

EARLY REFERRAL

Taxpayers whose returns are under examination may request early referral of one or more developed, unagreed issues from Compliance to Appeals, while the other issues in the case continue to be developed in Compliance. The early resolution of a key issue may encourage taxpayers and the Service to agree on other issues in the case. Early referral can also be requested with respect to issues regarding an involuntary change in method of accounting, employment tax, employee plans and exempt organizations. Regular Appeals procedures apply, including taxpayer conferences. For complete information, see Revenue Procedure 99-28.

ARBITRATION

Taxpayers may request arbitration for factual issues that are already in the Appeals administrative process. Arbitration is also available after unsuccessful attempts to enter into a closing agreement under § 7121, and for certain Offer in Compromise cases involving unsuccessful attempts to enter into a compromise under § 7122 and certain Trust Fund Recovery Penalty cases.

If settlement negotiations are unsuccessful, the taxpayer and Appeals may jointly request binding arbitration. A model agreement to arbitrate allows the parties certain flexibility in designing the arbitration process. For complete information, see Announcements 2002-60 & 2000-4.

Some of the cases excluded from Appeals arbitration are:

- Compliance and Appeals Coordinated Issues;
- Legal issues;
- Certain Collection issues;
- Those not consistent with sound tax administration;
- Frivolous arguments; and
- Those where you did not act in good faith during settlement negotiations.

EX PARTE COMMUNICATIONS

Section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) requires the IRS Commissioner to ensure an independent Appeals function, including the prohibition of ex parte

communications between Appeals Officers and other Internal Revenue Service employees to the extent that such communications appear to compromise the independence of the Appeals Officers. See Revenue Procedure 2000-43 for guidance in a question and answer format about the prohibition on ex parte communications. The prohibition against ex parte communications between Appeals Officers and other Service employees provided by RRA 98 does not apply to the communications arising in Fast Track Settlement or Fast Track Mediation because Appeals personnel, in facilitating an agreement between the taxpayer and LMSB or SB/SE, are not acting in their traditional Appeals settlement role.

MISSION

The mission of Appeals is to resolve tax controversies, without litigation, on a basis that is fair and impartial to both the Government and the taxpayer, and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service. Today, alternative dispute resolution instead of litigation is widely valued and applied in many areas of our society. Customers expect more dispute resolution options, and Appeals has adapted its approach to keep up with the new methods and developments. This brochure has been developed to distinguish five dispute resolution options that are sometimes confused with one another.

CONTACT INFORMATION/ OTHER USEFUL RESOURCES

Fast Track Mediation & Fast Track Settlement for Large and Mid-Size Business, Small Business/ Self-Employed Taxpayers, Nancy Talajkowski, 415-227-5007, nancy.j.talajkowski@irs.gov;

Early Referral, Mediation & Arbitration for all Taxpayers, Sandy Cohen, 202-435-5617, sandy.cohen@irs.gov.

- Taxpayer Advocate Service: 1-877-777-4778
- TTY/TTD: 1-800-829-4059
- IRS Toll Free: 1-800-829-1040
- Forms and Publications: 415-227-5007

Appeals

Introduction to Alternative Dispute Resolution

- ❑ **Fast Track Mediation**
- ❑ **Fast Track Settlement**
- ❑ **Mediation**
- ❑ **Early Referral**
- ❑ **Arbitration**

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FAST TRACK MEDIATION (FTM)

Fast Track Mediation is designed to help Small Business/Self Employed (SB/SE) taxpayers resolve many disputes resulting from examinations (audits), offers in compromise, trust fund recovery penalties, and other collection actions. Your case itself stays with SB/SE Compliance.

An Appeals or Settlement Officer who has been trained in mediation helps you and IRS discuss the issues involved in your disagreement, and possible ways to resolve it. Our goal is to reach a jointly agreeable solution, consistent with relevant law, within forty days. The mediator will not require either party to accept a certain outcome.

You and the IRS representative must sign an agreement to mediate before the first mediation session. *You don't have to file a written protest to request fast track mediation.*

Most cases that are not docketed in any court qualify for fast track mediation. Some of the excluded cases are:

- Issues with no legal precedent;
- Issues where the courts' decisions differ between jurisdictions;
- Campus and Automated Collection System cases;
- Collection Appeals Program cases; and
- Those with only frivolous arguments.

For mediation to succeed, all the decision-makers must be present. You may represent yourself at the mediation session, or you may officially appoint someone to act for you. You can bring anyone else you choose with you to support your position. You may withdraw from the mediation process anytime. You retain all the usual appeal rights for any issues that do not get resolved through fast track mediation. For complete information, see Publication 3605 & Revenue Procedure 2003-41.

FAST TRACK SETTLEMENT (FTS)

Fast Track Settlement is designed to help Large and Midsize Business (LMSB) taxpayers expeditiously resolve disputes during an examination while their case is still in LMSB Compliance. Fast Track Settlement brings Appeals resources to the audit site to resolve the dispute before the 30-day letter is issued. A specially trained Appeals Officer facilitates the discussion between you and the LMSB team manager to reach and execute a settlement with which you both agree.

You may request Fast Track Settlement after Form 5701 (Notice of Proposed Adjustment) has been issued and you provide a written response. It is available for factual and legal issues, including listed transactions, Compliance and Appeals Coordinated Issues, and issues that require consideration of the hazards of litigation.

Your benefits with Fast Track Settlement include:

- A one-page application;
- Consideration of the hazards of litigation;
- An answer within 120-days;
- No 'hot ' interest under IRC 6621;
- You may withdraw from the process at any time;
- You retain all traditional appeal rights;
- Significantly shortens your IRS experience;
- Involves only one tax computation;
- Your case closes agreed in Compliance; and
- Immediate use of Delegation Order 236.

Fast Track Settlement is also available for SB/SE and other IRS Operating Division taxpayers on a case-by-case basis. For complete information, see Revenue Procedure 2003-40.

MEDIATION

Mediation is an extension of the Appeals process. The mediator's role is to help resolve your dispute only after good faith negotiations in Appeals have been unsuccessful. Mediators can come from Appeals, or you can use non-IRS co-mediators, but at your own expense.

You may request mediation if you are already in the Appeals administrative process with any qualifying issues, and your case is not docketed in any court. It is available for both factual issues, such as valuation and transfer pricing issues, and legal issues. There are no dollar limits. Qualifying issues include Compliance and Appeals Coordinated Issues. It is also available after unsuccessful attempts to enter into a closing agreement under § 7121, and for certain Offer in Compromise cases involving unsuccessful attempts to enter into a compromise under § 7122 and certain Trust Fund Recovery Penalty cases.

Some of the cases excluded from Appeals mediation are:

- Certain Collection issues;
- Those not consistent with sound tax administration;
- Frivolous arguments; and
- Those where you did not act in good faith during settlement negotiations.

Mediation is optional. You and an Appeals Team Case Leader or Appeals Officer may request mediation after consulting with each other. You initiate mediation by sending a written request to the appropriate Appeals Team Manager, with a copy to the appropriate Area Director and Chief, Appeals. For complete information, see Revenue Procedure 2002-44.