

The background features a dark blue gradient with numerous vertical lines of varying heights and colors (blue, purple, red, green) that appear to glow. At the bottom, there is a series of wavy, horizontal lines that create a sense of depth and movement, resembling a digital landscape or data visualization.

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The New Normal of IRS Virtual Appeals Conferences: Practical Tips and Best Practices

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Overview

- The Office of Appeals has recently undergone several changes and for various reasons, taxpayer perception of Appeals' independence has eroded.
- For years the IRS encouraged virtual appeals conferences. And for years, taxpayers resisted. The COVID-19 pandemic has changed all that.
- Now, the IRS and taxpayers alike find themselves in a virtual setting because in-person conferences with the IRS Independent Office of Appeals have been suspended "until further notice."
- We will discuss best practices to help make the most of your virtual appeals conference, as well as provide an overview of the pros and cons of the virtual setting.

Agenda

- What's Happened in Appeals Since 2019?
 - IRS Ends the Appeals Conference Pilot Program
 - Congress Passes the Taxpayer First Act
 - COVID-19 Shuts Down the IRS and Taxpayers Alike
- Virtual Appeals Conferences
 - Best Practices
 - Pros and Cons of a Virtual Appeals Conference
- What's Next?

Appeals Conference Pilot Program Ends

- On May 1, 2017, Appeals began a two-year pilot program under which ATCLs invited LB&I compliance personnel and their counsel to participate in the non-settlement portion of appeals conferences.
- In May 2019, Appeals extended the pilot program for one additional year and the program completed on May 1, 2020.
- The pilot program was widely criticized by taxpayers.
 - Exam’s mandatory participation jeopardized both the real and perceived independence of Appeals.
 - The pilot program acted as a form of forced mediation.
 - ATCLs did not conduct conferences under one set of rules and guidelines were not followed.
- Appeals collected feedback on the pilot program and currently has no plans to roll out the program again.

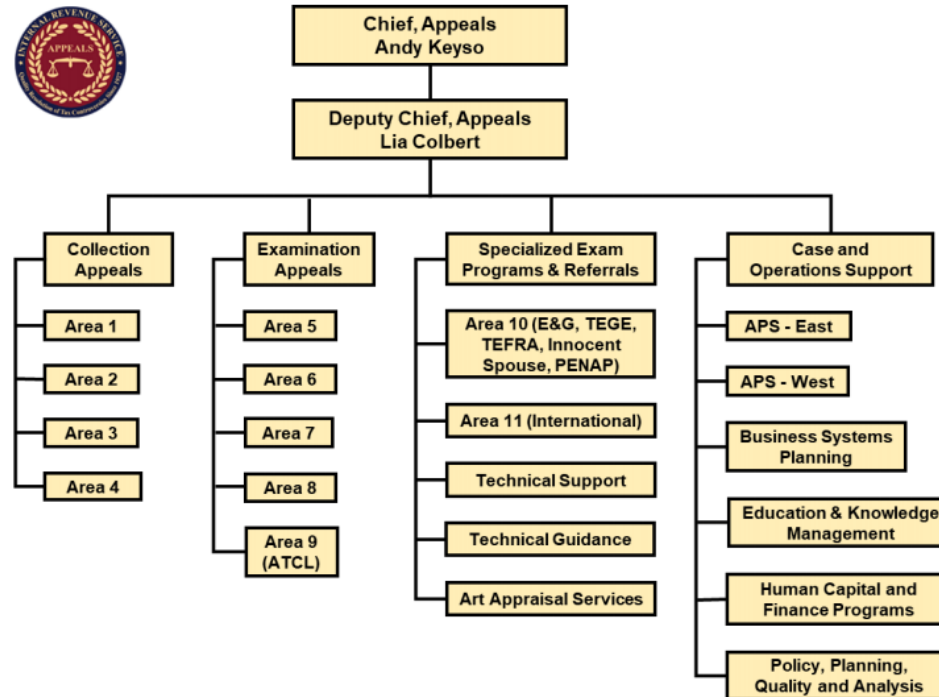
Congress Passes the Taxpayer First Act

- The Taxpayer First Act, enacted in July 2019, added section 7803(e) to the IRC and established the “Internal Revenue Service Independent Office of Appeals,” which is under the supervision and direction of the “Chief of Appeals.”
- Section 7803(e)(3) codifies Appeals’ mission and charges it to resolve controversies without litigation on a fair and impartial basis.
- Section 7803(e)(4) provides that the appeals process “shall be generally available to all taxpayers.”
 - Not all disputes must be referred to Appeals. *See* Rev. Proc. 2016-22, Sec. 3.03. However, section 7805(e)(5) provides certain taxpayers with a process to protest the IRS’ decision to deny access to Appeals.
- On February 5, 2021, the IRS named Heather Maloy to the position of Director, Taxpayer First Act Office. Heather will report directly to the IRS Commissioner in her new role.
- Appeals also recently created a new position: Senior Advisor to the Chief of Appeals.

If We Have To Say “Independent” Office of Appeals, Isn’t There a Problem?

- There is a difference between taxpayer perception of Appeals’ independence and reality.
- Taxpayers have expressed concerns about whether they received a truly independent and impartial “second look” by Appeals because of:
 - Inconsistent experiences with Appeals.
 - Appeals’ inclusion of compliance personnel and their counsel in the conferences.

IRS Independent Office of Appeals



COVID-19 and Shut Down of Appeals

- On March 24, 2020, the IRS announced that all mission-critical operations would continue, but all in-person assistance would be temporarily suspended.
- On March 25, 2020, the IRS issued IR 2020-59, the “People First Initiative.”
 - Appeals continued to work cases, but it discontinued all in-person conferences.
- The suspension of in-person conferences has continued to date and will continue until further notice.
- All appeals conferences are conducted by telephone or by videoconference (which was first offered to taxpayers in 2017).

Virtual Appeals Conference Timeline

August 2017

Appeals launches a virtual service delivery pilot program offering taxpayers a web-based virtual conference option.

March 2020

Due to the COVID-19 pandemic, Appeals suspends holding in-person conferences.

Appeals conferences only held over the telephone or by videoconference.

July 2020

IRS announces that over the past several months Appeals suspended taxpayers' cases if they requested an in-person conference.

For nondocketed cases, Appeals will generally continue to suspend cases.

**July 2020
(cont.)**

For docketed cases in Appeals' jurisdiction, because the Tax Court has begun scheduling virtual trials, Appeals will begin scheduling telephone or virtual conferences with taxpayers.

August 2020

Appeals no longer suspending nondocketed cases due to a taxpayer's request for an in-person conference.

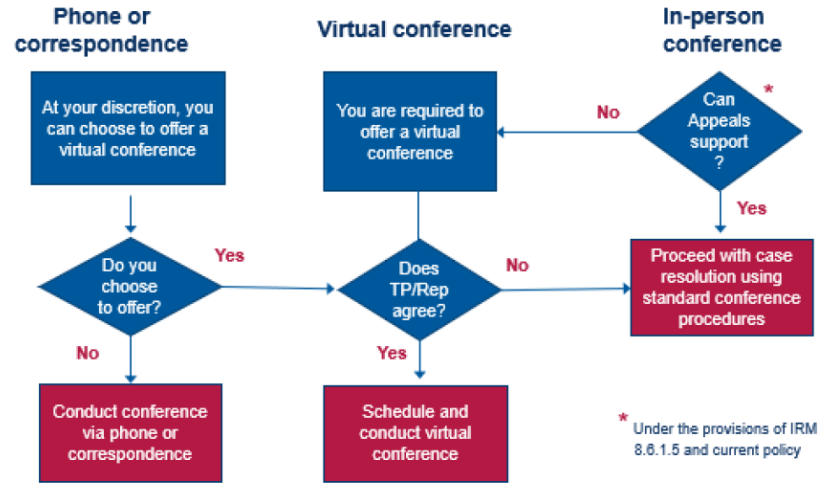
November 2020

Appeals will not resume conducting any in-person conferences until further notice.

Appeals will continue to conduct conferences by telephone or by videoconference.

Is Appeals Required to Offer a Virtual Conference?

- On March 22, 2021, Appeals issued guidance to its employees about the required use of virtual conferences.
- Appeals is required to offer a virtual conference if the taxpayer requests an in-person or virtual conference.

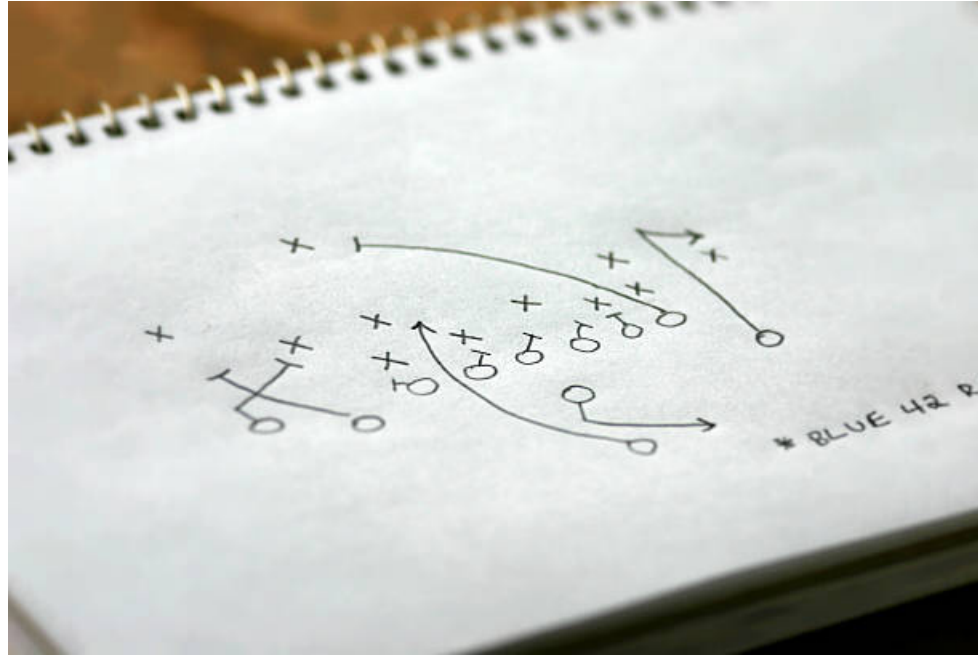




Best Practices to Ensure a Smooth Virtual Appeals Conference

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1. Establish Rules of the Road with Appeals



Establish Rules of the Road with Appeals

- Establish rapport with the ATCL and discuss scheduling of conferences and pre-conferences.
- Consider timing for the delivery of materials to Appeals and the provision of each party's materials to the other party.
- Discuss who will be attending the conference from Appeals and Exam.
- Ask Appeals to start the conference 15-30 minutes before the scheduled start time and to create a back-up plan in the likely event of technical issues with WebEx or ZoomGov.
- Ask the ATCL to instruct all parties to join the conference via video.
 - A video conference is supposed to enable taxpayers to meet "face-to-face" with Appeals.
- Ensure that discussions with Exam do not bleed into substantive settlement discussions with Appeals.

2. Consider the Medium for Presentation as You Develop Materials



Consider the Medium for Presentation as You Develop Materials

- A virtual conference may call for a different approach than a classic in-person appeals presentation.
 - The virtual setting makes it more difficult to read body language the way you can in person.
 - Holding attendees' attention virtually often for 8 hour meetings, may require a different approach from the typical setting where just one spokesperson speaks from a slide deck.
- Consider the inclusion of business unit executives to provide the factual portion of the presentation, if appropriate.
- Use graphics, consider breaking the presentation down into parts to allow for mini-breaks throughout and sharing presentation responsibilities among more than one speaker.

3. Undertake Testing of Technology in Advance and Create a Back-up Plan



Undertake Testing of Technology in Advance and Create a Back-up Plan

- Ask Appeals to conduct a practice session to identify any issues before the conference.
- Practice using the selected platform before the conference to ensure that all participants are familiar with the application.
- Be sure to REMOVE any preset filters. If you select a filter, choose one that is not distracting.
- Make sure you understand how and the best way to share the documents (share application versus share screen).
- Dial-into the selected platform instead of using computer audio because you will not be disconnected from the conference if your internet connection is interrupted.

4. Organize Materials for Ease of Presentation



Organize Materials for Ease of Presentation

- Plan for who will take the lead in controlling the slide presentation.
- If using PDF or other documentary exhibits, organize them all for easy access.
- Be sure that Appeals has all relevant documents as so they can refer back to them easily, and remember AJAC (Appeals Judicial Approach and Culture).

5. Manage Your Logistics



Manage Your Logistics

- Consider a mechanism to confer with your team behind the scenes to ensure you don't talk over each other or miss making an important point.
- Assign a point person to handle technical issues and communicate with participants who will be joining at a later point in the proceeding, such as a witness or tax return preparer.
- If you have multiple witnesses, time their presentation and establish a schedule for when they will join and leave the conference to minimize the number of participants on the selected platform at any given time.
- Build in time for mini-breaks during the presentation.

Pros and Cons of a Virtual Appeals Conference

Pros

- Allows taxpayers to be seen and heard and to share documents in real time
- Permits Appeals to evaluate credibility of the evidence from both the taxpayer and exam
- Saves taxpayers and the IRS time and travel expenses
- Permits taxpayers to get face-to-face service from anywhere the parties have internet access
- Ensures engagement and facilitates communication more effectively than a teleconference

Cons

- Technical issues, i.e., a slow internet connection can result in the loss/interruption of audio and visual functionality
- Difficult to read body language the way you can in person
- Exam and Appeals personnel may not join by video
- Holding attendees' attention virtually can often be difficult
- May not be as effective as in-person communications
- Difficult to coordinate schedules and negotiate remotely

Are Virtual Conferences the Wave of the Future?



“Regardless of the miracles of automation, our type of tax system cannot operate effectively without the human element.”

Mortimer Caplin, Former IRS Commissioner



“Virtual conferences will not be for everyone – I want to be clear about that.” “Virtual conference is just one additional way in which taxpayers and representatives can interface with . . . Appeals.”

Former IRS Appeals Chief Donna Hansberry



“It’s a lot easier to say no to somebody over the phone than when you’re in person.”

July 7, 2020 TEI webinar (Andrew R. Roberson, McDermott Will & Emory, conversation with an IRS Appeals officer)

Conclusion

- Appeals needs to restore taxpayer confidence in the appeals process by providing greater consistency in taxpayer experiences and by limiting the involvement of compliance personnel and their counsel in appeals conferences.
- The virtual setting has highlighted the importance of engaging experienced advisors who can navigate the appeals process and persuasively present the facts and law to Appeals.
- BE FLEXIBLE, enjoy not traveling for the conference and wearing slippers (but still dress for this conference just as you would for an in-person conference).

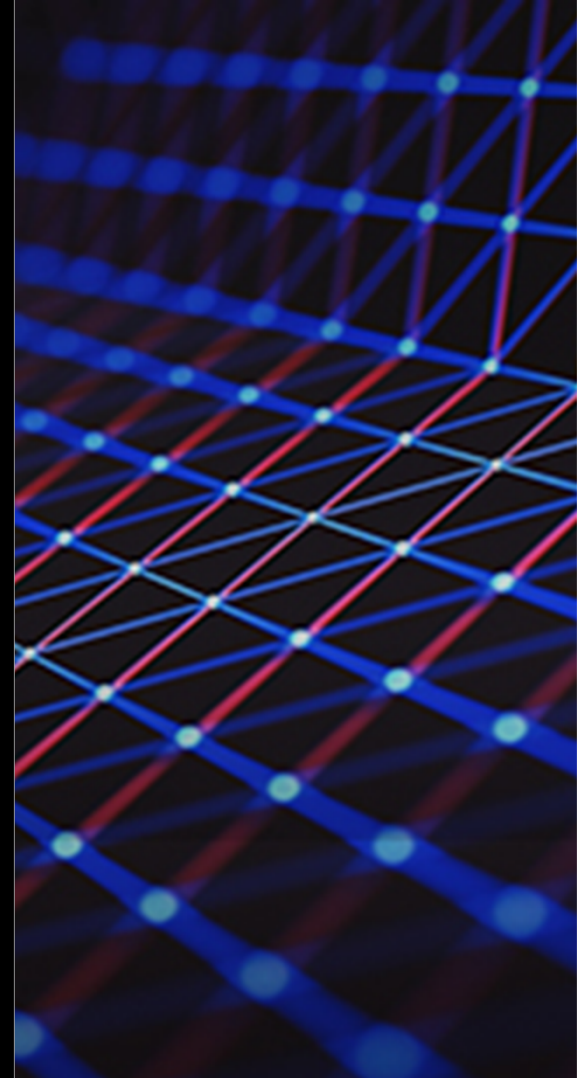
Coronavirus COVID-19 Resources

We have formed a multidisciplinary **Coronavirus/COVID-19 Task Force** to help guide clients through the broad scope of legal issues brought on by this public health challenge.

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To help keep you on top of developments as they unfold, we also have launched a resource page on our website at www.morganlewis.com/topics/coronavirus-covid-19

If you would like to receive a daily digest of all new updates to the page, please visit the resource page to [subscribe](#) using the purple “Stay Up to Date” button.



Biography



Sheri A. Dillon

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Sheri Dillon focuses on federal tax controversy matters, guiding clients through IRS examinations and appeals, the administrative claims process, and litigation. Sheri also counsels clients on a variety of tax-planning matters that involve acquisitions, dispositions, combinations, and debt restructuring and reorganizations, with a special focus on partnership transactions and closely held businesses.

Sheri has tax litigation experience and has appeared before the US Tax Court, US district and appellate courts, and the US Court of Federal Claims. She represents corporate taxpayers, Tax Equity and Fiscal Responsibility Act (TEFRA) and Bipartisan Budget Act partnerships, partners, tax-exempt organizations, and global, high-wealth taxpayers in the financial services, private equity, real estate, energy, manufacturing, and consumer products industries.

Sheri is an active speaker who regularly presents on current tax issues at various professional organizations, including the Tax Executives Institute, the Federal Bar Association, the American Bar Association Section of Taxation, and the DC Bar Section of Taxation. She previously taught partnership taxation at Catholic University of America's Columbus School of Law and helped launch the University of the District of Columbia, David A. Clarke School of Law's Low-Income Taxpayer Clinic, a program dedicated to providing legal services to low-income taxpayers. Sheri currently serves as a director and president of the Washington, DC Center for Public Interest Tax Law, whose mission is to provide pro bono tax services to the greater DC community.

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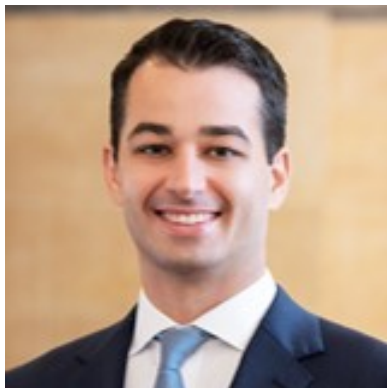
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Jennifer Breen concentrates her practice on tax controversy and planning matters, with an emphasis on audits and controversies and Internal Revenue Service (IRS) administrative proceedings. Jennifer routinely handles matters involving US federal income tax, foreign tax, state and local corporate and business tax, and sales and use tax. She has experience representing major corporations, partnerships, S corporations, and individuals in resolving domestic and international compliance and controversy issues before the IRS.

Prior to joining Morgan Lewis, Jennifer served as director of tax controversy at Mattel, Inc., where she developed and executed audit strategies, responded to information requests from respective tax authorities, and negotiated and resolved controversy matters. She was also responsible for accounting for income taxes under ASC 740, managing the company's global reportable transaction compliance, and ensuring compliance under the Foreign Account Tax Compliance Act.

Jennifer also served as director of tax controversy and regulatory services at PricewaterhouseCoopers LLP for more than seven years. She began her legal career as a lawyer with the IRS Office of Chief Counsel in Washington, DC, where she represented the IRS before the US Tax Court and advised on issues relating to practice and procedure.

Biography



Eric Albers-Fiedler focuses his practice on federal tax controversy matters. Eric represents clients before the US Tax Court and the Internal Revenue Service, aiding them with IRS examinations, ruling requests, and other administrative proceedings.

Prior to joining Morgan Lewis, he served as a legal intern to Judge James S. Halpern of the US Tax Court and spent five years in the tax practice of Ernst & Young LLP. Eric is a Certified Public Accountant.

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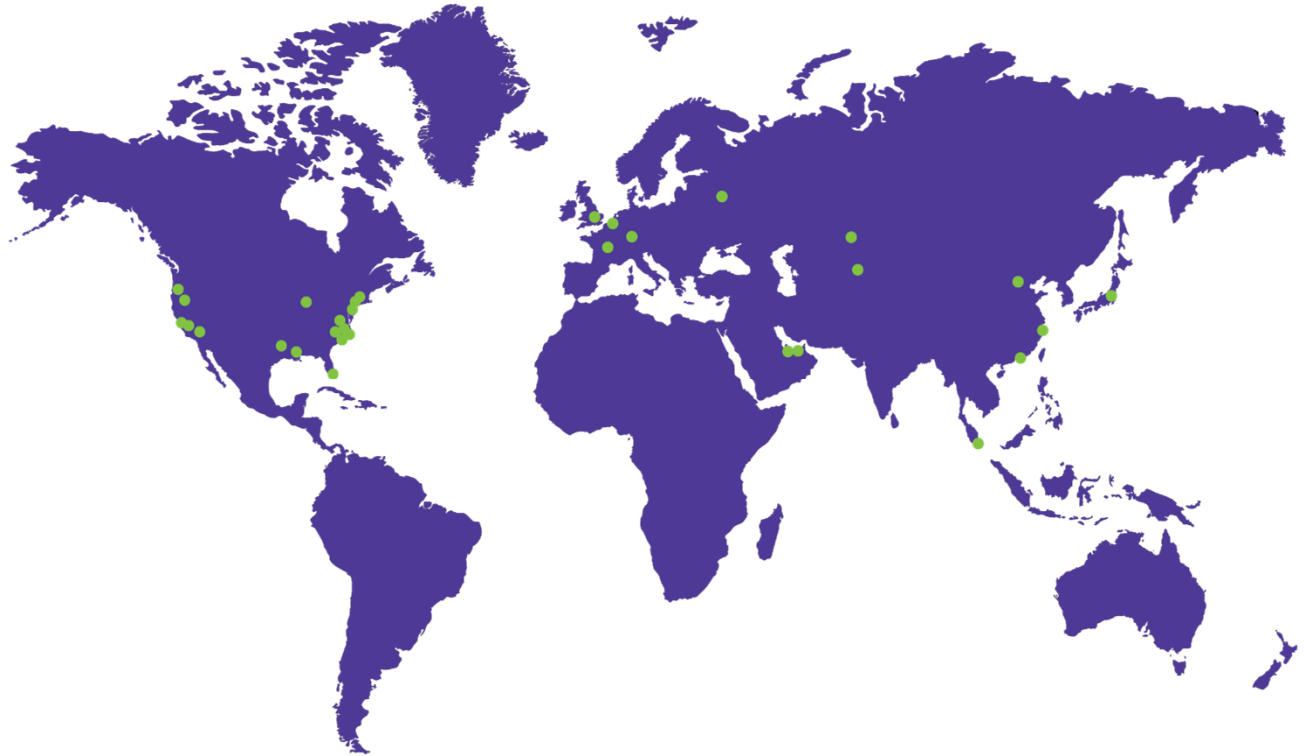
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