

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.106: Appeals Functions

Notice 2015-72

This notice provides a proposed revenue procedure that would update Rev. Proc. 87-24, 1987-1 C.B. 720, which describes the practices for the administrative appeals process in cases docketed in the United States Tax Court (Tax Court). Since the issuance of Rev. Proc. 87-24 in January 1987, the Internal Revenue Service (IRS) has been reorganized several times, the volume of litigation in the Tax Court has increased, and the IRS has adopted new policies and procedures to more efficiently manage the IRS's work load. Accordingly, Rev. Proc. 87-24 needs to be updated to more accurately reflect the procedures utilized in managing the flow of docketed cases between the Office of Appeals (Appeals) and the Office of Chief Counsel (Counsel).

The proposed update to Rev. Proc. 87-24 is not intended to materially modify the current practice of referring docketed cases to Appeals for settlement currently utilized in the vast majority of cases. The proposed revenue procedure describes the policies to ensure that docketed cases are handled consistently nationwide. Additionally, the

proposed revenue procedure updates official titles and removes the exclusion for cases governed by rulings by the National Office in employee plans and exempt organizations to reflect recent organization changes in the Tax Exempt and Government Entities Division. See Rev. Proc. 87-24, § 3, 1987-1 C.B. 720.

The proposed revenue procedure clarifies that, except in rare circumstances, Counsel will refer cases docketed in Tax Court to Appeals for settlement consideration. However, the proposed revenue procedure recognizes that there are cases and issues that should not be referred to Appeals or for which Counsel needs additional time before referring the case to Appeals. The proposed revenue procedure clarifies the procedures for when those situations arise.

The proposed revenue procedure promotes the shared responsibility of Counsel and Appeals to interact in a manner that preserves Appeals' independence. For instance, the proposed revenue procedure clarifies that, even in docketed cases, Appeals may exclude Counsel from settlement conferences with the taxpayer if Appeals determines Counsel's involvement will not further settlement of the case. The proposed revenue procedure also addresses coordination if a taxpayer raises a new issue while the docketed case is in Appeals.

Finally, the proposed revenue procedure describes procedures for requesting assistance from Counsel while the docketed case is in Appeals, and the internal procedures for handling and transferring custody of the administrative file for docketed cases referred to Appeals.

Because the provisions in the proposed revenue procedure affect a taxpayer's

case that is docketed in Tax Court, the IRS requests comments on the procedures contained in the proposed update to Rev. Proc. 87-24. Comments should be submitted by November 16, 2015 to:

Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2015-72)
Room 5203
P.O. Box 7602
Ben Franklin Station
Washington, D.C. 20044

or hand deliver comments Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2015-72)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Alternatively, persons may submit comments electronically via e-mail to the following address: Notice.Comments@irsounsel.treas.gov. Please include "Notice 2015-72" in the subject line of any electronic communications. All comments submitted by the public will be available for public inspection and copying in their entirety.

Proposed Rev. Proc. [XXXX-XX]

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 87-24, 1987-1 C.B. 720, to clarify

and describe the practices for the administrative appeals process in cases docketed in the United States Tax Court (Tax Court). The purpose of this revenue procedure is to facilitate effective utilization of administrative appeals and achieve earlier development and disposition of Tax Court cases.

SECTION 2. BACKGROUND

.01 The Office of Chief Counsel (Counsel) is charged with the responsibility of representing the Commissioner of Internal Revenue in cases docketed in the Tax Court. I.R.C. §§ 7452, 7803(b)(2)(D).

.02 The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, § 1001(4), 112 Stat. 685, 689, requires the Internal Revenue Service (IRS) to “ensure an independent appeals function” within the IRS.

.03 Under Rev. Proc. 2012-18, 2012-1 C.B. 455, the rules prohibiting ex parte communications between Counsel and the Office of Appeals (Appeals) do not apply to cases docketed in the Tax Court. However, Counsel and Appeals share a responsibility to interact – in all circumstances – in a manner that preserves and promotes Appeals’ independence. See Rev. Proc. 2012-18, § 2.02(2), 2012-1 C.B. 455, 457.

SECTION 3. PROCEDURES

Cases docketed in the Tax Court will be processed under the following procedures:

.01 Except as set forth in section 3.03 and section 4 of this Revenue Procedure, Counsel will refer docketed cases to Appeals for settlement consideration unless 1) Appeals issued the notice of deficiency or made the determination that is the basis of

the Tax Court's jurisdiction or 2) the taxpayer foregoes settlement consideration by Appeals.

.02 If Appeals issues a notice of deficiency or makes a determination without having fully considered one or more issues because of an impending expiration of the statute of limitations on assessment, Appeals may include a request in the administrative case file for Counsel to return the case to Appeals for full consideration of the issue or issues once the case is docketed in the Tax Court. If Appeals includes such a request in the administrative case file, the case will be treated as if Appeals did not issue the notice of deficiency or make the determination.

.03 Counsel will not refer to Appeals any docketed case or issue that has been designated for litigation by Counsel. In limited circumstances, a docketed case or issue will not be referred to Appeals if Division Counsel or a higher level Counsel official determines that referral is not in the interest of sound tax administration. For example, Counsel may decide not to refer a docketed case to Appeals in cases involving a significant issue common to other cases in litigation for which it is important that the IRS maintain a consistent position or in cases related to a case over which the Department of Justice has jurisdiction. If Counsel determines that a docketed case or issue will not be referred to Appeals, Counsel will notify the taxpayer that the case will not be referred to Appeals.

.04 For cases not covered by the exceptions in section 3 or the exclusions in section 4, Counsel will refer a docketed case to Appeals within 30 days of the case becoming "at issue in the Tax Court" (as defined by Tax Ct. R. 38). Counsel may, with

manager approval, delay forwarding a docketed case to Appeals if Counsel identifies a need for additional time. A delay of more than 90 days (120 days from when the case is at issue) requires approval of a Counsel executive. If a delay of more than 90 days is approved, Counsel will discuss with Appeals the need for the delay and when Counsel expects to forward the case to Appeals for settlement consideration. Examples of when Counsel may delay forwarding a docketed case to Appeals include, but are not limited to, cases in which Counsel determines a need to retain the administrative file for early trial preparation or when new facts, issues, or items are raised in the pleadings. Counsel may also delay forwarding a docketed case to Appeals when Counsel anticipates filing a dispositive motion, in which case Counsel will retain the case until the Tax Court rules on the motion. If a delay of more than 90 days is approved, Counsel will notify the taxpayer that referral of the case to Appeals will be delayed.

.05 When a docketed case is forwarded to Appeals for consideration, Appeals has the sole authority to resolve the case through settlement until the case is returned to Counsel.

.06 To the extent feasible, Counsel will alert Appeals about limits on the amount of time that Appeals may have the case for settlement consideration when Counsel forwards the case to Appeals. In such cases, Counsel and Appeals shall then agree upon the time when the case will be returned to Counsel.

.07 In any docketed case proceeding as a small tax case under the provisions of section 7463, Appeals will return the case to Counsel six months after the case is received by Appeals, or earlier, if necessary, so that it is received by Counsel no later

than three weeks prior to the date of the calendar call. In all other cases, Appeals will return the case to Counsel when Appeals concludes that the case is not susceptible to settlement or within 10 days after the case appears on a trial calendar, whichever is sooner. In all cases, Counsel and Appeals may agree to extend the time for Appeals to consider a case if settlement appears reasonably likely.

.08 By agreement between Counsel and Appeals, any docketed case may be transferred from Counsel to Appeals or from Appeals to Counsel, as appropriate, notwithstanding the fact that the case was previously considered by the receiving function. This authority will be used when such transfer will promote a more efficient disposition of the case.

.09 Upon request, Appeals will make the administrative case file, or a copy, readily available to Counsel when needed for trial preparation. A request for the administrative case file by Counsel will not transfer settlement authority back to Counsel. Counsel will promptly return the administrative file to Appeals on request, or when it is no longer needed by Counsel for trial preparation.

.10 When transferring a docketed case to Appeals, Counsel may request to be included in a settlement conference with the taxpayer. Appeals may, with manager approval, decline to include Counsel in the settlement conference if, after considering the views of both Counsel and the taxpayer, Appeals determines that Counsel's participation in the settlement conference will not further settlement of the case. Whether or not Counsel participates in the settlement conference, Counsel will continue with trial preparation, which may include, but is not limited to, asking the taxpayer to

participate in informal discovery conferences with Counsel only.

.11 Appeals will provide Counsel with access to any documents received by Appeals in a settlement conference with respect to the docketed case.

.12 If a taxpayer or the taxpayer's representative raises an issue for the first time while the docketed case is with Appeals for settlement consideration, Appeals will advise Counsel as soon as the new issue is identified and coordinate with Counsel to obtain Counsel's views on the new issue. In such cases, and in docketed cases containing an issue that was not previously examined, Counsel will work with the examination function of the relevant operating division, as needed, to develop the material facts relating to the new issue prior to Appeals' consideration of the issue.

.13 In evaluating the merits of a docketed case that has been referred to Appeals for settlement consideration, Appeals may obtain advice from Counsel and consider it in conjunction with other factors to reach a basis for settlement.

.14 In all docketed cases transferred to Appeals, Counsel may request that Appeals return the case (including settlement authority) to Counsel before Appeals has completed its consideration of the case under its settlement authority if Counsel determines that it is needed for trial preparation.

.15 If Appeals reaches a settlement with the taxpayer in the docketed case, Appeals generally will prepare a stipulated decision document reflecting the proposed resolution and forward it to the taxpayer. Counsel may assist with the drafting of the decision document as needed. By signing the proposed stipulated decision document and returning the document to the IRS, the taxpayer makes an offer to settle the case.

Counsel will review the decision document for accuracy and completeness, sign the decision document on behalf of the Commissioner, and file the document with the Tax Court.

SECTION 4. EXCLUSIONS

.01 Section 3 does not apply to cases docketed under section 6015(e)(1)(A)(i)(II), section 6110, sections 6320 and 6330, section 6402, section 7428, section 7476, section 7477, section 7478, and section 7479 of the Internal Revenue Code. For cases docketed under section 6213(a), section 3 does not apply to section 6015 relief raised for the first time in the petition.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 87-24, 1987-1 C.B. 720, is superseded.

SECTION 6. EFFECTIVE DATE

This revenue procedure is applicable to all docketed Tax Court cases pending on or after [insert date revenue procedure is released to the public].

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Jenni Black of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure contact Jenni Black on (202) 317-6834 (not a toll free call).