IRS Appeals Chief Clarifies Policy Changes in Open Letter

By

Marie Sapirie

Contact Author

To clear up speculation around recent policy changes at the IRS Office of Appeals, Appeals Chief Kirsten Wielobob wrote an open letter clarifying four recent changes.

The November 4 letter addresses procedural tweaks to the settlement authority of Appeals team case leaders; revisions to Internal Revenue Manual 8.6.1.4.4; amended conference practices; and changes to how Appeals handles determinations of relief under reg. section 301.9100. Wielobob said those changes "came to fruition around the same time largely by coincidence," and that the letter is meant to provide context and background to them.

The letter also addresses criticism that her department is attempting to limit access to Appeals employees, conferences, and case resolution, calling such assertions "misguided."

"How Appeals engages in case resolution is key to our role in tax administration," the letter states. "We continually evaluate and periodically revise what we do and how we do it to ensure we function not just in ways designed to support our mission, but also with the utmost integrity."

Sheldon M. Kay of Crowe Horwath LLP said Wielobob's effort to clarify the standards in the letter is helpful.

Kathy Petronchak of Alliantgroup LP concurred. "Transparency with regards to the reasons behind the changes helps us to better understand them, even if we are not in agreement," Petronchak said.

Wielobob also used the letter to announce the decision by Appeals' leadership to revise settlement procedures to make clear that a manager must review a penalties appeals case before an Appeals team case leader finalizes a settlement. The change was prompted by a July 2015 report by the Treasury Inspector General for Tax Administration, which noted the lack of consistent review of cases by managers. Under the new procedure, "If the ATCL and manager disagree about a settlement, the next higher level manager supervising ATCL Operations will continue to resolve any disagreement," Wielobob wrote.

Kay noted that there had been speculation that settlement jurisdiction might change, but Appeals clearly took into consideration the comments of employees and practitioners in making its decision.

Wielobob explained that the recent revision to IRM section 8.6.1.4.4 -- which covers conference and settlement practices -- is "not intended to force any resolution technique on taxpayers and

can actually aid the taxpayer and IRS compliance functions in understanding the cases and issues better."

Kay said that although the IRM has not changed in any material way in years, in practice, some appeals technical employees have requested that examination agents and Chief Counsel representatives attend meetings beyond pre-opening meetings. "I'm not sure that is a good process," he said, explaining that it compromises the normal appeals process.

Mark Heroux of Baker Tilly Virchow Krause LLP said that "adding IRS employees to the Appeals conference turns the Appeals conference into more of a trial setting as opposed to the historic conduct of most Appeals conferences." The change also calls into question the independence of the Appeals function, he said.

The letter also addresses two changes made effective October 3. One was a revision of in-person conference practices so that cases will not be transferred from the campus to the field whenever a taxpayer requests a face-to-face meeting. "Appeals is continuing to offer personal contact for all cases and in-person conferences where Appeals determines it will aid in resolving cases," Wielobob wrote. She said that taxpayers will continue to have a range of conference options depending on the nature of their case, including telephone, correspondence, virtual service delivery, and in-person meetings. (Prior coverage .)

"The changes are not intended to shift the paradigm away from in-person conferences as a resolution tool," she wrote. "The change in conference practices is of major concern to practitioners, but since the change in the IRM, I am aware of practitioners having been successful in working with Appeals officers to obtain a face-to-face meeting where the specified criteria are met," Petronchak said.

"The consolidation of Appeals cases into the service centers and the elimination of face-to-face conferences has been a work in progress for IRS Appeals," Heroux said. He added that taxpayers should have a right to meet the government professional who will render an independent decision on how much money the government will take from the taxpayer.

"Many taxpayers will feel that their credibility is critical to the case, and under the new rules the credibility of the taxpayer is one of the reasons to provide a taxpayer with a face-to-face conference," he said. But he said that taxpayers have been denied face-to-face conferences despite asserting that credibility was critical to the decision-making process. Heroux said that he had heard that the new rules apply to docketed cases as well. "Effectively eliminating face-to-face conferences is no way to improve the relationship between the government and the governed," he contended.

The second change that took effect October 3 is to regulatory election relief determinations by the IRS commissioner that affect a taxpayer's change of accounting method. (Prior coverage .) Wielobob wrote that the decision to grant taxpayers an extension to make a regulatory election is under the authority of the Office of Chief Counsel. "We determined that our decision cannot bring about the result a taxpayer wants in requesting an appeal and it potentially creates confusion in tax administration for us to accept those cases," she wrote.

Kay said that although it is correct that the Office of Chief Counsel is the part of the IRS that has the authority to grant extensions, "they may want to re-look at that at a higher level." It may be

better for the tax system in general not to have to take every abuse of discretion issue to litigation, he said.

Matthew R. Madara contributed to this article.