

## Tax Controversy Newsletter

# IRS Appeals: How to Navigate the Process

By David Gannaway, MBA, CFE, CAMS, EA, Principal

The Office of Appeals (“Appeals”) is a unit of the IRS which is separate and independent of the IRS Tax Examination Division (“Examination”) which conducts tax audits. The goal of Appeals is to resolve tax disagreements in an objective, impartial and neutral manner without litigation in Tax Court. Appeals handles approximately 100,000 federal tax disputes per year involving proposed tax assessments, tax collection and other IRS actions. Taxpayers who use the Office of Appeals do not give up their rights to a judicial review.

Let’s look at the circumstances in which the Office of Appeals would be a viable option for you and, if so, procedures and practices which should be taken into consideration. Whether or not you represent yourself or engage a professional, you should be aware of what’s entailed.

### Is Appeals the Right Place for Your Case?

Appeals is the place for you if **ALL** of the following apply:

- You received a letter from the IRS explaining your right to appeal the IRS decision.
- You do not agree with the IRS decision.
- You are not signing an agreement form sent to you.

Appeals is not for you if **ANY** of the following apply:

- The correspondence you received from the IRS was a bill and there was no mention of Appeals.
- You did not provide all information to support your position to the examiner during the audit.
- Your only concern is that you cannot afford to pay the amount you owe

### Written Protest Required

If you disagree with the IRS determination and meet the first set of criteria above, you may request an Appeals conference by filing a written protest within the timeframe specified in the letter [generally within 30 days from the date of the letter]. Your request should include all of the following:

- Your name, address, and a daytime telephone number.
- A statement that you want to appeal the IRS findings to the Office of Appeals.
- A copy of the letter you received that shows the proposed change(s).
- The tax period(s) or year(s) involved.
- A list of each proposed item with which you disagree.
- The reason(s) you disagree with each item.
- The facts that support your position on each item.
- The law or authority, if any, that supports your position on each item.

- The penalties of perjury statement as follows: “Under the penalties of perjury, I declare that the facts stated in this protest and any accompanying documents are true, correct, and complete to the best of my knowledge and belief.”
- Your signature under the penalties of perjury statement.
- If your representative prepares and signs the protest for you [the taxpayer], he or she must substitute a declaration for the penalties of perjury statement including:
  - That he or she submitted the protest and any accompanying documents, and
  - Whether he or she knows personally that the facts stated in the protest and any accompanying documents are true and correct.
- You must send your formal written protest within the time limit specified in the letter that offers you the right to appeal the proposed changes. Generally, the time limit is 30 days from the date of the letter.
- Include Form 2848, Power of Attorney.
- Submit Form 12203 for amounts less than \$25,000.

In the protest requesting an appeal, list all issues with which you disagree and why, and explain how you understand the facts and the law.

Give Appeals any additional information or documentation that will be helpful to the case within the timeframe specified. However, if new information is presented that you did not provide to the auditor or revenue officer before, Appeals may return the case or refer that information for further consideration. You will receive their comments and have an opportunity to respond.

### Key Points in the Appeals Process

Appeals works with Examination and the IRS Collection Department (“Collection”) in its efforts to resolve the taxpayer’s appeal. Some key points are:

- Appeals will attempt to settle a case on factual hazards when not fully developed by Examination (i.e., cases will not be sent back to Examination for further development).
- Appeals will not raise new issues or reopen issues on which the taxpayer and Examination have reached an agreement, with limited exceptions.
- Most new case receipts in Appeals must have at least one year remaining on the statute of limitations.
- Appeals will return non-docketed cases to Examination when a taxpayer submits new information or evidence or raises a new issue that merits investigation or additional analysis.
- For most work streams, Appeals will engage Examination for review and comment when a taxpayer raises a relevant new theory or alternative legal argument.
- Appeals will not take investigative actions with respect to financial information provided by taxpayers. Financial information needing investigation or verification will be sent to Collection.
- Appeals will only consider assets that were documented by Collection or introduced by the taxpayer.
- Appeals will accept as “verified” those financial statements reviewed by Collection within the previous 12 months.
- Appeals will not make recommendations to file Notices of Federal Tax Lien.
- All Offers in Compromise (OIC) submitted in Collection Due Process (CDP) or Equivalent Hearings will be reviewed by Collection for a preliminary recommendation or acceptance.

### Opportunity to Participate

The phrase “opportunity to participate” means that the taxpayer/representative will be given a reasonable opportunity to attend a meeting or be a participant in a conference call between Appeals and the originating function when the strengths and weaknesses of the facts, issues, or positions in the taxpayer’s case are discussed. The taxpayer/representative will be notified of a scheduled meeting or conference

call and invited to participate. If the taxpayer/representative is unable to participate in the meeting or conference call at the scheduled time, reasonable accommodations will be made to reschedule it.

## Response Times

Response times from Appeals can vary, depending on the type of case and the time needed to review the file. Normally, you can expect to hear from an Appeals employee **within 90 days after you file your request**. If it has been more than 90 days since you filed your request, you should contact the office where you sent your request. They can tell you when they forwarded your case to Appeals. Please allow 90 days from when your file was sent to Appeals for a reply.

If the IRS office to which you sent your request cannot provide a reason for the delay, you have two options:

1. Ask that office to contact Appeals for an approximate date when Appeals might contact you, or
2. Telephone the Appeals Account Resolution Specialist (“AARS”) at 559-233-1267. The AARS can tell you if your case has been assigned to an Appeals employee and how to contact that employee directly.

## Working with an Appeals Officer

You and/or your representative would be well-served by the following:

- Have your representative call other representatives that he/she knows to see if they have worked with the Appeals Officer before.
- If someone knows the Appeals Officer, ask what type of case, how were they to deal with, was their approach reasonable, what did they rely upon to make their decision?
- Generally, know how many cases have been ruled in favor of the taxpayer and how many for the IRS to gain an understanding of how the Appeals Officer may rule.
- Do not begin your Appeals request with anything similar to: “I have been working on this issue for two years without any success as the IRS does not want to listen.”
- Our firm’s general experience is that Appeals Officers genuinely want to resolve the issues without further litigation.
- Your timeliness, manner and tone, and presentation of your position in a non-confrontational way is critical.
- Be organized, present the facts in chronological order without “fluff” and research prior Tax Court rulings or IRS policies (Revenue Ruling, etc.) regarding the issues.
- Closely analyze your issues to prior rulings and extract the similarities to your matter.
- Apply the reasonable person test and link it to your position.
- If the facts support it, show that this is a one-time transaction and future compliance is not in jeopardy.

## Obtaining a Successful Result

Succinctly put, the following will help in a successful appeal:

- Preparation, Preparation, Preparation.
- Presentation, Presentation, Presentation.
- Professionalism, Professionalism, Professionalism.

## Contact Us

If you wish further information about the IRS appeals process or about PKF O’Connor Davies’ experience representing its clients in IRS appeals, please connect with [David Gannaway](#), Principal – Litigation & Forensic Services via [LinkedIn](#), by email [dgannaway@pkfod.com](mailto:dgannaway@pkfod.com) or contact your PKF O’Connor Davies’ business advisor.

## **About PKF O'Connor Davies**

PKF O'Connor Davies, LLP is a full-service certified public accounting and advisory firm with a long history of serving clients both domestically and internationally. With roots tracing to 1891, 9 offices in New York, New Jersey, Connecticut and Maryland, and more than 600 professionals led by 100 partners, the Firm provides a complete range of accounting, auditing, tax and management advisory services. PKF O'Connor Davies is ranked number 26 on Accounting Today's 2016 "Top 100 Firms" list and is recognized as one of the "Top 10 Fastest-Growing Firms." PKF O'Connor Davies is also recognized as a "Leader in Audit and Accounting" and is ranked among the "Top Firms in the Mid-Atlantic," by Accounting Today. In 2016, PKF O'Connor Davies was named one of the 50 best accounting employers to work for in North America, by Vault. The Firm is the 11th largest accounting firm in the New York Metropolitan area, according to Crain's New York Business.

PKF O'Connor Davies is the lead North American representative in PKF International, a global network of legally independent accounting and advisory firms located in 440 locations, in 150 countries around the world.

Our Firm provides the information in this e-newsletter for general guidance only, and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.