

GAO

United States General Accounting Office

Report to the Acting Commissioner of
Internal Revenue

July 1986

TAX
ADMINISTRATION

Administrative
Changes Could Lead to
Earlier Resolution of
Tax Disputes



036198



United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-222168

July 30, 1986

The Honorable James I. Owens
Acting Commissioner of Internal Revenue
Department of the Treasury

Dear Mr. Owens.

The Congress and others have been concerned about the growing backlog of cases before the United States Tax Court, an independent forum for resolution of disputed tax issues. As a result, we undertook a study to determine whether the number of cases being filed with the court can be reduced, particularly by settling more cases through the Internal Revenue Service's (IRS) appeals process. Most taxpayers who disagree with the results of an IRS examination of their income tax returns either request that their cases be referred to IRS' Appeals Division or bypass Appeals and file directly with the Tax Court. Our study of how taxpayers resolved their disputes with IRS showed that many taxpayers who initially bypassed IRS' internal appeals process and filed with the court eventually settled their cases out of court with the IRS' Appeals Division

We estimate that, in the seven IRS districts we visited, about \$1.2 million in added IRS and court processing costs and about \$268,200 in taxpayer filing fees were spent on cases which initially bypassed, but were ultimately settled by, the Appeals Division. We believe that some of these costs could have been eliminated had the Appeals Division had an opportunity to deal with these cases before they were filed with the court. Our analysis of appeals officers' opinions in a sample of cases we reviewed indicated that more than one-third of the taxpayers may not have fully understood the dispute resolution process, including the potential benefits of seeking administrative resolutions, before filing with the Tax Court. We believe IRS could do more to facilitate the early involvement of the Appeals Division in the case resolution process by better informing taxpayers about the dispute resolution process and encouraging them to go to IRS' Appeals Division before filing with the Tax Court. Even if taxpayers go to Appeals first they retain the right to take the case to the court

Objective, Scope, and Methodology

Our objective was to determine whether more federal tax disputes could be settled with less administrative cost to taxpayers and the government if taxpayers dealt with IRS' Appeals Division before filing their cases with the Tax Court.

We conducted our review at the Tax Court, IRS' National Office, and seven IRS district offices located in six of IRS' seven regions. We visited IRS' five largest districts—Chicago, Los Angeles, Manhattan, Philadelphia, and San Francisco—and two of the smaller districts—Nashville and Denver. Together, the seven districts accounted for 11,589 (29 percent) of the 39,941 cases received by the Tax Court in fiscal 1984.

To determine how many Tax Court cases were settled by the Appeals Division and whether these cases had been considered by Appeals before filing with the court, we analyzed IRS statistical reports. To determine how many cases could have been settled on the same basis without first being filed with the Tax Court, we analyzed and talked with appeals officers involved in a random sample of 178 cases which had been settled in fiscal year 1984 by Appeals in the seven districts we visited after the cases had been filed with the court. This sample is representative of the 6,405 Appeals bypass cases which were settled in the seven locations in fiscal year 1984.

To calculate the additional costs incurred by IRS and court staff to process Appeals bypass cases, we first determined how IRS processes a Tax Court case at the National Office and at each of the seven locations we visited. We next determined the average amount of time IRS staff spent handling a bypass case settled by Appeals. Applying fiscal year 1984 cost data to these time estimates, we computed the approximate cost of processing a case which had initially bypassed the Appeals Division but was later settled by it. To estimate Tax Court case handling costs, we determined how many cases the court processed and the total fiscal year 1984 cost of those offices involved in case processing. We determined what portion of the time in those offices was devoted to cases which IRS ultimately settled administratively and calculated the cost per case for the court to process them. We also computed the total amount of filing fees that taxpayers paid to the Tax Court on those cases which were eventually settled by Appeals.

To determine why taxpayers did not take their cases to Appeals first, we used our random sample of 178 cases and interviewed the appeals officers who settled the cases to determine why the taxpayers in those cases initially had bypassed Appeals and gone directly to the Tax Court. We did not attempt to contact taxpayers because we believed that, in this instance, the cost of doing so would outweigh the benefits. We did, however, discuss with IRS officials, practitioner groups, and five judges of the Tax Court why taxpayers do not now use Appeals. We also

obtained some of their views on ways to increase taxpayer use of the administrative appeals process

Because many states also rely on income taxes to provide revenue, we wanted to compare their processes for resolving disputes with taxpayers with those of the IRS. We reviewed the statutes of 21 states which had individual income tax systems similar to the federal tax system and, where necessary, contacted the states to determine (1) whether they had an administrative appeals system and (2) whether state taxpayers had to go to this appeals system before they could go to state court to try to settle their disputes. Our work was done in accordance with generally accepted government auditing standards.

Timely Resolution of Tax Disputes Through IRS' Appeals Division Can Be Beneficial to Both Taxpayers and the Federal Government

When there is disagreement over a taxpayer's return, IRS sends the taxpayer a preliminary notice which provides him/her 30 days in which to request that the case be sent to IRS' Appeals Division. Taxpayers who either elect not to appeal their cases or those who cannot resolve their disputes with Appeals are issued a notice of deficiency. This notice, which is also known as a 90-day letter, serves three purposes:

- It authorizes the taxpayers to petition the Tax Court and provides 90 days in which this can be done
- It specifies the amount of taxes and penalties that IRS believes is owed by taxpayers
- It prevents IRS from taking action to collect the tax until either the 90 days have elapsed or, if the case is filed with the Tax Court, until the case is finally resolved

After receiving a notice of deficiency, under section 6213 (a) of the Internal Revenue Code, the taxpayer can petition the court without contacting Appeals.¹ However, even though Appeals may be initially bypassed, it is still provided with an opportunity to settle these cases. This occurs because, under IRS procedures designed to encourage resolution of cases at the lowest possible level, the attorney from the local IRS District Counsel's office handling the Tax Court case is required to refer the case to Appeals for possible settlement before it is scheduled for trial

¹Taxpayers also may pay the disputed liability and petition the U.S. Claims Court or their local U.S. District Court. About 1,000 taxpayers took their cases to these courts in fiscal year 1984

As shown in Table 1.1, Appeals successfully resolves more than half of these Tax Court cases.

**Table 1.1: Resolution of Appeals
Bypass Cases Fiscal Year 1981 to 1984**

	Fiscal year			
	1981	1982	1983	1984
Total number of Tax Court cases closed by IRS Appeals or District Counsel settlement or court action	18,200	23,400	28,100	34,100
Number of closed cases which had initially bypassed Appeals	14,300	18,500	22,000	28,600
Number of bypass cases eventually settled by Appeals	7,200	9,900	12,800	17,800
Percentage of closed bypass cases settled by Appeals	50	53	58	62

We found that resolving more of these cases in Appeals without the involvement of the Tax Court could result in

- faster, simpler, and less costly resolution of the dispute,
- quicker assessment and collection of taxes due;
- better utilization of resources by IRS and the Tax Court; and
- reduced inventories of Tax Court cases.

Our analysis of IRS records showed that cases initially forwarded to the Appeals Division are usually settled faster and simpler. Fiscal year 1984 records showed that most cases which were initially forwarded to Appeals had been there for less than 9 months. They also showed, however, that most cases sent to Appeals after the Tax Court had been petitioned had been there more than 13 months. Settlement of a Tax Court case requires formal steps to open, process, and close the case. These steps are eliminated when a case is taken directly to, and settled by, Appeals.

As a result of these additional steps, the cost of processing a case which has been resolved by Appeals after it has been initially filed with the Tax Court is greater for both the taxpayer and the federal government than if the case had been sent directly to Appeals. For example, taxpayers who petition the Tax Court must pay a filing fee of \$60. A taxpayer who chooses to go directly to Appeals does not have to pay filing fees unless Appeals is unable to settle the case and the taxpayer decides to go to the Tax Court.

Both IRS and the Tax Court incur case processing costs on behalf of the government when a taxpayer files a case with the court but then settles with Appeals. To estimate these costs, we determined the average amount of additional time it took the Tax Court and IRS staff to process those cases that were filed with the Tax Court but were settled in Appeals in fiscal year 1984. By applying IRS and Tax Court fiscal year 1984 cost data to the results, we estimated that a small case—one involving disputed taxes of less than \$5,000²—would cost the government about \$100 more than if Appeals were the only organization involved and that a regular case would cost about an additional \$240³

Since over half of the cases that initially bypass Appeals are settled there later, the Tax Court and IRS are incurring case processing costs that could be avoided if these cases were settled by Appeals earlier in the dispute resolution process. We estimate that, in fiscal year 1984 at the seven locations we visited, Appeals possibly could have settled, before they were filed, 6,405 Tax Court cases which initially bypassed but were ultimately settled by Appeals. These cases cost the government about \$1.2 million to process and taxpayers \$268,200 in filing fees.⁴

In addition to the direct cost associated with these cases, the cases filed with the Tax Court take longer to process. As a result, it takes longer to assess and collect additional taxes and penalties which may be owed. However, interest continues to accrue on the taxes owed, which compensates the government for any delays in recovering those taxes.

Settling more cases in Appeals before they go to the Tax Court would allow IRS to devote more resources to those cases that require court hearings. For example, we estimated that about 8,600 hours of attorney time were spent on procedural matters related to those 6,405 Tax Court cases that were settled by appeals officers. Had these cases been settled without initially being filed with the Tax Court, we estimate that the equivalent of about 4 years of additional attorney time would have been available to work on other cases requiring trial preparation.

²Raised to \$10,000 by the Deficit Reduction Act of 1984, Public Law 98-369, effective July 18, 1984

³Several IRS functions and the Tax Court are involved in processing cases. Since processing small cases often involves simplified procedures, we made separate estimates for small and regular cases. Tax Court costs were about \$20 per case for both small and regular cases while the balance was incurred by various IRS functions.

⁴The \$268,200 in taxpayers' filing fees was calculated using a \$10 fee for small cases and \$60 fee for regular cases. On May 7, 1985, subsequent to our work, the Tax Court established a uniform \$60 filing fee.

Settling more cases in Appeals before they go to the Tax Court might also help reduce the court's case backlog. The Tax Court had almost 64,000 cases pending at the end of fiscal year 1984. Table 1.2 shows the high percentage of bypass cases the Tax Court receives each year.

Table 1.2: Tax Court Cases Which Bypassed IRS Appeals Fiscal Year 1981 to 1984

	Fiscal year			
	1981	1982	1983	1984
Total number of Tax Court cases received	29,500	30,700	32,600	39,900
Number of these cases which initially bypassed IRS Appeals	23,100	24,900	28,400	34,500
Percentage of bypass cases	78	81	87	86

Some Taxpayers Who Bypass Appeals May Not Understand the Process or the Benefits of Going to Appeals First

We interviewed the appeals officers involved in 178 sample cases which had been settled in fiscal year 1984 by Appeals in seven IRS districts after the cases had been filed with the Tax Court. Our purpose was to obtain their opinions on (1) how many of these bypass cases could have been settled on the same basis if the cases had gone to an appeals conference before the taxpayers filed with the Tax Court and (2) why they thought the taxpayers had initially bypassed appeals and gone directly to the Tax Court.

As Table 1.3 indicates, the appeals officers we interviewed believed that better than 80 percent of our sampled cases would have been settled on the same basis had those cases come directly to Appeals.

Table 1.3: Appeals Officers Opinions as to the Number of the 178 Sample Cases That Would Have Been Settled on the Same Basis

Opinion	Number of cases	Percent
Cases would have settled on same basis without court petition	147	83
Cases would have settled on different basis or did not know	31	17
Total	178	100

We were unable to conclusively determine why taxpayers did not refer their cases to IRS' Appeals before filing with the Tax Court. Our work indicates, however, that many such taxpayers may have initially bypassed Appeals because they did not understand the process or its potential benefits. In this regard, the appeals officers involved in the 178 sample cases suggested numerous reasons why the sampled taxpayers had bypassed Appeals. In analyzing our interview results, we grouped the appeals officers' responses into four broad categories:

- Taxpayer may not have understood process (36 percent)
- Taxpayer probably understood process and/or received advice from a practitioner (19 percent).
- Other reasons or no explanation (27 percent).
- No appeals conference offered (18 percent).

This grouping shows that the appeals officers believed a substantial portion of the taxpayers involved in our sample had not understood the appeals process available to them before filing with the Tax Court. If these taxpayers had had a better understanding of the process, more cases might have gone to Appeals first and the Tax Court's caseload might have been reduced.

IRS Can Do More to Encourage Taxpayers to Resolve Their Tax Disputes With IRS Appeals

Because more than one-third of the taxpayers in our sample may not have understood the appeals process, we evaluated IRS' procedures for informing taxpayers of their options. To do this we (1) identified what IRS employees are instructed to tell taxpayers regarding their appeal rights and (2) examined the correspondence and publications that are usually sent to taxpayers when IRS questions the amount of tax owed. We found that more could be done to inform taxpayers about the dispute resolution process. Specifically, IRS does not routinely

- inform taxpayers that even if they choose to bypass Appeals, their case will be routed through the Appeals Division for possible settlement;
- emphasize the success rate the Appeals Division has had in reaching agreement with taxpayers;
- stress that taxpayers who do not reach agreement in Appeals can still petition the Tax Court;
- point out that those taxpayers who do settle in Appeals can save Tax Court filing fees and the costs of preparing a petition; and
- advise taxpayers that under IRS procedures, Appeals will contact them within 30 days, which could possibly lead to earlier settlement of their disputes

IRS makes taxpayers aware of their appeal rights by (1) instructing its examiners to explain appeal rights to taxpayers whose returns are being examined, (2) including a discussion of appeal rights in various IRS publications, and (3) mentioning appeal rights in correspondence sent to taxpayers concerning disputed taxes. Taxpayers are generally informed that they may either request that their case be heard by an IRS appeals officer or obtain a notice of deficiency from IRS and petition their case to the Tax Court.

At the examination level, IRS instructs its examiners to respond to any questions from taxpayers whose returns are being examined regarding their appeal rights and to explain appeal rights to taxpayers who have unresolved tax disputes. However, the IRS manual does not instruct examiners to encourage taxpayers to go to Appeals before they petition the court or to explain to taxpayers how they could benefit from such action by avoiding payment of the court filing fee and by possibly having their cases resolved more quickly by Appeals. Furthermore, examiners are not instructed to explain to taxpayers that their cases will go to Appeals even if they elect to petition the Tax Court. IRS Publication 556, available to taxpayers who are being examined, contains general information on appeal rights and procedures. It describes how to appeal a case through IRS' Appeals Division and encourages taxpayers to go to Appeals rather than directly to the Tax Court. But, the publication does not explain the advantages of going to Appeals or inform taxpayers that their cases will go to Appeals even if they petition the Tax Court.

When proposed tax adjustments are not resolved at the examination level, IRS sends taxpayers a 30-day letter which briefly explains that taxpayers may request a conference at a local IRS Appeals office. IRS also encloses a copy of Publication 5 which explains appeals procedures in detail and urges taxpayers to appeal their case within IRS before going to court. However, neither the 30-day letter nor Publication 5 explains that (1) bypassing Appeals and filing directly with the Tax Court can be more costly, (2) Appeals receives and reviews cases even when initially bypassed, and (3) Appeals is able to settle most of the cases which initially bypass it.

During our work, we discussed the taxpayer dispute resolution process with representatives of the American Bar Association and the American Institute of Certified Public Accountants. Both groups indicated that IRS needed to better explain the dispute resolution process to taxpayers and that more taxpayers would use the appeals process if they were better apprised of the potential benefits of taking that approach. One American Bar Association representative suggested that IRS might also want to consider the use of a more personalized letter. The representative said that the form letter currently in use could make taxpayers think that Appeals is just a routine step in the process and that the taxpayers will not benefit by giving Appeals an opportunity to settle their case.

Administrative Changes Could Produce Information Useful for Determining Whether, and If So What, Further Legislative Changes Are Needed

The Internal Revenue Code currently permits taxpayers to petition the Tax Court without taking any action to appeal their cases within IRS. Concern about the increasing Tax Court backlog, however, has led the Congress to take some steps to encourage taxpayers to go directly to Appeals. For example, provisions adopted in the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248, to allow taxpayers to recover attorneys' fees in certain cases provide that the taxpayers must have exhausted administrative appeals. In addition, H.R. 3838, the Tax Reform Act of 1985, now being considered by the Senate, provides that taxpayers who have not exhausted administrative appeals could be required to pay \$120 in addition to the fee of \$60 currently required to file a case with the Tax Court.

Eighteen of the 21 state income tax appeal systems we researched presently require the taxpayer to exhaust the administrative appeals process before taking a dispute to a state court. However, most of the practitioner groups and Tax Court judges with whom we spoke during our review were not sure that this would be a good approach at the federal level. They said that while taxpayers should be informed of the advantages of first going to Appeals, they considered the current federal system better than one which would legally require taxpayers to go to Appeals first. Generally, their opinion was that the taxpayer's option should be preserved.

Even so, legislation to eliminate the taxpayer's option of going directly to the Tax Court might be necessary to resolve the appeals bypass problem. Such legislation could have resource implications for IRS and could result in IRS having to revise its procedures, controls, and time frames. For example, in light of the shift in workload that such a change would produce, IRS would need to consider whether it should adjust the time presently given taxpayers to decide whether to appeal and determine whether it would need to adjust its procedures for requesting and scheduling appeals conferences.

Conclusions

Increased use of IRS' appeals process to resolve tax disputes before petitioning the Tax Court could reduce the administrative costs to taxpayers and the government of settling federal tax disputes and help reduce the Tax Court backlog. IRS needs to assure that its examiners, publications, and correspondence with taxpayers inform the taxpayers that (1) generally their cases can be resolved quicker and at less cost by using the appeals process first and (2) cases sent directly to the Tax Court will be referred back to appeals offices anyway—where, historically, the

majority of such cases have been resolved. The results of these administrative changes could be useful in deciding whether further legislative action may ultimately be needed to significantly reduce the number of taxpayers who are bypassing appeals.

Recommendation

We recommend that the Commissioner of Internal Revenue revise the language of the 30-day letter, various IRS publications, and the information on the appeal procedures given to taxpayers by IRS auditors and revenue agents. These changes should (1) emphasize the advantages of going to the Appeals Division before filing with the Tax Court and (2) point out that, even if taxpayers bypass Appeals, the cases will still be assigned to it for attempted settlement.

Agency Comments and Our Evaluation

We obtained comments on a draft of this report from IRS and the Tax Court. Both generally endorsed efforts to increase taxpayers' use of IRS' administrative appeals process before petitioning the Tax Court. Their comments are included as appendixes I and II, respectively.

IRS agreed with the thrust of our recommendation to further inform taxpayers about the advantages of exhausting appeals before petitioning the Tax Court. IRS stated that it would review and revise the various publications and documents relating to the appeals process to point out the benefits to taxpayers of going to Appeals first. IRS expects to complete the review in 6 months, at which time it will decide what changes to make. IRS is also establishing a task force under the direction of the Associate Chief Counsel (Litigation) to (1) study IRS' internal procedures regarding the exhaustion of administrative remedies and (2) recommend improvements which would encourage more taxpayers to request an Appeals conference before petitioning the Tax Court.

The Tax Court also agreed with our recommendation. The court pointed out, however, that it might not necessarily always be in a taxpayer's best interest to go to Appeals first—a point with which we agree. The court noted that it may be IRS' responsibility to make taxpayers aware of this.

In the draft report on which IRS and the Tax Court commented, we concluded that taxpayers might make more use of the administrative appeals process if they could be assured that IRS would not raise new issues during the process. When a case goes directly from Examination to Appeals, the IRS appeals officer can raise a new issue without the

burden of proof shifting to IRS. Once a taxpayer petitions the Tax Court, however, the court's rules currently provide that if IRS raises any issues on a taxpayer's return that do not relate to the items under petition, the burden of proof for those new issues is on IRS rather than the taxpayer

Our review indicated that some taxpayers apparently bypassed Appeals by petitioning the Tax Court because they were concerned IRS might raise new issues. However, we found that IRS' appeals officers only rarely raise new issues. In July 1984, 19 were raised in the 3,053 non-Tax Court cases closed that month. Therefore, we proposed that IRS revise its guidance to provide that the Appeals Division would raise new issues only if the government was willing to accept the burden of proof for those issues in the Tax Court.

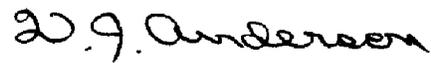
IRS disagreed with our proposal because it believed the proposal would result in "a flood of Tax Court cases" seeking to decide "what is a new issue?" IRS explained that it is often difficult to distinguish between a revised theory and an alternative, or new, position. IRS was also concerned that changing the burden of proof procedures could cause Examination to be overly general in its initial report on a case examination to protect the government's interest. The Tax Court cautioned that, if the IRS chose to implement the proposal, it should thoroughly discuss it with the Tax Section of the American Bar Association before involving the court.

We have eliminated discussion of this proposal from our report because we believe the points raised by IRS and the Tax Court have merit and warrant further study. In this regard, IRS' newly established task force to study administrative appeals procedures may choose to include this matter in the scope of its work.

This report contains a recommendation to you on page 15. You are required by 31 U.S.C. §720 to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agencies first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Secretary of the Treasury, the Director of the Office of Management and Budget, various congressional committees, and other interested parties

Sincerely yours,

A handwritten signature in black ink that reads "W. J. Anderson". The signature is written in a cursive style with a large initial "W" and "J".

William J. Anderson
Director

Advance Comments From the Internal Revenue Service

Note: A summary of IRS comments and our evaluation are incorporated on pages 10 and 11 of this report.

COMMISSIONER OF INTERNAL REVENUE

Washington, DC 20224

APR 18 1986

Mr. William J. Anderson
Director, General Government Division
United States General Accounting Office
Washington, DC 20548

Dear Mr. Anderson:

We appreciate the opportunity to review your recent draft report entitled "Administrative Steps Could Result in Earlier Resolution of Tax Disputes."

We have enclosed comments on the report's recommendations which detail our general agreement with the first recommendation and explain our disagreement with the second. We have also provided an additional comment on the report's discussion of the exhaustion of administrative remedies issue. We hope these are useful in preparing your final report.

With kind regards,

Sincerely,



Enclosure

Department of the Treasury Internal Revenue Service

IRS COMMENTS ON GAO DRAFT REPORT ENTITLED
"ADMINISTRATIVE STEPS COULD RESULT
IN EARLIER RESOLUTION OF TAX DISPUTES"

Recommendation 1

Revise the language of the 30-day letter, various IRS publications, and the information on the appeal procedures given to taxpayers by IRS auditors and revenue agents. These changes should (1) emphasize the advantages of going to Appeals before filing with the Tax Court and (2) point out that, even if taxpayers bypass Appeals, the cases will still be assigned to IRS' Appeals Division for attempted settlement.

Response

We agree with the overall thrust of the recommendation. We will review and revise the relevant publications and documents to point out the benefits to the taxpayer of going to Appeals before filing with the Tax Court. We expect this review to be completed within the next six months at which time we will determine which revisions, including those recommended by GAO, are most appropriate for implementation.

Recommendation 2

Revise IRS guidance to provide that the Appeals Division will raise new issues only if the government accepts the burden of proof for those issues both in Appeals and in the Tax Court. In this regard, we suggest that IRS discuss the manner of implementing this recommendation with the Tax Court.

Response

We are concerned that this proposal would result in another legal conflict to be decided by the Tax Court, namely, "what is a new issue?". The Tax Court has objected to a similar proposal that would raise new issues for determination by the Court. Because it is often difficult to distinguish between a revised theory and an alternative position, we would expect a flood of Tax Court cases asking for determinations.

- 2 -

Often, evidence originally requested during the examination is not furnished by the taxpayer until the case reaches Appeals. When this happens, the case is sent back to the district for evaluation of the new evidence. As a result the district may change or narrow the area of controversy between the Service and the taxpayer. The proposed change in the burden of proof could push Examination to be overly general in its initial report in order to protect the government's interests. For these reasons, we do not support the recommendation to raise new issues in Appeals only if the government accepts the burden of proof for those issues in Appeals and in Tax Court.

ADDITIONAL COMMENT

While the report discusses imposing a requirement on taxpayers to exhaust administrative remedies within the IRS prior to filing a petition, it does not make it one of its recommendations. We believe that legislation restricting access to the Tax Court may eventually become necessary. But before we suggest legislative changes, we want to assure ourselves that we have taken all possible steps to encourage taxpayers to utilize Appeals before going to the Tax Court. For this purpose the Associate Chief Counsel (Litigation) is planning to establish a task force to study our internal procedures regarding exhaustion of administrative remedies. The goal of the task force would be to make recommendations for improvements which would encourage more taxpayers to request an Appeals conference prior to petitioning the Tax Court.

Advance Comments From the U.S. Tax Court

Note A summary of Tax Court comments and our evaluation are incorporated on pages 10 and 11 of this report

UNITED STATES TAX COURT

WASHINGTON D C 20217

March 18, 1986

CHAMBERS OF
SAMUEL B. STERRETT
CHIEF JUDGE

Mr. William J. Anderson
Director, General Government Division
United States General Accounting Office
Washington, D.C. 20548

Re: GAO Draft Report (B-222168):
Administrative Steps Could Result
in Earlier Resolution of Tax Disputes

Dear Mr. Anderson:

This is in response to your letter dated March 11, 1986, with which you enclosed a copy of a GAO draft report entitled Administrative Steps Could Result in Earlier Resolution of Tax Disputes. Although the report is addressed to the Commissioner of Internal Revenue, you requested that we provide you with our comments.

Your report indicates that many cases which are not administratively appealed prior to the filing of a petition with the Tax Court are eventually settled by the IRS Appeals Office. If such cases were settled prior to the filing of a petition, the Tax Court would be spared the obvious administrative cost of opening and then closing those cases. Therefore, from our point of view, we would welcome greater pre-petition utilization of the IRS administrative appeal process.

Your report also suggests that a significant percentage of taxpayers do not pursue pre-petition administrative appeal because of a lack of understanding about the process. You therefore recommend that the Commissioner attempt to educate taxpayers about the advantages of such appeal. I tend to agree with your recommendation, although possibly a sensitive issue could arise concerning the Commissioner's duty, if any, to provide a balanced view. As your report recognizes, under certain circumstances it might not be in a particular taxpayer's best interest to pursue pre-petition administrative appeal.

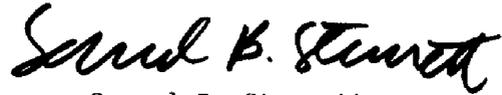
Finally, your report suggests that certain taxpayers may forego pre-petition administrative appeal because of their concern that the Appeals Office may raise a new issue. You therefore recommend that the IRS voluntarily accept the burden of proof in respect of any new issue raised by the Appeals Office. You also suggest that the IRS pursue with the Tax Court the means by which this recommendation could be implemented.

- 2 -

The proper allocation of the burden of proof in tax litigation has been addressed by the Supreme Court, by statute, and by the Rules of this Court. Moreover, we have repeatedly held that because a proceeding in this Court is de novo, we generally will not look behind the notice of deficiency and inquire into the administrative process. If the Commissioner is inclined to accept your recommendation, we think it would be inappropriate for him to involve the Court with this matter without first thoroughly discussing it with the Tax Section of the American Bar Association.

I trust that the above comments are responsive to your request.

Very truly yours,



Samuel B. Sterrett
Chief Judge

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