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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

PROBLEM

Committed to the principle that “all taxpayers should enjoy convenient access to Appeals, regardless of their locality,” Congress, as part of RRA 98, required the IRS to “ensure that an appeals officer is regularly available within each State.”¹ The IRS maintains that this mandate is met by Appeals Officers “riding circuit” (*i.e.*, traveling into the jurisdiction to meet with taxpayers in person) at least quarterly in states lacking a permanent Appeals presence.² However, 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.³

The number of states without a permanent Appeals office has risen by 33 percent, from nine to 12, since 2011.⁴ Today, approximately a quarter of the states have no permanent Appeals presence. Taxpayers in those states may be forced to travel long distances, incur additional expenses, or face delays in obtaining an in-person hearing.⁵ 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.⁶ Further, curtailed face-to-face conferences can make it more difficult for Appeals Officers to resolve cases and can cause taxpayers to question the independence and impartiality of Appeals.

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.*⁷ All of these fundamental rights, which also gave rise to RRA 98, are adversely affected when a face-to-face Appeals conference is not readily and conveniently available.

1 S. Rep. No. 105-174, at 92 (1998); The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, Title III, Subtitle E, § 3465(b), (1998).

2 *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.

3 Appeals response to TAS information request (Aug. 5, 2014); supplemented by fiscal year (FY) 2014 data provided by Appeals on November 6, 2014. For a more in-depth discussion of the Appeals presence issue, see Most Serious Problem: *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, supra.*

4 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.

5 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).

6 National Taxpayer Advocate 2009 Annual Report to Congress 76.

7 See IRS, Taxpayer Bill of Rights, available at <http://www.irs.gov/Taxpayer-Bill-of-Rights>.

EXAMPLE

A taxpayer lives in rural Montana and operates a small livestock ranch. The IRS audits the taxpayer and proposes an adjustment with which he disagrees. The taxpayer files a protest with the IRS Office of Appeals and requests an in-person conference, believing this direct contact to be essential, as the issue in controversy is factually difficult and legally complex.

Appeals does not maintain a field office in Montana. As a result, the taxpayer's request for a face-to-face conference goes to an Appeals Officer in Washington State. This assignment of the case worries the taxpayer who doubts that the Appeals Officer based in Washington will have adequate knowledge of market forces, weather conditions, and other ranching issues that are central to the tax dispute.

In addition to this concern, the taxpayer cannot afford transportation to Washington State. As a result, his remaining options are to wait for an Appeals Officer to ride circuit, which can substantially extend the length of the Appeals process, or to forgo a face-to-face conference. Wishing for a timely resolution of the tax controversy, the taxpayer reluctantly decides to proceed with the appeal, communicating with the Appeals Officer by telephone and correspondence.

Ultimately, the taxpayer and the Appeals Officer cannot reach an agreement. The taxpayer believes the presentation of his case has been prejudiced by the lack of a readily available Appeals Officer who understands ranching issues, and feels he has been denied access to justice. The taxpayer, therefore, seeks judicial review as a means of resolving the tax controversy that, in his view, could have been properly addressed through a face-to-face meeting with a well-informed Appeals Officer possessing local background.

RECOMMENDATION

To address the lack of convenient access to Appeals, the National Taxpayer Advocate recommends that Congress pass legislation to expressly 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.

PRESENT LAW

Section 3465(b) of RRA 98 provides “The Commissioner of Internal Revenue shall ensure that an appeals officer is regularly available within each State.”⁸ As expressed by Senator Roth at the time RRA 98 was enacted:

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.⁹

⁸ RRA 98, Pub. L. No. 105-206, § 3465(b), 112 Stat. 685 (1998).

⁹ 144 CONG. REC. S7622 (1998) (Statement of Sen. Roth).

REASONS FOR CHANGE

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 Appeals field office.¹⁰

Circuit riding, however, existed prior to the passage of RRA 98.¹¹ 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.¹² 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 continued to maintain that circuit riding alone fulfills its post-RRA 98 obligations.

In practice, however, many taxpayers are experiencing limitations on their ability to have an in-person Appeals conference. 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 have no Appeals or Settlement Officers with a post of duty within their borders.¹³ Further, the overall number of Appeals conferences held via circuit riding has progressively fallen over each of the last four years.¹⁴

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.

Available evidence indicates that the lack of face-to-face access to Appeals in all states is harmful to impacted taxpayers. The ability, or lack thereof, 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).¹⁵ Similarly, overall dissatisfaction is more than twice as great for correspondence examinations (41 percent) than for face-to-face examinations (18 percent).¹⁶

Further, taxpayers forced to rely on circuit riding in order to obtain a face-to-face Appeals conference often must wait an additional 6 months or more to resolve their Appeals case as compared with taxpayers fortunate enough to live near an Appeals office.¹⁷ Moreover, circuit riding Appeals conferences have

10 National Taxpayer Advocate 2009 Annual Report to Congress 81; IRM 8.6.1.4.1.1 (June 8, 2010).

11 IRM 8622 (Apr. 20, 1990).

12 S. REP. No. 105-174, at 88 (1998).

13 IRS, Human Resources Reporting Center, *available at* <https://persinfo.web.irs.gov/> (last visited June 27, 2014).

14 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, in the absence of more targeted data from the IRS, analysis of circuit riding data provides the clearest insight into the status of taxpayers residing in states without a regular Appeals presence.

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

16 *Id.*

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

significantly higher levels of disagreement between taxpayers and the IRS, and generate substantially lower levels of agreement than face-to-face Appeals conferences conducted in field offices.¹⁸

This evidence indicates that taxpayers located in states without a permanent Appeals presence are being inadequately served and may lack access to justice. Further, it casts doubt on the effectiveness and equity of circuit riding even when employed by the IRS in states possessing permanent Appeals field offices. Circuit riding Appeals Officers and Settlement Officers do not have the familiarity with the economic, market, geographic, and other state and local conditions necessary to adequately assess the import of facts and circumstances and the credibility of witnesses as a means of fairly and efficiently resolving cases.

EXPLANATION OF RECOMMENDATION

As part of the fiscal year 2011 Senate Budget Resolution, Senator Enzi 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.”¹⁹ Ultimately, the Budget Resolution that included Senator Enzi’s amendment was never acted upon by Congress. Nevertheless, the taxpayer service concerns giving rise to this legislation, and § 3465(b) of RRA 98, have not been remedied by the IRS.

Congress should address the lack of taxpayer access to Appeals in those jurisdictions without an Appeals field office by enacting legislation that expressly requires that at least one Appeals Officer and Settlement Officer be located and permanently available within every state, the District of Columbia, and Puerto Rico.²⁰ The IRS can achieve this expanded presence over time through attrition, rather than backfilling, of Appeals personnel currently located in IRS campus (centralized) Appeals offices.

18 Appeals response to TAS information request (Aug. 5, 2014); supplemented by FY 2014 data provided by Appeals on November 6, 2014. See also Most Serious Problem: *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*, *supra*.

19 See 156 CONG. REC. S2654 (2010) (statement of Sen. Enzi).

20 Although not a panacea, videoconferencing and other means of virtual service delivery represent a promising vehicle for the provision of virtual face-to-face access if properly developed, implemented, and deployed. For further discussion of this topic see Most Serious Problem: *VIRTUAL SERVICE DELIVERY: Despite a Congressional Directive, the IRS Has Not Maximized the Appropriate Use of Videoconferencing and Similar Technologies to Enhance Taxpayer Services*, *supra*.