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#4**APPEALS: The IRS Lacks a Permanent Appeals Presence in 12 States and Puerto Rico, Thereby Making It Difficult for Some Taxpayers to Obtain Timely and Equitable Face-to-Face Hearings with an Appeals Officer or Settlement Officer in Each State****RESPONSIBLE OFFICIAL**

Kirsten B. Wielobob, Chief, Appeals

DEFINITION OF PROBLEM

Congress has long recognized that “all taxpayers should enjoy convenient access to Appeals, regardless of their locality.”¹ As a result, Congress required the IRS, among other things, to “ensure that an appeals officer is regularly available within each State.”² Recently, in adopting the Taxpayer Bill of Rights (TBOR), the IRS reaffirmed its commitment to a number of related principles including *the right to appeal an IRS decision in an independent forum*, *the right to quality service*, *the right to challenge the IRS’s position and be heard*, and *the right to a fair and just tax system*.³ All of these fundamental rights are adversely affected when a face-to-face Appeals conference is not readily and conveniently available.

The IRS maintains that this mandate is met by Appeals Officers “riding circuit” (*i.e.*, traveling into the jurisdiction so as to meet with taxpayers in person) at least quarterly in states lacking a permanent Appeals presence.⁴ Nevertheless, circuit riding Appeals cases often take an additional six months or more to resolve and have significantly lower levels of agreement than face-to-face Appeals cases conducted in field offices.⁵ Appeals’ physical presence in certain states has continued to be restricted or has been eliminated entirely. Almost one quarter of the states (12 out of 50) have no permanent Appeals presence, and this number of states lacking a permanent field office has increased by 33 percent, from nine to 12, since 2011.⁶

The National Taxpayer Advocate has long warned of the dangers to taxpayer rights inherent in such a course of action.⁷ Taxpayers in states without an Appeals presence may be forced to travel long distances,

1 S. REP. No. 105-174, at 92 (1998).

2 The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, Title III, Subtitle E, § 3465 (b) (July 22, 1998).

3 See IRS, Taxpayer Bill of Rights, available at <http://www.irs.gov/Taxpayer-Bill-of-Rights>. In particular, *the right to appeal an IRS decision in an independent forum* is explained by TBOR as follows: “Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals’ decision. Taxpayers generally have the right to take their cases to court.”

4 *The U.S.–China Economic Relationship: A New Approach For a New China*, Hearing Before the S. Comm. on Finance, 111th Cong., 69-70 (2010) (testimony of Timothy F. Geithner, Sec. of Treasury). See also National Taxpayer Advocate 2009 Annual Report to Congress 81.

5 See Figures 3 and 4, *infra*.

6 IRS, Human Resources Reporting Center, available at <https://persinfo.web.irs.gov/> (last visited June 27, 2014). The territory of Puerto Rico has also lacked a permanent Appeals office during this time period.

7 See National Taxpayer Advocate 2009 Annual Report to Congress 346-350. See also *Hearing on Filing Season 2012*, Hearing Before the S. Comm. on Finance, 112th Cong. 3-12 (2012) (testimony of Teresa Thompson, Local Taxpayer Advocate, MT).

incur additional expenses, or face delays in obtaining an in-person hearing.⁸ Even if they persevere and obtain a face-to-face hearing, their cases may be handled by an Appeals Officer or a Settlement Officer unfamiliar with the local economy or other relevant community issues.⁹ Additionally, curtailed face-to-face conferences can make it more difficult for Appeals Officers to gauge the credibility of oral testimony and can cause taxpayers to question the independence and impartiality of Appeals.¹⁰ Videoconferencing could be part of the solution to the lack of Appeals presence; however, it is not a panacea and is no replacement for local knowledge, experience, or presence.

ANALYSIS OF PROBLEM

When Passing RRA 98, Congress Expressed its Intent that Taxpayers Should Have Convenient Access To Appeals Regardless of Their Locality.

Congress believed that making Appeals Officers available in each state would provide a place for taxpayers to turn when they disagreed with the IRS.¹¹ Congress was further convinced that this convenient access was not only an important element of taxpayer rights, but would also contribute to the goal of more timely and efficient resolution of disputes between taxpayers and the IRS.¹² Moreover, Appeals Officers who are well versed in the local industries and economic circumstances prevailing within a particular region are indispensable as a means of preserving both the appearance and the reality of fair and equitable treatment.¹³

As explained by Senator Roth, when adding § 3465 to RRA 98:

With this legislation, we require the agency to establish an independent Office of Appeals—one that may not be influenced by tax collection employees or auditors. Appeals officers will be made available in every state, and they will be better able to work with taxpayers who proceed through the appeals process.¹⁴

The IRS's Contention that Circuit Riding Complies With the Mandate of RRA 98 Regarding Ready Access to Appeals Does Not Comport With Reality.

The IRS does not dispute that it is subject to § 3465(b) of RRA 98. Instead, the IRS argues that it meets its obligations by allowing for “circuit riding” on at least a quarterly basis to states lacking a permanent

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- 8 See National Taxpayer Advocate 2009 Annual Report to Congress 346-350. See also *Hearing on Filing Season 2012, Hearing Before the S. Comm. on Finance, 112th Cong. 3-12 (2012)* (testimony of Teresa Thompson, Local Taxpayer Advocate, MT). The terms “in-person” Appeals conferences and “face-to-face” Appeals conferences are used interchangeably and should be distinguished from “virtual face-to-face” Appeals conferences, which the IRS hopes to make available through the use of technology. VIRTUAL SERVICE DELIVERY: Despite a Congressional Directive, the IRS Has Not Maximized the Appropriate Use of Videoconferencing and Similar Technologies to Enhance Taxpayer Services, *infra*. See also Legislative Recommendation: *Virtual Service Delivery (VSD): Establish Targets and Deadlines for the Development and Implementation of VSD in Brick & Mortar Locations, in Mobile Tax Assistance Units, and Over the Internet, infra*.
- 9 National Taxpayer Advocate 2009 Annual Report to Congress 76.
- 10 For a suggestion from the National Taxpayer Advocate regarding congressional intervention as a means of solving this problem, see Legislative Recommendation: *Access to Appeals: Require That Appeals Have at Least One Appeals Officer and Settlement Officer Located and Permanently Available Within Every State, the District of Columbia, and Puerto Rico, infra*.
- 11 See, e.g., 144 CONG. REC. S7639 (1998) (statement of Sen. Jeffords).
- 12 S. Rep. No. 105-174, at 88 (1998).
- 13 National Taxpayer Advocate 2009 Annual Report to Congress 76. See also *Filing Season Update: Current IRS Issues, Hearing before the S. Comm. on Finance, 111th Cong., 18-19 (2010)* (remarks of Sen. Enzi).
- 14 144 CONG. REC. S7622 (1998) (statement of Sen. Roth).

Not only are states without an Appeals post of duty increasing, but the number of Appeals Officers and Settlement Officers located in existing field offices has diminished. Between the summer of 2010 and the summer of 2014, this category of Appeals personnel has dropped by approximately 27 percent, from 817 to 593.

Appeals field office.¹⁵ Additionally, the IRS states that, “Taxpayers are never required to travel out of state for face-to-face meetings unless they prefer meeting in an alternate location as a matter of convenience.”¹⁶

Doubts persist, however, regarding whether circuit riding satisfies the congressional intent underlying § 3465(b).¹⁷ Circuit riding existed prior to the passage of RRA 98.¹⁸ Nevertheless, Congress felt compelled to require that Appeals Officers be made regularly available in *all* states. Unlike some other aspects of RRA § 3465, which the legislative history explained as a codification of existing IRS procedures, the “regularly available within each State” mandate was presented as a new requirement.¹⁹ Despite this legislative indication that Congress desired more convenient access and local presence than was being supplied by circuit riding, the IRS has expanded the number of states without an Appeals Officer or Settlement Officer, and has contended that circuit riding alone fulfills its post-RRA 98 obligations.

Unsatisfied with this position, Senator Enzi, as part of the fiscal year 2011 Senate Budget Resolution, introduced legislation requiring redeployment of existing IRS resources “to provide at least one full-time Internal Revenue Service appeals officer and one full-time settlement agent in every State.”²⁰ In connection with this legislation, Senator Enzi explained:

Section 3465(b) of the IRS Restructuring and Reform Act of 1998 states, ‘The Commissioner of the Internal Revenue Service shall ensure that an appeals officer is regularly available within each state,’ yet Wyoming and eight other states have no such personnel physically located within their borders. The Appeals process is the last step for taxpayers to argue the merits of their return before a Notice of Deficiency is recorded and collection processes begin. Therefore, it is critical that all taxpayers—even rural taxpayers—have unfettered access to IRS appeals officers. ... I think it is perfectly reasonable to suggest that the IRS redeploy existing resources to provide at least one full-time appeals officer and one full-time settlement agent in every state.²¹

In response, Treasury Secretary Geithner stated:

The appeals process uses circuit riding to mitigate the need for specialization and where the nearest office is more than 150 miles from the taxpayer, while at the same time ensuring that the needs of each and every taxpayer are timely met. This structure is consistent with the statutory requirement in the IRS Restructuring and Reform Act of 1998, which provides the IRS Commissioner must ‘ensure that an Appeals Officer is regularly available in each state.’

15 National Taxpayer Advocate 2009 Annual Report to Congress 81; IRM 8.6.1.4.1.1.1 (June 8, 2010).

16 National Taxpayer Advocate 2009 Annual Report to Congress 81.

17 See *id.*

18 IRM 8622 (April 20, 1990).

19 S. REP. NO. 105-174, at 88 (1998).

20 See 156 Cong. Rec. S2654 (2010).

21 Filing Season Update: Current IRS Issues, *Hearing before the S. Comm. on Finance*, 111th Cong., 18-19 (2010) (remarks of Sen. Enzi). See also Press Release, Senator Enzi, Budget Is Sweet and Sour: Enzi Improves Bill But Can’t Support Final (Apr. 22, 2010), available at http://www.enzi.senate.gov/public/index.cfm/news-releases?ContentRecord_id=278e14e5-802a-23ad-4646-e63f9f3b85d6 (last visited on Oct. 20, 2014).

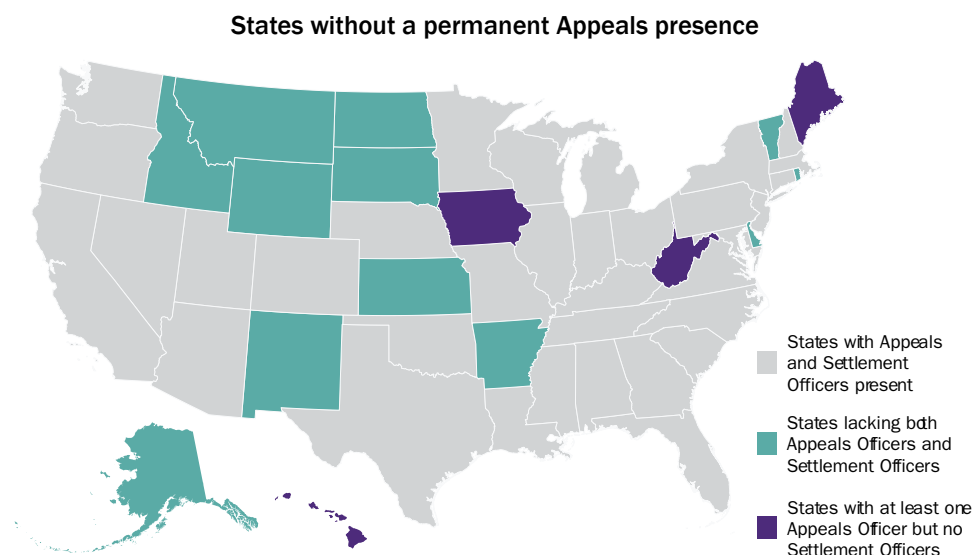
IRS, as part of its regular planning, will continue to look at resource allocation, and is committed to ensuring adequate access to the appeals process for every taxpayer.²²

Ultimately, the Budget Resolution that included Senator Enzi's amendment was never acted upon by Congress. Nevertheless, the concerns giving rise to this legislation remain.

In Practice, Many Taxpayers are Experiencing Limitations on Their Ability to Have an In-Person Appeals Conference With the IRS.

The number of states and territories in which Appeals lacks both an Appeals Officer and a Settlement Officer has grown by 33 percent since 2011. Twelve states and Puerto Rico, roughly a quarter of U.S. states and territories, have no Appeals or Settlement Officers with a post of duty within their borders.²³ The current distribution of states lacking a permanent Appeals presence is illustrated by the following map:

FIGURE 1.4.1²⁴



Not only are states without an Appeals post of duty increasing, but the number of Appeals Officers and Settlement Officers located in existing field offices has diminished. Between the summer of 2010 and the summer of 2014, this category of Appeals personnel has dropped by approximately 27 percent, from 817 to 593.²⁵ Appeals Officers and Settlement Officers located in field offices are, among other things,

22 *The U.S.–China Economic Relationship: A New Approach For a New China*, Hearing Before the S. Comm. on Finance, 111th Cong., 69-70 (2010) (testimony of Timothy F. Geithner, Sec. of Treasury).

23 IRS, Human Resources Reporting Center, available at <https://persinfo.web.irs.gov/> (last visited June 27, 2014). This map does not include Puerto Rico, which also has no Appeals presence.

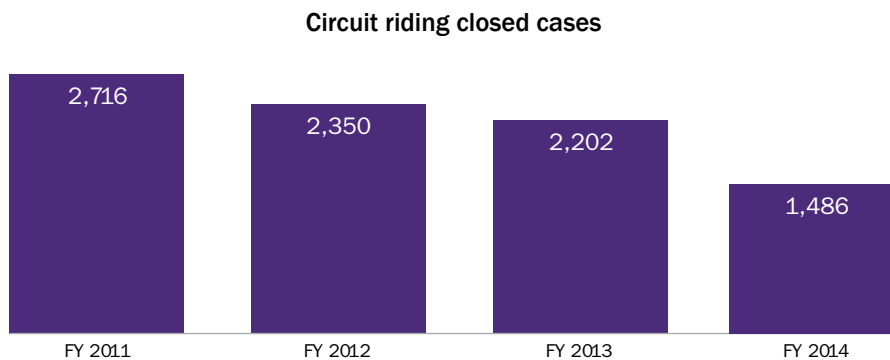
24 The following states lack both Appeals Officers and Settlement Officers: Alaska, Arkansas, Delaware, Idaho, Kansas, Montana, North Dakota, New Mexico, Rhode Island, South Dakota, Vermont and Wyoming. The following states have at least one Appeals Officer but no Settlement Officers: Hawaii, Iowa, Maine, and West Virginia. See Appeals' Response to TAS information request (Aug. 5, 2014).

25 See user data from on rolls listing, comparing personnel data from Aug. 23, 2010 with personnel data from Aug. 23, 2014, available at <https://persinfo.web.irs.gov/track/workorg.asp> (last visited on Oct. 2, 2014).

the group responsible for circuit riding. Accordingly, this reduction in field-based Appeals Officers and Settlement Officers has the impact of limiting the number of Appeals personnel available to ride circuit in states without an Appeals presence, and in rural areas where taxpayers lack access to an Appeals field office.

The overall number of Appeals cases closed via circuit riding likewise has progressively fallen in each of the last four years.²⁶ This trend is illustrated in the accompanying graph.

FIGURE 1.4.27



Although the IRS does not report this data on a state-by-state basis, it is not unreasonable to infer that there has been an equal or greater drop in the number of in-person Appeals conferences held in states with no Appeals presence. If the IRS wishes to make the case that circuit riding is sufficient to satisfy RRA 98 in states lacking a regular Appeals presence, the IRS should support this contention with data regarding the availability and effectiveness of face-to-face appeals in such states. Otherwise, the IRS's position regarding RRA 98 compliance is based on unsubstantiated assertions.

The National Taxpayer Advocate is concerned that this decreasing trend in the number of circuit riding cases, and the isolation it portends for states without an Appeals presence, is not the result of taxpayer choice. Rather, it is effectively imposed on taxpayers by the expansion of states without a permanent Appeals office and by the diminishing availability of Appeals personnel who can ride circuit.

The Lack of Face-to-Face Access to Appeals in all States is Harmful to Impacted Taxpayers.

The ability to interact on a face-to-face basis with the IRS has a significant effect on taxpayer perceptions and satisfaction. For example, an IRS survey has indicated that overall satisfaction with face-to-face examinations is much higher (71 percent) than for correspondence examinations (43 percent).²⁸ Similarly,

26 Appeals does not report circuit riding data on a state-by-state basis. Appeals response to TAS information request (Aug. 5, 2014). Note that circuit riding can occur in rural areas of states that have permanent Appeals offices. Moreover, taxpayers in some states lacking a permanent Appeals presence occasionally have convenient access to a field office in a nearby state. Additionally, circuit riding can occur for reasons unrelated to geography, such as substantial books and records, high inventories, or lack of technical expertise. See IRM 8.6.1.4.1.1 (June 8, 2010). Nevertheless, this is currently the best available data regarding the effectiveness of circuit riding.

27 Appeals response to TAS information request (Aug. 5, 2014); supplemented by FY 2014 data provided by Appeals on November 6, 2014.

28 IRS, National Research Program 2011 Customer Satisfaction Survey (Feb. 9, 2012).

overall dissatisfaction is more than twice as great for correspondence examinations (41 percent) than for face-to-face examinations (18 percent).²⁹ Consistent with this data, TAS has also found that taxpayers receiving the Earned Income Tax Credit (EITC) are substantially more likely to respond to face-to-face examinations.³⁰ Likewise, a recent TAS study of taxpayers eligible to use low income taxpayer clinics (LITC) indicated that 77 percent of the surveyed taxpayers preferred face-to-face interactions with their local LITC.³¹

The National Taxpayer Advocate is concerned that this decreasing trend in the number of circuit riding cases, and the isolation it portends for states without an Appeals presence, is not the result of taxpayer choice. Rather, it is effectively imposed on taxpayers by the expansion of states without a permanent Appeals office and by the diminishing availability of Appeals personnel who can ride circuit.

The Appeals Customer Satisfaction Survey provides further evidence of the importance taxpayers place on the availability of face-to-face meetings. For example, in its 2008 survey, Appeals highlighted seven particular categories of specific suggestions from customer comments, one of which was, “Taxpayers would like in-person meetings with Appeals.”³² Among other things, one survey taxpayer stated, “It would be nice to meet with somebody in person, it might get done faster face-to-face.”³³ Another taxpayer responded, “I feel they need to have face-to face appeals.”³⁴

In addition to taxpayer perceptions and satisfaction, the National Taxpayer Advocate is particularly concerned that the lack of an Appeals presence in certain states has a demonstrably negative effect on the cycle times and outcomes of tax disputes in those states. Taxpayers forced to rely on circuit riding in order to obtain a face-to-face Appeals conference must wait substantially longer for a resolution of their appeals case than do taxpayers fortunate enough to live near an Appeals office. A comparison of the time needed for resolving Appeals cases (cycle time) is depicted in the table below.

29 IRS, National Research Program 2011 Customer Satisfaction Survey (Feb. 9, 2012).

30 National Taxpayer Advocate, Briefing for the Enforcement Committee, *Examination Strategy: The Impact of Increasing Automation*, slide 15 (Apr. 23, 2012).

31 TAS, Survey of Taxpayers who are Eligible to Use IRS’s Low Income Taxpayer Clinics, slide 11, July 2014. Taxpayers are generally eligible to use LITCs if their income is at or below 250 percent of the federal poverty level (e.g., \$29,175 for a single taxpayer; \$59,625 for a family of 4 in calendar year (CY) 2014). See IRC § 7526(b)(1) for the definition of a qualified low income taxpayer clinic. For the 2014 Federal Poverty Guidelines, see U.S. Department of Health & Human Services, 2014 Poverty Guidelines, available at <http://aspe.hhs.gov/poverty/14poverty.cfm> (last visited on Oct. 20, 2014).

32 IRS, Appeals Customer Satisfaction Survey, National Report, Fiscal Year 2008 Results, slide 11, Feb. 2009, available at <http://appeals.web.irs.gov/stratplan/custsat.htm>.

33 *Id.*

34 *Id.*

FIGURE 1.4.3, Cycle times (in days)³⁵

Fiscal year	Field cases with face-to-face conferences	Circuit riding
2011	388	628
2012	373	677
2013	344	816
2014	406	628

Moreover, circuit riding Appeals conferences have significantly higher indicia of disagreement between taxpayers and the IRS, and lower indicia of agreement, than face-to-face Appeals conferences conducted in field offices. This outcome is illustrated in the following table:

FIGURE 1.4.4, Agreement/disagreement percentages comparison³⁶

Appeals percentages	Case types	FY 2011	FY 2012	FY 2013	FY 2014
Agreed	Field cases with face-to-face conferences	65%	64%	63%	63%
	Cases with circuit riding	51%	47%	52%	40%
Unagreed	Field cases with face-to-face conferences	14%	14%	15%	14%
	Cases with circuit riding	27%	30%	27%	33%

To the extent that taxpayer satisfaction, cycle time, and outcome are adversely affected, one factor may be that decisions are being made by Appeals Officers with no first-hand connection with, or knowledge of, the local area involved.³⁷ Appeals Officers who reside within the community, or at least in the same states as the taxpayers with whom they are interacting, have a greater likelihood of being well-versed in the local industries and economic circumstances prevailing in a particular region, and preserving both the appearance and the reality of fair and equitable consideration.³⁸ Conversely, taxpayers residing in a state without a permanent Appeals office may be disadvantaged in the presentation of their case, or disenchanted with the Appeals process itself, because of the cost and inconvenience of traveling extended distances for a hearing, or the wait for a circuit riding Appeals Officer to appear in an accessible location.

Reduced taxpayer satisfaction and negative outcomes, whether a result of perception or reality, can have a powerfully adverse downstream impact on the IRS as well. The potential consequences of limiting access to face-to-face Appeals conferences include an impaired IRS ability to determine litigation hazards,

35 Appeals response to TAS information request (Aug. 5, 2014); supplemented by FY 2014 data provided by Appeals on November 6, 2014. Note that the column entitled “Field cases with face-to-face conferences” excludes cases held via circuit riding, which are separately stated for comparison. References to “field” information in subsequent tables likewise excludes circuit riding data.

36 Data for this figure is drawn from Attachments 3 and 4 of Appeals’ response to TAS information request (Aug. 5, 2014) as supplemented by FY 2014 data provided by Appeals on November 6, 2014. Agreed cases combine codes 03 (Agreed Non-Docketed), 08 (Docketed – Appeals Secured Agreement), and 15 (Fully Allowed) set forth in those attachments. Unagreed cases combine codes 05 (Defaulted Notice of Deficiency), 13 (Unagreed Non-Docketed), and 14 (Fully Disallowed), also provided in those attachments. Other codes are excluded from this agreed/unagreed analysis as, for example, they reflect cases resolved after leaving Appeals’ jurisdiction or cases that are only partially agreed and partially unagreed. Even if such codes were considered as part of the analysis, however, the trends illustrated in the accompanying table would remain present.

37 National Taxpayer Advocate 2009 Annual Report to Congress 76; National Taxpayer Advocate 2009 Annual Report to Congress 347-48.

38 *Id.* See also Filing Season Update: *Current IRS Issues, Hearing before the S. Comm. on Finance, 111th Cong., 18-19 (2010)* (remarks of Sen. Enzi).

evaluate collection alternatives, and timely settle cases. As a result, cases that Appeals could have resolved may be left for IRS counsel attorneys to settle or litigate, resulting in downstream costs for the government. Likewise, some taxpayers may feel they are compelled to bring suit in court in order to gain the opportunity to present their case in person. Thus, the lack of a permanent Appeals office in each state may well have the unintended consequence of draining IRS administrative resources and increasing litigation with taxpayers.

Videoconferencing Could Be Part of the Solution with Respect to the Lack of Appeals Presence, but Is Not a Cure-All.

Recognizing that videoconferencing might be one means of alleviating the scarcity of Appeals Officers in a given state or area, Congress, as part of RRA 98, also directed the IRS to consider using videoconferencing as a means of holding Appeals conferences “between appeals officers and taxpayers seeking appeals in rural or remote areas.”³⁹ Although the IRS has moved slowly in responding to this directive, recently some IRS divisions, including Appeals, have held pilot studies of virtual service delivery (VSD).⁴⁰ These pilots, as well as the experiences of other agencies such as the Social Security Administration and the Department of Veterans Affairs, indicate that VSD holds great promise for expanding the accessibility, timeliness, and quality of IRS service delivery through virtual face-to-face technology.⁴¹

The IRS should continue to expand the scope and availability of VSD. Nevertheless, VSD, or any other means of conducting an Appeals conference, should never supersede, or in any way compromise, a taxpayer’s right to an in-person Appeals conference with an Appeals Officer stationed in the taxpayer’s state of residence.

CONCLUSION

When passing RRA 98, Congress expressed the desire that “all taxpayers should enjoy convenient access to Appeals, regardless of their locality.” Nevertheless, the number of states without a permanent Appeals office has been steadily rising. The IRS’s contention that this absence can be remedied by riding circuit, however, is not supported by the available evidence. Rather, the number of face-to-face Appeals conferences held through circuit riding is steadily falling. Taxpayer satisfaction, the appearance of fairness, and the outcome of proceedings are all adversely affected by the lack of an Appeals Officer and a Settlement Officer in each state. Congress desired better for taxpayers, and more from the IRS, when it passed § 3465(b) of RRA 98.

39 RRA 98, Pub. L. No. 105-206, Title III, Subtitle E, § 3465(c) (July 22, 1998).

40 Additionally, Appeals recently has established procedures for making VSD available for Campus Appeals in situations where Appeals personnel are co-located with VSD equipment and the taxpayer or representative is located within 100 miles of a VSD customer-facing location. See Memorandum from John Cardone, Director, Policy Quality and Case Support to Appeals Employees, Re: Implementation of Virtual Service Delivery (VSD), (July 24, 2014). To this point, however, the lack of customer-facing locations places a significant practical limitation on the ability of taxpayers to utilize this option.

41 VIRTUAL SERVICE DELIVERY: Despite a Congressional Directive, the IRS Has Not Maximized the Appropriate Use of Videoconferencing and Similar Technologies to Enhance Taxpayer Services, *infra*.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS should:

1. Expand Appeals duty locations in a way that ensures at least one Appeals Officer and one Settlement Officer are stationed within every state, the District of Columbia, and Puerto Rico.
2. Begin systematically collecting information allowing for a more precise analysis of the timeliness and fairness of Appeals conferences conducted through circuit riding both in states without a permanent Appeals presence and in states where Appeals field offices are augmented by circuit riding.