

CLIENT ALERT

IRS Issues BBA Guidance to Appeals

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While taxpayers await guidance from the IRS on how Bipartisan Budget Act of 2015 (BBA) appeals will function, the IRS has issued interim guidance to Office of Appeals employees. The guidance addresses the role of the Appeals TEFRA Team and how much time must be left on the statute of limitations before a BBA case can go to IRS Appeals.

Status of BBA Appeals

The IRS has not yet issued guidance on how IRS Appeals will operate in the new Centralized Partnership Audit Regime which was enacted by the BBA and is effective for all tax years beginning after December 31, 2017. However, the IRS has said that taxpayers will have the opportunity to go to Appeals during a BBA audit. In the preamble to final Treasury regulations released on December 21, 2018, the IRS said that it plans to “adopt procedures under which the partnership will have an opportunity to resolve with IRS Appeals any issues with respect to the adjustments made during the examination prior to the mailing of the NOPPA.”

IRS Memorandum for Appeals Employees

On March 25, 2019, the IRS issued interim guidance to Appeals employees on the new BBA partnership audit procedures. Appeals employees are to follow this guidance until the IRS updates the Internal Revenue Manual Section 8.19, Appeals Pass-Through Entity Handbook – Procedures and Authorities.

From the March 25 memorandum, we learned that the same Appeals employees who handled the old partnership audit procedures under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)—the Appeals TEFRA Team—will handle the BBA appeals. This team took a proactive role in all TEFRA key cases in Appeals from receipt through closing.

We also learned that the IRS is treating BBA appeals as a centralized issue. Pursuant to the interim guidance, the IRS will refer all BBA key cases to the ATT, including the following:

- New receipt screening.
- Agreement package preparation.
- Notice of Proposed Partnership Adjustment (NOPPA or PPA) preparation.
- Modification Dispute Screening.
- Final Partnership Adjustment preparation.
- Tax Computation Imputed Underpayment (in coordination with an Appeals Tax Computation Specialist).

The March 25 memorandum also instructs Appeals employees regarding the statute of limitations. Generally, all non-docketed new BBA key cases received by Appeals must have at least 365 days remaining on the statute of limitations.

What this means for taxpayers

Taxpayers may see a significant increase in the number of partnership returns being audited and going to Appeals. Congress enacted the BBA to ensure more partnership audits. Before the BBA was passed, the IRS audited less than 1 percent of large partnership tax returns (compared to 27 percent of large corporate tax returns). It is clear that the IRS is preparing to increase its large partnership audit rate under the BBA.

Although partnership appeals are still being handled by the same Appeals group, taxpayers should expect Appeals to experience some growing pains. Appeals will be dealing with new procedural issues inherent to the BBA regime and it will likely be dealing with far more audits than it did under TEFRA.

Because revising the Internal Revenue Manual and issuing regulations are long processes, taxpayers should expect the IRS to continue issuing more interim guidance like the March 25 memorandum.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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