

IRS Appeals and Writing an Effective Protest

At exam or in collections, the IRS may not be willing to agree to an acceptable resolution for the taxpayer. Have no fear, because IRS Appeals is here!

When the IRS issues a notice that proposes certain actions—such as changes to a tax return or collection activity—the taxpayer may be entitled to request an Appeals conference. Although sometimes the taxpayer alternatively may seek a remedy in court, Appeals is a less formal and typically far less costly forum to resolve disputes between the taxpayer and the IRS. Moreover, a taxpayer does not relinquish the right to pursue a remedy in court by taking a case to Appeals.

Here is Appeals' mission statement:

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.

IRS Appeals proudly boasts independence as a core value. Appeals offers a fresh, objective, and impartial perspective, and provides taxpayers a fair hearing that would otherwise often inefficiently clog up a court's and taxpayer's time and resources.

To take a case to Appeals, the taxpayer must protest in writing the IRS' proposed action. An effectively drafted protest sets the stage for obtaining a fair and desired result.

Over the last few years, the Appeals Judicial Approach and Culture (AJAC) project has implemented policy changes for IRS Appeals to more effectively bifurcate IRS compliance functions and the role of Appeals. The policies are aimed for IRS compliance functions to serve as finders of fact and for Appeals to not take investigative actions but instead resolve cases.

When drafting a protest, a taxpayer must be specific in his appeal of the tax items in dispute. The introduction of new information in Appeals may result in Appeals releasing jurisdiction on the case and returning the file to compliance.

The IRS website states to include all of the following in a written protest:

- Your name, address, and a daytime telephone number.
- A statement that you want to appeal the IRS findings to the Office of Appeals.
- A copy of the letter you received that shows the proposed change(s).
- The tax period(s) or year(s) involved.
- A list of each proposed item with which you disagree.
- The reason(s) you disagree with each item.
- The facts that support your position on each item.
- The law or authority, if any, that supports your position on each item.
- The penalties of perjury statement as follows: "Under the penalties of perjury, I declare that the facts stated in this protest and any accompanying documents are true, correct, and complete to the best of my knowledge and belief."
- Your signature under the penalties of perjury statement.

Practice Tip: In general, the protest letter should reflect the writing style of the IRS. The goal is for the reader to have the impression the writer is seasoned and has command of the content. A few style tips:

Capitalize “T” for “Taxpayer when referring to the client”; cite authority according to the *Bluebook*; and use lowercase “s” for section unless it starts a sentence.

A protest letter should contain headings to address each of the items required, as listed above. We will focus on some of the important items through an example. Suppose an IRS examiner proposes to disallow a deduction for mortgage interest claimed on Schedule A.

A list of each proposed item with which you disagree

An effective protest should have a separate sentence for each item in dispute. Each sentence should state that the taxpayer protests the proposed action. For example:

The Taxpayer disagrees with the IRS proposal to disallow the paid mortgage interest claimed on the Taxpayer’s 2014 Form 1040, Schedule A.

The facts

This item represents the taxpayer’s opportunity to highlight favorable facts and downplay unfavorable facts, if any. This section should read like a story. The story should leave the reader with not only an understanding of the facts but also an initial impression that the taxpayer’s position is correct. For example:

The Taxpayer purchased property on [DD/MM/YYYY]. The taxpayer financed the purchase with a mortgage in the amount of \$x, with payments of \$y/month, beginning on [DD/MM/YYYY]. The taxpayer timely made the mortgage payments every month in 2014. The total mortgage interest paid during 2014 was \$z.

Discuss the law

The protest should highlight favorable law. If there is unfavorable law, the protest may mention components of the law that are distinguishable from the issue under protest. Depending on the issues involved, the discussion of law could include a combination of statutes, regulations, case law, or secondary material. For example:

In general, section 163(a) of the Internal Revenue Code allows a taxpayer to deduct all interest paid or accrued within the taxable year of indebtedness.

Apply the law to the facts

After authority is discussed, the protest should analogize favorable authority to the taxpayer’s items in dispute. This section is the primary opportunity for the taxpayer to explain why the law, as applied to the taxpayer’s facts, clearly demonstrates the taxpayer’s position is correct and the IRS’ position is not. For example:

Here, the taxpayer is clearly entitled to deduct mortgage interest paid in 2014. During 2014, the taxpayer made total mortgage payments of \$x, with total interest paid of \$z. Section 163(a) clearly allows the taxpayer to deduct \$z on Schedule A.

Practice Tip: When there are several items in dispute, it may be helpful to address the meatier sections of the protest letter first with an outline of the issues and arguments to generate an initial structure, followed by developing paragraphs for each issue. Save editing and proofreading for last.

Failure to exhaust administrative remedies

If a taxpayer bypasses Appeals and seeks to litigate in U.S. Tax Court, the court may nevertheless first reroute the case to Appeals in an effort to have the taxpayer and IRS resolve the case before going to

trial. The court is most grateful when docketed cases reach a resolution in Appeals. The court may not look favorably upon a taxpayer's refusal to at least attempt to utilize Appeals. Additionally, taxpayers that bypass Appeals cannot recover costs of litigation.

Conclusion

Draft a strong conclusion in a short paragraph that states the relief sought and why the taxpayer is entitled to the relief.

IRS Appeals is a great forum for a taxpayer to resolve disputes. Drafting a persuasive protest letter is a critical step towards achieving the desired result.