

Publication 5

Your Appeal Rights and How to Prepare a Protest if You Disagree



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The IRS Independent Office of Appeals Mission

To resolve Federal tax controversies without litigation on a basis which is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and enhances public confidence in the integrity and efficiency of the Service.

Introduction

This publication explains actions you should take prior to requesting an administrative appeal of your tax case if you don't agree with the Internal Revenue Service's (IRS) proposed changes or findings. It also provides an overview of your administrative appeal rights within the IRS and a summary of your rights to have your case heard in the United States Federal Courts.

While this publication mainly focuses on disputes resulting from an examination of a tax return or claim for refund or credit, the information on how to prepare a protest also applies to disputes resulting from many other types of IRS actions, including, but not limited to the following:

- Denial of a request for certain penalty abatement
- Denial of a request for innocent spouse relief
- Rejection of an offer in compromise
- Determination that you owe a penalty
- Determination affecting tax-exempt status
- Determination affecting qualification of a retirement plan

These actions result in a proposed change to your Federal tax liability, a denial of your request to change your Federal tax liability, or

a change to your reporting requirements. This publication refers to all these actions as proposed changes.

The Taxpayer Bill of Rights states you have the right to appeal an IRS decision in an independent forum. You are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the IRS Independent Office of Appeals' (hereinafter, Appeals) decision. You also generally have the right to take your case to court. For more information on the Taxpayer Bill of Rights, see [**Publication 1**](#), Your Rights as a Taxpayer.

Additional Resources

For some types of cases, the appeals process and available court actions are different than a tax deficiency or claim disallowance case, which are overwhelmingly the most common disputes in Appeals. See

www.irs.gov/appeals for more information.

The letter that you received from the IRS proposing the changes may contain important information about the appeal rights available to you for your specific type of case, including how to request an appeal and what will happen if you decide not to appeal.

If your case involves one of the issues listed in the table on this page, refer to the appropriate publication for specific guidance. Visit www.irs.gov/forms-instructions or call 800-TAX-FORM (800-829-3676) for IRS Publications.

If your case involves...	Refer to...
A change in tax-exempt status	<u>Publication 892,</u> How to Appeal an IRS Determination on Tax-Exempt Status

An employee plans examination change	<u>Publication 1020,</u> Appeal Procedures Employee Plans Examinations
An employment tax examination change	<u>Publication 5146,</u> Employment Tax Returns: Examinations and Appeal Rights
Disqualification of a retirement plan	<u>Publication 5153,</u> Appeal Procedures: Adverse Determination Letter on Qualification of a Retirement Plan

If You Don't Agree

Before you request an appeal, make sure that you have provided the IRS employee handling your case with any information, documents,

and explanations that the employee requested, or that you would like the IRS to consider. If you have not submitted this information, contact the IRS employee identified in the letter you received and provide this information within the specified time limit. If you provide new information or raise new issues to Appeals that the IRS has not previously considered, it may first need to be considered by an IRS employee, which will likely delay the resolution of your case. See **The Appeals Conference** on page 5.

If you don't agree with the changes proposed by the IRS, you may contact the IRS employee identified in the letter you received to discuss the issues. Generally, if you cannot reach an agreement with the IRS employee, you may request a discussion with the employee's supervisor. If you still don't agree after your attempts to resolve the matter with the IRS employee and/or supervisor, you may request Fast Track Settlement (FTS) if your

case qualifies, or an administrative appeal with Appeals. See **Protests** on page 3 for more information on how to request an administrative appeal.

If You Do Nothing...

And Your Case Is...	The IRS Will...
An examination of your income, estate (and generation-skipping transfer), gift (and generation-skipping transfer), or certain excise taxes or penalties, with a proposed deficiency	Send you a notice of deficiency allowing you a limited time to petition the U.S. Tax Court for redetermination. If you don't timely petition the U.S. Tax Court, the IRS will send you a bill for the amount due.

An examination of your employment tax liabilities

Send you a bill for the amount due relating to issues not reviewable by the U.S. Tax Court. In certain instances, you may receive a Notice of Employment Tax Determination Under IRC 7436 which affords you a limited time to petition the U.S. Tax Court. If you don't timely petition the U.S. Tax Court, the IRS will send you a bill for the amount due relating to the issues included in that notice. Refer to **Publication 5146**, Employment Tax

	<p>Returns: Examinations and Appeal Rights; and <u>Publication 3953</u>, Questions and Answers About Tax Court and the Notice of Employment Tax Determination Under IRC § 7436.</p>
And Your Case Is...	The IRS Will...
A denial of a claim for refund	<p>Send you a notice of claim disallowance explaining that you have a limited time to file suit with the appropriate U.S. District Court or the U.S. Court of Federal Claims. You may</p>

	have already received this notice.
A proposal of a trust fund recovery penalty or certain information return penalties	Send you a bill for the amount due.
A rejection of an offer in compromise (OIC) based on doubt as to liability.	Continue collection action after the expiration of a 30 day period following the rejection, as warranted.
A denial of a penalty abatement	Close your case without abating the penalty.
A denial of a request for innocent spouse relief	Generally send you a final determination letter regarding your request allowing you

	a limited time to petition the U.S. Tax Court.
A determination on tax-exempt status or on qualification of a retirement plan	Send you a final adverse determination letter. In general, if you do not file a protest to the proposed adverse letter, you cannot appeal the final adverse determination letter. In addition, you must have exhausted your administrative remedies to be able to seek a declaratory judgment in court.

Appeals Mediation Programs

In certain IRS cases, you may request an expedited dispute resolution process called Fast Track Settlement (FTS). The disputed issue must be fully developed and the IRS must agree to participate in this process. During FTS, your case remains in the examiner's jurisdiction while a specially trained Appeals employee serves as a neutral party using dispute resolution techniques to facilitate an agreement between you and the IRS. You may withdraw from the FTS process at any time. You will retain your usual appeal rights if any issues remain unresolved.

To request FTS, inform the IRS employee handling your case that you are interested in FTS. If the examination division agrees to participate in this process, they will work with you to jointly complete the necessary form to start the process.

See **Publication 4167** or the Appeals Mediation - Alternative Dispute Resolution (ADR) website at **www.irs.gov/appeals/appeals-mediationprograms** for more information on FTS and other Appeals' ADR programs.

Protests

You must submit a written protest to request an Appeals conference. The Appeals employee assigned to your case will use your protest to prepare for the Appeals conference. Refer to **Notice 609**, Privacy Act Notice, for more information about how the IRS uses information you provide.

Send your protest to the IRS address in the letter you received within the time limit specified in the letter. A formal protest is required in all cases unless you qualify for a small case request, as discussed below, or another appeal procedure.

Small Case Request

If the total amount of tax and penalties for each tax period involved is \$25,000 or less in the letter you received, you may make a small case request instead of filing a formal written protest. See under **“Formal Written Protest”** for cases that are not eligible for small case requests. In computing the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund. For an offer in compromise, the entire amount for each tax period includes total unpaid tax, penalty and interest due. For a small case request, you may either:

- Prepare a brief written statement listing the disputed issues and why you disagree, or
- Complete the appeal request form included with the letter you received proposing the change, if applicable, or

you can use [**Form 12203**](#), Request for Appeals Review.

Formal Written Protest

A formal written protest is required if the proposed change to the total amount of tax and penalties for any tax period is more than \$25,000 in the letter you received. The total amount includes the proposed increase or decrease in tax and penalties or claimed refund. If more than one tax period is involved and any tax period exceeds the \$25,000 threshold, you must file a formal written protest for all periods involved. For an offer in compromise, include total unpaid tax, penalties and interest due. A formal written protest is also required in the following cases:

- Employee plan and exempt organization cases regardless of the dollar amount.
- Partnership and S Corporation cases regardless of the dollar amount.

- In all other cases, unless you qualify for the small case request procedure, or other special appeal procedures, such as requesting Appeals consideration of liens, levies, seizures, or installment agreements. See [**Publication 1660**](#), Collection Appeal Rights, for more information on special collection appeals procedures.

In your formal protest, include a statement that you want to appeal the changes proposed by the IRS and include all of the following:

- Your name, address, and a daytime telephone number.
- List of all disputed issues, tax periods or years involved, proposed changes, and reasons you disagree with each issue.
- Facts supporting your position on each disputed issue.

- Law or authority, if any, supporting your position on each disputed issue.
- Penalties of perjury statement, as follows:

"Under penalties of perjury, I declare to the best of my knowledge and belief, the information contained in this protest and accompanying documents is true, correct, and complete."

Note: Representatives who submit the protest must use the applicable penalties of perjury statement below, based upon whether they have personal knowledge regarding the information stated in the protest and accompanying documents:

- **Personal Knowledge:**

"Under penalties of perjury, I declare that I submitted the protest and accompanying documents, and to the best of my personal knowledge and belief, the information stated in the

protest and accompanying documents is true, correct, and complete."

- **No Personal Knowledge:**

"Under penalties of perjury, I declare that I submitted the protest and accompanying documents, and I have no personal knowledge concerning the information stated in the protest and accompanying documents."

- Your (or your representative's) signature under the penalties of perjury statement.

IRS Independent Office of Appeals

Appeals is an independent function of the IRS, separate from the division of the IRS that proposed the changes. It is the only level of administrative appeal within the IRS. Appeals employees fairly and impartially settle disputes between taxpayers and other divisions of the IRS by considering the

arguments made by both sides, and then applying the relevant tax law (including court decisions and other legal authorities) to the facts of the case. Most disputes can be settled informally at the Appeals level without litigation.

As an administrative function of the IRS, Appeals can only consider your arguments if they are based on tax laws. Appeals cannot consider your arguments if they are based only on moral, religious, political, constitutional, conscientious, or similar objections to the assessment or payment of Federal taxes.

The IRS is legally required to assess proposed tax by a certain date in most cases. We refer to this date as the statute of limitations. Generally, before an examination case is received in Appeals, IRS policy for originating functions may require greater than 365 days remain on the statute of limitations. The IRS will ask you to agree to extend this date if

additional time is needed to meet the required number of days. If you choose not to extend the date, Appeals will not accept your case. Note that docketed U.S. Tax Court cases do not have the statute of limitation concerns that non-docketed cases do.

The Appeals Conference

Appeals conferences are held in an informal manner. Appeals will contact you and/or your authorized representative to arrange a conference at a convenient time.

You may represent yourself at your appeals conference, or you may appoint a person authorized to practice before Appeals to represent you such as an attorney, certified public accountant, or enrolled agent. See [**Circular No. 230**](#), Regulations Governing Practice Before the Internal Revenue Service, for more information on qualifications to practice before Appeals. You may include a person who doesn't meet these qualifications

in your appeals conference as a witness, but they may not represent you before Appeals.

If you want your representative to participate in an appeals conference without you, you must provide a properly completed power of attorney to the IRS before the representative can receive or inspect confidential information. You can use [**Form 2848**](#), Power of Attorney and Declaration of Representative, or any other properly written power of attorney or authorization for this purpose. If you can't afford representation, a Low Income Taxpayer Clinics (LITC) may be able to represent you if you qualify. In addition, LITCs also provide assistance to taxpayers who speak English as a second language to help taxpayers understand their rights and responsibilities. You can find more information about LITCs in [**Publication 4134**](#), Low Income Taxpayer Clinic List. LITCs are independent from the IRS. You can get copies of Form 2848 or Publication 4134 from

www.irs.gov, an IRS office, or by calling 800-TAX-FORM (800829-3676).

You or your authorized representative should be fully prepared to discuss all disputed issues and the reasons you disagree with each issue at the conference. **If you submit new information or raise a new issue requiring additional analysis, Appeals will generally return the case to the originating IRS office for its determination on the new information.**

You will receive the originating office's comments, have an opportunity to respond, and can continue to pursue your appeal rights.

Court Actions

If you do not appeal your case within the IRS, or were unable to reach a settlement with Appeals, you may be able to take your case to one of the following courts if you satisfy

the court's procedural and jurisdictional requirements:

- United States Tax Court
- United States Court of Federal Claims
- United States District Court in the judicial district where you reside or have your principal place of business

You can obtain rules from each court. These courts are independent judicial bodies and have no connection with the IRS.

U.S. Tax Court

You may be able to file a petition with the U.S. Tax Court to review the changes proposed by the IRS. The U.S. Tax Court is generally a “prepayment” forum, which means you can petition the U.S. Tax Court before making full payment, but its jurisdiction is limited. You generally cannot petition the U.S. Tax Court unless you have received a notice or determination letter that

informs you that you have the right to do so. However, you may also petition the Tax Court if you have not received a notice or determination involving: a determination of tax-exempt status under IRC 7428 if the IRS has not made a determination after 270 days; the abatement of interest if the IRS has not mailed a final determination within 180 days of a claim for abatement under IRC 6404; or an innocent spouse relief request if the IRS has not issued a final determination letter after six months since filing Form 8857, Request for Innocent Spouse Relief.

You must file your petition with the U.S. Tax Court within the timeframe specified in the notice, usually 90 days (or 150 days if the notice is addressed to a person outside the United States). There is a filing fee, but the fee may be waived if you qualify. The law sets the time to file your petition; the IRS or the U.S. Tax Court cannot change this time period. You have only the timeframe specified

to petition the court, even if you continue to talk to IRS examiners or Appeals.

You can get more information about the U.S. Tax Court's procedures and other matters on the court's website at www.ustaxcourt.gov or by writing to:

U.S. Tax Court
Attn: Office of the Clerk of the Court
400 Second Street, N.W.
Washington, DC 20217-0002

If you timely petition the Tax Court, and you did not previously appeal your case within the IRS, you will normally have an opportunity to attempt settlement with Appeals while you are waiting for your trial. The Tax Court will still follow its normal procedures to schedule your case for trial, but you may not need to appear at trial if you settle your case before the trial date. If unable to settle, you may appear *pro se* (by yourself) at Tax Court or by a representative admitted to the Tax Court that you appointed.

Caution: If the Tax Court determines that your case is intended primarily to cause a delay, or that your position is frivolous or groundless, the court can impose a penalty against you of up to \$25,000 in its decision.

District Court and the U.S. Court of Federal Claims

You can take your case to your U.S. District Court or the U.S. Court of Federal Claims, but generally only after you have fully paid the amount and timely filed a claim for refund with the IRS. If you are a nonresident alien, you may seek relief in the U.S. Court of Federal Claims, but you generally cannot take your case to a U.S. District Court because you are not a resident of any United States judicial district.

If you filed a timely claim for a refund with the IRS but haven't received a written response on your claim within 6 months from the date you filed it, you can file suit for a

refund in your U.S. District Court or the U.S. Court of Federal Claims. Certain types of cases, such as those involving some employment tax issues or manufacturers' excise taxes, can only be heard by these courts.

Note: You have 2 years from the date of the notice of claim disallowance to file a refund suit. Appeals' consideration of a disallowed claim doesn't extend the 2-year period for filing suit. However, it may be extended by mutual agreement.

You can get information about procedures for filing suit in either court on their websites:

- U.S. District Courts website:
www.uscourts.gov
- Court of Federal Claims website:
www.cofc.uscourts.gov

Innocent Spouse Appeals

If you are the spouse who filed [**Form 8857**](#), Request for Innocent Spouse Relief, requesting innocent spouse relief (the “requesting spouse”), you can generally request an appeal if the IRS denies your request in whole or in part. If you are a non-requesting spouse, you can request an appeal if the IRS grants innocent spouse relief in whole or in part to your requesting spouse (or former spouse). However, a non-requesting spouse cannot appeal an IRS decision to *deny* relief to the requesting spouse (or former spouse). Your appeal request must be submitted in writing. You can use [**Form 12509**](#), Innocent Spouse Statement of Disagreement, to explain why you disagree with the IRS’s proposed determination concerning your request or your (current or former) spouse’s request for innocent spouse relief. If you are the requesting spouse, you

can petition the U.S. Tax Court to review your request for innocent spouse relief if:

1. Six months have passed since you filed Form 8857 and you have not received a final determination letter from the IRS; or
2. You have received a final determination letter denying relief in full or in part and you petition the U.S. Tax Court no later than 90 days after the IRS sent you that letter.

Pass-Through Entity Appeals (BBA)

If you petition the U.S. Tax Court for relief, the Tax Court's scope of review will be limited to the IRS's administrative record established at the time of the determination (the date of the final determination letter), and any newly discovered or previously unavailable evidence. Therefore, it is important for both the requesting and non-requesting spouse to

provide all relevant, available evidence to the IRS before it issues its final determination.

The Bipartisan Budget Act of 2015 (BBA), as amended, repealed the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) partnership procedures and electing large partnership provisions and replaced them with an entirely new centralized partnership audit regime. BBA is generally effective for tax years beginning 1/1/2018, with allowances for early elect-in for tax periods beginning after 11/2/2015.

If the entity and tax year(s) at issue are covered by BBA, the entity has appeal rights. At the end of the Appeals process, Appeals will issue a Notice of Proposed Partnership Adjustment (NOPPA) for all proposed adjustments, whether agreed or unagreed. In response to the NOPPA, the partnership may request modification and an opportunity for a modification Appeals hearing. However, in a modification Appeals hearing, Appeals will not

reconsider an issue that was previously disputed and considered by Appeals.

If a Notice of Final Partnership Adjustment (FPA) is issued, the partnership may elect to “push-out” an imputed underpayment to its partners to take into account, file a petition for judicial review of the adjustments, or both.

See

www.irs.gov/businesses/partnerships/bapartnership-audit-process, for more information.

Recovering Administrative and Litigation Costs

You may be able to recover your reasonable administrative and litigation costs if you are the prevailing party and if you meet the other requirements. For example, you must exhaust your administrative remedies within the IRS including participating in the Appeals process,

and you must not unreasonably delay the administrative or court proceedings.

- *Administrative costs* are costs incurred for administrative proceedings on or after the date you receive the first letter of proposed deficiency giving you an opportunity for review in Appeals, the Appeals decision letter, or the notice of deficiency, whichever is earliest.
- *Litigation costs* are costs incurred for court proceedings.

Recoverable litigation or administrative costs may include:

- In general, attorney fees that do not exceed a maximum hourly rate, which changes from year to year. Fees in excess of the maximum can be awarded in limited circumstances.

- Reasonable amounts for court costs or any administrative fees or similar charges by the IRS.
- Reasonable expenses of expert witnesses.
- Reasonable costs of studies, analyses, tests, or engineering reports that are necessary to prepare your case.

To qualify as a prevailing party, you must

- Substantially prevail on the amount in controversy or the most significant issue(s) presented, or obtain a final judgment that is less than or equal to a “qualified offer” that the IRS rejected, AND
- Meet the applicable net worth and size requirements.

Net worth and size limitations:

- For individuals, estates, or trusts, net worth cannot exceed \$2,000,000.
- Charities and certain cooperatives must not have more than 500 employees.
- A partnership, corporation, association, unit of local government, or organization must have a net worth of \$7,000,000 or less and must not have more than 500 employees.
- In TEFRA partnership proceedings, both the partnership and the requesting partner must meet relevant net worth and size limitations.

You are not the prevailing party if:

The United States establishes that its position was substantially justified. If the IRS does not follow applicable published guidance, the United States is presumed to not be

substantially justified. This presumption is rebuttable. Applicable published guidance means regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if they are issued to you, private letter rulings, technical advice memoranda and determination letters. The determination of whether the Government's position was substantially justified will also consider the outcome of the same issue(s) or position(s) in other cases the Government has already litigated.

In the context of administrative proceedings, Appeals will determine who is the prevailing party. You must file your claim for administrative costs no later than the 90th day after the IRS mails (or otherwise furnishes) you the final determination of tax, penalty or interest. This means that you may receive administrative costs from the IRS without going to court. If your application for administrative costs is denied, you may

appeal the determination to the U.S. Tax Court no later than the 90th day after the IRS mailed you the denial letter.

In the context of court proceedings, a court will decide who is the prevailing party. You must follow applicable court rules when filing your claim for costs.

Taxpayer Advocate Service (TAS) Assistance

The TAS is an independent organization within the IRS that helps taxpayers and protects taxpayers' rights. TAS can offer free help if your tax problem is causing a financial difficulty, you've tried but are unable to resolve your issues with the IRS or you believe an IRS system, process or procedure isn't working as it should. If you believe you are eligible for TAS assistance or would like more information, call the TAS at 877-777-4778, TTY/TDD 800-829-4059, go to www.taxpayeradvocate.irs.gov, or refer to

Publication 1546, Taxpayer Advocate Service
– We Are Here to Help You.

Report IRS Actions

You can confidentially report misconduct, waste, fraud, or abuse by an IRS employee to Treasury Inspector General for Tax Administration (TIGTA) by calling 800-366-4484 (800-877-8339 for TTY/TDD). You can remain anonymous.

Small Business Ombudsman

A small business entity can participate in the regulatory process and comment on enforcement actions of IRS by calling 888-REG-FAIR (888-734-3247), TTY/TDD 800-877-8339, or by visiting <https://www.sba.gov/ombudsman>.

For General Information:

Appeals Website: IRS Website:

www.irs.gov/appeals www.irs.gov **IRS**

Toll Free Phone Numbers:

800-829-1040 (for individuals)

800-829-4933 (for businesses)

800-829-4059 /TDD

IRS Forms and Publications:

www.irs.gov/forms-instructions 800-TAX

FORM (800-829-3676) **Taxpayer Advocate**

Service:

TaxpayerAdvocate.irs.gov

877-777-4778

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