

Extension of Test of Arbitration Procedure for Appeals

Announcement 2002-60

SUMMARY: This document modifies and extends the test of the arbitration procedure set forth in Announcement 2000-4, 2000-1 C.B. 317, for an additional one-year period beginning on July 1, 2002, the date this announcement is published in the Internal Revenue Bulletin.

This procedure allows taxpayers to request binding arbitration for **factual** issues that are already in the Appeals process. Under the procedure set forth in Announcement 2000-4, the taxpayer and Appeals must first attempt to negotiate a settlement. If those negotiations are unsuccessful, the taxpayer and Appeals may jointly request binding arbitration.

BACKGROUND: Appeals concluded a two-year test of the arbitration procedure on January 17, 2002. During this period, Appeals received five requests for arbitration, four of which Appeals approved. The arbitration program is consistent with IRS' efforts to improve tax administration, provide customer service, and reduce taxpayer burden. During the additional one-year test period, Appeals will seek additional cases for arbitration to further evaluate the program.

CHANGES: Changes to Announcement 2000-4 made by this announcement include:

- Issues involving the substantiation of expenses under § 162 of the Internal Revenue Code, Trade or Business Expenses, or § 274, Disallowance of Certain Entertainment, Etc., Expenses, are now eligible for arbitration.

- Arbitration is now available for an issue for which the taxpayer intends to seek competent authority assistance, provided a request for competent authority assistance has not as yet been filed. In such a case, the taxpayer may not request competent authority assistance until the arbitration process is completed. However, competent authority assistance may be requested while arbitration is pending if such request is necessary to keep open a statute of limitations in the treaty country. In such a case, the U.S. competent authority will suspend action on the case until arbitration is completed. Arbitration is not available for an issue for which the taxpayer has requested competent authority assistance or the simultaneous Appeals/Competent Authority procedure described in section 8 of Rev. Proc. 96-13, 1996-1 C.B. 616, or any subsequent revenue procedure. **Taxpayers are cautioned that if they enter into a settlement with Appeals (including an Appeals settlement through the arbitration process), and then request competent authority assistance, the U.S. competent authority will endeavor only to obtain a correlative adjustment with the treaty country and will not take any actions that would otherwise amend the settlement. See section 7.05, Rev. Proc. 96-13.**
- The arbitration procedure now includes the following express timelines to complete the agreement to arbitrate and proceed to arbitration. Generally, it is expected that the parties will complete the agreement to arbitrate within four weeks after the taxpayer is notified that Appeals has approved the arbitration request, and proceed to arbitration within 90 days after signing the agreement to arbitrate. A taxpayer's inability to adhere to these timeframes, without reasonable cause, may result in Appeals' withdrawal from the arbitration process.
- The arbitration procedure excludes Collection cases.
- The arbitration procedure excludes issues for which arbitration would not be consistent with sound tax administration, e.g. issues governed by closing agreements, by *res judicata*, or controlling Supreme Court precedent.

- The arbitration procedure excludes frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2001–41, 2001–33 I.R.B.173.
- The arbitration procedure excludes cases where the taxpayer did not act in good faith during settlement negotia-

tions, *e.g.*, failure to respond to document requests, failure to respond timely to offers to settle, failure to address arguments and precedents raised by Appeals.

- Since the publication of Announcement 2000–4, Appeals has reorganized its

staffing. Therefore, position and office titles in Announcement 2000–4 are substituted as follows, along with an updated mailing address for Headquarters Appeals:

Position Title Changes

Old
National Director of Appeals
Assistant Regional Director of Appeals (ARDA-LC)

New
National Chief, Appeals
Area Director

Appeals Associate Chief

Appeals Team Manager

Appeals Team Chief

Appeals Team Case Leader

Office Title Changes

Old
National Director of Appeals
Attn: C:AP:ADR&CS
1099 14th Street, N.W.
Suite 4200 - East
Washington, DC 20005

New
National Chief, Appeals
Attn: Appeals Large Business and Specialty Programs - Operations
1099 14th Street, N.W.
Suite 4200 - East
Washington, DC 20005

National Office Appeals

Headquarters Appeals

Appeals Region

Appeals Area

Office of Alternative Dispute Resolution and Customer Service Programs

Appeals Large Business and Specialty Programs - Operations

In addition to the above changes, responsibility for the management of the Appeals arbitration program has been transferred from the Office of Alternative Dispute Resolution and Customer Service Programs to Appeals Large Business and Specialty Programs - Operations.

EFFECTIVE DATE: This procedure is effective July 1, 2002, the date this announcement is published in the Internal Revenue Bulletin.

EFFECT ON OTHER DOCUMENTS: This announcement modifies and extends the test of the arbitration procedure set forth in Announcement 2000–4.

DRAFTING INFORMATION: The principal author of this announcement is Sandy Cohen, of the office of Appeals Large Business and Specialty Programs - Operations, Headquarters Appeals. For further information regarding this announcement, contact Mr. Cohen at (202) 694–1818 (not a toll-free call).