

# Appeal Rights and Preparation of Protests for Unagreed Cases

Department  
of the  
Treasury  
Internal  
Revenue  
Service

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## If You Agree

If you agree with the examiner's findings in the enclosed examination report, please sign the agreement form and return it with our transmittal letter. By signing, you are agreeing to the amounts shown on the form.

If the agreement shows you owe additional tax you may pay it without waiting for a bill. Include interest on the additional tax and on any penalties at the applicable rate from the due date of the return to the date of payment. Figure the interest as shown in the enclosed Notice 433, Yearly Interest and Certain Penalty Rates.

If you do not pay the additional tax when you sign the agreement, you will receive a bill for the additional tax. Interest is charged on the additional tax from the due date of your return to the billing date. However, you will not be billed for more than 30 days interest from the date you sign the agreement. No further interest or penalties will be charged if you pay the amount you owe within 10 days after the billing date.

Please make your check or money order payable to the Internal Revenue Service and include on the check or money order your social security number or employer identification number, the tax form number, and the tax period for which payment is being made. Do not send cash through the mail.

If the examination report shows a refund is due you, you should sign and return the agreement form promptly so the Service can send your refund sooner. You will receive interest on the refund.

## If You Don't Agree

If you decide not to agree with the examiner's findings, you have the option of requesting a meeting with the examiner's supervisor to discuss the findings. If you still do not agree, we urge you to appeal your case with the Service. Most differences can be settled in these appeals without expensive and time-consuming court trials. (Appeals conferences are not available to taxpayers whose reasons for disagreement do not come within the

scope of the internal revenue laws. For example, disagreement based solely on moral, religious, political, constitutional, conscientious, or similar grounds.)

If you do not want to appeal your case in the Service, however, you can take it to court.

The following general rules tell you how to appeal your case.

## Appeal Within The Service

Appeals within the Service are handled by the Office of Regional Director of Appeals. If you decide to appeal, address your request for a conference to your District Director in accordance with our letter to you enclosing these instructions. Your District Director will forward your request to the Appeals Office, which will arrange for a conference at a convenient time and place. However, a consolidated Appeals conference may be held for all producers in certain windfall profit tax cases. See the heading for procedures on these cases if you are appealing a windfall profit tax issue.

If agreement is not reached with Appeals, you may, at any stage of these procedures, take your case to court. See the back of this publication concerning Appeals to the courts.

## Written Protests

Along with your request for a conference you may need to file a written protest with the District Director. You don't have to file a written protest if:

- The proposed increase or decrease in tax, or claimed refund, does not exceed \$2,500 for any of the tax periods involved; or
- Your examination was conducted by correspondence or in an IRS office by a tax auditor.

If a written protest is required, you should send it within the period granted in the letter transmitting the report of examination and include in it:

1. A statement that you want to appeal the findings of the examiner to the Appeals Office;

2. Your name and address;
3. The date and symbols from the letter transmitting the proposed adjustments and findings you are protesting;
4. The tax periods or years involved;
5. An itemized schedule of the adjustments with which you do not agree;
6. A statement of facts supporting your position in any contested factual issue; and
7. A statement outlining the law or other authority on which you rely.

The statement of facts, under 6 above, must be declared true under penalties of perjury. You may do this by adding to the protest the following signed declaration:

"Under penalties of perjury, I declare that the facts presented in my written protest, which are set out in the accompanying statement of facts, schedules, and other attached statements, are to the best of my knowledge and belief, true, correct, and complete." If your representative sends us the protest for you, he or she may substitute a declaration stating:

- That he or she prepared the protest and accompanying documents; and
- Whether he or she knows personally that the protest and accompanying documents are true and correct.

## Representation

You may represent yourself before Appeals, or you may be represented by an attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service. Your representative must be qualified to practice before the Internal Revenue Service. If your representative appears without you, he or she must file a power of attorney or a tax information authorization before receiving or inspecting confidential information. Form 2848, Power of Attorney and Declaration of Representative, or Form 2848-D, Tax Information Authorization and Declaration of Representative (or any other properly written power of attorney or authorization) may be used for this purpose. You can get copies of these forms from an Internal Revenue Service office.

You may also bring witnesses to support your position.

### **Procedures for Crude Oil Windfall Profit Tax Cases**

The Statement of Procedural Rules allows the Service to provide a single consolidated Appeals conference to address all oil items arising in connection with a property or lease whenever the Service determines that a consolidated procedure is necessary for effective administration of the windfall profit tax law. Generally, oil items are items taken into account in computing the windfall profit tax that can be more readily determined at the property or lease level such as:

- The tier or tiers of the crude oil;
- The quantity of crude oil in each tier;
- The adjusted base price and removal price; and
- The severance tax.

All producers having an interest in the property or lease will be permitted to participate in this conference if a written request to attend is made within 60 days of the mailing of the letter proposing the adjustment. If a written protest is required, it should also be sent within the 60-day period. If you do not agree with the adjustments but decide not to attend the conference, and the issue is appealed by the other owners, your case will be held in suspense until the final administrative determination is made.

The determination by the Appeals Office is the final administrative determination with respect to oil items arising in connection with the property or lease for the period under examination.

These procedures do not affect the producers' administrative appeal rights with respect to producer items, that is, items more readily determined at the producer level such as exemptions and independent producer status. All unagreed producers are still entitled to a separate Appeals conference to resolve producer item issues. A separate notification of appeal rights relating to producer items will generally be issued following the final administrative determination of the oil items.

Any person who receives a 60-day letter with respect to oil of which another person is the producer and who is not autho-

rized to act on behalf of or represent that other person shall, within 10 days of the receipt of the 60-day letter, furnish to that other person a copy of the 60-day letter, including the proposed adjustments. Any person forwarding a 60-day letter shall notify the Service of the name, taxpayer identification number, mailing address, type of interest owned, and ownership percentage of the person to whom the letter is forwarded. This information shall be furnished to the Service at the return address shown on the 60-day letter.

### **Appeals To The Courts**

If you and the Service disagree after your conference or if you skipped our appeals system, you may take your case to the United States Tax Court, the United States Claims Court, or your United States District Court. (However, if you are a nonresident alien taxpayer, you cannot take your case to a United States District Court.) These courts are independent judicial bodies and have no connection with the Internal Revenue Service.

#### **Tax Court**

If your case involves a disagreement over whether you owe additional income tax, estate or gift tax, or certain excise taxes, you may go to the United States Tax Court. To do this, ask the Service to issue a formal letter, called a notice of deficiency. You have 90 days from the date this notice is mailed to you to file a petition with the Tax Court (150 days if addressed to you outside the United States). If you do not file the petition within the 90-day period (or 150 days as the case may be), the law requires that we assess and bill you for the deficiency.

If you discuss your case with the Internal Revenue Service during the 90-day period (150-day period), the discussion will not extend the period in which you may file a petition with the Tax Court.

The Court will schedule your case for trial at a location convenient to you. You may represent yourself before the Tax Court, or you may be represented by anyone permitted to practice before that Court.

If you dispute not more than \$10,000 for any one tax year, there are simplified procedures. You can get information about

these procedures and other matters relating to the Court from the Clerk of the Tax Court, 400 Second St. N.W., Washington, D.C. 20217.

### **District Court and Claims Court**

You may take your case to your United States District Court or to the United States Claims Court. Certain types of cases, such as those involving manufacturers' excise taxes, can be heard only by these courts. Generally, your District Court and the Claims Court hear tax cases only after you have paid the tax and have filed a claim for refund. You can get information about procedures for filing suit in either court by contacting the Clerk of your District Court; or the Clerk of the Claims Court. If we haven't acted on your claim within 6 months from the date you filed it, you can then file suit for refund. If we have disallowed your claim, a suit for refund must be filed no later than 2 years from the date of our disallowance.

### **Litigating Expenses**

If certain conditions are met, you may be entitled to recover from the Government reasonable litigation expenses incurred. These include, for example, court costs, expert witness fees, cost of engineering reports, and attorneys' fees. To recover these expenses, you must:

1. Substantially prevail in your case with respect to the amount or issues;
2. Show that the Government's position was unreasonable; and
3. Exhaust your administrative remedies with the IRS.

These provisions apply to civil litigation in a court of the United States, including the Tax Court. Expenses incurred solely for administrative appeal purposes within the IRS are not recoverable from the Government.

### **Penalty**

Whenever it appears to the Tax Court that proceedings before it have been instituted or maintained by you primarily for delay or that your position in such proceedings is frivolous or groundless, damages in an amount not in excess of \$5,000 shall be awarded to the United States by the Tax Court in its decision.