

Area of
Focus #9**The Office of Appeals' Relatively Narrow Geographic Footprint Creates Barriers to In-Person Conferences and Limits Appeals' Effectiveness****TAXPAYER RIGHTS IMPACTED¹**

- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

DISCUSSION

In several Annual Reports to Congress, the National Taxpayer Advocate has discussed the importance of in-person conferences to both taxpayers and the IRS Office of Appeals (Appeals).² An in-person conference is sometimes essential to properly explaining and settling a controversy, particularly for cases involving factual or legal complexity, credibility of witnesses, or hazards of litigation settlements.³

Closely linked to the availability and effectiveness of in-person conferences is the taxpayer's physical proximity to the Appeals Technical Employee (ATE) assigned to the case. If a taxpayer must travel hundreds of miles to obtain a desired in-person conference, or if the ATE has little understanding of the taxpayer's local circumstances, then the communication and commonality often necessary for case resolution can be compromised. TAS has long urged Appeals to address these related concepts and will continue to monitor developments throughout fiscal year (FY) 2020.

Appeals Has Taken Positive Steps to Make All Taxpayers Eligible for In-Person Conferences

Taxpayers whose cases are assigned to Appeals field offices have historically had access to in-person conferences.⁴ By contrast, Appeals campus cases were made ineligible for such conferences in October 2016.⁵ This action created a particular hardship for low and middle income taxpayers, whose cases are disproportionately assigned to the campuses.⁶

To its credit, Appeals, taking to heart the urgings of the National Taxpayer Advocate and other stakeholders, has recently changed its policy and reinstated the right of campus taxpayers to transfer their cases to field offices in order to accommodate an in-person conference.⁷ Appeals has also indicated

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

2 National Taxpayer Advocate 2018 Annual Report to Congress 307-313; National Taxpayer Advocate 2017 Annual Report to Congress 195-202; National Taxpayer Advocate 2016 Annual Report to Congress 206-210; National Taxpayer Advocate 2014 Annual Report to Congress 46-54; National Taxpayer Advocate 2014 Annual Report to Congress 311-314.

3 Letter from American College of Tax Counsel to Kirsten Wielobob, Chief, Appeals (Oct. 10, 2016), 2016 TNT 197-16. See also Letter from Texas Soc'y of Cert. Pub. Accts. to John Koskinen, Comm'r of IRS (Jan. 24, 2017), 2017 TNT 16-16; ABA Members Comment on Recent Appeals Division Practice Changes, 2017 TNT 89-10 (May 10, 2017).

4 IRS, Interim Guidance Memorandum (IGM) AP-08-1017-0017, *Appeals Conference Procedures* (Oct. 13, 2017).

5 Effective October 1, 2016, Internal Revenue Manual (IRM) 8.6.1.2.2, *Transfers for the Convenience of Taxpayers*, was deleted, eliminating the right of taxpayers to transfer cases out of campuses.

6 National Taxpayer Advocate 2018 Annual Report to Congress 307-313.

7 IRS, IGM AP-08-1118-0013, *Appeals Conference Procedures* (Nov. 30, 2018).

that it will continue to pursue additional strategies aimed at ensuring that taxpayers' requests for in-person conferences are accommodated, regardless of whether the assigned ATE is located in a campus or in the field.⁸ This progress in facilitating in-person conferences should continue and could serve as an important step along the path toward providing taxpayers with meaningful choice regarding the type and location of their Appeals conferences.

The National Taxpayer Advocate applauds Appeals for undertaking its recent policy change with respect to in-person conferences. This progress, however, does not alone eliminate the larger systemic problems attributable to the channeling of taxpayers' cases to campus locations.⁹ For example, a taxpayer whose case remains in a campus will not have access to a highly graded ATE, even when the complexity of the case might warrant such an assignment. Ninety-four percent of ATEs in field offices are Grade 13 or above, whereas all ATEs in campuses are Grade 12 or below.¹⁰ Further, although Appeals' new transfer policy is beneficial, it does not adequately address geographic access to in-person conferences and thereby minimizes Appeals' effectiveness in resolving cases.

Appeals' Reliance on Campuses Presents Physical Barriers to In-Person Conferences and Makes It Difficult for Campus Taxpayers to Have Their Cases Heard by Higher-Graded, Locally Based Appeals Technical Employees

Appeals has only six campus locations spread throughout the United States: Philadelphia, Pennsylvania; Brookhaven, New York; Fresno, California; Ogden, Utah; Memphis, Tennessee; and Florence, Kentucky.¹¹ Fifty-three percent of Appeals cases are assigned to these campuses.¹² By contrast, the remaining 47 percent are spread among Appeals' 67 field offices.¹³ The geographic dispersal of the campuses and field offices is shown in Figure 4.9.1.

8 IRS, IGM AP-08-1118-0013, *Appeals Conference Procedures* (Nov. 30, 2018).

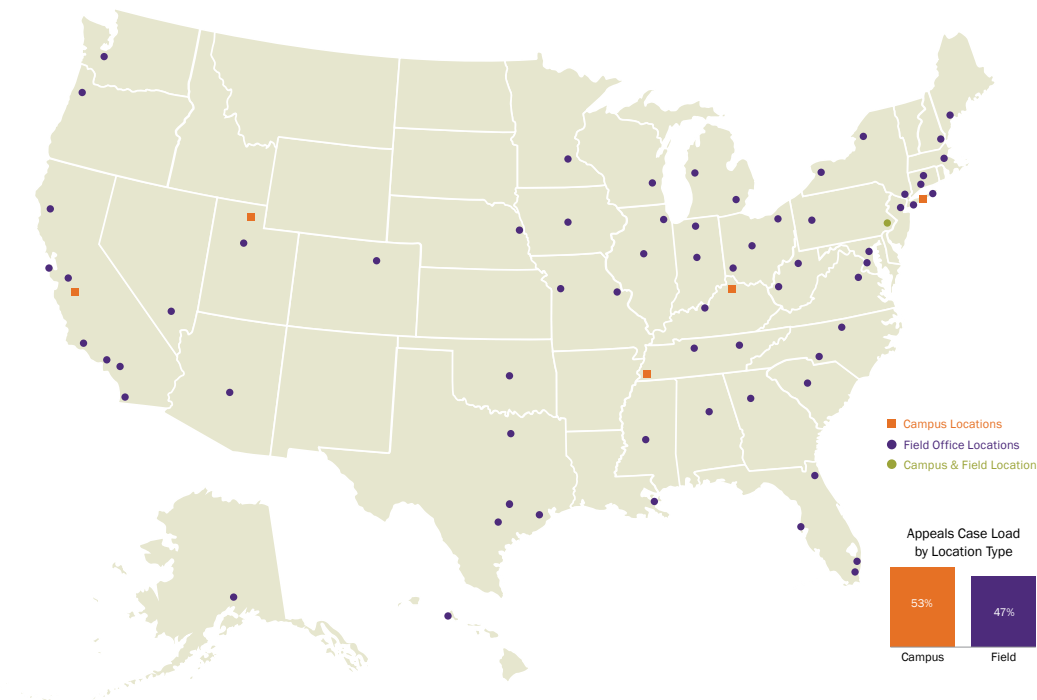
9 National Taxpayer Advocate 2018 Annual Report to Congress 307-313.

10 IRS response to TAS information request (Oct. 26, 2018).

11 IRS response to TAS information request (May 7, 2018).

12 IRS response to TAS information request (Oct. 26, 2018).

13 *Id.*

FIGURE 4.9.1, Appeals Campus and Field Locations¹⁴

Thanks to Appeals' reinstatement of campus taxpayers' right to seek a case transfer to facilitate an in-person conference, taxpayers are no longer inextricably bound to campuses. Nevertheless, Appeals' campus-centric approach can make this right difficult to exercise. Appeals states that it will use its best efforts to schedule an in-person conference at a location that is reasonably convenient for taxpayers and Appeals. However, given the geographic scarcity of field offices, which are the primary venues for in-person conferences, and the fact that twelve states and Puerto Rico lack a field office altogether, taxpayers wishing for an in-person conference may well be required to travel substantial distances and incur significant cost in order to attend an in-person conference.¹⁵

The circumstance that 53 percent of all Appeals cases are decided out of only six widely scattered offices is problematic because Appeals best serves taxpayers when it has a broad and diverse geographic footprint.¹⁶ This presence allows ATEs to negotiate case resolutions based on an understanding of the local economic circumstances and prevailing community issues faced by taxpayers. Similarly, taxpayers are more likely to develop a rapport with, and respect the decisions of, ATEs with whom they share common experiences.¹⁷ An Appeals function that is embedded within communities provides a more effective environment for establishing trust and achieving case resolutions.¹⁸ This optimal environment,

14 This map was developed based on information provided in the IRS response to TAS information request (May 7, 2018).

15 IRS response to TAS fact check (Nov. 21, 2018).

16 Although 68 field offices would appear ample in comparison with only six campus locations, that number is insufficient to cover the entirety of the U.S., its territories, and the District of Columbia. Currently, 12 states and Puerto Rico lack any Appeals presence offering in-person conferences. Appeals response to TAS information request (Oct. 26, 2018).

17 National Taxpayer Advocate Fiscal Year (FY) 2019 Objectives Report to Congress 138.

18 *Id.*

however, is systematically denied to campus taxpayers unless they opt for an in-person conference, which they may or may not need to resolve their cases. Additionally, given Appeals' current staffing model, Appeals may lack any personnel whatsoever located within a taxpayer's vicinity.

Appeals could expand its geographic footprint and minimize its reliance on campuses by using attrition from the campuses to increase staffing in local field offices with ATEs of various grades and designations such that the office could cover cases ranging from the Earned Income Tax Credit (EITC) to itemized deductions to Schedule C controversies.¹⁹ Likewise, Appeals could enhance its case assignment flexibility by re-designating technically or factually complex case categories, such as those involving EITC claims, so that they could be assigned to higher-graded ATEs where appropriate.²⁰ These steps would not only expand Appeals' geographic footprint and facilitate the accessibility of in-person conferences, but would lay the foundation for a structure that more effectively and equitably serves both campus and field taxpayers.

FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Monitor the availability of in-person conferences in both campus and field cases;
- Encourage and work with Appeals to expand its geographic footprint; and
- Advocate for taxpayers who do not receive a high-quality independent appeal by maintaining close contact with the tax practitioner community, entering into issue- and case-specific dialogues with Appeals, and issuing taxpayer assistance orders where appropriate.

¹⁹ Appeals explains its reluctance to allow case transfers out of the campuses because Appeals concentrates specialized knowledge in particular campuses and because Appeals Technical Employees (ATEs) in campuses are typically lower graded than those in the field and therefore handle less complex cases. Andrew Velarde, *IRS Appeals Confident That In-Person Campus Conferences Will Return*, 2018 TNT 21-63 (May 21, 2018).

²⁰ This step was recommended by the National Taxpayer Advocate to the Chief of Appeals as part of a May 31, 2016, meeting. In that meeting, the then-Chief of Appeals expressed the view that Earned Income Tax Credit (EITC) cases were less complex and therefore best suited for lower-graded ATEs. Given the often challenging factual scenarios and legal issues involved in these cases, however, this perspective should be reevaluated.