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**From:** [REDACTED]  
**Sent:** Wednesday, November 21, 2018 10:07:23 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
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**Subject:** FW: Domestic Crude Export - Guidance Requested

This responds to your request for advice concerning whether cases raising solely constitutional and non-tax issues are eligible for Appeals consideration. While it is ultimately up to Appeals to interpret its provisions on criteria for case consideration, we agree that Appeals may determine that its procedures allow it to decline to accept cases with no tax issues.

A fair reading of Appeals published guidance and procedures would allow Appeals to decline to consider all non-tax issues that do not fall within the scope of the tax laws, including arguments based only on constitutional grounds. In particular, Publication 5, *Your Appeal Rights and How to Prepare a Protest If You Don't Agree* (Rev. 01-1999), provides "Appeals can not consider your reasons for not agreeing if they don't come within the scope of the tax laws (for example, if you disagree solely on ... constitutional... grounds." (Emphasis added). See also IRM 4.23.22.5(2)c.; 8.1.1.3.1; 26 CFR 601.106(b). The general Appeals Delegation Order 8-8, IRM 1.2.47.9, does not make any specific provision for either consideration or exclusion of constitutional issues.

To sum, it is ultimately up to Appeals to decide which cases to take and which to decline. Current published Appeals procedures do appear to allow Appeals to decline to accept a case which raises solely constitutional and non-tax issues.