



LARGE BUSINESS AND  
INTERNATIONAL DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

November 8, 2021

Control Number: LB&I-04-1121-0019  
Expiration Date: 11/8/2023  
Affected IRM: 4.46.5

MEMORANDUM FOR ALL LB&I EMPLOYEES

FROM: Theodore D. Setzer /s/ *Theodore D. Setzer*  
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SUBJECT: Requesting Participation in Appeals Conferences for Appeals  
Team Leader Cases

The purpose of this memorandum is to provide guidance to LB&I examiners on requesting participation in Appeals conferences for Appeals Team Case Leader ("ATCL") cases. The definition of an ATCL case is found under IRM 8.7.11.2. For all other LB&I cases, the procedures for requesting a pre-conference with Appeals found under IRM 4.46.5.12 remain in effect.

The IRS Independent Office of Appeals (Appeals) recently announced the findings from and next steps for their pilot program referred to as the ATCL Conferencing Initiative. Under the pilot, ATCLs routinely extended invitations to LB&I examiners and their Chief Counsel representatives to join the initial case discussion conference with taxpayers and/or their representatives. The pilot program applied only to Appeals' largest and most complex cases – i.e., cases typically involving multi-national business entities represented by corporate officers or tax practitioners from major accounting and law firms. Following a detailed review of stakeholder feedback on the pilot, Appeals concluded that inviting LB&I and their Counsel representatives to the initial discussion of complex cases can be beneficial but is not necessary in every case. Accordingly, while ATCLs will generally be required to invite LB&I to a "pre-conference" meeting, ATCLs will continue to have the discretion to allow LB&I and taxpayers and/or their representatives to engage in a joint discussion at the start of the case.

LB&I believes that participation in certain Appeals conference discussions aid the ATCL in understanding the dispute and the merits of both parties' positions, thereby fostering effective tax administration. In addition, LB&I recognizes the importance to tax administration of an independent administrative forum by which taxpayers may resolve issues with the IRS and Appeals' role as that forum. Having a complete understanding

of the law and application of the particular facts to the law, which in complex cases can be aided by a joint discussion, assists Appeals' mission to resolve controversies on a basis which is fair and impartial to both the Government and the taxpayer.

Although our participation in these conferences is not guaranteed, LB&I employees should continue to request to be invited where LB&I participation would help improve understanding of factual and legal differences in the case. Appeals will continue to operate under longstanding Appeals' policy that permits, but does not require, the ATCL to invite LB&I to the non-settlement portion of the Appeals conference. ATCLs will use their discretion whether to invite LB&I and will solicit the views of the taxpayer to help inform that discretion. If LB&I participation is denied, Appeals will explain its grounds for denial. Also, as in the past, settlement discussions should be held only between Appeals and the taxpayer, without LB&I presence, and ex parte communication rules must be followed.

Employees should consider the following factors before making a request to attend an Appeals conference:

- The case is factually complex;
- History has shown lack of meeting of the minds regarding the underlying facts or legal positions;
- The taxpayer's characterization of LB&I's position in the formal written protest is not accurately stated and participation by both the taxpayer and LB&I at the Appeals conference will assist Appeals in both bridging the lack of understanding and better understanding the case;
- The taxpayer has presented multiple legal arguments or authorities that it relies on to support its position;
- The case involves outside experts or expert opinions;
- The case involves an issue of importance to tax administration, such as a case of first impression; one involving the interpretation of a new statute or regulation when there are no reported opinions or when published guidance is pending or where precedent is otherwise absent or conflicting; one affecting large numbers of taxpayers or an industry; or one falling within an operating division's major strategic goal;
- The case involves an issue in which the Government seeks to distinguish a position set forth in published guidance;
- The case involves an issue coordinated under strategic compliance/coordination initiative such as LB&I campaigns; or
- A tax shelter case involving a "Listed Transaction" or substantially similar transaction within the meaning of Treas. Reg. 1.6001-4(b)(2), or a "Transaction of Interest" under Treas. Reg. 1.6011-4(b)(6).

We recognize there will be factors not appearing on the list that may nonetheless render a case suitable for requesting participation in an Appeals conference. In these instances, examiners should exercise their professional judgment in reaching that conclusion.

LB&I examiners should ensure that such requests are clearly indicated on [Form 4665](#), Report Transmittal, or in rebuttals to the taxpayer's formal written protest.

For additional information on the guidelines from the pilot program that Appeals will continue to follow, please refer to the *Appeals Team Case Leader Conferencing Initiative: Summary of Findings and Next Steps*, published in September 2021. For more information on ex parte rules, refer to IRM 4.46.5.12. For questions or comments concerning this guidance, contact the LB&I Policy Office through the [LB&I Policy Gateway](#) and [Create a Request](#).

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