

How Clients Can Take Advantage Of The IRS Tax Appeals Process

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The IRS gives clients a lot of ways to deal with large tax debt. Some avenues are better than others. “Taxpayers typically don’t know much about the IRS appeals process, and for good reason,” said Johnny Mesko, a tax manager in the Philadelphia office of Armanino LLP. “The process is complex, IRS notices can be scary and the amounts due can be suffocating.”

The IRS Independent Office of Appeals is independent from the IRS examination and collection functions that make tax assessments and initiate collections, said Michelle E. Espey, partner for corporate tax at Farrell Fritz P.C. in Uniondale, N.Y.

“Taxpayers with large federal debt, unfortunately, seem to know very little [about how] most tax liability/collection disputes can be settled without the need to go to court,” Espey said. “We frequently recommend that our client-taxpayers take advantage of the appeals process, which is less formal and typically less costly.”

In most collection scenarios there are three ways to access the IRS Independent Office of Appeals, said Jim Gadwood, member of the tax department at Miller & Chevalier Chartered in Washington, D.C.: collection due process (CDP); equivalent hearing; and the collection appeals program (CAP). Each comes with different procedures—and advantages.

“CDP is the most powerful and offers a taxpayer the most options,” Gadwood said. “At a CDP hearing, a taxpayer can raise spousal defenses, challenge the appropriateness of the collection action and propose collection alternatives such as an installment agreement or an offer in compromise.”

“A taxpayer can also challenge the existence or amount of the underlying tax liability if the taxpayer didn’t previously have an opportunity to do so,” Gadwood added. “If the taxpayer disagrees with the appeals determination at the end of the CDP hearing, [he or she] can petition the U.S. Tax Court.”

A taxpayer who fails to request a CDP hearing by the deadline may still request an equivalent hearing, raising “the same issues as in a CDP, subject to the same limitations,” Gadwood said. “But a taxpayer that requests an equivalent hearing may not challenge the appeals determination.”

CAP is available earlier in the collection process than CDP or an equivalent hearing; a taxpayer can use CAP to challenge collection but “cannot use CAP to challenge the underlying tax liability, and there is no right to challenge the appeals determination,” Gadwood said.

An installment agreement allows a taxpayer to pay rather than dispute a tax debt over time. An offer in compromise, or OIC, allows a taxpayer to settle tax debt for less than the full amount due based on doubt as to liability, doubt as to collectability, or both, Gadwood said.

For smaller balances, taxpayers can use collection voice bots recently implemented by the IRS, said Miri Forster, partner and national tax controversy leader at Eisner Advisory Group in Iselin, N.J. “These bots have been successful at quickly establishing short-term and long-term payment plans by phone, and for modifying and extending payment plans in some cases,” she added.

“One of the biggest misconceptions,” Espey said, “is that not every case can be resolved via a quick call to the IRS to simply strike a deal. A detailed financial statement will almost always be required” in either the case of debt or dispute.”

“Don’t believe all the commercials” that promise to quickly and easily resolve IRS debt, Forster said. “Taxpayers must submit detailed financial information on their assets and liabilities, along with supporting documentation, before the IRS will consider a payment plan or an offer in compromise.”

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Pennies on the dollar “in a sense” can happen through an offer-in-compromise, Mesko said, but it’s “a cumbersome process that considers taxpayer’s current assets, liabilities, potential earnings, monthly income and living expenses. In the end it’s a calculation and only a small number of taxpayers fit into the window in which the IRS would accept an offer made by the taxpayer to settle the tax debt at a lower amount.

“Finding the correct method to resolve the debt and fully satisfy the liability can take months and even years,” Mesko added, but “act fast when an IRS notice is received. Most notices have a deadline to respond or to pay.”