

# Tax Section Survey Report on Independence of IRS Appeals

The Section recently surveyed its membership to determine their experience relating to the perceived independence of the Internal Revenue Service's ("IRS" or "Service") Appeals Division ("IRS Appeals" or "Appeals"). The Committee on Administrative Practice and a "Blue Ribbon" panel of members developed a seven-page survey instrument to solicit opinions from Section members who have had experience with Appeals in the recent past. This survey covered the independence of the IRS Appeals process in the examination, collection, and enforcement functions. More than 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.<sup>1</sup> The results of the survey appear in the 108-page Survey Report, which is now available on the Section's website at [www.abanet.org/tax](http://www.abanet.org/tax). This article constitutes the executive summary of the report.

One component of the survey gave respondents the opportunity to evaluate a series of general statements about the Appeals process. The key responses are summarized below:

- On a positive note, 73.1% of the 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 respondents 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 perceptions that certain recent changes in the structure and procedures of IRS Appeals have had a negative effect on that office's independence or appearance of independence. 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.
  - 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 (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.

It is interesting to note that some of the findings generally mirror those described in the Report of the Treasury Inspector General for Tax Administration issued in 2005.<sup>2</sup>

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

<sup>1</sup> The Tax Section gratefully acknowledges the outstanding efforts of Joanne Martin, Senior Research Fellow of the American Bar Foundation.

<sup>2</sup> "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 is agreement across a substantial component of the respondent pool with regard to perceptions that certain recent changes in the structure and procedures of IRS Appeals have had a negative effect on that office's independence or appearance of independence.

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

## NEWS BRIEFS *continued from page 4*

### LAW STUDENT TAX CHALLENGE

Now in its seventh year as an ongoing project of the Tax Section's Young Lawyers Forum, the 2007-2008 Law Student Tax Challenge is underway. Designed to stimulate and reward law student interest in and knowledge of the tax law as it applies to "real life" tax planning situations, this nationwide competition is open to law students attending any ABA-accredited law school.

Teams are initially evaluated on two criteria: a memorandum to a senior partner and a letter to the client explaining the result. Based on this written work product, 6 teams from the J.D. Division and 4 teams from the LL.M. Division receive a free trip to the Section's 2008 Midyear Meeting, January 17-19, at the Loews Lake Las Vegas Resort, where they will defend their submissions before a panel of some of the country's top tax lawyers.

Written submissions are due November 12, 2007. This year's problem focuses on a like-kind exchange and issues related to the formation of a partnership. To review the contest rules and this year's problem, visit [www.abanet.org/tax/lstc](http://www.abanet.org/tax/lstc).

### FALL MEETING MATERIALS AVAILABLE ONLINE

Did you miss the Joint Fall CLE Meeting in Vancouver? You can still benefit from over 160 papers that were presented at the meeting by logging on to the Tax Section's website. As a benefit of membership, Section members can view and search materials from the Fall Meeting, as well as other Section Meetings at: <http://www.abanet.org/tax/commonline/>.

### FALL MEETING SPONSORS—THANK YOU

The Tax Section would like to thank the following sponsors of the 2007 Joint Fall CLE Meeting:

Borden Ladner Gervais LLP  
 Blake Cassels & Graydon LLP  
 Thomson West  
 Global Consultants and Services Limited  
 Taggart & Hawkins  
 Baker & McKenzie  
 J.P. Morgan Property Exchange Inc.  
 Christie's  
 Houlihan Lokey Howard & Zukin

### PRO BONO OPPORTUNITY IN WASHINGTON, DC

The Pro Bono Committee of the Tax Section will be implementing a pilot program for member volunteers in the Washington, DC area to assist in the training of VITA volunteers to prepare returns on military bases in the Metropolitan Washington, DC area. Tax Section volunteers will not be asked to prepare returns themselves, but instead will be asked to train the preparers. Because the pilot is limited to the Washington area, we are only soliciting volunteers from that region. To learn more about this pro bono opportunity, check the Section web site at [www.abanet.org/tax](http://www.abanet.org/tax).

