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**SHOULD YOU GO TO IRS APPEALS?**

By: Victor Sy, CPA, MBA

If you lose an audit to the IRS, you have two choices: pay or appeal. If you are happy with the results (or don't want to extend the agony of dealing with the IRS) - pay. If you are not happy or feel that you have not been treated fairly - appeal. Let's explore the advantages & disadvantages of going to the Appeals.

**Advantages of going to Appeals:**

1. The Appeals Officer is neutral.
2. The Appeals Officer is independent.
3. The appeals process is quicker. The new IRS emphasizes the reduction of time to resolve tax cases by delegating more authority to frontline Appeals Officers to resolve cases quickly.
4. The Appeals Officer has a mission: to settle tax controversies without litigation.
5. The officer is more open-minded to the merits of your case to avoid hazards of litigation.
6. Your bargaining position is enhanced as you no longer have to deal with a combative agent who may have been locked into certain positions on unagreed issues.
7. It may force an unreasonable agent to rethink a position if you signify your plans to appeal.
8. The Appeals Officer is more open and candid than government attorneys during formal discovery procedures in a court of law.
9. The appeals process gives you more time to find out about the IRS' position.
10. It also buys you time to decide on which trial forum you eventually want to use - the tax court, court of federal claims, or US district court.
11. Tax, penalties, and interests need not be paid until the case is settled.
12. You may collect attorney's fees if a court determines that the IRS position was not justified.

**Disadvantages of going to appeals:**

1. The Appeals Officer may raise new issues that were overlooked, ignored, or deemed irrelevant by the prior agent. If there are issues that are critical against you, stay away from appeals.
2. Interest accrues as your case drags on.
3. The strain of an unsettled IRS audit may be too heavy for you. You may just prefer to pay.
4. There are additional fees for representation by an attorney, CPA, or enrolled agent. (These fees, however, may be offset by savings in reduced tax, penalties, and interest charges when you are adequately represented).
5. Non-docketed settlements with Appeals Office have less finality than docketed tax court rulings.

**My Suggestion:** Go to appeals. In my 34 years of dealing with the IRS, it is by far the best forum to settle tax controversies. The Appeals Officer is a mediator, not an opponent. Compared to office auditors and field revenue agents, Appeals Officers are a welcome sight. It is quite challenging sometimes to deal with young or overzealous examiners who wear police badges to enforce the law. It is quite expensive to litigate in tax court. I have found Appeals Officers (usually CPAs or attorneys with master's degrees) easier to deal with. They have more understanding, wider perspective on running a business. They understand how we survive to make ends meet. They are just more reasonable to deal with in putting your case to rest.

Good luck! ☺