



Section of Taxation

10th Floor
740 15th Street, N.W.
Washington, DC 20005-1022
202-662-8670
FAX: 202-662-8682
E-mail: tax@abanet.org

September 19, 2007

Ms. Linda Stiff
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Survey Report on Independence of IRS Appeals

Dear Acting Commissioner Stiff:

Enclosed please find the American Bar Association Section of Taxation's Survey Report on Independence of IRS Appeals. This report represents only the views of those who responded to the American Bar Association Section of Taxation's survey. It has not been approved by the Tax Section, the Board of Governors or the House of Delegates of the American Bar Association, and should not be construed as representing the policy of the American Bar Association.

Sincerely,

Stanley L. Blend
Chair, Section of Taxation

Enclosure

cc: Donald L. Korb, Chief Counsel, Internal Revenue Service
Sarah H. Ingram, Chief, Appeals, Internal Revenue Service
Nina E. Olson, National Taxpayer Advocate, Internal Revenue Service
Eric Solomon, Assistant Secretary (Tax Policy), Department of the Treasury

CHAIR
Stanley L. Blend
San Antonio, TX

CHAIR-ELECT
William J. Wilkins
Washington, DC

VICE CHAIRS
Administration
Rudolph R. Ramelli
New Orleans, LA

Committee Operations
Elaine K. Church
Washington, DC

Communications
Ellen P. Aprill
Los Angeles, CA

Government Relations
Armando Gomez
Washington, DC

Professional Services
Samuel L. Braunstein
Fairfield, CT

Publications
Louis Mezzullo
Rancho Santa Fe, CA

SECRETARY
Alice G. Abreu
Philadelphia, PA

ASSISTANT SECRETARY
Walter Burford
Atlanta, GA

COUNCIL
Section Delegates to the House of Delegates
Paul J. Sax
San Francisco, CA

Richard M. Lipton
Chicago, IL

Immediate Past Chair
Susan P. Serota
New York, NY

MEMBERS
Christine L. Agnew
Houston, TX

John P. Barrie
New York, NY

Peter P. Blessing
New York, NY

Peter J. Connors
New York, NY

Richard S. Gallagher
Milwaukee, WI

Sharon Stern Gerstman
Buffalo, NY

C. Wells Hall
Charlotte, NC

Helen M. Hubbard
Washington, DC

Kathryn Keneally
New York, NY

Emily A. Parker
Dallas, TX

Priscilla E. Ryan
Chicago, IL

Stephen E. Shay
Boston, MA

Barbara Spudis de Marigny
San Antonio, TX

LIAISON FROM ABA BOARD OF GOVERNORS
Raymond J. Werner
Chicago, IL

LIAISON FROM ABA YOUNG LAWYERS DIVISION
Matthew McLaughlin
Gulfport, MS

LIAISON FROM LAW STUDENT DIVISION
Venay Kumar Puri
Pittsburgh, PA

DIRECTOR
Christine A. Brunswick
Washington, DC

**American Bar Association
Section of Taxation**

**Survey Report on
Independence of IRS Appeals**

August 11, 2007

Executive Summary

The ABA Section of Taxation (“Tax Section”) decided to survey its membership to determine the members’ experience relating to the perceived independence of the Internal Revenue Service’s (“IRS” or “Service”) Appeals Division (“IRS Appeals” or “Appeals.”) In that regard, a seven-page survey instrument was developed by the Committee on Administrative Practice and a “Blue Ribbon” panel of members to solicit opinions from Tax Section members who have had experience with Appeals in the recent past regarding the independence of the IRS Appeals process from the examination, collection, and the enforcement functions of the IRS. Over 560 Section members responded to the initial evaluation questions in the survey, and they provided over 70 pages of comments about the positive and negative aspects of their recent experiences with IRS Appeals.¹

One component of the survey presented the respondents with the opportunity to evaluate a series of general statements about the Appeals process. The key responses are summarized as follows:

- On a positive note, 73.1% of the survey respondents believe that Appeals Officers are generally fair.
- Three quarters of the respondents perceive Appeals Officers to be generally well trained in tax law and procedure.
- About 73.5% of the tax practitioners offering an opinion expressed their belief that Appeals Officers are generally well trained in how to interact with taxpayers and representatives.

There is agreement across a substantial component of the respondent pool with regard to perception that certain recent changes in the structure and procedures of IRS Appeals have had a negative effect on the independence or appearance of independence of Appeals. The following key responses are noteworthy:

- Almost 80% of the respondents expressing an opinion believe that Appeals involvement in recent IRS tax shelter settlement initiatives, such as the Executive Stock Option tax shelter, makes Appeals less independent.
- Almost two thirds think that the independence of Appeals is reduced when protests are sent first to examination or ACS before going to Appeals.
- About 62% believe that Appeals Officers who are located at the same physical location as compliance personnel are less independent than Appeals Officers who are located at a different (non-co-located) offices.

¹ The Tax Section gratefully acknowledges the outstanding efforts of Joanne Martin, Senior Research Fellow of the American Bar Foundation. Joanne was instrumental in developing the initial survey document, compiling the results and drafting the initial survey report. Moreover, her sense of humor made “light work” of the survey process for each of the Tax Section members involved. Thanks Joanne!

- Over half of the respondents expressing an opinion on these issues think that Appeals Officers who are located at campuses (formerly “service centers”) are less independent than local Appeals Officers, and that Appeals involvement in recent alternative dispute resolution processes such as the Fast Track Mediation or Fast Track Settlement, makes Appeals less independent.

Interestingly, with regard to the Fast Track programs, about three quarters of the relatively small number of tax practitioners who have actually participated in either the Mediation or Settlement program reported their perception that these are worthwhile programs. This suggests that consideration should be given to making these programs more accessible.

The survey tested perceptions about the Appeals process in the context of four different types of matters -- examination appeals, collection due process (“CDP”) hearings, appeals from offers in compromise (“OIC”) or non-CDP cases, and innocent spouse appeals. Interestingly, there were differences in perceptions across these different case types. For example, with regard to evaluations of whether Appeals exercised independence generally in these matters, 40.1% of the tax practitioners with experience in appeals from OICs or non-CDP cases report a perception that Appeals did not exercise independence, compared to 33.9% of those who had handled CDP matters in the two years before the survey, 30% with experience with appeals from examination, and finally, only 17% of those who had handled at least one innocent spouse case in the two years prior to the survey. It is interesting to note that these findings generally mirror those described in the Report of the Treasury Inspector General for Tax Administration issued in 2005.² In response to the question, “how satisfied were you with the independence Appeals had from the people who proposed adjustments,” about 60% of the respondents reported some level of satisfaction.

The many comments provided by the survey respondents illuminated the reasons for their positive or negative perceptions of their recent experiences with Appeals. Most of the comments, both positive and negative, focus on Appeals personnel issues. Positive comments cite the willingness of Appeals personnel to listen to the arguments presented, the level of preparation exhibited by the Appeals Officers, and the ability of Appeals personnel to reach conclusions that recognize the elements of each individual case. The negative comments touch upon concerns with Appeals Officers who seem unable to reach a decision without consulting the IRS National Office; the influence of industry specialists or other experts to the detriment of the independence of the Appeals Officers; perceptions that Appeals Officers who come up through the ranks of revenue officers or examination agents bring with them the attitudes of their previous positions rather than attitudes more appropriate to an appellate official; and that competent, experienced Appeals Officers are retiring, ceding the arena to individuals who are not as well trained.

² “The Overall Independence of the Office of Appeals Appears to be Sufficient,” Report of the Treasury Inspector General for Tax Administration (Ref. No. 2005-10-141) September 9, 2005 (“TIGTA Report”).

There are substantial concerns about delay in resolution caused by lost files, heavy caseloads, and lack of timely communication.

The positive comments regarding location turn upon the benefits of ease of access to local Appeals Officers. The negative comments involve concerns about having to work with Appeals Officers in distant locations, who in addition to not being readily accessible, are not aware of local circumstances. The comments regarding location focus less on independence issues and more on concerns about access and inconvenience.

Survey Report

Tax Practitioners: Their Experiences with the IRS Appeals Division

Since the Internal Revenue Service Restructuring and Reform Act of 1998 (P.L. 105-206) (“IRS Reform Act”), IRS Appeals has been required to handle more and different work. In September of 2005, the Treasury Inspector General for Tax Administration released the TIGTA Report on the results of their review evaluating whether the Appeals’ modernized structure and processes provide the level of independence intended by the IRS Reform Act. To supplement the findings of the TIGTA Report, and in an effort to give the IRS constructive feedback on how the changes have affected tax practitioners, the ABA’s Tax Section designed and sponsored a survey to gather information on the satisfaction of the ABA Tax Section members with the overall IRS Appeals process and to gauge current perceptions regarding Appeals independence from the examination, collection, and enforcement functions. The following is a report of the findings from this survey:

Context

All of the Tax Section members who received the survey instrument were asked to indicate whether or not they had any direct communication (by phone, letter, email, etc.) with an IRS Appeals employee within 24 months of completing the survey. Only those practitioners who indicated that they had participated in direct communications with IRS Appeals personnel within this 24 month time period were asked to provide information regarding their perceptions of the process so that the survey results would reflect recent experiences with Appeals.

One of the changes evaluated in the TIGTA Report was the shifting of work from field to campus operations, thereby reducing the number of face-to-face conferences. In this regard, it was useful to differentiate the survey respondents by examining the level of experience they have had with Appeals work in various locations. As shown in Table 1, only a small percentage of the responding tax practitioners (16.3%) have had experience with Appeals Officers located at campuses. Most of the matters undertaken by the respondents appear to be handled locally. In that regard, 44.8% of the tax practitioners

who provided information on the office location indicated that all of these matters were undertaken at a local Appeals office. As detailed in Table 1, the second most frequently utilized “site” for handling these matters was by telephone. About 12.0% of the tax practitioners report that all of their respective Appeals issues were handled exclusively with Appeals personnel by telephone.

Table 1					
Location of Matters Involving Direct Communication with Appeals*					
	Percent of Matters				
Location	None	1 to 50%	51 to 99%	100%	Ns
Local area	17.8%	17.5%	19.9%	44.8%	(572)
Campus	83.8	13.7	0.5	2.1	(585)
National Office	89.0	8.7	0.7	1.5	(584)
Telephone	61.0	22.6	4.5	12.0	(585)

*Percentages may not add to 100 due to rounding.

Changes to Appeals Division Processes

The tax practitioners who had had direct communications with an IRS Appeals employee within 24 months preceding the survey were asked to assess the level of their agreement with a series of statements regarding recent changes in the Appeals Division’s processes. The respondents were asked to base their evaluations on their understanding of these specific recent changes to Appeals, including the centralization of Appeals functions, establishment of Appeals offices at IRS campuses, the new alternative dispute resolution (“ADR”) processes that Appeals and the IRS have developed, and Appeals’ role in the new settlement initiatives involving tax shelters.

Table 2 sets out the statements tested and the pattern of responses. The first finding of note is the rather substantial number of respondents who were unable to express an opinion about the recent ADR processes, the tax shelter settlement initiatives, and the comparison of perceived Appeals independence at campus locations versus perceived Appeals independence at local Appeals offices. It is clear from the response patterns to other questions in the survey instrument that very few of the respondents have

had any experience with either the Fast Track Settlement or Fast Track Mediation process. Additionally, as shown in Table 1, only a small percentage of the respondents have worked with Appeals personnel in campus locations. Consequently, the fact that about half of the respondents express no opinion on these matters can be viewed as a reflection of that lack of exposure. In other words, the rather marked variation in the number of respondents willing to provide evaluations of the various statements is an indicator that the survey response patterns are not the result of a general strong positive or negative predisposition towards or against Appeals, but rather this variation appears to reflect the amount of actual experience of the respondent with respect to questions presented.

Table 2						
Changes to Appeals Process*						
	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion	(Ns)
Appeals involvement in recent alternative dispute resolution processes, such as the Fast Track Mediation or Fast Track Settlement, makes Appeals less independent	7.1%	20.1%	18.4%	3.9%	50.5%	(566)
Appeals involvement in recent IRS tax shelter settlement initiatives, such as the Executive Stock Option tax shelter, makes Appeals less independent	17.2	22.6	8.7	1.8	49.7	(563)
Appeals officers who are located at the same physical location as compliance personnel are less independent than Appeals officers who are at a different (non-co-located) office	13.1	32.2	22.1	6.0	26.5	(565)
Appeals officers who are located at the service centers (campuses) are less independent than local Appeals officers	8.9	23.5	21.2	3.0	43.4	(562)
Encouraging Appeals officers to hold telephone conferences instead of face-to-face conferences speeds up the resolution of matters	8.6	33.3	29.1	12.5	16.4	(567)
The independence of Appeals is reduced when protests are sent first to examination or ACS before going to Appeals	21.0	31.9	24.0	3.9	19.2	(567)

*Percentages may not add to 100 due to rounding.

A more meaningful examination of the data displayed in Table 2 above might best be undertaken by removing from the analysis those respondents who are unable to express an opinion with regard to the various statements. Table 3 sets forth the results of this more refined analysis and introduces the use of a mean or average score based upon a four point scale ranging from “strongly agree” to “strongly disagree”. (Note: lower mean scores indicate higher levels of agreement with the statement being assessed.) Almost 80% of those who evaluated the assertion that Appeals involvement in recent IRS tax shelter settlement initiatives makes Appeals less independent, agree or strongly agree that this is the case. Almost two thirds (2/3) of those evaluating the assertion that the independence of Appeals is reduced when protests are sent first to examination or ACS before going to Appeals agree or strongly agree. Approximately 61.7% agree or strongly agree with the assertion that Appeals Officers who are located at the same physical location as compliance personnel are less independent than Appeals Officers who are at different (non-co-located) offices.

Table 3 Changes to Appeals Process (“No Opinion” Response Removed)						
	Strongly Agree	Agree	Disagree	Strongly Disagree	Mean	(Ns)
Appeals involvement in recent alternative dispute resolution processes, such as the Fast Track Mediation or Fast Track Settlement, makes Appeals less independent	14.3%	40.7%	37.1%	7.9%	2.39	(280)
Appeals involvement in recent IRS tax shelter settlement initiatives, such as the Executive Stock Option tax shelter, makes Appeals less independent	34.3	44.9	17.3	3.5	1.90	(283)
Appeals officers who are located at the same physical location as compliance personnel are less independent than Appeals officers who are at a different (non-co-located) office	17.8	43.9	30.1	8.2	2.29	(415)
Appeals officers who are located at the service centers (campuses) are less independent than local Appeals officers	15.7	41.5	37.4	5.3	2.32	(318)
Encouraging Appeals officers to hold telephone conferences instead of face-to-face conferences speeds up the resolution of matters	10.3	39.9	34.8	15.0	2.54	(474)

Table 3 Changes to Appeals Process (“No Opinion” Response Removed)						
	Strongly Agree	Agree	Disagree	Strongly Disagree	Mean	(Ns)
The independence of Appeals is reduced when protests are sent first to examination or ACS before going to Appeals	26.0	39.5	29.7	4.8	2.13	(458)

*Percentages may not add to 100 due to rounding.

With regard to the three other statements in this group of questions tested by the survey, the respondent pool evaluating each was closer to evenly divided between agreeing or disagreeing with the statement. That is, the respondents assessing whether or not the use of telephone conferences rather than face-to-face meetings speeds up the resolution of matters, whether the new ADR processes make Appeals less independent, or whether Appeals Officers at campuses are less independent than local Appeals Officers, are about evenly divided as to whether they agree or disagree with these assertions.

In connection with the information collected in Table 1, it is appropriate to ask whether those who have not participated in telephone conferences are more likely to express a negative view based on anticipation rather than experience?

Keeping in mind that many of the respondents have handled only a few matters with Appeals in the relevant time period, and that the number of those who resolved these cases solely through communication by telephone is relatively small, it appears that there may be a relationship, albeit not a statistically significant one, between some level of experience with telephone conferences with Appeals personnel and perceptions about their desirability. As can be seen in Table 4, the tax practitioners who handled all of their Appeals cases by telephone were more likely than those who only handled some or none in this manner to agree with the assertion that encouraging the use of telephone conferences rather than face-to-face conferences speeds up the process. It might be noted that the response patterns among those who used this method for some, but not all, of the matters they handled are very similar to those of the tax practitioners who had direct contact with Appeals but did not participate in any telephone conferences.

Table 4 Encouraging Telephone Conferences Rather the Face-to-Face Meetings Speeds Up Resolution of Matters			
	Percent of Matters Handled by Telephone		
Level of Agreement	None	1 to 99%	100%
Strongly Agree	7.7%	10.5%	18.9%
Agree	38.5	39.9	52.8
Disagree	37.3	35.7	15.1
Strongly Disagree	16.5	14.0	13.2
(Ns)	(260)	(143)	(53)

*Percentages may not add to 100 due to rounding.

The number of clients that a respondent represented in the 24 months preceding the survey through direct communications with an IRS Appeals Office does not appear to be a factor in influencing the level or the respondent’s agreement with any of the assertions listed in Tables 2 and 3 – with one exception. As shown in Table 5, the tax practitioners who have worked with more clients on matters involving direct communications with an Appeals Office are less likely to agree with the assertion that the independence of Appeals is reduced when protests are sent first to examination or ACS before going to Appeals. However, even in the case of respondents who handled the largest number of cases with Appeals, almost 55% still evidenced their agreement with this assertion.

Table 5 Appeals Independence Is Reduced When Protests Are Sent First to Examination or ACS Before Going to Appeals*					
Number of Clients	Strongly Agree	Agree	Disagree	Strongly Disagree	Ns
1	32.9%	42.4%	22.4%	2.4%	(85)
2 to 3	21.8	48.7	27.7	1.7	(118)
4 to 9	24.0	40.3	27.9	7.8	(129)
10 or more	26.1	28.7	39.1	6.1	(115)

*Percentages may not add to 100 due to rounding.

General Comments

The survey respondents were asked to express their level of agreement with a number of general statements based on their experiences with Appeals. As set out in Table 6, the vast majority of respondents believe that getting the right answer to a case should be the major focus of Appeals. There is also strong sentiment that speedier resolution should also be a major focus, coupled with the adoption of firm guidelines for turnaround time. It should be noted that about a quarter of the respondents disagree or strongly disagree with these goals. This hesitation is perhaps grounded in a concern that speed does not always produce the right result, and firm guidelines with regard to turnaround time without some flexibility in the system cuts both ways.

A very substantial percentage of survey respondents agreed or strongly agreed that Appeals Officers are generally well trained in tax law and procedure (75%), are well trained in how to interact with taxpayers and representatives (73.5%), and are generally fair (73.1%). However, 44.4% of the respondents were not able to express an opinion as to whether Appeals Officers receive sufficient support from their managers.

Table 6 General Comments*						
	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion	(Ns)
Appeals should adopt firm guidelines for turn around time	18.8%	47.2%	23.0%	2.5%	8.5%	(564)
Speedier resolution should be a major focus of the Appeals Division	17.2	47.8	24.5	2.3	8.2	(563)
Getting the right answer to a case should be the major focus of the Appeals Division	54.0	40.3	3.2	1.1	1.4	(561)
Appeals Officers are generally well trained in tax law and procedure	10.3	64.7	17.0	3.0	5.0	(564)
Appeals Officers are generally well trained in how to interact with taxpayers and representatives	9.4	64.1	19.1	2.8	4.8	(565)
Appeals Officers are generally fair	8.0	65.1	18.2	3.5	5.1	(565)
Appeals Officers receive sufficient support from their managers	3.6	29.1	20.1	2.9	44.4	(561)

*Percentages may not add to 100 due to rounding.

Generally speaking, the experience level of the respondents with Appeals as measured by the number of clients the respondents have represented in the last 24 months through direct communications with an IRS Appeals Office, is not significantly connected to the opinions of the respondents regarding any of the assertions listed in Table 6. The exceptions are the levels of agreement with the statements that Appeals should adopt firm guidelines for turn around time and that speedier resolution should be a major focus of the Appeals Division. As shown in the table below, the tax practitioners with more experience are more likely to disagree with both statements than those who represented fewer clients in such matters during the relevant time period.

Table 7*					
Appeals Should Adopt Firm Guidelines for Turn Around Time					
Number of Clients	Strongly Agree	Agree	Disagree	Strongly Disagree	Ns
1	29.2%	52.2%	17.7%	0.9%	(113)
2 to 3	17.0	60.0	20.7	2.2	(135)
4 to 9	17.0	52.5	27.0	3.5	(141)
10 or more	18.4	41.2	36.0	4.4	(114)
Speedier Resolution Should be a Major Focus of the Appeals Division					
Number of Clients	Strongly Agree	Agree	Disagree	Strongly Disagree	Ns
1	23.4%	57.7%	18.9%	0.0%	(111)
2 to 3	18.2	59.9	20.4	1.5	(137)
4 to 9	17.0	48.2	31.9	2.8	(141)
10 or more	17.4	39.1	37.4	6.1	(115)

*Percentages may not add to 100 due to rounding.

The survey recipients were asked to provide any comments or suggestions they might have regarding the appeals process, particularly those that address the issue of the independence of Appeals. These comments and suggestions appear in Appendix A. Those comments cover a wide range of topics ranging from general positive statements to expressions of concerns about personnel, delay, opportunities for face-to-face meetings, location, ex parte communications, tax shelter initiatives, independence, and Fast Track alternatives. Examples of these comments include:

Positive

- *As a general rule, I am pleased with the quality, competence, hard-working attitude, reasonableness and pace of Appeals Officers. I have dealt with Appeals Officers in various locations throughout the country and have found that they are uniformly very good.*

Personnel

- *I find that it is the luck of the draw. Some Appeals Offices consider the law and the facts of the case and come to an honest dispute resolution. Others are not technical, do not act fairly to taxpayers, do not consider the merits of both positions, and are an embarrassment to the IRS.*

Delay

- *We requested an Appeals conference in December of 2005. The assigned Appeals Officer informs me that his caseload is so large he will not be able to schedule the conference until the summer of 2007.*

Face-to-Face Meetings

- *The telephone process has not worked for me. I have had better success with in person conferences. It is especially helpful in innocent spouse cases when the Appeals Officer can meet the person involved and judge their demeanor.*

Location

- *The local AOs are fair, conscientious and hard working. Our experience with the AOs at the campuses where things have been centralized, is that they rubberstamp whatever the Service has done. We have found this to be especially true in the innocent spouse area. Accordingly, we avoid campus AOs like the plague.*

Ex Parte Communications

- *It would be helpful to get a sense of the magnitude of ex parte violations, which seems fairly common. I have experienced flagrant violations of the ex parte restrictions by Appeals Officers and since the statute has no remedy, there is very little recourse.*

Tax Shelters

- *Apart from so-called tax shelters, my recent experience has been positive. In the case of tax shelters, I believe the process is being managed poorly at all levels.*

Independence

- *I have seen no lack of Appeals independence from the Exam division. Generally the role and authority of IRS National Office has been an impediment to resolution of controversies.*

Fast Track

- *Appeals needs more authority to make Fast Track more workable. Examination must understand that Appeals can and will impose a settlement. To achieve this, there must be respect for their role and absolute authority to affect the proper result assuming of course that the taxpayer is in agreement.*

Appeals from Examination

Of the four types of Appeals matters examined in the survey – appeals from examination, CDP hearings, appeals from offers in compromise or non-CDP collections cases, and innocent spouse appeals -- the one with which most of the respondents have had some experience is appeals from examination. Slightly over two thirds of the tax practitioners who had direct communication with an IRS Appeals Officer in the 24 months preceding the survey reported representing at least one client in an appeal of an examination. The range of experience in terms of the frequency of client representation varied considerably across the respondent pool -- from practitioners who had done so only once in the 24 month period to those who had been involved in 50 such matters. Table 8 sets out the reported frequency of times the respondents report representing at least one client in an appeal of an examination during the relevant 24 month time period. About a third of these responding Tax Section members (32.1%) did so only once, while fewer than 10% reported that they had represented a client in an appeal of examination more than 10 times during the past 24 months.

<p style="text-align: center;">Table 8 Number of Times Representing Client in Appeal of Examination in Past 24 Months* (N=439)</p>	
Number of Times	Percent
1	32.1%
2	19.6
3	11.4
4 to 5	16.4
6 to 10	12.8
More than 10	7.7

*Percentages may not add to 100 due to rounding.

Table 9 sets out the reactions of the Tax Section members experienced in the area of appeals from examination to a series of assertions about the process. The majority of these respondents (87.3%) indicate that it is their perception that Appeals acted professionally. (Only about 9.7% of the respondents expressed some level of disagreement with that statement.) Examining the other positive statements – that Appeals was objective, that the Appeals Officer properly applied the law to facts, that the issues were resolved in a reasonable amount of time, that Appeals ultimately applied its own judgment to the issue, and that the respondent was generally satisfied with the way Appeals handled his or her most recent case – about two thirds (65.3%) of the tax practitioners agreed that Appeals had been objective in considering their presentation or argument and 61.6% agreed that they were generally satisfied with the way Appeals handled their most recent case. Conversely, more than a third of the respondents did not agree with the assertions regarding the reasonableness of the timeframe for resolution, that the Appeals Officers properly applied law to facts, and that the respondent had been satisfied with the way that their most recent matter had been handled.

With regard to the negative assertions – that Appeals was predisposed to the government’s position, that the IRS examiner or his or her manager improperly influenced Appeals’ determination, and that the IRS attorney improperly influenced Appeals determination – it is clear that the greatest level of agreement was with the

statement regarding the predisposition of Appeals toward the government’s position. About 55.9% of the responding Tax Section members agreed with the assertion. While clearly an area upon which a substantial number of respondents declined to comment, slightly less than a quarter of them believed that either the IRS examiner or attorney had improperly influenced Appeals’ determination.

Table 9 Examination Appeals Experience						
	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion	(Ns)
Appeals was objective in considering my presentation/argument	8.6%	56.7%	22.8%	7.7%	4.2%	(430)
Appeals was predisposed to the government’s position	16.4	39.5	34.3	4.9	4.9	(428)
Appeals acted professionally	20.0	67.3	6.4	3.3	3.1	(425)
Appeals Officers who handled my case(s) properly applied the law to facts	8.4	49.3	30.8	5.8	5.6	(428)
Appeals resolved the issues(s) in a reasonable amount of time	7.0	48.0	26.7	14.1	4.2	(427)
The IRS examiner (auditor, revenue agent) or his or her manager, improperly influenced Appeals’ determination	6.5	13.8	44.6	11.2	23.8	(428)
The IRS attorney (e.g., Area Counsel) improperly influenced Appeals’ determination	7.9	15.6	39.0	8.1	29.4	(418)
Appeals listened to all parties in the dispute and ultimately applied its own judgment to the issue(s)	6.8	53.6	20.2	8.5	10.8	(425)
Overall, I was satisfied with the way Appeals handled my most recent case(s)	8.9	52.7	23.3	10.3	4.9	(429)

*Percentages may not add to 100 due to rounding.

As might be expected following a review of the response patterns set out in Table 9 above, there are some concerns regarding the level of independence of Appeals exercised in the examination appeals in which the Tax Section members have been

engaged in the recent past. When asked whether they believed that Appeals generally exercised independence in these matters, 62.2% responded that Appeals had displayed the appropriate level of independence, but 30% did not, as shown in Table 10.

Table 10 Overall, Appeals Exercised Independence (N=434)	
	Percent
Yes	62.2%
No	30.0
No opinion	7.8

It is noteworthy to mention that 40.3% of the practitioners who had expressed their opinion that Appeals did not generally exercise independence stated that the type of case/or transaction involved prevented Appeals from doing so. However, about 16.5% of these respondents stated that there was nothing in the nature of their cases that should have acted as a bar to the exercise of independence by Appeals.

When asked whether they believed that the Appeals Officer was aware of the rule against *ex parte* communications with other IRS personnel, only slightly over half of the tax practitioners responding to this inquiry (51.4%) believed that the Appeals Officer was aware of this rule; 16.6% believed that the Appeals Officer was not aware of the rule; and 32.0% were unable to reach a conclusion in this regard. More importantly, 25.1% of these respondents reported that the Appeals Officer did have such an *ex parte* communication in a situation where an *ex parte* rule had not been either explicitly or implicitly waived. On the other hand, about a quarter (27.4%) of respondents indicated that the Appeals Officer had not engaged in any *ex parte* communications. Almost half (47.4%) were unable to answer the question.

It would appear that access to a face-to-face meeting with Appeals in examination appeals is very important to the tax practitioners who handle these matters. About half of those with experience with examination appeals (50.9%) believe the opportunity for a face-to-face meeting with Appeals should be available in all cases. Another 47.2% indicate that access to face-to-face meetings should be available in some cases or that the opportunity to have such a meeting should depend on the facts and circumstances of the

individual case. Only 1.9% suggested that face-to face meetings were not important in these cases. As shown in Table 11, the tax practitioners who handle examination appeals matters are willing to wait between one or two to six months for the opportunity for a face-to-face meetings with Appeals.

<p style="text-align: center;">Table 11 Time Willing to Wait for Face-To-Face Meeting (N=428)</p>	
	Percent
1 week	0.7%
2-4 weeks	12.1
1-2 months	54.9
6 months	23.6
Other	8.6

Respondents who had been involved in at least one appeal from examination in the 24 months preceding the survey were asked to describe the elements of their most positive and negative experiences with these matters during this time period. The comments offered in response to this inquiry appear in Appendices B and C. The vast majority of these focus on personnel issues.

Fast Track Programs

As noted previously, the level of experience with either the Fast Track Mediation Program or the Fast Track Settlement Program is relatively limited across the respondent pool. About three quarters (75.3%) of the respondents are aware of the Fast Track Mediation Program. Among those who are aware of the Fast Track Mediation Program, only 15.2% have represented a client in this program. It is important to note, however, that those tax practitioners who have participated in this program expressed a strong opinion that this is a worthwhile effort. However, as detailed in Table 12, about a quarter of this group of respondents also thought that the Appeals Officer who mediated their case was not impartial, and 42.8% reported that the Appeals Officer who mediated their case was influenced by another part of the IRS.

Table 12 Fast Track Mediation Program						
	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion	(Ns)
The Appeals Officer who mediated my case was impartial	20.0%	56.0%	14.0%	10.0%	0.0%	(50)
The Appeals Officer who mediated my case was influenced by another part of the IRS	16.3	26.5	46.9	8.2	2.0	(49)
Fast Track Mediation is a worthwhile program	34.0	42.0	14.0	6.0	4.0	(40)

With regard to the Fast Track Settlement Program, again while awareness of the program is quite high, few of the respondents have participated in this process. Although slightly less than three quarters (71.1%) of the respondents stated that they were aware of the Fast Track Settlement Program, only about 16.4% of these respondents had actually represented a client in this program during the 24 months preceding the survey. As was the pattern among the practitioners evaluating the Fast Track Mediation Program, the majority of those assessing the Settlement Program clearly believe that it is a worthwhile program. Again, however, as detailed in Table 13, about a fifth of this group of respondents did not believe that the Appeals Officer who handled their case was impartial and about two fifths (42.0%) indicated that they thought the Appeals Officer had been influenced by another part of the IRS.

Table 13 Fast Track Settlement Program						
	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion	(Ns)
The Appeals Officer who mediated my case was impartial	24.0%	52.0%	8.0%	12.0%	4.0%	(50)
The Appeals Officer who mediated my case was influenced by another part of the IRS	12.0	30.0	36.0	16.0	6.0	(50)
Fast Track Settlement is a worthwhile program	40.0	44.0	10.0	4.0	2.0	(50)

Collection Due Process Hearings

About 29.9% of the tax practitioners who reported having direct communications with an Appeals Office employee within 24 months of the survey indicated that they had represented at least one client in a CDP hearing during this period of time. The CDP survey instrument directed a set of questions similar to those addressed by practitioners who had experience with appeals from examination. Among this group of respondents, the median number of times they had represented a client in such a hearing over the last 24 months was two, although the full range of experience among these tax practitioners ranged from one to 60 matters in a two year period. Table 14 sets out the pattern of client representation among the respondents who handled CDP process hearings during this time period.

Table 14 Number of Times Representing Client in Collection Due Process Hearings in Past 24 Months* (N=194)	
Number of Times	Percent
1	39.2%
2	18.6
3 to 4	15.5
5 to 9	9.3
10 to 15	13.4
More than 15	4.1

*Percentages may not add to 100 due to rounding.

These respondents were presented with a set of statements regarding their perceptions of various aspects of collection due process hearings that mirrors the one used previously in the evaluations of appeals from examination. The response patterns shown in Table 15 in most instances mirror those discussed above. About 81% of the tax practitioners responding to this inquiry agree or strongly agree that Appeals acted professionally. While 61.4% thought that Appeals was predisposed to the government's position, 59.4% agree or strongly agree that Appeals was objective in considering their

presentation or argument, and 54.8% believe that Appeals listened to all parties in the dispute and ultimately applied its own judgment to the issue(s). About 56.9% of the tax practitioners responding to these inquiries indicate that they were satisfied with the way Appeals handled their most recent case. Approximately one third of those responding to this set of inquiries did not agree that the Appeals Officers who handled their case(s) properly applied the law to facts or that Appeals resolved the issue(s) in a reasonable amount of time. As before, a significant percentage of the respondents were not able to address the question of whether an IRS examiner (auditor, revenue agent), IRS collection person (revenue officer), or his or her manager improperly influenced Appeals' determination (28.7%), or whether Appeals' determination was influenced by an IRS attorney (43.0%).

Table 15
Collection Due Process Hearings

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion	(Ns)
Appeals was objective in considering my presentation/argument	6.1%	53.3%	27.8%	7.2%	5.6%	(180)
Appeals was predisposed to the government's position	17.6	43.8	31.8	2.3	4.5	(176)
Appeals acted professionally	14.8	65.9	9.7	4.5	5.1	(176)
Appeals Officers who handled my case(s) properly applied the law to facts	6.6	49.2	28.2	5.5	10.5	(181)
Appeals resolved the issues(s) in a reasonable amount of time	5.6	51.1	27.5	6.7	9.0	(178)
The IRS examiner (auditor, revenue agent) or his or her manager, improperly influenced Appeals' determination	6.1	12.2	44.8	8.3	28.7	(181)
The IRS attorney (e.g., Area Counsel) improperly influenced Appeals' determination	3.9	2.2	45.3	5.6	43.0	(179)
Appeals listened to all parties in the dispute and ultimately applied its own judgment to the issue(s)	5.6	49.2	22.9	5.6	16.8	(179)
Overall, I was satisfied with the way Appeals handled my most recent case(s)	6.1	50.8	27.6	8.3	7.2	(181)

*Percentages may not add to 100 due to rounding.

Over half (57.4%) of the practitioners who participated in at least one CDP hearing and who provided an evaluation of the independence of that process thought that Appeals generally exercised independence in the CDP hearing(s) in which they participated. About a third (38.9%) perceived that Appeals did not generally exercise independence in these matters. Among those who believed that independence had not been exercised, almost half (48.5%) indicated that there was nothing about the case or transaction that should have prevented the exercise of independence.

It is interesting to note that there is no statistically significant relationship between the number of matters handled by the respondents and the perception that Appeals generally exercised independence in the collection due process hearings in which they participated. Although the tax practitioners who reported handling such matters for 10 or more clients during the 24 month sampling period were more willing to express an opinion than were those with less experience, as shown in Table 16, the familiarity with the process as marked by the frequency of hearing experience appears to slightly, but not significantly, affect perceptions of independence in these hearings.

Table 16			
Independence Exercised in CDP Hearings*			
Number of Clients	Yes	No	No Opinion
1 (N=70)	52.9%	34.3%	12.9%
2 (N=33)	57.6	33.3	9.1
3 to 9 (N=45)	60.0	31.1	8.9
10 or more (N=33)	63.6	36.4	0.0

*Percentages may not add to 100 due to rounding.

With regard to ex parte communications, 45.3% of the 181 tax practitioners who represented at least one client in a CDP hearing in the 24 months prior to the survey and who responded to a question about such communications reported that they believed that the Appeals Officers with whom they worked in these hearings were aware of the rule against ex parte communications. Only 9.9% indicated that the Appeals Officers with whom they worked were not aware of the rule. About 16.4% of the 183 practitioners

who reported whether or not the Appeals Officer had had an ex parte communication with another IRS employee in any of the collection due process hearings in which they participated indicate that the Appeals Officer did have such a communication.

The perception of the importance of face-to-face meetings with Appeals among tax practitioners who handle CDP matters is quite strong. About 64.1% of the 78 lawyers who responded to this inquiry expressed their belief that it is important to have a face-to-face meeting in all cases. Another 34.6% indicate that meetings of this type are important only in some cases or that it depends on the facts and circumstances of the case.

The tax practitioners who handled at least one CDP hearing in the 24 months prior to the survey were asked to describe the elements of their most recent positive and negative experiences with Appeals in these matters. The comments offered by the survey respondents appear in Appendices D and E.

Appeals from Offers in Compromise or Non-CDP Collections Cases

Only about a fifth of the tax practitioners who had direct communications with an IRS Appeals Office employee in the 24 months prior to the survey reported that they had participated in appeals from offers in compromise or non-CDP collections cases (21.5%). Additionally, 60.0% of this small group of respondents had handled only one or two such cases in the 24 months preceding the survey.

This group of practitioners was presented with the same set of statements regarding the process. The response patterns shown in Table 17 below in most instances mirror those discussed above for both CDP hearings and examination appeals. About 78.2% of the tax practitioners responding to this inquiry agree or strongly agree that Appeals acted professionally. Although 65.4% thought that Appeals was predisposed to the government's position, about half (50.8%) agree or strongly agree that Appeals was objective in considering their presentation or argument, and 49.7% believe that Appeals listened to all parties in the dispute and ultimately applied its own judgment to the issue(s). Slightly less than half (47.8%) of the tax practitioners responding to these inquiries indicate that overall, they were satisfied with the way Appeals handled their most recent case. About 55.0% of these respondents thought that Appeals resolved the

issue(s) under consideration in a reasonable amount of time. On the other hand, 39.9% of the respondents believed that Appeals Officers did not adequately apply the law to the facts of their case(s). A substantial percentage of this group of respondents indicated that they were not able to address the questions regarding the influence exerted by an IRS examiner on Appeals or whether Appeals' determination had been improperly influenced by an IRS attorney.

Table 17						
Offers in Compromise and Non-CDP Collections Hearings Experience						
	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion	(Ns)
Appeals was objective in considering my presentation/argument	2.9%	47.9%	30.7%	13.6%	5.0%	(140)
Appeals was predisposed to the government's position	26.6	38.8	28.8	0.7	5.0	(139)
Appeals acted professionally	7.2	71.0	13.8	3.6	4.3	(138)
Appeals Officers who handled my case(s) properly applied the law to facts	3.6	46.4	31.9	8.0	10.1	(138)
Appeals resolved the issues(s) in a reasonable amount of time	3.6	51.4	24.3	15.0	5.7	(140)
The IRS examiner (auditor, revenue agent) or his or her manager, improperly influenced Appeals' determination	3.6	12.3	40.6	6.5	37.0	(138)
The IRS attorney (e.g., Area Counsel) improperly influenced Appeals' determination	2.9	4.3	41.3	5.1	46.4	(138)
Appeals listened to all parties in the dispute and ultimately applied its own judgment to the issue(s)	4.4	45.3	27.7	8.8	13.9	(137)
Overall, I was satisfied with the way Appeals handled my most recent case(s)	4.3	43.5	32.6	15.9	3.6	(138)

*Percentages may not add to 100 due to rounding.

Again following the general pattern seen with regard to the perception that Appeals generally exercised independence in examination appeals and CDP hearings, about half of the tax practitioners who were involved with OIC or non-CDP collections cases report their perception that Appeals exercised independence in these matters. As

detailed in Table 18, another 40.1% did not believe this was the case. Almost half (49.2%) of the 59 tax practitioners who believe that Appeals had not generally exercised independence in the appeal of an OIC or non-CDP collections case in which they had participated indicated that there was nothing about the case or transaction involved that prevented Appeals from doing so.

Table 18 Overall, Appeals Exercised Independence (N=137)	
	Percent
Yes	51.8%
No	40.1
No opinion	8.0

The tax practitioners who had handled appeals from OICs or non-CDP collections matters provided comments about their most recent positive and negative experience with these matters. These comments appear in Appendices F and G.

Innocent Spouse Appeals

In terms of raw numbers, of the four different areas of Appeals concentration tested by the questionnaire, respondents were least likely to indicate that they have handled Innocent Spouse appeals in the last 24 months. Of the 95 practitioners surveyed, only 14.3% had direct communications with an IRS Appeals Office employee concerning an innocent spouse case. Additionally, among those who reported working on such matters during this time period, 59.6% had only handled one innocent spouse matter and 20.2% reported handling only two.

The survey respondents who participated in at least one innocent spouse appeal during the two years prior to the survey were presented with the same set of statements regarding the process as in the case of the other types of matters. Again, the response patterns shown in Table 19 mirror for the most part those discussed above for the three other types of matters tested by the questionnaire. About 84.9% of the tax practitioners responding to this inquiry agree or strongly agree that Appeals acted professionally. Although 56.5% thought that Appeals was predisposed to the government's position,

about two thirds (67.7%) agree or strongly agree that Appeals was objective in considering their presentation or argument, and 63.2% believe that Appeals listened to all parties in the dispute and ultimately applied its own judgment to the issue(s). A substantial 62.7% of the tax practitioners responding to these inquiries indicate that overall, they were satisfied with the way Appeals handled their most recent case. About 65.2% of these respondents believe that Appeals resolved the issue(s) under consideration in a reasonable amount of time. Conversely, about 38% of the practitioners who handled at least one innocent spouse appeal did not think that the Appeals Officer who handled their case(s) properly applied the law to facts in the case. Once again, a substantial percentage of this group of respondents indicated that they were not able to address the question of whether an IRS examiner had improperly influenced Appeals determination or whether Appeals' determination had been improperly influenced by an IRS attorney.

Table 19
Innocent Spouse Appeals Experience

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion	(Ns)
Appeals was objective in considering my presentation/argument	16.1%	51.6%	21.5%	7.5%	3.2%	(93)
Appeals was predisposed to the government's position	15.2	41.3	30.4	6.5	6.5	(92)
Appeals acted professionally	16.1	68.8	7.5	2.2	5.4	(93)
Appeals Officers who handled my case(s) properly applied the law to facts	13.0	44.6	29.3	8.7	4.3	(92)
Appeals resolved the issues(s) in a reasonable amount of time	10.9	54.3	18.5	8.7	7.6	(92)
The IRS examiner (auditor, revenue agent) or his or her manager, improperly influenced Appeals' determination	0.0	4.4	40.7	8.8	46.2	(91)
The IRS attorney (e.g., Area Counsel) improperly influenced Appeals' determination	1.1	2.1	42.2	10.0	44.4	(90)
Appeals listened to all parties in the dispute and ultimately applied its own judgment to the issue(s)	10.5	52.7	12.1	5.5	18.7	(91)
Overall, I was satisfied with the way Appeals handled my most recent case(s)	17.6	45.1	23.1	9.9	4.4	(91)

Almost two thirds (68.1%) of the tax practitioners responding to the survey who participated in at least one innocent spouse appeal in the 24 months prior to the survey reported that they thought that Appeals generally exercised independence in the innocent spouse appeal case(s) in which they had participated. As detailed in Table 20, only 17% did not believe that this was the case.

Table 20 Overall, Appeals Exercised Independence (N=94)	
	Percent
Yes	68.1%
No	17.0
No opinion	14.9

The tax practitioners who had handled innocent spouse appeals provided comments about their most recent positive and negative experience with these matters. These comments appear in Appendices H and I.

Summary of Response Patterns Across Different Type of Matters

An examination of the response patterns for purposes of comparing tax practitioners’ perceptions across the varieties of Appeals matters tested in the survey presents some interesting patterns. Table 21 below sets out the average response scores on a scale of 1 to 4 (the “Don’t Know” responses have been removed from the analysis) to the statements used to evaluate appeals from examination, CDP hearings, OICs or non-CDP collections hearings, and innocent spouse hearings. While the variations across the various matters is not particularly large, it is interesting to note that those respondents commenting on innocent spouse hearings are more likely to consistently evaluate the statements more positively than respondents evaluating the other three areas. On the other hand, the respondents offering their perceptions of these statements with regard to appeals from OICs or non-CDP collections cases are more likely in most instances to evaluate other areas more negatively.

Table 21 Comparative Mean Scores				
	Appeals From Exam	CDP Hearings	Appeals from OIC or Non-Collections Cases	Innocent Spouse
Appeals was objective in considering my presentation/argument (412) (170) (133) (90)	2.31	2.38	2.58	2.21
Appeals was predisposed to the government's position (407) (168) (132) (86)	2.29	2.20	2.19	2.30
Appeals acted professionally (412) (167) (132) (88)	1.93	2.04	2.14	1.95
Appeals Officers who handled my case(s) properly applied the law to facts (404) (162) (124) (88)	2.36	2.36	2.49	2.35
Appeals resolved the issues(s) in a reasonable amount of time (409) (162) (132) (85)	2.50	2.39	2.54	2.27
The IRS examiner (auditor, revenue agent) or his or her manager, improperly influenced Appeals' determination (326) (129) (87) (49)	2.79	2.78	2.79	3.08
The IRS attorney (e.g., Area Counsel) improperly influenced Appeals' determination (295) (102) (74) (50)	2.67	2.92	2.91	3.10
Appeals listened to all parties in the dispute and ultimately applied its own judgment to the issue(s) (379) (149) (118) (74)	2.34	2.34	2.47	2.15
Overall, I was satisfied with the way Appeals handled my most recent case(s) (408) (168) (133) (87)	2.37	2.41	2.62	2.26

A comparison of the survey responses from the tax practitioners to the query regarding whether Appeals generally exercised independence in the various types of matters in which they participated mirrors the conclusions that might be drawn from the analysis above. The perceptions of independence are strongest in Appeals' handling of innocent spouse appeals and weakest in appeals from OICs and non-CDP collections

hearings. This pattern is detailed in Table 22 below. It is interesting to note that these findings generally mirror the results from the Appeals surveys described in the TIGTA Report. In response to the question, “how satisfied were you with the independence Appeals had from the people who proposed adjustments,” about 60% of the respondents reported some level of satisfaction; 22% were neutral; and 18% indicated some degree of dissatisfaction.

Table 22				
Overall Appeals Exercised Independence				
	Appeals from Examination (N=434)	CDP (N=183)	OIC (N=137)	Innocent Spouse (N=94)
Yes	62.2%	57.4%	51.8%	68.1%
No	30.0	33.9	40.1	17.0
No Opinion	7.8	8.7	8.0	14.9

Brief Summary of Open-Ended Responses

The survey respondents provided a very substantial number of comments in response to several queries about the elements of both their positive and negative experiences with Appeals. The richness and scope of these comments can be seen in the Appendices to this report. The summary paragraphs below merely touch upon some of the themes that can be pulled from this material.

Personnel

As is apparent from the volume of comments about Appeals personnel, it is often the case that the expressions of positive or negative experiences offered by the responding tax practitioners turn on perceptions of the Appeals Officers’ attitudes and level of experience. The negative concerns often result from perceptions that the experienced Appeals Officers are quite good, but many are close to retirement. These highly qualified individuals are being replaced by less experienced personnel who have come up through other parts of the Service and carry with them the attitudes of their prior jobs rather than the appropriate impartiality of an appellate official. Lack of training and knowledge of the law, reliance on experts, pressure from large caseloads, and apparent lack of willingness to listen to the facts and arguments presented or to look for acceptable

compromise solutions are frequently cited as contributing to a perception that there are weaknesses in the Appeals process. Alternatively, the recitation of the reasons for positive feelings about the Appeals process include the opposite experiences – contact with professional Appeals Officers who are conversant with the law, willing to listen to the taxpayer’s position and to consider the special circumstances of a case, and who make an effort to reach a mutually acceptable resolution. In short, the Appeals Officers are the overt aspect of the process that can convey to the participants that the process is fair and independent, regardless of the outcome.

Location

One of the concerns addressed by the survey is the effect that centralization of Appeals functions by, for example, moving cases away from local offices to campus locations, has on perceptions regarding the independence of Appeals. It would appear from the comments and limited frequency of use of campus locations by the respondents, that this aspect of the process does not have a strong negative effect of perceptions of independence. While concerns were expressed about major problems with handling cases in non-local sites, there went more to inconvenience than fostering perceptions of lack of independence. It should be noted that there were a substantial number of positive comments about local offices and the personnel in these “community” offices.

The difficulty of getting face-to-face conferences with Appeals personnel was often mentioned, as well as the lack of responsiveness to telephone contacts. Alternatively, it was clear that perhaps due to the nature of particular cases, telephone contact with Appeals Officers has proven to be a helpful aspect of the Appeals process for some practitioners.

Timetable

Again, due to the variety of cases and their unique aspects and the variability of access to Appeals personnel, the experiences with regard to the timeliness of case processing varied considerably across the respondent pool. Reports ranged from a complete lack of contact, delays that push matters over the statute of limitations, and the passage of years before a case is resolved, to complete satisfaction with the timetable for case resolution. Often the delays are connected to perceptions that the Appeals Officer is not the ultimate decision maker.

Conclusion

To conclude, the following points are noteworthy:

- On a positive note, 73.1% of the survey respondents believe that Appeals Officers are generally fair.
- Three quarters of the respondents perceive Appeals Officers to be generally well trained in tax law and procedure.
- About 73.5% of the tax practitioners offering an opinion expressed their belief that Appeals Officers are generally well trained in how to interact with taxpayers and representatives.
- Almost 80% of the respondents expressing an opinion believe that Appeals involvement in recent IRS tax shelter settlement initiatives, such as the Executive Stock Option tax shelter, makes Appeals less independent.
- Almost two thirds think that the independence of Appeals is reduced when protests are sent first to examination or ACS before going to Appeals.
- About 62% believe that Appeals Officers who are located at the same physical location as compliance personnel are less independent than Appeals Officers who are located at a different (non-co-located) offices.
- Over half of the respondents expressing an opinion on these issues think that Appeals Officers who are located at campuses are less independent than local Appeals Officers, and that Appeals involvement in recent alternative dispute resolution processes such as the Fast Track Mediation or Fast Track Settlement, makes Appeals less independent.

Appendix A

Question 4.2

Please provide any comments or suggestions you have regarding the Appeals process, particularly those that address the issue of the independence of Appeals. Note procedures that seem to work particularly well, as well as those that could be improved.

Personnel

I find that it is the luck of the draw. Some Appeals Officers consider the law and the facts of the case and come to an honest dispute resolution. Others are not technical, do not act fairly to taxpayers, do not consider the merits of both positions, and are an embarrassment to the IRS.

You can not have former revenue officers as Appeals Officers. They do not understand that their role is settlement.

My experience in the last few years is that the Appeals Officers are not prepared to deal with complex issues, and have a negative (instead of impartial) attitude (not tax shelter cases). I have discussed this with an Appeals Manager, who seems to be in agreement with me.

Appeals should receive more training in evidence and the evaluation thereof.

My general experience is that the likelihood of a reasonable settlement has decreased as the more experienced Appeals Officers and Settlement Officers retire. Having served as Counsel in the 70s and 80s, I know that Appeals Officers of that era had more definite commitment to settling cases than do the less experienced replacement personnel.

Get rid of Compliance Center paraprofessionals and return appeals to qualified local Appeals Officers.

Appeals economists have not helped the process because Appeals Officers seem to “check out” when the economist is involved, making settlement of transfer pricing matters difficult.

Appeals Officers should respect deadlines associated with the Internal Revenue Code and the correspondent regulations. Additionally, Appeals Officers should be required to produce detailed calculations that derive how they arrive at their final calculation regarding penalties and interest. Far too many times, their calculations are wrong and they are unwilling to produce their work-product to determine its mathematical rigor.

Independence is important, in that some agents can be arbitrary or unwilling to see the big picture.

The independence of the appeals process depends on the experience and knowledge of the Appeals Officer. The more experienced and knowledgeable, the more independent. Independence of Appeals appears to have declined. Appeals Officers spend too much time trying to “mediate” between Exam and taxpayers. Appeals tries too hard to get Exam to concede issues first before making the hard calls themselves. I have also seen an increase in the instances of Appeals Officers developing arguments or positions that Exam has not advanced. This is advocacy that is not consistent with the role of independent arbiter. Some Appeals Officers are overly concerned about Joint Committee second guessing of their settlements. In more technical areas such as R & D credit, the use of outside experts to support Appeals is a disaster. Rather than using the experts to assist them in understanding the subject matter, Appeals Officers are deferring to the experts on the merits of the issue. Procedures that work well: 1) Where Appeals Officer attempts to narrow issues before the first conference by asking pointed question to Exam and the taxpayer about their respective contentions based on his review of the protest and rebuttal. 2) The pre-conference (Exam conference a which taxpayer can attend) works best if the Appeals officer actively solicits discussion about....

My experience is limited to one issue on one audit. In that situation, the Appeals Officer was ill prepared for our meetings (protest, cases, and documents unread), on a limited hours schedule, and really not interested in negotiating a reasonable settlement. The process took 18 months due to these reasons and perhaps the Appeals Officer concerned that subsequent JCT review would be harsh if she negotiated too much in the taxpayer’s favor. We ultimately could not justify additional time and consulting resources that could have offset all future gains on further appeals review. Contrast this with our LLM professor who is also a local office Appeals Officer. He focuses on reaching reasonable settlements, negotiated fairly between the parties, based on the relative facts and strength of both parties. Those without merit are dismissed while those with substance (facts and law) are heard and settled close to the midpoint between the agents and taxpayer.

One thing that was not mentioned in this survey was Settlement Officers. They are a real problem since they come from a collection background and don’t seem to be well trained.

Appeals Officers with a collection background should not consider cases in which collection alternatives are being discussed. In addition, special training is required for Appeals Officers who consider innocent spouse requests. It is nearly impossible to obtain relief under Section 6015 unless the taxpayer goes to court.

Some Appeals Officers reflect their “rise” from the ranks. In other words, they do as they would have done as an RO, etc. There is no difference. Others are truly independent and try and reach a reasonable resolution.

In general, the Appeals process is pretty fair and effective. However, I have found that if an Appeals or Settlement Officer has worked on a taxpayers case previously, that there is often a distinct bias against the taxpayer, based on the Officer’s previous result.

Industry specialists are too active in the appeals process (settlement guideline determination, review or settlements, etc.).

I have encountered less experienced and less independent Appeals Officers than was previously my experience.

IRS should put more resources into Appeals support including providing sufficient secretarial help, training more officers and in general acting like they care about these guys. My experience has been that they are very disillusioned and can't wait to retire. In 5 years, a whole generation of officers with their institutional knowledge will be run off or just gone. I find this a lot more disconcerting than the independence issue which frankly I have never found to be a serious problem.

It is becoming near worthless. They are so overworked they can't pay attention. They frequently take a "government" viewpoint. They claim to consider hazards of litigation when they have not assessed them properly.

Appeals Officer said to me that he is under a quota system in violation of the Restructuring Act of 1998 because he is evaluated on his turnover rate. He also said that he is directed to treat a case as non-agreed if there is any single issue with a reasonable possibility of IRS success that taxpayer did not concede or compromise. Sounds more like OIC than Appeals. In any event, because the Appeals officer will not do what is demanded, my case languishes for over a year without anyone having made a substantive review of the issues. I am not a happy camper!

Seems to me that the collection-focused AOs, i.e., those dealing with CDPs, OICs, and other collection matters are less independent than those dealing with Exam-related matters.

Appeals Officers who recently were promoted from Examination or Collection are very inclined to redo the exam and find "new" bases to sustain the audit proposed adjustments. This protracts the duration and expense of the Appeals process. Also, it forces taxpayers to litigation in order to obtain correct resolution.

My satisfaction with the Appeals process is directly related to the amount of knowledge the Appeals representative has. My best experiences are with people who have been with the Service for several years working in Appeals. When I have dealt with newer employees, the process has not gone well. Usually, there is a lot of wasted time explaining basic points, and usually I have to go to a higher level in order to get adequate resolution. This can be very time consuming and expensive to the client. I had one Appeals of an Offer in Compromise that went on for several years, with the case being transferred back and forth between offices, employees quitting, the Service's file being lost, and ultimately ending with meetings at the local office that could easily be made into a sitcom. Suggestions – joint OIC cases should be tracked internally by both social security numbers. At any given time in the process, an attorney should be able to call the

Service and find out exactly who is handling a case and where it being handled, and direct dial phone numbers and addresses.

Once they form an erroneous position it is hard for them to consider the argument against the government. I think independence is best maintained if the appellate conferee has no prior experience with the Service or Justice Departments. Hiring from outside either of those agencies will more likely result in candidates without an institutional bias.

More recent Appeals Officers require additional training in complex international issues.

Appeals Officers shouldn't handle appeals involving areas of the law they don't understand. When this happens, they get "advice" from other IRS personnel – but the taxpayer is unable to talk to the same personnel, so there is no way to correct any misunderstandings of the facts or relevant law. Frankly, that leads to stalemate, which isn't what Appeals is supposedly trying to achieve.

The survey is timely, because there are several systemic problems in the IRS Appeals offices. I believe these problems may be widespread and the result of lack of oversight by the upper echelon of management within the IRS. My comments are intended to assist the Tax Section in its survey of the IRS Appeals and not intended to be critical. I believe there are a number of well qualified Appeals Officers in the country, but the Appeals Office in general and the historic functions of Appeals have been tarnished by the lack of training, manpower staffing, poor management, and budgeting issues. This has been going on for some time and it should not come as a surprise to those that work with the office on a regular basis. Appeals was at one time known for its substantive expertise and the office prided itself on its independence. Neither quality exist today in any real form. IRS use of mediation represents an improvement in the settlement process, but often takes place too early in the examination process.

There is considerable variability, depending on which appeal conferee one gets. Some appeals conferees do not want to engage in a meaningful discussion of the issues.

Requiring a certain percentage in settlement even when the Appeals Officer knows he has a bad case or a bad legal position is unfair and disturbing.

In my last experience with Appeals, the Officer was more interested in getting the matter off her desk than evaluating the merits of the case. The taxpayer was denied an office conference even though one was requested in a timely fashion in the protest. When asked about this, the officer said that "an office conference is the same as a telephone conference with the taxpayers counsel." Calls to the supervisor were not returned. I felt strongly that the appeals function failed miserably in this instance.

I don't have a problem with Appeals' independence from Audit, but some Appeals Officers are unwilling to make appropriate concessions where the taxpayer has a strong case, especially where facts are at issue.

The Appeals process was a complete waste of time for me and my client. I had the strong sense that the Officer was under direction to close the case in a set time frame, which precluded consideration of my client's case, and merely recited boilerplate conclusions of law. While I understand that many CDP appeals may be frivolous, current procedures make a mockery of the term due process.

The quality of Appeals employees had deteriorated now that many senior people have retired. There is also a more confrontational attitude with taxpayers, especially in collection work.

Appeals always used to listen well and resolve issues fairly and that is not as often the case any more – sometime you are lucky to get a good AO or Settlement Officer – my experiences with the [state] office have been and with [city], but I have had some really bad experiences lately both in local office and campus offices.

At traditional Appeals, industry specialist clearly sides with Examination and argues their case for them.

My practice is in the [city] area (formerly CBD) and the local IRS Appeals Office (as is Collection) is extremely understaffed as a result of Hurricane Katrina. Pre-Katrina, that Appeals Office was fairly independent and laziness on the part of a particular Officer when a tough issue was involved best describes instances of partiality or unfair results. I have been very dissatisfied with appeals that are handled by Appeals Officers located out-of-state in the last 24 months. The Appeals Officers have been discourteous, ignorant of basic accounting principles and reporting regulations and seemed to be interested in nothing more than closing the case with a denial as soon as possible. No substantive review of the evidence or law is rendered by such Officers. It has been frustrating and costly in each instance in the last two years.

Appeals Officers need additional training in creative means of settling matters and need the support of managers in that pursuit. Manager's main involvement is to compel Appeals Officers to wrap up the Appeal quickly, as opposed to reaching the most fair and accurate resolution. Appeals Officers who raise new issues or arguments for the Service not advanced in examination exhibit a lack of independence.

I have met extremely fair and knowledgeable Officers in the same office and division as one who seemed uninterested in either the right result under the law or a fair result for the taxpayer.

It is becoming near worthless. They are so overworked they can't pay attention. They frequently take a "government" viewpoint. They claim to consider hazards of litigation when they have no way to assess them properly.

Seasoned veterans, 15 years plus, in examination and collection handle cases better. Erosion in entry level qualifications of personnel has become apparent in the Appeals

Officers that we are now getting. Obsession with structure will not undo the lack of talent.

Appeals and Exam should never rely upon the same district counsel for advice.

In recent years, some Appeals officers seem to be relying too much on very inexperienced counsel.

Had face-to-face and telephone conferences with Appeals Officer. Case still moved according to her internal timetable.

Time

I think timelines is an area that needs improvement.

Seems like it is getting more difficult to close cases with Appeals. Instead of one meeting, there are continuous demands for more and more info before they can reach a conclusion.

[City] Appeals Office must be overburdened. Appeals Officer kept case for eight months and then returned it to examination.

The single largest issue with Appeals is the long turnaround time for a non-fast track case. It currently takes a minimum of 18 to 24 months for the first meetings with an Appeals Officer. That is unacceptable. I have discussed this issue with both management at Appeals and representatives of the Senate Finance Committee and the House Ways and Means Committee, and their staff.

It takes way too long to get to Appeals and then they want to move immediately. Generally, they give extensions. I was not pleased with the pre-appeals conference procedure (attended by exam and counsel) as I thought independence was lost to some extent.

My only issue at this time is that the Appeals Officers are overworked and there is a large delay in moving cases.

The process remains very slow, leaving taxpayers with uncertainty for months, in some instances over a year before assignment to an Appeals Officer.

The lack of deadlines on Appeals officers is a problem and permits extended delays in resolving a matter and the taxpayer cannot do anything to expedite a resolution.

We requested an appeals conference in December of 2005. The assigned Appeals Officer informs me that his caseload is so large he will not be able to schedule the conference until the summer of 2007 maybe!!

Speed it up.

Process takes way too long.

It is way too slow because of delays caused by Exam review of submissions made to the Appeals Office on various issues.

I was amazed by how long the IRS Appeals person took to respond. He told me he worked from home and did not receive phone, mail or faxes sent to the office. Because he responded so slowly it was impossible to know which of my communications he received.

Too many Appeals Officers attempt to do too much over the phone causing added delay. I can accomplish much more with a one hour meeting than I can with 4 to 5 ten minute phone calls. I believe the independence of Appeals is still present although it does seem to be diminishing. There seems to be a significant lag time when transferring a case from a field audit to Appeals. I don't know if it is the examination function delaying the case or if it is the Appeals Officer not being able to get to the case quickly enough but recent cases are taking approximately one year between last contact with exam and an actual Appeals conference.

The recent case I had needed a clearly articulated time frame in which our discussions could take place. It ended when the Appeals Officer suddenly and without warning said that we were too close to trial to even try to wrap up our discussions and was now without jurisdiction. I can calculate those time frames but it would have been helpful for her to have than kept constantly before the both of us.

The delays on collection cases are interminable.

Our experience with the local Appeals Officer assigned to our case was fine. We were able to come to a resolution with the AO fairly quickly. He was reasonable and receptive to compromise. Unfortunately, our issue was both a coordinated one and a Joint Committee case. We were bogged down for months – both the AO and I concluded that the issues coordinator's group hadn't read our initial submission. We spent weeks trying to answer questions that had already been addressed in the submission. My limited experience (as in-house senior tax officer) is that there are too many hand-offs. The process is greatly hindered by the number of steps one is required to take. Each step appears to be under the control of a different manager or group with its own priorities. Admittedly a Joint Committee case is more complicated, but the process is anything but streamlined. When we finally got Joint Committee approval, our claim was handed-off to another office for processing. Perhaps these steps are intended to protect taxpayers, but the process doesn't appear to work.

Although generally my experiences with Appeals has been positive, I am aware that certain Officers' workloads are ridiculously large, thereby causing cases to sit in Appeals for many months, sometimes over a year. One Officer stated she had 160 cases.

CDP cases are not being worked within 2 years. Appeals of OICs are not being worked within 3 years.

Haste makes waste – I have seen speed cause bad cases decisions.

One of my biggest complaints is that Appeals will ask for data, give a short time to produce it, get it, sit on it for weeks or even months and then want the data again because it is old. This is very costly and upsets the taxpayer.

Face to Face/Telephone

Dislike telephone appeals.

The telephone process has not worked for me. I have had better success with in person conferences. It is especially helpful in innocent spouse cases when the Appeals Officer can meet the person involved and judge their demeanor.

I'm in [city, state]. We have less face-to-face meetings due to reduction in local Appeals Officers. I think face-to-face meetings work best to resolve issues – telephone meetings alone don't help generally.

Face-to-face meetings are generally very productive.

Face-to-face with a competent Appeals Officer and a taxpayer's representative with technical and ethical reputation usually gets the job done.

I find that the face-to-face meetings let me see how the officer is receiving the information that I am providing. I think that "rushing" a determination could do more damage than good in that you risk getting a quick result, albeit a negative one.

Face-to-face meetings are essential in resolving issues. It is too easy on the phone for the Appeals Officer to rule against you.

Appeals should strive to conduct more face-to-face appeals conferences. Presently, Appeals Officers rely almost exclusively on paper and do not seem to weigh very heavily the arguments and comments of counsel.

I practice in [city] and until recently had had good experiences with the [same city] Appeals Office. Have recently waited more than a year for a meeting with an Appeals Officer because assigned officer is in [another city in another state] – this is very unsatisfactory. Not being able to have face-to-face meetings compromises the system.

Campus or phone appeals are useless. They have the deny stamp out before the call is made. Only a face-to-face conference is of any value and these take a very long time.

Face to face meetings with Appeals Officers are important for the representative to be able to judge the fairness and reasonableness of an Appeals Officer.

Location

The local AOs are fair, conscientious and hard working. Our experience with the AOs at the campuses where things have been centralized, is that they rubber stamp whatever the service has done. We have found this to be especially true in the innocent spouse area. Accordingly, we avoid campus AOs like the plague.

It was certainly easier to practice when all appeals were handled locally.

Keep some Appeals Officers at local offices to know and trust tax attorneys.

I dislike having cases assigned to officers distant from me and the client.

The system would be improved if we could have all estate and gift tax appeals handled in our state. Right now, I have one pending in front of an Appeals Officer in another state.

I liked it better when localized vs. all over the country.

Conduct all matters locally and in person. Need better training for Appeals Officers, especially in basic legal doctrines, such as substance over form, sham transactions, step transactions etc.

My interaction with the local Appeals Officers has, for the most part, been pleasant, fair and speedy. I have noticed different treatment when having to deal with service center Appeals officers. They are more rigid with less independence and fail to understand the particular nuances that exist in this market that may not exist in their market.

Using campuses to process low grade LSMB and SBSE cases will work. Sometime will need to define low grade.

Centralization

The centralization of the call centers has caused lots of information to be lost and for the telephone calls to be less effective. On one matter, I had to fax the form 2848 three separate times, to three separate fax numbers. In another matter, I was given misinformation by IRS correspondence that I couldn't confirm was incorrect by telephone (I'm just reading a computer screen and I'm not sure.") Lastly, my clients have begun to receive IRS correspondence in advance of me, so they call with questions and I still have not received the letter to which they are referring.

The new centralization movement decreases the independence of Appeals because it seems to focus on turnaround time not getting to the right results. Also recently I was told

that if I asked for a face-to-face at my local office as opposed to a telephonic at a campus center, it would take longer and felt as though it was an intimidations tactic.

Ex Parte Communications

The prohibition against Appeals Officers having ex parte discussions with the examiner or collection officer is frequently ignored.

Ex parte rules work quite well – particularly when forced by taxpayer.

The Service needs to ensure the Appeals Officer does not speak to compliance agent. This particularly lax in (city).

It would be helpful to get a sense of the magnitude of ex parte violations, which seems fairly common. I have experienced flagrant violations of the ex parte restrictions by Appeals Officers and since the statute has no remedy, there is very little recourse.

I provided no opinion as to the effect of co-location on Appeals independence because all officers I have dealt with in the past several years are not co-located and have no basis for comparison. I am concerned, however, that co-location puts an enormous strain on the rules against ex parte communications.

One point of concern relates to the interpretation of the ex parte rules, especially in the context of issues that involve the use by examination of experts (e.g., MITRE). Lack of independence is most evident in those cases where an expert has been involved at the examination level.

There is often ex parte contact between examinations and Appeals that is not supposed to occur.

I don't trust the independence of Appeals Officers that are located in the same office as the audit agents. Even if they don't talk about the appeal, I believe they may be influenced by their relationships with exam agents.

It became clear from comments that the Appeals Officer made to me that he had had ex parte communications with examination which is completely inappropriate.

The integrity of the Appeals process requires strict adherence to the ex parte rules.

Positive

The Appeals function has always impressed me as an excellent program. It still is.

Appeals Officers are the crown jewels of the IRS. They need substantially more logistical support so they can focus on the substance of cases. I would even favor giving TCLs clerks.

I have found the new procedures to work well. No more ex parte discussions. Everything is out on the table.

I have been very satisfied with the caliber, courteousness, and independence of Appeals Officers in recent years. There has been a marked change in this respect during the 34 years that I have practiced before the IRS. Hopefully this trend will continue, given the generally deficient caliber of revenue agents.

I have always been pleased with the appeals process.

I have generally been satisfied with the appeals process. (2)

I have been generally satisfied with the independence of the Appeal Officers I have dealt with.

Appeals seems to be sufficiently independent. Problems with case resolution stem from getting counsel involved too early, which sets the stage for no or little administrative resolution.

Have had very good experience with [city] Appeals Officers in estate and gift tax audits – very fair and reasonable.

Although I have only dealt with one Appeals Officer, I found him to be knowledgeable, fair, easy to work with and compassionate.

Generally very happy with process – although process seems to work much better when there are not limitations on ability to settle.

My communications with appeals involved my speaking to Appeals Officers on Recent Developments in Federal Income Taxation. They are a great audience.

I have found most Appeals Officers to consider themselves independent of the auditors. I used to work for the DOJ – Tax Division and went into private practice about 24 years ago. Over that period, I have settled maybe 50-70 cases, and had only about three or four which I could not settle on fair terms.

In my 29 years of tax law practice, my contacts with Appeals Officers have (with one or two notable exceptions) led me to believe that the Appeals process works well and that Appeals Officers are knowledgeable, fair and independent. Except for one notable exception in the past 2 years of an incompetent Appeals Officer, my experience in the last two years with phone contacts with Appeals Officers located on campuses has not changed my overwhelmingly favorable opinion of the Appeals process.

I have been a practitioner for almost 30 years, including 4 years with Chief Counsel. Most of my relationship with Appeals locally is with officers with whom I have worked

for many years and have a good working relationship. My campus experience has been fair and I have had no problems with independence.

As a general rule, I am pleased with the quality, competence, hard-working attitude, reasonableness and pace of Appeals Officers. I have dealt with Appeals Officers in various locations throughout the country and have found that they are uniformly very good.

Appeals Officers seem to be more fair than they used to be. I had some bad Appeals Officers some time ago. One was so bad that her superior officer acknowledged her incompetence.

Fast Track and post appeals mediation are both valuable tools. The Appeals Officers I have encountered in these situations are truly independent.

Appeals is independent; the lack of independence rings untrue, particularly at LMSB. Just more whining by non-lawyers in the larger accounting firms and tax lawyers that do not have the balls to go to court.

I practiced tax law, including substantial involvement in tax controversy matters (audits, appeals, litigation), for about 40 years prior to my retirement. (Thus my answers to the preceding questions that focused on the past 24 months substantially understate my experience with Appeals, and my answers to succeeding questions that focus on the last 24 months are necessarily misleading because they exclude my pre-retirement years of practice. In the last few years I have served as a mediator under Rev. Proc. 2002-44.) I represented dozens of clients in cases at appeals. I had the opportunity to speak and interact regularly with appeals Officers. Obviously there were some differences in quality among appeals officer. My strong feeling is that Appeals officers are, and have long been, very sensitive to issues of independence entirely aside from the formal rules found in the IRS Restructuring and Reform Act of 1998 and Rev. Proc. 2000-43. I have found Appeals officers to be very competent as a general rule and very interested in guarding their independence. I do not believe that independence is the real issue....

OIC Matters

Offers in compromise area – in need of improvement. There needs to be some policies or procedures in place to make sure that taxpayers are treated fairly and all facts and circumstances are considered. Tax collection efforts -- Appeals should be more involved.

OIC process has been a black hole/disaster from the get go.

In OIC cases, the Appeals office should be trying to reach a resolution to avoid repeat filings.

Offers in compromise area – in need of improvement. There needs to be some policies or procedures in place to make sure that taxpayers are treated fairly and all facts and

circumstances are considered. Tax collection efforts – appeals office should be more involved.

95% of the benefit of appeals, especially in an OIC, is to delay. During that time, the taxpayer may increase his expenses to meet the standards and get an OIC through.

CDP

My experience with CDP appeals has been very unsatisfactory.

My experience is that Appeals Officers are generally fair except in CDP appeals – in those cases, I have found the Appeals Officers, are in particular, abusive and not independent. They may think they are independent but they permit their views and beliefs to be overly influenced by district counsel and the DOJ – who are, in most cases, not independent at all.

The delays on collection cases is interminable.

The Appeals process, with regard to proposed examination adjustments, appears to generally work well with fair an independent review. The process, though, seems biased when involving collection. The presumption appears to be that the taxpayer is not as worthy of a full and fair hearing as when a technical issue from examination is involved.

In general, my experience is that Appeals Officers outside of CDP understand that their function is to try to resolve the dispute and that this will require each side to make concessions. The CDP settlement officers generally have collection experience and these CDP officers frequently do not have the same interest in resolving the case as other Appeals Officers. They (CDP settlement officers) seem to think that their function is to maximize collection and they do not consider special circumstances.

Appeals seems uninterested in reaching accommodations. In my recent CDP appeals, the Officer did not want to consider any alternative interpretation of the regulations except as was “office policy” even though the regs. seemed clearly contrary to “office policy” (an innocent spouse case) or the impossibility of the taxpayer to pay the IRS demand, even though the taxpayer was offering \$ 2,000 a month (CDP appeal – taxpayer has since filed bankruptcy and tax debt is dischargeable).

Tax Shelters

In so-called tax shelter cases, Appeals seems to turn off its independence from Exam and simply becomes a part of Exam. In these cases, Appeals seems to disregard hazards for the government and is afraid to reach a fair settlement.

Apart from so-called tax shelters, my recent experience has been positive. In the case of tax shelters, I believe the process is being managed poorly at all levels.

Historically, I have had considerable regard for the professionalism of Appeals. My experiences during recent tax shelter audits, however, have been very disappointing. The objective, especially in regard to the applicability of penalties, has been punishment without regard to the merits of the case. In one instance, the local Appeals Officer called to apologize the day after a meeting attended by a representative from the National Office. The Appeals Officer acknowledged that he was not following statutory predicates and applicable legal precedents but said that he had been told to insist on the penalty under any and all circumstances – so much so that our Protest had not even been read. This was the most egregious incident, but is by no means the only one.

My involvement has been with cases that the IRS views as tax shelters, although the transactions have not been listed or reportable. The IRS appears to approach these cases with the objective of driving up taxpayers' transaction costs without addressing the technical merits of the underlying case. A recent protest with significant factual issues was recent denied by Appeals without ANY communication from Appeals (even though a conference was requested). Both the examining agent and Appeals have refused to address the underlying technical issues.

Appeals should be made as independent as possible and should not be involved in initiatives such as tax shelter enforcement programs.

With notable exceptions Appeals Officers are independent of exams. Notable exceptions include tax shelters and very large dollar adjustments where the examination group has invested large sums of money in experts.

Recent tax shelter initiatives have reduced Appeals independence.

I do feel that Appeals independence is almost completely compromised when “tax shelters” are at issue and so far have not spent hardly any time dealing with Appeals on tax shelters.

In tax shelter cases, National Officer has told the Appeals officers how to settle the appeals and when to apply penalties and what percentage they should be. In dealing with listed transactions, Appeals is not independent.

Appeals “involvement” in the recent wave of so-called tax shelters is shameful. Appeals used to be independent. Now, if the IRS Exam Division labels a case as a tax shelter, Appeals is merely an extension of Exam, thus, penalty relief is nonexistent. A loss for those taxpayers acting in good faith and more importantly for the Appeals organization

Independence

Appeals should be segregated from exam and collections.

I have seen no lack of Appeals independence from the Exam Division. Generally, the role and authority of IRS National Office has been an impediment to resolution of controversies.

So long as you have people like Everson and Korb at the top of the Commissioner's Office and Chief Counsel, respectively, there will be pressure to limit Appeals' independence and make it a tool of exam and collection.

The independence of Appeals depends on the type of case. Upper level Appeals Officers handling examination/Tax Court matters are generally very independent. Whereas, former revenue officers handling collection matters are less independent.

Appeals follows too closely the positions taken by exam. They have become less interested in understanding a taxpayer's particular facts and more rigid in their application of the law.

My experience with Appeals suggests they are being advised or at least influenced by District Counsel. I have been involved in three matters in which Exam incorrectly characterized transactions under examination as tax shelters. As soon as that happened, all appearance of independence evaporated. In one of the matters, after spending more than three years responding to IDRs, privilege log requests, summonses, "all hands" information meetings, resulting in client controversy costs in excess of \$1.5 million, one taxpayer finally settled with NO CHANGE. The system is severely broken.

My greatest concern is that Appeals seems not to take a fresh look or examination when the issue has received a formal or informal opinion of a Chief Counsel attorney. It appears that Appeals Officers seem to believe that the opinion provides them immunity from criticism and therefore they insist that taxpayers concede the position of Chief Counsel. They do not examine the hazards in any opinion of Counsel that supports the position of Examination.

We have had several instances where Exam has tried to keep issues away from Appeals or so framed them that Appeals hands were tied in deciding the issue. Exam need to write their report and get out of the picture if Appeals is to remain independent.

The independence of Appeals has been compromised through the National Office control of issues. Although the NO will often describe its position as "guidelines" for Appeals to consider, woe unto any Appeals Officer who strays from those "guidelines" without NO approval. This is far from the former independent review of all cases that taxpayers and their representatives had come to expect from Appeals.

If the National Office dictates the outcome of the Appeals process and interferes with the flow of information, the Appeals process is meaningless.

Issue coordination is the greatest threat to independence. Appeals becomes entrenched along with Exam and Counsel, failing to recognize hazards.

Tax controversy has changed; IRS should focus on keeping Appeals as independent as they can.

In the last 24-36 months, Appeals Officers have become increasingly less independent and they seem less willing to resolve matters than in previous years. They seem more inclined to refuse to settle or resolve matters.

In my limited experience, the Appeals Officer sent the case back to Audit which refused subsequently to send the case back to Appeals. My client was very dissatisfied. The case is now in US District Court. Appeals should have more authority to hear cases, and to seek better, independent legal advice instead of appearing to be beholden to Audit.

The biggest problem I've experienced with Appeals Officers is their unwillingness to make decisions without consulting some nameless person in the Washington office and asking him to her to address an issue without having an adequate or accurate knowledge of the facts. The Appeals Officer digs in his or her heels and it is impossible to get a dialog going with the nameless person in Washington. Very frustrating. The Appeals Officer should allow the taxpayer to be part of the process.

The focus of the National Office programs to settle issues has grossly reduced the independence of Appeals.

The Appeals Office needs to have control over Exam to disagree with Exam and settle as Appeals did 10 years ago. There should be one reviewer for Appeals and not have Appeals seek approval from more than one source in the National Office.

On one matter, the appeals process was essentially useless because the Appeals Officer told me the exam/report was part of a "coordinated issue program" and that she had no discretion/authority to alter the revenue agent's conclusion, and that litigation was the only option.

Tax controversy has changed; IRS should focus on keeping Appeals as independent as they can.

With respect to independence, as a tax attorney I want to see what Appeals is looking at that they get from the IRS so I can respond to it and to whom they spoke with the IRS about the case. And I want Appeals to tell me their decision and give me a chance to respond before it is final.

Re: independence, IRS should not allow former revenue agents to become Appeals officers, it taints their views.

Appeals Officers seem to be sensitive to Chief Counsel's litigation strategies regardless of how they would settle a case. Often Officer is willing to settle but is told not to so that certain cases can be litigated.

They seem too swayed by options of the auditors and the field, even when the field's analysis is weak and not well reasoned or off on the facts.

Fast Track

Fast track works well.

Fast track appeals did not work for us. The Commissioner had given instructions to the Appeals Officers. Appeals Officer went directly to taxpayer with factual inquiry and reversed local compliance officer on penalty issue.

Case went on Fast Track to an Appeals Officer, who sent the case back for more information. After receiving the information, he decided the case was not appropriate for Fast Track, and sent it back again. I then took the case to Appellate, where he handled the case as the Appeals Officer and naturally, we were unable to settle and are now in the Tax Court.

The Fast Track process really should not be run by Appeals Officers that handle audit appeal work. It should be segregated more.

In many ways, Fast Track felt like a continuation of the field audit. The field agent controlled the environment and the taxpayer did not get a chance to present its case to an independent Appeals Officer. The Appeals Officer met with the field agents without including the taxpayer but refused to meet with the taxpayer without the field agents being present.

The Fast Track Settlement was extremely unfair to the taxpayer – following many conversations where it became apparent that the position of the IRS was clearly wrong, the Appeals agent refused to rule on the matter. A follow-up phone call resulted in an admission that their initial positions were wrong, but additional issues were raised by the IRS by unknown people in unknown locations and we were not allowed to talk to them. This resulted in my clients telling me that it sounded like the old IRS to them. The position of the IRS were so weak that we got a 100% taxpayer result following one meeting with an independent Appeals Office. More than one year was wasted dealing with the so-called Fast Track procedure. Neither the Fast Track officer nor any person working the case has significant experience with the issues involved.

Appeals needs more authority to make Fast Track more workable. Examination must understand that Appeals can and will impose a settlement. To achieve this, there must be respect for their role and absolute authority to effect the proper result assuming of course that the taxpayer is in agreement.

Appeals officers tend to be more independent during Fast Track negotiations as opposed to when they are the final decision maker.

At Fast Track Appeals Officer clearly adopted an IRS versus taxpayer attitude. No sign of independence.

Other

Penalties are difficult to negotiation and an all or nothing settlement seems to prevail.

If the Appeals Office provided the taxpayer representative the revenue agent's memo that accompanies the file, the taxpayer's representative would feel that the Appeals Office was more independent. It might help if you could have a meeting with the Appeals Office with the revenue agent present.

Requests for personal hearings are routinely ignored as are requests to transfer appeal to regional or local office. Arbitrary cutoff dates damage taxpayer's ability to respond to detailed queries within time limits established by officer and notices often fail to reach client or counsel or both.

Not happy with the penalty appeals process that I experienced with (site) service center. Although I see relief for a first time violator, otherwise I found it difficult to compromise.

Eliminate panels. One panel member can bring the whole Appeal to a halt and usurps the responsibility of the Team Leader.

Protests should be sent directly to Appeals; eliminate 3 Team Manager Review Boards; reduce coordinated and industry issues giving more settlement authority to Appeals Office.

Appeals should be given unfettered authority to resolve matters. Further, Appeals should not be conducted as a negotiating forum. Appeals should assess the litigating hazards and proffer the best settlement. If the taxpayer takes it, the case is settled. If not, the case goes to litigation. I feel there is too much of a car dealer mentality – Appeals is going to get the most money out of taxpayer, regardless of the relative strengths of positions.

Appeals should not adopt a result that is less favorable than the results of the agent's report.

The Appeals mission is not to "be right" it is to be fair and impartial. Understanding the hazards of litigation should be the number one priority in Appeals.

They should use e-mail communications more. Some Appeals Officers will but most will not. They should consider collateral issues more than they do, i.e., how long IRS exam handled a case, difficulties experienced by taxpayer during the exam process, etc.

Settlement discussions with Appeals should be confidential even in a docketed case. The rule on ex parte communications should be the same in each type of case.

The process did not work at all.

There should be greater incentive on the part of Appeals Officers to settle cases by being more flexible in coming to a compromise position.

Appeals involvement in national settlements should be avoided.

The perceived practice or policy of the Appeals Division is to find some excuse for refusing jurisdiction over a case without advising the taxpayer.

The process of setting coordinated issues and emerging issues limits the utility of the Appeals function, thereby harming independence.

Despite several arguably meritorious fact patterns, Appeals never reversed Local Office denial of IRC section 509(a)(3) supporting organization status. This was true even prior to 9/11/2001.

A strong Appeals Office that truly acts independent is vital to the process. From a straight appeal standpoint, it is important to have an independent view of a case that may have become personal for a collection officer. Further, a strong Appeals Office creates a more effective collection function because independence forces a more efficient evaluation of the case.

The Restructuring Act will result in the elimination of Appeals. This has been an objective of Exams for many years and it is about to become reality. The elimination of Appeals would be a great mistake.

I have had appeals cases bounced around, inane positions taken and once a case goes to appeals, it enters a void.

Strict, unwavering adherence to administrative rules can lead to government waste. Before a decision is made whether or not to hear an appeal, the Appeals Officer should consider the burden it places on the government in the long run for deciding not to accept a case. Such was the case in an appeal of an OIC Appeal that was filed one day late, forcing taxpayer to file a new OIC and begin the process over again for both the government and the taxpayer.

On one occasion I actually walked in on an Appeals Officer meeting with the examining agent before the scheduled conference. This seems to violate recent legislation. It would be helpful for a brief pre-conference telephone conversation to determine what issues may be agreed and what issues the Appeals Officer really want addressed. I once had a million dollar issue conceded by the Appeals Officer in his opening comments based on my protest. I wasn't even sure what the issue was about!

Appeals seems to be broken. The current case at issue is Appeals Officer agreed to a release of lien, R.O. agreed to release of lien, manager of R.O. agreed to release of lien. Manager of Appeals refused and Advocate is now helping.

Appeals independence had been slightly diminished by the explicit or tacit support that is given by senior IRS official to the agents' idea that Appeals is running amok. The institution remains strong, but to remain so, there needs to be constant emphasis of the point by senior official, not casting of doubt.

The Appeals process is somewhat inefficient to taxpayers.

The IRS needs to develop an OIC program and appeals program that is more flexible in permitting taxpayers a means of settling their tax obligations for an amount that is less than the total due. In addition, the IRS needs to find a way to shorten its times and get to resolution more quickly. The OIC process is too structured and inflexible. CDP hearings are generally a waste of time and do not provide a path to resolving any taxpayer matters. I have had success dealing with Appeals Officer in general. They appear to me to act independently on most occasions. However, it appears that certain taxpayers with poor histories with the IRS are not dealt with as fairly as taxpayers with problems that are presented for the first time.

Audit is dumping too many bad issues on Appeals and then complains that Appeals gives up its issues. If agents did a better job, Appeals could better perform its function which is to resolve cases based on hazards of litigation. Appeals use of Counsel personnel seems to work well but the protest process should eliminate the reviews of examining agent.

IRS Appeals should be present when stipulations are prepared for trial so as to settle a case that has potential for settlement.

Appeals are becoming less independent. Appeals are taking unsupportive position which increases costs, timing, etc. to taxpayer. Tax code should be thrown out and replaced with VAT.

Appeals has little or no independence with the current structure. The continual transfer of cases and re-organizing has diminished the quality of the Appeals function.

Most cases that end up in Appeals should not be there because of what is happening in the compliance divisions such as Notice of Intent to Levy being sent very early in the case.

Appeals should make decision based on initial facts provided by the agent and not send case back to ask the agent to further develop facts. Perhaps the system would work better if the agent prepared a detailed written reply to the taxpayer's protest and then both documents were presented to appeals for consideration.

Improvement would be to emphasize reaching a doable result in a reasonable time and avoiding stalemates. A stalemate accomplishes nothing and creates no revenue.

On the compromise area it is a waste of our time to even go to Appeals – their hands are tied. It is much different from where it was in the past. In other areas, I am not as certain they are really permitted to take into account the hazards of litigation. I feel their ability to resolve matters is less than it has been in the past and many of the better attorneys are leaving the Service.

I think Appeals handles all too many collections matters and it is a bad use of time. IRS needs to revamp the collections and collections appeals process and keep the Appeals Officers out of it.

In my cases, involving tax exempt bonds and TEGE, my impression is that the Appeals Officer are still uncertain as to the standards they are to apply in considering the merits and “risks” of litigation.

Exam is assessing far more penalties than in the past – even where the underlying facts are not different and where there is not serious basis for their assertion. Appeals appears to very limited in their ability to drop these penalties. Accordingly focus has shifted in some instances to penalty discussion rather than substantive discussions.

I am very against the use of Forms 12256 and 12257, which are often given to taxpayers and their representatives asking that they “waive” their right to go to tax court.

I went through two different Appeals processes in the same “appeal” from an Exam matter (employment taxes), where the Exam process itself took about two years before going to Appeals. The first Appeals experience was Mediation and it was a total disappointment and waste of time. The Appeals Officer conceded privately that my client’s position was very strong, but as a mediator she felt unable to put too much pressure on Exam to settle. Actually, the result was a disgrace to the IRS. The second was Fast Track Settlement in which the Appeals Officers actually had the authority to push Exam. The result was completely different in this very same matter: a proposed assessment on the disputed part of the Exam matter was reduced by over 95% and the nature of “future compliance: was totally different than what Exam had insisted upon for almost three years and at the first Mediation. This is a classic situation where it is unclear whether the personnel involved, the passage of time, or the difference in processes (Mediation vs. Fast Track Settlement) measured the different results.

The Technical Guidance process is broke in several areas, e.g., research credit. There is open animosity between the TGCs and the LMSB Appeals Officers. The ex parte rules are honored more in the breach than in actuality – numerous after the fact episodes that are typically initiated by Compliance rather than Appeals and then explained as involving on “administrative matters.” Too many coordinated and emerging issues – coordination is good, but the absence of discretion is bad. Cases run on facts, not law, and many senior

Appeals Officers have been quite open as to their frustration in dealing with the review process.

Predisposed to Government Position

In my experience lately, as opposed to several years ago, the Appeals Officer just rubberstamps what the agents have done. The time of getting a fair review has passed.

In the overwhelming majority of matters I have handled with appeals, the AO is biased in favor of the IRS – rather than being neutral. The bias is stronger with some, less with others, but it is there. Accordingly, the taxpayer does not obtain the “neutral” unbiased treatment called for. Managers almost always will “back up” their agents, so that effectively there is no “appeal” from the AO’s decision, even if the AO is wrong. In OIC appeals, AOs will stretch the IRM sometimes beyond recognition in finding “assets” or “income” beyond Policy Statement p-5-100. “Reasonable” collection potential becomes “maximum” collection potential. This should not be the attitude even with the Offer Specialist, let alone the AO.

My general impression is that Appeals is a homer for the IRS. I had an Appeals Officer agree with the IRS position recently because the IRS attorney merely said it was so without authority. In fact, the authority supported the taxpayer. The judge later agreed with the taxpayer position. I have been very disappointed with the independence of Appeals.

In my interactions with Appeals, not limited to just the past 24 months, it has been very apparent that there was anti-taxpayer bias in general, and as related to the case of particular taxpayers. I have not doubt that case specific anti-taxpayer and pro-IRS bias and groundwork was laid by someone other than the Appeals officers. I surmised that this bias occurs because Appeals Officers receive and review the files of other IRS employees concerning the taxpayer. On balance though, having Appeals available is much more preferable than having Appeals not available.

Officers typically spout the “Company line”; i.e., Appeals Officers generally take the IRS position on each issue, with the burden of persuasion falling on the taxpayer. To be truly independent, Officers should function more as an independent fact finder and interpreter of applicable law and regs.

I have been very pleased with the Appeals process over the long term, except in the area of the Sec. 6672 cases. There is in those cases an anti-taxpayer bias that has been impossible to overcome.

Appeals Officers should focus on getting the right answer rather than advocating for the government.

I am a retired IRS management official in private practice. I have always, since by beginning days as a young revenue agent, never understood how an Appeals Officer (who

is an IRS employee and draws a paycheck from the same organization as I did) can render a truly independent opinion on a tax case. The performance of IRS employees no matter what their title or organization (when it comes down to the bottom line) is measured by how much ultimately goes in the U.S. Treasury.

Appeals will look to bolster the Agent's reports rather than focusing on resolving the dispute.

Appendix B

Question 5.8

Please describe the elements of your most positive experiences with an examination appeal in the past 24 months. (What factors made the experience positive – personnel, location, timetable.)

Personnel

Personnel (11)

Personnel and result

Responsiveness

Good communication

Amiable

Courteous (3)

Appeals Officer acted professionally. (2)

Professional personnel with a fair resolution.

Fairness of the Appeals Officer (city)

The Appeals Officers are generally fair and professional.

Professionalism of Appeals Officers.

Professional and independent.

Generally nice professional people.

Knowledgeable and reasonable Appeals officer. Very professional and thoughtful.

Appeals officer was pleasant and professional.

Appeals Officer was experienced, fair and reasonable.

Location is irrelevant. Personnel are critical. How positive the experience is depends, more than anything else, on (1) the intelligence and diligence of the Appeals Officer, so that issues are well considered; and (2) the Appeals Officer's independence.

I believe the knowledge, fairness and overall professionalism of the Appeals Officer is far more important than the location of his or her office or the timetable (except in estate tax matters where the statute cannot be voluntarily extended).

My most positive experiences were with the personnel. Location didn't matter and timetable proved to be pretty reasonable.

Fairness and professionalism of Appeals Officer are the most important factors, along with independence.

The Officer was knowledgeable about our case and the law.

An experienced Appeals Officer who fairly weighs the facts.

Some Appeals Officers are more willing to work with you on collection issues. They have more time to give to someone in need of reasonable payment terms.

Most Appeals Officers that I have dealt with have been professional and courteous.

Courtesy and professionalism of IRS personnel.

The Appeals Officer was somewhat honest in analyzing the merits of his case and that of the taxpayer.

Appeals Officer was well prepared.

The factor that made it positive was that the Appeals Officer considered the law, the facts, and was not afraid to make an honest judgment based on that.

Personnel competent, objective and conscientious. Totally professional.

Appeals officer was professional, highly competent, efficient and effective.

Appeals agent was finally convinced that the examining agent made several errors of judgment.

Knowledge and experience of the Appeals Officer.

An Appeals Officer who was thoroughly prepared and professionally focused on the issues. The officer truly wanted to understand the law.

Appeals Officer [name] was very knowledgeable, fast and professional.

Appeals Officer was knowledgeable and reasonable; individual Appeals Officers can make a big difference. Some are not reasonable at all.

Appeals Officer was open minded. Listened to what I had to say in a face-to-face meeting and objectively reviewed evidence.

The Appeals Officers are professional and polite and seem to understand and absorb the position of the taxpayer. Most, I believe sincerely try to be fair and attempt to amicably resolve the matters.

The appeals process is most positive where the Appeals Officer is open minded and willing to stand up for the result that he/she believes is fair – regardless of whether Exam agrees.

Being treated fair.

Appeals Officer was receptive to taxpayer argument and was interested in coming to a reasonable settlement. It also helps that the Appeals Officer was prepared and well versed on the issues and had read the taxpayer protest.

Preparation by Officer, evenhanded approach and questions. Giving solid rationale for positions.

Excellent AO. Listened and tried to work out an appropriate resolution of a complex matter.

When they acted independently and were not improperly influenced by Examination or District Counsel.

(City) office personnel knowledgeable and professional.

Flexibility of AO in listening to my position. I found the Officer very open and willing to listen.

Some are better than others. In my locality, there are only one or two competent Appeals Officers. They are a pleasure to work with. The incompetent ones try to bully taxpayers and generally throw their weight around.

Generally, my experiences have been positive. I think the issue of satisfaction depends on the experience and personality of the Appeals Officer. As to the Appeals specialists, I don't think they have the experience and follow a strict interpretation of what is required for relief rather than trying to compromise, using litigation hazards as the basis.

Officer was accessible by telephone and returned calls promptly. Kept to the timetable.

The Appeals Officers were personally courteous, or at least civil.

Personality, experience and training.

Fairness and creativity of Appeals Officer in reaching a settlement.

Appeals officers are always professional and pleasant in my experience.

IRS Officer was very familiar with the legal and factual issues.

Senior Appeals Officers with extensive experience are superb.

Willingness to be nontraditional in approaching settlement has often resolved logjams.

Professionalism of Appeals Officer. Desire to reach fair and early settlement.

Appeals Officers seem to have a bit more discretion and seem to be somewhat less tied to the IRS company line than lower level audit people.

Appeals Officers are polite and conscientious and try to get the right answer. They seem to be increasingly limited by National Office positions and contacts with the National Office or Appeals coordinators are often very slow.

The questions are difficult to answer because I have had multiple appeals with dramatically different approaches. One was very professional with an objective Appeals Officer. Another was somewhat less professional with an Appeals Officer who regularly coordinated with Exam and Counsel on the coordinated issue and failed to exercise any independent judgment. That having been said, the most positive experience involved a very experienced appeals Case Leader who took direct involvement, held face-to-face meetings with Exam and the taxpayer, and hammered out a settlement over the course of two all-day meetings. It was tough but fair.

The Appeals Officer seemed to be impartial and in a situation where the examining agent and his manager seemed to clearly be incorrect, Appeals acknowledged this quickly.

The Officer was willing to meet to discuss the case issues, although I think he misapplied the law in the end.

Appeals was very professional, got to the essence of the facts and issues quickly and was willing to compromise to resolve the issue fairly for both sides.

Well prepared Appeals Officer willing to work quickly.

In a recent case, the Appeals Officer was extremely helpful, writing a 24-page report supporting an innocent spouse claim.

Willingness to really look at the facts of the case, review the affidavits and so forth.

The majority of my experiences with Appeals Officers has been extremely positive. I've had a great deal of difficulty getting some cases to Appeals and once there, assigned to an Appeals Officer, but once there, the Appeals Officers have been more reasonable and fair than any other person I have dealt with in the IRS structure.

I had a very unusual situation, apparently unprecedented. The Appeals Officer, now retired, who was in Florida, and I came up with a very creative resolution of the issue which allowed the taxpayer to recognize the income at issue when it was received because of circumstances that made the specific amounts involved unlike the ordinary course.

Appeals Officers in (city) are people with whom I have worked for years. I respect them and they respect me. If I disagree, I go to Tax Court.

Appeals Officer had actually read and understood the file and taxpayer's claim/position, agreed that the examiner's rejection of such claim was improper and restored taxpayer's costs/deductions. Officer read and compared taxpayer's authorities with examiner's references and did not hesitate to find the latter's lacking. This was the one good experience amidst the bad ones.

Receptiveness to meeting and discussing issues; fitting into schedule.

Once case settled, agent expedited the disposition.

Competence of the Appeals Officers in evaluating the facts and the law.

She knew her job. She had judgment.

Knowledgeable personnel (National Office). Flexibility in negotiating a settlement.

The Appeals Officer listened to the issue and was responsive to getting to the correct result.

The problem with this survey is that I've had two cases before Appeals within the past 2 years. One was handled very well, the other one was not. The most positive experience with the case that was handled well was that we each shared information and the Officer made a fair offer of settlement to resolve the case and it got resolved.

Ability to view documents together with Appeals Officer and to have client present for portions of Appeal.

The Appeals Officers in (state) are pleasant and professional and want to settle the matters before them, but on a basis that is intellectually sound.

Willingness to resolve the issues quickly when the audit and submission to field auditor had gone on an excessive amount of time and was untimely, respectively.

Appeals Officer set out likely timetable in first meeting, clearly stated the information he would be reviewing, identified the coordinated issue and the process for handling that. He was respectful and didn't appear to have reached a conclusion about our issue prior to the first meeting. We were able to reach a compromise in the second meeting. He kept me apprised of the progress of the matter throughout.

Some Appeals Officers are more willing to work with you on collection issues. They have more time to give to someone in need of reasonable payment terms.

Willingness to resolve the issues quickly when the audit and submissions to field auditor had gone on an excessive amount of time and was untimely, respectively.

In one matter, the AO was logical, mostly timely, not overburdensome in granting requests, and LISTENED to arguments (cash vs. accrual method) and agreed on balance to allow cash. Also he made other adjustments which were appropriate though not in taxpayer's favor. Another case was a penalty appeal where the facts were pro-taxpayer but line agent predictably rejected the appeal. The Appeals Officer compromised based on true and accurate analysis of litigating hazard. This type of experience, however, is rare. Mostly Appeals Officers do not evaluate penalty litigation hazard correctly. This is especially true in TFRP cases in 4th Circuit.

The majority of Appeals Officers are competent and fair. All of them favor the IRS. Most, however, can be persuaded that the IRS position is weaker than the IRS would admit. Certain Appeals Officers are not bright enough to fairly judge a tax case.

Most Appeals Officers are professional and polite and seem to understand and absorb the position of the taxpayer. Most, I believe sincerely try to be fair and attempt to amicably resolve the matters.

The team of Appeals Officers seemed very knowledgeable, albeit a bit too enamored of examination's argument on one issue.

I had an innocent spouse case that was initially scheduled for a telephone conference. When I explained to the Appeals Officer that the client needed to tell her side of the story to the IRS in order to achieve closure, the AO set a face-to-face conference. My client told me later that she really felt better, no matter what the outcome, having had the opportunity to meet the IRS officer deciding her case and to have had the opportunity to tell her side of the story.

Most Appeals Officers are professional and more realistic than auditors.

Had an abusive tax shelter client. The Appeals Officer knew the issues, was familiar with the file and was ready to discuss settlement at the first (and as it turned out, only) meeting. The resolution was the result that should have been obtained. Yes, it cost my client a lot of money. But it was the correct result under the facts and the law.

Personnel B examined the facts completely.

Elements of positive experiences: (1) experienced, decisive Appeals Officer (esp. Appeals Team Case Leaders); (2) little or no deference to other such as LMSB counsel, technical advisors, etc.; (3) Appeals officer's unwillingness to countenance delays by Exam in responding to questions; and Appeals Officer's refusal to present arguments not raised by Exam (even where the issue was not well developed by Exam).

Thoughtful consideration of the issues by capable Appeals Officers. I also had a positive experience with an Appeals panel (This is not to suggest that I always get what I want.) In multi-issue cases, I like the idea of assigning issues to different Appeals Officers. It

speeds things up and is somewhat refreshing. I welcome the idea of assigning issues to Appeals officers based on their experience with the issues or areas of expertise.

Appeals understood the law, and acted fairly for both parties.

Prompt responsive communication and a fresh review of the facts by Appeals Officer.

Preparation by officer; evenhanded approach and questions. Giving solid rationale for positions taken.

Generally, professionalism and knowledge of substantive area of law.

I had a 531 case with respect to which I met with the Appeals Officer. I had to send her more data, but ultimately the proposed assessment was withdrawn. She was not familiar with the area and I had to do some educating of her, but it worked out favorably for my client. The other matter was an estate tax audit dealing with the magnitude of discounts for closely held corporations. The Appeals Officer was familiar with this area and an acceptable settlement was reached fairly promptly.

One Appeals Officer was quite versed in the law, prepared and cordial.

The Appeals Officer went out of his way to make sure our client's interests were well served by all IRS employees involved in the case.

Independent, fair assessment of case for settlement.

Appeals Officer knew the law; was courteous.

Appeals Officer was prepared and generally knowledgeable of the facts.

Appeals Officers are professional. They tell it like it is and when their bound by an appeals coordinated paper they tell you. With the newly decided cases, the taxpayer's hazards of litigation have significantly increased and the government's position is now supported by decided cases.

The Appeals Officer was professional, listened to the arguments of the taxpayer, and made a fair offer in order to reach settlement.

In recent LMSB appeal, the Appeals team leader was a very experienced senior Appeals Officer. He understood the law and made an effort to understand our position and the authorities that we were relying upon. We were able to reach a settlement that considered the merits of both sides of the issue and the hazards of litigation.

The AO actually read our protest and ruled in our favor based upon our submission, which included facts, supporting documents and a legal analysis.

In one set of cases the Appeals Officer acted independently and correctly analyzed the hazards of litigation.

I have had excellent relations with Appeals Officers reviewing exam issues. They showed a desire to resolve and matter and they were technically knowledgeable.

The Appeals Officer's willingness to negotiate.

The professionalism of the examiner and her prompt and correct decision.

The Appeals Officer was knowledgeable and interested in resolving the matter.

Detailed written response to protest along with a proposed first offer received from one Appeals Officer.

A senior LMSB Appeals Team Leader analyzed the parties' positions, told each what he wanted from them, set down a timetable, did his own research, and came to a decision within the timetable he set down. Neither side prevailed on all the issues, The outcome was within the boundaries of fair split on issues and generally right on issues that went completely to one party or another.

Creativity in achieving settlements.

Appeals responded quickly and in a positive manner. Generally easy to work with. Willing to look at all facts and circumstances. Most Appeals Officers are good to work with.

The professional approach of the Appeals Officers and willingness to make decisions based on their experience and knowledge.

The Appeals Officer accepted the taxpayer's position (correctly) even though it resulted in a large refund instead of a large deficiency.

Demeanor of Appeals Officer.

Knowledgeable Officer that objectively looks at all the law before rendering an option.

I had an appeal with a senior large case Appeals Officer in [state] who has been with the Service many years. He was professional, knew what he was doing, and made the process run smoothly. The difficulty was that due to a shortage of large case qualified Appeals Officers, we had to wait over a year to get a conference.

Most positive experiences are when Appeals Officer is open-minded.

Openness to opposing views of the facts and reasonable application of code and regulations.

The Appeals Officer is cooperative and pleasant but powerless to set a reasonable schedule to resolve the matter, which is not complex.

[Name] [city] Appeals Office – he is always willing to meet, identify the situation and analyze the litigation risk. He is an essential part of the resolution process.

Appeals Officers in the local office are extremely well qualified independent thinkers.

Timely response and knowledgeable Appeals Officer who was aware of hazards of litigation.

Each appeal is different depending on the issues in the case. If industry issues are involved, then the experience is not good. Otherwise, the team of Appeals Officers engages in good discussion that usually leads to a fair settlement.

Fast Track would have been excellent were it not for the intransigence of Examination and Counsel. The Appeals Officer was experienced, well trained and had excellent judgment. Were it not for him there would have been no settlement. The process however was even discouraging to him. Instead of an adversary experience. Exam and Counsel need to be trained to understand the purpose and be a real partner in making it work.

Integrity of ATCL.

Examination position was without merit based on case law and Appeals merely asked for substantiation and resolved the matter. Immediate telephonic contact and agreement to prompt resolution once facts were presented.

I was lucky enough to have one of my favorite Appeals Officers.

Appeals handled by phone calls, the time for which was agreed upon mutually before the date. The Appeals Officer is friendly (this is very important), open and above board in his or her comments. The Appeals Officer makes an attempt to understand my position and tells me why he or she agrees or disagrees and gives me a chance to respond to his or her proposed decision before it is made. The Appeals Officer tells me if he or she has had any contact with IRS staff. The Appeals Officer sends me a copy of any IRS report or document that he or she thinks in controlling, like and RO's report.

Most are friendly and sympathetic to taxpayers who have legitimate grievances. However it appears that managers or other parties influenced a negative decision after a telephone conference that ended in a favorable position to the taxpayer.

Effort to settle the case on a reasonable basis considering the hazards of litigation. Appeal of penalties when Appeals Officer disagreed with auditor and counsel and abated penalties for reasonable cause.

Appeals Officer appeared to be independent. Also note, the Officer is one of the growing ranks of IRS retirees.

Willingness to understand the facts first then apply the law.

Positive attitude with the objective to get the matter resolved without litigation. Most of my experiences have been timely but one where the agent did a terrible job and the Appeals Officer literally had to do the audit.

Focusing on the issues one-by-one, coming prepared to meetings and making decisions.

Two Appeals Officers traveled to client location which was more than four hours out of town. Site visit greatly enhanced taxpayer's presentation of facts since tour of facility enabled Appeals a greater understanding of facts. Very positive Appeals Officers who were well versed with issue, pre-read material and were ready to negotiate in initial meeting. Quick resolution.

My most recent positive experience involved an [city]-based Appeals Officer handling a protest for a Northern California taxpayer. The Appeals Officer attended a meeting in [where taxpayer lived], was well prepared, and disposed of the issue appropriately.

I was comfortable that the Appeals Officer was aware of my schedule and the client's schedule and worked to make sure that the conference fit in both of our schedules.

Independence of Officer, willingness to try different approaches to settlement, mutual trust.

Case is not yet resolved and if we settle it will not be on a basis that my client likes, but the Appeals Officers were well prepared, professional, pleasant to deal with, appeared independent of exams (although predisposed to the IRS view) and moved the matter....

When we got out of the direct connection with all IRS personnel and had an Appeals Officer in a distant city from the examination, we got a knowledgeable person who was interested in the applicable law and facts and was not only experienced but did additional....

Appeals Officer was knowledgeable of the law, reviewed the IRS records, found the records I submitted for my client were not on the IRS records. Error by the IRS office and gave my client the refund because my client kept the records to prove the case. Appeals Officer was fair, and carefully read the taxpayer's material. He recognized the weakness in the government's position and was willing to compromise.

Team chief was generally technically knowledgeable.

Agreement to come to all meetings prepared to discuss technical issues.

The Appeals Officer was thoughtful and deliberate in reviewing the materials presented by the examination personnel in light of the arguments presented by the taxpayer.

Appeals Officer listened carefully to my arguments, raised relative arguments and made a decision. It was a fair decision but not a complete victory for the taxpayer or the government.

Very experienced Appeals Officer who spent the time to understand the law and facts and did not rely on others but instead made up his own mind, and did so within a reasonable time. (Unfortunately, he is no longer with Appeals. He was promoted to a different area.)

The Appeals Officer was very professional and seems genuinely interested in resolving the issues in my case. The Appeals Officer was also very fair and it was much easier to deal with the Appeals Officer than to have to deal with the examining agent.

These elements include a prompt and effective analysis of both the strengths and weaknesses of the IRS's position, a willingness to share that analysis with me, a willingness to listen to and respond to my analysis, and a willingness to reach a realistic (resolution).

Case was sent back to Appeals by IRS attorney on a docketed Tax Court case. Appeals Officer worked quickly to resolve the case via telephone and fax especially when I described how poorly the examining officer handled the case.

Competent, senior experienced Appeals Officers. Taking the time to understand the facts and issues. Developing a reasonable range of settlement. Professional and non-antagonistic attitude toward both Exam and TP. Obvious knowledge of case....

Personnel are generally skilled and know that they are independent. In the issues I have had (all major or coordinated issues) Appeals have faced restrictions. Additional Exam is able to exert more influence on Appeals in a variety of ways....

The Appeals personnel are intelligent, knowledgeable, courteous, and generally well-prepared. Appeals have been addressed promptly which saves clients both time and money because being refreshed on the issue all over again is unnecessary.

We had the same Appeals Officer in all three cases; we understand that he's the one that gets assigned the cases that district counsel doesn't want settled!

Objectively fair analysis of legal issue, lack of pro-government initial bias.

ENE session in which Appeals Officer presided. The personnel ran an excellent meeting and we were able to resolve all but one issue at this meeting. ENE is not a formal program by Appeals/Exam, but they should consider adding it, at least in LMSB cases.

Experienced Appeals Officer; good past experiences/rapport/ willing to deal – knows what he can get approved; knows procedures.

Willingness to listen to facts – fairness.

Appeals Officer was reasonable, and he/she was prepared for phone calls and hearings.

Appeals Officers are by and large pleasant. Most AOs try to keep cases moving; although one or two locals are real dogs.

Location

Location (12)

The appeal conference was held in the taxpayer's city B the Appeals officer came here and was attentive and considerate.

The location and the approach of getting to an agreed resolution.

Location was convenient. (2)

Location was acceptable.

The location was convenient and the facilities adequate for the purposes intended.

Location was within an hour of my office.

Appeals hearing was at an office across the street from my office.

Local Appeals office. (2)

Neutral location.

I like meeting at the Appeals Office.

Location – I like dealing with local people. They can not hide behind a telephone.

Convenient location, able to schedule appointment at mutually convenient time.

The most positive elements are access to a local office and face-to-face meetings.

The ability to meet face-to-face with the Appeals Officer and discuss the issues where he could reflect on (and show the support for) his position and we, likewise, could reflect on (and show the support for) your position. This dialog resulted in our ability to settle.

The fact that the Appeals Office is located in my city makes it convenient and it is generally quite easy to schedule meetings.

Locating the appeals conference in the area where taxpayer resides.

Case resolved with several conferences over the phone.

Rapid telephone.

Face-to face.

Location in my area is helpful, but cases are now getting handled all over the county, making face-to-face meetings impossible in some matters.

Close location to taxpayer – no need to travel. Convenient location.

Appeals Office convenient to my office.

Timetable

Timetable (3)

Timetable was reasonable once Appeals got the case.

Turn around time.

Quick turn around in scheduling the conference.

Faster than expected resolution.

Timetable was acceptable.

Gave time for production of additional facts which weighed in taxpayer's favor.

Set date for conference to discuss issues.

Being able to sit down with an Appeals Officer along with my client enabled us to resolve the matter quickly. In fact after only one hour we obtained a no change. If this had been through a telephone or correspondence it would have take a lot longer.

Appeals Officer flexible as to timing of conference.

IRS agent willingness to allow reasonable extension of time to respond helped us make fair case.

My single experience was not negative. I thought it was handled expediently and professionally.

Ex Parte Communications

Appeals agents are aware of the ex parte restrictions however appear not to understand what it means. In our experience they continue to have ex parte communications indicating that there is nothing wrong with the communications that they are having....

Other

Reached a reasonable settlement.

Once in front of the Appeals Officer, the full explanation of items can be shared and agreement reached on the treatment of disputed items very quickly.

Timetable is a factor of statute case, docketed cases set for trial and then other cases.

National Office was effective and responsive.

I have handled many cases before Appeals and on the whole find it a most suitable arrangement for resolving disputes between the field officer and the taxpayer. Have I been disappointed at times, yes, but I have been overwhelming satisfied with the process for resolving taxpayer/Service disputes at the highest administrative level within the Service. My experience has demonstrated that the better prepared, the better you do for your client at Appeals.

Appeals mediation under Rev. Proc. 2002-44 produced the most positive experiences. This is a great way to resolve tax controversies.

Clear determination. Follow-up documentation consistent.

Opportunity to discuss and argue case in gentlemanly fashion.

We need trained, qualified Appeals Officers with experienced managers giving direction and oversight.

Generally positive outcome.

Although Appeals improperly applied the law in some areas, it was willing to compromise, as was our client, to resolve the issue.

Via correspondence contact only, an Appeals Officer agree with our position supporting a hardship/reasonable abatement request initially denied at the examiner level.

Appendix C

Question 5.9

Please describe the elements of your most negative experiences with an examination appeal in the past 24 months. (What factors made the experience negative—personnel, location, timetable?)

Everything.

Personnel

Personnel (4)

Appeals Officer seems to have too many cases to resolve.

The Appeals Officer did not know the law, only looked at a small portion of the facts, and was not open to the taxpayer's arguments. The Appeals Officer was not interested in fairly settling the case, since I got the impression that my client had offended him.

Predisposed against taxpayer, rude, unprofessional, ignorant of the law as well as rules of evidence and procedure.

The Appeals Officer was intransigent, wanted to uphold the examiner even though examiner was biased, did not listen to the facts and seemed to have prejudged the case; it was settled but taxpayer, CPA and me all felt it was a bad experience.

Our Appeals Officer only works two days per week, holds early hours, and left messages at the end of her day (3:30), making live telephone communication impossible. One issue in dispute should not have taken \$65K in drafting and negotiation support along with 18 months to settle at a pro-government result.

I called in an Appeals Manager because the Appeals Officer did not understand the law after multiple written and verbal explanations. The Appeals Manager understood quickly and helped us arrive at a satisfactory settlement. On another matter, the Appeals Officer similarly did not understand the law, but the Appeals Manager would not get involved. As a result we had to try the case and won. The Appeals Officer called me to congratulate me, but still did not understand the law. Appeals Officers are supposed to understand legal arguments. Too many do not at the present time.

Personnel are not knowledgeable.

Personnel are not qualified to be Appeals Officers.

Inability of settlement officer to understand nuances in the law and to adequately appreciate the implications of exceedingly complex facts. In short, an experienced

Appeals Officer who had been around the block a few times would have better understood the case. Also I sense a reluctance of Appeals supervisors to substitute their judgment of the less-experienced appeals or settlement officer.

One Appeals Officer from the (city) office. He is unbelievably difficult to work with.

The biggest problem is Appeals Officer who are unwilling to settle case on the basis of the record they have before them and prefer to speculate on what record may be developed in litigation. This problem has been magnified recently because the Appeals Division is receiving poorly developed cases from Exam. If the record is inadequately developed the case should be sent back at the earliest opportunity and when returned there should rarely be a further remand. The case should then be decided on the record. Also Appeals does not pay sufficient attention to the rule that precludes raising new issues.

Officer heard nothing the taxpayer's representatives had to say, and had a fixed view which did not permit alternative thoughts, facts or interpretations. When in doubt or confused, he left the room to speak to his supervisor! When questioned about his own opinion, actually stated that the only outcome possible is the one his supervisor had, a fortiori, approved.

Industry specialist involvement. ATCL's unwillingness to make ultimate decision.

Anytime an industry issue is involved, the ISP is too involved in the Appeals process.

Personnel. Appeals need people who want to hear cases; not to punt them when they are difficult.

On one occasion the Appeals Officer was reluctant to take a position for fear that his Manager would overrule him. He was more concerned about job security than getting the matter resolved.

Inflexibility in considering settlement. Had already made up mind on one issue and did not read or consider arguments of protest statement.

Failure of settlement officer to be prepared and having their mind made up before a conference.

It is understood that some Appeals Officers are more settlement-minded than others. But some have already made up their minds and go through the motions of a conference because they are required to. Honesty about preconceived notions before a conference would make the process more time efficient for both sides.

Appeals appeared to have made up his mind prior to the conference. Appeals failed to focus on the facts which were favorable to the taxpayer.

Held a predetermined view of the facts, i.e., a service rubber stamp.

My most negative experiences were with personnel who, for whatever reason, refused to evaluate the true facts of the case and were predetermined (sic) to resolve the matter in favor of the government. Furthermore, I have had personnel who have decided the matter prior to our conference.

Personnel has their mind made up before they listen to your argument. I got the impression that the person is just going through the motions in order to check the AI did it: box on a form.

Appeals Officer pretty much had decided case like judge. Inflexible. Varies from person to person.

I had three different Appeals Officers. The first one sent the case back to the field unnecessarily. The second one never understood the case and dragged it out until he retired.

One Appeals Officer treated the request as a nuisance. It involved a controlled issue. I don't think the result was a fair conclusion of the merits of the client's case.

Deferral of issues to Exam. Lack of ability to apply normal standards in a large number of technical areas. The biggest problem has been the so-called "team approach" where there is no leader or senior Appeals Officer in charge as in the past.

There was ex parte communication; the Appeals officer did not have an open mind and did not seem to have an independent and nuanced understanding of the issues.

Breakdown of settlement discussions due to retirement of Appeals Officer.

Appeals does not appear to be as independent as before. Appeals appeared to have too many masters looking over his shoulder.

Failure to have read protest. Apparent deferral to Exam for judgment. Inability to appear to separately evaluate issues from position of Exam. Not devoting enough time to consider facts and law. Inadequate explanation of Appeals position. Argumentative.

Complete failure to understand the substantive issues. An unwillingness to engage in detailed discussions of the issues (probably because they did not want to appear unknowledgeable, but that is speculation on my part), and an overall less than friendly (attitude).

Location is great, but of no value if the process is such that the hearing is a formality because the Appeals Officer has already decided what he is going to do.

In one old tax shelter case, the Appeals Officer appeared to make a general assumption that IRS had been procedurally correct. They did not follow up on our request to inquire of Service personnel whether certain documents existed and to obtain such documents.

They mean well. They just don't have a strong grasp of the relevant tax law. While the matters were ultimately decided in favor of my clients, the process was tortuous.

Long-time, elderly Appeals Officer who was disorganized, admitted that he didn't understand the issue, and turned the outcome over to a young, lazy IRS lawyer who parroted back a faulty FSA. We eventually went back to National Office and won hands down. Took three years.

Appeals Officer put more stock in facts developed by the examining agent without independently verifying them even though the taxpayer vigorously opposed them.

Appeals Officer located out of town and traveled to District Office infrequently bound by others' views such as the Art Advisory panel and section 2036 National coordinator and could not exercise independent judgment.

Lack of information provided by the Appeals Officer.

An experienced Appeals Officer who would not settle part and allow the remainder to go forward.

Even prior to the new approach to penalties, I had an Appeals Officer disregard entirely taxpayer's very reasonable arguments for late filing because of improprieties at the agent level and bombarded me with electronic research on cases with facts that were distinguishable and was clearly not interested in listening to reasonable arguments where reasonable cause is an excuse to late filing.

General unwillingness to read submitted materials carefully and give thought to the arguments.

The Appeals Officer was not forthcoming in terms of his actions. The Appeals Officer did not contact the taxpayer in a timely fashion. The Appeals Officer acted as an advocate for the government and worked the case as if he were preparing for trial.

The Officer denied the taxpayer's conference. The Officer made no apparent attempt to evaluate the credibility of the parties involved or to consider the case on its merits.

Inflexible hostility to taxpayers (and inability to admit it), lack of respect or trust for taxpayer representatives.

I was unhappy that the examiner's unagreed report did not contain much information, yet the Appeals Officer had the entire case file that had much other development of the facts other than what was in the unagreed report.

The Appeals Officer claimed he had insufficient time to devote to an informed consideration of the matter.

Had one Appeals Officer that was not willing to look at all facts and circumstances and was not willing to work with me to settle the case.

Appeals refused to concede the case even though it agreed that the IRS had only a 10% (de minimis) chance of winning at trial.

Lack of expertise and unresponsive management.

A trust fund penalty case handled by a former RO, recently promoted, in which the RO sat on the case for over a year, who decided the case without a conference on the basis of material never discussed with the taxpayer by the examination agent or the Appeals officer, and then closed the case with an assessment without notifying the taxpayer or the taxpayer representative and never filed the power of attorney IRS system so collection was initiated with a taxpayer contact without notification of the taxpayer representative.

Post appeals mediation, despite Appeals recognizing that the hazards were 80% in the taxpayer's favor, the Appeals Officer refused to concede the case.

In an offer in compromise case out of [city] the Appeals Officer never even considered the protest to the rejection letter. It was perhaps the most frustrating experience I ever had at Appeals, but I realized the Officer had no collection background and wanted no part of the case. I wrote a blistering letter to the head of the office but never received a (response).

The AO sat on the case forever (appeal from audit reconsideration), then refused to settle because he claimed that the original audit file was missing and they couldn't trace back to the original assessment.

Appeals Officer lost composure and started arguing when he heard who had represented taxpayer in the exam.

Personnel – inexperienced, ignorant and stubborn.

The Officer was not as in tune with procedure as one would have hoped.

In the case that I mentioned earlier that was not handled well, I didn't think the Officer listened to my facts – at all. He seemed predetermined to rule against my client.

A reluctance to acknowledge hazards of litigation on certain issues.

[City] office – appeal of audit involving assignment of income issue. Appeals Officer sided with agent on this issue but sustained civil fraud while conceding there were not “traditional” elements. [City] office – Appeal from OIC rejection. Appeals Officer

wanted to include 50% of home value despite fact taxpayer had never owned home. Appeals Officer found taxpayer had a “beneficial” interest in face of legal authority such does not exist. Matter is now on appeal to NTA under ATA0. Appeals Officer seemed determined to increase the offer even without legal authority for his position. [City] – penalty appeal. Client was a church with few resources; former employee embezzled funds. Appeals Officer granted partial relief but should have granted more on the facts.

I had a CDP appeal where the Appeals Officer called me up without prior warning and caught me pretty much unprepared. I was a hardship case over a lien filing. His mind was made up before we started. The whole call took less than 5 minutes and I wondered afterwards why I had even bothered.

Most unsatisfactory experiences come down to personnel issues. In particular, there is a big difference between the effectiveness of the Appeals Team Case Leaders and other Appeals Officers.

Predisposed to the government’s position.

Predisposed to government position and hence did not listen to contra views.

Personnel were extremely and intractably biased in favor of the government’s position.

In one matter, the Examining Agents had spent years developing the case and there were (sic) a significant amount of documents developed. The Appeals Officer did not read any of the case materials.

Biased officer who I had to ask to be removed from the case. However, this is generally not the case. Most officers appeared, at least on the surface, to be fair and unbiased.

CDP hearing officer simply would not hear a case because client did not provide him with information before the hearing that the IRS already had been given numerous times and which we were willing to give to him on the day of the hearing.

Unprepared or ill-trained Appeals Officers who were not able to fully comprehend the issues.

Some agents have a strong predisposition against certain planning, such as use of FLPs and related discounts.

The ATCL actually accused us of being disingenuous because we increased our offer in an effort to settle, although he later apologized. We were unable to settle with him, however, because he said that the case involved tax shelters. There were not listed transactions and the Exam team did not assert penalties, but that label was the kiss of death. Very unsatisfactory.

Protests were either not read or were ignored, and no attempt was made to apply applicable law objectively. I can only describe the conferences as kangaroo courts. Please understand that I say this reluctantly.

Examination division and completely misunderstood his role and the application of the law to the facts, and the “risks” of litigation.

When Appeals treats me like he or she is all powerful, usually accompanied with old-line formality and an attitude like I am wasting my time advocating my position – remember some of the ROs in the 1980s and 1990s. I have to admit, this has happened less frequently, I am pleased to say. The last time the person stated that they were close to retirement.

In the answer to the previous question, I mentioned the lack of experience of Appeals specialists who handle penalty appeals. Because of that, I currently have the issue referred to the local Appeals Office.

IRS Appeals Officer obviously had held onto the case and did not send appointment letter at all; but rather, sent out an extension request with no explanation for requesting or inquiring as to settlement potential.

The AO invited the RA to participate in the Appeals conference and only supported the RA’s unfair determination of alleged unreported income. We were forced to petition to Tax Court and after several months of negotiating with Counsel we were about to enter a stipulation of about 25% of the original deficiency sustained by AO. The RA was an incompetent and the AO was unwilling to negotiate and accept her flawed method of income reconstruction. The AO refused to consider the quality work papers prepared by our expert CPA.

When the Appeals Officer opens the first conversation advising me that my client should consider conceding a portion of the penalty, but has not even given me a chance to present a case on the merits, the entire experience is soured from the start and can only be repaired with tremendous effort.

Went to Fast Track and had nobody with experience or knowledge and no desire to understand the taxpayer’s position – the Appeal Officer refused to rule against the IRS although it was clear to everyone that their position had no merit.

An IRS Appeals Officer who was assisting the primary officer and who was very biased due to having worked as an IRS engineer for 30 years.

Appeals failed to take the time to understand taxpayer’s position and simply came to the table with a knee jerk reaction.

Unwillingness to accept taxpayer explanations without signed affidavits from taxpayer and witnesses.

Appeals doesn't seem to understand facts, doesn't want to review documents, always defers to exam opinion, not willing to seek tech advice or other counsel within appeals, stonewalling, too much influence by exam team, not timely in returning calls, no basis communicated to taxpayer why no settlement was offered, not creative.

Innocent spouse case – Appeals Officer was trying to be fair, but she just didn't really understand the case.

[Name] in [city]. She often sends a rejection letter based on her initial review, without discussing a case with our office (at least 3 times). She does not properly identify or respond to issues raised on appeal.

When the Appeals Officer stubbornly resisted changing an initial position despite the presentation of different facts from what the revenue agent had presented.

I had a difficult issue and no one wanted to consider it.

The Appeals Officer would not take any position contrary to the Exam adjustment even in response to persuasive legal and factual arguments. It was as if he was afraid to make a mistake against the IRS.

Appeals Officer seemed predisposed to Exam's position.

Not coming prepared to meetings and having to prepare for the same Appeals meetings several times.

Subsequent to the issuance of a statutory notice of deficiency, the IRS was provided proof and issued a second revenue agent report conceding the issues to the taxpayer. The Appeals Officer informed me that she would have to review the file herself to determine if she agreed with the agent that the case should be conceded. This was a docketed tax court case.

Independence

Lack of independence

Complete lack of independence from examination division.

Same appeals office was prohibited from resolving a significant controversy due to control of the issue by the IRS National Office.

Reluctance to vary from auditors results, i.e., lack of independence.

District Counsel attempting to sway the Appeals Officer.

Participation (and dominance) of Area Counsel.

Appeals improper reliance on the expert Exam hired to assist with an issue.

The deference to the outside R & D experts (particularly in the case of software) by Appeals is unsatisfactory.

In another case, the AO has been speaking regularly with the Agent. The AO has not provided us with the Agent's new submissions.

IRS Commissioner dictated the outcome.

Because the Appeals Officer wasn't knowledgeable about the subject matter, she engaged in communications with other IRS officials (instead of submitting the issue to tech advice, as we urged).

The negative experience occurs when I perceive that someone (generally Counsel, but sometimes Examination and sometimes an Appeals supervisor) unduly influences the position of Appeals after the conference. Too many times I have left a conference believing we were close to resolution only to have the Appeals Officer later call and retract an offer preciously made or accepted.

Exam legal counsel tried to unduly influence Appeals with a 7 hour non-stop telephone rebuttal of the exam Protest at the start of the Appeals process leaving all others on the call in a comatose state.

Justifying the actions by saying that he was not influenced by a National Office pronouncement even though he followed its guidelines to the nth degree.

On complex issues of law, Appeals relies on district counsel who also advised Exam. In essence, the same party (a lawyer) is indirectly deciding the same issue at Exam & Appeals. Defer to Exam – mind made up before conference.

Officer unwilling to challenge Chief Counsel's desire to litigate the particular issue.

Inappropriate attempts by Exam to contact Appeals. Slow or no activity from Appeals while the National Office forms an opinion about how to proceed on a given issue.

Influence of IRS Coordinators unduly influenced the Appeals Officers.

Bad influence of superior unfamiliar with the issues.

Felt like the Appeals Office was inclined to accept the agent's determination regardless of the information presented by me.

The Appeals Office simply backed up the examining agent. They did not really consider the arguments I made. It appeared to be a sniff test, not a matter of law.

The person was constrained by the National Office in the FLP case. She was so biased since an FLP was involved, that she could not see the facts distinguishing our case from previously decided cases and what caused the IRS risk of litigation.

In those cases where the IRS has developed a position on an issue, it is very difficult to get an Appeals Officer to consider the specific facts regarding your client's case. In these situations, there is little benefit in proceeding to Appeals.

Local counsel attempted to improperly influence appeals.

Location

Location (3)

Campus

Refused to meet, had to do everything by mail/telephone.

Location (out of my area, so no possibility of face-to-face).

Telephone contact in a CDP case in which the CDO appeals was summarily rejected.

Phone conferences are useless.

Case assignment to distant locations making fact-to-face meetings more expensive and less convenient. Locations were for IRS convenience, had nothing to do with location of facts or documents.

Location of Appeals Officers too centralized.

Lack of face-to-face conference.

With Appeals being transferred to [city], it is difficult to get a face-to-face meeting.

Appeals Officer was in [state] while taxpayer was in [another state]. Appeals conference had to schedule around several time zones. Officer was not in a position to assess taxpayer's credibility since all meetings were over the phone.

Location is generally required at a downtown location without parking rather than a suburban setting with parking.

The officers in different parts of the country do not understand or otherwise give credence to local circumstances.

One factor that makes the Appeals process more difficult is the idea of creating Appeals teams from different parts of the country. This makes it difficult for all of the parties to get together to review the issues. I particularly like meeting face-to-face and believe that it helps resolve the case more quickly. The fact that the members of the Appeals Team are spread out in different locations around the country makes it more difficult to schedule meetings and to resolve the case. Another factor that has dramatically slowed down the processing of the case is the fact that the Appeals section that performs the tax computations is no longer located in the same office as the Team Leader. The separate location of the computation personnel has made it much more difficult to get the cases resolved after reaching a settlement. We have been waiting for a final agreement from appeals on one case that has been settled for more than six months.

Timetable

Delays

I submitted an appeal in February 2006 and so far have only received confirmation that the Appeals Office has it. Accordingly, I have had no opportunity for a positive experience – but I hope to get one soon.

Timetable (4)

Time frame to resolve the dispute was rather lengthy.

Length of time to conclusion.

Lengthy delays.

Way too long to hear case.

The Appeals process was very time consuming.

The timing is intentionally slow.

Process took much longer than necessary to reach resolution.

Timetable – took 6 months to conclude.

Inability to turn around the execution of an 870 AD within a reasonable amount of time.

The time for filing the protest and having a face-to-face hearing was 30 months!

The turnaround time for Appeals is completely unacceptable.

Over a year delay.

Delay in case consideration.

Absolute lack of any contact from Appeals for over 12 months.

Process is too slow.

Timeliness. Initial conference was held approximately 11 months after protest was filed.

We cannot get a conference scheduled and have no hope for one. Now waiting for 10 months and have no hope for one in the next 8 or 9 months. My client is in limbo and I have little or no alternatives.

Have to wait until crisis mode (Tax Court trial date) before the Appeals Officer focuses on your case.

I dealt with only one matter which was referred to the EPEO National Office for tech advice from a District EPEO Office. The National Office entirely agreed with my position, which was not very surprising because the law was clear. However, I had to wait close to two years from the beginning of the District's review and resultant misguided findings until the matter was finally cleared up by the National Office.

Too many of the Appeals Officers will let a case sit for many, many months without their attention and suddenly impose on the taxpayer strict time limits requiring both the taxpayer and me to drop whatever else we are doing and respond to the Appeals Officer's demands. Time constraints are always a one way street with Appeals.

The very slow processing time of a case. For the first two years, the only contact I typically have with Appeals is a request for an extension of the statute of limitations. This needs to improve. In one instance with two related cases that had been at Appeals for four years, I requested a meeting to try to resolve these previously agreed cases with the new Appeals Officer prior to executing an extension (the statute of limitations, as previously extended, would not run for over 6 months). Despite the new Appeals Officer's promise to schedule a meeting within the next 30 days, the meeting was never scheduled by the new Appeals Officer and, 3 months later, I was told my clients would receive notices of deficiency. The requested extension were immediately provided to and signed by the new Appeals Officer. His supervisor had notices of deficiency issued without a meeting being held, despite the fact that the statute of limitations had another 1 1/2 months to run. That is an inefficient way to clear old case inventory. In one case the Appeals Officer was in the same location as the revenue agent and did seem a lot less independent when it came to disavowing the agent's position.

Lack of timeliness. The arbitrary deadlines imposed upon me after the Appeals Officer failed to fulfill statutory timelines.

While the Appeals Officer was considerate, it took a couple of reassignments to get the case heard and many months to get the decision after the conference. In fact, the process dragged on for several years and was totally unreasonable as to the time.

The timetable is the only negative aspect. A one year wait between Exam and an Appeals hearing is ridiculous.

Appeals personnel was slow to respond after 1st communication. After second and third call more than 30 days after 1st correspondence, Appeals personnel told me he was very busy and hadn't looked at the case, yet.

The only negative experience was the result of delays in reaching a decision. The elapsed time from issuance of the 30-day letter to resolution exceeded 12 months. The consequences to individual taxpayers of an adverse determination were significant.

Appeals timing is always an issue. Most of the time a statute extension is necessary to get into appeals and once in appeals that timing is extremely poor. Appeals agents also appear to be driving up the cost of representation in order to deter taxpayer.

The timetable to get my matter resolved took too long. It was approximately 1 to 2 months to get a resolution from the time I submitted the requested documents to the Appeals Officer.

Delay in some CDP cases.

Appeals brought into docketed case "late" because of District Counsel's caseload and attempted to short circuit the process because of time pressure.

Lost administrative file delayed Appeals consideration of docketed tax court case until two weeks prior to trial.

Pending appeal of OIC which was first filed 2/17/05, transferred to one office, transferred to another office, and now transferred back to first office with no contact except a letter received 9/05. There is no contact phone number. Considerable delay when case initially, assigned; lack of necessary expertise.

The paperwork to reflect the settlement seemed to take several months (longer than it took to handle the appeal through to the point where we reached a settlement).

The process has been slow, however due to the complexity of the facts we wanted fact-to-face meetings and time to thoroughly explain our positions.

Continual requests for additional information lengthened the timetable to an unacceptable level. After disclosure of all documents in taxpayer's possession and an affidavit that certain documents had been destroyed over seven year ago should be enough. Requesting

10 year-old pay records that were such information was originally disclosed. It looks like a delay tactic.

Time to receive (?) to protest too long.

Too much time elapsed between the date the Protest was submitted and the hearing before the appeal was held.

Timetable to complete process.

Timing was difficult.

I really haven't had a negative experience in the past 24 months. A few years ago, however, I had an appeal stretch on for almost 2 years. It was a very complicated case involving many different entities and individuals.

I have had several examiners and other seek to deny my clients access to Appeals and once the cases have been assigned to Appeals it has taken up to a year to have my case come before an Officer.

I have experienced significant delays with international issues because of scheduling problems of the Appeals international specialists.

Over the years the negative experiences related primarily to the inability of Appeals in some cases to make decisions and/or act quickly.

Agent had such a heavy caseload that couldn't schedule me for something like six months.

The appeal took over two years.

For a period of 28 months, my taxpayer's case was either delayed, transferred, or otherwise "lost in channels." No personnel could provide me with updates as to status of the assignment of an Appeals Officer.

Appeals is overburdened with an unrealistic workload creating a huge backlog.

Tax Shelters

Dealing with Appeals on certain tax shelter issues where a decision has already been made seems to be counterintuitive. Appeals should acknowledge at the onset which cases they can negotiate a settlement and which cases have already been decided.

In a tax shelter case, a perceived bias of the Appeals Officer in favor of the Service.

Ex Parte Communications

Ex parte communications (1)

A negative Appeals matter was one in which the Appeals Team Leader had ex parte contacts with Exam, was unprepared, and appeared unwilling or unable to exercise independent judgment.

Case where Appellate Officer discussed the case with the examining agent and agreed with her without allowing us to discuss the appeals brief we submitted to the Appellate Officer (he said he read it, but based on his comments, I doubt that he did).

Involvement in the pre-conference by exam and counsel I believe had an influence on independence.

IRS National Office's attempt to influence Appeals on an issue where IRS hazards of litigation are very high.

Input from other levels or other personnel.

The Officer was belligerent, admitted to having ex parte communications with the Examination Division.

Violation of restrictions on ex parte communication rules, allowed District Counsel and the DOJ to improperly influence their decision and their belief in the credibility of my client. In one case, the DOJ told the CDP Appeal Officer that my client was "dirty." This was totally untrue. The problem was that the DOJ early on formed an improper impression of the client. When we went to Appeals, we should have gotten a fresh look. We were totally prejudiced by the comments of the DOJ.

Other

There is a lot of fat in the process.

Appeals should be abolished if they are just going to be another enforcement arm of the IRS Exam Division.

Being tied down by unrealistic "maximum" settlement percentages on certain issues as laid out by Appeals issue coordinators.

Too much visceral reaction to tax planning. "It may be technically correct that 301 doesn't apply (reorganization context), but you have too much E & P and I'm going to apply it anyway" in spite of contrary judicial authority.

Due to the issue specialization process, the fact that no one Appeals Officer was responsible in a meaningful way for the overall outcome was extremely frustrating and unproductive.

Issue involved was a coordinated issue. Difficult to schedule meetings and Appeals Officer had no discretion.

Cases involving coordinated issues and listed transactions. Appeals is merely an extension of the enforcement arm in these matters.

The new policy that the Officers have been instructed (I believe last year) not to negotiate penalty waiver as part of the overall appeal process.

Requiring the Appeals Officer to collect some tax even when he acknowledged that his case was weak.

Difficult to believe in independence when every proposal other than IRS adjustments are rejected.

IRS loses documents and correspondence, denies the lost documents, does not efficiently communicate with taxpayer and counsel, not available by phone, deny receipt of faxes.

Appeals improperly inserting itself into the role of developing new theories in an attempt to support the underlying adjustment.

Not giving phone numbers to call, could call only by fax and then hope for a convenient time to call back.

Oversight by TGCs on various issues (including particularly research credit issues) – which has resulted in few settlements, little guidance (to appeals or taxpayers), intransigent, one-size-fits-all offers without regard to specific facts, and lengthy review that is not transparent at all to the taxpayer.

Appeals received agent's report on innocent spouse which agent did not send to taxpayer or attorney.

I had the utmost regard for Appeals and Appeals Officers. I appreciate the difficulties of tax shelter cases, and even understand a reluctance to settle such cases. I don't understand, however, the utter disregard and misapplication of applicable legal principles, especially in regard to penalties.

Panel approach and failure of Appeals to act with honesty and integrity.

The intransigence on a collection appeal with regard to issues as to the reasonableness of the initial assessment is my most negative appeal. Also, I have had problems with hobby-loss rules where the mind set is to look at the facts solely of the specific activity instead

of the surroundings – a wealthy spouse of a wealthy doctor or the attempts by a middle income family to earn a few extra dollars.

Appeals Officer said to me that he is under a quota system in violation of the Restructuring Act of 1998 because he is evaluated on his turnover rate. He also said that he is directed to treat a case as nonagreed if there is any single issue with a reasonable possibility of IRS success that taxpayer did not concede or compromise. Sounds more like OIC than Appeals. In any event, because he will not do what is demanded, my case languishes for over a year without anyone having made a substantive review of the issues. I am not a happy camper!

Appendix D

Question 6.8

Please describe the elements of your most recent positive experiences with a collection due process hearing in the past 24 months. (What factors made the experience positive—personnel, location, timetable?)

Personnel

Personnel (4)

Courteous
Good communication
Fairness
Knowledgeable

Personnel were very good.
Personnel have been good.

Personnel was professional.
Professional attitude of officer.

Personnel are generally competent.

The Settlement Officer was experienced and knowledgeable and communicated well.

I had a very knowledgeable Settlement Officer who tried very hard to come up with the right answer.

A Settlement Officer listened to our presentation with respect to a proposed offer in compromise. She presented a reasonable counter offer and we reached an amicable compromise.

The Settlement Officer proposing alternatives which both parties could consider.

Settlement Officer forwarded copies of transcripts to me, per power of attorney, before the hearing.

Officer was receptive and listened well.

Appeals Officers were fully prepared for the hearing, granted extensions when needed, granted additional time to present more facts where appropriate.

The conversations were straightforward. The Appeals Officer knew the case.

(Name) of the (city) Appeals Office is one of the fairest persons I've encountered in my practice before the IRS. I've dealt with (name) for many years and he exhibits that fairness in all of his dealings.

Appeals Officer was agreeable to extension requested by this office as a result of being impacted by Hurricane Katrina. It was greatly appreciated as the IRS has been very difficult to deal with in this respect overall.

(Name) is truly a model Settlement Officer, and she exercises independence.

Usually the agents intervened with some kind of compromise.

Willing to consider reasonable collection alternatives.

Personnel were objective and focused on the IRM. They did not seem to have the built-in bias of the Collection Division.

Appeals handled by phone calls, the time for which was agreed upon mutually before the date. The Appeals Officer is friendly (this is important), open and above board in his or her comments. The Appeals Officer makes an attempt to understand my position and tells me why he or she agrees or disagrees and gives me a chance to respond to his or her proposed decision before it is made. The Appeals Officer tells me if he or she has had any contact with IRS staff. The Appeals Officer sends me a copy of any IRS report or document that he or she thinks is controlling – like an RO's report.

The Appeals Agent was willing to listen and, I believe, understood what the issue was.

The agent was professional and seemed to thoughtfully consider my client's position even though ultimately found against us.

Positive experience was when the Officer allowed me to explain the facts surrounding the CDP hearing and then ask questions regarding the particular taxpayer before coming to a conclusion. Personnel was the most important factor.

Officer willing to work with me.

Creativity by Appeals Officer and willingness to think outside box to reach resolution rather than simply rubberstamp collection decision activity.

Appeals Officers were professional, but the case was settled factually. Other than granting the taxpayer his/her Appeal rights, the conference served no purpose.

The Revenue Officer misapplied trust fund payments to penalty, interest and the corporate portion of employment taxes. The Settlement Officer thoroughly analyzed the accounts and directed the Revenue Officer to reapply significant sums on two occasions

to the trust fund portion of the employment taxes. This despite the fact that the taxpayer was in fact a responsible person under section 6672 of the Code.

Exercise of independent judgment.

(Name) and (name) are a valuable asset to the (city) Appeals Office. They always listen to my client's position and make an independent decision.

Appeals Officers I have dealt with have been both personable and knowledgeable with no apparent pro-service bias.

Appeals Officer carefully listened to the facts and was not in any way intimidated by or predisposed towards Collection. Appeals Officer also demonstrated significant creativity and resolved the case fairly quickly. Also very professional in demeanor.

The matter involved a struggling parish church whose bookkeeper embezzled the employee withholding taxes. The Appeals Officer gave the church a most favorable interpretation of the case law.

Location

Location (3)

Location was very good.

All cases should be handled locally. All related cases (involving same taxpayer) should be more easily consolidated.

Face-to-face meeting, local meeting.

The Appeals Officer was local which made it easier to get together for conferences.

Phone access and timetable made it somewhat tolerable.

Matter was handled entirely by phone. The result overall was fair, although I thought Appeals Officer did not make a sufficient offer on the penalties being imposed.

Hearings by phone save substantial time. Document submission done by mail or fax.

Telephone hearing was very convenient.

Telephone hearing was very convenient. Settlement Officer forwarded copies of transcripts to me, per power of attorney, before the hearing.

Timing

Timetable

Timetable was fast.

Speedy resolution.

Timetable was short.

Timeliness.

Once the case was begun, it was quickly handled by the Appeals Officer.

Once we got the local office to take charge of the case, they were quick in setting up a conference.

Flexibility on due dates

Resolution

We were able to reach a good result for all parties most of the time.

Result was appropriate.

Successful resolution of penalty abatements.

A good method to resolve a case without filing a Tax Court petition.

Other

Ability to work something out after stalling at the agent level.

The value of a CDP is to get to tax court where possible.

Most recent experience was collection process initiated before Appeals considered issue substance. CDP Appeals determined that collection process was improper. Prompt resolution and independent review were positive factors.

The dispute was straightforward, basically a misunderstanding that an advocate could clear up with a written submission to Appeals and phone conferences. Not all due process appeals are so simple, however. I was pleased with the result.

I presented the facts as I understood them and asked for justice, which in several cases was granted.

Have not had a bad experience with the [city] office, and most of my appeals have been denied.

Appendix E

Question 6.9

Please describe the elements of your most recent negative experiences with a collection due process hearing in the past 24 months. (What factors made the experience negative—personnel, location, timetable?)

Personnel

Personnel

I've dealt with an Appeals Officer out of the (city) campus who seems to just repeat the party line – he always parrots what the Revenue Officers have decided. I've also encountered the same attitude from an Appeals Officer out of the (another city) campus.

In our area there is a Settlement Officer who is located with the compliance personnel – she tends to be harsh, wants to close the case quickly, and does not have the seasoned judgment necessary for the job. I had to take the case to court to get a fair look at the issue.

I had a CDP appeal where the Appeals Officer called me up without prior warning and caught me pretty much unprepared. It was a hardship case over a lien filing. His mind was made up before we started. The whole call took less than 5 minutes and I wondered afterward why I had even bothered. The AO was not interested in the hardship reasons that were involved. He only wanted to meet his timetable for the call and to cross it off his list.

Closed minded, dependent upon supervisor for advice and instructions, unable to think for himself. Ignored facts, ignored taxpayer's financial position, disbelieved taxpayer's facts in respect of financial liquidity and had no basis for disbelieve other than his supervisor, who had "glanced" at the file, drew such conclusion. Thus, he could not gainsay her. Pathetic.

There is at least one Settlement Officer who hardly ever exercises independence and who writes determinations which distort the information presented.

One hearing officer was extremely lazy on a very complicated matter and, in my opinion, issued a determination under false pretenses forcing the client to file in tax court.

Appeals Officer was unwilling to look at the cited case law and evidence. All that he was interested in was the mailing of the collection notices. Questions such as jurisdiction and convicted criminal fraud of the taxpayer's previous representative were ignored.

We filed a CDP in 2001 for taxpayer and his spouse. Soon thereafter we submitted OICs on behalf of each. Spouse also asked for innocent spouse relief. AO sent the I/S request to the field for consideration and returned the OICs and all documentation stating it would not be considered until the completion of the I/S determination. In July 2006 the IRS made an adverse determination on the I/S. AO then called stated that she was issuing a determination letter against the taxpayers and they could not submit their OICs for consideration. We then appealed to her manager who set an arbitrary deadline of 10 days for submission of complex financial data and the OICs. We met that deadline. The AO then called my partner and upon receiving a voicemail that my partner was on vacation demanded follow-up documents by close of business the following day or she would issue an adverse determination. She did not attempt to call me. Only because of luck my partner checked her voicemail from her vacation location and learned of the deadline. We then met the deadline. AO delayed decision for years and then tried to reject our CDP without considering an OICs. She and her manager felt it was proper for them to delay a decision on the I/S for 5 years, attempt to not consider the OICs and when confronted set arbitrary and capricious deadlines. Summary – unfair, dishonest, and tried to cover up their own incompetence in not making a decision on the I/S for 5 years.

Telephone conference with Appeals Officer in another state only lasted about 15 minutes because she did not understand the law regarding a lien. We were specifically told that she would have to consult with IRS counsel.

Overall, I find collections due process to be disorganized and inefficient. Personnel are generally uninformed as to case particulars and prior correspondence and taxpayer file maintenance is poorly managed.

Manager's refusal to see injustice of unyielding collection effort.

Settlement Officer was not interested in the facts. I had to complain to the manager to get them to agree to a face-to-face meeting. There was significant bias toward collection and a completely irrational determination.

The Appeals process was a complete waste of time for me and my client. I had the strong sense that the Officer was under direction to close the case in a set time frame, which precluded consideration of my client's case, and merely recited boilerplate conclusions of law. While I understand that many CDP appeals may be frivolous, current procedures make a mockery of the term due process.

When the Appeals Officer treats me like he or she is all powerful, usually accompanied with old-line formality and an attitude like I am wasting my time advocating my position – remember some of the RO's in the 1980's and early 1990's. I have to admit, this has happened less frequently I am pleased to say. The last time the person stated that they were close to retirement.

Appeals seems uninterested in reaching accommodations. In my recent CDP appeals, the Officer did not want to consider any alternative interpretation of the regulations except as

was “office policy” even though the regs. seemed clearly contrary to “office policy” (an innocent spouse case) or the impossibility of the taxpayer to pay the IRS demand, even though the taxpayer was offering \$2,000 a month (CDP appeal – taxpayer has since file bankruptcy and tax debt is dischargeable).

Unprofessional attitude, bias

Overtly misstated the law.

They were nasty and horrible to deal with. The manager was even worse. I will say that they seemed briefly to be listening to us until they had the ex parte communications with IRS personnel.

Government Position

Appeals predisposed not to agree with the taxpayer, and made unrealistic determinations based on incorrect assumptions.

Trying to get every last cent when there were not assets and attached the social security payments.

CDP hearings seem to be predisposed in favor of the government.

Seemed to just take the IRS position, collect at all costs.

As stated in previous answer, seemed almost exclusively predisposed to government’s position, to the almost absolute conclusory rejection of the taxpayer’s position.

Bias on the part of local Appeals Officer toward a particular taxpayer mirroring treatment of taxpayer by Revenue Officer. In another instance, it was my perception that personal prejudice against the taxpayer for factors unrelated to the issue at hand strongly factored into the Appeals Officer’s decision.

The Officers that do CDPs simply are unwilling to consider the taxpayer’s side of the issue and in every case in my experience rule against the taxpayer. I think they are a waste of time.

A client who had an installment situation who was humored by a (city) Conferee, who indicated what would happen at Appeals in an Equivalent Decision hearing and strongly requested the withdrawal of the Appeal. Sure enough, there appeared to be no taxpayer tolerance or any open mind whatsoever during the conversation with the Appeals Office in which alternative IRS remedies were asked to be considered.

Due process hearings are only there so the government can say that they offered a due process appeals. They are just going through the motions.

The predisposition against settlement.

I have overall had satisfactory results with CDP in many cases in the sense that the offers were accepted etc. However, the Settlement Officers were less willing to consider the taxpayer's position and it frequently required substantial extra effort to get the proper result. There seemed to be a predisposition against resolution.

Timetable

Timetable

Timetable and repeated requests for more information, including updated financial information.

Timetable too long.

Everything just takes so long.

Timetable is unacceptable.

Time to resolve.

Delays

Delays in scheduling a face-to-face meetings.

Delay in scheduling hearing.

Took too long to get a hearing.

Appeals is so behind on cases, they do not do anything for at least two years or more.

Fairly slow decision-making.

Most negative was CDP hearings that took forever to resolve and then, because the case has become over-aged, the agent is only interested in closing the matter and not actually listening to the particular facts of the matter.

Requested due process hearing and in two months, have received no contact from Appeals, the RO continued on, denying receipt of the request for hearing, did not stop collection processes, admitted no wrong. Just like the old days.

When I submitted the request, I received a letter from a non-Appeals Officer asking for more information and was given less than a week to get this information to the IRS.

It took forever to even get to a person who would even listen and then it took him an excessive time to achieve a resolution.

Long wait for hearing. Result changed twice during telephone conferences. Whole process was longer than 12 months.

Lack of timeliness. The lack of information produced by the Appeals Officer. The arbitrary deadlines imposed upon me after the AO failed to fulfill statutory guidelines.

Location

Location (3)

Sometimes when the Appeals Officer is in a different city and the matter is complex (e.g., trust fund issues with how payments are applied), the process takes a long time and mistakes are made.

Conferences seem rushed, particularly if done via telephone call.

Long distance communications are sometimes difficult.

Ex Parte Communication

Not independent, numerous improper ex parte communications.

Though the agent understood the issue, the agent was unable to act based on the opinion of the IRS attorney involved with the case (ex parte communication was done after authorization).

Result

Inability to work out something satisfactory for a client.

Could not get the result that I felt was the right one.

Other

Everything (2)

There were no completely positive ones.

No communications, no letters, nothing. Just waiting.

My main problem was a client who didn't tell the truth.

After a lengthy submission and over 400 pages of documents obtained through a FOIA request, none of the issues raised was addressed.

With our lower income client, they absolutely refuse to consider an OIC if they determine that the client qualifies for CNC. This is a form of economic discrimination.

Refusal to even consider a request for an installment agreement because taxpayer was delinquent with his current income tax return.

Unwillingness to listen to argument that notice of intent to levy was issued before any alternatives explored with Compliance personnel.

Matter was never assigned to Appeals and I had to involve Taxpayer Advocate.

Appeals Officer did not have the original amended return – IRS misdirected it to (city), per letter from (same city) IRS office to me, dated 9/28/06. I sent a copy to the Settlement Officer.

Excessive/duplicative filings.

Appendix F

Question 7.8

Please describe the elements of your most recent positive experiences with an appeal of an offer in compromise or a non-CDP collection matter in the past 24 months. (What factors made the experience positive—personnel, location, timetable?)

Personnel

Personnel (2)

Professional, well trained

Courteous

Reasonable fair and practical

Took time to review the file

Creativity is important

Some cooperation

Good communication

[Name] in the [city] office is great.

Appeals Officer was professional and willing to listen.

Certain Appeals Officers fairly consider the intent of Congress in enacting the 1998 legislation.

We were able to amend the offer and get it accepted. The Officer seemed interested in finding a way to make it work rather than a reason to uphold the rejection by the agent.

The local Appeals Officer handled the matter quickly as a favor.

More reasoned view of clients' ability to pay compared to OIC examiner.

She was very cooperative in granting extensions of time to obtain additional information for my client's office in compromise.

Appeals Officers have been personable and knowledgeable, and properly applied the law.

Almost all cases assigned to the same Settlement Officer. This Officer always listens to what we have to say, deals with the actual evidence presented in deciding what to do and makes their own decision on what to do. A real pleasure.

The Appeals Officer was willing to listen to me and to look at photographic evidence of why the taxpayer's house was not worth what the ad valorem tax appraisal was.

Appeals was able to see the mistakes in the offer calculation and quickly get to an accepted offer.

Overall, my experience with appeals of OIC and non-CDC cases has been good. The Officers are knowledgeable and generally fair. They seem to have more flexibility to settle a case than do the Officers dealing with OICs at the lower level.

The Appeals Officer was fair and reasonable and requested my client's permission to have an ex parte communication with the Collections Officer with respect to one specific matter of importance (which my client gladly permitted).

Appeals recognized that client was in difficult financial and health position and decided to put matter in non-collectible status.

They considered special circumstances, such as how local factors influence asset valuation and extraordinary expenses in considering RCP.

The successful OIC result was where the AO looked at the facts outside of the normal IRS "Guidelines" and decided that money today is worth more than nothing in the future.

Lawyer Appeals Officers were more educated, more knowledgeable and better trained to handle Appeals than most non-lawyer Appeals Officers.

The best element was the fact that I had actual communication with a real person, and that person was willing to communicate with me. The second best element was the fact that the person was familiar with my client's case.

Most positive was when the Officer and I went through the RCP including the assets and future income potential together during the conference.

Personnel was very professional, but her hands were completely tied.

I successfully resolved an OIC in the [city] Appeals Office. The communication and technical knowledge of the Appeals Officer and supervisor were an asset to the resolution.

Face-to-face. AO realized collections had abused discretion. AO humble enough to change mind.

I have had offers approved by Appeals. In one case, District Counsel has rejected the taxpayer's offer although the Appeals Officer believes it is in the best interest of the IRS to accept the offer. Has been re-submitted to District Counsel for reconsideration.

Location

Location (1)

Location was fine.

Local office

Most conferences have been local. This helps by allowing more complete presentations and permitted quick follow up with additional information that the Appeals Officer may request.

Telephonic and quick resolution.

Resolution by telephone.

Outcome

The resolution

Able to work out a reasonable offer

A good result was reached for all parties.

Taxpayer's OIC was granted after a hearing for the amount originally offered.

Timing

Prompt response. Improper application of rules regarding projection of income was a negative. This became irrelevant and the promptness became primary.

Once in Appeals, the matter was concluded rapidly.

Other

The hearing was based on facts, not hazards.

One was at the Service Center Appeals level and I was surprised at the efficiency and dispatch with which the case was resolved. The amount paid was higher than that offered, but it was fair to both parties and resulted in resolution of the offer.

Appendix G

Question 7.9

Please describe the elements of your most recent negative experiences with an appeal of an offer in compromise or a non-CDP collection matter in the past 24 months. (What factors made the experience negative—personnel, location, timetable?)

Personnel

Personnel (1)

Most Appeals Officers have a tendency to approach an appeal with an open mind – they give the prior decision more weight than they should and are often unwilling to give any weight to the argument being presented.

Unwillingness to consider age and health issues of client.

Unwilling to listen to reason and the facts of the income/expenses as presented.

The personnel were just unwilling to listen.

Appeals Officer was an Exam person and could not comprehend the offer program – she also was math-challenged. We wasted time on irrelevant issues and had to argue about how to calculate RCP but finally got the offer accepted.

The Appeals Officer is a former revenue officer, and acted like a revenue officer throughout the proceeding.

Recently promoted RO, bias, failure to follow IRS procedures, failure to disclose matter upon which he would rely when it was not disclosed during examination, disregard of controlling circuit court of appeals precedent.

Unreasonable demands as to future ability to pay by taxpayers; blatant disregard of community property laws, the Manual and [made?] statements to the effect that taxpayers cannot just get away with not paying their taxes because it isn't fair.

It was a complete waste of time with no effort to apply the law only and arbitrary set of rules established by the Service to make it “uniform”.

The Appeals Officer would not even discuss the issues in any detail. He simply called and said he was denying the appeals and we argued about why instead of letting me make my case.

While my client was not an officer nor had check signing ability, the Appeals Officer had the client substantially increase the amount offered to accept the OIC.

Once they determine that a client is CNC, they will not consider an offer. Also, the Appeals Officers we have worked with disregarded the IRM in calculating RCP.

Biased Appeals Officer (same as previous one), lack of knowledge of purpose of OIC.

The Appeals Officer had already determined that the OIC was going to be rejected and had no desire to really listen to the taxpayer's reasoning.

After months of negotiation with the Appeals Officer, he recommended an OIC for acceptance. His boss overruled his decision. When we met with the manager, she had no adequate answer for her rejection of the offer other than she thought the taxpayer could pay more even though....

Appeal appeared to be open and shut. Appeals Officer stated at outset that he did not have to consider the risks of litigation or the costs thereof.

Lack of common sense in interpretation of facts and application of rules by personnel.

Appeals Officer had no authority whatsoever to resolve matter, served only as information gatherer, probably for collection purposes.

Predisposition to get rid of case on procedural pretext.

In a CAP appeals, Appeals refused to consider very unusual circumstances in deciding what would be done in the CAP. Very bureaucratic, only interested in not making waves within Appeals, not interested in reaching a result that makes sense.

The most recent case demonstrated a very closed-minded and overly restrictive application of the OIC rules. There are not clear-cut guidelines and the Appeals Officer was convinced that the taxpayer should pay the entire amount regardless of the facts.

Failure to follow their own guidelines re projection of income.

Rude, arrogant, defensive, negative personnel.

Predisposed. Took a very unjustified defensive position. Had to seek help from the National Taxpayer Advocate's Office. May also have been overly influenced by Counsel's office. Need to be independent.

Weak officer; strong supervisor. Officer unable to reach a decision without obtaining permission from supervisor. When asked whether obtaining supervisor's views before making determination was proper for an Appeals officer, he became irritable and defensive.

The Appeals Officer acted as if there is a presumption that the OIC agent was correct and that the OIC decision could only be overcome with an overwhelming quantity of clear and convincing evidence.

Both appeals involved trust fund recovery penalty assessments. Both Appeals Officers (from two different states, by the way) bought the Revenue Officer's recommendation without reservation; and both were not willing to review additional facts.

I believe the Revenue Officer attempted to influence the Appeals Officer. However, I don't think the attempt was successful. I never discussed this with the AO but the RO did indicate such a contact was attempted.

Timing

Timeliness

Length of wait.

Most negative were the timetables for resolving the matters.

I'm still waiting.

Just the time factor.

Delays

Repeated demands for more and more info – by the time that stopped, the info was stale and we had to start again.

Endless delay with too many requests for updated financial materials.

Held onto the case for over two years and then gave taxpayer 10 days to fully document 433 information and refusing to consider that information when it was submitted.

Artificial timeframes to update information.

Location

Case moved all around the country to several Appeals Offices and took almost one year to even get heard.

Location of conference far from taxpayer's and representative's location.

Location was not convenient for client.

Dealing with Appeals Officers far away from my area and not familiar with local expenses.

Other

Lack of sympathy for my client, but my client was not that sympathetic.

It was decided before I showed up.

Decisions were checklist based, not based upon individual circumstances.

Almost impossible to settle on collectability today.

Result was not reached. Case was resolved later with a revenue officer.

The OIC process is unrealistic. Taxpayers opting for this remedy need help. The guidelines do not allow for case by case analysis.

Appeals could not close the file because of procedural missteps by the initiating agent.

There have not been many positive experiences as Appeals Officers have been categorically denying OIC appeals.

Not a positive development. Sent in request for IRS release of right of redemption for realty. No readily available address for Special Procedures could be located.

No flexibility to allow a waiver of rules in some cases for purposes of more efficient processing of cases.

Not able to work out a reasonable offer.

Dependence upon approval from Memphis; they use archaic rules that prevent consideration of decent offers; also detest the new payment requirements.

Independence lacking.

Prejudgment

Appeals could not close the file because of procedural missteps by the initiating agent.

Appendix H

Question 8.8

Please describe the elements of your most recent positive experiences with an innocent spouse appeal in the past 24 months. (What factors made the experience positive—personnel, location, timetable?)

Whole experience was positive.

Personnel

Personnel (1)

The Appeals Officer was very sympathetic and made my client feel good about herself for the first time in years. My client was not used to having someone listen to her instead of her husband. This was very empowering for her.

She studied the file, she understood the evidence, and she was prepared to decide the case.

Experience of Appeals Officer and willingness to analyze relatively complex factual issues.

The Appeals Officer had a much better understanding of the issues of duress and forgery and a much better understanding of the knowledge standard that the centralized IS unit.

The Appeals Officers appear again to be fair and reasonable, however the innocent spouse rules are too restrictive and it is difficult to obtain a settlement of the case.

Officer understood the facts and the law and properly applied them to the facts of the case.

Appeals Officers show a desire to resolve the cases. The contrast with CDP settlement is like day and night. This may partly be a result of IRS liberalization of the rules in Rev. Proc. 2003-61....

Despite Appeals Officer being several states away, she received all docs by fax, was flexible with scheduling teleconference time.

Appeals Officer considered all facts and asked meaningful questions regarding the taxpayer's situation.

Via verbal and written correspondence, the Appeals Officer made a swift determination of the merits of the claim, she followed up with me personally in an effort to clarify and resolve any questions she still ha after reading the examiner's case file.

I found the Appeals Officers were experienced, fair and reasonable.

Personal call with a promise to help resolve.

Appeals Officer carefully considered written presentation of taxpayer's claim and handled everything professionally. Timetable for determination was long, however.

Result

Result (1)

Got the relief requested, which was the correct result. Appeals was willing to give time to let taxpayer make additional arguments and those were seriously considered.

Proper result was obtained.

Fair treatment, applied the facts and law.

Fair resolution.

Presented case to AO on an 6015c case and received an appropriate full concession.

Result was favorable after reviewing evidence submitted by me.

We won.

When we challenged it, the spouse claiming "innocence" withdrew claim.

Timetable

The decision was handled within 6 months.

A recent campus appeal was settled on very fair terms, very quickly, in less than 60 days.

Location

Location (3)

Location was in local IRS office.

Appeal was handled by correspondence and telephone. No need for face-to-face.

Other

Innocent spouse claims require face-to-face and maybe a meeting with the wife to show a lack of knowledge of the business activities of the husband. Signing of the return is given far too much weight, as the spouse often has no idea what she is signing.

Procedure was spelled out in detail for taxpayer by IRS.

Explained position.

Appendix I

Question 8.9

Please describe the elements of your most recent negative experiences with an innocent spouse appeal in the past 24 months. (What factors made the experience negative—personnel, location, timetable?)

Personnel

Personnel (1)

Appeals Officer was biased against taxpayer due to taxpayer's ethnicity (Asian) and this caused her whole approach to the case to be biased—we settle the case with IRS counsel because we could get nowhere with Appeals.

Appeals suffer from a pro-wife prejudice.

Personnel's prejudice against requesting party.

Taxpayer was denied 6015c relief. Taxpayer then filed Tax Court petition. After a minimal review by Counsel attorney, the IRS conceded the case in full. The AO forced litigation on a case where concession by the IRS was the only appropriate decision.

The Appeals Officer limited herself to the record from examination. When presented new factors, she indicated that she only had to review the administrative file.

Appeals Officer really didn't have a good grasp of the legal standards.

Incompetent (local) Appeals Officer allowed 10 year period of limitations on collection to lapse in two separate tax years by waiting almost 2 years to decide appeals. So result was very favorable to the taxpayer, but only through Appeals Officer's negligence.

Taxpayer was granted relief under 6015(c), but Appeals Officer wouldn't tell taxpayer how much she was liable for until taxpayer agreed to the decision. Ultimately taxpayer had to file U.S. Tax Court petition to resolve because of Appeals Officer's inflexibility.

Complete inability and/or refusal to analyze the facts. Flat out and out incompetence, and, in one case, I was lied to about certain aspects of the case.

We had a strong case but the Appeals Officer refused to agree with us. We filed in Tax Court and the attorney conceded 100% before we tried it.

My relationship with District Counsel's Office was more satisfactory than my relationship with the Appeals Officer.

The Appeals Officer was totally negative and gave short shrift to the taxpayer's claim.

Appeals received agent's report on innocent spouse which agent did not send to the taxpayer or to attorney.

Timetable

I had to get local ombudsman office to tell me the case status after protest had been on file over 1 year.

A little slow getting there.

It can take over 6 months for local Appeals to contact you on the non-docketed IS cases.

It took WAY too long (by several months) from the submission of taxpayer's position for the Appeals Officer to make up her mind.

It took too long to get heard by Appeals.

The back-end processing. After Appeals agreed that one of our clients was entitled to innocent spouse relief it took forever to get her refund released.

The government's grossly unreasonable delay in resolving the issue caused the taxpayer to lose the property involved in a foreclosure action. Had the government acted expeditiously, the taxpayer could have refinanced the property and satisfied the obligation.

Timing of resolution—still pending after 18 months.

Government's Position

While Appeals tried to be independent, I believe they were swayed by the government's position. They were very hesitant to rule in favor of the innocent spouse and litigation ultimately ensued. The taxpayer got a 100% victory.

Other

The protest and appeal requested that the case be transferred to the local regional or district office and that a hearing be scheduled. Neither request was granted.

The rule applied to income from jointly titled property in this situation was arbitrary and not rooted in local or federal law. It was only about 20% of the deal and we ate it, but it did not sit well with me.

Difficulty of factual findings, poor work up at collection.

Failure to follow to complete promise to resolve and a negative response which showed the responder was not aware of the personal call nor the supporting data supplied.