

November 29, 2022

Steven M. Martin
Director, Appeals Case & Operations Support
Independent Office of Appeals
Internal Revenue Service
ap.taxpayer.experience@irs.gov

RE: Comments on Enhancing Video Conference Options for Taxpayers and Tax Professionals (IR-2022-154)

Dear Mr. Martin:

The Texas Society of Certified Public Accountants (TXCPA) is a nonprofit, voluntary professional organization representing more than 28,000 members. One of the expressed goals of the TXCPA is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of the CPAs of Texas, as well as the public interest. TXCPA has established a Federal Tax Policy Committee to represent those interests on tax-related matters. The committee has been authorized by the TXCPA Board of Directors to submit comments on such matters of interest to the committee membership. The views expressed herein have not been approved by the Board of Directors or Executive Board and, therefore, should not be construed as representing the view or policies of the TXCPA.

Comments

The IRS is seeking practitioner comments on all aspects of video conferencing in IR-2022-154. We commend you for clearly stating in IR-2022-154 and IR-2022-170 that taxpayers and their representatives can choose whether they want to meet with IRS Appeals through telephone, video or in-person conferences. We write to emphasize the importance of in-person appeals conferences and to request that they be fully retained and not diminished in any way as the IRS continues to develop its video-conferencing technology, as well as to make other requests below.

Importance of In-Person Conferences

We certainly appreciate your efforts in serving taxpayers efficiently by offering telephone and virtual technology but believe taxpayers' rights are best served by continuing to provide in-person appeals as a preference. We understand that during the COVID-19 pandemic, the IRS sought to avoid unnecessary person-to-person contact and therefore expanded access to video conferences in an effort to serve taxpayers. Those procedures generally worked well during a pandemic. But now that most practitioners and taxpayers are back in their workplaces, we believe in-person conferences will, in most instances, offer a better experience for taxpayers.

Non-verbal communications can and do supplement what is verbally said and are best conveyed through in-person discussions. Body language, facial expressions and even eye contact, for example, can help show that a person is or is not receptive to a line of argument and can reveal a person's level of sincerity and interest. These subtleties are not always communicated well in a two-dimensional video conference, let alone a telephone conference. In virtual meetings, for example, speakers often look at the screen and not directly at the camera, which can create the erroneous impression of not engaging or having something to hide. By contrast, body language can be communicated very well through in-person meetings and thereby help expedite resolution of issues.

In-person conferences can therefore be particularly effective and important where issues of fact, intent or truthfulness are in question. These types of issues arise in many different contexts such as, for example, when addressing a taxpayer's reasonable cause defense to penalties or whether a taxpayer intended to make a profit (e.g., hobby-loss case).

In addition, inexperienced taxpayers may encounter technology and presentation difficulties that can work against them in a video conference. While IRS appeals officers are now adept at the use of virtual tools and able to present well on video, inexperienced taxpayers are likely to be uncomfortable with using new technology and tools, particularly when operating under the inherent anxiety and stress of an IRS appeals conference. A taxpayer may not know, for example, how to share documents, communicate electronically or balance lighting effectively. By simply having inadequate lighting, a taxpayer may inadvertently appear washed out as if wanting to be anonymous or hide something. Coaching clients on effective video communications and on the use of video equipment adds another level of complexity, time and resources for both the taxpayers and practitioners that is not present with in-person conferences.

We have previously communicated our position on in-person appeals in letters on March 4, 2016; May 13, 2016; and Jan. 24, 2017 (copies attached); those letters have continued validity.

Appeals Independence

Appeals procedures should also stress the importance of providing an independent appeal. We continue to have great concern over the involvement of any IRS employees, other than the IRS appeals officer, in an IRS appeals conference. Of course, we understand that in the context of a docketed case, members of the IRS Chief Counsel Office might need to be involved in negotiations and settlement. But with a virtual appeal, it may be difficult for the taxpayer or the IRS appeals officer to know who is involved off-screen. For this reason, we believe it is important that the rules on who can participate in a virtual appeal be made clear to all parties. In addition, all who can view the virtual conference should have their names and roles prominently disclosed. This is critical to providing an appeal that is transparent and fair.

Local Appeals Officer

For virtual appeals, the IRS may seek to assign a remote appeals officer because of workloads or needed technical expertise. This may work well when an expert is not available locally. However, we believe this should be at the taxpayer's option and workforce issues should not be solved by unilaterally shifting an appeal to a remote virtual officer. Also, there should not be a shift in the IRS appeals officer once an appeal has begun unless the taxpayer and practitioner agree.

Recorded Conferences

Any recording of video conferences should only be by agreement of the IRS and the taxpayer/practitioner. Recording may deter open communications as parties may be concerned about a misspoken word being quoted back to them or used in a later proceeding. Also, a recorded conference could be further reviewed by those not allowed in the conference or otherwise misused. On the other hand, having a recording may help participants review the conference proceedings to better understand all sides of issues. As such, any recording should be by agreement and equally available to the taxpayer/practitioner and to the IRS.

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Technology Requirements

IRS appeals officers and practitioners may have technology skills, technology tools and high-speed internet, but some taxpayers do not. Technology tools may enhance a virtual conference but should be kept simple so taxpayers are not overwhelmed and can fully participate. The technology platform and equipment should also be standardized with requirements known and agreed in advance of the conference. If the taxpayer does not have the tools or skills, another meeting format should be available. Notably, the IRS appears to be using the Microsoft Teams conferencing platform, while many individuals are much more familiar with and more likely to have access to Zoom technology.

Summary

Thank you, again, for maintaining in-person appeals while developing virtual conferences as an alternative. We appreciate this opportunity to comment and offer our assistance in these important appeals procedures. For further information, please feel free to contact me at 214-749-2462 or at dcolmenero@meadowscollier.com or TXCPA Staff Liaison Patty Wyatt at 817-656-5100 or pw Wyatt@tx.cpa.

Sincerely,



David E. Colmenero, J.D., LL.M., CPA
Chair, Federal Tax Policy Committee
Texas Society of Certified Public Accountants

Principal responsibility for drafting these comments was exercised by David E. Colmenero, J.D., LL.M., CPA; Julie Ann Dale, CPA; Kenneth M. Horwitz, J.D., LL.M., CPA; and Christina A. Mondrik, J.D. CPA.

Attachment: TXCPA letter to Treasury Secretary Lew and IRS Commissioner Koskinen (March 4, 2016)
TXCPA letter to IRS Commissioner Koskinen (May 13, 2016)
TXCPA and Texas State Bar Tax Section letter to IRS Commissioner Koskinen (Jan. 24, 2017)



March 4, 2016

The Honorable Jacob J. Lew
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, D.C. 20224

RE: Request that the IRS Expose its "Future State" Vision and Concept of Operations for Public Comments

Dear Secretary Lew and Commissioner Koskinen:

The Texas Society of Certified Public Accountants (TSCPA) is a nonprofit, voluntary professional organization representing more than 27,000 members. One of the expressed goals of the TSCPA is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of CPAs in Texas, as well as the public interest. TSCPA has established a Federal Tax Policy Committee (FTP) to represent those interests on tax-related matters. TSCPA has also established the Relations with IRS Committee to create and maintain communications with the Internal Revenue Service (IRS). These committees have been authorized by TSCPA's Board of Directors to submit comments on such matters of interest to committee membership. The views expressed herein have not been approved by the Board of Directors or Executive Board and, therefore, should not be construed as representing the views or policies of the TSCPA.

We are pleased to learn that the IRS is creating a "future state" plan within its Concept of Operations (CONOPS) to improve service to taxpayers and practitioners. However, we are concerned the plan may substitute electronic interaction for in-person communications in many situations where this may not be efficient or efficacious either for the IRS or for the public. We appreciate the recent inclusion of material on the IRS website relating to this plan, acknowledging the receipt of input from specified, but limited groups and persons. However, we urge you to expose the CONOPS plan for general public review and comment, as parts are in development, from time to time during the planning process. This process should occur well before any adoption or implementation of any part so that the IRS may benefit from the practical perspective of practitioners and the public.

In many instances, electronic interactions will be less adequate than in-person communications. Tax issues are often complex, and we expect taxpayers and their professional advisors, however sophisticated, will frequently not ask the right questions online or, the online answers will be incomplete or will lead to additional questions. Many of us see this problem now in our communications by email with clients that impel actual interactive direct telephone or in-person communication. In contrast, a brief discussion with an IRS staff person could help clarify the issues and provide an opportunity for any necessary follow-up questions, thereby enhancing efficacy for both the IRS and the taxpayer.

Additionally, many individuals, including lower-income and elderly taxpayers, may not have access to appropriate technology or may be less than adequately technologically oriented. Taxpayers who do not fluently speak or read Standard American English, who are not cognoscenti in respect of the special language used in connection with federal tax issues, or who have difficulty with written communication, such as relatively lower educated persons or dyslexic persons, may be severely hindered by the move toward more electronic and fewer spoken taxpayer communications.

As noted in the National Taxpayer Advocate's 2016 Report to Congress, the CONOPS plan may drive the most vulnerable classes of taxpayers to rely on third parties, not all of whom may be scrupulous (or trained) tax professionals, to assist them in communicating with the IRS.¹ Especially if these communications are not limited to Circular 230 regulated practitioners, taxpayers run the risk of increased cost, not to mention increased risk, in communicating with the IRS.

Many taxpayers are very reasonably suspicious of communicating with the IRS using technology. Frequent reports identify IRS data breaches of sensitive taxpayer information.² As recently as Feb. 9, 2016, the IRS reported additional data breaches in its Electronic Filing PIN system, which was designed to protect taxpayers from harm.³

As the IRS moves toward increased use of technology to serve taxpayers, we want to help identify situations where technology will be most useful and efficacious, as well as those circumstances where it may not be an efficient substitute for personal taxpayer service.

The process of "modernizing" communications, as well as other initiatives that might be proposed in the CONOPS, is important to taxpayers and tax practitioners. Accordingly, for the reasons stated above, we believe that the CONOPS and its parts should be presented for collaborative review and comment by the public well before any anticipated adoption or implementation date.

We appreciate this opportunity to present our comments and would be happy to discuss this further with you. Please contact me at 972-419-8383 or kmh@gpm-law.com if you would like to discuss our comments.

Sincerely,



Kenneth M. Horwitz, JD, LLM, CPA
Chair, Federal Tax Policy Committee
Texas Society of Certified Public Accountants



Michael D. Williams, CPA
Chair, Relations with IRS Committee
Texas Society of Certified Public Accountants

¹ Taxpayer Advocate Service- Fiscal Year 2016 Objectives Report to Congress – Volume One, page 64.

² See *Id.* at p. 61.

³ See IRS Statement, available online at: <https://www.irs.gov/uac/Newsroom/IRS-Statement-on-Efiling-PIN>, as reported by The Journal of Accountancy at http://www.journalofaccountancy.com/news/2016/feb/irs-data-breach-exposes-social-security-numbers-201613868.html?utm_source=mn:cpainsider&utm_medium=email&utm_campaign=16Feb2016.

Messrs. Lew and Koskinen
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cc: The Honorable Mark J. Mazur, Assistant Treasury Secretary for Tax Policy
The Honorable Orrin G. Hatch, Chairman, U.S. Senate Finance Committee
The Honorable Ronald L. Wyden, Ranking Member, U.S. Senate Finance Committee
The Honorable Kevin Brady, Chairman, U.S. House Ways & Means Committee
The Honorable Sander M. Levin, Ranking Member, U.S. House Ways & Means Committee
Members of Congressional Caucus on CPAs and Accountants
Texas Members of U.S. Congress
Nina E. Olson, National Taxpayer Advocate



May 13, 2016

The Honorable John Koskinen
Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

RE: Preserving and Improving Access to Face-to-Face Appeals Conferences

Dear Commissioner Koskinen:

The Texas Society of Certified Public Accountants (TSCPA) is a nonprofit, voluntary professional organization representing 27,000 members. One of the expressed goals of the TSCPA is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of CPAs in Texas, as well as the public interest. TSCPA has established a Federal Tax Policy Committee (FTP) to represent those interests on tax-related matters. The FTP has been authorized by the TSCPA's Board of Directors to submit comments on such matters of interest to committee membership. The views expressed herein have not been approved by the Board of Directors or Executive Board and, therefore, should not be construed as representing the views or policies of the TSCPA.

Importance of Face-to-Face Appeals

The appeals process is essential to the fairness of our tax system. The recent implementation of the Appeals Judicial Approach and Culture (AJAC) has significantly reduced taxpayers' ability to meet face-to-face with appeals officers to resolve tax issues. In addition, staffing reductions and reallocation of appeals and settlement officers to IRS service centers has seriously degraded access for in-person appeals conferences. This has resulted in delays and increased costs for both taxpayers and the IRS. Face-to-face communications are the most efficient way to deal with complex issues, allow both sides to evaluate the importance of each other's arguments, focus on and evaluate the strengths and weaknesses of facts and issues, and properly assess litigation hazards. Face-to-face communications are simply more effective than telephone calls, ongoing correspondence or video conferences because it is easier to ascertain if the message sought to be conveyed is effectively communicated to and understood by the recipient.

Virtual Service Delivery and Other Alternatives

Appeals has long been an effective alternative dispute resolution system. We believe the availability of face-to-face meetings is important to the appeals process, but in a large state like Texas, the taxpayer often has to bear substantial costs and burdens in traveling long distances, possibly with multiple trips if the taxpayer is referred back and forth between Appeals and Examinations or Collections. (We note, for those unfamiliar with distances in Texas, that El Paso is closer to Los

Angeles than to Dallas, and Dallas is closer to Chicago than to El Paso.) We appreciate that the IRS is starting to make virtual service delivery (VSD) available in offices distant from major cities like Dallas, Houston, Austin, San Antonio, El Paso, etc. and, of course, this concept is equally true for taxpayers distant from a major city in other states. While we have not observed such a process, we doubt that it is capable of being as effective as face-to-face communications. We do believe it has the potential to be better than handling an appeal only by telephone or correspondence. Many firms have video conferencing facilities, and practitioner groups and organizations might add this capability if the IRS system is a high-quality technology and it promotes VSD availability and procedures. (We note that we have seen the current IRS video conferencing capability and we hope that the quality of the IRS VSD technology is superior to the video conferencing.) Given the clear superiority of face-to-face meetings to settle conflict, we continue to urge the IRS to also consider having Appeals personnel "ride the circuit," visiting various field offices on a regular schedule to meet with taxpayers and tax practitioners to resolve cases.

Another issue is that VSD is a general IRS system and not specific to Appeals, which impacts its availability. Appeals staff must obtain access to the VSD conferencing room through another department. Many Appeals staff members do not even know the system capabilities at this point. We hope the IRS will implement procedures for taxpayers and their representatives to schedule appointments to use the VSD conferencing rooms to meet virtually with the IRS officers from their remote locations.

AJAC has Hindered Appeals Effectiveness

The IRS intended AJAC to separate the fact-finding function of Examinations and Collections from the negotiation and decision-making function of Appeals. Although we understand the burden that was being placed on Appeals and appreciate the efforts to encourage case resolution at earlier levels in Examination and Collections, we note that appeals officers (and settlement officers) have long had authority to send improperly developed cases back to the field—and that authority extended and extends to cases docketed in Tax Court.¹ These efforts were stimulated because some practitioners were less than forthcoming with agents and revenue officers, at least in part because of perceptions that facts presented and efforts to resolve issues at the field level are frequently met with less than open minds. We suggest that while the goal is admirable, the resolution to impose AJAC is not having the intended effect and is instead resulting in a deprivation of taxpayer rights. In operation, the AJAC approach has been used to manage the age of Appeals' caseload and, at least in its practical application, has effectively undermined the availability of a fair and efficient appeals system. The National Taxpayer Advocate has described many of the issues, including that AJAC is:

- Being used to intimidate taxpayers and deny their right to an administrative appeal;
- Causing cases to bounce back and forth between Appeals and Compliance; and
- Resulting in curtailed review by appeals hearing officers of IRS Examination and Collection actions.²

¹ Rev. Proc. 2016-22, 2016-15 IRB 577 (March 23, 2016).

² National Taxpayer Advocate's 2015 Annual Report to Congress, MSP #8, 83.

These problems are fully described in her report, which mirrors the experience of many of our members. For example, if the taxpayer has not submitted all files, Appeals will automatically refer the case back to Examinations or Collections. We believe the appeals officer should be able to independently evaluate the importance of facts and issues and fully develop the case in Appeals if it is determined that is the most efficient way to proceed. Automatically referring the case back to Examinations or Collections results in delays and added costs for the taxpayer (and, we suspect, the IRS). The AJAC process imposes mandatory and unrealistically limiting deadlines in which to resolve facts and issues. Taxpayers have no control over the timing of the assignment of the referred case. Given the lack of adequate field-level personnel, IRS delay can be lengthy. Thus, if the taxpayer, after the case is finally assigned, cannot promptly satisfy Examinations' or Collections' system-imposed tight deadlines for information, the taxpayer could receive a statutory notice of deficiency forcing the dispute into the likely more costly forum of the Tax Court. This is particularly onerous for taxpayers with limited resources and clearly violates the Appeals mission statement that is posted prominently in Appeals' offices. Further complication arises if the case is filed in Tax Court based on the Appeals-generated Notice of Deficiency because referral of the case back to Appeals for settlement is discretionary.³

Automatic application of AJAC procedures reduces the quality of appeals and diminishes the role of appeals officers, allowing Examinations and Collections to judge the reasonableness of document requests with little opportunity for the taxpayer to get a more objective determination of whether an alternative form of substantiation would suffice. In many cases, Appeals could easily review a new fact or argument rather than sending it back to Examinations or Collections and for many years highly trained appeals officers exercised this discretion. Additionally, requiring that the facts be supported by full documentation before Appeals will consider the case seems to contradict the long-standing *Cohan* rule,⁴ which allows taxpayers to produce alternative substantiation in certain circumstances.

Regardless of whether AJAC is being used to pressure the taxpayer to settle, the taxpayer must consider additional costs, procedural delays, and possible hazards of litigation resulting from AJAC procedures. We are concerned this might also be considered by the IRS taking negotiating positions. Some of our members believe appeals officers sometimes seem to apply AJAC procedures in an adversarial way to encourage settlements or to manage their caseload to satisfy internal reporting statistics, forcing settlement without a meaningful review of the facts and issues in Appeals. While the AJAC procedures may reduce the number of pending cases in Appeals, the cost to taxpayers generally increases and the quality of review and fairness generally decreases, clearly in contradiction to Appeals' mission statement.

Conclusion

In separate comments on the "future state" plan of the IRS, we observed the strong need for human interaction with the IRS. This also applies at least equally in cases within the Appeals jurisdiction in which substantial taxpayer rights are at stake.

³ Ibid, Rev. Proc. 2016-22, Section 3.01.


⁴ *Cohan v. Commissioner*, 39 F 2d 540 (2d Cir. 1930)

We believe the National Taxpayer Advocate has done an excellent analysis of face-to-face appeals problems from AJAC procedures and has made recommendations that should be strongly considered. We particularly support the recommendation to give IRS appeals and settlement officers more discretion to develop facts and arguments rather than being required to automatically bounce a case back to Examinations or Collections. This will allow the appeals (settlement) officer to fully develop the case and will add substantially to the quality of the appeals process. If a case is remanded to the field, the rigid and limited time for field action should be significantly relaxed to provide a fair process. The objective should be to resolve a case fairly and efficiently rather than following procedures that automatically limit the authority of Appeals and which will often delay and effectively deny appeal rights of taxpayers.

We recognize the IRS has to prioritize the use of its scarce workforce resources and funding, but an effective and fair appeals process is necessary for a fair tax system; procedures (whether by AJAC, personnel allocation or otherwise) that limit face-to-face meetings or impair a fair process should not be imposed to restrict a fair appeals process. Travel costs are borne by the taxpayer, and face-to-face meetings make the IRS more efficient and cost effective, and lead to a more efficacious approach to achieving the Appeals' mission of fairness. The IRS should encourage rather than discourage in-person appeals.

We appreciate this opportunity to present our comments and would be happy to discuss this further with you. Please contact me at 972-419-8383 or kmh@gpm-law.com if you would like to discuss our comments.

Sincerely,



Kenneth M. Horwitz, JD, LL.M., CPA
Chair, Federal Tax Policy Committee
Texas Society of Certified Public Accountants

Principal responsibility for drafting these comments was exercised by Kenneth M. Horwitz, JD, LL.M., CPA; Christina A. Mondrik, JD, CPA; and Julie Ann Dale, CPA.

cc: Nina E. Olson, National Taxpayer Advocate
Karen Schiller, Commissioner, IRS Small Business/Self-Employed Division
Kirsten B. Wielobob, Chief, Appeals, IRS Office of Appeals



January 24, 2017

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
P.O. Box 7604; Ben Franklin Station
Washington, D. C. 20044

Re: Limits on the Availability of In-Person Appeals Conferences

Dear Commissioner Koskinen,

On behalf of the Texas Society of Certified Public Accountants (TSCPA) and the Tax Section of the State Bar of Texas, we respectfully submit this joint letter to raise significant concerns by Texas tax practitioners in light of recent revisions to the Internal Revenue Manual that limit the availability of in-person appeals conferences.

TSCPA is a nonprofit, voluntary professional organization representing more than 28,000 members. One of the expressed goals of the TSCPA is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of CPAs in Texas, as well as the public interest. TSCPA has established a Federal Tax Policy Committee (FTP) to represent those interests on tax-related matters. The FTP has been authorized by the TSCPA's Board of Directors to submit comments on such matters of interest to committee membership. The views expressed herein have not been approved by the Board of Directors or Executive Board and, therefore, should not be construed as representing the views or policies of the TSCPA.

The comments incorporated into this joint letter are also being presented on behalf of the Committee on Governmental Submissions (COGS) of the Tax Section of the State Bar of Texas. These comments should not be construed as representing the position of the Board of Directors, the Executive Committee or the general membership of the State Bar of Texas. The Tax Section, which has submitted these comments, is a voluntary section of members composed of lawyers practicing in a specified area of law. These comments were approved by the Council of the Tax Section, which is the governing body of that Section. No approval or disapproval of the general membership of this Section has been obtained and the comments represent the views of the members of the Tax Section who prepared them.



Although members of the Tax Section of the State Bar of Texas who participated in preparing these comments have clients who would be affected by the principles addressed by these comments 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.

The Office of Appeals recently revised the Internal Revenue Manual (IRM) to limit taxpayers' ability to resolve their tax issues using in-person appeals conferences. While this change in policy was apparently intended to promote efficiency within the Internal Revenue Service (IRS), it constitutes a major change in long-standing policy that protects taxpayer rights. This change may diminish public confidence in the IRS while in many cases actually decreasing efficiency.

Informal statements by the IRS undermine, rather than promote, consistent application of the revised procedures. We understand that representatives of the Office of Appeals have expressed an intention to apply their procedures in a fair manner so as to not unreasonably limit taxpayers' access to face-to-face conferences. Nationwide consistency in access to the appeals process is essential. However, we believe appeals managers' interpretations may vary, particularly as time passes, in implementing informal statements that conflict with the language of the revised IRM procedures. Thus, these statements provide taxpayers and representatives little assurance of consistent application and could undermine already waning taxpayer confidence in the appeals process.

While we generally support the objective of the IRS "Future State" initiative to take advantage of the latest technology to reduce costs, this initiative should be implemented in a manner to enhance the entire taxpayer experience and should not come at the expense of taxpayer appeals rights. We believe the recent change limiting the opportunity for in-person meetings between taxpayers and the Office of Appeals is too restrictive and could, ultimately, even if not immediately, preclude nearly all in-person meetings. Moreover, the technology for holding alternative conferences is currently insufficient to accommodate taxpayers' needs for face-to-face appeals. Accordingly, we make the following comments and suggestions.

Revisions to the Internal Revenue Manual Threaten Taxpayer Rights

Revised IRM 8.6.1.4 entitled "Conference Practices" states that all conferences should be held by telephone except where:



- There are substantial books and records to review,
- The appeals officer cannot judge the credibility of the taxpayer without an in-person conference,
- The taxpayer has special needs that can only be accommodated with an in-person conference,
- There are numerous conference participants,
- An alternative conference procedure will be used involving separate caucuses, or
- Another IRM section calls for an in-person conference.

This list is deficient and fails to account for such factors as the technical difficulty or complexity of the case, either from a factual or legal perspective. The revised procedures should be carefully analyzed for other deficiencies and should be revised to moderate the bias against in-person conferences. Moreover, the criteria listed in the IRM to be applied by the appeals team manager (ATM) are too vague. Reasonable minds could differ on what constitutes “substantial books and records” necessary to transfer the case for a face-to-face conference. Focusing on these types of determinations will distract resources from the substantive appeals process, as the IRS is tasked with the procedural determination of whether a taxpayer’s case is worthy of an in-person meeting, rather than spending productive time addressing the merits of the case. Accordingly, we respectfully suggest that the IRS provide clearer guidelines as to what constitutes “substantial books and records” in order for taxpayers and tax practitioners to better be able to determine when it would be necessary for the IRS to schedule the case for a face-to-face conference.

As changed, the IRM requires that in-person conferences first be approved by the ATM rather than the appeals technical examiner (ATE). We believe the ATE, rather than the ATM, would be the more appropriate and efficient person to approve in-person conferences because the ATE has the most contact with the case while it is in Appeals. Accordingly, we recommend that the ATE is better equipped to make the initial determination of whether a case should be set for a face-to-face conference and should be the person with first approval authority for in-person conferences. The ATM would still be available to authorize a case for a face-to-face hearing if the ATE initially recommends against it. Furthermore, we believe the decision on whether a face-to-face conference is appropriate should not be vested solely in the Office of Appeals. Therefore, we suggest that this approval should be a collaborative analysis involving the taxpayer, the tax practitioner and the ATE.

Alternatives to Face-to-Face Appeals Conferences are Often Not Sufficient

The IRS is required to make appeals technical employees available on a regular basis in each state.¹ Moreover, the IRS has been encouraged to consider alternative techniques, such as teleconferences for taxpayers seeking appeals in rural or remote areas. We understand under the new policy, a taxpayer requesting an in-person conference will be offered a video conference (VSD) if the IRS has such a facility within 100 miles of the taxpayer. While, in some instances, this might be an acceptable alternative to an in-person conference, we understand the IRS currently has only 10 such facilities. In addition, in many large states, the VSD service is not likely to be available to a large percentage of the taxpayer population. For example, the only current VSD facility in Texas is in El Paso, which is more than 500 miles from most of the largest cities and population in Texas and in a different time zone from the rest of the state. We encourage the IRS to make VSD more available and to establish definitive procedures for use of VSD. We also understand that current VSD technology is not dedicated to Appeals, a fact that could lead to serious scheduling issues. Time constraints on the use of such technology could also impede fair hearings, the length of which frequently cannot be predicted.

We also encourage the IRS to consider improving the quality of communication before expanding videoconferencing. In our experience, the technology the IRS has historically employed to allow IRS representatives to participate in IRS practitioner liaison meetings has been full of glitches and far less than adequate to assure effective communications. Although videoconferencing can eliminate driving across the city, traveling across the country or sometimes even taking the elevator to get to another floor of the same building, it has been problematic and potential savings to the IRS should not be at the cost of the quality of an in-person meeting. Moreover, since an additional IRS employee will be required to monitor the use of the VSD system while the appeals conference is taking place, the actual cost savings is not apparent.

Kirsten Wielobob, former chief of appeals, responded in a letter to earlier comments of the TSCPA, stating that 87 percent of the cases conducted using telephone communications were “effectively resolved.” Although we understand that many cases can be resolved with a telephone discussion, these statistics may not tell the whole story. Efficient resolution could very easily include prompt denial of the relief the taxpayer was seeking. In addition, even if taxpayer relief was granted, we strongly suspect many of the

¹ Internal Revenue Restructuring Act of 1998 §3465(b) and (c). *See also* IRS Pub. 1660, Collection Appeal Rights.



cases behind this statistic involved relatively simple technical matters. While we agree that many such simple cases brought before Appeals can be resolved with a telephone discussion, we suggest that telephone conferences should not be the sole method of resolving all issues and procedures should not be used to reduce the availability of a face-to-face appeal for the cases that are not so easily resolved. Indeed, we suspect that if practitioners perceive that Appeals loses its attractiveness as the next step after a revenue agent's report, recourse to a Tax Court filing with the use of Appeals as a part of that procedure may become more the norm.

Our members often use telephone discussions in the appeals process because it is most efficient for us and our clients. This is particularly important in a state like Texas where an in-person conference might require a taxpayer or representative to travel hundreds of miles both to and from the conference. However, if the taxpayers and their representatives are willing to make the trip because they believe an in-person conference is important to a fair and efficient resolution of issues, they should not be denied the opportunity simply because the telephone conference is the "default" position combined with an administrative policy that Appeals will only permit in-person meetings under the very limited circumstances described in the IRM.

Ms. Wielobob requested that we provide examples of when face-to-face conferences are superior to telephone conferences. The following examples describe many of the types of circumstances where in-person meetings are critical to arriving at a fair and efficient resolution for both the IRS and taxpayers:

- Telephone communication is often not effective for complex factual or legal tax issues that require detailed explanations and/or where taxpayer records are critical to resolving the issue. The IRM references voluminous records as a reason why an appeal may be set for a face-to-face conference. However, the evaluation of what is voluminous is very subjective and the amount of records may not be relevant when dealing with a complex tax issue requiring detailed explanation.
- In-person communication permits both parties to evaluate each other's positions more clearly than mere voice communication. Facial expressions and body language are an effective and efficient means to determine whether the other party understands the points being raised, is raising them sincerely and has a strong belief in the position being asserted. Subtle differences in perspective are more likely to be understood in person using more senses than are available over the phone. Current videoconferencing capabilities, if available, do not pick up these subtleties.



- In-person meetings are important for taxpayers and IRS officials for whom English is a second language or who otherwise have limited communication capacities, which often requires the participants to rephrase questions and answers. This is an important issue in Texas where we have large Hispanic and Asian populations.
- As recognized in the IRM “Conference Practices,” in-person meetings are necessary whenever the taxpayer or the taxpayer’s representative has a hearing impairment.
- Even where hearing impairment is not an issue, poor telephone audio quality can sometimes interfere with a clear understanding of issues.

In our experience, face-to-face communications have been critical in resolving matters in appeals. In many appeals cases, settlement was easily reached by presenting and discussing a supporting case or documentation, such as a prior tax return, that may not meet the requirements of “substantial books and records” as required for an in-person appeal. While fax machines, scanners and other methods may allow taxpayers, tax practitioners and appeals officers to share additional documents or information during an appeals conference, those methods are not always as effective as physically bringing them to the appeals conference. We also note there are many complex situations that require much telephone and other follow-up, including follow-up in-person conferences.

Limitations on in-person meetings will reduce the ability of taxpayers and the IRS to clearly communicate their respective positions and will be likely to extend and complicate the resolution of the issues, significantly increasing the number of cases requiring judicial review and increasing overall costs for both the IRS and taxpayers.

Finally, since the appeals conference revisions constitute a significant change in long-standing policy, we believe the initiative should not have been implemented by merely adding wording to the IRM. Before implementing any proposal of this importance, the IRS should have requested public comment from those most affected, including taxpayers and tax professionals.

We are attaching two prior letters submitted by TSCPA on this subject, one on preserving and improving access to face-to-face appeals conferences and the other requesting an opportunity to comment on proposed implementation of the IRS Future State plan. Face-to-face appeals conferences are important for Texas CPAs and attorneys, and we respectfully encourage you not to unduly restrict the availability of in-person appeals conferences.

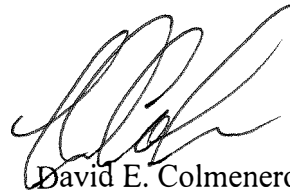


We appreciate this opportunity to communicate and comment on the revisions to the IRM and would be happy to discuss our comments further with you. Please contact Ken Horwitz at 972-419-8383 or kmh@gpm-law.com, or David Colmenero at 214-749-2462 or dcolmenero@meadowscollier.com if you would like to discuss our comments.

Sincerely,



Kenneth M. Horwitz, JD, LLM, CPA
Chair, Federal Tax Policy Committee
Texas Society of CPAs



David E. Colmenero, JD, LLM, CPA
Chair, Tax Section
State Bar of Texas

Principal responsibility for drafting these comments was exercised by Kenneth M. Horwitz, JD, LLM, CPA; David E. Colmenero, JD, LLM, CPA, on behalf of the State Bar of Texas; and Christina A. Mondrik, JD, CPA. The Committee on Government Submissions (COGS) of the Tax Section of the State Bar of Texas has approved these comments. Jeffry M. Blair, JD; Henry Talavera, JD; and Jason B. Freeman, JD, CPA, vice chair and co-chairs of COGS, respectively, also reviewed these comments. Bob Probasco, JD, CPA, reviewed the comments and made suggestions on behalf of COGS.

cc: Donna C. Hansberry, Chief, Appeals, IRS Office of Appeals
Mary Beth Murphy, Commissioner, IRS Small Business/Self-Employed Division
Nina E. Olson, National Taxpayer Advocate
Texas Members of U.S. Congress

Attachments (2)