

Federal Tax Controversies – Technical Issues and Strategies

Tax Executive Institute -
San Jose State University
High Tech Tax Institute
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Introductions

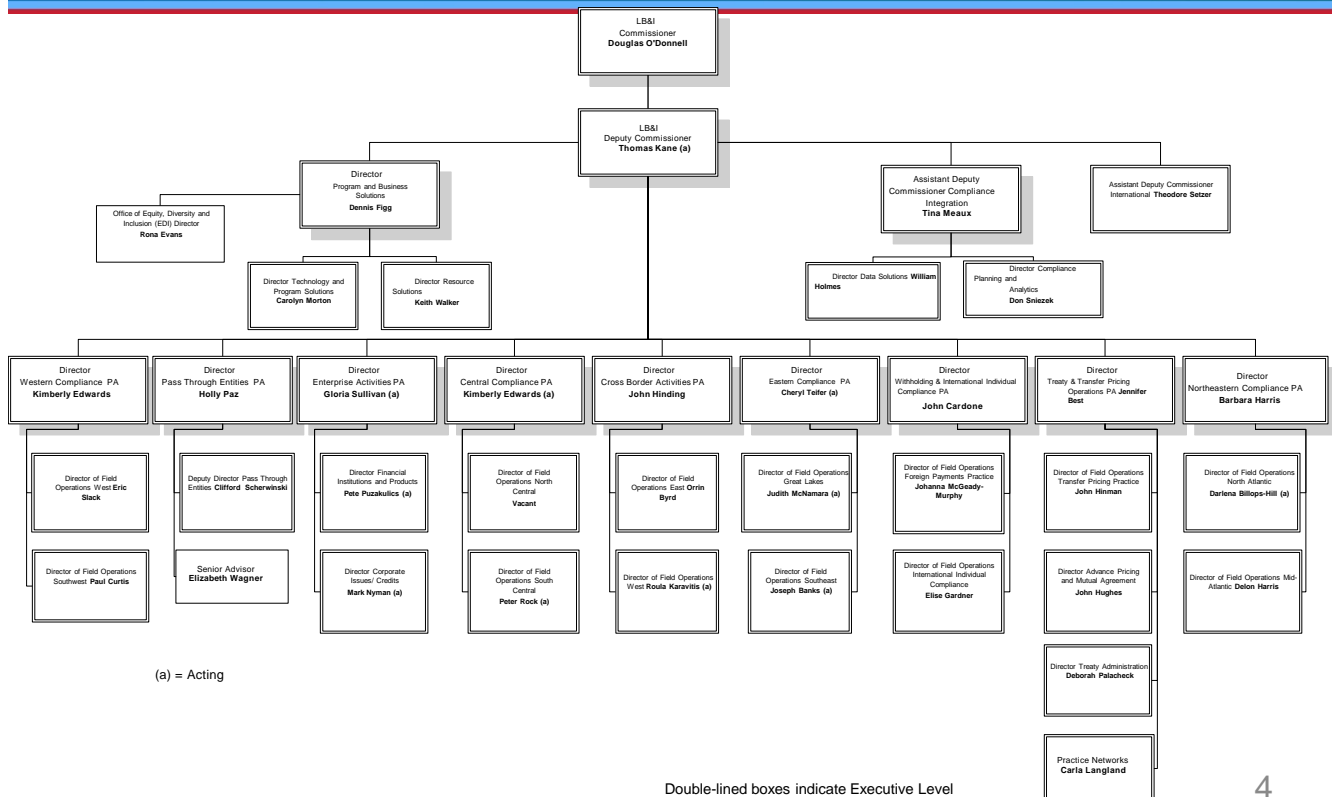
- ❖ Kimberly Edwards, Director, Western Compliance Practice Area
- ❖ Gloria Sullivan, Director (acting), Enterprise Activities Practice Area
- ❖ Eric Slack, Director, Field Operations, West
- ❖ Larry Langdon, Partner – *Mayer Brown LLP*
- ❖ Pat Chaback, Executive Director – *EY*
- ❖ Eric Johnson, Group Vice President – *Ross Stores*; TEI West Region VP
- ❖ Andy Mattson, Partner – *Moss Adams*
- ❖ Jean Pawlow, Partner – *McDermott*

Panel Discussion Topics

- ❖ LB&I Environment
- ❖ Campaigns
- ❖ LB&I Exam Process (LEP)
- ❖ Issue Resolution Programs
 - Industry Issue Resolution (IIR) – Rev. Proc. 2016-19
 - Compliance Assurance Process (CAP) – IRM 4.51.8
 - Pre-Filing Agreements (PFA) – Rev. Proc. 2016-30
- ❖ Appeals Procedural Updates
 - Fast-Track Settlement (FTS) – Rev. Proc. 2003-40
 - Rapid Appeals Process (RAP) – IRM 8.26.11
 - Changes to conferencing procedures (See Appeals Slide Deck for Details)
- ❖ Disaster Relief Revenue Procedures



LB&I Organizational Chart



LB&I Environment

- ❖ Since standup (2000), the number of LB&I returns filed has increased about 70% (about 150,000 at standup to an estimated 254,700 in 2013)
- ❖ Diminished workforce. LB&I workforce is down significantly since standup.

LB&I Environment

- ❖ A top LB&I priority is our issue management strategy – finding ways to resolve issues of controversy more efficiently and sooner in the audit process
- ❖ We're continuously working to improve both the timeliness and optimum cycle time – or examination duration - of our audits.

LB&I Campaigns

- ❖ Campaigns are a critical component of LB&I's compliance efforts.
- ❖ As explained when the first 13 campaigns rolled out in January, we need to be mindful that identifying a particular issue as a campaign does not suggest that every instance reported by a taxpayer is non-compliant or that there is elevated risk.
- ❖ LB&I continues to move toward issue-based examinations and a compliance campaign process in which the organization decides which compliance issues that present risk require a response in the form of one or multiple treatment streams to achieve compliance objectives.
- ❖ This approach makes use of IRS knowledge and deploys the right resources to address those issues.

LB&I Campaigns – Announced 1/31/17

- ❖ Initial rollout of 13 campaigns:
 - **Deferred Variable Annuity**
 - **Micro Captive Insurance**
 - **Basket Transactions**
 - **S Corporation Losses**
 - **TEFRA Linkage Plan Strategy**
 - **Inbound Distributor**
 - **OVDP Declines-Withdrawals**
 - **Repatriation**
 - **Form 1120F Non-Filer**
 - **Domestic Production**
 - **Related Party Transactions**
 - **IRC 48C Energy Credit**
 - **Land Developers - Completed Contracts Method (CCM)**

LB&I Campaigns – Announced 11/3/17

- ❖ 11 campaigns – 2nd Roll-out:
 - Form 1120-F Chapter 3 and Chapter 4 Withholding Campaign
 - Swiss Bank Program Campaign
 - Foreign Earned Income Exclusion Campaign
 - Verification of Form 1042-S Credit Claimed on Form 1040NR Campaign
 - Agricultural Chemicals Security Credit Campaign
 - Deferral of Cancellation of Indebtedness Income Campaign
 - Energy Efficient Commercial Building Property Campaign
 - Corporate Direct (Section 901) Foreign Tax Credit (FTC) Campaign
 - Section 956 Avoidance Campaign
 - Economic Development Incentives Campaign
 - Individual Foreign Tax Credit (Form 1116) Campaign

LB&I Campaigns

- ❖ Fundamental part of LB&I's Future State
- ❖ Involve LB&I harnessing the combined intellect of our team to make intentional decisions about compliance risks
- ❖ Our decisions impact the most important resource we have – our people.

LB&I Campaigns

- ❖ Campaigns achieve intended compliance outcomes by:
 - Focus on selected compliance risks
 - Identification of proper resources
 - Application of proper combination of treatment streams
 - Implementation of feedback loops and Adapting to feedback

LB&I Campaigns

- ❖ Every LB&I employee is encouraged to submit compliance issues for evaluation to determine whether LB&I should expend further resources to develop a particular issue into a campaign.
- ❖ This effort recognizes the importance of LB&I capturing and relying upon the vast knowledge and expertise of our work force to best use our resources to maximize compliance amongst LB&I's taxpayer population.

LB&I Campaigns

- ❖ By using LB&I's combined intellect, we can improve our understanding of compliance risk and how we respond to it.
- ❖ The concept behind campaigns is to improve resource deployment to respond to compliance risk.
- ❖ The idea is not to audit more returns, but to respond with a variety of treatments to maintain high compliance across the LB&I filing population

Campaigns – Treatment Streams

- ❖ Consideration of multiple compliance approaches for campaigns
- ❖ Focusing limited resources in the right areas that drive a specific compliance impact
- ❖ Using data analytics combined with input from employees to identify areas of compliance risk and
- ❖ Design treatment streams to achieve stated objectives

Campaigns – Treatment Streams

- ❖ A campaign treatment stream could include:
 - Examinations
 - Soft letters
 - Outreach
 - Industry Issue Resolution program
 - Tax form changes, or
 - Published guidance

Campaigns – Feedback Loops

- ❖ We've received hundreds of campaign suggestions and we're in the process of evaluating them—we're taking the approach of looking at all of the ideas, and making assessments.
- ❖ An important part of the process is an “integrated feedback loop” where we can hear from front-line examiners and practitioners as we evaluate and modify campaigns—or decide to terminate them.

Campaigns – Feedback Loops

- ❖ Feedback loops – it may take many months to know whether each campaign is functioning as intended or whether adjustments are required to achieve compliance objectives.
- ❖ It remains possible that while a compliance risk exists there may be no non-compliance. Said another way, we may determine that taxpayers are compliant.
 - We must remain aware of this possibility and provide feedback immediately if compliance concerns are not realized or if the risk turns out to be a significant concern with widespread non-compliance.

Campaigns – Lessons Learned

- ❖ Best Practices identified from the Campaign program include:
 - Robust Feedback Loops – our feedback process has shown that cultivating robust feedback loops allow us to adapt sooner
 - Designing and delivering campaign inventory with pre-identified training and tools
 - Identifying a campaign executive lead with strategic responsibility for all aspects of the campaign

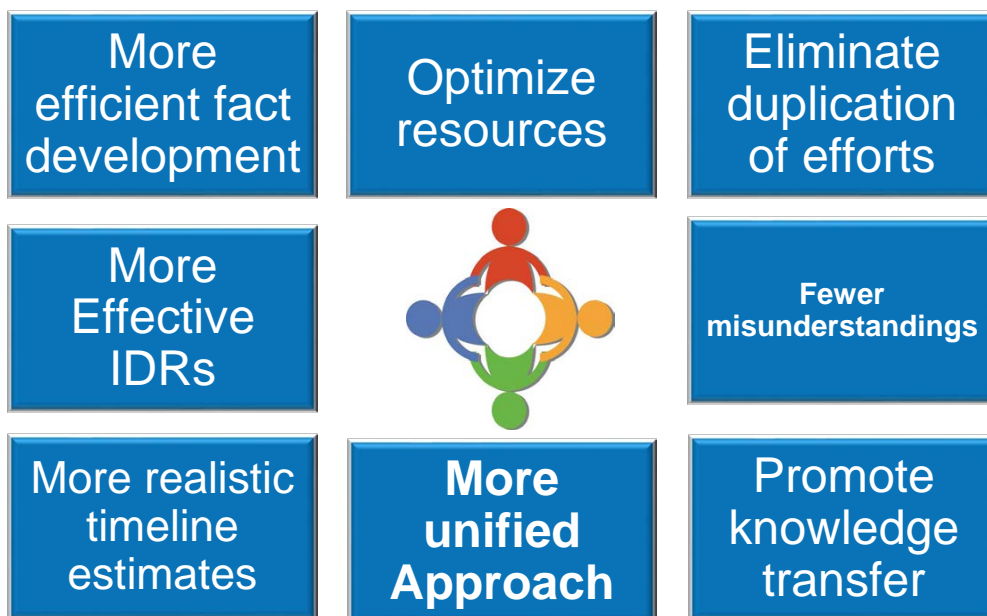
Campaigns – Evolving and Expanding

- ❖ LB&I's processes are evolving; we continue to evaluate campaign ideas and we will continue to assess and adapt our work processes
- ❖ LB&I will continue to incorporate components of our historical risk assessment process along with lessons learned as we expand our campaign work.
- ❖ LB&I intends to make campaigns public as long as doing so does not impair tax administration.

LEP Examination Process

- ❖ Three stages to the Examination Process:
 1. Planning
 - Communication
 - Issue Team Concept
 - Examination Plan
 2. Execution
 - Issue Development Process
 - Written Acknowledgement of Facts
 3. Resolution
 - Issue Resolution and Exit Strategy

Issue Driven Process



LEP – Best Practices

- ❖ Robust opening conferences
- ❖ Maintaining an ongoing dialogue – at least monthly meeting with team members – face to face or conference call
- ❖ Discussing IDRs before their issuance – narrowing issues
- ❖ Ensuring that IDR responses include helpful facts to support your position

LEP – Best Practices

- ❖ Provide Exam Team with an overview of operations, transfer pricing practices or other significant transactions
- ❖ Hold substantive issue discussions/meetings with key taxpayer personnel as issues arise
- ❖ Escalation to resolve certain issues arising in exams (How to do this the right way)

LEP – Best Practices

- ❖ Perform a Taxpayer Team & IRS Team joint evaluation on key areas of transparency, issue development process, availability of personnel, issue resolution, etc. at mid-cycle or on monthly/quarterly basis
- ❖ Communicate, Collaborate, Cooperate

❖ Lessons Learned

- Issue Driven Process and Issue Team Dynamics
- Claims Process
- Acknowledgment of Facts
- Principles of Collaboration
- Information Document Request (IDR Process)

Industry Issue Resolution Program

- ❖ The program's goal is to resolve frequently disputed or burdensome issues that affect a significant number of taxpayers.
- ❖ This goal is accomplished by providing clear guidance that business taxpayers can use, thus reducing the time and expense associated with resolving issues on a case-by-case basis during tax examinations.

Industry Issue Resolution Program

- ❖ Taxpayers or their representatives, such as industry trade associations, can submit their requests for guidance through the IIR program any time at IIR@IRS.gov.
- ❖ For each issue selected, a multi-functional team of IRS, Chief Counsel, and Treasury personnel will be assembled. The teams will gather and analyze the relevant facts from the submitter, industry groups and taxpayers for each issue and recommend guidance.

Industry Issue Resolution Program

- ❖ Generally, the IRS resolves accepted applications through IRS published guidance, such as a revenue ruling and/or revenue procedure; alternatively, where appropriate, the IRS may use administrative guidance.

Industry Issue Resolution Program Stats

❖ FY17 through July:

- 3 in process
- 0 received
- 1 completed
- 0 rejected

❖ FY16:

- 2 received
- 1 accepted
- 3 completed

Note: IIRs typically cross FYs in terms of when they are received, accepted, and completed. For example, IIRs in-process for the current FY could relate to IIRs received/accepted in a prior FY.

Compliance Assurance Process

- ❖ 2018 Application Period Closed 10/31/2017
- ❖ No New Entrants
- ❖ Comprehensive Assessment of CAP continues
 - Necessary given today's environment of limited resources and budget constraints
 - Ongoing IRS evaluation of existing programs to ensure they are aligned with LB&I's strategic vision

Compliance Assurance Process

❖ CAP Taxpayer Participation

- 2017 Current CAP Year
 - 174 returning taxpayers (no new TPs accepted in 2017)
 - 87 Compliance Maintenance
 - 4 Pre-CAP taxpayers (not included in 174 above)
- 2016 CAP Year
 - 181 returning taxpayers (no new TPs accepted in 2016)
 - 78 Compliance Maintenance
 - 11 Pre-CAP taxpayers (not included in 181 above)
- 2005: First CAP Year -17 taxpayers

Compliance Assurance Process

❖ FY 2017 CAP Case Statistics:

- 151 – Total Closed Cases
- 96 – No Change Cases
- 41 – Agreed
- 14 – Unagreed/Appeals

❖ FY 2016 CAP Case Statistics:

- 181 – Total Closed Cases
- 104 – No Change Cases
- 55 – Agreed
- 22 – Unagreed/Appeals

Pre-Filing Agreement Program

- ❖ Encourages taxpayers to request consideration of an issue before the tax return is filed and, thus, a beneficial way to reach agreement on an issue in a cooperative environment outside the examination process.
 - Reduces the cost and burden associated with the post-filing examination
 - Provides a desired level of certainty regarding a transaction, and
 - Makes better use of taxpayer and IRS resources

Pre-Filing Agreement Statistics

- ❖ **FY17 through July:**
 - 5 received
 - 2 accepted
 - 1 under consideration
 - 9 in process
 - 8 closed with agreement
- ❖ **FY16:**
 - 19 received
 - 15 accepted
 - 9 closed with agreement

Note: PFAs typically cross FYs in terms of when they are received, accepted, and closed with agreement. For example, PFAs accepted in one FY may not be closed with agreement until the next FY.

Fast Track Settlement Program

Joint LB&I Division/Appeals program offers a customer-driven approach to resolving tax disputes at the earliest possible stage in the examination process.

- ❖ This program is designed to:
 - Provide an independent Appeals review of the dispute in an environment where all parties to the dispute have a "voice" in the dispute resolution process,
 - Utilize the mediation skills and delegated settlement authority of Appeals, and
 - Reduce the length of a taxpayer's overall IRS experience.
- ❖ Applying for Fast Track Settlement is quick and easy - simply complete a one-page application.

Fast Track Settlement Statistics

- ❖ **FY17 through July:**
 - 60 Fast Track cases accepted
 - 61 Fast Track cases resolved
 - 12 Fast Track cases in-process
- ❖ **FY16:**
 - 54 Fast Track cases accepted
 - 70 Fast Track cases resolved
 - 13 Fast Track cases in-process

Note: Fast Track cases can cross fiscal years in terms of when they are accepted and resolved. For example, a case accepted into Fast Track in one FY may not get resolved until the next FY.

What is Rapid Appeals Process?

- ❖ Rapid Appeals Process is currently only available to LB&I cases assigned to an Appeals Team Case Leader (ATCL)
- ❖ Appeals manages and administers the RAP
- ❖ RAP takes place while the case is in Appeals' jurisdiction and is designed to be completed in one conference
- ❖ RAP enables taxpayers and the IRS to work together to expedite the resolution of unagreed issues

Objectives of RAP

- ❖ Reinforce existing efficiencies
- ❖ Improve customer satisfaction
- ❖ Introduce proven FTS techniques to resolve issues faster
- ❖ Reduce burdens on taxpayers and the Service
- ❖ Increase LB&I's involvement in the Appeals process while maintaining Appeals' independence
- ❖ Reduce overall cycle time

Distinctions Between RAP and FTS

- ❖ During RAP, the case is in Appeals' jurisdiction; in FTS the case is in LB&I jurisdiction
- ❖ If an issue is not eligible for FTS, all other disputed issues in the case are not eligible for FTS
- ❖ Under RAP, if an issue is not eligible for RAP, the remaining issues may still be eligible for RAP

ATCL CONFERENCES – RAP, CI, ACT

ATCL CASES ONLY – RAP, Conferencing Initiative (CI), Alternative Conferencing Techniques (ACT)

- ❖ Rapid Appeals Process (RAP)
 - Mandatory ATCLs consider and offer it, both LB&I and TP need to agree
- ❖ Otherwise:
 - ATCL conferencing initiative (CI) – mandatory for pilot
 - Alternative conferencing technique (ACT) — discretionary

CI AND ACT AFTER RAP REJECTION

What if the Taxpayer and LB&I do not agree to use RAP – then what?

- ❖ The ATCL can employ CI and/or ACT
- ❖ CI is a pilot and is mandatory for ATCLs in the pilot and ACT is optional for the other ATCLs.

Disaster Relief – Revenue Procedure

- ❖ Rev Proc. 2007-56
 - Under section 7508A and the underlying regulations, the IRS Commissioner has the authority to allow certain taxpayers in federally-declared disaster areas to delay certain requirements
 - Revenue Procedure lays out acts by code section and category and describes the act postponed in disaster or other situation
 - The Rev Proc does not, by itself, provide any relief in a disaster situation, but only lays out the relief that the IRS Commissioner may provide
 - IRS will generally publish a notification, including a press release, granting the relief described in the code, regulations and Revenue Procedure

Other Resources

- ❖ Rev Proc. 2006-32 – Cost Index Tables
- ❖ IRS.gov has a dedicated section to disaster relief, including laying out past disaster guidance
- ❖ General disaster guidance for individuals and businesses can also be located on IRS.gov and the information is updated regularly

<https://www.irs.gov/businesses/small-businesses-self-employed/faqs-for-disaster-victims>

<https://www.irs.gov/businesses/small-businesses-self-employed/disaster-assistance-and-emergency-relief-for-individuals-and-businesses-1>

Happy to Entertain Your Questions

