November 4, 2016

Recently, I have read articles and received letters from practitioners sharing concerns on several items related to the IRS Office of Appeals: the authority of the Appeals Team Case Leaders (ATCLs) to settle cases, revisions to IRM section 8.6.1.4.4 permitting other IRS employees to attend conferences, clarifications to conference practices, and revisions to how we handle section 9100 relief determinations. Because speculation has led to erroneous conclusions about our efforts, I would like to take an opportunity to provide some context and background, as well as share a decision.

1. **Settlement Authority**

In July 2015, the Treasury Inspector General for Tax Administration (TIGTA) issued a report on our Penalty Appeals workstream. One focus in the report was the lack of consistent review of cases by managers. The report cited as a significant control weakness the absence of any limit on the amount of penalties Appeals and Settlement Officers could abate without managerial review. The Inspector General determined this created a high level of risk for improper abatements.

Appeals' leadership studied whether the control weakness – front-line employees having settlement authority without required managerial review – existed in any other Appeals workstream. The only one we identified was ATCL Operations. For cases in other Appeals' organizations, IRM 1.2.47.9 delegates settlement authority to team managers, not our front-line employees. Under IRM 1.4.28.7, a team manager has the authority and responsibility to accept or reject a settlement.

Appeals' leadership decided to conduct a risk assessment to evaluate any risk of not requiring managerial review of cases worked in ATCL Operations and whether we have sufficiently mitigated the risks. Wanting to remain mindful of the value of current processes, we asked the ATCLs to assist us in identifying mitigations. They described existing procedures in IRM 8.7.11.3.1 that provide for case review and a process by which employee and manager disagreements are resolved for cases worked by ATCLs.

We concluded that modifying those existing processes, rather than undertaking a wholesale change, will mitigate the risk sufficiently. Settlement authority will remain with the ATCLs and Appeals will revise our procedures to make it clear that a manager must review a case prior to an ATCL finalizing a settlement to determine whether the manager has any proposed changes. In contrast to our other workstreams, an ATCL manager will not be accepting or rejecting settlements. If the ATCL and manager disagree about a settlement, the next higher level manager supervising ATCL Operations will continue to resolve any disagreement.

2. **Revision of IRM 8.6.1.4.4**

Recently, we revised IRM 8.6.1.4.4, *Participation in Conferences by IRS Employees*. I have heard comments that we added this provision to force taxpayers to use a process similar to the early resolution technique we call the Rapid Appeals Process.

Appeals always had the discretion to permit other IRS employees to attend conferences and, in fact, the bulk of this section predates the IRS Restructuring and Reform Act of 1998, although the section number has changed over time. The provision is designed to allow Appeals to invite others from IRS and Counsel to conferences to aid in case resolution. It is not intended to force any resolution technique on taxpayers and can actually aid the taxpayer and IRS compliance functions in understanding the cases and issues better.

3. **Conference Practices**

We revised our in-person conference practices effective October 3, 2016, to clarify our procedures for taxpayers, to better allocate resources, and to get the right work to the right Appeals employee. We found that some language in our letters erroneously suggested that taxpayers need to request an in-person (or face-to-face) conference to take full advantage of the appeals process. This misperception often resulted in taxpayers requesting an in-person conference when the case could be resolved by other methods, such as by telephone. In addition, our centralized Campus locations cannot accommodate in-person conferences. Prior policy required us to automatically transfer cases from the Campus to the Field whenever taxpayers requested to meet face-to-face. This generally resulted in a mismatch between the complexity of the case and the skill level of the employee. Automatic transfers also delayed case resolution and caused us to incur additional shipping costs, while our data shows that the majority of these cases were ultimately resolved by telephone with no in-person conference.

Appeals is continuing to offer personal contact for all cases and in-person conferences where Appeals determines it will aid in resolving cases. Taxpayers will continue to have a range of conference options depending on the nature of their case – telephone, correspondence, virtual service delivery, and in-person, which includes circuit-riding; however, Appeals will not transfer cases solely upon taxpayer request.

The changes are not intended to shift the paradigm away from in-person conferences as a resolution tool. By putting in place business rules around when Appeals provides in-person conferences, the changes shift the decision from the taxpayer to Appeals.

4. **Section 9100 Relief**

Effective October 3, as well, we revised our policies regarding Section 9100 relief determinations made by the Commissioner, which can affect the taxpayer's Change of Accounting Method (CAM). The decision to grant taxpayers an extension to make a regulatory election is left to the Commissioner’s discretion, which has been delegated to the Office of Chief Counsel and not to Appeals. Reversing Counsel’s decision on a 9100 relief determination has no practical effect without that authority.

This question arose in a case with a CAM issue. Considering the delegated authority, we asked what our settlement role is in those instances and what the prospective value is if we reverse a decision, but cannot change the method. We determined that our decision cannot bring about the result a taxpayer wants in requesting an appeal and it potentially creates confusion in tax administration for us to accept those cases.

The items mentioned above came to fruition around the same time largely by coincidence. Assertions that Appeals has conflated them to limit access to our employees, conferences, and case resolution is misguided. How Appeals engages in case resolution is key to our role in tax administration. We continually evaluate and periodically revise what we do and how we do it to ensure we function not just in ways designed to support our mission, but also with the utmost integrity in our processes.

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