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**RESOLVING TAX CONTROVERSIES
WITH THE IRS INDEPENDENT
OFFICE OF APPEALS:
WHAT'S NEW AND WHAT'S NEXT**

**60TH ANNUAL SOUTHERN FEDERAL TAX INSTITUTE
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Agenda

- Overview of the Independent Office of Appeals
 - ❑ Mission and Approach
 - ❑ Organization
 - ❑ Considerations in “Going” to Appeals
- Alternative Dispute Resolution (“ADR”) within the Independent Office of Appeals
 - ❑ Traditional Appeals or ADR?
 - ❑ Considerations to Participation in ADR
 - ❑ Potential Barriers to Resolution in ADR
 - ❑ May 2023 GAO Report
 - ❑ IRS ADR Efforts

Overview of the Independent Office of Appeals

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Mission and Function

- The Independent Office of Appeals (“Appeals”) is a separate and independent function of the Internal Revenue Service (“IRS” or “Service”), operating as the Service’s dispute resolution forum.

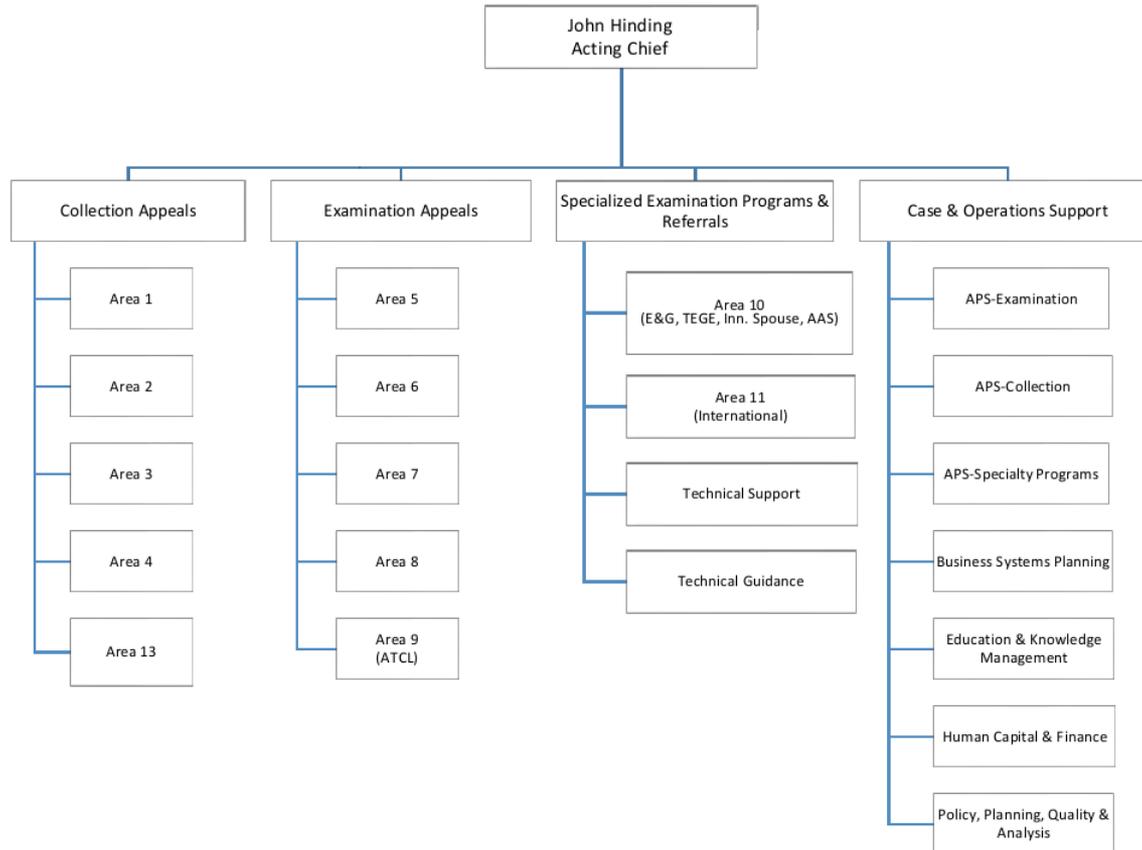
Mission: To resolve Federal tax controversies without litigation on a basis which is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and enhances public confidence in the integrity and efficiency of the Internal Revenue Service. IRC § 7803(e).

- Appeals is generally available to all taxpayers.
- To preserve impartiality of Appeals, *ex parte* communications between Appeals and other Service employees is generally prohibited.

“Quasi-Judicial” Approach

- Appeals uses a “quasi-judicial” approach acting as an independent arbiter by:
 - ❑ Relying on facts developed at the Examination level to evaluate the taxpayer’s and the IRS’ position on the issue.
 - ❑ Appeals attempts to settle cases by considering the hazards of litigation to each party.
 - ❑ Its mission is executed by considering taxpayers’ protest of cases, holding conferences (in-person, telephonic, correspondence, or virtual), and negotiating settlements.

Organizational Chart



Organization Functions

- Collection Appeals resolves cases involving Collection Due Process, Offer in Compromise, Trust Fund Recovery Penalties, Jeopardy Levies and Collection Appeals Program (CAP) cases.
- Examination Appeals resolves general docketed and non-docketed cases generated from the IRS examination functions, including the larger cases handled by Appeals Team Case Leaders (ATCLs).
- Specialized Examination Programs & Referrals resolves a variety of specialized programs such as international issues, estate and gift (E&G) issues, tax-exempt and government entity (TEGE) issues, tax computations, innocent spouse, and art appraisal services.
- Case and Operations Support involves all Appeals' support functions including policy, technology, education, human capital and finance and Account and Processing Support (APS).

Considerations in “Going” to Appeals

- Is the issue appropriate to take to Appeals?
 - ❑ Probability of success / strength of position
 - ❑ Willingness to settle
 - ❑ Timing
 - ❑ Regulatory exceptions to Appeals consideration
 - See Treas. Reg. § 301.7803-2(c)(1)-(24)

Considerations in “Going” to Appeals (continued)

- Key issues excepted from consideration by Appeals under Treas. Reg. § 301.7803-2(c) include:
 - ❑ Any issue based on a taxpayer’s argument that a statute violates the United States Constitution unless there is an unreviewable decision from a Federal court holding that the cited statute is unconstitutional.
 - ❑ Any issue based on a taxpayer’s argument that a Treasury Regulation is invalid unless there is an unreviewable decision from a Federal court invalidating the regulation.
 - ❑ Any issue based on a taxpayer’s argument that a notice or revenue procedure published in the Internal Revenue Bulletin is procedurally invalid unless there is an unreviewable decision from a Federal court holding it to be invalid.
 - ❑ Any case or issue designated for litigation or withheld from Appeals consideration in a Tax Court case.

Considerations in “Going” to Appeals (continued)

- Are there options other than going to Appeals?
- Is the issue an Appeals Coordinated Issue?
 - ❑ If so, are there corresponding Appeals Settlement Guidelines?
- BBA Partnership
 - ❑ Appealing proposed adjustments to partnership-related item
 - ❑ Appealing modification dispute
- Manner of Appeals conference: In-person, telephonic, virtual

Alternative Dispute Resolution Within The Independent Office of Appeals

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“Appeals is committed to offering Alternative Dispute Resolution programs as a cost-effective option for resolving cases, improving the taxpayer’s experience, and making the best use of IRS resources.”

John Hinding

Acting Chief of Appeals

IR-2025-100

October 1, 2025

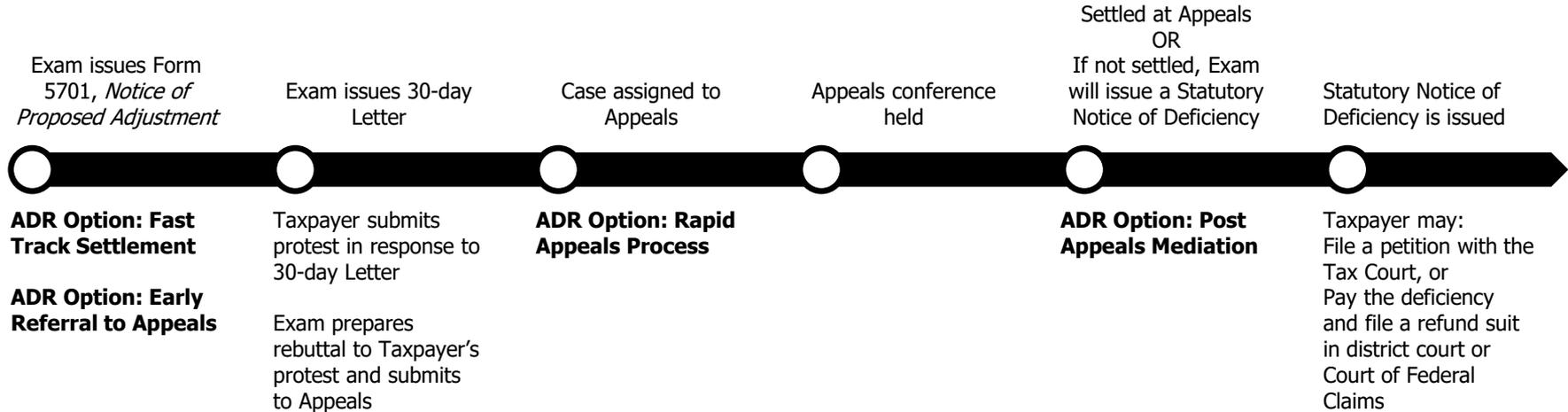
ADR Overview

- In accordance with the Administrative Dispute Resolution Act of 1990 and section 7123, Appeals has developed various alternative dispute resolution procedures.
- ADR programs help the IRS resolve tax controversies at the lowest level without sacrificing the quality and integrity of those determinations.
- Benefits include:
 - ❑ Flexibility;
 - ❑ Lower cost; and
 - ❑ Quicker resolution.

ADR Overview (continued)

- IRS ADR includes the following programs, which offer alternatives to “traditional” Appeals procedures:
 - ❑ Fast Track Settlement (“FTS”);
 - ❑ Early Referral;
 - ❑ Rapid Appeals Process (“RAP”); and
 - ❑ Post Appeals Mediation (“PAM”).

Traditional Appeals or ADR?



Considerations to Participation in ADR

- Benefits: avoid litigation, lower costs, flexibility, quicker resolution.
 - ❑ Is the issue appropriate for ADR?
 - Evaluate particular facts and circumstances of taxpayer's case.
 - Parties must be open and flexible to resolution.
- Will traditional Appeals be available if ADR is not successful?
- Are *ex parte* communications allowed in the particular ADR program?

Potential Barriers to Resolution Through ADR

- Taxpayer knowledge and experience with ADR program and purpose.
- IRS employee knowledge and experience with ADR program and purpose.
- Lack of details in ADR denials.
- Lack of taxpayer “decision-maker” presence during ADR proceedings.
- Lack of IRS “decision-maker” presence during ADR proceedings.
- Age of the case may disincentivize Exam participation in ADR.

GAO Report on ADR Programs

- The Government Accountability Office (“GAO”) conducted a study and prepared a report, published in May 2023, of the IRS’ ADR programs in response to the National Taxpayer Advocate reporting a decline in the use of ADR programs.
 - ❑ From FY 2013 to 2022, the IRS only used ADR programs in less than 0.5% of all cases Appeals reviewed. During the same time period, use of ADR fell by 65%.
 - ❑ The GAO report provided eight recommendations which focused on furthering the use of ADR, and clarifying the purposes, objectives and procedures of ADR programs. The IRS agreed to take action on certain recommendations and consider other recommendations.

Service's ADR Efforts: ADR Program Management Office

- In April 2024, Appeals formed the ADR Program Management Office (“PMO”) and appointed Michael Baillif as its Director.
 - The PMO’s mission is to oversee, administer, and promote IRS ADR programs in a manner that creates greater awareness, increases use, and ensures quality delivery of the programs to facilitate customer satisfaction and taxpayer issue resolution at the earliest stage. IRM 1.1.7.9(1).
- The PMO serves as a central point of contact for internal IRS and external ADR program inquiries.
- The PMO receives and reviews all ADR requests and coordinates assignment of ADR requests within Appeals.

Service's ADR Efforts: Pilot Programs

- On January 15, 2025, the Service announced three pilot programs testing changes to FTS and PAM procedures and introduced a “Last Chance FTS” program for certain taxpayers within the jurisdiction of the SB/SE division.
- On October 1, 2025, the Service announced another pilot program in which PAM cases will be reassigned to an Appeals team unconnected with the underlying case who will represent Appeals in the mediation session.
- The goal of the pilot programs is to make ADR programs more attractive and accessible for all eligible parties.

Service's ADR Efforts: Interim Guidance Memorandum LB&I-04-0725-0008

- On July 23, 2025, the Service issued an Interim Guidance Memorandum to all LB&I employees, requiring additional internal reviews and approvals before denying a taxpayer's FTS request.
 - ❑ Effective from August 1, 2025, through August 1, 2027, before the Service denies a taxpayer's FTS request, the applicable senior directors must notify the LB&I deputy commissioner of the proposed FTS denial.
 - ❑ The decision to accept or deny a taxpayer's FTS request is "a business decision, not a legal decision."

Appendix

**Fast Track Settlement
Early Referral
Rapid Appeals Process
Post Appeals Mediation**

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Fast Track Settlement

- After a taxpayer receives a Form 5701, Notice of Proposed Adjustment (“Form 5701” or NOPA”), and the taxpayer provides a written response, a taxpayer may elect to participate in Fast Track Settlement (“FTS”).
 - ❑ FTS is generally available to all cases within LB&I, SB/SE and TE/GE jurisdiction.
- Optional and allows Exam and the taxpayer to mediate their dispute with an FTS Appeals Official.
- FTS may be initiated by the taxpayer or Exam before Exam’s issuance of the 30-day letter, but both parties must agree to participate. Application for FTS is subject to approval by FTS Managers.
- Exam retains jurisdiction of the issue during the FTS process.

Fast Track Settlement (continued)

- The FTS Official has authority to propose a settlement. If the taxpayer or Exam does not agree, the taxpayer will retain all traditional rights to request Appeals consideration of the unagreed issue.
- If a settlement is reached, the parties sign the FTS Session Report acknowledging acceptance of the terms. An FTS settlement will not bind the parties for tax years not included in the FTS Session Report.
- Prohibition against *ex parte* communications is waived during FTS.
- FTS is designed to resolve disputes within 120 days (LB&I) or 60 days (SB/SE and TE/GE) of acceptance in the program.

Early Referral to Appeals

- Early referrals permits the parties to transfer a fully developed, unagreed issue to Appeals while other issues in a case are still pending with Exam.
- Unlike FTS, only a taxpayer may initiate this request, and Exam must approve.
- If the request is approved, within 30 days, Exam may submit a Form 5701 or equivalent to the taxpayer, the taxpayer must respond in writing within 30 days of receipt, which serves as the taxpayer's protest.
- Taxpayer and Exam then go through established Appeals procedures. *Ex parte* communications is not waived.
 - ❑ If agreement is reached, a closing agreement is prepared.
 - ❑ If agreement is not reached, the taxpayer may request mediation or any subsequent procedure. If mediation is not requested, Appeals closes the issue and Exam returns jurisdiction of the issue to Exam.
 - ❑ Generally, Appeals will not reconsider an unagreed early referral issue.

Rapid Appeals Process

- RAP is a mediation tool used to improve the efficiency and timelines of Appeals resolutions.
- RAP is elective; both the taxpayer and Exam must agree to participate.
- Unlike in FTS where the case is in Exam's jurisdiction, RAP takes place while in Appeals' jurisdiction.
- If all parties agree, the appeals pre-conference becomes a working conference where Appeals utilizes mediation techniques to resolve unagreed issues.
- If the parties reach agreement, traditional closing procedures apply. If the process is unsuccessful, the traditional Appeals process continues.
- *Ex parte* communications between Appeals and Exam are permitted if the taxpayer signs a waiver for the term of the session to allow for the communications.
- RAP does not replace traditional Appeals procedures or prevents the taxpayer from using other ADR programs.

Post Appeals Mediation

- PAM is available for eligible cases where a limited number of issues remain unresolved following settlement discussions with Appeals.
- The taxpayer and Exam must agree to participate in PAM. To initiate the process, the taxpayer submits a written request to the Appeals Team Manager.
- PAM is a non-binding process, and the mediator does not have settlement authority and cannot render a decision regarding any issue in dispute.
- The taxpayer and the Appeals Team Manager can select the mediator from a list of trained employees. At its own cost, the taxpayer may also elect to use a co-mediator who is not employed by the IRS.
- If an agreement is reached, Appeals will prepare a closing agreement.
- If no agreement is reached, a statutory notice of deficiency will be issued.
- *Ex parte* contacts with the mediator outside the mediation session are prohibited unless the mediator initiates contact.

Biography



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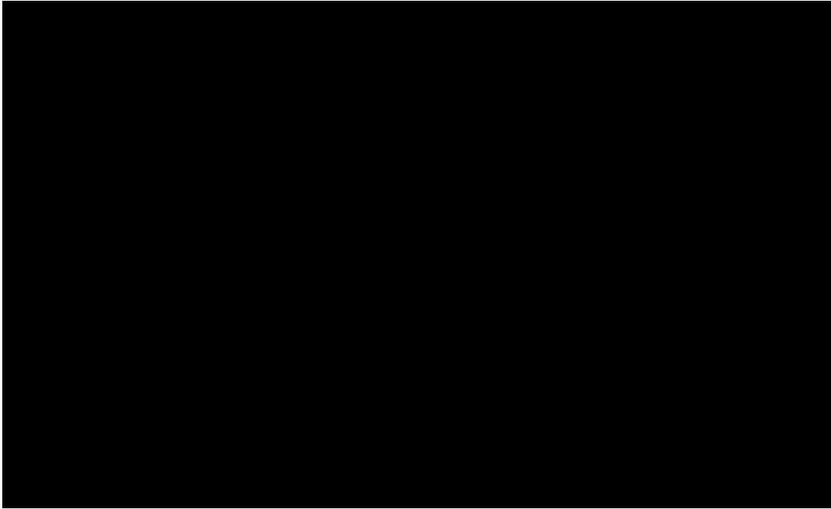
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Sheri A. Dillon focuses her practice on federal tax controversy matters, guiding clients through Internal Revenue Service (IRS) examinations and appeals, the administrative claims process, and litigation. Sheri also counsels clients on a variety of business and tax-planning matters, with a particular focus on high-net-worth individuals, partnership transactions, and closely held businesses.

Sheri has tax litigation experience and has appeared before the US Tax Court, US district and appellate courts, and the US Court of Federal Claims. She represents corporate taxpayers, Tax Equity and Fiscal Responsibility Act (TEFRA) and Bipartisan Budget Act partnerships, partners, tax-exempt organizations, and global high-wealth taxpayers in the financial services, private equity, hedge fund, real estate, energy, manufacturing, and consumer products industries.

Specifically, Sheri's recent experience includes challenges that involve economic substance, substance-over-form, and bona fide partnership issues; taxation of partnerships and partners; taxation of financial products; income tax accounting issues; cancellation of indebtedness income; employment tax issues; debt-equity classification; charitable contribution deductions; tax-exempt organizations, tax credits; and valuation. Sheri has also represented taxpayers and investors involved in promoter audit investigations.

Sheri is an active speaker who regularly presents on current tax issues at various professional organizations, including the American Bar Association Section of Taxation, Texas Federal Tax Institute, PLI, NYU Institute on Federal Taxation, Tax Executives Institute, Federal Bar Association, and DC Bar Section of Taxation. She previously taught partnership taxation at Catholic University of America's Columbus School of Law and helped launch the University of the District of Columbia, David A. Clarke School of Law's Low-Income Taxpayer Clinic, a program dedicated to providing legal services to low-income taxpayers. Sheri currently serves as a director and president of the Washington, DC Center for Public Interest Tax Law, whose mission is to provide pro bono tax services to the greater DC community.



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