

The State of Dispute Resolution at the Internal Revenue Service Submission from the National Association of Enrolled Agents September 27, 2017

“As a guiding principle, the Commission believes that taxpayer satisfaction must become paramount at the new IRS and that the IRS should only initiate contact with a taxpayer if the agency is prepared to devote the resources necessary for a proper and timely resolution of the matter.”

Report of the National Commission on Restructuring the IRS, June 1997

Unfortunately, 20 years later, this vision is not being fulfilled.

Defining the Problem

Increasingly, enrolled agents are expressing the view that the quality of dispute resolution within the IRS has deteriorated to an unacceptable level over the last five years. The National Association of Enrolled Agents (NAEA) represents the interests of over 53,000 enrolled agents nationwide. Enrolled agents are tax experts, licensed by the Department of Treasury. They must pass a thorough three-part Treasury-administered exam covering all elements of the Internal Revenue Code. Additionally, they are subject to background checks and must meet continuing education and ethics requirements to continue practicing as enrolled agents in good standing.

NAEA takes an expansive view of dispute resolution, encompassing the entire spectrum of tax administration. Our members represent taxpayers on a daily basis, dealing with notices, correspondence, examination, appeals and collection matters. Quality dispute resolution should not be an organizational value only for Appeals, but should be trained at every level of the agency. While the measure of the decline in quality is anecdotal, based on input from our membership, it can be demonstrated starkly by considering the answers to three important questions:

- Do key enforcement personnel have an adequate understanding of the Internal Revenue Code, the regulations, the Internal Revenue Manual, and the “Taxpayer Bill of Rights?”
- Are cases resolved in a timely fashion?
- Do IRS enforcement personnel work to resolve cases fairly at the earliest point of the process?

While there are many skilled, conscientious, and dedicated employees at the IRS, enrolled agents are telling us that they must answer “no” to all three questions, too frequently to be acceptable.

Enrolled agents are finding that auditors and tax compliance officers often lack a basic understanding of the statutes and regulations they are tasked to administer. More disturbingly, they often do not know their own procedures as laid out in the Internal Revenue Manual (IRM).

Additionally, with few exceptions, dealing with the IRS has become a game of hurry-up-and-wait. Taxpayers and their enrolled agents respond in a timely fashion to notices or requests for audit responses, but then find themselves waiting long periods of time for an acknowledgment or response, let alone a resolution of their case.

While correspondence exams increase efficiency for the IRS, they typically increase taxpayer burden and can be more expensive and take more time than an in-person audit. Because there is only one chance for resolution, enrolled agents report that they expend substantial time and effort to present a relatively simple case that could be taken care of with a single telephone call.

When responses from taxpayers arrive at the correspondence examination unit, they can sit in a queue at the IRS processing center for weeks, or even months depending on the backlog, causing great anxiety on the part of taxpayers. These computer-generated cases are assigned to tax examiners only when a response is received from the taxpayer or their representative. If all goes well, the IRS issues a letter thanking them for their responses and informing them nothing more is needed. All too often though, taxpayers or their representatives respond with a timely submission of documentation, but the case does not receive proper consideration of facts and circumstances, and the only subsequent communication from the IRS is an audit report with a balance due notice enclosed.

If a protest of this assessment is submitted to the IRS, the response is often inadequately handled as well. In a number of cases, it is obvious that the protest was hastily reviewed by an inexperienced or under-trained employee, resulting in the denial of a valid protest. If this denial is appealed, similarly trained employees evaluate the argument, adding another step in an exercise in futility. Any further request for a referral to Appeals of these disputed items are all too often not considered or acknowledged, and a Statutory Notice of Deficiency is summarily sent to the taxpayer.

Once the computer has taken this action, filing a petition in Tax Court is the only way to get the case heard by a qualified Appeals Officer. Enrolled agents believe there must be greater accessibility to be heard by an independent Appeals Officer at multiple stages while the taxpayers' fate is being determined in these automated audit pipelines.

Enrolled agents have noticed that as mastery of the laws and regulations has declined, there has been a corresponding decline in resolving cases quickly and fairly. In some cases, we believe this change in culture means that rather than getting to the right answer and then moving on, IRS compliance personnel in the field and campuses are more inclined to "find something wrong" if they have invested substantial time on an examination. In other cases we have seen, the Service's desire to close cases as quickly as possible with their limited resources spread thin has led to a hesitation on the part of IRS personnel to accept follow-up documentation or request an explanation when documentation is not understood.

Historically, Appeals Officers were experienced and knowledgeable and operated in a culture of resolving cases quickly and fairly. Over time, as resources have dwindled system-wide, more cost-effective alternatives have been developed by the IRS. In our experience, many of these cost-saving processes have led to severe reductions in service while taxpayer rights are increasingly being compromised. The end result has been reduced public confidence in the U.S. Tax system as fair and equitable.

The issue at hand is that there are not enough Appeals personnel to provide taxpayers with in-person conferences across the 50 states and territories. For example, between fiscal years (FYs)

2013 and 2016, the number of Appeals Hearing Officers available to resolve cases dropped by 24 percent¹. Consequently, the IRS created Campus Appeals units, which rely on telephone and now video conferences to handle their workload.

Root Causes

Decline in the IRS Budget: In the last five years, the IRS budget has declined from \$12.146 billion in 2012 to \$11.235 billion in 2016. As a result, the number of revenue agents decreased 22 percent from 10,216 to 7,937, and the number of tax compliance officers decreased 28 percent from 1,154 to 832. Contact representatives within the Automated Collections System (ACS) has decreased 22 percent, from 2,426 in FY 2012 to 1,897 in FY 2016. Enforcement personnel are not typically seen as customer service. However, if a taxpayer receives a letter or notice about their account and then are not able to resolve the issue in a timely and accurate fashion, then the non-resolution does become a customer service issue.

Retirements: The IRS is hemorrhaging experienced, well-trained personnel. Since 2010, approximately 17,000 employees have departed from the IRS and 40 percent more are or will be eligible to leave the Service in the coming year. The loss of these experienced employees has necessitated the hiring, training and deployment of many inexperienced personnel in a short period of time. Exacerbating this problem is the fact that training at the IRS is done by taking experienced people out of the field to pass on their knowledge to the newly hired, creating an even larger vacuum.

Lack of Quality Training: The IRS training budget has been slashed from \$172 million in FY 2010 to about \$22 million in 2013 (unable to obtain more updated data), a staggering 87 percent reduction. Training is not only key to increasing knowledge and understanding of the tax code and regulations, but is also among the IRS's responsibilities under the Taxpayer Bill of Rights.

On the collection side, revenue officers have been given very little discretion or training on resolving taxpayer cases. When a taxpayer's expenses exceed the financial standards for an Installment Agreement, the taxpayer must enter into a payment plan that is unaffordable, which greatly increases the likelihood of default down the road. In addition, the National Standards for Collection Information Statement analysis are unrealistic for taxpayers living in high cost areas. More flexibility in making determinations of collection potential would improve the public's perception that the system is fair and equitable.

Recommendations

To increase the quality and timeliness of dispute resolution within the IRS, Congress should consider the following policy and legislative changes:

Increase IRS budget for hiring Appeals Officers, compliance, and enforcement personnel. With this increased budget, the IRS should guarantee that taxpayers or their representatives do not have to travel more than 100 miles (where feasible) to have a face-to-face audit meeting or an in-person conference with an Appeals Officer. At the same time, it is important for the IRS to continue exploring video-conferencing and other options for increasing communications. Additionally, once a taxpayer responds to an IRS notice or letter, the IRS shall communicate a decision to the taxpayer within 30 days. Appeals and enforcement personnel should be given great authority to

¹ Taxpayer Advocate Service 2017 Report, volume 2, page 112

settle cases early and the IRS should evaluate them based on a singular focus on early and fair resolution of disputes.

Increase the Authority of and set higher standards for campus Appeals personnel. While we welcome and applaud the IRS for the recent addition of video conferencing as a substitute for some in-person Appeals hearings, we suggest additional provisions be implemented. The knowledge, experience and authority of the Appeals personnel should meet a higher standard than the campus Appeals Technical Employees, who may have very little authority and may not grasp the intricacies of the cases assigned to them.

Create and fund a dedicated training division within the IRS. A dedicated training division will streamline the IRS education process, ensuring that tax law and administrative policies be taught consistently throughout the country while guaranteeing that experienced personnel will not have to be taken offline to train new employees. Instructors will be tasked to research state-of-the-art tax administration techniques at the state, local and international levels and will help incorporate these techniques into their education materials and the Internal Revenue Manual. Additionally, as was done immediately after passage of the IRS Restructuring and Reform Act of 1998, IRS training shall focus on early and fair resolution of tax disputes. Only clear and consistent training will move the IRS to a more customer service-oriented organization.

Give Collections personnel wider discretion to reach agreements on payment plans. Congress and the IRS need to give collections personnel the authority and training to resolve cases quickly that might otherwise deviate slightly from the financial standards to facilitate payments by taxpayers. Additionally, the IRS should reevaluate the National Standards for Collection Information Statements by either adjusting the allowable living expenses for regional or local cost of living variations, or by returning to use of a dollar range, based on gross monthly income (as was the case prior to the IRS decision in 2007 to apply a single dollar amount for food, clothing, and other items, based on family size alone).

Give the Taxpayer Advocate Service authority to make adjustments, rather than merely making recommendations to IRS personnel. Taxpayer Advocates are at the forefront of problem resolution within the IRS. We recommend reinstating a Problem Resolution group with representation from examination, appeals and collection housed in the Taxpayer Advocate department with fixed authority to resolve issues up to \$10,000 and close cases.

Collections personnel must refrain from bypassing representatives with active powers of attorney. Congress should reemphasize and reaffirm the consequences of violations of 26 USC 7525, to ensure that IRS personnel shall not ignore valid powers of attorney by directly contacting taxpayers by telephone or at their residences or places of business.

Require IRS exam and collection personnel to offer alternative dispute resolution options. We commend the IRS for the expansion of Fast Track Settlement earlier this year, bringing the opportunity for small business and individual taxpayers to resolve unique examination issues through Appeals, allowing for consistency with large and mid-sized businesses. We recommend that the IRS expand alternative dispute resolutions options to all taxpayers and that exam and collection personnel be required to offer these options at the appropriate time.

To facilitate earlier resolutions to disputes, the IRS should debut online accounts for tax practitioners with a robust and secure means of communicating with IRS personnel on audit and collections issues. Access to secure online communication is especially important as the

agency becomes increasingly reliant on correspondence audits that currently require snail-mailing documents to anonymous IRS campus employees. Communicating through the practitioner's online account would go a long way to improving resolution times and hopefully mitigate, if not eliminate, the lost documents experience. Individual online accounts should display a Publication 1 equivalent when taxpayers utilize payment options in their accounts. The IRS should provide guidance on the use of electronic signatures for Forms 2848 and 8821 for Circular 230 practitioners.

The National Association of Enrolled Agents commends the Committee on Ways and Means in its bipartisan approach to improving the Internal Revenue Service. Our membership believes strongly that well-funded, well-trained IRS, fully cognizant of taxpayer rights and the value of Circular 230 tax practitioners to the process, will improve dispute resolution at every level of the organization. We look forward to continuing our work with the Committee.