

RESEARCH TAX CREDIT SYMPOSIUM

BEST PRACTICES FOR MANAGING YOUR CLAIM IN AUDIT AND APPEALS

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AGENDA

➤ Examination (Audit)

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- > Technical Advise Memorandum
- > Conclusion
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➤ Appeals

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- > Appeals



EXAMINATION (AUDIT)

EXAMINATION (AUDIT) – BACKGROUND CONTEXT

EXAMINATION COVERAGE (2015)

- Small Business Corporations (assets under \$10 million)
 - 16,460 vs. 17,257 (prior year); 5 % annual decrease; steady at ~1% of returns
 - \$740 million recommended additional tax; average increase \$45K
 - 33% no change

- Larger Corporations (assets of \$10 million and above)
 - 7,410 vs. 7,858 (prior year); 6% annual decrease; 11% vs. 12% of prior year returns
 - \$9 billion recommended additional tax; average increase \$1.2 million
 - 32% no change

- Partnerships
 - 19,212 vs. 15,779 (prior year); 22% annual increase; steady at ~.5% of returns
 - 38% no change

- S Corporations
 - 18,595 vs. 16,317 (prior year); 14% annual increase; steady at ~.4% of returns
 - 37% no change

EXAMINATION (AUDIT) - BACKGROUND CONTEXT

UNCERTAIN TAX POSITION (UTP) STATEMENT

Form 1120 filers of \$10 million and more of total assets must file UTP statement if 2 conditions are met:

1. Corporation has taken a tax position on current or for a prior tax year and
2. The corporation has recorded a reserve on that tax position in audited financial statements or has not recorded a reserve but expects to litigate the position.

Not required to file risk assessment or size of the reserve.

Filing Requirements

1. Listing of current and previous years uncertain tax positions.
2. Concise description of each UTP; description of the relevant facts affecting tax treatment of the position and information that can reasonably apprise the IRS of the identity of the tax position and the nature of the issue.
3. Sample Statement:
We incurred support department costs that were allocated to various research projects based upon a methodology we consider reasonable. The issue is whether the IRS will accept the methods we used to allocate the costs reasonable.

EXAMINATION (AUDIT) – BACKGROUND CONTEXT

IRS UTP FILING STATISTICS

	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>
UTP filers	2,399	2,467	2,332	2,196	2,142
% of Publicly Traded UTP filers	50%	57%	58%	61%	62%
Total UTP reported	5,752	6,239	5,754	5,367	4,742
Average UTP per taxpayer	2.4	2.5	2.5	2.4	2.2
<u>Most Common UTP</u>					
1) Research Credit	36%	31%	25%	24%	21%
2) Transfer Pricing	19%	20%	22%	22%	22%
3) Domestic Prod	4%	5%	5%	4%	4%

EXAMINATION (AUDIT) – BACKGROUND CONTEXT

IRS FORM 8275 DISCLOSURE STATEMENT

IRC §6662 imposes a 20% accuracy related penalty on underpayments of tax due to negligence or substantial understatement of income tax.

1. For corporations “substantial understatement” means showing 10% less than what should have been reported or \$10 million less.
2. However the understatement is reduced if there is substantial authority for the treatment or if there is adequate disclosure and a reasonable basis in the filed return. Form 8275 fulfills the adequate disclosure requirement.

Filing Requirement

1. Identify the rule that the position is contrary to.
2. Describe the disclosed item. Identify the location and amount of the item.
3. Describe the relevant facts and information that reasonably apprise the IRS of the identity of the item.
4. In 2008 the IRS estimated that 3,320 Form 8275's would be filed.

EXAMINATION (AUDIT) – BACKGROUND CONTEXT

LARGE CASE PROGRAMS

1. The IRS automatically examines about 1,700 corporate taxpayers annually, under the CIC Coordinated Industry Case Program (formerly CEP).
2. In 2015, the 1,979 largest corporations (\$1 billion or more in assets) had \$7.9 billion in recommended additional tax; average recommended increase \$4 million.
3. 18% no change after audit.

EXAMINATION (AUDIT) – CONDUCT OF EXAMINATION

OVERVIEW

The typical examination consists of 3 phases: Planning, Execution and Resolution.

Planning

1. IRS conducts an initial planning meeting covering authorizations, roles, expectations and responsibilities, establishing a timeline with specific milestones for mutual accountability, communication including IDRs, rules of engagement, logistics, discussion of prior examination results, etc.

Practice Tip: Taxpayer should establish a very aggressive timetable with the IRS and then hold them to it. Typically they are unable to keep pace and this gives the taxpayer leverage to pressure for wrap up and completion. Less time to look, less time to find issues.

2. The IRS expects the taxpayer to provide a comprehensive orientation of its business, organizational structure, record keeping , etc. Based on this an examination plan is developed and signed by both the IRS and the taxpayer.

Practice Tip: Taxpayer should use this as an opportunity to provide a comprehensive description of its research and development activities, the importance to the organization in terms of its competitive position, number of patents , number of employee scientists, engineers, technical disciplines, number of technical masters degrees and Phds, etc. in order to establish the reasonableness of the amount and type of research taking place.

EXAMINATION (AUDIT) – CONDUCT OF EXAMINATION

OVERVIEW

Execution

1. IRS and taxpayer discuss new issues and potential changes in scope or depth of examination.
2. Review progress toward achieving agreed upon milestones and discuss causes and mitigation options for deviations. Record all verbal agreements in writing to minimize misunderstandings and delays.
3. For each identified tax issue taxpayer explains the facts and circumstances related to the issue and the reason for the tax treatment.
4. Taxpayer responds to IDRs and explains omissions or requests additional time if needed.

Practice Tip: Taxpayer should aggressively meet all targets and push IRS to do the same. Keep the pressure up. This gives the taxpayer leverage to pressure for wrap up and completion. Less time to look, less time to find issues.

Resolution

1. IRS and taxpayer discuss the facts and law with respect to each issue..
2. IRS should prepare draft Form 5701 and taxpayer should review.
3. Throughout examination process exam team and taxpayer should identify and implement appropriate issue resolution strategies: Fast Track, Rules of Engagement, Early Referral to Appeals.
4. Utilize Form 886-A, Explanation of Items, to document proposed adjustment

EXAMINATION (AUDIT) – CONDUCT OF EXAMINATION

Information Document Requests (IDR)

1. Generally used by agents at an early stage of the exam process.
2. Must be issue focused; must clearly state the issue and only request relevant information.
3. A separate IDR must be prepared for each issue.
4. Examiner must discuss IDR with taxpayer before issuance; both parties must determine a reasonable timeframe.
5. If response is late or incomplete examiner must discuss with taxpayer and determine whether to extend for up to 15 business days.
6. Thereafter a Delinquency Notice (Letter 5077) is issued which gives 10 business days.
7. Thereafter a Pre-Summons letter (Letter 5078) is issued which gives 10 business days
8. Thereafter IRS through Counsel will issue a Summons.

Recording of Examinations

IRC §7521(a) permits taxpayers with advance notice to make an audio tape recording of any interviews. Taxpayers should insist on this.

EXAMINATION (AUDIT) – CONDUCT OF EXAMINATION

Technical Advice Memorandum (TAM)

1. Either examiner or taxpayer may seek a technical advice memorandum (TAM).
2. Taxpayer should consider this whenever an impasse is reached with examiner.
3. Prior to submission there is a mandatory pre-submission conference.
4. Every request must include a memo that describes the facts, issues, applicable law and the arguments supporting taxpayer's position and field's office position, Examiner then submits a memorandum to the Associate Office with a copy to the taxpayer. Taxpayer has a right to review and disagree on facts, and issues. Taxpayer has 5 calendar day deadline to submit its disagreement. Both sides then have 10 calendar days to resolve. If unresolved both set of facts are forwarded to Associate Office.
5. Field Office then gives taxpayer opportunity to participate in development of TAM.
6. If proposed TAM by Field Office is taxpayer adverse, taxpayer is afforded one conference. Typically the taxpayer is given 10 calendar days to make an additional submission.
7. **The issued TAM is binding on Examination. However the Appeals Office is not bound by the TAM and may settle the issue under existing authority taking the hazards of litigation into account for settlement purposes.**
8. If examiner declines to request TAM, taxpayer must appeal to the Director or Territory Manager within 30 calendar days. This appeal must be in writing. The decision of the Director or Territory Manager cannot be appealed but taxpayer can request a review from the appropriate Director.

EXAMINATION (AUDIT) – CONDUCT OF EXAMINATION

CONCLUSION OF EXAMINATION

1. Examination Agent issues a Revenue Agent Report (RAR) at the conclusion.
2. Report is on a “agreed” or “unagreed” basis. If agreed, report consist of a brief explanation of adjustments and tax computations.
3. Taxpayer is asked to sign IRS Form 4549, Income Tax Examination Changes. In certain cases taxpayer will be asked to sign Form 870 Waiver of Restrictions and Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment. If a statutory notice of deficiency has been issued IRS Form 4089, Notice of Deficiency Waiver, will be used as the Settlement Document. Signing any of the above forms makes the taxpayer liable for the full amount of taxes and penalties and interest and precludes Tax Court venue.
4. However signing the above forms does not prevent the taxpayer from filing a claim for a refund or filing a suit In US District Court or the US Court of Claims. Nor does the signing preclude the IRS from making a later claim.
5. If report is “unagreed”, examination agent first sends report to Quality Review Staff; thereafter statement of adjustments and tax computation is sent to taxpayer. This is accompanied by a “30 day letter” formally notifying taxpayer of findings. Taxpayer may request a hearing with the Office of Appeals by filing a written protest.

EXAMINATION (AUDIT) – CONDUCT OF EXAMINATION

AUDIT RECONSIDERATION

1. In order to be eligible for reconsideration a taxpayer must provide information that was not previously considered during the original examination.
2. No special form is needed. Taxpayer simply points out which items appear to be incorrect, provide copies of documents not previously submitted, along with a copy of Form 4549, with a letter of explanation,
3. The IRS aims to respond within 30 days. If the taxpayer disagrees with the results of the reconsideration, the taxpayer can ask for an Appeals Conference or pay amount due in full and file a claim for refund.

PROTEST TO APPEALS OFFICE

1. Protest must be filed with District Director.
2. Protest must itemize each adjustment that is being protested with a statement setting forth the facts and outlining the law supporting the protest.

Practice Point: In many cases a skeletal pleading rather than a detailed brief is the better strategy. Taxpayer should avoid committing to a factual position or legal argument, until the conference to see what the Service's position is.



APPEAL

APPEAL - JURISDICTION

APPEALS OFFICE JURISDICTION

1. The Appeals Division has “exclusive and final” authority for determination of income taxes and any assessments or penalties or additions to such tax.
2. Upon receipt of the taxpayer’s protest a tentative conference date is arranged.
3. The conference is informal without oaths or a stenographer.
4. The Appeals Office has a firm policy to settle as many cases as possible. (I.R.M. 8.1.1.1.1). Although strictly speaking the Appeals Officer is not permitted to initiate settlement offers in fact both sides argue the merits of their position and bargain for a settlement amount. This process can go on for a few months with many submissions and meetings.
5. Unlike examination agents, Appeals officers are permitted to take “hazards of litigation” into consideration when settling.
6. Generally speaking taxpayers do better at Appeals than at examination. Most cases are settled. But the Service will not settle a nuisance case.

APPEAL -AJAC

AJAC (Appeals Judicial Approach and Cultural Project)

1. Under AJAC, effective July 18, 2013, Appeals will not raise new issues and will not re-open an issue in which the taxpayer and Examination were in agreement. Previously, a taxpayer, by appealing, risked an Appeals Officer reversing an Examination oversight. Under AJAC, Appeals is not a continuation of the examination process; Appeals will focus on the points of disagreement identified by the parties.
2. Under AJAC, Appeals generally will not return a case to Examination. If Examination submits an factually undeveloped case, Appeals will attempt to settle the case on the evidence within the file. Appeals may return a case to Examination if the taxpayer's written protest is deficient.
3. Under AJAC, Appeals may consider theories or alternative legal arguments when evaluating the hazards of litigation of a case, but Appeals can only rely on evidence within the case file. Discussion of new cases or authorities that support arguments previously presented do not constitute a new issue.
4. If a taxpayer produces new evidence to Appeals about a disputed issue, not previously shared with Examination, then Appeals may release the matter back to Examination.

APPEAL – EX PARTE COMMUNICATION

PROHIBITION AGAINST EX PARTE COMMUNICATION

1. Appeals is prohibited from engaging in ex parte communications with Examination. Appeals may communicate if taxpayer is given the “opportunity to participate”.
2. With respect to oral communication, “opportunity to participate” means that a taxpayer must be given a reasonable opportunity to attend a meeting or participate via conference call. If an acceptable date for participation cannot be worked out then Appeals is required to inform the taxpayer of the substance of the discussion and give the taxpayer the opportunity to respond.
3. With respect to written communications, “opportunity to participate” means that a taxpayer must be provided with a copy of the written communication and given a chance to respond orally or in writing.
4. Appeals can submit any “significant new information” received from the taxpayer and review and discuss it with the Examination function. Significant new information is material that in the judgment of Appeals may have an impact on the originating functions findings or may impact Appeals’ independent evaluation, including the litigating hazards related to those issues.
5. Prohibition against ex parte communication does not apply between Appeals Officers and Chief Counsel attorneys or Counsel in connection with cases in Tax Court.
6. Violation of the ex parte rules do not affect the liability of the taxpayer or the IRS’s ability to asses a liability. When a violation occurs Appeals must notify the taxpayer and request input from the taxpayer as to the proper remedy. Ultimate authority rests solely with the IRS area director.

APPEAL – APPEALS CONFERENCE

APPEALS CONFERENCE

1. The district director's office refers the protest and the IRS administrative file to Appeals for consideration. Appeals can refuse to schedule a conference if it feels that: additional factual development, clear misapplication of the law by Examination, insufficient time to consider before SOL expires, protest is deficient, etc.
2. Appeals conferences are informal; testimony is not under oath, affidavits can be submitted on factual issues. Taxpayer has the right to make an audio recording by providing 10 days notice.
3. In complex or large dollar cases a team of Appeals Officers will handle the conference., a Team Chief and two Appeals Officers. Chief Counsel attorneys commonly attend conferences involving significant tax deficiencies.

Practice Tip: Chief Counsel presence should be treated with caution because the appeals process provides informal discovery to the Service's attorneys in unagreed cases.

4. Docketed Tax Court cases are referred to Appeals by the Chief Counsel's Office for settlement. Appeals has exclusive settlement jurisdiction for 4 months (can be extended). However, settlement jurisdiction is not to extend beyond the time that a notice of trial is issued by the Tax Court, generally 5 months prior to the date of the trial calendar,
5. Docketed cases are transferred freely between Chief Counsel and Appeals. Settlement authority resides with whom the case is before. Chief Counsel's primary concern is trial preparation but negotiations are not uncommon.

APPEAL - SETTLEMENT

SETTLEMENT OF APPEAL

1. Appeals Officer's Report – entitled "Action Memorandum and a Supporting Statement". Consists of 2 parts: Part 1 consists of statement of the proposed tax changes, mathematical computations, and brief explanations of the items at issue. Part II contains a detailed analysis of the respective positions with supporting documentation and if the case is unagreed, a suggested settlement amount.
2. Three Types of Settlement:
 - a. Mutual Concession – both parties agree there is substantial uncertainty how a court would interpret the law or find the facts
 - b. Split Issue – if litigated it would be a winner take all type issue; instead a percentage or agreed upon amount is negotiated. Produces a result that would not be achieved through trial.
 - c. Nuisance Value – no merits, a concession to avoid trial. Appeals policy is to neither grant or extract such a settlement.

APPEAL - SETTLEMENT

SETTLEMENT OF APPEAL

Settlement Forms

1. Form 870-AD (Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment) is used to settle the matter between Appeals and the taxpayer.
2. Contains a restriction stating that it is not enforceable until accepted by Commissioner of Internal Revenue; not a formal closing document under IRC §7121.
3. Commits Service to not reopening the case unless there is fraud, malfeasance, concealment, misrepresentation, etc. Also prohibits taxpayer from filing any claim for refund for the period in issue other than amounts attributed to carrybacks.

Closing Agreements

1. Authorized by IRC §7121 and Treas. Reg. §301.7121-1(a)(2); in practice infrequently utilized.
2. Agreement may relate to any taxable period prior or subsequent to date of agreement. Agreements affecting a subsequent tax liability are subject to subsequently enacted laws.
3. Form 906 is used for one or more issues. (Form 866 is used for total tax liability for a taxable period).
4. Request is submitted to district director where return was filed; if pending before a regional Appeals Office then the request should go to the Regional Office. A request that only relates to a subsequent period should be submitted to the Commissioner of Internal Revenue. Treas. Reg. §601.202(b).

APPEAL - SETTLEMENT

SETTLEMENT OF APPEAL

Offers in Compromise

1. The Secretary of the Treasury may compromise any case under the Internal Revenue laws prior to referral to the Department of Justice. The Attorney General may compromise any case after referral to the Department of Justice.
2. The grounds for compromise is doubt as to liability, see Treas. Reg. §301.7122-1(b),

Binding Effects of Settlement

1. Treated as a contract by courts. IRS considers Form 870-AD as final. Nonetheless some courts have found that IRC §7121 and IRC §7122 are the exclusive means of compromising tax issues.
2. Can be reopened if there is a showing of fraud or malfeasance or misrepresentation of a material fact (unintentional mistake does not constitute a misrepresentation).
3. Only the Commissioner himself may assert fraud, etc. to set aside a closing agreement. (Rev. Proc. 68-16).
4. As with any contract, if it is broken by one party, it may be rescinded by the other. So if a taxpayer fails to abide by the terms of a compromise agreement, by refusing to make payments, the Service may terminate the compromise agreement and collect the balance of the original tax liability.

APPEAL – JOINT COMMITTEE REVIEW

SETTLEMENT OF APPEAL

Joint Committee Review

1. IRC §6405(a) provides that no refund or credit in excess of \$2 million may be made until 30 days after a report has been submitted to the Joint Committee on Taxation.
2. In multiple year settlements the entire settlement is subject to Joint Committee review if the net refund exceeds \$2 million.
3. Tentative refunds under IRC §6411 in excess of \$2 million are not subject to Joint Committee Review, unless the tentative refund is audited and allowed by the IRS or where the tentative refund is still more than \$2 million after being offset by a settlement which results in deficiencies for other taxable years.

APPEAL - ADR

SETTLEMENT OF APPEAL

Alternative Dispute Resolution

Five types – Early Referral, Mediation, Fast Track Settlement, Fast Track Mediation, and Arbitration

Early Referral

1. IRC §7123(a) requires the IRS to establish procedures whereby a taxpayer can request early referral for unresolved Examination issues. The early referral procedures are set forth in Rev. Proc 99-28.
2. With certain exceptions a taxpayer may request early referral to Appeals of any developed unagreed issue arising in an audit.
3. Early referral is not available for issues that have not been developed, cases in which a 30 day letter has been mailed, or cases designated for litigation by Chief Counsel's Office.
4. The early referral request must be in writing, submitted to the case/group manager of the audit and must include a brief discussion of the factual and legal issues.
5. A response is typically forthcoming within 14 days. If early referral is accepted a form 5701, Notice of Proposed Adjustment, is sent to the taxpayer. Taxpayer must respond in writing within 30 days.
6. If agreement is reached a Form 906 , Closing Adjustment or Final Determination Covering Specific Matters, needs to be signed by both parties.
7. If an agreement is not reached, taxpayer may request mediation. If mediation is not requested jurisdiction returns to Examination.

APPEAL - SETTLEMENT

SETTLEMENT OF APPEAL

Mediation

1. IRC §7123(b)(1) requires the IRS to establish procedures whereby a taxpayer can request non-binding mediation on any issue that is not resolved at the conclusion of Appeals conference procedures, or unsuccessful efforts to negotiate a closing agreement under IRC §7121 or a compromise under IRC §7122. Mediation procedures are set forth in Rev. Proc 2014-63. There no longer is a dollar threshold needed to invoke mediation.
2. Mediation request is instituted by filing a written request with appropriate Appeals Team Manager, with a copy to Appeals Area Director and Chief of Appeals in Washington, DC.
3. The mediator is jointly selected by the taxpayer and the Appeals Team Manager. Rev. Proc. 2014-63 requires the use of an “Appeals employee who is a trained mediator”. But the taxpayer may also elect to use a non-Service employee as a “co-mediator” at the taxpayer’s expense.
4. Written summaries of positions are due at least 2 weeks prior to mediation. The mediators act as facilitators, no power to impose a decision. The mediators prepare a written report.
5. If a settlement is reached, traditional Appeals closing procedures are followed.

APPEAL - SETTLEMENT

SETTLEMENT OF APPEAL

Fast Track Settlement (FTS)

1. This program is for LMSB taxpayers; jointly administered by LMSB and Appeals. Goal of program is to resolve unagreed issues within 120 days of acceptance into program.
2. FTS is optional; can only be initiated after Service has issued Form 5701. Cannot be elected after 30 day letter sent. Most issues are eligible: exceptions are: litigation, competent authority, whipsaw, etc.
3. Both parties need to agree that the case is appropriate for FTS. Applicant need to complete a LMSB Fast Track Agreement Form and a written response to Form 5701.
4. The FTS Appeals Officer meets with the taxpayer and LMSB together or separately and attempts to resolve the dispute through mediation. FTS Officer cannot impose a settlement. If unresolved the taxpayer can file a protest with the Appeals Office.

Fast Track Mediation (FTM)

1. This program is for Small Business Self Employed (SB/SE) taxpayers. Only available for factual issues. Goal is to resolve within 40 days.
2. Both parties need to agree that the case is appropriate for FTM. Both parties need to sign an Agreement to Mediate. If accepted the case is assigned to a FTM Appeals Officer, trained in mediation.
3. The FTM Appeals Officer meets with the taxpayer and SB/SE and attempts to facilitate a resolution of the case. The FTM Officer cannot impose a settlement.

APPEAL – SETTLEMENT

SETTLEMENT OF APPEAL

Arbitration

1. Under Rev. Proc 2015-44, arbitration is only available for factual issues in cases that are already in Appeals jurisdiction. Arbitration is only available if traditional methods of resolution have been unsuccessful.
2. The parties must jointly request arbitration through a written arbitration agreement and they must agree on the legal issues covering the case. Neither party can appeal the decision of the arbitrator.
3. The arbitrator is selected at an administrative conference. The arbitrator can be an Appeals Officer employee or an independent individual. If the arbitrator is independent then the parties share the cost of the arbitrator. The arbitrator may request hearings.
4. *Ex parte* communication with the arbitrator is forbidden,
5. At the conclusion the arbitrator prepares a written report, which is limited to a decision on the facts. It cannot include legal analysis or interpretations of the law.

APPEAL – TAX COURT

TAX COURT

Notice of Deficiency

1. IRC §6212 authorizes the Commissioner to issue a “Statutory Notice of Deficiency” which serves to notify the taxpayer of a proposed assessment and the opportunity to petition the Tax Court before the actual tax assessment is issued. Generally this is issued only after settlement negotiations have failed unless there is a statute of limitations (SOL) problem.
2. Taxpayer has 90 days to file a petition, no extensions. In the interim the IRS is barred from issuing an assessment and SOL is suspended.
3. There are 2 prerequisites to Tax Court jurisdiction :
 - a. A notice of deficiency timely and properly mailed to the taxpayer and
 - b. A petition filed by the taxpayer to the Tax Court (not the IRS) within 90 days of the mailing of the notice by the IRS. (Date of mailing is the postmark date and is jurisdictional).
4. If taxpayer pays the anticipated deficiency in order to stop interest, before the deficiency notice is issued, then the Tax Court has no jurisdiction since the issuance of the deficiency notice is required for the Tax Court to have jurisdiction.

Practice Tip: Taxpayer can avail themselves of IRC §6603 by making a cash deposit which stops interest from accruing but does not interfere with the issuance of the deficiency notice.

APPEAL – TAX COURT ALTERNATIVES

TAX COURT

Tax Court vs. Other Judicial Forums

1. Alleged tax deficiency need not be paid for Tax Court to have jurisdiction. (valid notice of deficiency is prerequisite for Tax Court jurisdiction).
2. Jurisdiction by US District Court or Court of Federal Claims requires tax to be fully paid.
3. Trial by jury only in US District Court
4. Specialized judge (virtually certain in Tax Court)
5. Choice of adversary:
 - a. Tax Court – IRS Area Counsel
 - b. US District Court – local Assistant US Attorney or Staff Counsel
 - c. Court of Federal Claims – Justice Department
 - d. Appeal:
 - a. Tax Court and US District Court - appeal to US Court of Appeals circuit at corporation's principal place of business
 - b. Court of Federal claims – appeal to US Court of Appeals for the Federal Circuit
6. Greater discovery rights in US District Court

APPEAL – APPEALS

TAX COURT

Alternative Dispute Resolution

1. Under Tax Court Rule 124 any factual issue in a case can be resolved by arbitration. The motion can be filed any time after the case is at issue and before trial.
2. The rules also allow for voluntary non binding mediation.

Appeals

1. Decisions are reviewable by the Court of Appeals for the circuit in which the corporation has the principal place of business. The parties may agree by written stipulation to review by any Court of Appeals.
2. An appeal must be made by filing a notice of appeal within 90 days of the entry of the decision or from 90 days of the denial of reconsideration.
3. Since the Tax Court is the trier of fact, its factual findings are not subject to reversal unless they are clearly erroneous. Questions of law are subject to de novo review, an abuse of discretion standard applies.
4. Although the timely filing of a notice of appeal establishes the jurisdiction of the Court of Appeals it does not stay the assessment and collection of a deficiency of the Tax Court. In order to stay the assessment and collection pending appeal, taxpayer must post a bond double the amount of the deficiency.