MSP #8 APPEALS: The Appeals Judicial Approach and Culture Project Is Reducing the Quality and Extent of Substantive Administrative Appeals Available to Taxpayers

RESPONSIBLE OFFICIALS

Kirsten B. Wielobob, Chief, Appeals
Karen Schiller, Commissioner, Small Business/Self-Employed Division
Debra Holland, Commissioner, Wage and Investment Division

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

DEFINITION OF PROBLEM

An independent and effective Office of Appeals (Appeals) within the IRS is essential for quality tax administration and meaningful protection of taxpayer rights. Appeals' mission is to resolve tax controversies on a basis that is fair and impartial to both the government and the taxpayer and in a manner that will enhance public confidence in the integrity and efficiency of the IRS.[2] Appeals attempts to accomplish these goals and to improve voluntary compliance by providing a prompt, high-quality decision in each case, and by reasonably resolving the maximum number of tax controversies without recourse to litigation.[3]

Appeals recently implemented the Appeals Judicial Approach and Culture (AJAC) project in hopes of enhancing "internal and external customer perceptions of a fair, impartial and independent Office of Appeals."[4] AJAC's stated intent is to reinforce Appeals' mission of administrative dispute resolution by clarifying and separating the negotiation and decision-making role of Appeals from the factual investigations and case development allocated to the Examination and Collection functions.[5] For example, under AJAC, Appeals now will generally treat a Collection information statement (CIS) as verified by Collection, and whenever taxpayers in Examination-based cases raise new issues or present additional

1 *See* Taxpayer Bill of Rights, *available at* www.TaxpayerAdvocate.irs.gov/taxpayer-rights.

2 IRM 8.1.1.1(1), *Accomplishing the Appeals Mission* (Feb. 10, 2012).

3 *Id.*

4 IRS, Internal Guidance Memorandum (IGM) AP-08-0714-0005, *Implementation of the Appeals Judicial Approach and Culture (AJAC) Project, Collection – Phase 2* (July 10, 2014).

5 IRS, *Reinforcing Appeals' Philosophy: Appeals Judicial Approach and Culture (AJAC) Talking Points* (July 2, 2014), *available at* http://appeals.web.irs.gov/about/ajac.htm. Appeals states that AJAC is intended to emphasize its "quasi-judicial" nature. According to Black's Law Dictionary, "quasi-judicial" is a term not easily definable, but generally connoting "[o]f, relating to, or involving an executive or administrative official's adjudicative acts." Black's Law Dictionary (10th ed. 2014), *available at* http://westlaw.com. Appeals' use of the term "quasi-judicial" is apparently intended to distinguish factual investigations allocated to the Examination or Collection functions from dispute resolution activities on which Appeals would like to focus.

evidence requiring further investigation, Appeals will send the matter back to Compliance for development and evaluation.[6]

Although AJAC's aspirations are commendable, its practical implementation is eroding the very perceptions of fairness and objectivity that it claims to bolster. One commentator stated, "[t]here seems to be something problematic in the procedure for just about everyone involved."[7] Further, non-docketed Examination-based Appeals receipts have steadily fallen and TAS has observed that AJAC cases, at least in some circumstances, may be generating less thorough review than pre-AJAC cases.[8]

The National Taxpayer Advocate has long been a proponent of an independent and effective Appeals process within the IRS.[9] Nevertheless, she is concerned that, in application, AJAC is:

- Being used to intimidate taxpayers and deny their right to an administrative appeal;
- Causing cases to bounce back and forth between Appeals and Compliance; and
- Resulting in curtailed review by Appeals Hearing Officers (Hearing Officers) of IRS Examination and Collection actions.[10]

ANALYSIS OF PROBLEM

AJAC Is Sometimes Being Used to Intimidate Taxpayers and Deny Their Right to an Administrative Appeal

The IRS recently affirmed its commitment to a number of fundamental taxpayer rights, including *the right to appeal an IRS decision in an independent forum.*[11] A meaningful and efficient appeals process is a core element of this taxpayer right, which is also a goal of AJAC. Nevertheless, while striving to operate more efficiently is laudable, the course the IRS is currently pursuing is imperiling taxpayers' access to Appeals.

6 IRM 8.22.7.1.1(2), *Collection Information Statement (CIS)* (Sept. 23, 2013); IRM 8.6.1.6.2, *General Guidelines* (Nov. 14, 2013). "Compliance" will be used hereafter as a collective term to refer to the Examination and Collection functions within the Small Business/Self-Employed Division (SB/SE) and the Wage & Investment Division (W&I). To the extent a portion of the discussion is limited to a particular IRS operating division, that division will be specifically referenced.

7 Diane Freda, *Estate Taxes: Estates Grapple With New Dispute Timelines Under IRS Appeals Procedure*, Daily Tax Rep. (BNA) No. 4, at G-3 (Jan. 7, 2015). *See* her profile at http://www.bna.com/diane-freda-h2147483829/.

8 *See* figure entitled *Comparison of Appeals' Workload by Fiscal Year*, *infra*; Appeals response to TAS information request (May 29, 2015), as supplemented by fiscal year (FY) 2015 data provided by Appeals (Nov. 3, 2015). *See also* anecdotal comments from tax practitioners, *infra*, regarding the diminishing extent and quality of Appeals' review under AJAC.

9 *See* National Taxpayer Advocate 2014 Annual Report to Congress 185; National Taxpayer Advocate 2010 Annual Report to Congress 210; National Taxpayer Advocate 2009 Annual Report to Congress 70.

10 This term refers to any Settlement Officer, Appeals Officer, Appeals Account Resolution Specialist, or other employee holding hearings, conferences, or who otherwise resolves open case issues in Appeals. It further encompasses individuals who conduct or review administrative hearings or who supervise hearing officers. IRS, AJAC FAQs, *available at* http://appeals.web.irs.gov/about/ajac-faq.htm#General (updated July 7, 2014).

11 Taxpayer Bill of Rights, *available at* www.TaxpayerAdvocate.irs.gov/taxpayer-rights.

An effective and available Appeals function is crucial for a variety of reasons, including Appeals' ability to:

- Accept affidavits and weigh oral testimony;
- Consider hazards of litigation; and
- Apply the *Cohan* rule as a means of negotiating a case resolution.[12]

In conjunction with AJAC, Compliance started enforcing a more stringent policy with respect to Information Document Requests (IDRs) and to close cases and bypass Appeals prior to issuing the Statutory Notice of Deficiency (SNOD) unless a taxpayer provides all requested documentation or certifies that no additional information is available.[13] For example, Letter 5262 was originally revised over TAS's objections to read:

> If you don't provide the information requested on the enclosed Form 4564 or contact me to confirm you have no additional information to provide by the response due date listed above, we will close your examination based on the information we have now. If you don't agree, you won't be able to appeal within the IRS before we issue a notice of deficiency.[14]

Nevertheless, a telephone call from a taxpayer confirming that no additional information is available leaves the IRS identically situated to where it would be if the same taxpayer failed to respond to the IDR at all.[15] Yet the outcomes are fundamentally different: in the first scenario, the taxpayer will be able to exercise his or her right to go to Appeals, while in the second scenario, the same taxpayer will be barred from exercising that right.

Although Appeals Judicial Approach and Culture Project's (AJAC) aspirations are commendable, its practical implementation is eroding the very perceptions of fairness and objectivity that it claims to bolster.

When TAS objected to this policy, Compliance initially replied that mistakes would be made and the approach was subject to a learning curve, but the policy was consistent with AJAC.[16] The creation of additional obstacles and absolute prohibitions to an appeal within the IRS under the guise of AJAC has many troubling aspects. Compliance should not stand as the gatekeeper to Appeals. Appeals, not Compliance, should determine its own jurisdiction. Compliance cannot be allowed to sit as both judge and jury in deciding whether IRS information requests are reasonable and whether some lesser degree of information or alternative form of substantiation might be sufficient to allow taxpayers to establish their cases. In fact, that is the "quasi-judicial" role of Appeals — to review Compliance's determinations.

12 The *Cohan* rule was developed under federal case law as a means of allowing the fact finder to estimate deductible expenses where the fact of those expenses, although not their amount, can be substantiated. *See Cohan v. Comm'r*, 39 F.2d 540 (2d Cir. 1930). Note, these various settlement tools can sometimes be used by Compliance (*e.g.*, in the process of resolving coordinated issues, IRM 4.46.5.6.1, *Scope of Settlement Authority* (Mar. 1, 2006)). These resolution mechanisms, however, are not as widely available and commonly applied in Compliance as they are in the Appeals context.

13 TAS is primarily aware of this practice arising within the SB/SE Field Examination function. TAS elevated issue conference with SB/SE (July 30, 2014).

14 Letter 5262, *Examination Report Transmittal-Additional Information Due (Straight Deficiency)* (Aug. 2014); IRM 4.10.8.11, *Eligibility for Appeals Conference and Preliminary Letters (SB/SE Field and Office Examiners only)* (Sept. 12, 2014). The referenced SNOD would allow the taxpayer 90 days to appeal the IRS determination to the U.S. Tax Court.

15 In many situations, this failure to respond could be attributable to circumstances beyond taxpayers' control, such as mail failures, health issues, or extended travel. Further, the required affirmation that the requested information does not exist ignores the possibility that taxpayers may possess the information but may have objections to the scope, relevance, or legality of some of the information sought by the IDR.

16 TAS elevated issue conference with SB/SE (July 30, 2014).

Compliance's approach, wrong in principle, has been made worse in practice by the compressed timelines it has imposed on taxpayers before issuing the SNOD. In the typical Small Business/Self-Employed (SB/SE) field examination, most taxpayers would receive an initial letter that included an information request. In the event that taxpayers did not respond, they soon were sent a second letter in the 5262 series demanding all requested information and threatening the loss of appeal rights if they did not provide that information or inform the IRS it was unavailable. If 15 days elapsed (ten days plus five days for mail handling), or if the IRS was unsatisfied with the taxpayer's response, the SNOD would be issued and Appeals temporarily or permanently bypassed.[17]

TAS received comments from some tax practitioners who believed that they were working with Compliance to provide information and resolve a case, only to be surprised by the unexpected arrival of a SNOD, effectively ending all current administrative dialogue with the IRS.[18] In an op-ed piece from *The New York Times*, a tax practitioner observed that if the compressed timeframes were not adhered to, "the consequences may be dire" and that "I could return home from a vacation or a stay in the hospital to find not only that I am being audited, but that my audit has already been closed and sent to the notice of deficiency unit."[19] Core taxpayer rights — such as *the right to appeal an IRS decision in an independent forum, the right to a fair and just tax system,* and *the right to pay no more than the correct amount of tax* — mean little if the IRS implements policies impairing those rights.[20]

After the National Taxpayer Advocate brought the issue to the attention of senior leadership, the IRS agreed to discontinue the use of the Letter 5262 series on a provisional basis. SB/SE issued a June 9, 2015 memorandum temporarily suspending use of the Letter 5262 series.[21] TAS understands that SB/SE is contemplating reversing itself and reinstituting its previous policy with minor modifications regarding the issuance of SNODs in cases where all requested information is not provided and the taxpayer does not call to confirm the lack of such information.[22] Thus, not only would SB/SE continue to refuse relief to those who already have been denied access to Appeals by the premature issuance of SNODs, but all taxpayers would once again become subject to this risk. The National Taxpayer Advocate urges SB/SE to abandon its attempts to place obstacles between taxpayers and Appeals. SB/SE should permanently discontinue use of the Letter 5262 series and the policies that led to its development.

---

17 IRM 4.10.8.11(5), *Eligibility for Appeals Conference and Preliminary Letters (SB/SE Field and Office Examiners only)* (Sept. 12, 2014). As previously noted, taxpayers are provided with 90 days in which to file a petition with the U.S. Tax Court. In many of these cases, the issue will then be sent back to Appeals by the Tax Court if the matter has not been previously considered by Appeals. This additional procedural step, however, subjects taxpayers to unnecessary delays, expenses, complexities, and pitfalls for the unwary.

18 TAS conference call with Low Income Taxpayer Clinic practitioners (Apr. 22, 2015). The information gleaned from this and other similar TAS conference calls is anecdotal and cannot be taken as systemic proof or statistical evidence. Nevertheless, it is consistent with broader impressions formed by TAS from widespread interactions with taxpayers and their representatives.

19 David DuVal, *Beware the I.R.S.'s Speeded-Up Audit*, N.Y. Times (Apr. 29, 2015), *available at* http://www.nytimes.com/2015/04/30/opinion/beware-the-irss-speeded-up-audit.html?emc=eta1&_r=0.

20 Taxpayer Bill of Rights, *available at* www.TaxpayerAdvocate.irs.gov/taxpayer-rights.

21 The impacted letters include Letter 5262, *Examination Report Transmittal - Additional Information Due (Straight Deficiency)*; Letter 5261, *Examination Report Transmittal - Additional Information Due (Claims for Refund)*; Letter 5441, *Response to Letter 5262 - Straight Deficiency, and Office Examination's Use of Letter 950, 30 Day Letter-Straight Deficiency*. *See* SB/SE Memo from Scott Irick, Director, Examination/AUR Policy, *Temporary Suspension of Letters 5262, 5261, 5441, and Office Examination's Use of Letter 950* (June 9, 2015), *available at* http://lmsb.irs.gov/international/dir_compliance/foreign_resident/downloads/Letter%20Suspension%20Memo%202015-0609.pdf.

22 SB/SE response to TAS fact check document (Nov. 16, 2015). While SB/SE does not directly address TAS's understanding, SB/SE's reply states, among other things, "[t]he AJAC 'Reassessment' [which is considering the Letter 5262 series] has developed recommendations that are being elevated for executive review and approval. The team is recommending additional IRM clarifications, letter updates, training, external communications and oversight." *Id*.

In focus groups conducted by TAS, several tax practitioners commented that in their experience, Revenue Agents (RAs) who examine cases in Compliance now often discourage taxpayers from going to Appeals.[23] One practitioner stated, "They (RAs) always try to send me to Tax Court straight from exam; they want me to skip Appeals."[24]

Further, according to some practitioners, Compliance also has been using AJAC as a tool for "bullying" taxpayers in other circumstances.[25] TAS has received some reports that Compliance, under the vague but broad cloak of AJAC, has aggressively demanded that taxpayers sign waivers of the statute of limitations on assessment, extending it for one to two years. These demands have occurred even in cases where taxpayers have only sought a slight extension of time from the IRS to provide requested documents and where sufficient time remained under the existing statutory period of limitations for the case to be transferred to Appeals.[26] The use of procedural leverage by the IRS to intimidate taxpayers, to threaten premature case closures, and to jeopardize taxpayers' access to Appeals is inconsistent with AJAC's avowed purpose.

AJAC has been promoted as having the goal of enhancing "external customer perceptions of a fair, impartial, and independent Office of Appeals."[27] However, in some situations AJAC has been used as an instrument for limiting taxpayers' access to Appeals or coercing them into taking steps not in their best interests.

AJAC Is Causing Cases to Bounce Back and Forth Between Appeals and Compliance

A core policy notion of AJAC is that cases should be fully worked in Compliance and not come to Appeals until the IRS and the taxpayer have reached an impasse.[28] AJAC resulted in the implementation of several directives instructing Hearing Officers to return cases to Compliance for the completion of required factual investigations.[29] If a taxpayer raises a new issue or presents additional evidence at Appeals, then the case is sent back to Compliance if, in the opinion of the Hearing Officer, it requires further investigation.[30] Even in cases where new theories or arguments relying on no additional facts are presented by the taxpayer, AJAC requires Compliance to be consulted for its recommendation.[31]

These strictures effectively narrow Appeals' jurisdiction. Cases where Appeals previously would have been actively involved and sought to negotiate settlements fair to both taxpayers and the government are now returned to Compliance. When implemented on a case-by-case basis, and when informed by the

23 2015 IRS Nationwide Tax Forums TAS Focus Group Report, *Appeals – How Are AJAC and CAP Changes Working?*, 6, 7 (Oct. 2015).

24 *Id*. at 7.

25 TAS conference call with practitioners associated with the American Bar Association Section of Taxation (Mar. 17, 2015).

26 *Id*. Generally, 365 days must be remaining on the statute of limitations for Appeals to accept a proposed deficiency case. IRM 8.21.3.1.1, *New Receipts and Transfers* (Aug. 28, 2014).

27 IRS, IGM AP-08-0714-0004, *Implementation of the Appeals Judicial Approach and Culture (AJAC) Project, Examination and General Matters – Phase 2* (July 2, 2014).

28 *Reinforcing Appeals' Philosophy: Appeals Judicial Approach and Culture (AJAC) Talking Points* (July 2, 2014), *available at* http://appeals.web.irs.gov/about/ajac.htm.

29 *See, e.g.*, IRS, IGM AP-08-0714-0004, *Implementation of the Appeals Judicial Approach and Culture (AJAC) Project, Examination and General Matters – Phase 2* (July 2, 2014).

30 IRS, IGM AP-08-0714-0004, *Implementation of the Appeals Judicial Approach and Culture (AJAC) Project, Examination and General Matters – Phase 2* (Projected as IRM 8.2.1.5(2)(i), (j), *Returning a Case to Examination – Appeals Hearing Officers*) (July 2, 2014).

31 IRS, IGM AP-08-0714-0004, *Implementation of the Appeals Judicial Approach and Culture (AJAC) Project, Examination and General Matters – Phase 2* (Projected as IRM 8.6.1.6.6, *Taxpayer Raises New Theory or Legal Argument*) (July 2, 2014). This consultation is to be undertaken subject to existing *ex parte* requirements. *Id.*

judgment of the Hearing Officer, such an approach is reasonable and has merit. However, when mandated by means of an inflexible systemic policy, this approach is fraught with inequities and inefficiencies.

According to some tax practitioners, AJAC is being used by Appeals as an inventory control mechanism.[32] The more cases that are bounced back to Compliance, the fewer open cases remain in Appeals' inventory. Some practitioners have observed that Appeals is often quick to embrace this opportunity and return cases to Compliance.[33] Others have related that in the past, Appeals Officers were more open to having conversations and listening to taxpayers' positions, whereas now they are in more of a hurry to move the case along — often back to Compliance.[34] The National Taxpayer Advocate is concerned that Compliance, in turn, will respond to its own expanding inventory pressures by precipitously returning cases to Appeals or bypassing Appeals altogether through the issuance of SNODs.

Appeals' workload has decreased in recent years with overall and non-docketed Examination-based case receipts steadily falling between fiscal years (FY) 2011 and 2015. By contrast, Examination-based docketed cases in Appeals have remained relatively constant, resulting in a proportional increase in such cases. This trend will likely only increase if SB/SE reinstitutes the Letter 5262 series and resumes the practice of bypassing Appeals through the precipitous issuance of SNODs. Docketed cases are expensive and stressful for taxpayers and a resource drain for the IRS. The extent to which AJAC is exacerbating this proportionally increasing trend in docketed Appeals cases will become clearer over time, but, to this point at least, AJAC does not appear to be helping. These trends are shown in the following figure.

FIGURE 1.8.1, Comparison of Appeals' Workload by Fiscal Year[35]

	Nondocketed		Docketed		Overall Case Receipts
	Case Receipts	Percentage	Case Receipts	Percentage	
FY 2011	21,706	50%	22,101	50%	43,807
FY 2012	19,450	46%	23,004	54%	42,454
FY 2013	16,509	43%	21,797	57%	38,306
FY 2014	13,563	37%	23,356	63%	36,919
FY 2015	11,645	33%	23,785	67%	35,430

To further illustrate AJAC's troubling application, a tax practitioner participating in a TAS conference call provided the following example. A part of the factual record in an Appeals case included detailed bank records. The Hearing Officer indicated a willingness to sit down with the taxpayer, review the factual file together, and seek a resolution of the case based on the shared dialogue. However, the case was sent back to Compliance by the Hearing Officer's manager under the auspices of AJAC.[36] Everyone loses in this scenario including the Hearing Officer who was ready, willing, and able to resolve the case; the taxpayer who must incur the additional cost and effort of recommencing the dialogue with Compliance; and the tax system itself, which has placed needless burdens on taxpayers and strained the morale of its employees.

32 TAS conference call with practitioners associated with the American Bar Association Tax Section (Mar. 17, 2015).

33 *Id.*

34 2015 IRS Nationwide Tax Forums TAS Focus Group Report, *Appeals – How Are AJAC and CAP Changes Working?*, 6 (Oct. 2015).

35 Data for this figure, which focuses on Examination-based cases, was drawn from the Appeals Response to TAS information request (May 29, 2015), as supplemented by FY 2015 data provided by Appeals (Nov. 3, 2015).

36 TAS conference call with practitioners associated with the American Bar Association Tax Section (Mar. 17, 2015).

Along with Hearing Officers whose ability to resolve cases has been limited, similar morale issues are reportedly being experienced by Compliance employees. According to some tax practitioners, certain Compliance personnel expressed the view that Compliance was not adequately consulted in the development and implementation of AJAC.[37] Some Compliance employees have articulated "feelings of anger" at AJAC's provisions and "resentment" when cases are returned from Appeals.[38] Taxpayers and their representatives are placed at an unfair and unnecessary disadvantage when forced to seek justice in such a discordant environment, particularly when the venue for resolution is perpetually in danger of changing.

AJAC Is Resulting in Curtailed Review by Appeals Hearing Officers of IRS Examination and Collection Actions

AJAC also appears to be diminishing the substantive quality of the Appeals' reviews that are taking place. Several participants in TAS focus groups described the Appeals environment under AJAC as having shifted from conversational to adversarial.[39] Another participant in a focus group commented, "My level of confidence in Appeals has declined…"[40]

Taxpayers who grow weary of the administrative hurdles established for case resolution or who lose access to Appeals because of premature case closures may be driven to seek justice beyond the IRS in the judiciary or might drop out of the dialogue and be denied due process altogether.

Where Examination actions are concerned, AJAC precludes taxpayers from raising issues at Appeals that are not first considered by Compliance.[41] According to practitioners, this change in practice by Appeals is significantly unfavorable for taxpayers and detracts from the fair and speedy resolution of cases.[42]

Manifestations of AJAC's attempt to limit Appeals' jurisdiction are also apparent in appeals arising out of Collection cases. For example, in cases involving offers in compromise (OIC) made outside of the collection due process context, Hearing Officers are only allowed to review the OIC in question. They are precluded from offering other collection alternatives as a means of resolving the case.[43] Thus, AJAC removes an important resolution tool from the hands of Hearing Officers, disadvantages taxpayers, and increases the burden on Collection, which, in most situations, will have the case added to its inventory.

Further, in appeals arising pursuant to the Collection Appeals Program (CAP), AJAC clarifies that Hearing Officers are to consider only the "appropriateness" of the decision under review.[44] The sense of tax practitioners interviewed by TAS is that Appeals is interpreting this review as purely procedural in nature.[45] One practitioner who is active in representing taxpayers in CAP reported being

37 TAS conference call with practitioners associated with the American Bar Association Tax Section (Mar. 17, 2015).

38 *Id.*

39 2015 IRS Nationwide Tax Forums TAS Focus Group Report, *Appeals – How are AJAC and CAP Changes Working?*, 6 (Oct. 2015).

40 *Id*, at 5.

41 *Aggressive IRS Audit Techniques*, panel discussion, American Bar Association Section of Taxation 2015 Joint Fall CLE Meeting, 65 (Sept. 19, 2015).

42 *Id.*

43 IRM 8.23.3.12, *Alternative Resolutions for Offers* (Oct. 15, 2014).

44 IRM 8.24.1.1.1(9), *Administrative and Legislative History* (Dec. 2, 2014). For a more in-depth discussion of issues surrounding CAP and the ways in which these issues are being exacerbated by AJAC, see National Taxpayer Advocate 2015 Annual Report to Congress, Most Serious Problem: *Collection Appeals Program (CAP): The CAP Provides Inadequate Review and Insufficient Protections for Taxpayers Facing Collection Actions, infra*.

45 TAS conference call with practitioners associated with the American Bar Association Tax Section (Mar. 17, 2015).

told by a Hearing Officer that, "If all of the boxes were checked, then Appeals would sustain Collection's decision."[46]

The National Taxpayer Advocate is concerned that these restrictions on Hearing Officers' abilities to resolve controversies will result in the rubber-stamping of actions taken by Compliance, particularly in Collection cases. If Hearing Officers are limited in their ability to evaluate facts and circumstances and apply common sense and good judgment in their discussions with taxpayers, Appeals' core mission will be jeopardized. Hearing Officers should be empowered and encouraged to explore the broadest possible scope of settlement options in furtherance of their role of facilitating administrative dispute resolution. To the extent that this effort would, in the opinion of Hearing Officers, be assisted by the clarification or development of additional facts, they should have the ability to pursue such a course.[47]

To the extent that this ability is curtailed, as is currently occurring under AJAC implementation, both taxpayers and the voluntary tax system will suffer. The IRS Restructuring and Reform Act of 1998 strengthened Appeals in hopes of protecting taxpayers "caught in the IRS hall of mirrors" and providing them with an administrative appeals process that is "truly independent and structured to represent their concerns."[48] If this "hall of mirrors" is reinstituted by AJAC, taxpayers who grow weary of the administrative hurdles established for case resolution or who lose access to Appeals because of premature case closures may be driven to seek justice beyond the IRS in the judiciary or might drop out of the dialogue and be denied due process altogether. In the long run, such outcomes, which are currently being precipitated by AJAC, place extraordinary cost burdens on taxpayers, the government, and the judiciary. Moreover, the preservation of due process rights and the perception of fairness it brings are cornerstones of a successful voluntary tax compliance system, not just of the administrative appeals process.[49]

CONCLUSION

The AJAC project is intended to increase the efficiency and effectiveness of Appeals. While these goals are laudable, current observations indicate that AJAC cases may be taking longer to resolve and, at least in some circumstances, yielding a diminished level of substantive review. AJAC's implementation is eroding the very perceptions of fairness and objectivity that the project was instituted to bolster. In practice, AJAC is being used to limit taxpayer's access to Appeals, causing cases to be bounced back and forth between Appeals and Compliance, and resulting in curtailed review by Hearing Officers. Although AJAC's underlying premise that cases should be thoroughly worked by Compliance is reasonable enough, the manner in which AJAC has been implemented is neither in the best interests of taxpayers nor tax administration.

46 TAS conference call with practitioners associated with the American Bar Association Tax Section (Mar. 17, 2015).

47 This authority would be consistent with the independence of Appeals, as it would be exercised in conjunction with Appeals' administrative dispute resolution activities, and would be undertaken separate and apart from the influence of other operating divisions within the IRS.

48 144 Cong. Rec. S7622 (July 8, 1998) (Statement of Sen. Roth).

49 *Reinforcing Appeals' Philosophy: Appeals Judicial Approach and Culture (AJAC) Talking Points*, July 2, 2014, *available at* http://appeals.web.irs.gov/about/ajac.htm; National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 131, 134; National Taxpayer Advocate 2009 Annual Report to Congress 79.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Permanently discontinue the Letter 5262 series and preserve taxpayers' rights to an appeal even in cases where all requested information is not provided to Compliance.
2. Loosen AJAC restrictions to allow Hearing Officers to exercise more discretion regarding whether additional factual development or analysis within Appeals would materially assist case resolution.
3. Provide Hearing Officers with revised guidance and enhanced training emphasizing quality substantive review, rather than mere satisfaction of procedural requirements by expanding timeframes and retaining Appeals' jurisdiction where appropriate, as the best means of providing taxpayers with *the right to appeal an IRS decision in an independent forum*.
4. Develop and implement an outreach plan aimed at practitioners to help them understand what is needed for a successful appeal and to provide Appeals with information about the difficulties experienced by taxpayers and practitioners under AJAC.