



Fast Track and Appeals

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Appeals Judicial Approach and Culture (AJAC)

- Appeals will not engage in fact-finding
 - Appeals will not consider new facts not presented to Exam
 - Factual issues that are not properly developed are returned to Exam
- Appeals will not raise new issues
- Appeals will not reopen previously agreed issues
 - See IRM 8.6.1.6 (New Issues and Reopening Old Issues); Appeals Policy Statements 8-2 and 8-3 (IRM 1.2.17)

Appeals Judicial Approach and Culture (AJAC)

- Taxpayer can raise new issues or new theories
 - Appeals can consider (without developing new facts)
 - Appeals to request review and comment from Exam
 - Appeals to send back to Exam if require fact development
 - 210 days required on statute of limitations to consult Exam
- New information or evidence means
 - Not shared with Exam
 - In view of Appeals Office, merits additional analysis or investigative action
 - New information provided after NOPA or with Protest may extend Exam (possible additional IDRs)



Fast Track Settlement

- Rev. Proc. 2003-40
- Appeals mediation between taxpayer and Exam prior to Appeals process
- Available to all LB&I taxpayers
- Requires issues to be fully developed
- Only available after Form 5701 (NOPA) has been issued and prior to 30-day letter
 - No “hot” interest



Fast Track Settlement

- Either party may suggest Fast Track, both must approve
 - Can withdraw at any time
- Must fully develop fact issues, taxpayer submits memorandum in response to NOPA
- Designed for resolution within 120 days
 - Taxpayer and IRS must have decision-maker present
 - In practice, may be long delay for fast track approval (prior to official beginning of fast track)

Fast Track Settlement Statistics

Program	2012	2013	2014
Fast Track Settlement – SB/SE	64	165	230
Fast Track Settlement – LB&I	124	105	81
Fast Track Settlement – TE/GE	6	11	5



Fast Track Pros and Cons

- Advantages
 - Fast
 - “Two bites” with test of position (“sneak peak”)
 - “Gold star” program, high degree of success
 - Lower administrative costs if successful
- Disadvantages
 - Ex parte not applicable
 - Position may influence Appeals Consideration
- AJAC Appeals limitations reduce disadvantage of presenting case to Exam



Rapid Appeals Process

- IRM 8.26.11
- Appeals program similar to Fast Track Settlement
- Appeals (rather than Exam in FTS) has settlement authority
- Mediation (by Appeals officer acting as mediator) between taxpayer and Exam
- Exam remains part of Appeals process, ex parte waived



Rapid Appeals Process

- All parties must agree, usually suggested by Appeals or taxpayer
- Can withdraw at any time
- Designed to permit resolution quickly, in one session
 - Decision-makers should be present

Rapid Appeals Process Pros and Cons

- Difficult to resist Appeals suggestion of Rapid Appeals Process
 - Can create informal procedure
- Advantages
 - Fast
 - “Gold star” program
 - Inclusion of Exam may limit AJAC problems
- Disadvantages
 - Ex parte difference from normal Appeals

Post-Appeals Arbitration

- Announcement 2008-11 / Rev. Proc. 2014-63
- Rarely used
- Discontinued Rev. Proc. 2015-44






Post-Appeals Mediation

- Rev. Proc. 2014-63
- Non-binding mediation process following unsuccessful efforts at Appeals settlement
 - Designed to be used where limited issues remain unresolved
- Available to all LB&I taxpayers
 - Not available for cases previously in Fast Track
- Appeals Officer as mediator, taxpayer may use non-IRS co-mediator at taxpayer expense

Post-Appeals Mediation Pros and Cons

- Advantages
 - “Second bite” at the apple
 - Relatively quick
 - Covers both factual and legal issues
 - Ex parte limitations apply, Exam excluded
- Disadvantages
 - Appeals Officer tends to side with his colleague
 - Limited preparation opportunity

Post-Appeals Mediation



Program	2012	2013	2014
Post-Appeals Mediation (non-collection)	71	88	67
Post Appeals Mediation (OIC/TFRP)	23	11	5

Questions?

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