



Oklahoma Combined Practitioner Liaison Meeting – January 16, 2015

Appeals-Overview of AJAC Phase II

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AJAC: Agenda

Appeals Judicial Approach and Culture

- Overview
- Guidance
 - Statute
 - New information & Returning LB&I Cases

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AJAC Overview: Purpose

AJAC changes:

- Clarify the independent and impartial role of Appeals hearing officers
- Clarify the distinction between the roles of Compliance and Appeals
- Emphasize a quasi-judicial approach to dispute resolution

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 AJAC Overview: Principles

Impartial Hearing

- Neutral venue to both taxpayers and the IRS to settle tax disputes without costly litigation.

Technically Competent

- well-reasoned and unbiased decision based on the relative merits and hazards of litigation of each case.

Professional Commitment

- exemplify the reality and perception of Appeals' independence.

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 AJAC Overview: Guidance

Phase 1 Interim Guidance AP-08-0713-03

- Issued: July 18, 2013
- [Incorporated in IRM]

Phase 2 Interim Guidance AP-08-0714-0004

- Issued: July 2, 2014
- Most provisions effective: Sept. 2, 2014
- Assistance to/from Counsel: Oct. 1, 2014

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 AJAC Overview: Appeals International Cases

There are three primary International AJAC issues that need to be highlighted:

1. International cases fall within LB&I guidelines except for IIC (International Individual Compliance) cases. See IRM 8.7.11.5.3(2).
2. International cases originating from Campus-sourced functions worked by IIC Tax Examiners follow the standard new information/issue guidance and IRM 8.6.1.6.5 (2) exception provision.
3. Specific guidance applies to IRC § § 6038 and 6038A International Penalty Appeal Cases.

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 AJAC Guidance: Statute

General Rule:

- new case receipts from Compliance requires at least 365 days left on the statute
- Cases returned to Compliance: 210 days
- Cases returned from Compliance: 180 days

Exceptions:

- Estate Tax: 270 days
- Excessive Refund Claim (§ 6206): 270 days

IRM 8.2.1.4 [Phase 2 IG]

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 AJAC Guidance: Returning Cases (Generally)

- IRM 8.2.1.5 [Phase 2 IG] contains instructions for returning a case to the originating function
- Appeals will not return a case to Examination for further development

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 AJAC Guidance: New Information

If Appeals receives new information from the TP that, in the judgment of the Appeals hearing officer, merits additional analysis and/or investigative action, generally the case will be returned to the originating function (jurisdiction released) to examine the new information.

Rationale: a first review by Compliance ensures that the TP is afforded a true appeal with respect to their position/issue. If Appeals conducts the initial review, the TP is not getting a “true appeal” or second look at their case.

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AJAC Guidance: New Information

New Info from TPs

- Appeals exercises judgment using knowledge, experience and reasoning when determining if new information merits investigative action.
- Exception for Campus-sourced cases
- If originating function chooses to not investigate new information, Appeals will determine its probative value in assessing hazards and determining settlement

Rationale: Appeals will not perform investigative actions.
IRM 8.6.1.6.5 [Phase 2 IG]

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AJAC Guidance: New Information

New Info from TPs

- **New information or evidence:**
 - any item or document related to a disputed issue that taxpayer did not previously share with exam and merits additional analysis or investigative action
- **Additional analysis:**
 - anything that is not self-evident or that involves voluminous information
- **Investigative action:**
 - actions required for fact finding, to make inquiries or to verify the authenticity of an item

IRM 8.6.1.6.5 [Phase 2 IG]

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Question

True or False -

Under AJAC interim guidance, "new" information or evidence is any item or document related to a disputed issue that taxpayer did not previously share with exam and does not merit additional analysis or investigative action.

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Answer

False – “new” information or evidence is any item or document related to a disputed issue that taxpayer did not previously share with exam and merits additional analysis or investigative action.

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AJAC Guidance: New Information

Returning Case to LB&I

- The following **Appeals/LB&I New Information Matrix** applies to LB&I-sourced work, **excluding International Individual Compliance (IIC) cases:**
(see next slide)

IRM 8.7.11.5.3 [Phase 2 IG]

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Appeals/LB&I New Information Matrix

Type of Information Received	Action to be Taken
1. Taxpayer provides Appeals with information that LB&I previously requested during the examination.	Appeals will release jurisdiction of the case to LB&I.
2. Taxpayer, on its own initiative, provides Appeals with information not previously shared with LB&I during the examination.	Appeals will release jurisdiction of the case to LB&I.
3. Taxpayer provides information in response to a question or request from Appeals to clarify or corroborate information contained or referenced in the RAR, Protest or Rebuttal.	Appeals will provide LB&I with an opportunity to review and comment on the information within a specified time frame (generally 45 days).
4. Taxpayer makes a new argument (not including new information).	Appeals will provide LB&I with an opportunity to review and comment on the new argument within a specified time frame (generally 45 days).

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AJAC Guidance: New Information

Multiple Issue Cases

- Field Appeals officers
- Appeals Team Case Leaders
 - Rapid Appeals Process (RAP)

IRM 8.7.11.5.3 [Phase 2 IG]

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AJAC Guidance: New Issue, Argument, & Theory

- New Issue
- New Theories or Arguments
 - LB&I and SB/SE Field Cases: opportunity to review and comment

IRM 8.6.1.6.1 (11-14-2013)
IRM 8.6.1.6.2 (11-14-2013)
IRM 8.6.1.6.6 [Phase 2 IG]

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AJAC Phase 2: JCT & Tax Court

- Joint Committee on Taxation
 - Additional guidance forthcoming.
- Tax Court Cases under Counsel Jurisdiction
 - Effective Oct. 1, 2014, Appeals hearing officers no longer examine new information by the taxpayer requiring analysis and/or investigation immediately prior to, or during Tax Court calendars

IRM 8.4.1.15.4 [Phase 2 IG]

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THANK YOU

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Additional Analysis and/or Investigative Action?

Upon receipt of the Uniform Acknowledgment Letter (UAL), the taxpayer delivers several boxes of documents to the Appeals hearing officer. Review of the administrative file revealed that the taxpayer was unable to provide the examiner with any documentation, but submitted a protest indicating it would be submitted in Appeals. In this instance, pursuant to SB/SE procedures, a SNOD should have been issued and the case should not have been forwarded to Appeals for consideration due to the taxpayer being uncooperative. However, submission of the new information by the taxpayer requires additional analysis and/or investigative action to be taken by Compliance, and the case would be returned to Compliance.

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Corroborating v. New Information

Although not previously submitted to Compliance, information may be deemed as not being new information for the purposes of corroborating or supporting information previously considered by the examiner:

During Compliance's consideration of documentation, the TP provided cancelled checks and invoices to support expenses claimed on the return. One of the purchases by check was for a large sum, and the TP was unable to provide additional clarification as to its description and business purpose. The expense was disallowed. In Appeals, the TP submits a copy of an invoice which provided a description of the item, and to which the amount and date correspond to the check.

This new information does not require additional analysis or investigative action. It corroborates the amount disallowed and does not justify returning the case to Compliance for consideration.

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 Field-LB&I Cases

(Matrix Item #1)

The taxpayer wants to deduct software expenses that were erroneously capitalized, and files an informal claim during the examination. The taxpayer is requested to provide a listing of the expenses by project and year. However, the taxpayer provides a listing of the expenses by year, and states that they cannot be separated by project. The examiner disallows all expenses, and the case is forwarded to Appeals. While in Appeals, the taxpayer provides the detail of expenses by project and year. The Appeals hearing officer decides that the information is new. Therefore, Appeals would release jurisdiction of the case to LB&I.

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 Field-LB&I Cases

(Matrix Item #2)

The taxpayer reported a large non-cash charitable contribution for donated land. The examination team requested appraisals and other documentation to substantiate the non-cash contribution. The taxpayer provided an appraisal that did not fully support the FMV attributed to the land. Therefore, the charitable contribution was not allowed. During the Appeals conference, the taxpayer presents a new 3rd party appraisal for consideration. In this instance, Appeals would release jurisdiction of the case to LB&I as the appraisal is deemed as new information.

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 Field-LB&I Cases

(Matrix Item #3)

The Appeals hearing officer requests that the taxpayer respond to an item in the examiner's rebuttal to the protest. The taxpayer submits their response in writing. In this instance, Appeals would provide LB&I with an opportunity to review and comment on the information within a specified time frame.

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Field-LB&I Cases

(Matrix Item #4)

A new court case came out during the course of Appeals consideration. The taxpayer provides its legal position on the court case, and the taxpayer does so in writing. Appeals would provide LB&I with an opportunity to review and comment on the information within a specified time frame.



THANK YOU
