

The New York Chapter of Tax Executives Institute

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Alternative Dispute Resolution – An Update

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Alphabet Soup

- AIR
- CAP
- PFA
- LIFE
- APA
- CA
- Early Referral
- Fast Track

What Do These All Mean?

- Code creates huge scope for disagreement, often involving very large sums
- Often, no apparent objective standard on which to resolve disputes
- IRS cannot possibly litigate all cases that it feels strongly about
- Hence, one way or another, most disputes are going to be “resolved” or “settled”

Effect of Proliferation of Mechanisms

- Meanings of procedural designations somewhat limited: at either Exam or Appeals levels, if both taxpayer and IRS personnel see scope for mutually acceptable resolution, agreement is possible
- Primary significance of procedural designation is identity of official with authority to initiate process
- Psychological/relationship factors extraordinarily important, given absence of objective criteria

Factors Affecting Resolution

- Success in building mutual credibility between taxpayer, IRS personnel
- Success in promoting coordination between field-level, executive personnel within IRS
- Potential for structuring omnibus resolution encompassing multiple issues and years

Factors Affecting Resolution (cont'd)

- IRS focus on nationally coordinated issues, coupled with Appeals resistance to perceived encroachment on independence.
- Volatility of political environment (as seen in recent flap over “currency”)

Questions of Technique

- Whether to seek participation in CAP, LIFE
- Best person with whom to initiate discussion of resolution/settlement (e.g., Team Leader, Territory Mgr., Appeals, LMSB Hqtrs.)?
 - Generally, do need to take guidance from applicable rev. proc.
 - Don't need to stop with first contact, but need to be cognizant of "going over head" concerns
- "BATNA"/Detachment/"Balcony"
- In TP cases, simultaneously treating enough years to cover business cycle

Broader Context

- What do we need for FIN 48, as well as reliance on informal resolution of matters involving billions of dollars, say about our corporate tax system?
- Is large-scale political action to address tax uncertainty at all likely?