Due Process and the IRS
Office of Appeals

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Office of Appeals

• Independent organization within the Service that provides an administrative forum for taxpayers to resolve their tax disputes.

• 4 Functions:
  – Collection Appeals
  – Examination Appeals
  – Specialized Examination Program & Referrals
  – Case and Operations Support
Mission of Appeals

• “To resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the service.”

• Does not specifically mention due process.
How Appeals Aims To Accomplish Its Mission:

• Act in accordance with TBOR, IRC §7803(a), in every interaction with taxpayers.
• Provide prompt conference and prompt decision in each case.
• Make a high quality decision in each case.
• Effect a satisfactory number of agreed settlements.
• IRM 8.1.1.1(2)
Basic Elements of Procedural Due Process

• Notice
• Opportunity to be heard before a fair and impartial tribunal
• Does not necessarily have to be a pre-termination or pre-deprivation hearing
• Balancing test to determine what type of process is due.
Types of Determinations From Which Appeal is Possible

• Deficiency determination following exam

• Collection Matters
  – Collection Due Process
  – Collection Appeals Program
  – Offers in Compromise
  – Refund Disallowance
  – Assessable Taxes, Penalties, and Interest

• Innocent Spouse Relief
Appeal of Deficiency Determination

• 26 CFR §601.106(b) – TP has right of administrative appeal after issuance of 30-day letter and request for Appeals consideration
• 26 CFR §601.105(d)(1) – 30-day letter informs TP of appeal rights.
• IRM 8.1.1.3, 8.3.2.2
• But SNOD is often issued before expiration of TP’s deadline to appeal. Remedy?
Collection Due Process

• Provides independent review of IRS decision to file NFTL or of proposed levy action.
• Statutory right to appeal under IRC §§6320 (lien) and 6330 ( levy.)
• After hearing and issuance of Notice of Determination, TP has right to challenge determination in Tax Court.
• Hearing is pre-levy but post NFTL filing.
CDP continued

• Equivalent hearing may be requested by TP who missed deadline to request CDP hearing
  – Must be requested within 1 year, starting day after last day to request CDP hearing.
  – No right to judicial review from Decision Letter issued by Appeals.
  – Will consider same issues that can be raised in CDP hearing.
Collection Appeals Program

• Can appeal following certain actions:
  – Levy or seizure action that was or will be taken
  – NFTL that was or will be filed
  – Denials of lien certificates (subordination, withdrawal, discharge, non-attachment)
  – Rejected, proposed for termination, or terminated installment agreements
  – Disallowance of return of property under IRC §6343 (b) or (d)
• Not available for collection actions with their own appeal processes (TFRP, OIC, penalty, jeopardy levies)
• Decision is not appealable to court
• Before requesting CAP hearing, must discuss problem with Collections group manager
• Highly expedited: telephone conference within 2 days and resolution within 5
Offers in Compromise

• IRM 8.23.1.1

• 30 days from date on rejection letter to request an appeal. Reg. §301.7122-1(f)

• No right of judicial review from decision of Appeals, unlike an unfavorable OIC decision where the OIC was submitted as part of CDP process.
Refund Disallowance

• IRM 8.7.7.11
• TP can ask Appeals to reconsider a disallowed refund claim but must be made within time for filing suit.
• Does not extend TP’s time for filing a refund suit under IRC §6532.
• No specific deadline to appeal disallowed refund other than the above.
Assessable Taxes, Penalties, and Interest

• Applies to
  – Employment and most excise taxes (not subject to deficiency procedures)
  – Non-deficiency-related tax penalties including
    • §6672 Trust Fund Recovery Penalty (60 days to file a timely protest proposed assessment)
    • §6694 Tax Preparer Conduct Penalty
    • §6651 Late Filing and Late Payment Penalties
    • §6404(e) Interest Abatement Denials
Innocent Spouse Appeals

• IRM 25.15.12

• If relief is denied in whole or in part to the RS, the RS may appeal the preliminary determination.

• If relief is granted in whole or in part to the RS, the NRS may appeal that preliminary determination.
Impartiality Issues

• Ex Parte Communications
  – IRM 8.1.10
  – Revenue Procedure 2012-18

• Prior Involvement in Case
Gaps in Due Process?

• EITC frozen during exam and
  – TP is in dire needs of funds to avoid eviction, repossession or other hardship
  – TP is not able to access funds until exam is over
  – TP may not have opportunity for un-docketed appeal because of early issuance of NOD.

• See TAS OAR Process: IRM 13.1.19

• Limited availability of face-to-face conference
NTA Legislative Recommendation

• LR #2, 2018 Annual Report to Congress
• Amend IRC §7803 (a) to establish independent Office of Appeals and grant TPs right to prompt administrative appeal that provides impartial review of all compliance actions and explanation of Appeals decision except where Secretary has determined, pursuant to regulations that appeal is not available.