

IRS Clarifies Office of Appeals Policies – Frequently Asked Questions

1. In a Collection case, when will Appeals send information to Small Business/Self-Employed (SB/SE) Collection for their review?

If Appeals determines that an investigation is needed or verification is required, information will be sent to Collection for their review.

2. Can alternative collection options be considered by Appeals?

With the exception of Collection Due Process (CDP) cases, collection alternatives will not be considered in Appeals.

3. Will Appeals investigate assets that were not investigated by SB/SE Collection?

No. It is the role of Collection to investigate, locate, value, and document assets, income, and collection potential. Given Appeals' role of independence and impartiality, Appeals will resolve disputes regarding these issues and should not undertake actions that are the responsibility of Collection personnel and their managers. Note that there are legal prohibitions on the failure of the taxpayer to disclose information to Collection.

4. How do these changes apply to cases in which the taxpayer has unsuccessfully tried to resolve the issue through IRS functions?

If the taxpayer timely responded to Compliance with all available information, then the Appeals hearing officer will make a decision based on the documentation in the file.

5. Will Appeals raise new issues?

No. Appeals will not raise new issues except in case of fraud, misrepresentation or malfeasance.

6. What is considered a “new issue”?

Any issue not raised by Compliance in the report (e.g. 30-Day Letter or work papers) or rebuttal and disputed by the taxpayer.

7. Can Appeals raise issues addressing computational errors?

Yes. Appeals hearing officers will consider and make corrections to computational errors while working a case. Addressing a computational error is not considered a new issue.

Computational errors include, but are not limited to, calculating net operating loss carryforwards and carryovers, self-employment tax computations, alternative minimum tax computations, etc.

8. Given that Appeals will not raise a new issue, can the Appeals hearing officer consider a new theory or alternative legal argument?

Yes. A new theory or alternative legal argument can be considered when weighing the hazards of litigation; however, the hearing officer will not develop additional evidence that is not in the case file to support the new theory or alternative legal argument. If a taxpayer raises a new theory or alternative legal argument, it may be subject to review and comment by the originating function.

9. In considering a case, can the Appeals hearing officer consider what may be the best legal argument, even if neither party is making it?

Yes. Consideration of various legal theories and arguments, even if not raised by either the taxpayer or government, is generally part of the process to determine the hazards of litigation. This does not equate to raising a new issue.

10. Is a taxpayer precluded from raising a new/beneficial issue or presenting new information?

No. The taxpayer can raise a new issue or present new information. However, Appeals may return the case to Compliance, so that Compliance will have the opportunity to examine it. Where the case is docketed before the United States Tax Court, Appeals may request examination assistance from Compliance, allowing Compliance to perform any investigative or analytic actions.

11. If jurisdiction of a case is returned to Compliance for consideration of new information submitted by a taxpayer, is Compliance limited solely to addressing the new information?

No. Once Appeals releases jurisdiction of a case (on non-docketed cases only) the originating function, it is solely within that function's purview to revisit and/or add new issues as the function deems appropriate.

12. What is the minimum time that must remain on the statute of limitations for a case to be accepted by Appeals?

For most Examination cases, there must be at least 365 days remaining on the statute of limitations when a case is received by Appeals in order for Appeals to accept it. Where the Examination case is docketed before the United States Tax Court, the statute of limitations is temporarily suspended until the matter is resolved. For Collection cases, there is no requirement for a minimum number of days remaining on the statute of limitations since the taxes have already been assessed.

13. Have there been any changes to the ex parte rules related to the recent guidance?

No. The ex parte rules continue to apply and are not affected.

14. What procedures apply when new information is received in a case docketed in U.S. Tax Court?

Appeals may request examination assistance from Compliance so that an Examiner can perform any necessary analysis and additional work.

15. What happens when Appeals requests examination assistance from Compliance on a docketed case?

Compliance has the discretion to decline the examination assistance requests. If assistance is not provided, Appeals will attempt to settle the case by assessing the hazards of litigation based upon all of the information available. When Compliance provides assistance, Appeals

will promptly send the taxpayer a Letter 4642, Docketed Case Examination Assistance, informing them that Compliance is being reengaged and that the ex parte rules will continue to be employed.

16. What will Appeals do with Examiner's findings when examination assistance is provided on a docketed case?

Appeals will provide the results of the examination assistance to the taxpayer to give him/her an opportunity to review and respond to the Examiner's findings. Appeals will then use all of that information in attempting to resolve the case. It is important to note that Appeals is not bound by the Examiner's findings and can continue to attempt to resolve the case in a manner that achieves a result that is fair and impartial to both the taxpayer and the government. It is imperative that all additional information to support the taxpayer's position is provided at the onset of Appeals' involvement with the case. Not only does this assist to avoid delays in resolving the issue, but it also aids the taxpayer in having their information reviewed by the appropriate party as Appeals will only request examination assistance from Compliance one time.

Examples:

- 1. Compliance challenged a tax-free exchange transaction under Internal Revenue Code Section 1031 on the basis that the relinquished and replacement properties were NOT like-kind properties. When the case is in Appeals, the Appeals hearing officer determines that the properties WERE like-kind, but observes that the exchange was not completed in the requisite time period. Is this a new issue or new theory?**

This is a new theory. The issue is the exclusion of the income from the like-kind exchange. Compliance's theory is that the properties were not of like kind. The time period would constitute an alternative legal argument which is permissible. Appeals can consider the best legal argument to arrive at the correct tax liability. Jurisdiction of the case will not be released.

2. **The IRS audited a sole proprietor. On his filed 1040, the taxpayer's Schedule C reported Line 22, Supplies \$20,000 and Line 23, Taxes \$0. The taxpayer provided supporting information for only \$8,000 in supplies so the examiner disallowed \$12,000 and issued an RAR (Revenue Agent's Report or Form 4549). The taxpayer filed an appeal. The taxpayer reviewed his QuickBooks records prior to the Appeals conference and found that an error had been made. The taxpayer paid only \$8,000 for supplies, but had expenses of \$12,000 for sales taxes that were not reported on Line 23. The taxpayer provided substantiation to the Appeals employee, noting the error. Is this a "new issue" requiring a return of the case to Examination?**

Yes. The case should be returned to Examination for consideration of the new issue (Line 23, Taxes) with the new evidence, provided there is sufficient time remaining on the statute of limitations or the taxpayer agrees to an extension. The examiner's original review of the return and proposed adjustments did not include a review of taxes since no deduction was reported on the Schedule C.

3. **Examination audited a taxpayer for cancellation of debt. She requested an appeal. The representative states the taxpayer was insolvent at the time the debt was cancelled, thus the cancelled debt could not be included in gross income. The representative provided evidence of the insolvency with a copy of the taxpayer's financial statements that were not provided to Examination. Does the case need to be returned to Examination?**

Yes the financial statements merit additional analysis or further investigation to verify the accuracy of those statements.