

IRS Taking Twice As Long To Close Appeals Cases, Data Shows

By Joshua Rosenberg

Law360 (May 13, 2022, 3:40 PM EDT) -- It took the Internal Revenue Service nearly twice as long to close out appeals cases in fiscal year 2021 compared with the agency's progress in fiscal year 2018, according to data an IRS official shared Friday.

The speed at which the agency closed nondocketed appeals cases languished to 372 days on average in 2021, according to statistics that Andy Keyso, head of the Independent Office of Appeals, shared at the American Bar Association Section of Taxation's May meeting, held in person in Washington, D.C., and online. That rate, the agency's so-called cycle time, was 194 days on average in fiscal year 2018 for nondocketed cases, or those that hadn't been filed in the U.S. Tax Court.

"I'm troubled by the increase in cycle time, but I'm not defeated by it," Keyso said at the conference. "I believe that it is reversible, and we will reverse it here as we get people back into the offices."

The delay in processing appeals cases can largely be attributed to two phenomena outside the agency's control, Keyso said. There was the 35-day government shutdown that ended in January 2019 and the coronavirus pandemic that rocked the agency and the country beginning in March 2020.

In a review of the data, it becomes clear that the delays are not the result of appeals officers taking longer to work cases, Keyso said, but instead are a result of a bottleneck in the system involving the cases' workflows.

"When you analyze the hours people are spending on their cases and the actions that are causing the delay, you can see how it really is that the delay is caused by the movement of the case and the difficulties there," he said.

The workflow bottleneck should be alleviated when agency employees return to their workplaces en masse, Keyso said. That transition should be completed by the end of June, according to agency officials.

Still, the delays have caused frustration for taxpayers and their representatives, Jennifer Breen, partner at Morgan Lewis & Bockius said during the panel discussion, who noted that in her experience, it's taking the agency even longer than a year to close cases. For instance, the agency still hasn't resolved a series of protests that were filed in 2019, Breen said.

"I think some of the delay we have to attribute to exam because oftentimes, they're not available to schedule," Breen said, referring to examination personnel. "But I think that we have to figure out a way

to get that cycle time down, because I think it's perpetuating some of these controversies."

Asked for comment, an IRS spokesperson relayed a message from Keyso, stating that as he mentioned during the panel discussion, the cycle time delay is attributable to the pandemic and will be reduced when appellate personnel return to the office setting.

--Editing by Neil Cohen.

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