

Rules of Taxpayer Representation

PART II - APPEALS

This article is the second in a three-part series dealing with “Rules” of taxpayer representation. Part I focused on the Audit, Part II focuses on Appeals. Taxpayers have certain appeal rights after an audit and during the collections process. Appeals during the collections process will be discussed in Part III. At the conclusion of the audit, the auditor issues a Notice of Proposed Adjustment, or 30-day letter as it is more commonly called, because as the name suggests, the taxpayer has 30 days to file a Protest (Appeal). If the taxpayer fails to file a Protest, the IRS issues a statutory notice of deficiency or 90-day letter, again because the taxpayer has 90 days to file a Petition in the U.S. Tax Court. If the taxpayer files a Petition in the Tax Court, the case will in most situations be referred to appeals for a hearing. Although the appeal hearing is informal in nature, it is similar to a legal proceeding, and a taxpayer’s representative should be experienced in handling appeals.

1. 30-Day Letter or 90-Day Letter Appeal. An appeal from the 30-day letter and 90-day letter end up in the same place for a hearing, the Office of Appeals. An appeal from the 30-day letter requires the taxpayer to extend the statute of limitations on assessment. As discussed in Part I, extending the statute should be carefully considered, as this allows new issues to be developed. The hearing officer could decide to send the case back to the auditor if some issues are not fully developed. This could also result in new issues being developed. Once the IRS issues a 90-day letter, the IRS is generally precluded from opening new issues. This is an advantage of filing a Petition in Tax Court from the 90-day letter. The case will then be sent to appeals for a hearing.

2. Request Account Transcripts. The starting point for any taxpayer representation, whether the situation is an audit, appeal, penalty abatement, or collections, is to request the taxpayer’s account transcripts for the relevant tax and periods. The account transcript contains a history of any activity that has occurred on the taxpayer’s account. You can determine when the tax return was filed, taxes paid, penalties assessed, and other activity.

3. Request the Taxpayer’s Audit File. Always request the taxpayer’s audit file. If I have been retained during the middle of the audit, I usually request the file from the agent. If the agent is unwilling to provide the file, I tell them that the audit cannot continue until I receive it and have reviewed it. If the agent refuses to provide it, I file a formal Freedom of Information Act (“FOIA”) request. If I am handling the appeal, my first step is to file a FOIA request for the audit file. The audit file contains the agent’s daily activity log, work papers, notes, and a host of other information that may be beneficial to your client’s case. The audit file often contains information that you can use to your client’s advantage at the appeal hearing.

4. Face-to-Face Meeting. I initially request a face-to-face meeting at the local IRS appeals office. This is done when I receive the first IRS correspondence after the case has been assigned to appeals or as part of the Protest. I can always change the hearing to a telephone conference at a later date. In my experience, better results are achieved at a face-to-face hearing. You can personalize the taxpayer, and have a better discussion of the issues in a face-to-face hearing.

Taxpayer representation is more art than science. It takes practice and experience to obtain a feel for the different steps in the process.

These are some of the general rules I follow, but I am always ready to adapt based on the circumstances of each particular case. Rules of taxpayer representation during the Collection process follow in Part III.

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370 Main Street, 12th Floor
Worcester, MA 01608
TEL 508.459.8000 FAX 508.459.8300

THE MEADOWS

161 Worcester Road, Suite 501
Framingham, MA 01701
TEL 508.532.3500 FAX 508.532.3100

CAPE COD

1579 Falmouth Road, Suite 3
Centerville, MA 02632
TEL 508.815.2500 FAX 508.459.8300