

Strengthen Taxpayer Rights Before the Office of Appeals

#35 PROVIDE TAXPAYERS WITH A LEGALLY ENFORCEABLE RIGHT TO AN ADMINISTRATIVE APPEAL WITHIN THE IRS, EXCEPT IF SPECIFICALLY BARRED BY REGULATIONS

Present Law

The Internal Revenue Service Restructuring and Reform Act of 1998 generally grants taxpayers the right to an administrative appeal within the IRS. This recourse, however, can be curtailed by the IRS for subjective reasons, including on the nebulous grounds of “sound tax administration.”¹²⁰

Reasons for Change

Access to the IRS’s Office of Appeals is important for a variety of reasons, including Appeals’ function as the independent administrative decisionmaker of last resort; its role of negotiating case settlements; and its ability to accept affidavits, evaluate the credibility of witnesses, and consider potential hazards of litigation. Currently, however, the IRS has the unilateral ability to deny this forum to a taxpayer on an *ad hoc* basis. Since taxpayers generally lack a legally enforceable right to an appeal, they are powerless to prevent the IRS from bypassing Appeals if it wishes to punish what it views as uncooperative behavior or avoid settlement negotiations involving a particular taxpayer or issue. The IRS’s unfettered discretion to deny an appeal raises the specter of unfair and inequitable treatment of individual taxpayers or groups of taxpayers.

The National Taxpayer Advocate believes taxpayers should be entitled to an administrative appeal, except in rare cases. The standards for denying an appeal should be clear and narrow (*e.g.*, where multiple taxpayers face the same legal issue and the IRS has designated the issue for litigation or where a taxpayer is taking a frivolous position). To further ensure the IRS denies appeals only in rare cases, taxpayers whose right to an administrative appeal is denied should have the right to protest the decision to the Commissioner.

Recommendation

Amend Internal Revenue Code § 7803(a) to establish an independent Office of Appeals and grant taxpayers the right to a prompt administrative appeal within the IRS that provides an impartial review of all compliance actions and an explanation of the Appeals decision, except where the Secretary has determined, pursuant to regulations, that an appeal is not available, including where the IRS has designated the central legal issue in the case for litigation or where the taxpayer is advancing a frivolous position. Where an appeal is not available, the Secretary shall establish procedures by which an affected taxpayer may file an administrative protest with the Commissioner and shall furnish taxpayers with information about filing such a protest.¹²¹

¹²⁰ In *Facebook, Inc. & Subs. v. IRS*, 2018-1 U.S.T.C. (CCH) ¶150,248 (N.D. Cal. 2018), a United States District Court recently concluded that taxpayers generally do not have an enforceable right to an administrative appeal.

¹²¹ For legislative language substantially consistent with this recommendation, see Taxpayer First Act, H.R. 5444, 115th Cong. § 11101 (2018); Protecting Taxpayers Act, S. 3278, 115th Cong. § 601-605 (2018).