

Federal Tax Controversy

November 9, 2021



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1



Topics for Discussion

- State of LB&I and Hiring
- Current Priorities and Workload Prioritization
 - Key portfolio work and issues
 - Cross Border Activities, TCJA and Campaign Updates
 - Other recent updates
- Impact of COVID-19 and Post Pandemic Changes
- Taxpayer First Act and IRS NEXT



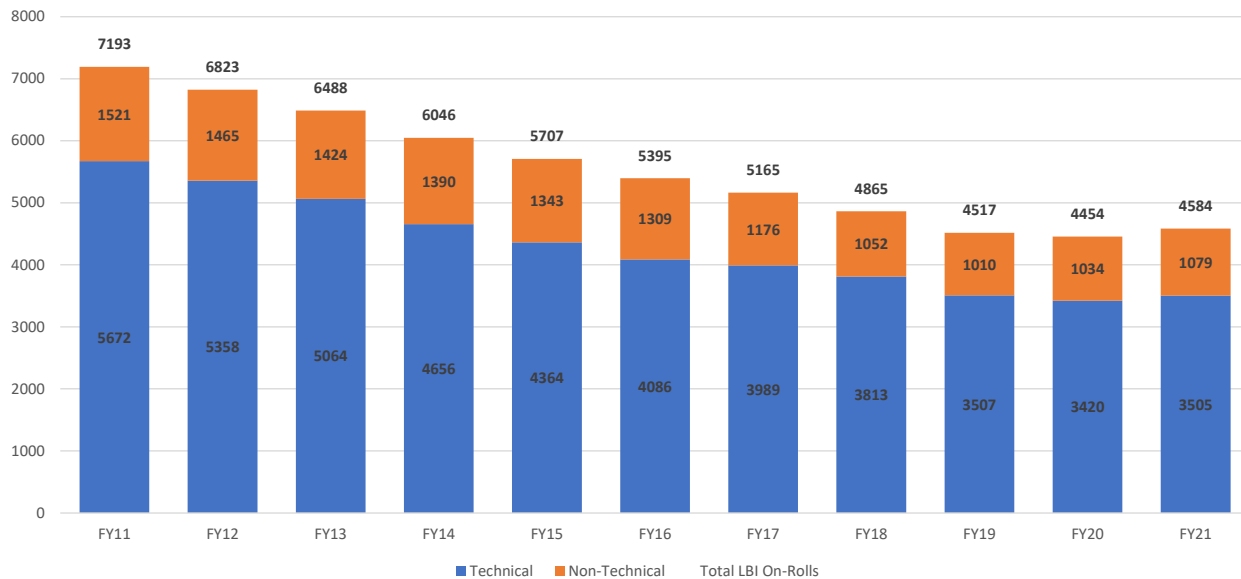
FY2022 LB&I Strategic Goals

- Strengthen Tax Compliance Programs
- Expand Workforce Tools and Opportunities
- Improve Engagement, Collaboration and Communication



Current workforce -- staffing and hiring

LB&I STAFFING YEAR-OVER-YEAR BEGINNING OF YEAR ON-ROLLS





LB&I Hiring – FY21

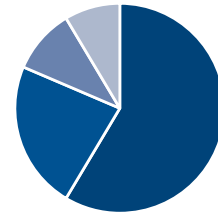
LB&I Hiring – FY21

- Final # Added to Rolls **351**
- All Job Classifications
 - Revenue Agents – including CAS, International, Transfer Pricing, FPs
 - Engineers
 - Economists
 - Appraisers
 - Tax Law Specialists



Current priorities and Workload Prioritization

- LCC (successor program to CIC) – C Corporations
- CAP – Publicly held C Corporations
- Campaigns – Single Issue Focus – Any return
- Global High Wealth – Enterprise approach, begins with 1040
- Flow-Through - Partnerships & S-Corps
 - Large Partnership Compliance
- Mandatory (i.e., Claims)
- “Discretionary” - Other Corporate Exams
- Individual International Compliance – 1040s
- Taxpayer Initiated – PFA’s, APA’s, Voluntary Disclosures



LB&I Portfolio workplan balances goals of ‘next best case’ and coverage. Compliance practice area examiners will work all of these types.



Large Corporate Compliance (LCC)

- Large Corporate Compliance (LCC) Program replaces Coordinated Industry Case (CIC) program
- LCC is one of the compliance programs in LB&I's portfolio
- Ensures oversight for LB&I's largest taxpayers
- Uses data analytics along with tax expertise to identify risk of the entire LB&I large corporate population
- Deployed May 15, 2019 (2017 returns)
- 2019 return Production Run started May 28, 2021



LCC Overview and Benefits

- LCC uses data analytics to help identify the best returns for the field – looking at all filings
- LCC uses automatic pointing that reduces the burden on examiners and systemically identifies every corporate return meeting the program threshold, something that the CIC program did not do
- LCC increases the likelihood examiners can work on high-risk issues
- LCC aligns our workload identification efforts with the 2018-2022 IRS Strategic Goals; specifically, “Advance data access, usability and analytics to inform decision-making and improve operational outcomes.”



LCC - Impact to Taxpayers

- LB&I Examination Process applies to LCC
- Revenue Procedure 94-69 currently under review. For now, applies to LCC taxpayers under examination that had open CIC examination before May 21, 2019.
- Delegation Order 4-24 was updated in December 2020 and now applies to all LB&I cases (not just CIC/LCC)



Compliance Programs – CAP Overview

- CAP provides the IRS and taxpayers a cooperative model for early resolution of issues
 - CAP began as a pilot program in 2005 with 17 taxpayers and now includes 136 taxpayers as of 2021 CAP year
 - Acceptance based on eligibility, suitability, and risk assessment
- CAP Recalibration changes announced August 2018



Compliance Programs – CAP 2022

- **Application Period** - CAP 2022 Application Period open from September 1st to November 1st, 2021
- **Notification** - Applicants will be informed in February 2022 if they are accepted into the program
- **Participation** - Applicants return signed CAP Memorandum of Understanding (MOU) to secure participation in March 2022



Compliance Programs – CAP 2022 Cont'd.

- Eligibility requirements continued from CAP 2021:
 - 2 (two) open filed returns and 1 open unfiled return
 - Provide audited financial statements in accordance with U.S. GAAP
- Exceptions – changes:
 - IRC Section 965 exception has been eliminated
- More information about the CAP Program and FAQs can be found on the [CAP Program Webpage](#) at IRS.gov



What is a Campaign?

- A holistic response to compliance risk
 - Resources
 - Treatment streams



4 Guiding Principles

- Cultivate environment of continuous learning
- Use data analytics and examiner feedback
- Employ an integrated set of tailored treatment streams
- Drive continual collection and analysis of data and feedback

58 Active Campaigns

- Additional campaigns will continue to be rolled out



Campaigns – 2016 ---> present

- Transition to issue focused campaigns
- Capitalize on collective experience
- Campaigns may cover any type of LB&I return
Some are cross-BOD
- Over 1,000 campaign suggestions received
- Over 50 LB&I Compliance Campaigns announced
- Practice units, Lessons learned
- Increasing percentage of overall Portfolio
- Current focus on TCJA



How Campaigns Function?

- Harnessing the combined intellect of our team
- A fundamental change to selecting and performing work
- Drive specific compliance objectives
- Improve our understanding of risk



Cross Border Campaigns

- Financial Service Entities Engaged in a U.S. Trade or Business ****NEW****
- Form 1120-F Delinquent Returns Campaign
- Form 1120-F Interest Expense / Home Office
- Form 1120-F Non-Filer*
- IRC 965 – Treatment of Deferred Foreign Income Upon Transition to Participation Exemption System of Taxation
- IRC Section 901
- Foreign Triangular Reorganizations
- Foreign Based Company Sales Income
- Section 956 Avoidance



LB&I TCJA Campaign

- The TCJA campaign will monitor issues more closely and share information learned throughout LB&I and the IRS
- The goal of this campaign is to identify technical issues and better understand taxpayer behavior under the new law
- The treatment streams for this campaign may include examinations, soft letters, outreach, new and improved practice units and development of future issue-based campaigns



TCJA Reg. Validity Challenges – LB&I Perspective

- Taxpayers have filed many challenges to TCJA regulations
- Taxpayers have used several different forms and disclosures to report (Amended Return, 8275-R, Sch. UTP, Whitepaper, 94-69 Disclosures, etc.)
- Revenue agents have been instructed to follow the regulations as published, regardless of challenges.
- Revenue agents are forwarding each instance of a challenge to a centralized LB&I team, so that the division is aware of the entire inventory of challenges
- Associate Chief Counsel Office is highly involved in assisting LB&I and evaluating the legal merits of challenges



199 Claims Risk Review Campaign

- TCJA repealed the domestic production activities deduction (DPAD) for tax years beginning after December 31, 2017
- This campaign addresses all business entities that may file a claim for additional DPAD under IRC section 199
- The campaign objective is to ensure taxpayer compliance with the requirements of IRC section 199 through a claim risk review assessment and issue-based examinations of claims with the greatest compliance risk



Research Issues Compliance

- **Research Issues Campaign**
 - Addressing research credit and research and experimental expenditures issues
 - Objectives are to promote voluntary compliance, focus resources on the highest risk research issues and increase consistency of examinations
- **Updated ASC 730 Directive**
 - Objective is to strategically reduce the deployment of resources related to the examination of research credit issues
 - Clarified Scope of Exam
 - Taxpayer Eligibility
 - Exam Guidance Section
 - New Documentation Requirements
 - Modified Appendix C to carve-out non-ASC 730 expense



Other Key Portfolio Items

- **Global High Wealth - Examinations of high-net-worth individuals that extend beyond individual income tax returns to include examining the entities that these taxpayers control.** LB&I working to increase its coverage in this area
- **High-Income Exams - Joint effort between LB&I and the Small Business/Self Employed Division, in coordination with the Tax Exempt and Government Entities Division to address coverage for high-income taxpayers**
- **Flow-Through Work - Increased hiring and coverage planned; as well as a form improvement effort to support improved identification of noncompliance**



Other Compliance Efforts

Ongoing focused effort on key issues:

- Syndicated Conservation Easements Campaign
- Micro-Captives Campaign
- Fraud Referrals and Promoter Examinations
- Virtual Currency Campaign



Other Recent Efforts

- Workload Prioritization and Risk Assessment
- Rev. Proc. 94-69 Announcement
- Industry Subject Matter Expert Program
- Data Analytics



Impact of COVID-19 and Post Pandemic Changes

- Continuing to monitor impact to taxpayers and our workforce, respond accordingly, and afford flexibility where feasible
 - Revised IDR Directive guidance
 - Revised case processing procedures
- Expansion of digital transmissions will continue until further notice
- Temporary deviation through December 31, 2021, allowing digital signatures on certain specified paper filings



CARES Act Highlights

- Forms 1139 entering exam workstream
- Joint Committee review process
- Anticipate increase in filings of preliminary returns followed by subsequent filing of a superseding return
- TCJA limitation for 163(j) was primarily based on 30% of Adjusted Taxable Income (ATI). The CARES act modified ATI limit to 50% instead of 30% for taxable years beginning 2019 and 2020
- Corrected the QIP recovery to a 15-year recovery property under IRC §168(e)(3)(E) and 20 years under IRC §168(g)(3) retroactive to the date of the original TCJA provision, Dec. 31, 2017



The Act includes numerous tax provisions and extensions. LB&I is responsible for the implementation of 17 provisions as follows:

Sec. 105	Railroad track maintenance credit	Sec. 136	Mine rescue team training credit
Sec. 111	Look-thru rule for related controlled foreign corporations	Sec. 139	American Samoa economic development credit
Sec. 112	New Markets tax credit	Sec. 143	Alternative fuel refueling property credit
Sec. 115	7-year recovery period for motorsports entertainment complexes.	Sec. 145	Production credit for Indian coal facilities
Sec. 116	Expensing rules for certain productions	Sec. 203	Waste energy recovery property eligible for energy credit
Sec. 121	Extension of carbon oxide sequestration credit	Sec. 204	Extension of energy credit for offshore wind facilities
Sec. 131	Credit for electricity produced from certain renewable resources	Sec. 205	Minimum rate of interest for certain determinations related to life insurance contracts
Sec. 132	Extension and phaseout of energy credit	Sec. 210	Temporary allowance of full deduction for business meals
		Sec. 306	Treatment of certain US possessions

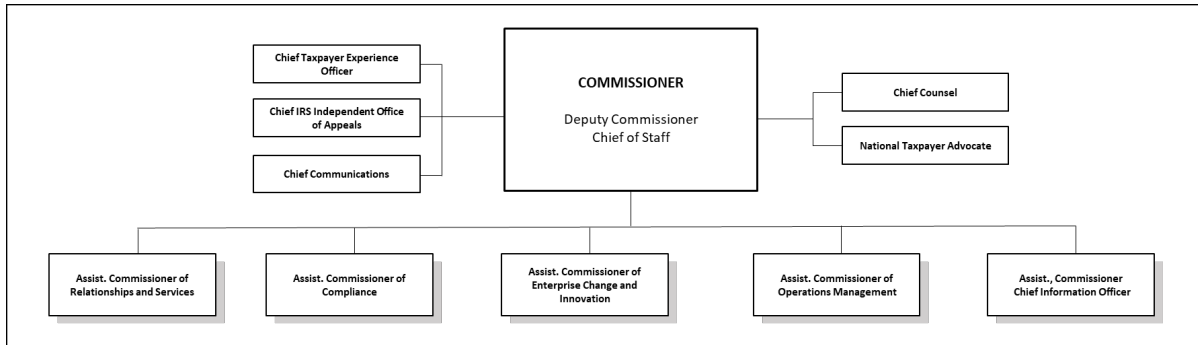


Taxpayer First Act (TFA)

- **Three Major Components: Comprehensive Customer Service Strategy, Organizational Structures, and Training Strategy**
- **Report to Congress submitted on January 11, 2021**
- **Taxpayer Experience Office, led by the Chief Taxpayer Experience Officer, will set the strategic direction for improving the taxpayer experience across the IRS, and provide information on changing taxpayer expectations, industry trends and ways to apply customer service best practices**
- **Training as a priority – IRS University**
- **Compliance division will combine compliance functions across taxpayer segments (LB&I, SB/SE, TE/GE, etc.) into one division led by an Assistant Commissioner of Compliance to minimize the duplication of activities, oversight, planning, and services, and to develop communities of expertise**



Organizational Redesign Strategy IRS Leadership



We'll work together over the Report's 10-year timeline to identify the steps and actions to:

- Improve the taxpayer experience and provide a continued emphasis on taxpayer rights
- Improve Operational Efficiencies
- Increase Collaboration
- Enhance Innovation
- Continue to Improve Critical Operations Currently Serving Taxpayers Well



IRS NEXT: Background

- Over the last ten years, IRS' budgets have decreased or remained flat despite increasing demands on the agency. As a result, IRS personnel has dramatically reduced through attrition and hiring freezes, which has constrained the agency mission and business results.
- In January 2021, pursuant to the [Taxpayer First Act](#), IRS published a [Report to Congress](#) (RTC) which included recommendations for organizational redesign to reduce inefficiencies and improve the taxpayer and employee experience.
- Building on the work the Taxpayer First Act Office did to publish the TFA Report to Congress, and with potential for increased hiring, we're focused on building an IRS for the next generation.
- We're now shifting our focus to prioritize the long-term strategic recommendations in the Report to outline how we're structured, how the agency operates and how we make progress with our FY2022 budget resources.
- The TFA Office is becoming the IRS NEXT Office, which will focus on both the design and implementation of a revitalized IRS organization and, in partnership with HCO, lead a servicewide effort to integrate our recruiting, hiring, training and onboarding efforts.



Report to Congress Strategy Implementation

- The Taxpayer Experience Office (TXO), led by Chief Taxpayer Experience Officer Ken Corbin, is standing up to implement the taxpayer experience strategies outlined in the Report to Congress.
- Ten cross-functional project teams have been established to help operationalize the Training Strategy. These teams are comprised of subject matter experts from the business units and training experts in the Human Capital Office.
- IRS NEXT will coordinate activities related to organizational redesign.



IRS NEXT Office Structure





IRS NEXT Organizational Redesign

❖ Build out a structure that will:

- Improve operational efficiency
- Be more nimble so we can begin reducing the tax gap
- Improve the employee and taxpayer experience
- Make the IRS a compelling place to work that attracts the next generation by supporting learning and career advancement



You can always ask questions or submit feedback to

IRSNext@irs.gov



Taxpayer Digital Communications (TDC): Publication 5425



**Taxpayer Digital
Communication Secure File
Sharing - Secure Messaging**
A New Way to Connect with the IRS



Ever wish for a faster way to communicate and exchange information about your current IRS Large Business and International (LB&I) Division audits?

The IRS now has an easier way to communicate with taxpayers: it's called the IRS Taxpayer Digital Communication Secure File Sharing-Secure Messaging (TDC SFS-SM). With this service, you and your authorized representative will be able to send and receive messages and digital documents related to your IRS audit quickly and easily.

With TDC SFS-SM, you can:

- Correspond with an IRS agent through your web browser at your convenience
- Submit and receive digital documentation quickly and securely
- Message with safety and security with no downloads, certificates or tokens to install
- Connect anytime from anywhere
- Avoid time on the phone
- Eliminate paper and postage costs



Taxpayer Digital Communications (TDC): Publication 5425 (continued)

Who can use TDC SFS-SM?

Both taxpayers currently under audit with Large Business and International (LB&I) and authorized employees of your company will be able to use secure messaging relating to your IRS audit. TDC SFS-SM will enable digital exchange of messages and attachments with IRS agents.

How does TDC SFS-SM work?

IRS TDC SFS-SM is similar to a web-based email service. Messages can be securely sent to you by IRS representatives and you may respond and even include document attachments pertaining to your IRS audit.

The IRS will save all messages as digital record of your communications. You will be notified when you have a secure message waiting for you via a notification email to the addresses provided on your signed consent (See *How do you sign up?*).

The notification will include a link to your secure messaging center. In order to protect your privacy and reduce the potential for identity theft, no personal information will be included within this notification email.

How do you sign up?

If your company is currently under an IRS audit, you may be asked if you want to participate in the TDC SFS-SM system by your IRS agent. If not, you may ask your IRS agent to participate in TDC SFS-SM.

You will be provided a Taxpayer Consent form, which you should review, sign and return to your IRS agent. Next you will receive a system-generated email notifying you that you have been added to the system, including a username and a link to the system, asking that you log in and create your password.

Taxpayer representatives

If you are a representative of a taxpayer/business that has been invited to use TDC SFS-SM, you may access the application as long as you have an appropriate designation on Form 2848 (Power of Attorney), have signed the Consent form and completed the authentication process.

Once you have an account, just log in to your Secure Message account. Follow the instructions and you'll soon be set to use the new system.

Publication 5425 (6-2020) Catalog Number 74636U Department of the Treasury Internal Revenue Service www.irs.gov



Independent Office of Appeals

Independent Office of Appeals

Overview

Presented by Darren Lee, ATCL Team Manager 11-9-2021





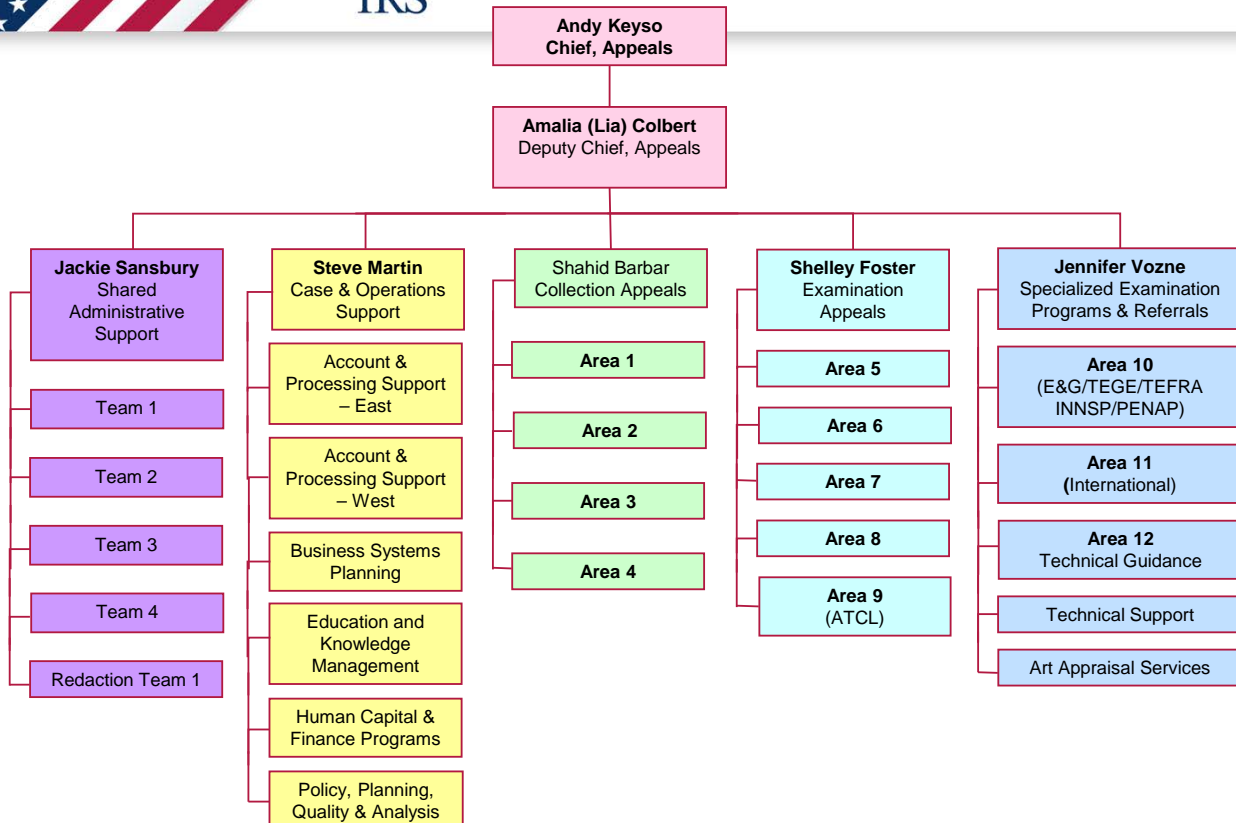
Appeals' role within the IRS

- ❖ **Dispute resolution**
- ❖ The IRS Independent Office of Appeals is an administrative appeal function available to taxpayers. Appeals can review a tax matter either after Compliance has made its decision (non-docketed case) or after a taxpayer has petitioned the Tax Court (docketed case).
- ❖ **Mission**
- ❖ To resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.
- ❖ **Independence**
- ❖ The independence of the appeals function is mandated by statute and includes the prohibition on ex parte communications between Appeals and other IRS employees to avoid the appearance of improper influence.

37



Appeals' Organization



38



Appeals settlement authority

Appeals is expressly authorized to enter into settlements that take into consideration hazards of litigation

A “litigating hazard” is a substantial uncertainty in the event of litigation as to:

- How the courts would interpret and apply the law
- What facts the courts would find or
- The admissibility of or weight that would be given to a specific item of evidence

Appeals must consider probable outcomes to avoid arbitrary settlements

39



Independence policies

Appeals will attempt to settle a case based on factual hazards when the case is not fully developed and taxpayer presents no new information or evidence

Appeals will not raise new issues or reopen issues agreed to by taxpayer and Compliance (except for cases involving fraud or malfeasance)

40



Independence policies

Limitations period

Most new case receipts in Appeals must have at least one year remaining on the statute of limitations

New information

Appeals generally returns non-docketed cases to Compliance when taxpayer submits new information or evidence or raises a new issue warranting investigation or additional analysis (exceptions apply)

New arguments

Appeals generally engages Compliance for review and comment (subject to *ex parte* requirements) when taxpayer raises a new theory or alternative legal argument on a non-docketed case

41



Mediation options

Fast track mediation—collection

Voluntary process for OIC and Trust Fund Recovery Penalty (TFRP) cases

Appeals employee serves as mediator and has no settlement authority (hazards of litigation may not be considered)

If no resolution, taxpayer retains traditional appeal rights

Fast track settlement

Voluntary process for examination cases

Appeals employee serves as mediator and may propose settlement based on litigating hazards

If no settlement, taxpayer retains traditional appeal rights

Rapid appeals process

Voluntary process for large business and E&G cases

After pre-conference, ATCL may suggest mediation between taxpayer and Compliance as an alternative to a traditional conference

If a RAP is unsuccessful, Compliance leaves and settlement negotiations are conducted between the ATCL and the taxpayer

Post appeals mediation

Voluntary process available for exam, OIC and TFRP cases if traditional appeals negotiations fail

Taxpayer may request PAM, but Appeals manager decides if case should get PAM

New Appeals employee serves as mediator between original Appeals employee and taxpayer

Must use Appeals mediator, but taxpayer may also use non-IRS co-mediators (at own expense)

(Non-docketed cases only)

42



Hot Topics – Appeals conferences

Conference techniques include:

- In person
- Virtual (WebEx, Zoom)
- Telephone
- Correspondence

In-person conferences

(suspended until further notice as result of pandemic)

- Upon request, a taxpayer may obtain an in-person conference; Appeals will use its best efforts to schedule the in-person conference on a date and in a location that is **reasonably convenient for taxpayer and Appeals**
 - Limits apply (e.g., workload, availability of subject matter experts, CDP regulations)

43



ATCL Conference Initiative:

Current status of Pilot- Started in May 2017, Appeals officially implemented the conference initiative pilot to improve conference efficiency for large, complex cases. Pilot ended May 2020.

Pilot Feedback-Feedback from internal and external pilot participants, Appeals determined that inviting Compliance to the initial discussion of complex cases can be beneficial but is not necessary in every case.

Next Steps- ATCLs will use their discretion whether to invite Compliance to the non-settlement portion of the Appeals conference and will solicit the views of the taxpayer to help inform that discretion.

44



Appeals-related provisions-“New” Appeals:

- Changed name to IRS Independent Office of Appeals, IRC 7803(e)(1)
- Codified mission statement
- Provided that the process by which Appeals resolves federal tax controversies is generally available to all taxpayers
- Codified Appeals’ right to legal advice from Chief Counsel
- Provided that certain specified taxpayers must be provided access to the nonprivileged portions of their case files regarding disputed issues at least 10 days prior to an appeals conference. IRC 7803(e)(7)(C) defines a Specified Taxpayer.
- Required reporting of cases designated for litigation by Chief Counsel



R&E Credit Chief Counsel Memorandum

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Disclaimer: This portion of the presentation is not part of the IRS presentation. IRS personnel neither participated in the preparation of these slides nor endorse its content, which solely reflects the views of the author.



New Chief Counsel Memo on R&E Claims

- ❖ Memorandum 20214101F released 10/15/2021
- ❖ Press release and memo: <https://www.irs.gov/newsroom/irs-sets-forth-required-information-for-a-valid-research-credit-claim-for-refund>

1. For a taxpayer's refund claim for the I.R.C. § 41 research credit to be valid, the taxpayer must, at a minimum:
 - Identify all the business components to which the I.R.C. § 41 research credit claim relates for that year.
 - For each business component:
 - identify all research activities performed;
 - identify all individuals who performed each research activity; and
 - identify all the information each individual sought to discover.
 - Provide the total qualified employee wage expenses, total qualified supply expenses, and total qualified contract research expenses for the claim year (this may be done using Form 6765, Credit for Increasing Research Activities).
-