



AJAC: Appeals Judicial Approach & Culture

*Procedural Changes and Protecting
your Clients' Rights in Appeals*

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Refresher: What is Appeals?

- ▶ The function of the IRS Appeals Office is laid out in its mission statement:
 - ▶ “The Appeals Mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service”
[IRM 8.1.1.1]
 - ▶ When a taxpayer has reached an impasse with the originating compliance function they may seek a resolution with Appeals. Appeals serves as an impartial arbiter and provides an avenue for exhausting administrative remedies in tax controversies.
 - ▶ Over which cases does Appeals have jurisdiction:

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 - ▶ When a taxpayer has reached an impasse with the originating compliance function they may seek a resolution with Appeals. Appeals serves as an impartial arbiter and provides an avenue for exhausting administrative remedies in tax controversies.
 - ▶ Over which cases does Appeals have jurisdiction: ALMOST EVERYTHING

Briefly...

- ▶ Collection Cases under Appeals Jurisdiction
 - ▶ Collection Due Process Hearings
 - ▶ Final Notices of Intent, Notices of Federal Tax Lien, Jeopardy Levies, etc.
 - ▶ Equivalent Hearings – For non-timely CDP requests up to one year after notice
 - ▶ Rejected Offers-in-Compromise – Doubt as to Liability or Collectability
 - ▶ Collection Appeal Program cases (CAP Appeals)
 - ▶ Levies, NFTLs, nominee liens, denials of lien subordinations, etc.
 - ▶ Rejection or termination of Installment Agreements & Others
 - ▶ Trust Fund Recovery Penalty cases
 - ▶ Appealed Innocent Spouse Cases

Briefly...

- ▶ Examination Cases under Appeals Jurisdiction
 - ▶ Protested Examinations
 - ▶ Docketed and Non-docketed cases originating from Exam
- ▶ AJAC primarily impacts non-docketed cases originating from the Examination function

What is AJAC?

- ▶ The Appeals Judicial Approach and Culture project took form in 2012 to ensure the policies of Appeals are consistent with its mission.
- ▶ The goal of AJAC is aimed to return Appeals to a quasi-judicial approach in the way it handles cases. It is part of an effort to improve internal and external customer perceptions of a fair, impartial, and independent Appeals Office.
- ▶ Phase I of AJAC was implemented on July 18, 2013
- ▶ Phase II took effect for cases received after September 2, 2014
- ▶ Again, AJAC primarily impacts non-docketed Exam cases
- ▶ Additional changes to Appeals policy have been implemented under the new 'Docketed Examination Assistance (DEA)' project.

What is AJAC?

- ▶ Appeals Officers are “no longer going to be examiners or investigators”
- ▶ Appeals process is not a continuation or an extension of the examination process.
- ▶ New issues are not to be raised by Appeals
- ▶ Appeals will not reopen an issue on which the taxpayer and the IRS are in agreement.

Appeals Before AJAC

- ▶ Prior to AJAC Appeals could, and did, return insufficiently developed cases to the originating function.
- ▶ Appeals used to have discretion to raise new issues and reopen agreed issues if there were substantial grounds for doing so and the potential effect on tax liability was material.
- ▶ ASED limitations were more lenient.

AJAC – Collection Cases

- ▶ Appeals will not take investigative actions with respect to financial information provided by taxpayers. Financial information needing investigation or verification will be sent to Collection.
- ▶ Appeals will only consider assets that were documented by Collection or introduced by the taxpayer.
- ▶ Appeals will accept as “verified” those financial statements reviewed by Collection within the previous 12 months.
- ▶ Appeals will not make recommendations to file Notices of Federal Tax Lien.
- ▶ All OICs submitted in CDP or Equivalent Hearings will be reviewed by Collection for a preliminary recommendation or acceptance.
- ▶ In non-CDP OIC cases, Appeals will only determine the acceptability of the OIC and will not offer other collection alternatives.

AJAC – Collection Cases

CDP & Equivalent Hearings

- ▶ Appeals is responsible for making a determination based upon the facts and the law known to it during the time of the hearing.
- ▶ Files sent to Appeals in CDP cases should contain sufficient documentation for Appeals to make a determination.
- ▶ Appeals cannot return the case to Collection and instead must decide whether to:
 - ▶ (1) Request relevant information from the taxpayer;
 - ▶ (2) Issue an appeals referral investigation for Collection to secure or verify information; or
 - ▶ (3) Make a determination based on the available information.
- ▶ The case must be evaluated only on the information contained in the Collection case file.
IRM 8.22.4.2.1

AJAC in Collection Cases – Cont'd

Offers in Compromise

- ▶ Appeals Officers making a final determination on an OIC are directed not to investigate to identify new assets but to consider only assets documented by Collection and accept previously agreed upon values.
- ▶ Appeals cannot revise the value of an asset to an amount higher than determined by Collection unless the taxpayer voluntarily provides new information.
- ▶ Appeals may only correct errors in determining reasonable collection potential that are strictly computational in nature.
- ▶ New IRM sections make clear Appeals is not an extension of the Collection OIC process.
- ▶ Appeals is only to consider the items that were in dispute when the rejection was issued.
- ▶ In short: Appeals may no longer attempt to identify additional assets or revise asset values. IRM 8.23.3.3

AJAC in Collection Cases

OIC – Cont'd

- Since COIC's adverse recommendation is not a 'final determination' under IRC 7122(f), Appeals must make a determination within 24 months from the date the OIC was first received by COIC. Otherwise the Offer is automatically deemed accepted. [Non-CDP Cases]

IRM 8.22.7.10.6.5

CAP Appeals

- ▶ Appeals will not consider alternatives to the issue under appeal, only the appropriateness of that issue.
- ▶ IRM 8.24.1.1.1(9) provides examples.

Practice Pointers in Collection Cases

- ▶ Providing financial information and a resolution proposal prior to, or soon after, the right to go to Appeals is available is a must.
- ▶ As IRS puts it, "Taxpayers should fully cooperate with IRS compliance functions during the development of their case so the file is complete when it comes to Appeals."
- ▶ Introducing new information in Appeals may result in Appeals releasing jurisdiction over the case and returning it to Collection.
- ▶ Diligent practitioners will be mindful of Appeals' investigatory limitations and provide thorough substantiation to Collection so that Appeals can make a reasonable determination and so as to avoid burdensome delays to the taxpayer.
- ▶ Aggressive (or overburdened) Revenue Officers or ACS representatives have historically pushed work off on Appeals. AJAC will require the Collection function employee to perform the necessary analysis.

AJAC – Examination Cases

- ▶ MAJOR CHANGES
- ▶ Appeals will attempt to settle a case based on factual hazards when not fully developed by Exam. (i.e., cases will not be sent back to Exam for further development).
- ▶ Appeals will not raise new issues or reopen issues on which the taxpayer and Exam have reached an agreement, with limited exceptions.
- ▶ Most new non-docketed cases in Appeals must have at least one year remaining on the ASED. Docketed cases in Appeals do not have similar statute concerns.
- ▶ Appeals will return non-docketed cases to Exam when a taxpayer submits new information or evidence or raises a new issue that merits investigation or additional analysis.

AJAC – Examination Cases

- ▶ Again, Appeals will not generally return cases to Exam for further development. However, certain circumstances may be grounds for returning a case to Exam's control.
 - ▶ The case is missing a Protest;
 - ▶ The Protest fails to set forth the taxpayer's position, lacks detail, or fails to meet the requirements of Pub 5;
 - ▶ Technical advice was pending at the time of the referral;
- ▶ Cont'd
 - ▶ Some action must be taken or some event must occur before Appeals can adequately consider the case;
 - ▶ The taxpayer provides new information or evidence; OR
 - ▶ Appeals discovers potential fraud, malfeasance, or misrepresentation of a material fact.

AJAC in Examination Cases – Cont'd

- ▶ Appeals will retain jurisdiction of docketed cases when a taxpayer submits new information or evidence or raises a new issue that merits investigation or additional analysis, but will request assistance from Exam in performing those functions. If Exam does not provide assistance, Appeals will attempt to settle the case based on the hazards of litigation associated with the new information and the other information already in the case file.
- ▶ For most cases, Appeals will engage Exam for review and comment when a taxpayer, or their representative, raises a relevant new theory or alternative legal argument.

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- ▶ Essentially, Appeals will only hear cases that are fully developed.
- ▶ A fully developed case is defined by IRS as one that “has all pertinent evidence well documented with an easy to follow audit trail. Generally, the case contains the evidence needed to support the adjustments proposed in the exam report.”

AJAC in Examination Cases

New Issues

- ▶ A “new issue”, in a non-docketed case, is one which was not discussed with Exam and does not appear on the exam report.
- ▶ In docketed cases it is defined as any adjustment to an item affecting the taxpayer’s liability that is not included in the statutory notice of deficiency.
- ▶ IRM 8.4.1.15.3

VS

New Arguments/Theories

- ▶ A new argument or theory is one which supports a position already held by one of the parties.
- ▶ Case law, Regs, and other sources can be used in new ways to support an already held position.
- ▶ Appeals is not prevented from raising a new theory or alternative argument. IRM 8.6.1.6.1

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New Issues – Cont'd

- ▶ Although Appeals is prohibited from raising new issues in docketed tax cases, Appeals will consider new issues that the government raises in its formal pleadings and may consider new evidence developed by Compliance or by Counsel to support the government's position.
- ▶ IRM 8.4.1.15.3
- ▶ Additionally, if Counsel determines that Appeals may consider a new issue without formal amendment to the proceedings or the petitioner raises a new issue in a formal amendment to the proceedings, the Appeals Officer may refer the issue to Compliance for review and to make a determination.

AJAC - Timing

Timing is Everything

- ▶ To ensure Appeals has sufficient time to fulfill its role as independent arbiter, new timing requirements are imposed. There must be 365 days remaining on the ASED before Appeals will accept a non-docketed case.
- ▶ Appeals will return a case to Exam for consideration of new issues or information raised by a taxpayer only if there are at least 210 days remaining on the ASED.

Determining statutes is a must.

- ▶ Appeals will accept a case that Appeals previously returned to Exam only if there are at least 180 days remaining on the ASED.
- ▶ These time periods however do not apply to refund claims and other cases that do not involve a proposed deficiency.
- ▶ Taxpayers in Appeals on a deficiency case should be prepared to extend the ASED when necessary.

Practice Pointers in Examination Cases

- ▶ AJAC memoranda instruct IRS staff that if a taxpayer or their representative unreasonably delays the process by intentionally submitting new information or raising new issues multiple times, the case will not be sent to Exam for more analysis. Rather, the Appeals Officer can make a determination based on his/her own assessment of the factual hazards of litigation.
- ▶ Taxpayers can no longer hold back information during the examination phase and present that information for the first time at Appeals.

Issues to Keep in Mind

- ▶ Case resolution will almost certainly be delayed under AJAC.
- ▶ Underpayment interest will continue to accrue.
- ▶ Perceived “intentional delay” by practitioners can have substantially negative impacts on your clients case. Appeals may simply make a determination without affording the taxpayer time to supply additional information which could impact their overall tax liability, penalties, and interest.
- ▶ In such cases the taxpayer is left with court as their only remedy which, depending upon the court entered, can be financially burdensome and time consuming.

Issues to Keep in Mind

- ▶ Determining statutes of limitation at the case outset is essential to providing sound advice to your clients;
- ▶ Developing evidence, information, and documents early in audits and raising all relevant issues will save you and your clients time and headaches down the road in most cases;
- ▶ Making clients aware of the AJAC procedures and educating them will hopefully quell any frustrations directed at you as their representative and, if you provide it writing, will hopefully offer you some protection in the case of the overly litigious, disgruntled client.

QUESTIONS OR COMMENTS?



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Fact Sheet

IRS Clarifies Office of Appeals Policies

(Updated October 1, 2016)

Background/Purpose:

In recent years, Appeals has initiated independence projects to ensure our policies and practices are consistent with our mission. Appeals' role is to settle disputes on a fair and impartial basis that favors neither the government nor the taxpayer. Appeals should not perform compliance actions. Rather, we attempt to settle a case after IRS compliance functions (Accounts Management, Collection, and Examination) have made a determination with which the taxpayer disagrees.

In 2012, we began the Appeals Judicial Approach and Culture (AJAC) project, which resulted in a series of policy clarifications primarily for non-docketed cases. We adopted these key policies in phases from 2012 through 2014.

Since the AJAC-related changes focus on non-docketed cases, additional work was needed to ensure that examination cases docketed in the U.S. Tax Court receive consistent treatment. As a result of the Docketed Examination Assistance (DEA) project, we issued on July 24, 2016 interim guidance for requesting examination assistance on docketed cases. Effective October 3, 2016, the new guidance will apply to docketed cases where new information is provided to Appeals that, in the judgment of the Appeals Technical Employee, merits investigation or additional analysis by an IRS compliance function.

In general, the policy clarifications brought about by both projects ensure that IRS compliance functions are the finders of fact and Appeals does not take investigative actions. These policies ensure taxpayers have a true appeal right – where Appeals reviews a final determination made by a compliance function.

Key Collection Policy Clarifications:

- Appeals will not take investigative actions with respect to financial information provided by taxpayers. Financial information needing investigation or verification will be sent to Collection.
- Appeals will only consider assets that were documented by Collection or

introduced by the taxpayer.

- Appeals will accept as “verified” those financial statements reviewed by Collection within the previous 12 months.
- Appeals will not make recommendations to file Notices of Federal Tax Lien.
- All Offers in Compromise (OIC) submitted in Collection Due Process (CDP) or Equivalent Hearings will be reviewed by Collection for a preliminary recommendation or acceptance.
- In non-CDP OIC cases, Appeals will only determine the acceptability of the OIC and will not offer other collection alternatives.

The recent Docketed Examination Assistance interim guidance for Appeals cases can be found [here](#). These policy changes are effective on October 3, 2016 and apply to docketed examination cases where a taxpayer submits new information or evidence or raises a new issue that merits investigation or additional analysis.

Key Examination Policy Clarifications:

- Appeals will attempt to settle a case based on factual hazards when not fully developed by Examination (*i.e.*, cases will not be sent back to Examination for further development).
- Appeals will not raise new issues or reopen issues on which the taxpayer and Examination have reached an agreement, with limited exceptions.
- Most new non-docketed case receipts in Appeals must have at least one year remaining on the statute of limitations. Docketed case receipts in Appeals do not have similar statute of limitation concerns.
- Appeals will return non-docketed cases to Examination when a taxpayer submits new information or evidence or raises a new issue that merits investigation or additional analysis.
- Appeals will retain jurisdiction of docketed cases when a taxpayer submits new information or evidence or raises a new issue that merits investigation or additional analysis, but will request assistance from Examination in performing those functions. If Examination does not provide assistance, Appeals will attempt to settle the case based on the hazards of litigation associated with the new information and the other information already in the case file.
- For most work streams, Appeals will engage Examination for review and

comment when a taxpayer raises a relevant new theory or alternative legal argument.

What taxpayers need to know:

- Taxpayers should fully cooperate with IRS compliance functions during the development of their case so the file is complete when it comes to Appeals.
- When appealing a compliance function's decision, taxpayers should be specific in their protest about the item(s) in dispute.
- Introducing new information in Appeals may result in Appeals releasing jurisdiction over the case and returning it to the compliance function.
- Our recent policy changes help to preserve the opportunity for an impartial appeal for taxpayers by ensuring Appeals is reviewing a final determination made by a compliance function.
- In docketed cases, Appeals will share all communications received from the compliance function with respect to any examination assistance provided. The taxpayer will have an opportunity to review the findings and respond to Appeals in attempting to resolve disputed issues.
- Although there will be a period of transition as these policies are implemented, we are confident that they will improve the appeals process by supporting Appeals' mission and strengthening a taxpayer's right to an independent appeal.