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October 10, 2016

Kirsten Wielobob  
Chief, Appeals  
Internal Revenue Service  
999 North Capital Street  
Washington, D.C. 20002

Dear Ms. Wielobob:

On behalf of the Officers and the Board of Regents of the American College of Tax Counsel, I write to express our concern with recent changes to Part 8, Chapter 6 of the Internal Revenue Manual, relating to Appeals Conference and Settlement Practices. Among the changes, effective October 1, 2016, IRM 8.6.1.4.1.2 was revised to provide that Appeals Conferences will, as a general rule, be conducted by telephone rather than in person. On October 3, 2016, Appeals issued a Fact Sheet explaining the changes. We believe that the shift to telephonic Appeals Conferences will have a serious negative effect on the prompt and fair resolution of tax disputes and on the public's perception of the fairness of Appeals and the federal tax system in general. We also believe that this change will result in resolution of fewer cases by Appeals, forcing more disputes into litigation and ultimately placing greater costs and burdens on taxpayers, the Internal Revenue Service and the courts alike.

Recent implementation of the Appeals Judicial Approach and Culture initiative was appropriately intended to ensure that Appeals focus on its core decision-making function, without being distracted by *de novo* fact-finding exercises. Eliminating the presumptive right to an in-person Appeals Conference moves in the opposite direction, hampering Appeals' decision-making function by creating unnecessary communications barriers, which will inevitably lead to resolution of fewer tax disputes.

Although the revised Manual provision does allow for an in-person conference if the taxpayer requests one, the listed requirements for holding an in-person conference are narrow and, in all cases, Appeals Team Manager approval for an in-person conference is required. Under the restricted requirements, few cases will be eligible for an in-person conference, even where the Appeals Technical Employee may agree that an in-person conference would facilitate resolution of the case. This will impose a particular burden on small taxpayers and their advisors, who have less experience navigating the Appeals process and will find it more difficult to fit their

cases into the narrow requirements for obtaining an in-person conference. At a minimum, scarce Appeals resources will be spent evaluating taxpayer requests for an in-person conference, rather than evaluating the merits of the case.

The Officers and Regents of the College are senior, experienced tax lawyers with decades of experience handling audits, administrative appeals and litigation with the Internal Revenue Service. In our practices, we see first-hand the benefit that Appeals provides, not only in facilitating the prompt resolution of tax disputes but also in fostering taxpayer confidence in the fair administration of the tax law. Because the Appeals Conference stands as the culmination of months if not years of case development, and because the subjective nature of a hazards of litigation settlement is often difficult to communicate and negotiate remotely, the availability of an in-person conference is among the most important aspects of the Appeals process.

Emphasizing the critical role that Appeals plays in ensuring both the fact and the perception of fair administration of the tax laws, in the Internal Revenue Service Restructuring and Reform Act of 1998 (“RRA ‘98”), Pub. L. No. 105-206, Title III, Subtitle E, sec. 3465(b) Congress directed that “[t]he Commissioner of Internal Revenue shall ensure that an appeals officer is regularly available within each State.” With telephonic Appeals Conferences now being the norm, there is no assurance that an appeals officer will be available in *any* state, much less each state, as the statute requires.

Our tax system has grown exponentially more complicated since RRA ‘98, making the historical policy of allowing an in-person conference all the more important in facilitating clear communications between taxpayers and Appeals, allowing resolution of factual misunderstandings, and facilitating prompt resolution of tax disputes. More importantly, the default policy of in-person conferences has promoted a broad understanding by taxpayers that a fair and neutral forum exists within the Internal Revenue Service to resolve their disputes. The same rationale for an in-person conference underlies Congressional purpose in establishing the Tax Court as a court of national jurisdiction with judges who travel to hold trial sessions throughout the country. Curtailing the right to in-person Appeals Conferences will, we believe, have the illogical effect of pushing more disputes into Tax Court, where taxpayers retain the right to have their cases heard in a face-to-face hearing.

In raising concerns with the new default rule of telephonic Appeals Conferences, we are aware of the growing resource constraints facing the Internal Revenue Service and that those constraints have been particularly difficult for Appeals. To the extent that resource considerations underlie the recent Manual change, those considerations should be addressed by full funding of the Internal Revenue Service, which we firmly support, not by curtailment of taxpayers’ hearing rights. We also believe that technology, including Virtual Service Delivery, can provide a partial solution to this problem. Indeed, many of our clients embrace technology as a resource saving measure and have been eager to use it in their interactions with the Internal Revenue Service in general and with Appeals in particular. Many disputes can be resolved through telephonic conferences and we have no objection to Appeals Technical Examiners suggesting such conferences and asking the taxpayer to explain why they believe an in-person conference would be helpful. We also have no objection to eliminating the prior Appeals policy of automatically transferring cases from centralized campuses, as long as the general presumption is for an in-person conference and the assigned Appeals Technical Examiner retains discretion to evaluate the

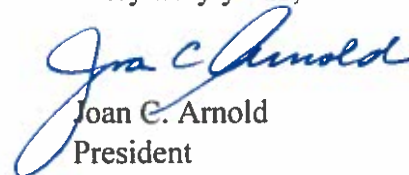
merits of a request for an in-person conference on a case-by-case basis. Retaining the presumptive right to an in-person conference remains critically important, even in cases where a telephone conference, Virtual Service Delivery or other technology is used. Simply having the option of an in-person conference reinforces taxpayer confidence and perceptions of fairness in the tax dispute resolution process, even when that option is not exercised.

We respectfully request that Appeals reconsider the recent Manual change adopting telephonic Appeals Conferences as the default rule. We also ask that Appeals consider expanding the facts and circumstances that are listed in the revised Manual provision as considerations in evaluating a taxpayer request for an in-person conference. As additional considerations, we think that the factual and legal complexity of the case, the taxpayer's compliance history, whether penalties have been asserted, and the amount at issue relative to the taxpayer's reported income should also be taken into account. Also, discretion to hold an in-person conference should be vested with the Appeals Technical Examiner having primary responsibility for the case, rather than an Appeals Team Manager as currently provided for.

Finally, given the existence of legislation on point, the importance of the Appeals Conference in the dispute resolution process, and Appeals' long-standing practice of allowing an in-person conference on request, we believe that any change to conference practices should be made only after an opportunity for input by affected stakeholders, rather than through an ostensibly routine modification to the Internal Revenue Manual. In the current environment, it is vitally important that Appeals do all it can to reinforce the perception of fairness and independence in the administration of the tax laws; we believe that eliminating the right to an in-person Appeals Conference moves in the opposite direction.

Thank you in advance for your consideration of this very important matter.

Very truly yours,



Joan C. Arnold  
President

cc: Hon. John Koskinen, IRS Commissioner  
Nina E. Olson, National Taxpayer Advocate