

40th Annual TEI-SJSU High Tech
Tax Institute
November 5, 2024

Federal Tax Controversy: Year 2 of the IRS Strategic Operating Plan

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Agenda



IRS Strategic Operating Plan



Impact of Increased IRS Resources – How LB&I Taxpayers Need to Adjust



Issue Resolution Initiatives



Application of the Codified Economic Substance Doctrine



Reg Challenge Cases in the Wake of *Loper Bright*



Independent Office of Appeals Update

TEI- SJSU HighTech Tax Institute

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Agenda

- Appeals Staffing and Cycle Time
- Appeals Organizational Changes
- Secure Messaging Pilot Program
- Alternative Dispute Resolution Revitalization
- Regulation Validity Challenges



Appeals Staffing and Cycle Time

WORKSTREAM	FY 2022	FY 2023	FY 2024
Total Staffing	1,509	1,543	1,746*
Total Receipts	74,408	60,036	51,990
Total Closures	72,189	67,793	65,573
Non-Docketed Cycle Time	365	292	309

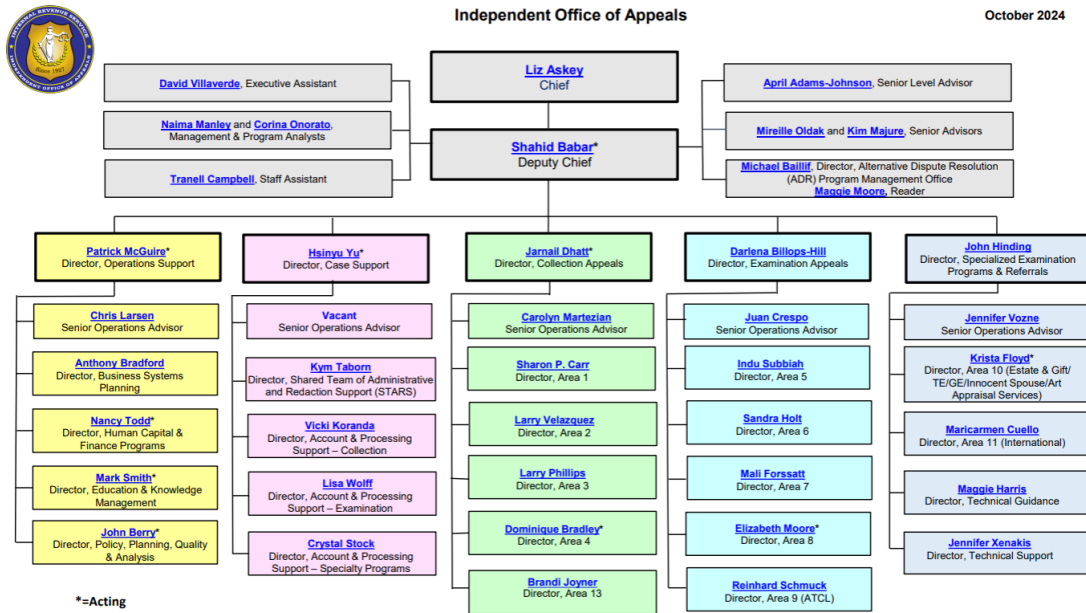
*Headcount as of September 21, 2024

- Significant hiring efforts continue for technical employees, including Appeals Officers, Settlement Officers, etc., including “direct hire” authority.
- Appeals has had an annual attrition rate of 13% each year since FY2019.
- Appeals authorized to increase headcount to 2,227 by end of FY2025.

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Current Appeals Organization Chart



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Secure Messaging Pilot Program

- New “Corporate Group Mailboxes” pilot program, to enhance secure messaging for large business taxpayers with multiple representatives
- Eligible taxpayers can request a Group Mailbox to communicate with the Appeals employee assigned to their case. This facilitates –
 - 24/7 online access to secure digital messages
 - Streamlined communications with central access available for multiple authorized individuals
 - Secure records sharing
 - Faster case resolution
- The pilot will run from Sept. 30, 2024, through March 31, 2025.

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ADR Revitalization - Background

- Historically low participation rate in our ADR programs.
 - 65% decline since FY 2013.
- The Independent Office of Appeals (Appeals) received approximately 100 ADR cases in FY 2023.
- GAO recommended steps:
 - Centralized ADR management structure;
 - Comprehensive data collection; and
 - Neutral contact point.

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ADR Revitalization Approach

- Appeals led a cross-functional project team (Appeals, LB&I, SB/SE, TE/GE, Counsel) to study and improve the use of ADR.
 - Partially to remedy declining utilization.
 - Partially in response to GAO report.
 - In line with Service-wide Transformation efforts (Strategic Operating Plan Initiative 2.4), ADR programs will continue to focus on helping taxpayers achieve tax certainty early in the administrative process.
 - In summer 2023, Appeals issued a request for comments, which generated helpful insights from taxpayers, practitioners, and IRS employees.
 - The team made its recommendations in December 2023 and has been working on implementing those recommendations.

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ADR Program Management Office

- Centralized neutral contact point;
- Comprehensive data collection and analysis;
- Coordinate training of mediators;
- Guide efforts of implementation team;
- Undertake outreach and education.
- ap.adr.programs@irs.gov

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ADR Improvements

- Changes and pilots under consideration designed to:
 - Remove barriers to participating in Post-Appeals Mediation;
 - Allow Appeals to mediate/resolve disputes earlier in the examination process;
 - Make it easier for taxpayers to get their cases into ADR by increasing the types of cases and issues that are eligible;
 - Require a higher-level review before taxpayers' ADR requests are denied;
 - Provide for explanation to taxpayers when requests for ADR are not accepted; and
 - Streamline and clarify existing guidance.
- Incremental changes will be made, first announcement in progress.

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ADR Next Steps

- Final development and approval of procedural changes and pilots.
- IRS employee training and education.
- Taxpayer and practitioner outreach.
- Appetite for ADR demonstrated by increasing case receipts and continued high levels of ADR case resolutions.
 - 56% increase in Fast Track Settlement case receipts in LB&I during FY2024
 - In FY2024 overall ADR case receipts rose by 25%

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ADR Activity Within Appeals

- Consolidating ADR activities within the PMO to maximize focus.
- Expanding training for mediators and Appeals technical employees.
- Revising and clarifying guidance to give Appeals employees a clearer understanding of the letter and spirit of our ADR practice.
- Looking hard at the effectiveness of our programs and opportunities for improvement and growth.
 - Early referral and RAP
 - 360° review of PAM

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Regulation Validity Challenges

- In a recent slate of cases – non-tax (*Loper Bright/Relentless*) as well as tax-related (*Varian, Liberty Global*) – courts have held that the federal regulations at issue were invalid.
- IRM 8.1.1.3.1(5) precludes Appeals from applying litigating hazards to a taxpayer's argument that a Treasury regulation is invalid, unless there is an unreviewable decision from a Federal court invalidating the regulation (in whole or in part, if that part is the provision being challenged as invalid).
- Appeals is not precluded from applying litigating hazards to other arguments on the issue, e.g., that the Treasury regulation does not apply, or applies favorably, to a taxpayer's facts and circumstances.
- Treasury and IRS in the process of finalizing Prop. Treas. Reg. § 301.7803-2(c)(19).

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Questions?

