

## #35 REQUIRE TAXPAYERS' CONSENT BEFORE ALLOWING IRS COUNSEL OR COMPLIANCE PERSONNEL TO PARTICIPATE IN APPEALS CONFERENCES

### Present Law

Present law does not directly address the inclusion of personnel from the IRS Office of Chief Counsel or IRS compliance functions in conferences held by the Office of Appeals.

### Reasons for Change

Until recently, the Office of Appeals only occasionally invited personnel from the Office of Chief Counsel or the IRS compliance functions to participate in taxpayer conferences.<sup>144</sup> In October 2016, the Office of Appeals revised provisions of the Internal Revenue Manual to allow Appeals Officers to include personnel from the Office of Chief Counsel and/or the IRS compliance functions in Appeals conferences as a matter of routine. Under the new procedures, an Appeals Officer may invite these additional participants regardless of whether taxpayers agree or object to their presence.

Including Counsel and Compliance personnel over taxpayer objections contravenes the purpose of an Appeals conference, which is neither to give Compliance personnel another bite at the apple nor to transform Appeals into a mediation forum. Instead, the mission and credibility of Appeals rests on its ability to undertake direct and independent settlement negotiations with taxpayers and their representatives.

This change in conference procedures in some cases is having far-reaching negative consequences for Appeals' effectiveness in resolving cases with taxpayers. Taxpayers are less likely to feel that their cases have been fully heard, that they have been treated fairly, and that the outcome of the proceedings ought to be respected. As a result, taxpayers are more likely to come away disillusioned with the Appeals process, more likely to pursue their cases in court, and potentially less likely to comply voluntarily with the tax laws in the future. Over time, practitioners will be less likely to advise clients to pursue the Appeals process.

In addition, the expansion of Appeals conferences to routinely involve Counsel and Compliance personnel alters the relationship between taxpayers and Appeals Officers. It makes interactions less negotiation-based and transforms the conference into a more contentious and one-sided proceeding. This approach is also seemingly inconsistent with Congress's intent in creating an independent Office of Appeals as part of the Taxpayer First Act.<sup>145</sup>

### Recommendation

- Amend Internal Revenue Code § 7803(e) to provide: "A taxpayer shall have the right to a conference with the Office of Appeals that does not include personnel from the Office of Chief Counsel or the compliance functions of the Internal Revenue Service unless the taxpayer specifically consents to the participation of those parties in the conference."<sup>146</sup>

<sup>144</sup> For a more detailed discussion of this topic, see National Taxpayer Advocate 2019 Annual Report to Congress 63-69 (Most Serious Problem: *Appeals: The Inclusion of Chief Counsel and Compliance Personnel in Taxpayer Conferences Undermines the Independence of the Office of Appeals*).

<sup>145</sup> Taxpayer First Act, Pub. L. No. 116-25, § 1001, 133 Stat. 981 (2019); H.R. REP. No. 116-39, pt. 1, at 29 (2019).

<sup>146</sup> For legislative language generally consistent with this recommendation, see Protecting Taxpayers Act, S. 3278, 115th Cong. § 601 (2018).