

35th Annual TEI-SJSU High Tech Tax Institute

Federal Tax Controversy

November 5, 2019



Presenters

- ❖ Wendy Abkin, Partner - *Morgan Lewis & Bockius LLP*
- ❖ Cabell Chinnis, Partner – *Mayer Brown LLP*
- ❖ Robert J. Kovacev, Partner – *Norton Rose Fulbright US LLP*
- ❖ Emily Lam, Partner - *Skadden, Arps LLP*
- ❖ Don Murray, Director, Field Operations West, CBA, LB&I - *IRS*
- ❖ Eric Slack, Director, Field Operations-West - *IRS*
- ❖ Gloria Sullivan, Director - Western Compliance Practice Area - *IRS*

Topics for Today

- ❖ Current workforce -- staffing and hiring
 - Context for priorities and initiatives
- ❖ LB&I Portfolio of Compliance Programs
- ❖ Implementation of Major Priorities
- ❖ Key Compliance Issues – LB&I and Western Compliance
- ❖ Tax certainty and Risk assessment
- ❖ Focus for FY 2020
- ❖ Tax Cuts and Jobs Act Compliance Planning for Cross Border Activities
- ❖ LB&I’s Appeals Activities

Current workforce -- staffing and hiring

LB&I STAFFING YEAR-OVER-YEAR
 BEGINNING OF YEAR ON-ROLLS



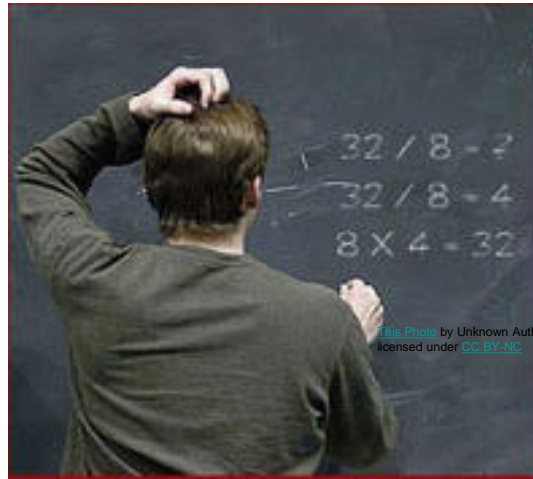
LB&I Hiring – FY19

- ❖ Add to Rolls 387
- ❖ All Job Classifications
 - Revenue Agents – including CAS, International, Transfer Pricing, FPs
 - Engineers
 - Economists
 - Appraisers
 - Tax Law Specialists

Western Practice Area – Staffing & Hiring

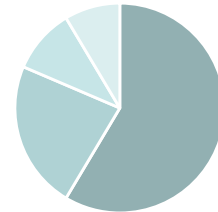
- ❖ Sept 2019 Revenue Agents on Staff - 559
- ❖ 2019 Hiring to date:
 - Revenue Agents Added to Rolls 62
 - Including:
 - Bay Area 11
 - LA Area 9
 - Denver 9
 - Houston 8
 - Dallas 7
 - Seattle 6

LB&I Portfolio or How did this case get selected for exam?



LB&I Compliance Portfolio (Types of Compliance Work)

- ❖ LCC (successor program to CIC) – C Corporations
- ❖ CAP – Publicly held C Corporations
- ❖ Campaigns – Single Issue Focus – Any return
- ❖ Global High Wealth – Enterprise approach, begins with 1040
- ❖ Flow-Through - Partnerships & S-Corps
- ❖ Mandatory (i.e., Claims)
- ❖ “Discretionary” - Other Corporate Exams
- ❖ Individual International Compliance – 1040s
- ❖ Taxpayer Initiated – PFA’s, APA’s, Voluntary Disclosures



LB&I Portfolio workplan balances goals of ‘next best case’ and coverage. Compliance practice area examiners will work all of these types.

Workload Selection: Data Sources & Analytical Tools To Identify Cases Depend Upon Focus Area or Compliance Goal

❖ Data Sources

- Internal
- External

❖ Analytical Tools

- Statistics
- Algorithms
- Risk Models
- Filters
- Unstructured Data
(Text Mining)

❖ Examples of Use:

- DAS Scores- Used for identifying Corp returns
- Used to identify LCC Population
- Identifies Partnership population
- Limited issue campaigns
- Risk assessment & scoping of Forms 8886

LB&I continues to develop and refine tools to identify potential high risk returns. Feedback used to adjust priorities and strategies

Classification & Risk Assessment Process

1. Returns identified for potential exam
2. Classification process (except LCC)
 - Centralized, Cadres
 - Manual generally
3. Highest Risk Sent to field managers with classification info
4. Risk Assessed by managers – includes specialist areas
5. Decision: Examine v Survey

Large Corporate Compliance (LCC) Program Successor to CIC

- ❖ The LCC program announced in May 2019.
- ❖ Improve case selection
- ❖ 2017 tax year will be included in the LCC audit selection process.
- ❖ CAP is not included in the LCC program.
- ❖ Prior CIC cases will be completed and closed as CIC cases.
- ❖ LB&I case manager and relevant personnel will determine scope
- ❖ Revenue Procedure 94-69

Compliance Programs – CAP & CAP Recalibration

- ❖ August 2016 - Evaluate the CAP program.
- ❖ August 2018 - 2019 CAP year changes announced.
- ❖ June 2019 - 2020 CAP interest solicited via Statements of Interest.
 - 18 Statements of Interest Received
 - Tax Control Framework Questionnaire
 - Review and establish baseline TCF requirements for a CAP taxpayer.
- ❖ September 2019 – Application Period open through October 2019

CAP & CAP Recalibration

- ❖ Centralized risk assessment
 - Resource assessments are a win/win for IRS and taxpayers.
 - Research Credit Questionnaire
 - MITT (Material Interco Transaction Template) Required
- ❖ Implement 1 and 1 (1 open year and 1 unfiled year) criteria but with expanded exceptions.
- ❖ CAP FAQs are online at IRS.gov
- ❖ Acceptance will depend on application volume, suitability, resources, and risk assessment.
- ❖ We welcome your feedback.
lbi.irs.cap.program@irs.gov

Campaigns – 2016 ---> present

- ❖ Transition to issue focused campaigns
- ❖ Capitalize on collective experience
- ❖ Holistic response
- ❖ Campaigns may cover any type of LB&I return. Some are cross-BOD.
- ❖ Over 1,000 campaign suggestions received.
- ❖ Over 50 LB&I Compliance Campaigns announced.
- ❖ Practice units, Lessons learned
- ❖ On-going Announcements
- ❖ Increasing percentage of overall Portfolio.
- ❖ Current focus on TCJA

- ❖ The Global High Wealth group was organized in 2009
- ❖ Enterprise approach.
- ❖ Increasing GHW coverage
- ❖ Increasing Large Partnership and S-corp coverage
- ❖ Form Improvement efforts
- ❖ BBA Implementation – procedural guidance now in place

Implementation Priorities for LB&I

- ❖ Bipartisan Budget Act (2015, effective 2018)
- ❖ Tax Cuts & Jobs Act (2017)
 - Identifying and prioritizing areas of potential non-compliance
 - Audit Currency
 - Comparative analysis – risk assessment
 - Campaigns
 - International Focus
 - LB&I collaboration across all practice areas
- ❖ Taxpayer First Act
 - Changing Landscape in Tax Administration
 - Implementation efforts underway

Key Compliance Issues

- ❖ Syndicated conservation easements
- ❖ Micro-captive insurance
 - Exams, Promoter Investigations
 - Litigation
 - New Settlement Initiative
- ❖ Virtual currency
- ❖ Fraud referrals - Commissioner Rettig announced a new Fraud Referral initiative.

Western Compliance – Key compliance issues

- ❖ Research Credit
 - IRS and taxpayer resources
 - Opportunities to streamline audits – Big Picture
 - Industry based
 - Risk Tools, Risk Review Teams
 - Leverage Research Credit Directive
 - MITRE referral process – review
 - Exit strategies (agreements on methodology)
 - Work with stakeholders (including TEI)
 - Claims
 - Engineer Resources – hiring

Western Compliance – Key Compliance Issues

- ❖ Section 199
 - Claims Campaign Ongoing
 - Areas of Significant Compliance Risk
- ❖ Transfer Pricing
 - Transfer Pricing Examination Process (TPEP) Publication 5300 released in 2019.
 - TTPO working with TEI on improvements
 - Guide to best practices and processes to assist with planning, execution and resolution of Transfer Pricing examinations.
 - Centralized Risk Assessment
- ❖ Repeal of SBC Directive following 9th Cir decision in Altera

Tax certainty and risk assessment

- ❖ Research Credit – Centralized risk assessment in CAP
- ❖ Transfer Pricing – MITT used in CAP and helped improve our selection/deselection of issues.
- ❖ Merger & Acquisition Transactions – Significant deselection of issues
- ❖ Centralized Risk Assessment Cadres

Focus for FY2020

- ❖ Hiring
- ❖ TCJA compliance
- ❖ Improved use of data analytics to improve case selection
- ❖ Training: New Hires, TCJA Guidance
- ❖ Communication/Engagement
- ❖ Improved internal operations including technology

CBA Tax Reform Presentation

Don Murray

November 5, 2019

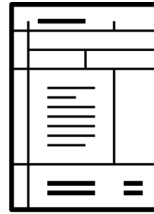


Implementation Updates

- ❖ Guidance



- ❖ Forms & Instructions



Campaign development materials relate to examination selection standards; examination selection standards and the underlying data for determining such standards are protected under the law from disclosure. Access to these materials should be restricted, and in all cases these materials should not be shared beyond anyone that has a need to know.

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Implementation Updates, continued

- ❖ Implementation Risks

- ❖ Compliance Issues



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Training

- ❖ International Overview Training
- ❖ Face to Face Training
- ❖ CBA Revenue Agent Deep Dive Training
- ❖ New Hire Training



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Compliance Planning

- ❖ Overview
- ❖ International Matrix
- ❖ E&P Resources Team
- ❖ Support of CAP Teams



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Independent Office of Appeals

Overview



Appeals' role in IRS

Dispute resolution

The IRS Independent Office of Appeals is an administrative appeal function available to taxpayers. Appeals can review a tax matter after Compliance has made its decision (non-docketed case) or after a taxpayer has petitioned the Tax Court (docketed case)

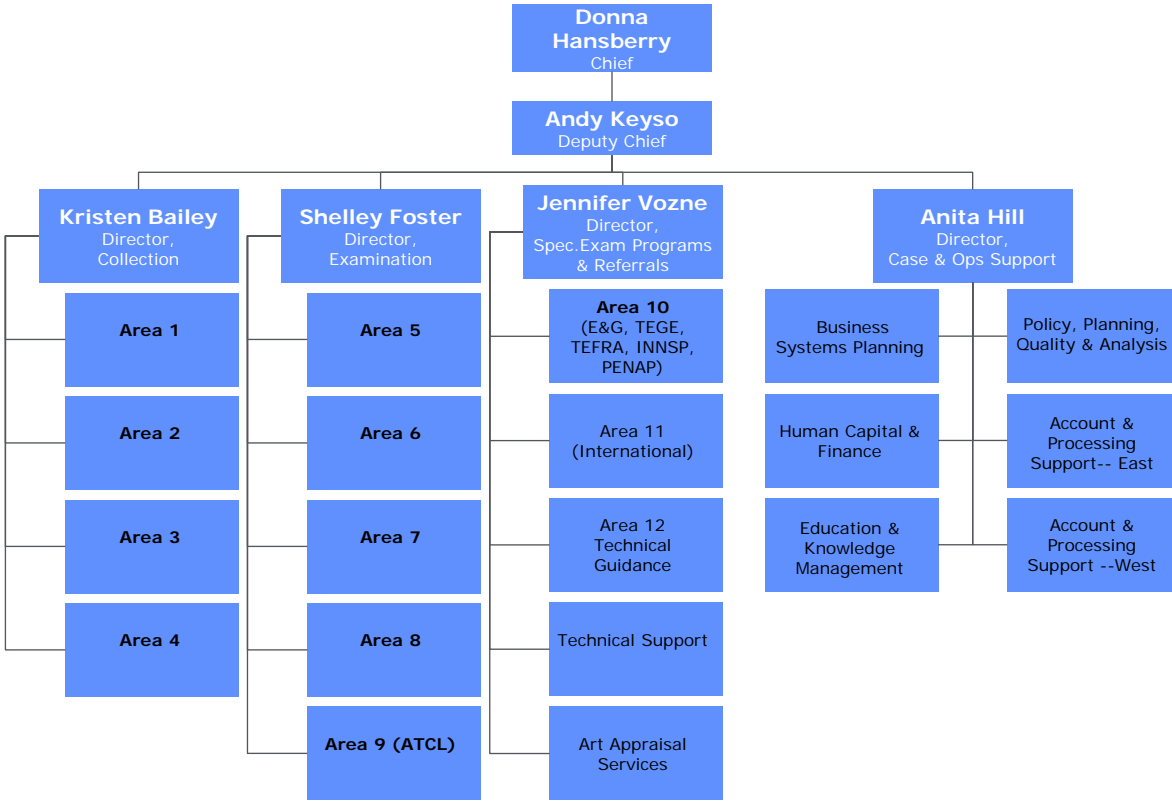
Mission

To resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service

Independence

The independence of the appeals function is mandated by statute and includes the prohibition on ex parte communications between Appeals and other IRS employees to avoid the appearance of improper influence

Appeals' organization



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Receipts by type

Workstream	FY 2017	FY 2018	JUL FY 2019
Collection Due Process (CDP)	37,667	35,168	29,505
Offers in Compromise (OIC)	9,564	8,864	5,676
Innocent Spouse	3,407	2,657	1,378
Penalty Appeals	10,652	8,190	4,726
Coordinated Industry Cases	88	65	35
Industry Cases	955	885	657
Examination	30,657	27,290	20,203
Other	10,584	9,311	6,927
Total	103,574	92,430	69,057

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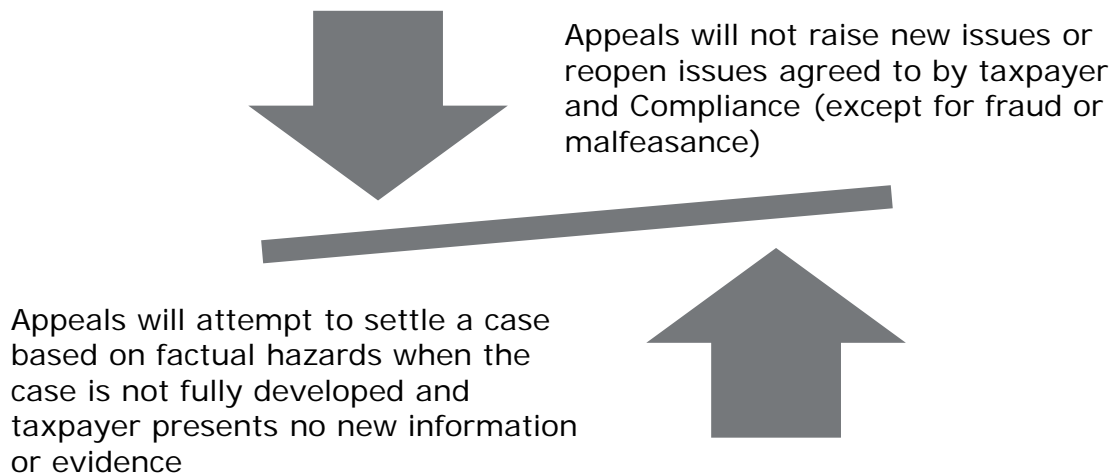
Appeals settlement authority

- Appeals is expressly authorized to enter into settlements that take into consideration hazards of litigation
- A “litigating hazard” is a substantial uncertainty in the event of litigation as to:
 - How the courts would interpret and apply the law
 - What facts the courts would find or
 - The admissibility of or weight that would be given to a specific item of evidence

Appeals must consider probable outcomes to avoid arbitrary settlements

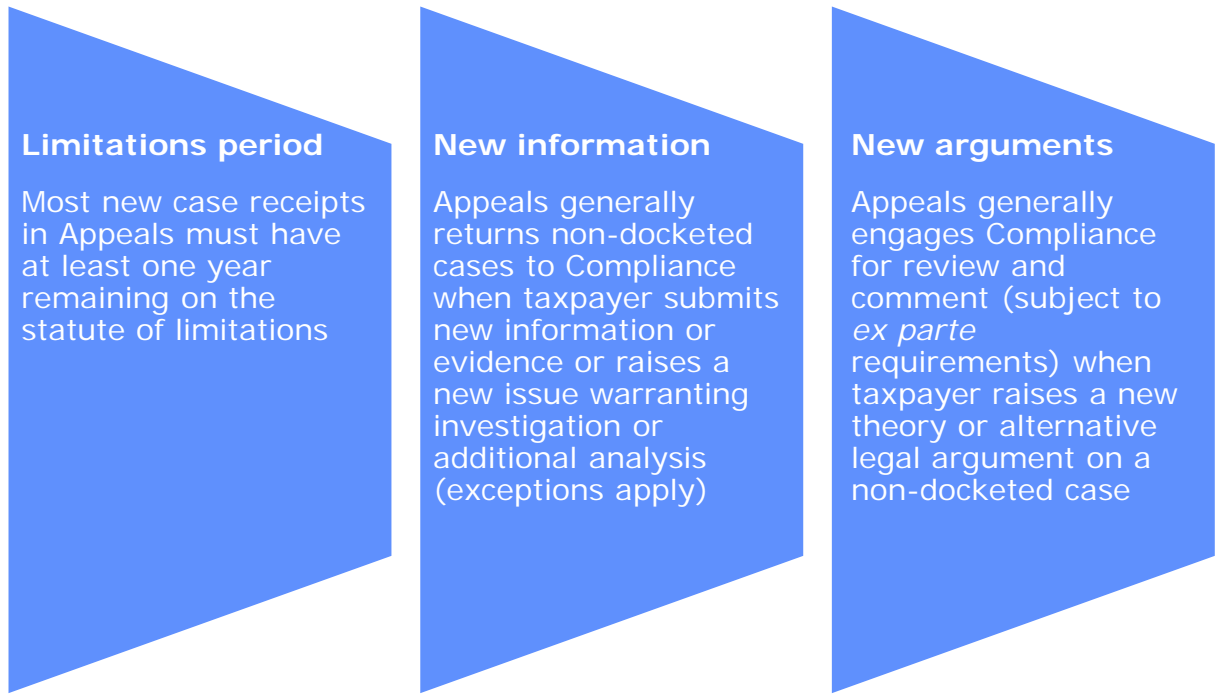
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Independence policies



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Independence policies



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Mediation options

Fast track mediation—collection	Fast track settlement	Rapid appeals process	Post appeals mediation
Voluntary process for OIC and Trust Fund Recovery Penalty (TFRP) cases	Voluntary process for examination cases	Voluntary process for large business and E&G cases	Voluntary process available for exam, OIC and TFRP cases if traditional appeals negotiations fail
Appeals employee serves as mediator and has no settlement authority (hazards of litigation may not be considered)	Appeals employee serves as mediator and may propose settlement based on litigating hazards	After pre-conference, ATCL may suggest mediation between taxpayer and Compliance as an alternative to a traditional conference	Taxpayer may request PAM, but Appeals manager decides if case should get PAM
If no resolution, taxpayer retains traditional appeal rights	If no settlement, taxpayer retains traditional appeal rights	If a RAP is unsuccessful, Compliance leaves and settlement negotiations are conducted between the ATCL and the taxpayer	New Appeals employee serves as mediator between original Appeals employee and taxpayer
			Must use Appeals mediator, but taxpayer may also use non-IRS co-mediators (at own expense)

(Non-docketed cases only)

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Appeals conferences

- **Conference techniques include:**

- Telephone
- In person
- Virtual (WebEx)
- Correspondence

- **In-person conferences**

- Upon request, a taxpayer may obtain an in-person conference; Appeals will use its best efforts to schedule the in-person conference on a date and in a location that is **reasonably convenient for taxpayer and Appeals**
 - Limits apply (e.g., workload, availability of subject matter experts, CDP regulations)

Taxpayer first Act of 2019

Appeals-related provisions:

- Changed name to IRS **Independent** Office of Appeals
- Codified mission statement
- Codified right to an appeal of most IRS determinations
- Codified Appeals' right to legal advice from Chief Counsel
- Guaranteed access to certain contents of administrative case file at least 10 days prior to conference for specified taxpayers
- Required reporting of cases designated for litigation by Chief Counsel

ATCL conferencing initiative—Pilot

- Appeals developed a pilot to test Compliance attendance at conferences in large cases
- Participating Appeals Team Case Leaders (ATCLs) invite Compliance to participate in all of their conferences
 - Approximately 1/3rd of ATCLs are participating in pilot
 - Taxpayers cannot opt out
 - Compliance does not attend settlement negotiations
 - Pilot is being extended for an additional year
- External participants will be surveyed by an outside contractor
- Appeals will post an outline of practices used in the pilot to www.irs.gov

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Questions?

