

GOING TO APPEALS

By

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A. Overview of the Appeals Process

Appeals is the Internal Revenue Service dispute resolution forum. The Commissioner has granted Appeals the authority to consider and negotiate settlements of internal revenue controversies. (Internal Revenue Service Delegation Order No. 66; Internal Revenue Service Policy Statement P-8-47.) Currently, line authority for Appeals field operations is through the National Chief of Appeals who reports directly to the Commissioner. Appeals settles approximately 85 to 90 percent of the cases it reviews. (This outline deals primarily with going to Appeals after an IRS examination. Most of the procedures discussed, however, apply to all types of appeals.)

Appeals provides taxpayers with a prompt and independent review of their case after another IRS office has proposed changes that adversely affect them. The Appeals process provides the final administrative opportunity for the taxpayer and the IRS to fairly resolve tax disputes without litigation.

The goal of the Appeals Office is to settle as many cases as possible within the broad guidelines of its Mission Statement (IRM Sec. 8.1 (1999)):

The Appeals mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.

Even though much of the work of Appeals comes from examinations, its jurisdiction has expanded over the last few years. In examination cases, the taxpayer receives the 30-day letter. This letter is accompanied by the Revenue Agent's Report and gives the taxpayer 30 days to request an Appeals conference. In most cases, the taxpayer is required to file a protest describing the taxpayer's position. If the taxpayer does not request an Appeals conference, then the IRS will send the taxpayer a notice of deficiency. If the taxpayer files a petition with the Tax Court, and has not had an Appeals conference, the IRS will send the case to Appeals to investigate a possible settlement. See Rev. Proc. 87-24, 1987-1 C.B. 720. In other types of cases, the IRS will send the taxpayer a letter advising the taxpayer of his right to an Appeals conference and giving the taxpayer a time limit in which to request an Appeals conference.

As a result of the IRS Restructuring and Reform Act, Appeals has acquired jurisdiction with respect to request for Collection Due Process appeals. Internal Revenue Service Restructuring and Reform Act of 1998, 112 Stat. 685 (1998). Under the Collection Due Process procedure, the taxpayer can have an Appeals conference after the filing of a Notice of Federal Tax Lien and prior to any levy upon the taxpayer's property.

Appeals also considers cases that may involve one or more of the following:

1. The administrative determination of liability for income, estate, gift, employment and excise tax, plus additions to tax, additional amounts and I.R.C. Chapter 68 penalties.
2. Offers in compromise based on doubt as to liability and/or collectibility.
3. Penalty appeals.
4. Abatement of interest.
5. Administrative costs under I.R.C. Sec. 7410.
6. Jeopardy assessments/levies.
7. Recommendations concerning settlement offers in refund suits.
8. I.R.C. Sec. 534(b) letters.
9. Refund cases including Joint Committee cases.

Appeals does not consider cases that only involve the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar arguments. See Treas. Regs. Sec. 601.106(b).

Appeals plays a vital role in the protection of taxpayer rights by having authority to settle disputes between taxpayers and operating divisions within the IRS. The IRS encourages the resolution of tax disputes through administrative appeals, rather than court litigation, in order to minimize expenses incurred by both the Government and the taxpayers. The Appeals Office makes the final determination for the IRS regarding the taxpayer's tax liability. If the taxpayer disagrees with the Appeals Office's determination, the taxpayer's only remedies are: (1) Tax Court litigation; or (2) paying the tax and filing suit for a refund.

Appeals has reorganized its staffing to include a headquarters and three operating units that align with the IRS operating divisions. Appeals Headquarters is responsible for addressing Appeals strategic needs, while the operating divisions provide service to different segments of taxpayers. The head of Appeals reports directly to the IRS Commissioner and is responsible for planning, managing, directing and executing nationwide activities for Appeals.

Appeals has revamped its processes and is creating new services for taxpayers. These services include:

1. Mutually Accelerated Appeals Process (MAAP)

This program is designed to reduce the time it takes to resolve Coordinated Examination Program (CEP) cases in Appeals. This initiative will improve the efficiency of Appeals' large-case program and improve customer satisfaction for the large-case population that Appeals serves.

2. Fast Track Mediation (FTM)

FTM is a streamlined process designed to expedite disputes involving audits, offers in compromise and trust fund recovery penalties. In this process, Appeals Officers will serve as mediators to resolve disputes while cases are still in Compliance. The FTM pilot began on July 1, 2000, in four sites: Denver, Hartford, Houston, and Jacksonville.

3. Arbitration

The arbitration program is a new alternative dispute resolution initiative designed to assist taxpayers who were unable to reach a settlement in the normal course of the Appeals process. This program uses a neutral decision-maker that will reach a binding decision on issues that prevented the taxpayer and Appeals from reaching a settlement. See Announcement 2000-4, 2000-3 I.R.B. 317.

4. Mediation

Mediation is an alternative dispute resolution initiative designed to assist taxpayers and Appeals in reaching a settlement. A non-IRS or Appeals mediator is used to facilitate negotiations between Appeals and taxpayers when they are unable to reach a settlement in the normal course of the Appeals process. See Announcement 98-99, 1998-46 I.R.B. 34.

5. Early Referral

Early referral procedures allow taxpayers whose returns are being examined to request the transfer of a developed but disputed issue to Appeals, while Examination continues to develop other issues in the case. The purpose of this initiative is to resolve cases more expeditiously. See Rev. Proc. 99-28, 1999-29 I.R.B. 109.

B. Non-Docketed and Docketed Cases

A non-docketed case is one where the IRS has not issued a statutory notice of deficiency and the taxpayer has not filed a Tax Court petition. In a non-docketed case a 30-day letter is issued by the Revenue Agent performing the examination. In these cases, the taxpayer must file a protest as a means of obtaining an Appeals conference. If the taxpayer has petitioned the Tax Court before consideration by the Appeals Office, the case is a docketed case. In these docketed cases the Appeals Office will have exclusive settlement jurisdiction for a period of about four months.

The main difference between a non-docketed and a docketed case is how the taxpayer gets to Appeals. A protest is required in non-docketed cases, but after the protest is filed, the Appeals conference is basically the same in either a non-docketed or a docketed case.

If the taxpayer elects not to file a protest for an appeals conference after receiving the 30-day letter, a 90-day letter will be issued, giving the taxpayer 90 days to file a petition with the Tax Court. After the taxpayer files his petition, the case will be forwarded to the Appeals Office for the four-month period.

This four-month period begins when the Appeals Office receives the case from IRS Counsel. In all cases, the Appeals Office will arrange a settlement conference within 45 days of receiving the case. However, this four-month period depends on the workload of each Appeals office. If a settlement is reached in a docketed case, the Appeals Officer will prepare the necessary computations and send them to District Counsel. District Counsel then prepares the settlement documents for execution and filing with the Tax Court.

At the end of the four-month period (or earlier if the Appeals Office feels the case is not susceptible of settlement), the case will be returned to IRS Counsel. IRS Counsel will then have exclusive authority to dispose of the case by trial.

C. Advantages and Disadvantages of Going to Appeals

1. Advantages:

- a. The taxpayer and the IRS may be able to settle the case without litigation.
- b. The taxpayer does not have to make an immediate decision to file suit in the Tax Court or in the United States District Court or the Claims Court.
- c. The taxpayer delays the assessment and is permitted more time and a different forum in which to settle his case.
- d. The taxpayer will not have to pay the tax immediately.
- e. The taxpayer can obtain information about the IRS's position that he could not otherwise obtain from the Revenue Agent. For example, even if the taxpayer cannot convince the Appeals Officer that the Revenue Agent was wrong, Appeals provides an informal opportunity for discovery that might not have otherwise been available to the taxpayer. Furthermore, the taxpayer will have more opportunity to prepare the case before a suit commences.
- f. The protest gives the taxpayer a chance to tell his story.

B. Disadvantages:

- a. The Appeals Officer may raise new issues. The policy, however, is to not reopen or raise new issues unless they are "substantial" and the "tax liability is material." Policy Statement P-8-49 provides that an issue on which the taxpayer and the district director are in agreement should not be reopened by Appeals. New issues are not raised casually, indiscriminately, or haphazardly, and are never, under any circumstances, raised for bargaining purposes.
- b. Delay in concluding the case may subject the taxpayer to more expense in the way of additional penalties and interest.
- c. Appeals may not be able to settle all issues if the IRS has identified one of them as a litigation issue.

If the taxpayer does not go through the Appeals procedure, he could be subject to a penalty of as much as \$5,000 for failure to exhaust all administrative remedies. A taxpayer should exhaust all remedies so that he may request legal fees and administrative costs in the future.

D. The Need for a Protest

The taxpayer must request in writing an Appeals conference with respect to an audit. The dollar limitation for requiring a formal protest has increased. If the total amount for any tax period (including tax and penalties) is more than \$25,000, the taxpayer must submit a written protest to obtain Appeals consideration. If the total amount for any tax period is \$25,000 or less, the taxpayer can request an appeal by making a "Small Case Request." A taxpayer can make such a request for Appeals consideration by writing the IRS, indicating the disputed issues and the taxpayer's reason for not agreeing. (See IRM Sec. 8.6.1.1.4.)

Special appeal procedures may be provided for cases such as appeals of liens, levies, seizures or installment agreements. The IRS provides an appeal request form for these types of cases. (See Publication 1660, Collection Appeal Rights.)

The taxpayer must submit a written protest to obtain consideration in all employee plan and exempt organization cases, and in all partnership and S corporation cases. See Sample Protest (**Exhibit A**) and Sample Letter Transmitting Protest (**Exhibit B**).

E. Preparing the Protest

The taxpayer's first step in going to Appeals is preparing a protest requesting an Appeals conference. The protest is a written document which sets forth the taxpayer's position. The taxpayer must file the protest within the 30-day period required in the IRS's letter summarizing the Revenue Agent's findings or advising of other action that gives the taxpayer the right to request an Appeals conference. If a taxpayer elects not to file the protest within the 30-day period, the taxpayer will then receive a 90-day letter, after which it is still possible in very limited situations to have an Appeals conference after filing suit in the Tax Court.

The taxpayer may request, and the IRS usually grants, a 30-day extension to prepare the protest. If a taxpayer does not retain a representative until after the time for filing the protest has expired, the taxpayer's representative should go ahead and file a protest. There is always the possibility that the IRS will accept and process the protest and give the taxpayer an Appeals conference. Although there is no official form for protests, the protest must contain the following information:

1. Name and Address

This will be the full name(s) and current address of the taxpayer(s), including social security number or taxpayer identification number on the tax return(s) which are being appealed.

2. Statement of Appeal

This is a statement setting forth why the taxpayer(s) wishes to appeal the Revenue Agent's findings.

3. Letter Date and Symbols

This information will be found in the upper right-hand portion of the 30-day letter under the heading "In Reply Refer To:".

4. Tax Period(s) or Year(s) Involved

List only the year(s) or tax period(s) covered by the appeal which is found on the Revenue Agent's Report of income tax changes.

5. Itemized Schedule of Tax Changes

This should correspond to the Revenue Agent's Report of income tax changes. The taxpayer(s) should list the items disagreed with and the years in which the adjustments appear.

For Example:

	1998	1999
Contributions	\$ _____	\$ _____
Bad Debts	\$ _____	\$ _____
Child Care Credit	\$ _____	\$ _____
Negligence Penalty	\$ _____	\$ _____

6. Statement of Facts

The statement of facts section is very important. In this section, the taxpayer should individually address each item in the itemized schedule that he disagrees with. The taxpayer should state the facts and the reasons why these items were included on the tax return. For penalties, the taxpayer should explain why he disagrees with the Revenue Agent. It is not sufficient to state, "At the time of the Appeals conference I will present my facts."

The Appeals Officer should be able to make a preliminary determination based on a combination of the taxpayer's explanation of the statement of facts and the Revenue Agent's report. This should save time in reaching a final resolution of the taxpayer's case.

7. Statement of Law or Authority

The taxpayer should state the law and authority that supports his position and include the IRS Code sections, Revenue Rulings, Publications, or court cases that substantiate his position. If the taxpayer chooses, he can incorporate the statement of law or authority into each item under the statement of facts instead of making separate sections.

8. Perjury Statement

The perjury statement is mandatory and the taxpayer must sign it. The exact wording the taxpayer should use is:

Under the penalties of perjury, I declare that I have examined the statement of facts presented in the protest and in any accompanying schedules and, to the best of my knowledge and belief, it is true, correct, and complete.

If a representative submits the protest, he may substitute a declaration stating that he prepared the protest and accompanying documents, and whether he knows personally that the statement of facts contained in the protest and accompanying documents is true and correct.

9. Signatures Required for a Written Protest

If the protest relates to a jointly-filed return, both the husband and wife must sign the protest. If the protest relates to a corporation, the corporation's name should be followed by the signature and title of the officer authorized to sign for the corporation. A Power of Attorney may also sign the protest.

The protest preparer can gain a psychological advantage in the Appeals Office conference by attaching documents and affidavits to the protest. Attachments reflect that the preparer has done his homework and is ready for trial. In addition to supporting the statements made in the protest, the attachments also give the preparer a measure of credibility. Both of these factors will help in negotiations with the Appeals Officer.

After the protest is prepared, the protest is filed with the IRS office that sent the letter advising the taxpayer that an Appeals Conference may be requested. Once that office receives the protest it will forward it to the Appeals Office.

There are different views as to how detailed a protest should be: it can be very skeletal or very detailed. Experience shows, however, that it is usually better to have a detailed protest setting forth all of the facts and the law that support the taxpayer's position.

The protest should set forth why the taxpayer should prevail. It should be written in positive language and should not to attack the IRS employee or rebut all of the IRS's allegations. Attacking the IRS or trying to rebut the IRS's position will place the taxpayer on the defense and show a weakness in the taxpayer's case.

F. Preparing for the Appeals Conference

The Appeals Officer wants to maximize the possibility of closing the case with one conference, so he will prepare all issues of the taxpayers case. (See **Exhibit C**, Sample Letter Confirming Appeals Conference.) The taxpayer's representative should be equally (if not more) prepared and should do the following before preparing the protest and attending the Appeals conference:

1. Interview the taxpayer--learn the "exact" facts and "all" the facts.
2. Check the important facts--do not rely totally on what the taxpayer says.
3. Obtain business records and any other documentary evidence from the taxpayer.
4. Develop the arguments after investigating the facts and analyzing the law.
5. Evaluate both sides of the case.
6. Determine what other evidence is needed--e.g., additional witnesses.
7. Assemble exhibits for use at the conference.
8. Review the entire file--it is better to postpone the conference than make a weak presentation.
9. Develop a proposed settlement.

G. The Role of the Appeals Officer

It is the role of the Appeals Officer to be reasonable and impartial. The Appeals Officer does not act as an investigator or examining officer, but can request additional information or evidence if he feels it is required. The Appeals Officer should negotiate a settlement with the taxpayer or the taxpayer's representative, and he should recommend the settlement to his supervisor who has actual settlement authority. If the parties enter into an agreement to close the case with finality, the case will not be reopened after a supervisor approves the settlement except in very limited circumstances. (IRM Sec. 8.6.1.2.3.) Appeals has the authority to resolve cases on an intermediate or compromise basis based on the facts, law, and hazards of litigation. The unique part of Appeals' authority is its ability to consider the probability of the outcome of the case if litigated.

The Appeals Officer's exercise of settlement authority is subject to certain limitations, such as:

1. Recurring Nature of Issue

Since the goal of Appeals is to resolve issues with finality, it may not be in the best interest of the parties to settle an issue that continues from year to year on an intermediate basis without a closing agreement. A distinction should be made between a fact-intensive issue and pure legal issue. (IRM Sec. 8.6.1.3.8.)

2. Compliance

Appeals may decline to settle a case if the taxpayer's voluntary compliance would produce a greater result than settlement or other resolution. (IRM Sec. 8.6.1.(1)(b).)

3. Controlled Issues

If an issue is controlled by the National Office, Appeals cannot settle the case. The National Office controls issues in cases falling under the Appeals coordinated issue program, industry specialization program (ISP) and product pricing cases. (IRM Sec. 8.2.3.3.4.)

4. National Office Determination

Appeals may not settle cases if it is contrary to technical advice favoring the taxpayer or if it will disturb a change in accounting method approved by the National Office. (IRM Sec. 8.1.2.2.4.)

5. Nuisance Value Settlement

Appeals cannot enter into any settlement that is not based on the merits of the issue, but is made solely to eliminate the inconvenience or cost of further negotiations or litigation. (IRM Sec. 8.6.1.3.3.) Appeals cannot demand or grant concessions if the only purpose is to relieve either party of such inconvenience or cost.

H. Appeals Conferences

Appeals conferences are informal meetings between the Appeals Officer and the taxpayer that are designed to promote frank discussion and mutual understanding. These conferences do not involve ideological arguments. (IRM Sec. 8.6.1.2.) The Appeals Officer must handle cases objectively by reaching a sound decision based upon the merits of the issues in dispute. (IRM Sec. 8.6.1.2.1.)

One purpose of the Appeals conference is to allow full disclosure by both sides. Since the Appeals conference is at the taxpayer's request, the taxpayer will be allowed to present his case and the Appeals Officer will ask questions to clarify the facts and law.

Appeals schedules conferences at times and places that are reasonably convenient to taxpayers and their representatives. Generally, they are held at Appeals Offices. Appeals Officers, however, do travel to locations where there is no permanent Appeals Office. Ordinarily, the amount in dispute is not an important factor in approving another conference site. (IRM Sec. 8.6.1.2.1 (1).)

The number of conferences are usually held to a minimum, but the taxpayer should request as many conferences as is deemed necessary to settle the case. Cases are promptly concluded by frankly discussing the facts and the law.

The Appeals mission is to resolve tax controversies, without litigation, on a basis which is "fair and impartial" to both the Government and the taxpayer. A fair and impartial resolution is one which reflects on an issue-by-issue basis the probable result in event of litigation, or one which reflects mutual concessions for the purpose of settlement based on relative strength of the opposing positions where there is substantial uncertainty of the result in event of litigation.

The Appeals Officer will take into consideration several factors in connection with his evaluation of settlement possibilities. Some of these factors are as follows:

1. The substantiating evidence likely to be presented.
2. The credibility of the taxpayer.

3. The availability of witnesses.
4. The probability that the evidence the taxpayer can present will carry his burden of proof.
5. The uncertainty as to any issue of fact and conclusion of law (the law in the circuit to which the case would be appealed).

Factors which Appeals will **not** consider when weighing the hazards of litigation are:

1. The Docketed or Non-Docketed Status of the Case

The standards for settling a case is the same for both a pre-90-day case and a docketed case. The same standards also apply to a claim or overassessment case.

2. The Proximity to Trial of a Case

The proximity to trial may increase the pressure for the Appeals Officer to settle a case, but this factor will not cause a change in the settlement criteria. It is possible that on reconsideration of a case or during trial preparation, the Appeals Officer may discover additional facts that may affect the evaluation of the case, or there may be a change in the status of the law.

3. Competency of Counsel

The qualifications of counsel for the taxpayer or counsel for the Government is a neutral factor.

4. The Tax Court Judge Assigned to the Case

The idiosyncrasies of a specific judge may also create additional pressure for the Appeals Officer to settle, but should not cause a change in the criteria.

5. The Cost of Litigation

The cost of litigation will not be used as a criterion to settle a case or as a lever to force a settlement at a greater amount than is warranted by the merits of the case.

Accordingly, the Appeals Officer concentrates on the evidence available for presentation in court.

Since the conference in the Appeals Office is informal, no one is present to record the discussions of the facts and the law relating to the issues involved. No one takes testimony under oath. This relatively informal procedure can, however, be so "pleasant" that the taxpayer or his representative may underestimate its importance. Unlike a trial, the "judge" (Appeals Officer) who is to be persuaded is also an adversary who argues the position of the IRS. In addition, the Appeals Officer has a strong psychological edge in tax negotiations because he does not need to satisfy a client, nor must he be as concerned with the time and expense of litigation if they do not agree to settle. On the other hand, there is a built-in weakness in the conference procedure on which the taxpayer or his representative can capitalize, if he prepares for the conference. The Appeals Officer is at a disadvantage, because he has not personally prepared the case. Unfortunately, though, it has been estimated that in about 60% of Appeals conferences, taxpayers' representatives are unprepared at the initial conference. At the conference, the Appeals Officer may decide that further factual development is necessary, and may request the taxpayer to submit additional information. Discussion of a complicated case may require additional conferences.

At some point, the Appeals Officer will discuss settlement, at which time the Appeals Officer will ask the taxpayer or his representative to submit an offer of settlement if the issues involved are capable of settlement in the Appeals Officer's view. The taxpayer's representative should rely on a favorable case in the circuit to which he would appeal his case, for more weight is given these cases than Tax Court decisions. Although the Appeals Officer will make use of legal reasoning and research, the Appeals Office approach is "administrative" and not "judicial." In the final analysis, the Appeals Officer is an IRS employee who will follow the position of the IRS on an issue. The Appeals Officer has more flexibility in settling cases than does the Revenue Agent or other IRS employees who have handled the matter being reviewed by Appeals.

I. Extending the Statute of Limitations

After the protest is filed, the administrative file of the IRS containing the protest, tax returns of the taxpayer, the Revenue Agent's report, and other documents relating to the taxpayer's liability for the years involved is sent to the Appeals Office. A major concern of the Appeals Office is the expiration of the statute of limitations on assessment; accordingly, the file will be examined to determine when the statutory period of limitations expires. The district offices are instructed not to transmit a case to the Appeals Office unless at least 120 days remain before the expiration of the statutory period for assessment. If the Appeals Office determines that the time for appellate review is inadequate, the taxpayer will be requested to execute a Form 872, which will extend the statutory period to a specific date. Alternatively, the Appeals Officer may also request a Form 872-A, which is an open-ended consent that extends the period of assessment until 90 days after either completion of the Appeals Office consideration or notice by either party on a Form 872-T

of its desire to terminate the consent. Generally, it is best to use Form 872, and it should be executed for the minimum period of time that can be negotiated with the IRS.

J. Types of Settlements

There are basically three types of settlements: mutual concession settlements; split-issue settlements; and nuisance value settlements.

In a mutual concession settlement, both the Government and the taxpayer make a concession for the purpose of settling the case when there is a substantial uncertainty about how a court would interpret and apply the law or about what facts the court would find if the case were litigated. Appeals is expressly authorized by Policy Statement P-8-47 to enter into such settlements. In such a case there is substantial strength to the position of both parties, so that neither party, with justification, is willing to concede in full the unresolved area of disagreement.

A split-issue settlement is similar to a mutual concession settlement because if the issue is litigated it would result in a decision completely for the Government or for the taxpayer. Policy Statement P-8-48 provides that Appeals may enter into settlements based on a percentage or stipulated amount of the tax in controversy, but that such settlement, identified as a "split-issue" settlement, should be used only where no other method of settlement is appropriate.

A nuisance value settlement is any concession that eliminates the inconvenience or cost of further negotiations or litigation and is unrelated to the merits or the issues. Policy Statement P-8-47 provides that the IRS will not settle if the settlement is based on nuisance value to either party.

Negotiations should aim toward resolution of all issues in a case. If this cannot be done, then the taxpayer's representative and the Appeals Officer should attempt to reach agreement on all issues which can be settled.

The IRS resolves issues such as reasonableness of salaries, capital gain vs. ordinary income on recurring sales of property, hobby losses, etc., on the basis of the facts and circumstances applicable to each year. In such cases settlement has no effect on later years in which a similar issue may arise.

Where settlement involves issues such as basis of property, category of income, or amount of income from installment collections, it may be desirable to incorporate the effect on later years into the settlement by use of a closing agreement or collateral agreement.

Where the disposition involves mutual concessions and the subsequent tax effect is material, a closing agreement should be executed. Where there are no mutual

concessions or where the tax effect is not material, a closing agreement is not required, but it may be executed if in the judgment of Appeals it is desirable or the taxpayer requests a closing agreement.

Where a closing agreement is not required, a collateral agreement may be obtained since it will express in writing the understanding of the parties as to the tax effect in later years.

K. Forms Used to Settle Cases with Appeals

Appeals Officers do not have final authority to settle tax cases. No settlement reached with an Appeals Officer is binding unless and until it is approved by a reviewing officer appointed within the Appeals Office. This means that Appeals will not conclude a case merely because an Appeals Officer has reached some oral understanding with the taxpayer. A settlement will conclude when it is reflected in a settlement agreement (Form 870-AD), signed and accepted on behalf of the Commissioner. After this agreement is signed, the case will not be reopened unless there is later a suspicion of fraud, concealment, misrepresentation, etc., and then only with approval of Appeals. Further, the taxpayer agrees not to seek a refund for any tax covered by the agreement. Form 870 is less binding on the taxpayer and the IRS, and is generally used at the district level in settling cases with the Revenue Agent. The taxpayer can still file a claim for refund and the IRS may assert deficiencies.

L. Settlement at Appeals

After settling the case, the Appeals Officer prepares an action/transmittal memorandum and supporting statement discussing the issues and evidence, the amount of settlement, and the reasons supporting settlement. Someone other than the Appeals Officer must approve any settlement between the Appeals Officer and the taxpayer. Appeals then sends the taxpayer computations and a settlement agreement form. After processing and assessment, Appeals sends the taxpayer a bill for the agreed-upon deficiency.

If the case cannot be settled, the Appeals Officer prepares an action/transmittal memorandum and Appeals case memo, which discusses the settlement offer and the Appeals Officer's settlement range. At this time, the Appeals Office will request the issuance of a statutory notice of deficiency, which the IRS Counsel reviews before issuance.

M. Customer Service

In support of the Appeals mission, the Appeals Office has established a customer service program. IRS Announcement 99-98 informs taxpayers about Appeals Customer

Service Representatives. Appeals presently has a Customer Service Representative in each of the 33 Appeals Offices nationwide. The duties of the Appeals Customer Service Representatives include:

1. Serving as proponents of the Appeals process;
2. Providing assistance to taxpayers during their administrative appeal;
3. Handling taxpayers' complaints regarding Appeals;
4. Participating in National Problem Solving Days;
5. Coordinating with Taxpayer Advocate representatives on Appeals matters;
6. Performing Appeals education and outreach with the public, as well as other IRS functions;
7. Ensuring that taxpayers' rights are not abridged; and
8. Identifying problems and trends, including analyzing customer survey and balanced measures results.

Appeals Customer Service Representatives can be reached at a toll free number at 1-877-457-5055 whenever assistance is needed with an Appeals tax matter.

The Appeals Customer Service Program is designed to provide specific assistance and information regarding the administrative appeals process. The assistance will be available to all taxpayers and their representatives who are considering or requesting an appeal of any IRS determination or collection enforcement action.

For example, the Appeals Customer Service Representative (ACSR) will provide instructions on preparing a protest, how to get ready for an Appeals conference, or answer any other questions pertaining to the Appeals process. If the taxpayer has a concern about the correctness of a tax, penalty, or interest assessment, or any other transaction in their account that has come about since meeting with the Appeals Office, the ACSR can research the taxpayer's account, explain what happened, and if necessary, coordinate corrections to the account. Assistance is also available in other relevant matters, such as resolving any undue delay in advancing a case through the Appeals process.

The objective of this program is to provide one-stop service in Appeals. Because of the size and complexity of the IRS, it is often difficult for anyone outside of the organization to find help on their own.

Now taxpayers and their representatives have a specific person they can call for assistance. Moreover, the ACSR is available throughout the entire appeals process even after the tax matter has been closed.

N. Conclusion

A taxpayer should never pass up the opportunity to take his or her case to the Appeals office. Even though all cases are not resolved at Appeals, the majority of them are; and in many situations the results are better, and certainly more predictable, than the outcome of a trial.

Exhibit A
Sample Protest

[Date]

Sam Shelton
Internal Revenue Service
1100 Commerce, MC 4444 DAL
Dallas, Texas 75242

Attn: Sandy Jones

Re: Protest of Proposed Adjustments to Form 1040 for George and Helen
Monroe (SSN 111-11-1111)

Dear Mr. Shelton:

On behalf of the taxpayers, George and Helen Monroe, protest is hereby made to the adjustments set forth in your letter to these taxpayers dated August 16, 2000, proposing additional taxes and penalties.

1. Name and Address of Taxpayers.

Taxpayers' names are George and Helen Monroe, and their mailing address is 1234 State Street, Dallas, Texas 75222.

2. Request for a Conference.

George and Helen Monroe (hereinafter "Taxpayers") request a hearing with the Regional Appeals Office of the Internal Revenue Service in Dallas, Texas, to appeal the proposed adjustments to their tax year ending December 31, 1998.

3. Date and Symbols of Letter of Transmittal.

On or about August 16, 2000, the Internal Revenue Service (hereinafter "IRS") mailed Taxpayers Letter 950, enclosing a report of proposed adjustments to the amount

of tax for Taxpayers' 1998 tax year. The "Person to Contact" noted on such letter was Sandy Jones.

The IRS advised Taxpayers that they could appeal the proposed adjustments of the IRS by preparing a written protest and forwarding such protest to the District Director of the IRS at the address shown on the letter.

4. Tax Periods Involved.

The IRS has proposed additional taxes and penalties against Taxpayers for their tax year ending December 31, 1998, as follows:

<u>Year</u>	<u>Tax Increase</u>	<u>§6663 Penalty</u>
1998	\$ 89,701.00	\$ 67,276.00

Taxpayers are still reviewing the report of the Revenue Agent, and because of the time limitations required to file this protest, Taxpayers will present additional information prior to the Appeals conference.

5. Schedule of Adjustments to Which Taxpayers Do Not Agree.

Taxpayers take exception to the proposed adjustments and findings of the IRS and the Revenue Agent set forth in the letter sent to Taxpayers referred to in Paragraph No. 3 above. The Revenue Agent erred in making the following adjustments with respect to Taxpayers for their tax year ending December 31, 1998:

- (a) Determination of additional gross receipts in the amount of \$123,500;
- (b) Decrease in travel expenses in the amount of \$8,251;
- (c) Determination that the civil fraud penalty pursuant to Section 6663 of the Internal Revenue Code should be applied; and
- (d) Determination that additional taxes and penalties are due.

6. Statement of Facts With Respect to Taxpayers' Position.

The following is a statement of facts supporting Taxpayers' position with respect to the contested factual issues:

(a) Taxpayers correctly reported all of their income on their return for the year 1998.

Income has been incorrectly computed by the IRS. The Revenue Agent has included income in her computations which has been reported in other places on the tax return. In addition, nontaxable income and transfers have not been correctly determined.

(b) Reduction in amount deducted as travel expenses for 1998.

Taxpayers have canceled checks for all travel expenses which are sufficient substantiation for the deductions to be allowed.

(c) No civil fraud penalty pursuant to Section 6663 of the Internal Revenue Code should be assessed against Taxpayers.

The Revenue Agent has proposed the assessment of the civil fraud penalty under Section 6663 of the Internal Revenue Code. No penalties under Section 6663 should be assessed against Taxpayers. This penalty is proposed with respect to the underpayment of tax due to fraud. Until a resolution is made concerning the other issues herein, it is impossible to know if it is appropriate for any penalties to be assessed against Taxpayers.

7. Statement of Law With Respect to Taxpayers' Position.

The issues involved are factual issues. To the extent that the factual issues are resolved in favor of Taxpayers, Taxpayers will have reduced income or be allowed additional deductions.

8. Conclusion.

Based on the above, the additional taxes proposed by the Revenue Agent are incorrect. Further, no penalties should be assessed against Taxpayers.

Under penalties of perjury, we declare that we have examined the statement of facts presented in this protest, and to the best of our knowledge and belief they are true, correct and complete, and our understanding of what transpired.

George Monroe

Helen Monroe

The foregoing protest was prepared by the undersigned counsel for George and Helen Monroe. Such counsel is informed and believes that the facts contained in such protest are true and correct, but has no personal knowledge of such facts.

COUNSEL FOR TAXPAYER

Exhibit B
Sample Letter Transmitting Protest

[Date]

[Address to IRS]

Re: Proposed Assessment Against
[Client's Name and Social Security Number]

Dear _____:

Pursuant to your letter of _____, enclosed are the original and two copies of a protest prepared in connection with the proposed assessment against the above-named taxpayer(s). Also enclosed is a copy of our power of attorney. Please acknowledge receipt of the protest by placing your stamp on one of the enclosed copies and returning it to us in the enclosed stamped, self-addressed envelope. Please advise us if you need any additional information.

Sincerely,

cc: To Client

Exhibit C
Sample Letter Confirming Appeals Conference

[Date]

[Name]
Appeals Officer
Internal Revenue Service
4050 Alpha Road, 5th Floor
Dallas, Texas 75244-4203

Re: [Client's Name and Social Security Number]

Dear [Name]:

We are in receipt of your letter dated _____, setting the conference for the above-named taxpayer at _____ .m. on _____. This time will be convenient for us and we will see you at that time.

If you have any questions, please do not hesitate to give me a call.

Sincerely,

cc: Client