

#38 REQUIRE TAXPAYERS' CONSENT BEFORE ALLOWING IRS COUNSEL OR COMPLIANCE PERSONNEL TO PARTICIPATE IN APPEALS CONFERENCES

Present Law

Present law does not directly address the inclusion of personnel from the IRS Office of Chief Counsel or IRS compliance functions in conferences held by the Office of Appeals.

Reasons for Change

Until recently, the Office of Appeals only occasionally invited personnel from the Office of Chief Counsel or the IRS compliance functions to participate in taxpayer conferences. In October 2016, the Office of Appeals revised provisions of the Internal Revenue Manual (IRM) to allow Appeals Officers to include personnel from the Office of Chief Counsel and/or the IRS compliance functions in Appeals conferences as a matter of routine. Under the new procedures, an Appeals Officer may invite these additional participants regardless of whether taxpayers agree or object to their presence.

Including non-Appeals IRS personnel in an Appeals conference may be sensible in certain cases, and tax practitioners sometimes find this approach to be helpful in achieving case resolution. Including Counsel and Compliance personnel over taxpayer objections, however, contravenes the purpose of an Appeals conference, which is neither to give Compliance personnel another bite at the apple nor to transform Appeals into a mediation forum. Instead, the mission and credibility of Appeals rests on its ability to undertake direct and independent settlement negotiations with taxpayers and their representatives.

This change in conference procedures could have far-reaching negative consequences for Appeals' effectiveness in resolving cases with taxpayers. Among other things, the expansion of Appeals conferences to routinely involve Counsel and Compliance alters the relationship between the taxpayer and the Appeals Officer. It makes interactions less negotiation-based and transforms the conference into a more contentious proceeding.

Moreover, the initiative jeopardizes the real and perceived independence of Appeals, both of which are essential to effective administrative dispute resolution. As a result, taxpayers will be less likely to feel that their case has been fully heard, that they have been treated fairly, and that the outcome of the proceeding should be respected. To the contrary, taxpayers are more likely to come away disillusioned with the Appeals process, more likely to pursue their case in court, and potentially less likely to comply voluntarily with the tax laws in the future.

Recommendation

Amend the Internal Revenue Code or amend section 1001(a) of RRA 98 to add a subsection (5) that provides: "A taxpayer shall have the right to a conference with the Office of Appeals that does not include personnel from the Office of Chief Counsel or the compliance functions of the Internal Revenue Service unless the taxpayer specifically consents to the participation of those parties in the conference."¹³⁴

¹³⁴ This language is consistent with but broader than the prohibition against *ex parte* communications contemplated by H.R. 4375, 112th Cong. § 7 (2012). Additionally, this recommendation would provide taxpayers appearing before the Office of Appeals with protections against unwanted participation of Counsel and Compliance beyond those available under current IRS interpretations of what constitutes an *ex parte* communication.