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November 16, 2015

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on Notice 2015-72

Dear Commissioner Koskinen:

Enclosed please find comments on Notice 2015-72 concerning the administrative appeals process ("Comments"). These Comments are submitted on behalf of the American Bar Association Section of Taxation and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

The Section of Taxation would be pleased to discuss the Comments with you or your staff if that would be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "George C. Howell, III".

George C. Howell, III
Chair, Section of Taxation

Enclosure

CCs: William Wilkins, Chief Counsel, Internal Revenue Service
Erik Corwin, Deputy Chief Counsel (Technical), Internal Revenue Service
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**AMERICAN BAR ASSOCIATION
SECTION OF TAXATION**

**COMMENTS ON NOTICE 2015-72 CONCERNING THE ADMINISTRATIVE
APPEALS PROCESS**

These comments (“Comments”) are submitted on behalf of the American Bar Association (“ABA”) Section of Taxation (the “Section”) and address Internal Revenue Service (“Service”) Notice 2015-72, which includes a proposed Revenue Procedure for the administrative appeals process in cases docketed in the United States Tax Court (“Tax Court”). These Comments represent the position of the Section and have not been approved by the Board of Governors or the House of Delegates of the ABA. Accordingly, these Comments should not be construed as representing the policy of the ABA.

Principal responsibility for preparing and reviewing these Comments was exercised by the Section’s Committee on Administrative Practice Chair George Hani and the Section’s Committee on Court Procedure and Practice Chair Juan Vasquez, Jr. Substantive contributions were made by Jennifer Breen, Jeremiah Coder, James Gadwood, Natasha Goldvug, James Malone, Jr., Mary McNulty, Diane Ryan, and Mary Slonina of the Section’s Administrative Practice Committee, Alexandra Minkovich and Joshua Odintz of the Court Procedure and Practice Committee, and Christine Speidel, Andrew Roberson, Scott Schumacher, and Andrew VanSingel of the Pro Bono & Tax Clinics Committee. These Comments were reviewed by Megan L. Brackney, the Section’s Council Director for the Administrative Practice Committee, Mary McNulty, the Section’s Council Director for the Court Procedure and Practice and on behalf of the Committee on Government Submissions, and Peter H. Blessing, the Section’s Vice Chair (Government Relations).

Although many of the members of the Section who participated in preparing these Comments have clients who may be affected by the federal tax principles addressed herein or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments. Additionally, while the Section’s diverse membership includes government officials, no such official was involved in any part of the drafting or review of these Comments.

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Date: November 16, 2015

INTRODUCTION

We commend the Service for proposing to update Revenue Procedure 87-24, 1987-1 C.B. 720 (“Rev. Proc. 87-24”), which describes the practices for the administrative appeals process in cases docketed in the Tax Court. The proposed revenue procedure is welcomed guidance, as it clarifies the procedure by which docketed cases are referred to the Office of Appeals (“Appeals”) for settlement consideration. The proposed revenue procedure provides more timelines and parameters governing the flow of a case between the Office of Chief Counsel (“Counsel”) and Appeals than the current Rev. Proc. 87-24, which is especially important in a period of increased litigation in the Tax Court. In addition, Notice 2015-72 carries out the spirit of the Internal Revenue Service Restructuring and Reform Act of 1998 (“1998 Act”) by preserving Appeals’ independence. Preserving the independence of Appeals is important to the tax system, as it encourages taxpayers to work with Appeals to resolve tax controversies without litigation, and avoids burdening taxpayers and the Federal Government with the cost of litigation in the Tax Court.

We understand that the proposed revenue procedure was not intended to modify the current practice materially as prescribed by Rev. Proc. 87-24. In respecting that objective and taxpayers’ access to administrative resolution opportunities, the revisions would not be expected to broaden the scope of Counsel’s responsibility vis-à-vis Appeals in docketed settlements. Consequently, as a general matter, our comments are largely focused on maintaining the respective functional roles. Appeals’ mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer. Counsel’s mission is to provide a correct and impartial interpretation of the internal revenue laws and the highest quality legal advice to, and representation of, the Internal Revenue Service.

With the foregoing in mind, we recommend that the final revenue procedure:

1. incorporate references to the application of the *ex parte* rules to the examination function in docketed cases;
2. clarify whether taxpayers need to take any affirmative steps to forego settlement consideration by Appeals;
3. specify whether a case can be returned to the same Appeals officer in cases that had previously been considered by Appeals but remain eligible to be referred back to Appeals after being docketed in the Tax Court;
4. elaborate and clarify the limited circumstances in which docketed cases will be ineligible to be returned to Appeals due to “sound tax administration” and the interrelationship with the designation process;
5. limit the circumstances in which Counsel may delay forwarding a docketed case to Appeals;

6. limit the use of informal discovery in cases involving *pro se* taxpayers and ensure Appeals consults with Counsel with respect to informal discovery requests submitted by taxpayers;
7. clarify how Appeals, Counsel, and the examination function expect to interact if something new is presented for the first time while a docketed case is at Appeals;
8. clarify that Counsel's role in documenting the agreement reached between Appeals and the taxpayer is limited and expressly state that Counsel may not modify or alter the agreement reached between Appeals and the taxpayer; and
9. create a priority (for both Appeals and Counsel) for cases involving frozen refunds.

We discuss our recommendations in more detail below.

DISCUSSION

1. **Section 2.03: Application of the *Ex Parte* Rules**¹

We respectfully suggest that the final revenue procedure incorporate references to the application of the *ex parte* rules to the examination function in docketed cases.

Section 2.03 correctly points out that the *ex parte* rules in Rev. Proc. 2012-18 do not apply to communications between Appeals and Counsel in a docketed case. Rev. Proc. 2012-18, section 2.06(a). However, the final revenue procedure should also affirm that the *ex parte* rules in Rev. Proc. 2012-18, particularly section 2.03(1), continue to apply to communications between Appeals and the examination function even in a docketed case. Reinforcing that aspect of the *ex parte* rules is important to the independence of Appeals (real and perceived) because Section 3.12 (discussed below) contemplates that Counsel will “work with” the examination function in the event a new issue is raised at Appeals. We suggest that the first sentence of Section 2.03 be revised to read as follows: “Under Rev. Proc. 2012-18, 2012-1 C.B. 455, for cases docketed in the Tax Court, the rules prohibiting *ex parte* communications continue to apply to communications between the Office of Appeals (Appeals) and the examination function but do not apply to communications between Counsel and Appeals.”

In addition, it would also help reinforce the independence of Appeals to make clear that the examination function cannot circumvent the *ex parte* rules by using Counsel as a conduit to Appeals. We suggest the last sentence of Section 2.03, which observes that Counsel and Appeals share a responsibility to interact in a manner that preserves and promotes Appeals’ independence, be revised to say: “Any time Counsel involves the examination function, for example pursuant to section 3.12 below, Counsel and Appeals will ensure that such involvement complies with the *ex parte* rules of Rev. Proc. 2012-18 and preserves and promotes Appeals’ independence.”

2. **Section 3.01: Taxpayer Conduct that Prohibits a Docketed Case from Being Referred to Appeals**

We respectfully suggest that the final revenue procedure clarify which actions (if any) a taxpayer must take in order for a case to be referred to Appeals, as well as which actions prohibit a docketed case from being referred to Appeals.

Section 3.01 provides that Counsel will refer a docketed case to Appeals unless (1) Appeals issued the notice of deficiency or made the determination that is the basis of the Tax Court’s jurisdiction, or (2) the taxpayer foregoes settlement consideration by Appeals. The draft revenue procedure appears to contemplate an automatic referral to Appeals, absent an exception. This reflects our experience under Rev. Proc. 87-24 as well as the preferences of the vast majority of taxpayers. In addition, it provides additional support to the *pro se* taxpayer in navigating the administrative process. Appeals is uniquely trained and experienced in assisting

¹ Unless otherwise indicated, all “Section” references are to Notice 2015-72.

the less sophisticated taxpayer in understanding the complications as well as the settlement opportunities within that process.

If the default handling of a newly docketed case is its referral to Appeals, it would be helpful to state so unequivocally and to add direction to taxpayers on how they “forego[es] settlement consideration by Appeals”. Should the taxpayer state their decision to bypass Appeals affirmatively when the statutory notice is issued? How would this preference be expressed and communicated to Counsel? Does the Service contemplate that Counsel will reach out to the taxpayer at the appropriate time and ask if the taxpayer desires not to have the case referred to Appeals for settlement consideration, and only if the taxpayer at that time indicates that it does not desire that the case be referred to Appeals has it “foregone” the opportunity to have the case considered by Appeals? If so, we would suggest that both the manner and timing of that outreach to the taxpayer be added to the final version of the revenue procedure.

We suggest the procedures be revised to reflect that Counsel will reach out to the taxpayer within 15 days of the case being “at issue” in the Tax Court to ask if the taxpayer does not consent to the case being referred to Appeals and that, if Counsel does not receive a notice of non-consent, Counsel will then refer the case to Appeals within 15 days of receiving the taxpayer’s response. In the absence of a response from the taxpayer within 15 days of Counsel’s request, the case would proceed to Appeals. This change would make clear that a “taxpayer foregoes settlement” only through an actual response to an inquiry from Counsel after the case is docketed in the Tax Court.

Notification to the taxpayer of whatever action is taken is particularly important to *pro se* taxpayers. Many *pro se* taxpayers become disengaged and unresponsive during the Tax Court litigation process. Taxpayers are more likely to participate if they have regular contact with the Court, Counsel, or Appeals. It is difficult for *pro se* taxpayers to wait several months without hearing anything and without having an individual to contact about their case. This is particularly important for taxpayers who have not had a person assigned to their case prior to the filing of a Tax Court petition. Appeals or Counsel should reach out quickly, such as within 30 days, to any *pro se* taxpayer whose deficiency stems from a correspondence examination, math error, or automated underreporter process. We believe this would increase taxpayer engagement and promote the prompt resolution of *pro se* cases.

In addition to sending a letter, we suggest that Counsel consider telephoning *pro se* taxpayers to notify them that their case is being sent to Appeals. Similarly, it would be helpful if the Appeals Officer assigned to the case would call the taxpayer immediately upon receiving the case and then follow up with a letter advising the taxpayer of the documents and information needed. Low-income taxpayers tend to move more frequently than the general population, and often a taxpayer’s cellular telephone number is more stable than his or her mailing address. Taxpayers’ telephone numbers currently appear on Tax Court petitions and are, therefore, available to Counsel and Appeals.

Providing the opportunity for an interactive exchange between Counsel and the taxpayer shortly after the case is at issue may also have the added benefit of identifying cases susceptible to a quick resolution where the issue is simple and the proof is at hand. Taxpayers often contact low-income taxpayer clinics very late in the 90-day period to file their petition or after receiving

a stuffer notice from the Tax Court. Currently, the Tax Court includes a clinic stuffer notice with the Acknowledgment of Receipt of Petition. In many cases in which taxpayers contact low-income taxpayer clinics, the clinics are able to identify quick and easy ways to resolve the cases. Additionally, many *pro se* taxpayers are unable to navigate the correspondence examination process, despite having a clear-cut legal case supported by documentary proof. In cases in which Counsel and the taxpayer's representative believe the case should be settled immediately, there should be a process for resolving the case quickly without going to Appeals.

If the final revenue procedure is not revised to allow back-and-forth between Counsel and the taxpayer before the case is sent to Appeals, then clarification is needed so that the phrase "the taxpayer foregoes settlement consideration by Appeals" reflects taxpayer action or decision-making only after the case is docketed with the Tax Court. It is not uncommon for a taxpayer to choose to docket a case with the Tax Court and to bypass Appeals. Sometimes taxpayers bypass Appeals simply by asking the examination function to issue a Statutory Notice of Deficiency instead of a 30-day (or 60-day) letter. In other instances, the Service issues a Statutory Notice of Deficiency (instead of a 30-day (or 60-day) letter) because the taxpayer declined to extend the statute of limitations for assessment. In our experience, neither of these situations prevents a case from being referred to Appeals under Rev. Proc. 87-24. Indeed, Section 3.02 of the Notice allows the referral to Appeals in cases in which consideration by Appeals was cut short by an "impending expiration of the statute of limitations on assessment."² Thus, we do not believe that the Service views a taxpayer's refusal to extend the statute of limitations as the taxpayer "foregoing settlement consideration by Appeals." In any event, we suggest that this be made clear in the final revenue procedure, which could be accomplished by revising the second circumstance in Section 3.01 to be "the taxpayer, after filing its petition with the Tax Court, foregoes settlement consideration by Appeals."

3. Section 3.02: Can Cases be Referred Back to the Same Appeals Officer?

We respectfully suggest that the final revenue procedure specify whether a case can be returned to the same Appeals officer in cases that had previously been considered by Appeals but remain eligible to be referred back to Appeals after being docketed in the Tax Court.

Section 3.02 allows certain cases that have been previously, but not fully, considered by Appeals to be returned to Appeals after being docketed. For cases that are referred back to Appeals under Section 3.02, an open question is whether those cases can be returned to the same Appeals officer. We suggest that the final revenue procedure specify whether such cases can (or cannot) be returned to the same Appeals officer.³

² See also Treas. Reg. § 601.106(d)(3)(iii) ("If the deficiency notice in a case docketed in the Tax Court was not issued by the Appeals office and no recommendation for criminal prosecution is pending, the case will be referred by the district counsel to the Appeals office for settlement as soon as it is at issue in the Tax Court.").

³ In addition, related to Section 3.02, we suggest a slight grammatical revision in the first sentence, which provides: "If Appeals issues a notice of deficiency or makes a determination without having fully considered one or more issues because of an impending expiration of the statute of limitations on assessment, Appeals may include" As currently drafted, the qualifier—"without having fully considered one or more issues because of an

4. **Section 3.03: Cases Ineligible to Be Referred to Appeals**

We respectfully suggest that the final revenue procedure elaborate and clarify the limited circumstances in which docketed cases will be ineligible to be returned to Appeals due to “sound tax administration” and the interrelationship with the designation process.

The proposed revenue procedure appears to permit Counsel to designate a case for litigation informally (outside of the formal designation process outlined under I.R.M. § 33.3.6.2). The first sentence of Section 3.03 is: “Counsel will not refer to Appeals any docketed case or issue that has been designated for litigation by Counsel.” The second sentence in Section 3.03 is: “In limited circumstances, a docketed case or issue will not be referred to Appeals if Division Counsel or a higher level Counsel official determines that referral is not in the interest of sound tax administration.” This provision appears to continue the previous carve-out under Section 2.08 of Rev. Proc. 87-24 for withholding Appeals’ consideration while significantly diminishing the protections afforded taxpayers in the current procedure. Under Section 2.08 of Rev. Proc. 87-24 the Director of the Tax Litigation Division or the Deputy Associate Chief Counsel (International) is required to consult with both the National Chief of Appeals and Division Counsel before making a determination to deny Appeals’ consideration of a taxpayer’s case. Under the language in the draft revenue procedure, that determination is wholly within the discretion of Division Counsel under a new but undefined standard of “sound tax administration.” Appeals has no role in the procedure. National Office Counsel has no required role. We respectfully suggest that the checks and balances imbedded in the current provision be retained and that the final revenue procedure elaborate and clarify the limited circumstances in which docketed cases will be ineligible to be returned to Appeals due to “sound tax administration.” In addition, we respectfully request that provisions be added to allow for taxpayer input into the decision similar to those in the designation process under I.R.M. § 33.3.6.2.

In addition, the interrelationship with the formal designation process is unclear. While we understand why a case or issue that has been designated for litigation would not be referred to Appeals, the creation of an additional category of informal designation without an opportunity for taxpayer input or the checks and balances of substantive and procedural review afforded under the I.R.M. § 33.3.6.2 designation process would seem to erode the intended systemic taxpayer protections. Furthermore, the standards for this additional category are unclear as they appear to use a standard already considered as part of the existing process for designating issues for litigation. *See* I.R.M. § 33.3.6.1(1) (“cases are designated for litigation in the interest of sound tax administration”).

In the event this informal designation category is retained, we respectfully suggest that estate tax cases be excluded. Estate tax cases are unique in that the statute of limitations cannot

impending expiration of the statute of limitations on assessment”—could be read as applying only when Appeals “makes a determination.” If this is not the Service’s intention, we suggest that the final revenue procedure should revise this sentence to be: “If Appeals, without having fully considered one or more issues because of an impending expiration of the statute of limitations on assessment, issues a notice of deficiency or makes a determination, Appeals may include”

be extended. Consequently, Appeals frequently considers estate tax cases after they are docketed. Estate tax cases should only be subject to designation under the formal process of I.R.M. § 33.3.6.2.

With respect to cases or issues that have been designated for litigation, it would be helpful to clarify that the final revenue procedure is not intended to impact current practice as to how these cases and issues are handled. In particular, it would be helpful for the final revenue procedure to reflect the current practice in the Internal Revenue Manual that, “[i]n general, the designation of an issue in a case will not preclude the settlement of the remaining issues after the case is docketed.” I.R.M. § 33.3.6.1(3).

Section 3.03 also provides that “[i]f Counsel determines that a docketed case or issue will not be referred to Appeals, Counsel will notify taxpayer that the case will not be referred to Appeals.” The draft revenue procedure provides no time frame for when such notice should be given. We suggest that the same time frame for the referral that is presently in Section 3.04 (30 days from the case being “at issue” in the Tax Court) also apply to Counsel notifying the taxpayer that the case will not be referred to Appeals. At the 30-day mark from the case being “at issue” in the Tax Court, the taxpayer would want to know, and fundamental fairness would require the taxpayer be informed of, Counsel’s decision as to whether to refer the case to Appeals (or whether there has been an approved delay of such decision, as discussed below). At a minimum, the “prompt notification” requirement that was in Section 2.09 of Rev. Proc. 87-24 is not present in the draft revenue procedure and should be added.

5. Section 3.04: Timing of Referral to Appeals

We respectfully suggest that the final revenue procedure limit the circumstances in which Counsel may introduce any delay in forwarding a docketed case to Appeals. The role of Appeals is to settle cases and that role is most successfully carried out in docketed cases when referrals to Appeals are swift.

Section 3.04, which concerns the timing of a referral to Appeals, provides examples of circumstances under which Counsel could delay forwarding a docketed case to Appeals. One example cites a need for Counsel to retain an administrative file for “early trial preparation”. Historically, Counsel's need for an administrative file under these circumstances has been addressed by Appeals providing copies of the file so both functions could work simultaneously on their respective responsibilities. We respectfully suggest that the practice be continued and that this example be removed from the final revenue procedure.

A second example provided in Section 3.04 is that “Counsel may delay forwarding a docketed case to Appeals when Counsel anticipates filing a dispositive motion.” As an initial matter it would seem that a case with issues not related to the dispositive motion could be referred to Appeals for settlement consideration on those issues while any dispositive motion is addressed. Secondly, this example appears to illustrate a situation where Counsel is sufficiently confident in its legal position to delay settlement discussion while a pre-discovery motion is pending. We respectfully suggest that, in many situations, Appeals is the most appropriate forum for potentially resolving those issues before imposing on the court's resources.

In addition, Section 3.04 requires Counsel to notify a taxpayer if referral to Appeals will be delayed by more than 90 days but does not specify a time frame for providing such notice. As noted above, we believe Counsel should be required to keep the taxpayer informed at the relevant decision points, so that the taxpayer is aware of the case status.

6. **Section 3.10: Informal Discovery**

We respectfully suggest that the final revenue procedure limit the use of informal discovery in cases involving *pro se* taxpayers and ensure that Appeals consults with Counsel with respect to informal discovery requests submitted by taxpayers.

Section 3.10 provides that “Counsel will continue with trial preparation, which may include, but is not limited to, asking the taxpayer to participate in informal discovery conferences with Counsel only.” While we understand the need for Counsel to prepare for trial, informal discovery concurrent with Appeals’ jurisdiction should be limited in cases involving *pro se* taxpayers. *Pro se* taxpayers are often extremely confused about the court process and benefit from having one person assigned to their case. *Pro se* taxpayers are likely to confuse the roles of Appeals and Counsel. Further, very low-income taxpayers often face multiple challenges in their lives, making it difficult to comply with multiple requests, especially when those requests come from different offices within the same government agency. The more complicated the process, the more likely a *pro se* taxpayer will become nonresponsive.

In addition, the final revenue procedure should address either in Section 3.10 or elsewhere informal discovery requests submitted by taxpayers after the case has been sent to Appeals. In particular, we suggest that a provision be added that requires Appeals to consult with Counsel before denying a taxpayer’s request for information or documents. Currently, Appeals sometimes refuses to provide copies of documents that the taxpayer is entitled to see. This requires the taxpayer to send a *Branerton* letter to Counsel, which is inefficient and delays settlement.

7. **Section 3.12: Coordination with AJAC Project**

We respectfully suggest that the final revenue procedure clarify how Appeals, Counsel, and the examination function expect to interact if something new is presented for the first time while a docketed case is at Appeals.

Section 3.12 concerns instances in which Counsel may seek input from the examination function if the taxpayer raises a new issue for the first time once the case has been referred to Appeals. Specifically, Section 3.12 provides that, “If a taxpayer . . . raises an issue for the first time while the docketed case is with Appeals for settlement consideration, Appeals will advise Counsel. . . . Counsel will work with the examination function . . . to develop the material facts relating to the new issue prior to Appeals’ consideration.” Somewhat relatedly, the second example provided in Section 3.04 for when Counsel may delay forwarding a docketed case to Appeals is, “when new facts, issues, or items” are raised in the pleadings.

As noted in Comment 1 above, the *ex parte* rules do not apply to Counsel in a docketed case but continue to apply to the examination function. We believe it is important to the

independence of Appeals that the role of the examination function is carefully delineated in a docketed case that has been referred to Appeals. Section 3.04 provides that Counsel might delay sending a case to Appeals when new facts are raised. Will Counsel coordinate with the examination function in that instance?

It is also unclear to us how these provisions interrelate (if at all) with the revised policies of Appeals resulting from the Appeals Judicial Approach and Culture Project (“AJAC”). In memoranda issued in 2013 and 2014, the Service provided guidance concerning non-docketed cases in which new issues as well as “new information or evidence” and “new legal theories or alternative legal arguments” arise when a case is under the jurisdiction of Appeals. Memo dated July 18, 2013, by the Appeals Director, Policy, Quality and Case Support (Control No. AP-08-0713-03); Memo dated July 2, 2014, by the Appeals Director, Policy, Quality and Case Support (Control No. AP-08-0714-0004). These AJAC memos were limited to non-docketed cases and stated that similar guidance would be forthcoming for docketed cases. Is Notice 2015-72 intended to be that “similar guidance”? If not, some announcement together with the final revenue procedure that the “similar guidance” from Appeals remains forthcoming would be helpful clarification.

Even if the draft revenue procedure is not intended to be the “similar guidance,” we suggest that the final revenue procedure utilize the same terminology as the AJAC policies (and cross-references to how those terms are defined in the Internal Revenue Manual) to avoid confusion.⁴ To be consistent with the AJAC terminology, the final revenue procedure should refer to “new information” in Section 3.04 rather than “new facts.” Also, the term new “item” was not part of the AJAC policies. How is that term different from new information or a new issue? The AJAC project defines new issues, new information, and new theories or alternative legal arguments. The draft revenue procedure seems to cover the first two but not the third (unless a new theory or alternative legal argument is a new “item”). Was that omission intentional? The Notice explains that if a taxpayer raises a new issue, Counsel will work with the examination function to develop the material facts relating to the new issue prior to Appeals’ consideration. What role (if any) will the examination function play with respect to new information and new theories or legal arguments (as opposed to new issues)?

8. **Section 3.15: Counsel’s Role in Documenting Agreements Reached Between Appeals and the Taxpayer**

We respectfully suggest that the final revenue procedure clarify that Counsel’s role in documenting the agreement reached between Appeals and the taxpayer is limited and expressly state that Counsel may not modify or alter the agreement reached between Appeals and the taxpayer.

⁴According to the Internal Revenue Manual, “A new issue in a docketed case is any adjustment to or change to an item that affects the petitioner’s tax liability that was not included in the notice of deficiency and is raised or discussed during consideration of the case.” I.R.M. 8.4.1.15.3(1) (last revised 11-01-2013). “New information or new evidence is any item or document related to a disputed issue that the taxpayer did not previously share with the examiner, and in the judgment of the Appeals hearing officer, merits *additional analysis* or *investigative action by Examination*.” I.R.M. 8.6.1.6.5(1) (last revised 6-25-2015) (emphasis in original).

Section 3.15 provides:

If Appeals reaches a settlement with the taxpayer in the docketed case, Appeals generally will prepare a stipulated decision document reflecting the proposed resolution and forward it to the taxpayer. Counsel may assist with the drafting of the decision document as needed. By signing the proposed stipulated decision document and returning the document to the IRS, the taxpayer makes an offer to settle the case. Counsel will review the decision document for accuracy and completeness, sign the decision document on behalf of the Commissioner, and file the document with the Tax Court.

The above language could be read to suggest that Counsel is not bound by a settlement reached between a taxpayer and Appeals. We do not believe that was the intent (given that section 3.05 provides that Appeals has sole settlement authority), so some clarification would be helpful. We suggest revising the second sentence to read as follows: “Counsel may assist with the drafting of the decision document as needed to reflect the agreement reached between Appeals and the taxpayer.” We also suggest that any confusion regarding Counsel’s role in the agreed resolution could be eliminated by adding the following sentence at the end of Section 3.15: “Counsel has no authority to modify or otherwise alter the agreement reached between Appeals and the taxpayer.” Including this sentence will also reinforce the independence of the decision made by Appeals.

9. Procedures Needed to Prioritize Frozen Refund Cases

We respectfully suggest that the final revenue procedure create a priority (for both Appeals and Counsel) for cases involving frozen refunds. Taxpayers with frozen refunds that could equal a substantial portion of their annual income should have their cases addressed expeditiously. The Service should recognize frozen refund cases, at least those involving low-income taxpayers, as high priority and work toward a quick resolution to avoid the hardships that result from the frozen refund.