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IRS Appeals Conferences During the Pandemic

The Expert: Bill Colgin

A few months after COVID-19 closed Internal Revenue Service buildings and employees were sent home to work remotely, the reality of a backlog of pending matters led IRS Appeals to awaken and move forward again. Appeals officers, Exam teams, and taxpayer representatives tentatively began holding Appeals conferences and meetings using Webex and recently ZoomGov, the approved online video conferencing platforms for IRS Appeals. A growing familiarity with remote working, paired with the availability of online video and screen-sharing platforms, resulted in unexpectedly fruitful Appeals processes for taxpayers during the pandemic.

Question: How has the IRS Appeals process changed during the pandemic?

In-person IRS Appeals conferences, a fixture of large-case issues, were canceled overnight. The extinction of in-person meetings happened at a time when online platform solutions and improving at-home internet bandwidth allowed for large-scale use of effective tools for remote work and virtual communication. Many of us had used online platforms for years and shared best practices with others from the beginning. Necessity led to accelerated competency. Presentations, debate, and negotiations quickly adapted to screen sharing and video conversations in virtual IRS Appeals conferences. We lost the ability to read the nonverbal cues of the audience in the room. We gained the ability for one person to speak at a time and the ability to focus all participants on specific statements in documents, rows on spreadsheets, and regulatory provisions through screen sharing. We also no longer needed to coordinate in-person meetings that called for people to travel from many locations. Everyone participated from a location of choice, eliminating the need for travel, at least for the time being. Conference calls, long the preferred alternative to travel and in-person meetings, slowed to a trickle but also became a polite way to preemptively decline having to show up on video.

IRS Appeals Teams and Taxpayers' Representatives Went Digital

Many government and private buildings closed off access to offices and files in offices. Although many had long ago converted to digital files, those holding out no longer had a choice. Unlike in pre-pandemic times, nearly everyone now seemed to have immediate access to digital documents during online conferences and meetings. Such ready access to digital documents heightened the point/counterpoint discourse and allowed ready screen access to controlling statutes and regulations.

Funny and Not-So-Funny Things Happened Online

An unexpected power outage at my house caused me to disappear from a meeting with about twenty people during the beginning of my video presentation, scheduled to last several hours. The temporary outage lasted just long enough to cause my wireless internet to reboot, costing me about ten minutes to get everything back online and into the meeting.

Not everyone got the memo about best practices for the professional online environment. Echoing microphones, bad lighting, and unpleasant background noises all pale in comparison to the mute button fiascos we all experienced. Webex puts a speaker's video onscreen when activated by the speaker's voice, but it also can put the video onscreen of anyone making noises not intended for the viewing audience. No discussion of online snafus would be complete without reference to the hilarity of the viral video of the lawyer

appearing at a hearing in the guise of an animated kitty cat, unable to remove the Zoom filter by himself. Fortunately, online meeting competencies have improved, and meetings are generally streamlined.

What Will Appeals Look Like After the Pandemic?

In-person conferences with Appeals are currently unavailable, with no date announced for their return. Taxpayers currently have two choices for Appeals conferences, phone or virtual. The virtual platform is a clear choice for presenting and negotiating any issue of consequence. The IRS has made it clear that in-person conferences will be allowed again in the future but that virtual platforms will continue to be an alternative to in-person and phone conferences. Many issues will need to be resolved before in-person conferences can resume, such as whether masks or vaccine passports will be required.

IRS Appeals currently restricts the tools available on the online platforms. Video, document sharing, and chat features are permitted. But Appeals does not allow features that record a conference or transfer electronic files through the platform. The protocols for emailing information to Appeals have become more flexible, and the wide availability of file-sharing applications enables efficient transfer of large volumes of documents. Technology has advanced the efficiency of the Appeals process and will continue to do so.

The structure of the virtual large-case Appeals process will still begin with a taxpayer protest, a rebuttal from Exam, an opening conference, and negotiations. During the pandemic, the IRS announced the end of the controversial Appeals Pilot Program that allowed Exam to be present during the taxpayer's presentation to Appeals. I have had several Appeals meetings within this program. My experiences, like those of many others, have not been positive. During in-person presentations, I've been interrupted by arguments, seen rolling eyes and other nonverbal reactions, and heard disgruntled whispering that included unprofessional comments about the taxpayer. These disruptions often stop the presentation and impair the engagement of everyone in the room. Virtual conferences have decreased the effect of these behaviors, but the purported benefits of the Pilot Program never materialized in any of the conferences I attended, whether virtual or in-person. I share the views of others that the process floated in the Pilot Program should be abandoned for good.

Post-Pandemic Best Practices Before Appeals, In-Person and Virtual

The importance of preparation for conferences and negotiations with Appeals is no secret. The primary goal is simply to present a credible and clear position

and negotiate a concession or otherwise favorable result. Appeals teams freely disclose that their settlement rubric is driven by litigation hazards and, in my experience, that rubric has been observed with few exceptions. Accordingly, a large part of preparation is developing a powerful explanation of litigation hazards the IRS faces. Preparation to explain litigation hazards takes time, thought, collaboration, and judgment. Rarely if ever are bombast and table-pounding effective ways to explain litigation hazards or substitutes for preparation. Preparation for virtual conferences requires adapting the process for in-person conferences. PowerPoint slides tend to be the usual centerpiece of Appeals conference presentations, whether virtual or in-person. The virtual environment can be more powerful than the in-person environment to direct everyone's attention to a specific regulation, a passage in an intercompany agreement, or a row on a spreadsheet. Having control of the screen with an engaged audience can eliminate many distractions of in-person conferences. For example, key regulatory provisions can be highlighted in a document in the context of the surrounding language of a regulation, and multiple regulatory provisions are easily navigable on the screen using bookmarks. Spreadsheets can be toggled or pivot tables used to drill down to answer questions and make points. Demonstrative aids such as videos and charts have become a regular tool for presentations. A virtual conference is most effective with the presenter's camera on and the presenter well lit and making direct eye contact with the camera when possible. In-person conferences are likely to continue as the preferred choice, but virtual conferences are a close second. Choosing between in-person conferences with masks and virtual conferences with video is much harder.

Some of these tools have been widely adopted in courtrooms outfitted with technology, allowing onscreen exhibits to be used effectively with in-person proceedings. However, conference rooms for in-person Appeals conferences typically do not have such technologies; often they lack even an LCD projector. The virtual environment creates uniform opportunity for presentations that combine the tools discussed above without the annoying background hum of the exhaust fan from a conference table projector as it blows hot air at meeting participants.

It's hard to predict when we will operate in the post-pandemic environment. For those willing to change their old ways and adapt, virtual Appeals conferences are likely to continue to be a valuable tool in a post-pandemic world. ♦



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