



The Taxpayer First Act and the IRS Independent Office of Appeals

By Daniel A. Rosen, Esq.

The IRS Independent Office of Appeals ("Appeals") is a separate and quasi-independent function within the IRS. Its stated mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the government and the taxpayer.

Appeals is a longstanding fixture within the IRS. Historically, however, there was no statutory requirement that the IRS have an administrative appeals function, and what rights, if any, a taxpayer had to an independent administrative appeal. That changed with July 1, 2019 enactment of the Taxpayer First Act ("TFA"), which codified the requirement of an independent administrative appeals function within the IRS.

Taxpayer Access to Case Files


The TFA requires that the administrative case file referred to Appeals be made available to individuals with adjusted gross incomes not exceeding \$400,000 and entities with gross receipts not exceeding \$5 million for the taxable year to which the dispute relates. The TFA further requires that an eligible taxpayer be able to review the non-privileged portions of the administrative case file not later than ten days prior to the scheduled conference with Appeals, unless the taxpayer waives that requirement.

Granting access to case files is a welcome benefit for eligible taxpayers, who no longer need to affirmatively request their case files by making a Freedom of Information Act ("FOIA") request. FOIA requests are cumbersome, and the agency's response time can often result in securing necessary records only after the conference with Appeals takes place.

Cases Not Referred to Appeals

The TFA does not establish a general right to an administrative appeal, going only so far as to state that such an administrative appeal "shall be generally available to all taxpayers." Nevertheless, the TFA contains special rules where the IRS issues a statutory notice of deficiency to a taxpayer and subsequently denies an administrative appeal on a non-frivolous position. In such a circumstance, the TFA requires the IRS to prescribe notice and protest procedures for the affected taxpayer, including the requirement that the Commissioner notify a taxpayer of the denial in a written statement that includes a statement of the facts underlying the basis for the denial, as well as a detailed explanation of the reasons for denying the request for referral to Appeals. The written notice must advise the taxpayer of the right to protest the denial of the request to the Commissioner, and include information about how to lodge such a protest.

Conclusion

Appeals serves the critically-important role of reducing the number of litigated tax controversies consuming valuable judicial resources. A well-functioning and independent administrative appeals function also serves to bolster the general deterrent effect of successful IRS litigation by weeding out those positions that the government should not litigate. The TFA furthers these goals by codifying the administrative appeals function within the IRS, by granting most individuals and small entities automatic access to their case files, and by affording procedural protections to taxpayers denied Appeals consideration following receipt of a statutory notice of deficiency. 



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