

Appeals Team Cases Conferencing Initiative: Frequently Asked Questions about Compliance Attendance at Conferences

On May 1, 2017, the IRS Office of Appeals implemented an initiative in which some Appeals Team Case Leaders (ATCLs) will hold Appeals conferences with representatives from Compliance Examination teams (Compliance) in attendance. For many years, Appeals Officers have had the discretion to invite IRS Compliance personnel to Appeals conferences; this initiative will make Compliance attendance routine for certain cases. The goals for this initiative are to improve conference efficiency, reach case resolution sooner, and offer earlier certainty for issues in future years. As in the past, settlement negotiations will be held between Appeals and the taxpayer without Compliance present.

This initiative relies on taxpayers and Compliance participating in focused joint discussions to identify and, where possible, narrow the factual and legal differences, to assist Appeals Officers in evaluating the hazards of litigation. The insight that all parties may gain from an open discussion of positions could facilitate resolution of the same or similar issues in subsequent cycles.

ATCL Initiative Frequently Asked Questions

1. If a taxpayer has already fully discussed the issues with Compliance, why have another conversation with Compliance and Appeals?

For cases in this initiative, all parties actively participate to ensure a full understanding of any factual disagreements and the parties' legal positions. This will help the ATCL more rapidly focus on the most significant aspects of the dispute and aid in Appeals' evaluation of the hazards of litigation.

2. How is this different from the Rapid Appeals Process (RAP) set out in IRM 8.26.11?

RAP is a voluntary, collaborative process intended to help Compliance and the taxpayer reach a mediated resolution. In RAP, the parties engage in active negotiation to reach a mutually-agreeable settlement. In contrast, this initiative is intended to allow the parties to listen to each other's presentations and give the ATCL the opportunity to clarify facts and legal arguments that have not otherwise been clearly outlined. Under the initiative, the parties have not agreed to work toward a mediated resolution.

3. What if the taxpayer does not want to engage in direct settlement discussions with Compliance?

Settlement discussions for cases in this initiative are held between the ATCL and the taxpayer without Compliance present. Settlement discussions between the taxpayer and ATCL occur only after Compliance and the taxpayer have presented their understanding of the facts and the law and have responded adequately to any

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Frequently Asked Questions about Compliance Attendance at Conferences***

questions. The ATCL will decide the appropriate time to engage in settlement discussions.

4. Is Appeals trying to change the traditional Appeals session into a mediation session?

No. That said, the ATCL may encourage voluntary mediation and other alternative dispute resolution techniques if he or she believes they would be productive and the parties agree. If the parties agree, both the taxpayer and Compliance would participate in the mediation session.

5. Should a taxpayer expect the entire Compliance team to participate?

No. Generally, only team members involved in the unagreed issues that are the subject of the conference will participate.

6. Can the taxpayer elect not to participate in the initiative, or request a case transfer to avoid the initiative?

No. For all ATCLs participating in this initiative, Compliance will be invited to attend Appeals conferences. Case transfers will not be granted for the purpose of electing out of the initiative.

7. How does this initiative support an independent and impartial decision by Appeals?

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. Attendance at Appeals conferences by both the taxpayer and Compliance, where both parties are heard, is directly aligned with Appeals' mission.

8. Can Compliance raise new issues during the Appeals conference?

No. Compliance cannot raise new issues while a case is under Appeals' jurisdiction. Additionally, if a taxpayer raises new issues in Appeals, the ATCL will return the case to Compliance to examine the issue or make a determination prior to considering the merits of the issue. This is consistent with current guidance relating to Appeals' new issue policy (IRM 8.6.1.6.1 through 8.6.1.6.5).

9. Does this initiative violate ex parte rules?

No. Taxpayers are allowed to participate in all discussions where Compliance is present. See, Rev. Proc. 2012-18, Section 2.01(3). The special rules for certain Field Counsel attorneys continue to apply as well. See Rev. Proc. 2012-18, section.

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Frequently Asked Questions about Compliance Attendance at Conferences***

10. What is the role of LBI Division Counsel in the initiative?

For purposes of the initiative, Chief Counsel attorneys may be invited to participate if requested by either Compliance or Appeals. This is consistent with current guidance regarding Counsel participation during pre-conferences (IRM 8.7.11.8.3) and Fast Track Settlement sessions (IRM 4.51.4.4.4.7).

11. What if there are too many issues to be settled in one conference?

ATCLs will use their discretion to make the best use of everyone's time in scheduling conferences.

12. What authority allows Appeals to use this initiative?

As noted above, Appeals has discretion to invite Compliance or Counsel to conferences pursuant to IRM 8.6.1.4.4.

13. What are the benefits to the taxpayer?

The initiative may result in quicker resolution of issues in Appeals and potential for earlier certainty of issues going forward.