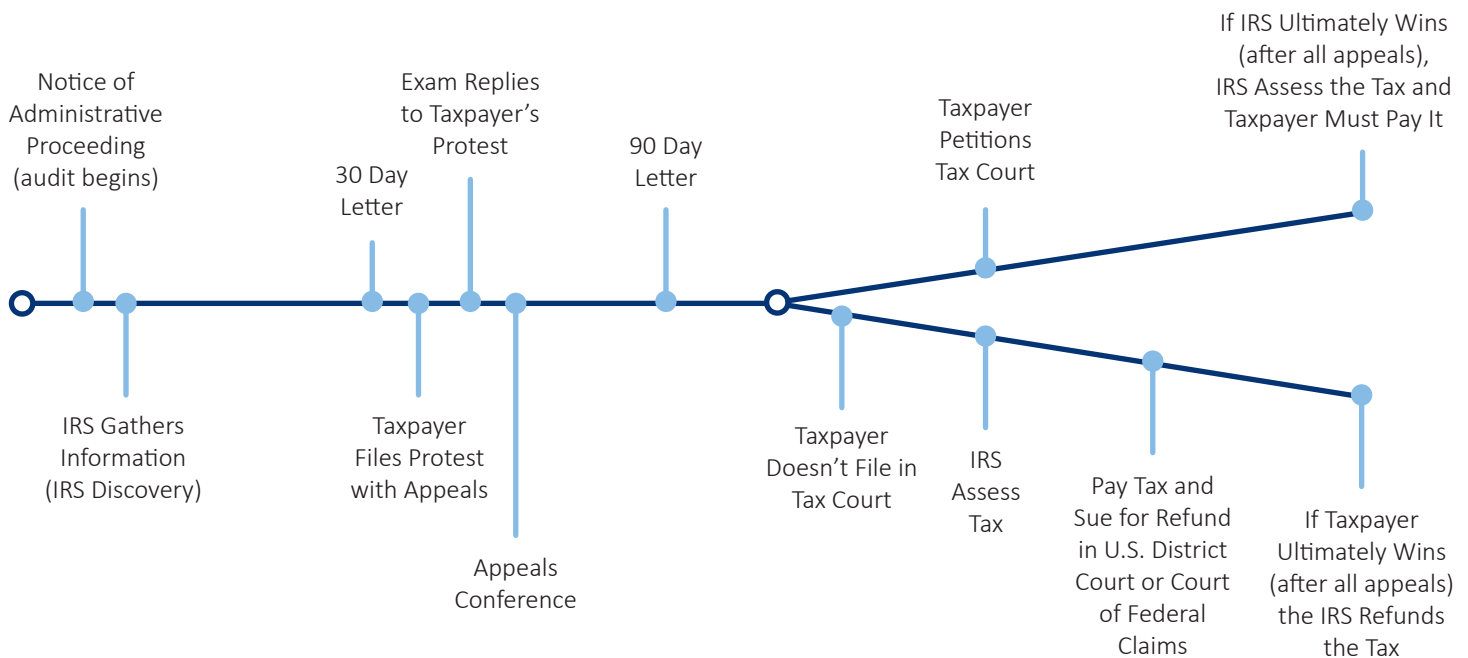


Managing Tax Audits and Appeals Quick Reference Guide

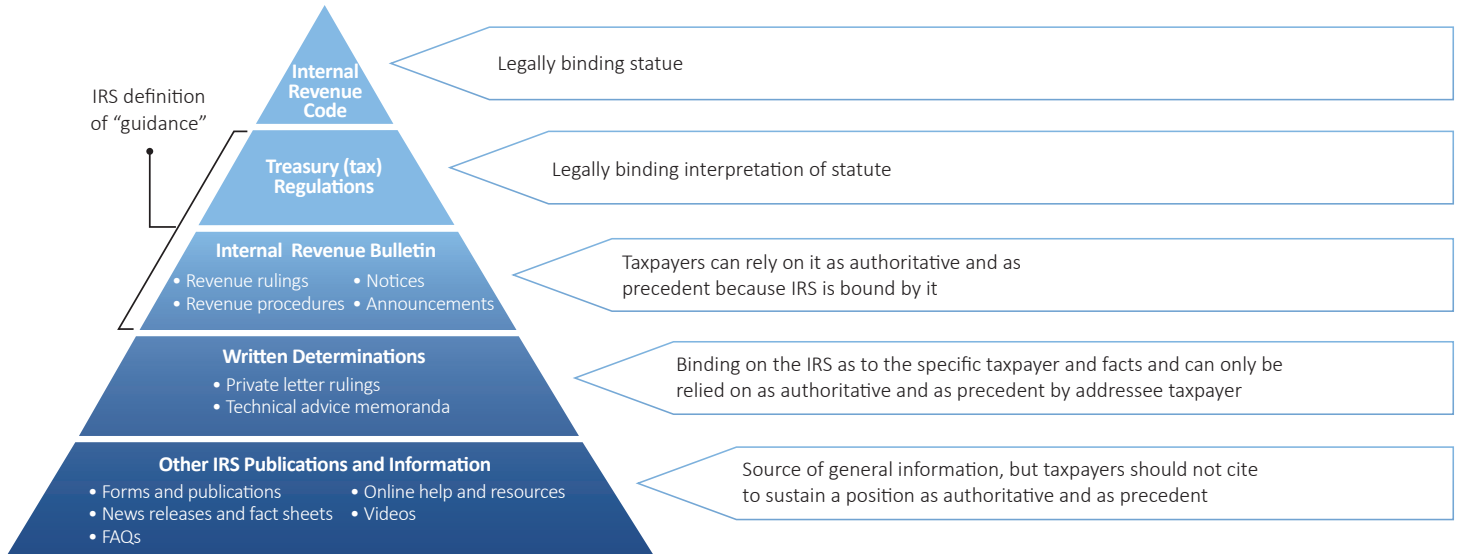
Statutory Deadlines

Item	Due Date	Authority
Assess tax	Generally, IRS must assess a tax within the later of: (1) three years of a return being filed or (2) three years after the due date for the return	I.R.C § 6501(a); see Crowell & Moring’s <i>Managing Tax Audits and Appeals</i> , 17.1.1.
File an amended return for a refund	Generally, a taxpayer must file for a refund within the later of (1) three years from the time the return was filed or (2) two years from the time the tax was paid	I.R.C § 6511(a); see Crowell & Moring’s <i>Managing Tax Audits and Appeals</i> , 18.6.1.
Sue for a refund	Generally, a taxpayer must sue for a refund within two years of the IRS denying the claim	I.R.C § 6532(a)(1); see Crowell & Moring’s <i>Managing Tax Audits and Appeals</i> , 20.2.3.
Petition U.S. Tax Court to redetermine notice of deficiency	Taxpayer must file a petition with the U.S. Tax Court within 90 days of the IRS mailing the notice of deficiency (150 days for foreign taxpayer)	I.R.C. § 6213(a); see Crowell & Moring’s <i>Managing Tax Audits and Appeals</i> , 16.6.

Typical Stages of Federal Tax Controversy



Guidance Issued by the Treasury Department and the IRS



Source: GAO analysis of IRS documents | GAO-16-720

Treasury Regulations

- **Treasury Regulations have the force and effect of law and are binding on taxpayers**
 - Temporary Regulations have the same force and effect of law as final regulations, until final regulations are issued.
 - Temporary regulations expire within three years after issuance.
 - Proposed Regulations are prepared to provide timely guidance when temporary or final regulations would take too long.
- **Revenue Rulings**
 - Official interpretation of internal revenue laws, related statutes, tax treaties, and regulations.
 - Set forth how tax law is applied to an entire set of facts.
 - Taxpayers may rely on revenue rulings to determine tax treatment of their own transactions, however the IRS cautions against reaching the same conclusions in other cases unless facts and circumstances are substantially the same.
- **Revenue Procedure**
 - Official statement of procedure.
 - Usually reflects internal IRS management document or communication.
- **Announcements and Notices**
 - Used when guidance is needed quickly.
 - Can be relied on to same extent as revenue rulings and revenue procedures.
- **Private letter rulings**
 - Written response issued to a taxpayer interpreting and applying the tax laws to that taxpayer's specific set of facts.
 - May not be used or cited as precedent by another taxpayer, however can be predictive of how the IRS will treat an issue.
- **Technical Advice Memoranda**
 - Written determinations containing advice or guidance furnished by the IRS National Office upon the request of Exam or Appeals regarding a technical or procedural question that develops during any stage of any proceeding.
 - May not be used or cited as precedent by another taxpayer, however can be predictive of how the IRS will treat an issue.
- **Internal Revenue Manual (IRM)**
 - Instructions for IRS employees on how to administer tax law.
 - Not binding on the IRS, but provides significant insight into methods used by IRS.
- **Chief Counsel Orders and Notices**
 - Official policies and practices of the Office of Chief Counsel.
 - No legal effect, but can provide insight into methods used by IRS.

Stages and Types of IRS Discovery

Program	Description	Authority
Witness interviews and tours of taxpayer facilities	IRS interviews may occur at the beginning of an examination, to assist in identifying issues, or later, to develop facts and establish evidence tailored to issues under examination.	I.R.M. § 4.46.4; see Crowell & Moring's <i>Managing Tax Audits and Appeals</i> , 3.1.
Information Document Request (IDR)	Primary method IRS uses to obtain information; many IDRs request written documentation supporting the tax return or positions taken on tax return.	See Crowell & Moring's <i>Managing Tax Audits and Appeals</i> , 3.2.
Administrative summons	If IRS decides taxpayer has not complied, it may issue an IRS administrative summons. If the summoned party fails to comply with the administrative summons, the IRS can seek a court order enforcing the summons.	I.R.C. § 7402(b); see Crowell & Moring's <i>Managing Tax Audits and Appeals</i> , 3.2.2, 3.3.
Third-party summons	The IRS may issue a summons to any person. The IRS often uses third-party summonses to obtain records concerning the taxpayer under examination from a bank or accountant.	I.R.C. § 7602; see Crowell & Moring's <i>Managing Tax Audits and Appeals</i> , 3.3.7.
John Doe summons	Third-party summons that does not identify a taxpayer. Used when the IRS has knowledge of a particular transaction or transactions that may affect tax liability but does not know the identity of the persons involved.	See Crowell & Moring's <i>Managing Tax Audits and Appeals</i> , 3.3.9.
Designated summons	Special summons issued to corporate taxpayers with respect to one or more taxable periods currently under examination. Designated summonses have the effect of extending a statute of limitations period on the IRS making an assessment against the corporation.	I.R.C. § 6503(j); see Crowell & Moring's <i>Managing Tax Audits and Appeals</i> , 3.3.10.

Privileges Basics

- **Common privileges in IRS audits**

- o Attorney-client privilege: protects communications between a client and his attorney made and kept in confidence for the purpose of obtaining or providing legal advice [see Crowell & Moring's *Managing Tax Audits and Appeals* 4.1.1]
- o Work-product doctrine: protects materials prepared in anticipation of litigation [see Crowell & Moring's *Managing Tax Audits and Appeals* 4.3]
- o Federal authorized tax practitioner privilege: limited protections for communications between federally authorized tax practitioner and taxpayer in certain civil matters [see Crowell & Moring's *Managing Tax Audits and Appeals* 4.2]

- **Key things to remember**

- o Communication not automatically privileged just because it is with an attorney, especially if it is an in-house attorney
- o You can waive privilege even if you do not intend to waive
- o Privilege is a subject-matter waiver (you cannot selectively pick certain documents to waive the privilege but keep related documents privileged)

IRS Appeals

Program	Description	Authority
Fast Track	Both IRS and taxpayer have to agree; Appeals officer mediates	Rev. Proc. 2003-40; I.R.M. 8.26.2.5
Early Referral	Developed unagreed issue(s) goes to Appeals, while Exam continues to audit remaining issues	I.R.C. § 7123; Rev. Proc. 99-28
Appeals	Appeals officer is the decision-maker	I.R.M. 8.1.1; see Crowell & Moring's <i>Managing Tax Audits and Appeals</i> , 15.4.
Rapid Appeals Process	Preconference becomes a working conference where Appeals uses mediation techniques to resolve unagreed issues	I.R.M. 8.26.11; see Crowell & Moring's <i>Managing Tax Audits and Appeals</i> , 15.6.
Post-Appeals Mediation	Taxpayer or Appeals can request non-binding mediation on any issue not resolved at Appeals	I.R.C. § 7123; Rev. Proc. 2014-63

Choice of Forum

See Crowell & Moring's *Managing Tax Audits and Appeals*, 20.

U.S. Tax Court	U.S. District Court	U.S. Court of Federal Claims
Do not pay tax first	Must pay tax first	Must pay tax first
Judges based in D.C., but travel for trials	Local court	Court is in D.C.
Emphasis on informal discovery	Normal civil procedures	Similar to U.S. District Court rules
Judges are tax experts	Judges not tax experts	Judges may have tax experience
No jury	Jury possible	No jury
IRS attorneys represent government	DOJ attorneys represent government	DOJ attorneys represent government

For more information contact



David B. Blair
Partner
Washington, D.C.
+1.202.624.2765
dblair@crowell.com



Teresa Abney
Counsel
Washington, D.C.
+1.202.624.2667
tabney@crowell.com



Carina Federico
Associate
Washington, D.C.
+1.202.654.6712
cfederico@crowell.com