

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.106: Appeals Functions

Rev. Proc. 2016-22

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, for cases docketed in the Tax Court, the rules prohibiting ex parte communications continue to apply to communications between the Office of Appeals (Appeals) and the originating function, but do not apply to communications between Counsel and Appeals. 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), (3), 2012-1 C.B. 455, 457.

.04 On October 15, 2015, the Department of Treasury and the Service published Notice 2015-72, 2015-44 I.R.B. 613, which released a proposed revenue procedure that would update Rev. Proc. 87-24, 1987-1 C.B. 720. Notice 2015-72 invited public comment regarding the proposed revenue procedure. The IRS received a total of four comments, one of which contained a general objection to the proposed revenue procedure. The three substantive comments ranged from seeking clarification on some of the terms used in the proposed revenue procedure to seeking expansion of the scope of the proposed revenue procedure to cover other areas. Treasury and the Service considered all comments received and adopted several of the suggestions by making clarifying modifications. A number of the suggestions that were not adopted in the revenue procedure may be addressed in the Internal Revenue Manual, the Chief Counsel Directives Manual, or in training.

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 notifies Counsel that the taxpayer wants to forego 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 that has not been designated for litigation 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 calendar 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 calendar days (120 calendar days from when the case is at issue) requires approval of a Counsel executive. If a delay of more than 90 calendar 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 calendar days is approved by a Counsel executive, Counsel will promptly 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 a docketed 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. In such cases, Counsel and Appeals shall then agree upon the time when the case will be returned to Counsel.

.07 A docketed case proceeding as a small tax case under the provisions of section 7463, or as a regular case in which the amount at issue for each year is \$50,000 or less, that has been forwarded to Appeals for consideration may be recalled by Counsel after six months. If not recalled, Appeals will return the case so that it is received by Counsel no later than 30 calendar days prior to the date of the calendar call. In all other docketed cases, Appeals will return the case to Counsel when Appeals concludes that the case is not susceptible to settlement or within 10 calendar 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 If Counsel determines that the case is needed for trial preparation, Counsel may request that Appeals return the case (including settlement authority) to Counsel before Appeals has completed its consideration of the case.

.09 Notwithstanding any other provision in this revenue procedure, any docketed case may be transferred from Counsel to Appeals or from Appeals to Counsel by agreement between Appeals and Counsel. This authority will be used when such transfer may promote a more efficient disposition of the case.

.10 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.

.11 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.

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

.13 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. Appeals or Counsel will coordinate with the examination function as appropriate to obtain the IRS's views on the new issue, and in docketed cases containing an issue that was not previously examined, Appeals or Counsel will coordinate 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.

.14 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.

.15 If Appeals reaches a settlement with the taxpayer in the docketed case, a stipulated decision document reflecting the proposed resolution will be prepared and forwarded to the taxpayer. When Appeals prepares the decision document, Counsel may assist with drafting, 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 6404, section 7428, section 7476, section 7477, section 7478, section 7479, and section 7623 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 March 23, 2016.

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).