# Strengthen Taxpayer Rights Before the Office of Appeals

## #34 REQUIRE THAT AT LEAST ONE APPEALS OFFICER AND ONE SETTLEMENT OFFICER BE LOCATED AND PERMANENTLY AVAILABLE IN EACH STATE, THE DISTRICT OF COLUMBIA, AND PUERTO RICO

### Present Law

Section 3465(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) provides: "The Commissioner of Internal Revenue shall ensure that an appeals officer is regularly available within each State."

### Reasons for Change

Twelve states and Puerto Rico currently have no Appeals or Settlement Officers with a post of duty within their borders.[141] These states are Alaska, Arkansas, Delaware, Idaho, Kansas, Montana, North Dakota, New Mexico, Rhode Island, South Dakota, Vermont, and Wyoming. The IRS takes the position that its current staffing satisfies the statutory requirement by providing for "circuit riding" on at least a quarterly basis to states lacking a permanent Appeals field office.

As a legal matter, the National Taxpayer Advocate believes "circuit riding" does not satisfy the statutory requirement, because Appeals Officers engaged in "circuit riding" among multiple states are not "regularly available" in any one state. As a practical matter, "circuit riding" does not provide taxpayers who request in-person hearings with timely service and does not ensure that Appeals Officers are familiar with local conditions. Taxpayers and their representatives regularly complain about the difficulty of obtaining convenient and timely in-person access to Appeals and Settlement Officers. During fiscal year 2018, for example, non-docketed cases involving in-person conferences remained in Appeals' inventory for more than twice as long (394 days) as Appeals cases overall (194 days).[142]

In addition, Appeals' ability to effectively pursue administrative case resolutions often depends on the Appeals Officer's familiarity with prevailing economic circumstances and other local factors impacting taxpayers in a given geographic region. Appeals Officers who live elsewhere and visit a state for an occasional hearing often do not have this familiarity.

### Recommendation

- Amend Internal Revenue Code § 7803(e) to require that at least one Appeals Officer and one Settlement Officer be located and permanently available in each state, the District of Columbia, and Puerto Rico.[143]

141 Generally, Appeals Officers are assigned to cases associated with the IRS Examination function, whereas Settlement Officers are assigned to Collection cases.

142 Appeals response to TAS fact check request (Nov. 21, 2018).

143 For legislative language generally consistent with this recommendation, see Taxpayer Bill of Rights Enhancement Act, S. 1793, 115th Cong. § 502 (2017).

## #35 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.[144] In October 2016, the Office of Appeals revised provisions of the Internal Revenue Manual 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 Counsel and Compliance personnel over taxpayer objections 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 in some cases is having far-reaching negative consequences for Appeals' effectiveness in resolving cases with taxpayers. Taxpayers are less likely to feel that their cases have been fully heard, that they have been treated fairly, and that the outcome of the proceedings ought to be respected. As a result, taxpayers are more likely to come away disillusioned with the Appeals process, more likely to pursue their cases in court, and potentially less likely to comply voluntarily with the tax laws in the future. Over time, practitioners will be less likely to advise clients to pursue the Appeals process.

In addition, the expansion of Appeals conferences to routinely involve Counsel and Compliance personnel alters the relationship between taxpayers and Appeals Officers. It makes interactions less negotiation-based and transforms the conference into a more contentious and one-sided proceeding. This approach is also seemingly inconsistent with Congress's intent in creating an independent Office of Appeals as part of the Taxpayer First Act.[145]

### Recommendation

- Amend Internal Revenue Code § 7803(e) to provide: "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."[146]

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144 For a more detailed discussion of this topic, see National Taxpayer Advocate 2019 Annual Report to Congress 63-69 (Most Serious Problem: *Appeals: The Inclusion of Chief Counsel and Compliance Personnel in Taxpayer Conferences Undermines the Independence of the Office of Appeals*).

145 Taxpayer First Act, Pub. L. No. 116-25, § 1001, 133 Stat. 981 (2019); H.R. Rep. No. 116-39, pt. 1, at 29 (2019).

146 For legislative language generally consistent with this recommendation, see Protecting Taxpayers Act, S. 3278, 115th Cong. § 601 (2018).