both actions. You must identify all of your reasons for disagreement with us at this time. You may raise issues relating to the unpaid tax including:

- 
- Appropriateness of collection actions
  - Collection alternatives such as installment agreement, offer in compromise, posting a bond or substitution of other assets
  - Appropriate spousal defenses
  - The existence or amount of the tax, but only if you did not receive a notice of deficiency or did not otherwise have an opportunity to dispute the tax liability.

You may not raise an issue that was raised and considered at a prior administrative or judicial hearing, if you participated meaningfully in the prior hearing or proceeding.

To preserve your right to go to court, you must send us the Form 12153 within 30 days. Form 12153 is also available by calling 1-800-829-3676, or from our web site at [www.irs.gov](http://www.irs.gov). Include a copy of your lien and/or levy notice. List all taxes and tax periods for which you are requesting a hearing. Under CDP, you are entitled to only one hearing relating to a lien notice and one hearing relating to a levy notice, for each taxable period. If you receive a subsequent lien or levy notice after you request a hearing on an earlier notice, Appeals can consider both matters at the same time

Before you formally appeal a lien or levy notice by sending us Form 12153, you may be able to work out a solution with the Collection function that took the action. To do so, contact the IRS employee whose name appears on the lien or levy notice and explain why you disagree with the action. This contact, however, does NOT extend the 30-day period to make a written request for a CDP hearing.

***What will happen when you request a CDP hearing with the Office of Appeals?***

After you request a hearing, you can still discuss your concerns with the office collecting the tax or filing the Notice of Federal Tax Lien. If you are able to resolve the issues with that office, you may withdraw your request for a hearing.

The Office of Appeals will contact you to schedule a hearing. Your hearing may be held either in person, by telephone or by correspondence.

Unless we have reason to believe that collection of the tax is in jeopardy, we will stop levy action during the 30 days after the levy notice and, if your appeal is timely, during the appeal process.

Your appeal is timely if you mail your request for a hearing to the address shown on our notice on or before the 30<sup>th</sup> day after the date of the levy notice or the date shown on the lien notice. If we receive a timely filed Form 12153, we will also suspend the 10-year collection statute of limitations until the date the determination is final or you withdraw, in writing, your request for a hearing.

At the conclusion of the hearing, Appeals will issue a written determination letter. If you agree with Appeals' determination, both you and the IRS are required to live up to the terms of the determination.

If you don't agree with Appeals' determination, you may request judicial review of the determination by initiating a case in a court of proper jurisdiction (United States Tax Court or United States District Court, depending on the circumstances) on or before the 30<sup>th</sup> day after the date of Appeals' determination. Once the Court rules, its decision will be binding on both you and the IRS.

The Office of Appeals will retain jurisdiction over its determinations and how they are carried out. You may also return to Appeals if your circumstances change and impact the original determination. However, you must exhaust your administrative remedies first.

If your appeal request is not timely, you will be allowed a hearing, but there will be no statutory suspension of collection action and you can't go to court if you disagree with Appeals' decision.

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# ADMINISTRATIVE COLLECTION APPEAL RIGHTS

## COLLECTION APPEALS PROGRAM (CAP)

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For liens, levies, seizures and installment agreements under the CAP procedure, you don't have the right to a judicial review of Appeals' decision.

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The CAP procedure is available under more circumstances than the Collection Due Process hearing procedure. It is important to note that you can't proceed to court if you don't agree with Appeals' decision in your CAP case. Collection actions you can appeal are:

**Notice of Federal Tax Lien.** You may appeal before or after the IRS files a lien. You may also appeal denied requests to withdraw a Notice of Federal Tax Lien, and denied discharges, subordinations, and non-attachments of a lien. If the IRS files a Notice of Federal Tax Lien, you may have additional Collection Due Process appeal rights. See the preceding information regarding Hearing Available under Collection Due Process.

**Notice of Levy.** You may appeal before or after the IRS places a levy on your wages, bank account or other property. Before a levy is issued, you may have additional Collection Due Process appeal rights. See the preceding information regarding Hearing Available Under Collection Due Process.

**Seizure of Property.** You may appeal before or after the IRS makes a seizure. If you request an appeal after the IRS makes a seizure, you must appeal to the Collection manager within 10 business days after the Notice of Seizure is provided to you, or left at your home or business.

**Denial or Termination of Installment Agreement.** You may appeal when you are notified that the IRS intends to deny you an installment agreement. You may also appeal when we propose to terminate or terminate your installment agreement. The right to appeal denials or terminations of installment agreements is provided by law rather than provided by IRS administratively. As such, there are some differences between CAP for installment agreements and other CAP cases, such as levies etc.

**How do you appeal one of these IRS actions if your only collection contact has been a notice or telephone call?**

1. Call the IRS at the telephone number shown on your notice. Be prepared to explain which action(s) you disagree with and why you disagree. You must also offer your solution to your tax problem.
2. If you can't reach an agreement with the employee, tell the employee that you want to appeal their decision. The employee must honor your request and will refer you to a manager. The manager will either speak with you then, or will return your call within 24 hours.
3. Explain which action(s) you disagree with and why you disagree to the manager. The manager will make a decision on the case. If you don't agree with the manager's decision, your case will be forwarded to an Appeals Officer for review.

**How do you appeal one of these IRS collection actions if you have been contacted by a Revenue Officer?**

1. If you disagree with the decision of the Revenue Officer, and wish to appeal under CAP, you must first request a conference with a Collection manager.
2. If you do not resolve your disagreement with the Collection manager, you may request Appeals consideration by completing Form 9423, *Collection Appeal Request*. This form is available by calling 1-800-829-3676, or from our web site at [www.irs.gov](http://www.irs.gov). Check the action(s) you disagree with and explain why you disagree. You must also explain your solution to resolve your tax problem.
3. Submit the Form 9423 to that Collection Office.
4. The Collection Office must receive your appeal request for a lien, levy or seizure within 2 days of your conference with the Collection manager or we will resume collection action. For an appeal request for a denial or termination of an installment agreement, you have 30 days from the date of denial or termination of your installment agreement, to submit your request to the Collection Office.

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**Important:** The IRS can not levy until 30 days after the denial or termination of an Installment Agreement. If you appeal the denial or termination of an installment agreement within that 30-day period, we must stop levy action until your appeal is completed.

***What will happen when you appeal your case?***

**Lien, Levy and Seizure:** Normally, we will stop collection action on the tax periods the Appeal Officer is considering, unless we believe the collection of the tax is at risk.

**Installment Agreements:** The IRS can't levy until 30 days after the denial or termination of your agreement. If you appeal within that 30-day period, we will stop levy action until your appeal is completed.

Once the Appeals Officer makes a decision on your case, that decision is binding on both you and the IRS. This means that both you and the IRS are required to accept the decision and live up to its terms. You cannot obtain judicial review of an Appeals Officer's decision following a CAP hearing.

**Note:** Providing false information, failure to provide all pertinent information or fraud will void Appeals' decision.

## APPEAL OF OTHER COLLECTION ACTIONS

You may also appeal other Collection actions such as denied Offers in Compromise (OIC) or Trust Fund Recovery Penalties (TFRP) that the IRS is proposing. Other penalties are also appealable, if you made an abatement request that was denied.

For OICs and TFRPs, follow the protest requirements in Publication 5, *Your Appeal Rights and How To Prepare A Protest If You Don't Agree*. The correspondence you receive on these types of cases will explain where you should send your protest. For other penalties, follow the instructions in the letter that denies your abatement



Department of the Treasury  
Internal Revenue Service

[www.irs.gov](http://www.irs.gov)

Publication 1660 (Rev. 05-2000)  
Catalog Number 14376Z

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# Request for a Collection Due Process Hearing

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Use this form to request a hearing with the IRS Office of Appeals only when you receive a **Notice of Federal Tax Lien Filing & Your Right To A Hearing Under IRC 6320**, a **Final Notice - Notice Of Intent to Levy & Your Notice Of a Right To A Hearing**, or a **Notice of Jeopardy Levy and Right of Appeal**. Complete this form and send it to the address shown on your lien or levy notice for expeditious handling. Include a copy of your lien or levy notice(s) to ensure proper handling of your request.

(Print) Taxpayer Name(s): \_\_\_\_\_

(Print) Address: \_\_\_\_\_

Daytime Telephone Number: \_\_\_\_\_ Type of Tax/Tax Form Number(s): \_\_\_\_\_

Taxable Period(s): \_\_\_\_\_

Social Security Number/Employer Identification Number(s): \_\_\_\_\_

Check the IRS action(s) that you do not agree with. Provide specific reasons why you don't agree. If you believe that your spouse or former spouse should be responsible for all or a portion of the tax liability from your tax return, check here [  ] and attach Form 8857, Request for Innocent Spouse Relief, to this request.

**Filed Notice of Federal Tax Lien (Explain why you don't agree. Use extra sheets if necessary.)**

**Notice of Levy/Seizure (Explain why you don't agree. Use extra sheets if necessary.)**

I/we understand that the statutory period of limitations for collection is suspended during the Collection Due Process Hearing and any subsequent judicial review.

Taxpayer's or Authorized Representative's Signature and Date: \_\_\_\_\_

Taxpayer's or Authorized Representative's Signature and Date: \_\_\_\_\_

IRS Use Only:

IRS Employee (Print): \_\_\_\_\_ IRS Received Date: \_\_\_\_\_

Employee Telephone Number: \_\_\_\_\_

Attachment to Form 12153  
Request for Collection Due Process Hearing  
Insolvency Industries Co., Inc.  
EIN: 13-000000

Final Notice/Notice of Intent to Levy

1. The taxpayer disagrees with the amount of the liability. It believes that it is entitled to abatement of all penalties assessed against it. The taxpayer has a payroll service which prepares its returns. Edward Owesalot, the President of Insolvency Industries, reviews the returns with the accountant for Insolvency Industries, signs the returns, and the returns are then mailed. The taxpayer asserts that it has timely mailed all of its returns, and requests that any late filing penalties be abated.

Furthermore, the taxpayer had reasonable cause for failure to pay its taxes in a timely manner. Additionally, the taxpayer made payments on its accounts which were improperly applied by the Service. The taxpayer demands proof of the nature and extent of any penalties.

2. The taxpayer contests the addition to tax assessed on June 3, 2002 for tax period ending 9/30/1999. This addition to tax was made because the W2 information for 1999 did not match the yearly wage total. Since the Service alleges that it did not receive quarterly returns for Insolvency Industries for tax periods ending March 31, 1999 and December 31, 1999, wages were not reported on the IRS system for the first and fourth quarters of 1999. The IRS system thus totaled the yearly W2 information, and added the additional quarterly liability amount to the third quarter of 1999, where it did have a return filed. The March and December returns are attached. The total liability per the returns (adding line 14 for both returns ( $61,570.65 + 65,382.62 = 126,953.27$ )) is almost the exact amount of the addition to tax.

Since all quarterly returns for 1999 have been forwarded to the Service, all W2 wage information should be accurate, and the addition to tax of \$126,951.75 for tax period ending 9/30/1999 should be backed out.

3. The taxpayer is unable to pay its tax obligation in full and is entitled to an Offer in Compromise based on inability to pay, and doubt as to liability with respect to the penalties and addition to tax for tax period ending 9/30/1999.
4. If the taxpayer is not granted an Offer in Compromise, it should be granted an Installment Agreement pursuant to IRC § 6159.

# Collection Appeal Request

1. Taxpayer's Name		2. Representative: (Form 2848, Power of Attorney Attached)		
3. SSN/EIN	4. Taxpayer's Business Phone	5. Taxpayer's Home Phone	6. Representative's Phone	
7. Taxpayer's Street Address				
8. City		9. State	10. Zip Code	
11. Type of Tax (Tax Form)		12. Tax Periods Being Appealed		13. Tax Due

**Collection Action(s) Appealed**

14. Please Check the Collection Action(s) You're Appealing:

- |                                                 |                                                               |
|-------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Federal Tax Lien       | <input type="checkbox"/> Denial of Installment Agreement      |
| <input type="checkbox"/> Levy or Notice of Levy | <input type="checkbox"/> Termination of Installment Agreement |
| <input type="checkbox"/> Seizure                |                                                               |

**Explanation**

15. Please explain why you disagree with the collection action(s) you checked above and explain how you would resolve your tax problem. Attach additional pages if needed. Attach copies of any documents that you think will support your position.

Under penalties of perjury, I declare that I have examined this request and the attached documents, and to the best of my knowledge and belief, they are true, correct and complete. A submission by a representative, other than the taxpayer, is based on all information of which preparer has any knowledge.

16. Taxpayer's or Authorized Representative's Signature	17. Date
18. Collection Manager's Signature	19. Date Received

Department of the Treasury  
Internal Revenue Service  
District Director

Date of This Letter: May 21, 2004  
Letter 950  
Taxpayer Identifying Number:  
123-45-6789  
Form 1040  
Person to Contact:  
Max Deficiency  
Telephone Number: 213-555-1212

Brandy Poe  
9 Wasatch Canyon Road  
Los Angeles, CA 90008

Tax Year Ended: December 31, 2000

Deficiency:

Increase in tax 23,976.00

PENALTIES

IRC 6662(c) 6,279.00 and Estimated Tax Penalty

Dear Ms. Poe:

We are enclosing a report proposing adjustments to your tax for the year(s) shown above. Please read the report, decide whether you agree or disagree, and respond within 30 days from the date of this letter. [Our report may not reflect results of examinations of flow-through entities such as partnerships, S corporations, trusts in which you may have an interest.]

IF YOU AGREE, you should:

1. Sign and date the enclosed agreement form.
2. Return the signed agreement form in the enclosed envelope.

(continued next page)

Internal Revenue Service – Los Angeles, CA

Enclose payment of the tax and interest if additional tax is due. This will stop the compounding of interest. The person whose name and telephone number appear above will be able to tell you how much interest is due at the time you intend to make payment. (See the enclosed Publication 5 for additional payment information.)

After we receive your signed agreement form, we will process your case and bill you for any unpaid tax or interest, subject to acceptance by the district director.

IF YOU DO NOT AGREE and wish a conference with the Regional Office of Appeals, you MUST LET US KNOW within 30 days.

1. If the proposed change to your tax (including penalties) is \$2,500 OR LESS, call the person whose name and telephone number appear above. He or she will arrange for your case to be forwarded to the office of appeals. Or, check the appropriate section at the end of this letter. An additional copy of this letter is provided for this purpose. Mail it in the enclosed envelope.

2. If the proposed change to your tax (including penalties) is more than \$2,500 but \$10,000 or less for any tax period, you must provide us with a BRIEF written statement of the disputed issues. An additional copy of this letter is provided for this purpose. Mail it to us in the enclosed envelope.

3. If the proposed change to your tax (including penalties) is MORE THAN \$10,000 for any tax period, we will require a written protest. Follow the instructions in the enclosed Publication 5. Mail the protest to us in the enclosed envelope.

An appeals officer, who has not examined your return previously, will review your case. The appeals office is independent of the district director and resolves most disputes informally and promptly.

By going to the appeals office, you may avoid court costs, resolve the matter sooner, and prevent interest from compounding. An appeals officer will telephone you and arrange an appointment, if necessary.

If you do not reach an agreement with the appeals office or respond to this letter, we will process your case on the basis of the enclosed examination report. If you decide to bypass the appeals process and petition the tax court, normally your case will be assigned for settlement to an appeals office before the tax court hears the case. Also, you should be aware that the tax court does not have jurisdiction over excise or employment tax cases.

(continued next page)

Please note too that under Section 6673 of the Internal Revenue Code, the tax court can impose a penalty of up to \$25,000 under certain conditions. These conditions include: if the court finds that the taxpayer instituted the proceedings primarily for delay; if the taxpayer's position is found to be frivolous or groundless; or if the taxpayer failed to pursue administrative remedies available.

If you are a "C" corporation, this letter may invoke an interest rate two percent higher than the normal rate of interest, computed on the amount finally determined due, as provided by section 6621(c) of the Internal Revenue Code.

IF YOU ARE UNSURE as to what to do or if you have other questions, call the person whose name and telephone number appear above. He or she will be glad to discuss your choices.

Sincerely yours,

Robert W. Brock  
Area Director

Enclosures:  
Copies of this letter  
Examination Report  
Agreement Form  
Publication 5  
Envelope

**Portions Reprinted from**

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**by**

**Robert E. McKenzie**

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