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BY THE COMPTROLLER GENERAL

Report To The Joint Committee On Taxation

OF THE UNITED STATES

Changes To Appeals Process Could Improve Settlements And Increase Taxpayers' Satisfaction

Individual taxpayers are generally satisfied with their settlements and treatment by Appeals' personnel. Appeals' settlements, however, may not be as uniform and consistent as possible. Factors such as Appeals office location and whether the taxpayer petitioned the Tax Court have an effect on the rate of tax and penalty reduction. GAO points out the need to improve the effectiveness of Appeals' management control system and also makes suggestions which should lead to more uniform and consistent settlements.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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The Honorable Robert J. Dole
Chairman, Joint Committee on
Taxation

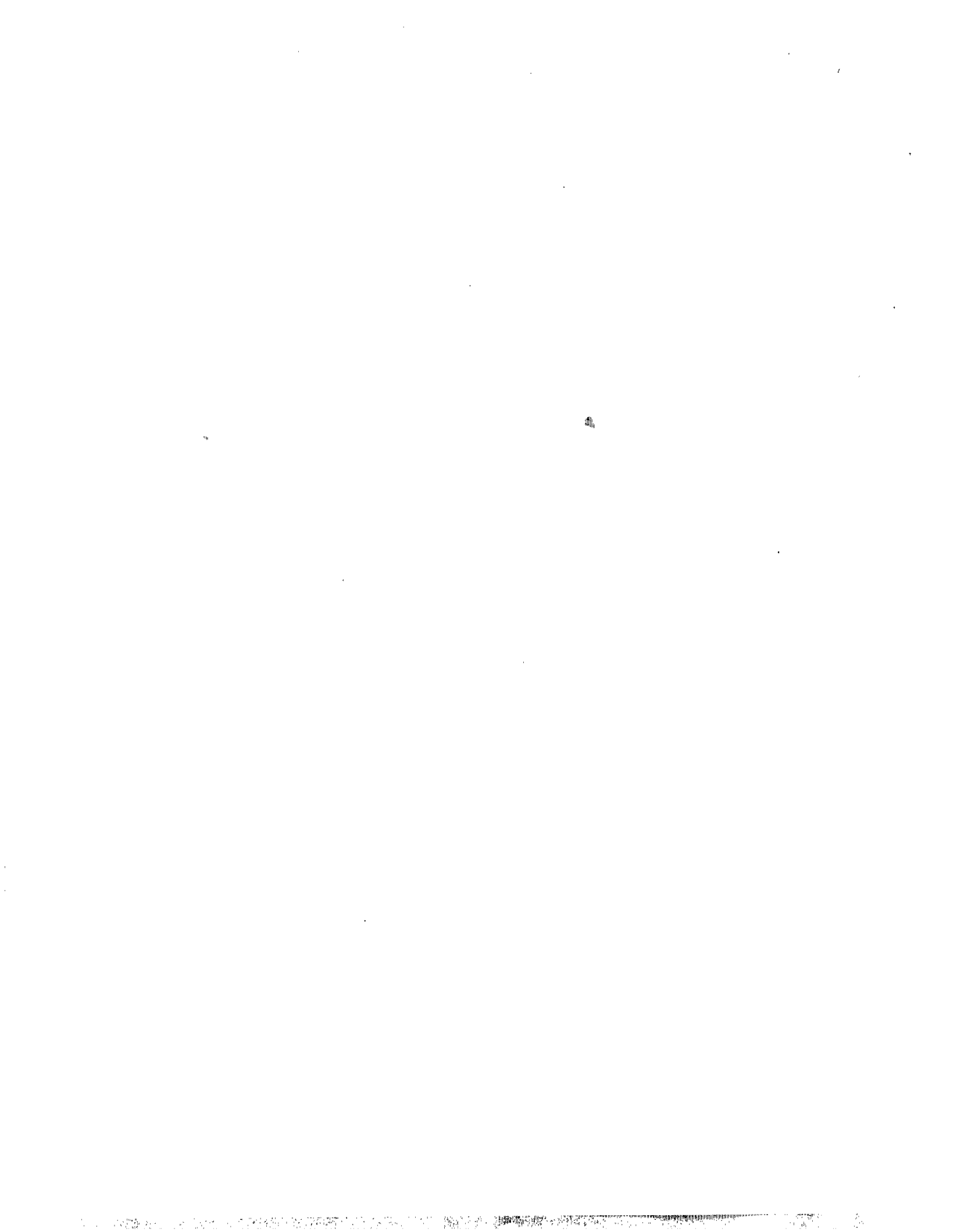
The Honorable Dan Rostenkowski
Vice Chairman, Joint Committee
on Taxation
Congress of the United States

This report, in response to your committee's request, discusses the need for modifications in the Internal Revenue Service's (IRS) administrative appeals process for resolving taxpayer disputes. The report points out steps IRS can take to help assure settlements are as uniform and consistent as possible. It also shows that taxpayers were generally satisfied with their treatment by the Appeals Division, except for the time it took to settle their cases.

As arranged with your committee, we are sending copies of this report to other congressional committees; the Director, Office of Management and Budget; the Secretary of the Treasury; the Commissioner of Internal Revenue; and other interested parties.

Charles A. Bowser

Comptroller General
of the United States



D I G E S T

The Internal Revenue Service (IRS) could improve settlement of cases in the Appeals Division and increase taxpayer satisfaction with its handling of cases by

--strengthening management controls that identify problems with settlements (see pp. 17 to 43) and

--reducing the time it takes to handle such cases (see pp. 53 and 54).

The Joint Committee on Taxation asked GAO to examine IRS' appeals process for resolving disputes with taxpayers who disagree with the results of their audits. GAO also obtained information (1) from taxpayers on their experiences with the appeals process and (2) on proposed legislation to help safeguard taxpayers' rights and insure impartial treatment by IRS.

GAO's statistical analysis of 577 closed cases showed that taxpayers stand an excellent chance of having their proposed audit adjustments reduced when they appeal their cases. Actually, 84 percent of the adjustments proposed by examiners were subsequently reduced or eliminated by IRS. (See pp. 7 to 12.)

UNIFORMITY AND CONSISTENCY OF
APPEALS SETTLEMENTS QUESTIONABLE

The Appeals Division has the responsibility of seeing that cases involving similar circumstances are settled as uniformly and consistently as possible throughout the Nation. There is little assurance, however, that this is happening.

GAO identified several factors which Appeals considered in settling cases. The effect these factors had on settlements varied substantially by the location of the Appeals office and whether the taxpayer petitioned the Tax Court. In a uniform and consistent appeals atmosphere, such variations should be at a minimum. (See pp. 9 to 12.)

SUPERVISORY AND MANAGEMENT
CONTROLS ARE NOT ADEQUATE

To help achieve the objective of uniformity and consistency, Appeals has designed a management control system which is comprised of three major components: (1) supervisory case reviews, (2) regional post reviews, and (3) nationwide special issue post reviews. However, the individual components of the system were not meeting their objectives. The deficiencies GAO noted in the reviews reduced the system's effectiveness in insuring uniform and consistent settlements.

Supervisory case reviews

Supervisory case reviews by Appeals supervisors are a key means of monitoring decisions because the review is to take place before the case is closed and, thus, allows deficiencies to be more easily corrected. GAO found, however, that the effectiveness of many of these reviews was limited, because:

- Most reviews were not made until after an initial settlement was proposed by the appeals officer. (See p. 19.)
- Reviews were not performed in sufficient depth and not adequately documented. (See pp. 20 and 21.)
- Supervisors were providing appeals officers with only limited feedback. (See pp. 23 to 24.)

Regional post reviews

Post reviews can be a valuable element of management control. Specifically, they can be the mechanism that compares completed results against established standards. GAO found, however, that regional post reviews are not a useful control tool because review standards are too vague and inconsistently applied. Consequently the results lack uniformity and cannot be meaningfully analyzed. (See pp. 27 to 41.)

A test of the effectiveness of regional post reviews illustrates this problem. GAO asked 24 supervisors and officers experienced in reviewing Appeals settlements to review and comment on 10 test cases as they would during a

normal post review. Although some inconsistency is to be expected when human judgment is involved, the variation in reviewers' comments on the test cases showed substantial disagreement over technical and case management aspects of settlement decisions. Many of the differences occurred because IRS review guidance was too vague to be consistently interpreted or applied.

Nationwide special issue post reviews

The nationwide post review evaluates the uniformity and consistency of Appeals cases involving special issues selected by the IRS national office. The usefulness of this review as a control mechanism is limited, however, because the documentation supporting the appeals officer's decision is frequently insufficient for reviewers to properly evaluate the actions taken on the case. In addition, there is no assurance that feedback on review results is given to branch office managers and discussed with appeals officers. (See pp. 41 to 43.)

TAXPAYERS ARE GENERALLY SATISFIED WITH THE RESULTS OF THEIR APPEAL

GAO surveyed individual taxpayers about their perceptions of the administrative appeals process. Although the respondents indicated that they were generally satisfied with their treatment by Appeals, many were dissatisfied with the amount of time required to settle their cases. (See pp. 49 to 54.)

IRS is implementing a nationwide work planning and control system and making changes to the Examination Division's automated management information system. These changes should assist in preventing processing delays.

Responses to GAO's questionnaire also showed that the majority of taxpayers did not have an accountant or attorney representing them. Half of them did not have representation because they felt they could deal with IRS themselves. GAO's study did not show that representation influenced the settlements made at Appeals.

Twenty-two percent of the taxpayers responding to GAO's questionnaire cited the continued cost of appealing their cases as the reason which best described why they decided to settle with Appeals. The cost of taking the case to court may therefore have caused some taxpayers to accept a settlement they did not agree with.

The Congress has been concerned about taxpayers' ability to afford the cost of resolving disputes. Both Houses of Congress have recently passed bills which deal with this matter and conferees have been appointed to resolve the differences. As of July 16, 1982, however, this legislation had not been reported out of the Conference Committee. (See pp. 47 and 48.)

AGENCY COMMENTS

IRS, in commenting on a draft of this report, generally agreed with GAO's proposals for improving management controls over the Appeals process. (See app. I.)

IRS commented that its procedures have been or are in the process of being revised. These revisions include:

- Increased guidance on conducting comprehensive supervisory reviews. (See pp. 25 and 26.)
- Improved procedures for performing and recording the results of regional reviews.
- A systematic approach to providing feedback on the results of reviews. (See pp. 45 and 46.)

IRS agreed with GAO's proposal that Appeals supervisors be required to document their evaluations of cases and revised its instructions. GAO, however, does not believe that the revision adequately changed the supervisory case documentation requirement. GAO remains convinced that such documentation is necessary in order for IRS to properly assess how well supervisors are reviewing the work of appeals officers.

RECOMMENDATION TO THE COMMISSIONER
OF INTERNAL REVENUE

The Commissioner should require Appeals super-
visors to document their case assessments.
(See p. 26.)

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CHAPTER 1

INTRODUCTION

The Joint Committee on Taxation asked us to examine the Internal Revenue Service's (IRS) appeals process for resolving disputes with taxpayers who disagree with the results of their audits.

Our primary objective was to identify areas needing improvement. We identified these areas by determining whether:

- IRS' procedures, practices, and controls were adequate to insure consistent handling of disputed cases.
- Taxpayers felt they were treated fairly by the appeals process.

As discussed in chapter 2 of this report, we found that a taxpayer's chance of reducing the amount of taxes and penalties on appeal may not be as uniform and consistent as possible. This is because other influences, such as Appeals office location and whether or not the taxpayer petitioned the Tax Court, have an effect on the rate of tax and penalty reduction.

Chapters 3 and 4 point out the need to improve components of the Appeals management control system. These components are supervisory case reviews, regional post reviews, and nationwide special issue post reviews.

THE APPEALS PROCESS

An IRS audit can either result in a recommendation by the examiner that the return be accepted as filed or that an adjustment be made to the reported tax liability. A proposed adjustment may be in favor of either the Government or the taxpayer. Taxpayers wishing to contest the proposed adjustment can choose from various administrative and judicial procedures to resolve the dispute. Although IRS encourages taxpayers to resolve tax disputes through the administrative appeals system rather than through litigation, taxpayers are free to bypass the administrative appeals process and invoke judicial proceedings to resolve the case.

Administrative procedures

IRS' Appeals Division is responsible for settling disputed audits administratively. The mission of the Appeals Division is to resolve tax controversies without litigation on a basis which is fair and impartial to both the Government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of IRS.

Appeals activities are carried out by the national office in Washington, 7 regional offices, and 37 branch offices. In fiscal year 1980, Appeals received over 53,000 cases of disputed audits totaling \$4.6 billion in proposed additional taxes and penalties. During the same period, Appeals disposed of nearly 50,000 cases, obtaining agreements on about 79 percent of them.

Cases considered by Appeals fall into two categories: non-docketed and docketed. Nondocketed cases are those in which the taxpayer protests a proposed action by IRS and requests a conference with Appeals. Docketed cases are those in which the taxpayer has filed a petition with the U.S. Tax Court. In fiscal year 1980, 79 percent of the cases Appeals received were nondocketed and 21 percent were docketed.

When Appeals receives a case it is assigned to an appeals officer who reviews it and contacts the taxpayer to arrange a conference. The appeals officer examines the records for each case, defines the taxpayer's and the examiner's positions, and determines the facts and the issues. The appeals officer also decides whether additional information or legal analysis is required and, where appropriate, advises the taxpayer of these decisions prior to the initial conference so that the discussions will be more meaningful.

During the conference with the taxpayer or the taxpayer's representative, the appeals officer's role is to hold the discussion with an open and receptive mind, to find a fair and reasonable basis for resolving disputes, and to achieve uniform and consistent treatment of cases involving similar circumstances. Sometimes issues are conceded in full by one party or the other; at other times cases are resolved by both parties making concessions. However, if a settlement is not reached, the appeals officer must clearly and fully explain the reason for his position and the further procedural rights open to the taxpayer.

At the conclusion of each case, the appeals officer prepares a supporting statement to explain how the case was handled. This statement usually discusses the issues raised; pertinent facts; applicable IRS and statutory regulations and rulings; the relative merits of each side; and recommendations, which include proposals for settlement if an agreement with the taxpayer has been reached. If agreement is not reached with the taxpayer on a case involving a proposed tax deficiency, a notice of deficiency is issued which provides the taxpayer 90 days to file a petition with the Tax Court.

Appeals' role in the settlement process increased in importance due to procedural changes made by IRS. On October 2, 1978, IRS eliminated the Examination Division's administrative conferences which formerly were used to settle many disputed audits. These district conferences accounted for about 32,000 settlements

in fiscal year 1978. Most of the cases that formerly would have been handled in these conferences now flow directly to the Appeals Division.

Another significant procedural change, which became effective July 1, 1978, gave Appeals sole settlement jurisdiction for at least 4 months over every case docketed for trial in the Tax Court except when Appeals has issued the notice of deficiency. Prior to this change, Appeals exercised joint settlement authority over such cases with the Office of Chief Counsel, IRS' principal legal advisor. As a result of the change, once a case leaves Appeals and is received by the Office of Chief Counsel, emphasis is to be placed on preparing the case for trial in the Tax Court, rather than on settling it. Thus, the Appeals Division now has the primary responsibility for administratively resolving disputed cases.

Judicial procedures

At any stage of the appeals procedure, the taxpayer can elect to bypass further administrative efforts and have the disputed case docketed for trial in either a district court, the Court of Claims, or the Tax Court. If a proposed tax adjustment has been paid, the taxpayer may file suit for a refund with either a district court or the Court of Claims. The Office of Chief Counsel then sends a written recommendation in support of either settlement or trial to the Department of Justice, which handles further processing of the case.

However, if a taxpayer does not agree to a settlement in the Appeals Division and does not wish to pay the proposed deficiency in advance, he or she can proceed to the Tax Court, where the case is handled by attorneys from the Office of Chief Counsel. If the case was not docketed while at the Appeals level, the case must be first docketed by filing a petition in the Tax Court upon receipt of a notice of deficiency issued by Appeals.

The chart on the next page illustrates the procedures followed during the settlement and trial of disputed tax cases. These procedures begin at the examination level and can end, but do so infrequently, with a final determination by the United States Supreme Court.

OBJECTIVES, SCOPE, AND METHODOLOGY

The following sections describe the objectives and scope of our work and summarize the methodology we used to obtain and analyze our data.

Objectives and scope

The Joint Committee on Taxation asked us to review IRS' administrative appeals process for dealing with individual and

Income Tax Appeal Procedure

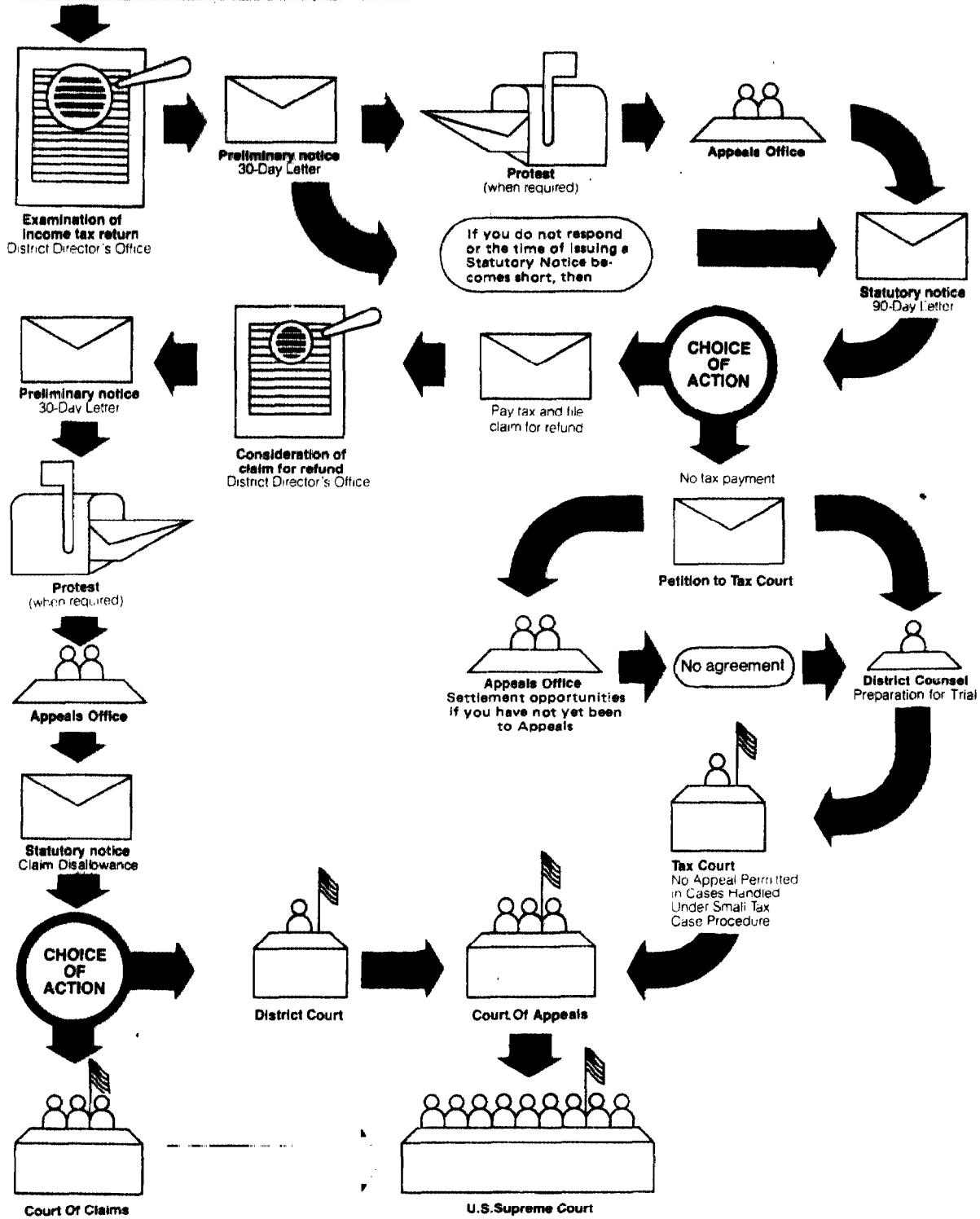
Internal Revenue Service

At any stage of procedure:

You can agree and arrange to pay.

You can ask the Service to issue you a notice of deficiency so you can file a petition with the Tax Court.

You can pay the tax and file a claim for a refund.



corporate taxpayers. Our primary goal was to identify areas needing improvement. In this connection we did not evaluate the technical quality of the settlement of individual disputed cases. However, we did evaluate IRS' procedures, practices, and controls to insure consistent handling of disputed cases.

We did our work at the IRS national office; the Mid-Atlantic, Central, North Atlantic, Mid-West, Southeast, and Western regional offices; and the district and Appeals branch offices in Baltimore, Cincinnati, and San Francisco.

Most of our field work was concentrated in the three Appeals branch offices. We chose these locations because they represented wide geographical coverage in different regions and varied in work-load size. The Director of IRS' Appeals Division said that operating differences noted in these three offices and any related findings would be sufficient to indicate management problems in the Appeals area.

Methodology

Our review was performed in accordance with GAO's "Standards For Audit Of Governmental Organizations, Programs, Activities, And Functions." We reviewed policy and procedures manuals and management reports relating to IRS' appeals process. We also interviewed various IRS personnel in the national, regional, district, and branch offices in order to better understand the appeals process and develop our findings. In addition, we assessed regional case review procedures by asking various Appeals reviewers to examine the same cases. Finally, we analyzed a random sample of individual and corporate cases settled in the three Appeals branch offices during fiscal year 1979, the latest year data was available for our review.

Regional post review test

To determine how Appeals personnel interpret and apply guidelines to perform regional post reviews of closed cases, we asked reviewers in six IRS regional offices to review the same selected cases. Each region provided four staff members with previous review experience to examine the same 10 cases which we had pre-selected. In order to insure that the cases were not identical, we selected cases for both corporate and individual taxpayers which included docketed and nondocketed categories, agreed and unagreed settlements, and differences in fact patterns. The reviewers were asked to examine these cases as if they were doing an actual review, and we subsequently discussed the results of the examinations with each reviewer.

The conditions of this test may not have been optimal. Some reviewers may have felt pressured to complete the cases quickly. Others may have been anxious that their technical skills were being tested. Both factors may have influenced the judgment of some reviewers. However, our purpose was to determine the extent to

which review guidelines and procedures were consistently applied by reviewers and to assess the comparability of the information recorded--not to assess the quality of the case settlements or the correctness of the reviewer's opinions. Therefore, we do not believe that reviewers' perceptions that they were being tested would significantly influence the test results for our purposes.

In regional post reviews, appeals officers and managers review the file retained in the Appeals branch office and look over pertinent dates, comments, and records of contact noted on the case inventory control card. We provided the reviewers in our test with this information by copying all office file documentation and control cards for the preselected cases. To preserve confidentiality, we removed all references to locations, names, and identifying numbers of taxpayers and names of IRS personnel.

Random sample of branch
office case settlements

We selected a random sample of 577 individual and corporate docketed and nondocketed cases settled by the three Appeals branch offices during fiscal year 1979 from a total universe of 1,778 such cases.

We analyzed each of the cases in our sample using various data collection instruments and methods of analysis. We attempted to collect information for the cases from the administrative files, which contain the report of examination and all papers relative to the taxpayer's liability for the year or years involved (see app. VI), and we asked the appeals officers who settled the cases to fill out a questionnaire after they reviewed the case files. (See app. IV.) Where the cases involved individuals, we also sent questionnaires (see app. V) to taxpayers to obtain their thoughts and perceptions on the settlement process.

We analyzed the results from these instruments using various statistical methods. Our major findings, which are expressed as percentages, were projected to the universe of closed individual and corporate cases in each of the three branch offices, as well as for all three branch offices together. The projections are at the 95 percent confidence level and are subject to precision limits. Examples of the precision limits are shown in many of the tables in the report. The projections made throughout this report will not always be based on all the cases from our sample due to nonresponse or respondents who did not answer certain questions. Appendix II provides further details on the methodology we employed in obtaining and analyzing the information from these data collection instruments.

CHAPTER 2

APPEALS SETTLEMENTS MAY NOT

BE UNIFORM AND CONSISTENT

Appeals provides the final administrative opportunity for taxpayers and the IRS to resolve tax disputes without litigation, on a uniform and consistent basis. However, our statistical analysis of closed cases indicates that a taxpayer's chance of reducing the amount of taxes and penalties on appeal may not be as uniform and consistent as possible. This is because other influences, such as Appeals office location and whether or not the taxpayer petitioned the Tax Court, have a statistically measurable effect on the rate of tax and penalty reduction.

In addition, other factors, such as taxpayer's credibility or the quality of supporting documentation, had a statistically measurable effect on the rate of tax and penalty reduction in some appeals locations but had no measurable effect at other locations. Similarly, factors which had a statistically measurable effect on the rate of recovery on docketed cases could not be shown to have an effect on nondocketed cases. We believe that in a uniform and consistent appeals atmosphere, such variations should be at a minimum.

PROPOSED ADJUSTMENTS ARE ALMOST ALWAYS REDUCED IF CASE IS SETTLED AT APPEALS

Taxpayers stand an excellent chance of having their proposed adjustments reduced when they appeal their cases. In comparing the difference between the taxes and penalties determined by the examiner and the final amounts agreed to at the three branch offices, our sample showed that in 84 percent of the cases the proposed adjustments were reduced or eliminated. 1/

IRS maintains annual recovery rate statistics. These statistics show the amount of tax and penalty agreed to at Appeals as a percentage of the amount proposed in Examination. Over the past several years nationwide recovery rates have ranged between 31 and 50 percent for nondocketed cases and 26 and 35 percent for docketed cases.

As shown below, the IRS dollar recovery rates for our sample cases ranged from 11 percent to 54 percent.

1/For details on the percentage of cases in which adjustments proposed in Examination were changed as a result of settlement, see app. III.

IRS Dollar Recovery Rates
for the Three Offices Visited

<u>Case category</u>	Amount of tax and penalty determined by the examiner (<u>note a</u>)	Amount of tax and penalty agreed to at Appeals (<u>note b</u>)	Percentage of tax and penalty <u>sustained</u>
<u>Nondocketed</u>			
Individual	\$ 9,151,454	\$4,392,882	48
Corporate	18,505,838	7,044,381	38
<u>Docketed</u>			
Individual	3,183,576	1,724,210	54
Corporate	19,835,957	2,212,822	11

a/The percent of sampling error by case category is: + 32 for nondocketed individual, +17 for nondocketed corporate, +30 for docketed individual, 0 for docketed corporate.

b/These figures represent audit adjustments proposed by the Examination Division and agreed to by the taxpayer in Appeals. They do not necessarily represent the amount IRS will eventually collect.

Although IRS measures recovery rates, it does not believe that differences in the recovery rates among Appeals personnel or various locations are useful measures of the propriety of settlements. An IRS study suggested that many factors beyond Appeals control help explain why settlements usually are made for a lower amount of tax and penalty than was originally determined. For example, the examining officer may have incorrectly developed the case; or, once at Appeals, the taxpayer may take a new position or supply information that was not available during the audit.

Recovery rates are also affected by the fact that many cases in dispute involve complex tax issues and uncertainties as to correct application of the law. Unlike the Examination Division, Appeals must frequently consider the legal hazards of how the case may be decided in the event of a court trial. Appeals also must consider applicable changes in tax law or IRS policy that have occurred since the examiner initially prepared the case.

Appeals believes that extraneous factors beyond its control can affect the tax and penalty recovered. We agree that factors extraneous to IRS can influence recovery rates. However, our analysis indicates there are other factors over which IRS does have control, which also have an impact on recovery rates.

FACTORS AFFECTING RECOVERY RATES VARY
ACCORDING TO LOCATION AND DOCKETED STATUS

Our analysis identified several factors which help explain why the amount of tax and penalty agreed to at Appeals varied from the amounts determined in Examination. We found that the effect these factors had on the recovery rate differed substantially by the location of the Appeals office and the docketed status of the case.

After discussions with IRS officials, we identified 25 factors (see app. VII), as possibly accounting for why changes were or were not made in proposed adjustments. These factors included those associated with the particular case itself, such as the amount of the proposed deficiency; those explaining why the case was unagreed at audit, such as how the examiner developed the case; and those explaining why the case was settled at Appeals, such as the factor most influencing the appeals officer's decision. Our analysis ^{1/} found that no one factor or set of factors explain all the variations between adjustments proposed by the examiner and the subsequent settlement. Nevertheless, we were able to explain a significant portion of the variation. By knowing the relative importance placed on these factors by the appeals officer in a given case we could predict with a relatively high degree of precision the percent of the adjustment that would be sustained. In one location, for example, we determined that 5 of the 25 factors used in our analysis explained 68 percent of the total variation for individual docketed cases.

However, our analysis indicated that the same factors did not consistently affect cases settled by appeals officers at

^{1/}For individual docketed and nondocketed cases at the three branch locations we used regression analysis to determine the strength of the relationship between certain factors and Appeals recovery rates. Our analysis postulated that as these factors affected the amount of the settlement or as the importance attributed to them by appeals officers in the settlement increased, a corresponding change would occur in the percentage of the original adjustment sustained by Appeals. We thus isolated those settlement factors most highly correlated with variations in the proposed adjustment at the three branch offices. The sample size of corporate taxpayers was too small to conduct similar tests.

the three branch offices. At one location, for example, recovery rates for individual docketed cases tended to increase when hazards of litigation was not a factor in the settlement. This factor was of major importance at that location but could not be shown to be significant in explaining recovery rates at the other two locations.

Similarly, the factor that most affected recovery rates for individual docketed cases at the second location, similar interpretations of facts or law by the appeals officer and the examiner, could not be shown to be significant in explaining recovery rates at the other two locations. Moreover, the factor that most affected recovery rates for individual docketed cases at the third location was not a significant factor at the other two locations.

The factors that explained variations in recovery rates also generally differed according to whether cases were docketed or nondocketed. ^{1/} At two of the locations, none of the reasons shown to be significant in relating to changes in recovery rates for docketed cases could be shown to be significant in explaining changes for nondocketed cases. At one location, however, the same factor had the greatest effect on the recovery rate for both docketed and nondocketed cases.

The following two tables illustrate in more detail the results of our analysis at the three locations. The first table shows factors which had a measurable effect on recovery rates for docketed cases. Note that the factors having a measurable effect were different at the three locations.

^{1/}A November 1980 study by IRS' Internal Audit Division also found differences between how docketed and nondocketed cases were handled by Appeals, in that docketed cases were completed faster and thus appeared to be receiving higher priority treatment.

Factors Explaining Variations in Recovery
Rates for Individual Docketed Cases

<u>Location</u>	<u>Factor</u>	<u>Percent of variation explained</u>
1	Hazards of litigation not involved in the settlement decision	a/
	Appeals officer considered complexity of the tax law important in settlement decision	a/
	Appeals officer considered taxpayer credibility important in settlement decision	a/
	Appeals officer considered voluntary compliance important in settlement decision	a/
	Appeals officer attributed reason case was appealed to problems with examiner rather than problems with taxpayer or case facts	a/ 68 ==
2	Settlement decision based on appeals officer not interpreting fact or law differently than examiner	a/
	Appeals officer stated that disagreement over case facts played a small role in reason case was disputed in Examination	a/ 43 ==
3	Settlement decision not based on new or additional taxpayer documentation	44 ==

a/These factors combined total the percentage shown.

The second table shows the factors that had a measurable effect on amounts for nondocketed cases. Note again that the number of factors having a measurable effect varied at the three locations.

Factors Explaining Variation in Recovery Rates for Individual Nondocketed Cases

<u>Location</u>	<u>Factor</u>	<u>Percent of variation explained</u>
1	Settlement decision not based on new or additional taxpayer documentation	a/
	Appeals officer said taxpayer's belief that appealing was worth the time and effort had a small role in why the case was unagreed at examination	a/ 40 ==
2	Settlement decision based on appeals officer not interpreting fact or law differently than examiner	a/
	Hazards of litigation not involved in the settlement decision	a/
	Appeals officer did not consider the complexity of tax law important in the settlement decision	a/ 52 ==
3	Appeals officer attributed reason case appealed to problems with examiner rather than problems with taxpayer or case facts	9 =

a/These factors combined total the percentage shown.

FACTORS INFLUENCING APPEALS PERSONNEL SETTLEMENT DECISIONS DIFFER

Depending upon the location, factors which frequently influence the appeals officer's decision on how to settle a case may be different. We found that differences existed among locations as to how strongly six factors influence the appeals settlement decision. These differences raise additional questions as to whether settlements are uniform and consistent.

Factors frequently influencing appeals settlement decisions differ by location

We asked appeals officers and managers to give us their opinion as to what factors should be frequently considered by appeals officers in making settlement decisions. The following six factors were the ones they told us were the most important:

- Need to foster voluntary compliance.
- Quality of the case as prepared by the examiner.
- Complexity of the tax law.
- Taxpayer's credibility.
- Hazards of litigation.
- Quality of the taxpayer's documentation.

Although the above factors did influence settlement decisions, the amount of influence varied by location. For example, we found statistically significant differences among Appeals locations in how these factors influenced settlement decisions, indicating a lack of uniformity in the use of the factors. The following table illustrates whether there was a statistical difference in how the factors were considered as influencing the settlement decision.

Was There a Statistically Significant
Difference Among Appeals Locations in How
Six Factors Influenced the Settlement Decision?

<u>Factor</u>	<u>Type of case (note a)</u>		
	<u>Individual docketed</u>	<u>Individual nondocketed</u>	<u>Corporate nondocketed</u>
Need to foster voluntary compliance	Yes	No	Yes
Quality of the case as prepared by the examiner	Yes	No	No
Complexity of the tax law	No	Yes	Yes
Taxpayer's credibility	No	Yes	No
Hazards of litigation	Yes	Yes	No
Quality of the taxpayer's documentation	No	Yes	No

a/Corporate docketed cases were omitted because of the small number of cases at the three locations. When working with a very small number of cases, minor shifts of cases from one category to the other cause large shifts in percentages producing data that might misrepresent the actual situation.

Our analysis indicates that the above factors may not be applied consistently at the various locations where cases are appealed. For example, while the quality of the case prepared by the examiner was considered an important influence in 48 percent of the appeals officers' settlement decisions for individual docketed cases in one location, that factor was an important influence in only 13 percent of individual docketed case settlements at another location. In another instance, the need to foster voluntary compliance was a major influence in 55 percent of the corporate nondocketed case decisions in one branch office compared to 17 percent of the same type of decisions in another.

CONCLUSIONS

The Appeals Division tries to resolve taxpayer disputes in a uniform and consistent manner. Our statistical analysis, however, suggests that taxpayers may not be receiving consistent treatment in Appeals settlements. Specifically, we found that the factors that had the most influence on the amount of the settlement often differed by location of the Appeals branch office and whether cases went to Appeals in docketed or nondocketed status. The degree to which certain factors influenced the appeals officers' settlement decisions also differed at the various Appeals locations.

In our opinion, IRS controls should insure that appeals officers settle cases as uniformly and consistently as possible and identify those instances where this is not happening so that management can take appropriate corrective action. Chapters 3 and 4 discuss how the Appeals review process can be revised to improve control over and provide more useful information about Appeals settlements.

AGENCY COMMENTS AND OUR EVALUATION

In commenting on a draft of this report (see app. I), IRS stated that the fact that major influences in settlement decisions were not consistent in each location does not support a conclusion, in and of itself, that the settlements reached did not reflect the relative merits of positions taken by the taxpayer and the Government. IRS added that the technical quality of the settlements was not considered by GAO and that this consideration was necessary before a valid opinion could be expressed on the uniformity and consistency of Appeals settlements.

We agree that relative merits and technical quality are factors that could influence an Appeals settlement. However, we also believe that they are not the only factors which could be expected to do so. Although an assessment of relative merits

and technical quality may have further explained a lack of uniformity and consistency in Appeals settlements, such an analysis would not have changed the need for the corrective actions identified through our study.

CHAPTER 3

MORE SUPERVISION IS NEEDED TO HELP

INSURE UNIFORM AND CONSISTENT SETTLEMENTS

The resolution of tax issues in a manner which insures uniform and consistent treatment with respect to taxpayers in similar circumstances is a major Appeals objective. To fully achieve this objective, however, improved controls are needed. One important control is supervisory review of settlement proposals.

Appeals managers told us that supervisory review is one of three primary management controls which help to insure uniformity and consistency. The other two controls are regional post reviews and nationwide special issue post reviews.

Taken together, the three levels of review comprise the Appeals control system for monitoring settlement decisions. To learn why decisions were not always treated the same, we examined the effectiveness of these reviews. We found that the reviews were poorly timed, lacked sufficient depth, or were often very limited in scope.

We also noted that the control system did not provide prompt organizational feedback of identified problems. This weakness precluded timely corrective action.

The control system could be more effective if each of its components were meeting their individual objectives. Proper functioning of each control element would enhance the total control system and would help to insure uniform and consistent decisions.

AN EFFECTIVE CONTROL SYSTEM IS VITAL FOR UNIFORM AND CONSISTENT DECISIONS

A properly designed and functioning control system provides management with the data it needs to identify problems, plan corrective actions, and improve future performance. Without valid feedback from the system regarding the extent and types of quality problems, management may not know that it has a problem needing correction, and those making errors may not know that they need to improve their performance.

A basic control system is built on four elements: (1) establishing standards which are measurable in terms of both quantity and quality; (2) supervising work as it progresses; (3) comparing completed results against the established standards; and (4) taking corrective action, if needed. All these elements, in turn, depend on effective organizational communication and feedback.

The above elements provide a model for evaluating the management controls employed by Appeals. To achieve organizational goals, the Internal Revenue Manual establishes Appeals standards, branch supervisors directly supervise appeals officers' work, and the national office and regional offices review completed work for comparison against standards and thereby determine the need for corrective action.

The goals have not been met, however, because

- supervisory reviews are not always timely or in sufficient depth to help insure uniformity and consistency,
- regional post reviews provide only limited information on a regional basis and do not provide any useful management information on a national basis (discussed in ch. 4), and
- nationwide special issue post reviews are based on documentation which frequently does not provide sufficient information to judge settlement uniformity and consistency (discussed in ch. 4).

As a result, Appeals management controls are not as effective as they could be, and management information is limited on the overall performance of the Appeals Division and the need for corrective action.

SUPERVISORY CASE REVIEWS DO NOT
ADEQUATELY ASSESS UNIFORMITY AND
CONSISTENCY

Appeals branch office chiefs and associate chiefs are the Appeals supervisors who review settlement proposals for uniform and consistent treatment. These supervisors are key to insuring quality Appeals decisions because they have the opportunity not only to review proposals but also to correct and change deficiencies before cases have been closed.

However, our review raised questions regarding the effectiveness and thoroughness of the reviews they perform. We found that demands on the time of Appeals supervisors seriously limit their ability to review cases. We also found that most supervisory reviews take place after the appeals officer has completed work on the case and appear to entail little more than the formality of "signing off" on the proposed settlement. Appeals supervisors also do not make full use of feedback as a management control tool to improve the future performance of their staffs and thus the quality of settlements.

Supervisory case reviews
are of key importance

The management control model we used requires supervisory review of work as it progresses to insure that established standards are met. Supervision provides the opportunity to observe ongoing activities and to discuss and correct undesirable performance in a timely manner. Supervisory review is thus a major part of the job of midlevel managers.

The official duties of Appeals supervisors include: planning, organizing, and assigning work; evaluating work and employee performance; utilizing and developing personnel; and complying with regional and national objectives. IRS policy is that Appeals settlements ordinarily are not considered official until they are approved by an Appeals supervisor. This policy necessitates that these supervisors read, review, and sign each settlement proposal negotiated by the appeals officers.

IRS draft guidelines covering its merit pay appraisal system set up management functions that closely resemble the functions called for in the management control model we used. Like our model, they underline the importance of the supervisor's role in assuring the adequacy of work performed and in developing subordinates. Critical elements of supervision, as defined by IRS, include

- assessing operational results against established expectations;
- improving the efficiency, productivity, and quality of work; and
- motivating, developing, and evaluating subordinates to increase their effectiveness, productivity, quality of performance, and potential for advancement.

During our discussions, Appeals supervisors and managers at the branch, regional, and national office levels identified supervisory case reviews as the Division's primary means of assuring the quality of settlements. They noted several factors which reinforce the importance of supervisory case reviews. For example, the supervisor can insure the quality of the work by encouraging good case management practices and professional quality writeups. Also, since supervisors oversee the work of several appeals officers, they are in a position to maintain consistency in IRS positions and in handling issues. Some Appeals managers thought that supervisory case reviews are the only meaningful management control because they provide the only chance to alter poor quality decisions prior to closing cases. They pointed out that since other reviews take place after cases are closed, they

can only serve to help prevent the same mistake from happening again.

Existing supervisory review practices limit effectiveness

We observed some procedural and practical aspects of Appeals case supervision which reduce the supervisor's effectiveness. First, IRS guidelines do not specify how supervisors should monitor the quality of individual settlements; and second, we found indications that in-depth reviews were not taking place.

Timing of supervisory reviews is too late to be effective

A branch office supervisor can follow present IRS supervisory case review guidelines and still be in a poor position to truly insure the quality of settlements. The only time the guidelines require a supervisory review of a case file is after the appeals officer has worked out a settlement proposal with the taxpayer and obtained a signed agreement form. This practice discourages supervision over technical aspects of the work in progress.

The practice of requiring reviews after the fact makes it very difficult to introduce any substantive changes to the case settlement proposal. This is because the supervisor is faced with the awkward predicament of having to reopen negotiations with the taxpayer after an agreement has apparently been reached. In commenting on this problem, one supervisor noted that he will approve a marginal decision, one which is adequate but which clearly could have been better, rather than antagonize the taxpayer by overturning a previous agreement.

Five of the eight Appeals supervisors we contacted told us they get involved in reviewing only 5 to 10 percent of their cases prior to when the initial settlement proposal has been negotiated. The limited involvement of supervisors was further confirmed by the appeals officers' responses to our questionnaire which showed that the supervisors provided technical guidance on only about 4 percent of the cases prior to when the initial settlement was proposed.

The appeals officers also reported that Appeals supervisors rarely alter case settlements. This was corroborated by our review of sampled cases. Our sample indicated that there was little or no change in 99.8 percent of the fiscal year 1979 settlements in the three branch offices as a result of supervisory reviews.

Supervisors do not
review case files in detail

Several Appeals supervisors had heavy workloads which made it difficult for them to find time to perform supervisory case reviews. Six of the eight supervisors we spoke to oversee groups of more than 10 appeals officers. Appeals officers' average workloads range from 14 to 90 cases. The supervisors told us that their schedules are full of administrative duties related to personnel management, assignment and tracking of cases, and reports and other special requirements of the regional and national offices. They reported that they are able to devote roughly 25 to 30 percent of their time to actually reviewing case files. Most of the Appeals supervisors, however, believe this is sufficient time to do an adequate job of reviewing cases.

The Appeals Supervisors' Guide encourages supervisors to know their staffs and to adapt the depth of review to that which is actually needed. Supervisors told us they do not need to review every case file in detail. They read the supporting statements to assess the clarity and appropriateness of the appeals officer's decision. They also check the case control card to determine if a case was properly managed. If they find nothing unusual, this is generally the extent of the scrutiny a case receives.

Appeals supervisors' estimates of the proportion of their cases that they reviewed in detail ranged from less than 10 percent to nearly 90 percent.

The supervisors said looking carefully at every case is unnecessary because they convey their general standards for Appeals work and hear about problems with difficult cases during informal day-to-day discussions with appeals officers. Supervisors also consider the semiannual evaluations of how each appeals officer manages his or her inventory, known as workload reviews, as good background information on the quality of work done by their staffs.

Some of the appeals officers responding to our questionnaire, however, were not satisfied with the case file reviews described above. The following written comments illustrate their dissatisfaction:

"The associate chief has the settlement authority not the appeals officer. This authority is something that should not be taken lightly. In the last two to three years the associate chiefs haven't been allowed to really do their jobs because of the many other details to which they are assigned."

"Upper management at both the branch office and regional levels, by their actions, continually show that they could care less about the quality of the work as long as they get the necessary statistics * * *."

IRS guidelines do not require that branch office supervisors enter written comments in case files indicating that reviews have occurred. Documentation in the case files at the three locations we visited showed evidence of such reviews less than half the time. Nearly all the cases bore a supervisor's signature representing approval of the proposed settlement. However, we estimate that less than 40 percent of the cases settled in the three branch offices contain even such minimal review documentation as comments on the inventory control card regarding how the case was handled or an evaluation of the quality of the settlement.

A lack of file documentation showing whether Appeals supervisors had reviewed new issues raised in favor of the Government during negotiations with taxpayers further indicates that supervisors may not be adequately carrying out their roles in the quality control process. Appeals officers may raise new issues during negotiations with the taxpayer if the issue is in the taxpayer's favor. We were told that new issues in the Government's favor should be carefully considered by both the appeals officer and supervisor before they are raised with the taxpayer in order to avoid the impression that Appeals is a continuation of the audit process.

However, we could not tell if most of the new issues raised in favor of the Government had been given proper supervisory consideration and review before they were raised with the taxpayer because evidence was lacking in the case files we examined. On the basis of the cases we reviewed, we estimate that about 100 cases in the three branch offices we visited involved the raising of one or more new issues. Approximately 60 percent of the new issues raised were in the Government's favor. During our review of case files, we found review notes indicating that the supervisor had approved raising such issues only about 5 percent of the time.

Review of Appeals settlements
are not always done by supervisors

The Appeals Division closes some cases without the supervisor ever seeing them. In two of the three branch offices we visited, appeals officers frequently act in place of a supervisor and often assume supervisory case review duties. According to estimates by supervisors in the two offices, this type of substitution occurs as much as 20 to 30 percent of the time. An appeals officer quoted earlier added a comment to our questionnaire expressing a concern we share over this practice:

"* * * there are so many other management details assigned to the associate chiefs that too often someone else is acting in their place. From the technical standpoint, this may not pose a problem, but how can an associate chief properly evaluate his appeals officers performance (quality-wise) if the associate chief is gone half the time because of other management details?"

Supervisory review is dependent
on local management philosophy

The extent and depth of supervisory reviews also varies according to the philosophy of management in the various locations. The Internal Revenue Manual does not specify how case reviews should be done or if and how the reviews should be documented. Instead, the regional offices determine what the case review process will be through the policies they adopt regarding branch office visits and post review results and recommendations.

Our work showed that one of the three branch offices we visited appeared to place more emphasis on supervisory case reviews than the other two. Case review duties were almost never delegated to appeals officers in this branch, except to help develop personnel for future management positions. Our review of sample cases indicated that the supervisors made written comments on how appeals officers handled cases in over 70 percent of the cases settled in fiscal year 1979. File evidence at the other two locations suggests that the supervisors there made significantly fewer comments on closed cases. Comments appear in about 30 percent of the files at one branch office and in less than 20 percent of the files at the other.

The chief in the office with the better review record said that he stresses the importance of careful review and notations on the case activity control card to

- provide feedback to the staff on the quality of their work,
- maintain a written record for the supervisor's use in preparing annual performance appraisals, and
- use in monitoring how well the associate chief is doing his job.

The national office is aware of weaknesses in the supervisory review function

The Director of the Appeals Division said that he is not satisfied that the supervisory case review as presently implemented is a fully effective quality control tool. He cited problems, for example, with the supervisors not carefully reading decisions before signing off on them. The Director feels that more emphasis should be given to the role of the branch office supervisor in assuring quality settlements. He plans to have supervisory workloads examined to see if adjustments are needed to the mix of administrative and case review responsibilities placed on branch office supervisors. He said that he is also planning to revise existing supervisory guidance to strengthen branch office management and improve staff motivation.

Feedback is not an integral part of the supervisory review process

Supervisory case reviews are the best means the Appeals Division has of assessing appeals officers' performances and notifying them either that they need to correct deficiencies in their work or that their work is of good quality. However, the feedback that branch supervisors provide to appeals officers on the quality of their work is often too general to have maximum effect as a management control tool. For the most part, appeals officers in our sample did not believe that the feedback they received affected their settlement decisions or helped improve their future performance. They also generally reported that they received little feedback on the quality of the settlements they reached in our sample cases.

Supervisors are responsible for providing appeals officers with feedback resulting from post reviews, workload reviews, and the supervisory case review process. This feedback is the primary means of improving the day-to-day technical quality of the appeals officer's work.

Unfortunately, feedback directly from the branch office supervisor concerning the technical quality, including uniform and consistent treatment, of individual case settlements is limited. Responses from the appeals officers in the three branch offices included in our review indicated that feedback from supervisors, when it occurs, rarely involves suggested improvements to the settlement. Instead, the feedback tends to be general and commendatory in nature. The following table illustrates the limited extent of the feedback appeals officers said they receive.

Feedback to Appeals Officers

<u>Feedback source</u>	<u>Percent of cases where appeals officers received feedback</u>	<u>Percent of feedback which was commendatory</u>
Branch chief	5	72
Associate chief	18	78

The majority of the appeals officers who recalled receiving feedback from their supervisors concerning our sample cases did not believe that the feedback significantly influenced their performance. Their responses to our questionnaire indicated when the supervisor did provide feedback on the cases, the feedback helped them understand the technical aspects of only 17 percent of these cases. Similarly, the appeals officers thought that supervisory feedback in about 30 percent of the cases helped them understand case management factors better. In addition, they believed that the feedback for only 37 percent of these cases helped them learn how to improve their future performance.

CONCLUSIONS

First-hand supervisory review of Appeals case work is an important management control to insure uniform and consistent settlements. The importance of this control has also been recognized by the Director of Appeals. We question, however, whether existing supervisory case reviews adequately assess this aspect of Appeals settlements. IRS guidelines only require that Appeals supervisors review cases after the appeals officer has completed work on them. The guidelines are also vague as to the detail in which Appeals settlements should be reviewed.

As a result, the Appeals Division has not placed adequate emphasis on the supervisory case review function. The Appeals Division's failure to place adequate emphasis on the supervisory case review function has allowed

- reviews to be poorly timed in terms of effecting corrective action,
- reviews to be cursory in nature,
- the review authority and responsibility of branch office supervisors to be bypassed, and
- local management the freedom to conduct case reviews in as much or as little detail as they see fit.

We also noted that documentation of how well appeals officers perform their work is very limited. In addition, supervisors at some locations do not review significant amounts of their staff's work. Due to this lack of systematic review, Appeals supervisors may not have an adequate basis on which to assess the quality of the settlement negotiations conducted by their staffs.

The Appeals Division has not recognized the importance of supervisory feedback as a control tool. Branch office supervisors are not taking full advantage of prompt feedback to improve or maintain the uniformity and consistency of Appeals work. Feedback to appeals officers is infrequent, and when it does occur it is predominantly commendatory. Thus, it does not serve to correct deficiencies, and appeals officers may not be motivated to improve their work.

In view of its importance to Appeals' mission of achieving a uniform and consistent decision in similar circumstances, the role of branch office supervisors in reviewing cases and giving feedback should be expanded and stressed to provide better control over appeals officer's work.

PROPOSALS TO THE COMMISSIONER OF INTERNAL REVENUE

In a draft of this report, we proposed that the Commissioner of Internal Revenue:

- Require that regional managers monitor supervisory review procedures at the branch offices to insure that existing guidelines and those to be generated are consistently applied and that the depth and detail of the reviews being performed are adequate to insure that the settlements reached conform with IRS policy regarding consistency and uniformity.
- Initiate changes to existing guidelines to require, when possible, supervisory review of proposed decisions before an agreement on the settlement has been reached with the taxpayer.

AGENCY COMMENTS AND OUR EVALUATION

IRS agreed with our finding relating to improving supervisory review of Appeals case work. In this regard it has implemented our proposal that the regions more closely monitor the supervisory review process.

Although recognizing the value of supervisory advice, assistance, and review of proposed decisions before an agreement has been reached, IRS believes that such supervisory action should occur only under circumstances that clearly warrant it. According to IRS, going beyond this would be impractical and would have the effect of inhibiting settlement of cases and duplicating effort in the vast majority of the cases where no difference occurs.

We had not envisioned a review system that was extensive or duplicative, but rather a selective system that would insure uniform and consistent settlements. We believe that if IRS provides supervisory review of proposed decisions when warranted, and effectively monitors this through its regional evaluation system, the intent of our proposal related to supervisory reviews of proposed decisions will be met.

In our draft report we also proposed that supervisors document their case assessments. IRS in its comments implied that new requirements were placed on supervisors to document their review of the cases completed by appeals officers. Although the Handbook was revised it did not change the basic requirements, existing at the time of our review, for supervisors to make comments only where case handling is commendatory or deficient. As such, we do not believe that IRS' revised instructions comply with our proposal. Specifically, we believe that all supervisory reviews should be documented. Without documentation IRS cannot completely assess how well supervisors are reviewing the work of appeals officers.

RECOMMENDATION TO THE COMMISSIONER
OF INTERNAL REVENUE

We recommend that the Commissioner of Internal Revenue require Appeals supervisors to document their case assessments.

CHAPTER 4

MANAGEMENT REVIEWS ARE NOT ADEQUATE FOR DETERMINING

IF UNIFORM AND CONSISTENT SETTLEMENTS ARE MADE

As discussed in chapter 3, and further discussed in this chapter, Appeals is not completely evaluating whether or not its objective of uniform and consistent decisions is being met because its control system is not adequate. The two reviews which should provide management with this type of information do not. One of the reviews, the regional post review, contains design and procedural weaknesses that result in inadequate measurement of whether or not settlements are uniform and consistent. The other review, the nationwide post review, depends on documentation which frequently does not provide sufficient information to judge settlement decisions. The reviews also do not provide feedback to managers and staff in positions to take corrective action.

REGIONAL POST REVIEWS ARE NOT TIMELY, LACK DEPTH, AND ARE NOT COMPLETELY DOCUMENTED

Appeals regional offices review the closed cases of their branch offices to insure uniform and consistent treatment of issues, high-quality disposition of cases, and efficient case management practices. These reviews are controlled by each region and may include matters of concern to regional management. The results of these post reviews are reported to the national office semiannually on cases closed during the preceding 6 months.

We found that regional post reviews as presently conducted are not a useful control tool because review standards are too vague. This vagueness causes different applications of review criteria and methods of conducting the reviews. Consequently, the results reported to the national office are not uniform and cannot be consolidated for further analysis. Because the national office lacks usable information, it does not furnish any feedback to the regions on their post reviews and does not take action to correct deficiencies. In addition, regional offices do not consistently provide information which they develop to their branch supervisors and appeals officers so that they can improve settlements. Moreover, branch supervisors determine the extent this information is communicated to appeals officers.

Regional Appeals officials, however, told us that the flexible structure of regional review programs is necessary and that they are satisfied that the reviews provide effective control over the quality of Appeals settlements. Most regional officials we spoke with believed that each region's needs and concerns are

slightly different, and that each region's reviews should be tailored to address that region's particular interests.

Reviewers' opinions on settlements and methods of recording those opinions vary

Post reviews can be a valuable element of management control, if properly designed and conducted. Specifically, they can be the mechanism that compares completed results against established standards. The regional post review is the system within Appeals that comes closest to making this important comparison.

To test the effectiveness of post reviews, we asked 24 Appeals supervisors and officers experienced in reviewing Appeals settlements, 4 from each of 6 IRS regions, to participate in our test of the process. Each individual was asked to review and comment on 10 test cases as he or she would during a normal post review.

Although some inconsistency is to be expected when human judgment is involved, the variation in reviewers' comments on our test cases showed substantial disagreement over the technical and case management aspects of settlement decisions. For example:

- One case involved Appeals' concession of a taxpayer's rent and utility expenses for a condominium used by corporate employees and business associates. Five of the reviewers judged this concession to be clearly wrong because the taxpayer did not furnish the type of substantiation required by regulation. Four more of the reviewers commented that this decision was poorly supported by the appeals officer's write-up. Twelve reviewers made no specific comment concerning this issue, while 3 reviewers approved of the concession to some degree with comments such as, "settlement OK," "good factual determinations," and "good decisions on disposition of issues."
- Another case involved a taxpayer who signed an agreement to a settlement in August 1978. The appeals officer did not prepare the supporting statement and submit the case for supervisory review until March 1979. Fifteen of the reviewers made some note of this 7-month time lapse, while 9 reviewers did not comment on the delay. Of the 15 who noted the problem, 4 thought the lapse was satisfactorily explained on the inventory control card, 6 others thought the lapse represented poor or inefficient case management, and 5 mentioned the delay but did not judge its appropriateness.

Some reviewers did not record
all problems they observed

In our subsequent discussions, several reviewers told us they identified problems with our test cases which they did not include on their comment sheets. The reviewers considered these problems too minor to warrant a formal comment. However, problems which some reviewers told us were too minor to record were recorded by other reviewers. Examples of such problems included

- a supporting statement which did not present the taxpayer's position,
- a question regarding whether or not one of the cases should have originally been sent to Appeals,
- a disagreement with the appeals officer's decision to raise a new issue, and
- a need for the appeals officer to obtain an affidavit to substantiate the dependency of a relative.

One reviewer also stated that the control cards lacked information needed to adequately evaluate case management factors for all 10 cases. The reviewer did not document this problem at all. Another undocumented problem a reviewer cited as common in several cases was that the supporting statements did not provide enough information on points that the reviewer considered important.

Reviewers did not record results uniformly

IRS has a standardized post review worksheet, shown on the following page, which reviewers use to document their comments on cases selected for post review. In our opinion, the worksheet is too general to provide uniform recording of exceptions or problems and subsequent accumulation of useful data.

The post reviewers we talked with had varying interpretations of how the form should be used. In fact, we could not summarize and compare the reviewers' comments on our test cases because of the problems caused by the varying interpretations. Some of the reasons why we could not were:

- Some reviewers marked evaluation factors to indicate the case was satisfactory, while others marked the factors to indicate problem areas.
- Some reviewers made noncommittal comments such as "soft settlement" (marginal decision that clearly could have been better), and it was not clear as to the quantitative meaning of these comments.
- Some reviewers checked the evaluation box labelled "other" and proceeded to comment on elements of the settlement that fit into a specific evaluation box on the worksheet.

These differences occurred among reviewers from the same IRS region as well as among reviewers from different regions.

Reviewers pointed out that the standardized portion of the comment sheet does not allow them to adequately present their opinion of the case, particularly when multiple issues are involved. For example, if a reviewer approves of the decision on one issue in a case but believes the disposition on a second issue is weak, the reviewer may or may not mark the box labelled "high quality of disposition." Written comments can relate to the reviewer's opinion of the disposition of the two issues, but the form does not ask for an overall assessment of the quality of the decision on the case.

Some reviewers believe it is appropriate to include favorable comments in their evaluation of cases, while others do not think the purpose of the post review is to compliment good work.

Review guidance is not
comprehensive enough to
be consistently interpreted

The post review guidelines consist of a list of factors to be considered under the two general headings of "technical evaluation factors" and "case management evaluation factors" and, like the worksheet, are too general. The exhibit on the next page shows the limited information provided in the guidelines.

Some Appeals reviewers agreed that these guidelines are not comprehensive, although most believed that further elaboration was unnecessary. They said the guidelines are appropriate as reminders to experienced appeals officers who draw on their own

Exhibit 8(23)00-1

Review Guidelines**I. Technical Evaluation Factors**

- (a) High Quality Disposition
 - (1) Nuisance settlement.
 - (2) New issues raised consistent with Manual provisions.
 - (3) Settlement adequately measures strengths of opposing positions.
 - (4) Closing or Collateral Agreements secured where appropriate.
 - (5) Settlement in reconsideration cases consistent with prior evaluation.
- (b) Uniformity and Consistency
 - (1) Taxpayers treated the same in docketed status as in nondocketed status.
 - (2) Disposition consistent with the treatment of the issues regionally.
- (c) Clear and Concise Writeup Supporting Decision
 - (1) Excessive Citations and Quotations.
 - (2) Formal vs. Informal Supporting Statement, IRM 8(21)12.
 - (3) Waived issues identified rather than discussed.
 - (4) Initial discussion of facts in Law and Argument, IRM 8(21) 26.
 - (5) Personal references and derogatory remarks avoided.
- (d) Procedural Compliance
 - (1) Form 5402
 - a. Potential refund litigation cases properly identified.
 - b. Appropriate agreement form secured.
 - c. Follow-up action noted where necessary.
 - d. Excessive number of conferences in relation to complexity of case.
- (e) Other

II. Case Management Evaluation Factors

- (a) Preliminary Review Consistent with IRM 8221
 - (1) Did case constitute a premature referral?
- (b) Prompt Conference
 - (1) Early conference offered consistent with complexity of case and Appeals Officer's workload
- (c) Expeditious Follow-up
 - (1) Prompt inquiries regarding promised information
 - (2) Significant time lags between case activity
- (d) Prompt Decision and Writeup
 - (1) Decision reached soon after all the final conferences and all facts are in.
 - (2) Writeup completed shortly after agreement is secured keeping in mind complexity of case and Appeals Officer's workload.
- (e) Other
 - (1) Case appropriately graded.

knowledge of tax law and IRS policy and procedure to judge the quality of cases under review.

The Internal Revenue Manual explains the factors listed in the guidelines; however, regional Appeals officials said that many aspects of Appeals work are not governed by specific criteria. As such, they expect post reviewers to exercise their professional judgment with respect to those evaluation factors which cannot be precisely defined. These officials added that they are satisfied that their reviewers generally produce consistent results.

We do not agree that professional judgment--even when augmented with a list of factors to consider when evaluating a case--produces sufficiently consistent results to provide adequate quality control over Appeals settlements. For example, three reviewers told us that they do not use IRS review guidelines and that they prefer to rely on their own judgment and experience. The other reviewers' interpretations of IRS review guidelines varied significantly for both technical and case management evaluation factors. Furthermore, discussions with the 24 reviewers showed that the emphasis placed on particular factors varied among the individual reviewers and among the various regional locations.

Technical evaluation factors

Many reviewers we talked with identified certain technical evaluation factors that were subject to misinterpretation or in their opinion were not valid and therefore ignored. An example of the latter is uniform and consistent treatment of docketed and nondocketed cases.

One purpose for applying the technical evaluation factor of uniform and consistent treatment of cases is to determine if docketed and nondocketed cases are treated the same. Ten reviewers told us they make no effort to even assess whether cases receive equal treatment regardless of status. Moreover, two of these reviewers did not believe the cases should be treated the same because of the time limits placed on how long docketed cases can remain in Appeals, while there are no such restraints on nondocketed cases. Two other reviewers said that it would be impossible to evaluate the similarity of treatment between docketed and nondocketed cases unless they were examining a number of both types of cases with similar issues. We believe that this evaluation factor should not be ignored because, as our analyses in chapter 2 indicated, there is a high likelihood that docketed and nondocketed cases are not treated consistently.

Several reviewers also told us they were unsure of how to define "high quality disposition" of a case. They felt there

was a particular lack of uniformity on how to define one element of high quality disposition--the appropriateness of raising a new issue at the Appeals level.

Appeals is allowed to raise new issues that have not been brought up during the audit. Such issues may be in favor of either the Government or the taxpayer. However, new issues in favor of the Government should only be raised after careful consideration of IRS guidelines to determine if such action is warranted.

The appeals officers who handled the settlements in the three branch offices we visited said they raised one or more new issues in about 6 percent of the cases they handle. They added that the issues were raised in favor of the Government about 60 percent of the time. When the new issue is in favor of the Government, it may result in further adjustments against the taxpayer.

IRS guidelines direct that appeals officers raise new issues in the Government's favor only when substantial grounds exist for doing so and when doing so will have a material effect on the tax liability. The Internal Revenue Manual defines these criteria as:

--Substantial: strong, possessing real merit, with a high degree of certainty that the Government would prevail in litigation.

--Material: having real importance and great consequence--the amount of tax involved must be material to the Government or have a positive effect on voluntary compliance.

Reviewers were often uncertain about the meaning of these definitions. As such, many reviewers were unable to differentiate between them. Nine reviewers, for example, referred to "substantial" in terms of the additional tax involved, rather than the merit of the issue. There was a good deal of variation in how the term "high degree of certainty" was interpreted. Estimates ranged from "reasonable" or "better than even" to 99- or 100-percent certainty of the Government winning the case in court.

When assessing whether or not the change in potential tax liability represented a material amount, reviewers indicated that they were influenced by such factors as the amount of the taxpayer's reported income or assets. Responses from the 24 reviewers on what factors would cause them to vary their assessments of materiality are summarized below:

Factors Affecting Assessment of Materiality

<u>Would this factor influence your assessment of materiality?</u>	<u>Number of "yes" responses</u>
The type of return	6
The amount of the taxpayer's income or assets	14
Whether the case was from office or field audit	3
The amount of tax in dispute from the audit	14
The amount of tax the new issue represents	24
How much tax change the new issue represents as a percent of the tax in dispute	14

Only three reviewers told us they had a minimum tax amount in mind below which they would not consider a new issue to be material. These minimum amounts ranged from \$2,500 to \$50,000.

In a prior report on how IRS selects corporate tax returns for audit, ^{1/} we reported that IRS needs to establish more specific measures of materiality to assist Examination Division classifiers in evaluating audit potential. IRS agreed to develop and issue instructions containing measures of materiality to assist in the classification and screening of returns. Similar measures would also be meaningful for inclusion in Appeals review guidelines.

Case management evaluation factors

Case management evaluation factors are concerned with whether cases are moved quickly and efficiently through the appeals process. Many times, however, reviewers had different definitions for "quickly" and "efficiently." For example, individual reviewers' criteria for defining when such things as case writeups were "prompt" or when "significant time lags" occurred ranged anywhere from 2 weeks to 3 months. IRS guidelines instruct reviewers to assess promptness in a manner that is " * * * consistent with the complexity of the case and the appeals officer's workload." Because reviewers normally look at the work of appeals officers from branch offices other than their own, five reviewers from the branch office level said they have no way of knowing, from the material they review, how the appeals officer's workload influenced management of the case. Another example is the assignment of cases to appeals officers. Cases received by the branch office are screened by the chief to establish what grade level the appeals officer should be to handle the case. This grade level is to be determined by the difficulty of the issues involved as well as by the amount in dispute. Nine reviewers told

^{1/}"IRS Can Improve Its Process For Deciding Which Corporate Returns To Audit" (GGD-79-43, Aug. 3, 1979).

us they ignore the case management factor which asks for an assessment of whether or not the complexity of the case was consistent with the grade of the appeals officer who handled it.

Emphasis on review guidelines varies

IRS review guidelines do not direct reviewers to emphasize any particular evaluation factor or category. Nevertheless, some regional offices place more importance on certain review factors than on others. Of the six Appeals regional offices we visited, the regional directors or their designees indicated that the policy in three regions is to emphasize all evaluation factors equally. On the other hand, the responses of regional directors or their designees in two regions indicated that those two regions place extra emphasis on case management factors. Responses from the remaining region indicated that it considers technical factors most important during the review. Because most regional offices do not supplement IRS review guidelines with anything more than oral instructions to reviewers, reviewers have their own ideas about which evaluation factors should be emphasized.

Only six reviewers said they attempt to give equal emphasis to all evaluation factors. Ten reviewers considered technical evaluation factors more important than the other factors. Two reviewers thought case management factors are more important, and six other reviewers singled out such specific factors as decision quality or uniformity and consistency for added emphasis.

The problems reviewers identified with our test cases reflect the differences in emphasis discussed above. One reviewer who told us case management factors are very important and who identified a total of 10 problems when reviewing our test cases classified 7 of the problems as case management problems. He classified only 3 of the 10 as technical problems. Another reviewer from the same region believed that technical factors should receive the most attention during post reviews. Accordingly, he identified 12 problems when reviewing our test cases, 11 of which involved technical evaluation factors.

Some reviewers believe more guidance would improve post reviews

We asked the reviewers if portions of the review guidelines needed to be more clearly defined. Three of the reviewers told us they believe post review results would be more meaningful if the IRS guidelines were more specific about how reviewers should judge cases. One reviewer suggested that a useful approach to case evaluations would be to rate each evaluation factor shown on the standardized review worksheet against a scale, such as high, average, or low. Another reviewer thought "high quality decision" is not adequately defined in the review guidelines

and suggested that both positive and negative aspects of decisions should be listed. A third reviewer suggested expanding the reviewer's comment sheet to include all items listed in the review guidelines for a simpler and more comprehensive presentation of the reviewer's opinion of the case.

Two reviewers said that some of the factors covered in the IRS review guidelines are too broad to be effectively applied. One believed that reviewers could not evaluate uniformity and consistency when they only examine a small sample of the cases containing any number of different issues. The other reviewer said that the technical evaluation factor calling for a clear and concise writeup supporting the appeals officer's decision in the case could cover a "multitude of sins."

In one region, reviewers use charts to record their evaluations of cases and then prepare their comment sheets from the charts. These charts clearly indicate compliance or noncompliance with such IRS standards as prompt conferences and followup. The charts also provide such information as number and types of issues involved. All this information, however, is not necessarily presented on the reviewer's comment sheet.

Another region has devised a method for its supervisors to rate the quality of settlements. The method rates the appeals officers performance on individual cases by factors such as the quality of the decision, the report, and the case management using a five-point scale ranging from outstanding to unacceptable.

We believe that if Appeals adopted a method of recording post review results similar to either of the ones described above, it would help reviewers more accurately record their opinions and also provide more useful data on the cases reviewed.

Variations in case selection limit the usefulness of regional reviews to management

Because Appeals regional directors have full control over their respective regional reviews, the results reported are very dissimilar. The national office receives semiannual reports on the results of the regional reviews but can do little with the data due to the wide variations in the scope and methodology of the reviews. The reviews are therefore of limited use as a quality control tool at the national level.

The various methods the regions use to select cases for review influence the focus of the review and the number of cases reviewed. For example, a review of all fraud penalty cases would

likely involve a small number of cases and would focus on how uniformly and consistently a region treated cases containing fraud penalties. In contrast, a review of all the cases closed out in a single branch office during a given month would involve far more cases but it would be difficult to evaluate uniformity and consistency since the cases would involve many different types of issues.

In practice, the regions do use a variety of methods for selecting cases to be post reviewed. For example, during the regional post review period ended March 31, 1979, four regions used a random sample method as part of their selection process while a fifth region selected virtually all dispositions for a 1-month period. For this same period, the two remaining regions selected cases possessing a particular attribute, such as Appeals issuing a statutory notice. In addition, the number of cases reviewed by the regions varied from less than 150 to over 700.

Reports to the national office
cannot be consolidated or compared

Although IRS guidelines specify the format for reporting regional post review results, the regional reports bear little resemblance to each other in either format or content. The Internal Revenue Manual states that regions are to report the number and types of cases reviewed; the number of reviewer comments by type of case and by category of comment (i.e., number of comments concerning technical evaluation factors and case management factors); and finally any general observations, conclusions, and recommendations. We noted, however, that all the regions do not follow the manual guidance on reporting.

While some regional reports are very detailed, others are extremely brief. One region reports the number of cases and comments without explaining the nature of the comments. In addition to providing the statistics requested, another region summarizes each exception taken by the reviewers and attaches the reviewers' comment sheets. A third region does not furnish the total number of reviewers' comments or exceptions.

Exception statistics, for those regions which count and report reviewers' comments as IRS requires, are not comparable between regions. Since IRS has not defined how reviewers' comments should be counted for evaluation purposes, the numbers reported to the national office mean different things for different regions. For example, two regions count the number of cases commented on rather than the number of comments while other regions count and report each individual comment.

The person responsible for monitoring review reports in the national office acknowledged that the reviews lacked uniformity. He said he does not attempt to perform comparative analyses of the results reported "because of this lack of uniformity."

Post review results not effectively
communicated to appeals officers

Very little, if any, feedback reaches the individual appeals officers. This lack of communication dilutes the usefulness of regional post reviews as a quality control mechanism. Regional post reviews identify problems with the quality of Appeals decisions, with procedures followed and supporting statements, and with the way cases are managed in Appeals. Problems identified on any of these areas should be communicated to the staff responsible for the deficiencies and to other Appeals offices to help improve overall performance. Although the regional offices disseminate varying amounts of information to their own branch offices, they do not share any post review results as a quality control mechanism between regions. The national office also does not communicate regional review results to the staff responsible for deficiencies or to other Appeals offices.

Feedback on review results is
not circulated to other regions

Information on problems discussed in regional post review reports could help appeals officers in other regions to correct mistakes and learn what pitfalls to avoid. Such information could also help branch and regional management identify situations to watch closely. The following examples describe some types of information contained in regional post review reports that would be helpful to Appeals personnel in other regions.

- A November 1979 report noted that an appeals officer's weak case could have been strengthened for the Government if the officer had considered an IRS ruling and the court decision on which the district counsel attorney eventually settled the case.
- A July 1979 report highlighted cases where the appeals officer appeared to have made some arbitrary concessions to settle cases.
- A February 1980 report provided information on how the region settled all cases involving contributions to individual retirement accounts. The analysis showed Appeals always sustained the findings of the district office and cited a recent court opinion which was helpful in settling this type of case.

A reason why the regional review results are not circulated to other regions is that the national office has not found information in the regional reports to be of nationwide significance. Nevertheless, several regional officials contacted expressed an interest in learning about the problems other regions address in their post reviews because the problems discussed could give them

new ideas of areas to cover in their own regional reviews or allow them to compare similar issues. They suggested that statistics on how a region is settling a given issue could be useful to other regions for purposes of assessing uniformity and consistency.

Feedback to branch office level is limited

Regional feedback to branch offices varies in scope and content from region to region. One regional office prepares separate memorandums for each branch office. The branch chiefs in this region thus only learn about review results which pertain to their own offices. Another region prepares a synopsis of review results for branch chiefs that discusses reviewers' comments on all the cases and provides the regional director's general observations on problem areas that have been identified. A third region furnishes the branch offices with copies of the report to the national office as well as with copies of all the reviewers' comment sheets. Officials at two of the three branch offices included in our review told us they would like more feedback on regional post reviews and on the overall quality of the branch office's work.

Individual appeals officers in all of the regions receive feedback on post review results only if the branch chief believes it is appropriate. None of the regional offices we visited took steps to insure that appeals officers see review results. However, six out of eight branch office supervisors told us they would share reviewers' comments with appeals officers through group discussions or, alternatively, on an individual basis if a definite trend is identified in one person's work.

Although some feedback is given, our work at the three branch offices indicates that regional post reviews are not a significant source of feedback to appeals officers on the quality of their work. The appeals officers' responses to our questionnaire show that regional post reviews were a source of feedback to the staff on less than 1 percent of the cases settled by the three branch offices during fiscal year 1979.

National office plans revisions to improve regional post reviews

As a result of our work and feedback from other sources, the Director of Appeals agrees that more guidance is needed to improve the consistency of the review and the usefulness of the results. Accordingly, he said that he plans to standardize regional post reviews but still allow the regions the flexibility to address local problems as well. The purpose of the standardized portion of the regional reviews will be to produce statistically projectable results which will better document the quality

of Appeals settlements nationwide. The Director said that he does not plan to furnish feedback to the regions on their post reviews until better guidance is issued concerning what is expected from the reviews.

NATIONWIDE SPECIAL ISSUE POST
REVIEW NEEDS IMPROVEMENT

Nationwide special issue post reviews are not designed to serve as a comprehensive assessment of Appeals case settlements. The intent of this review is to evaluate the uniformity and consistency of Appeals settlements involving a few issues. Nevertheless, within these parameters nationwide reviews can serve as a management control. However, we identified two factors which reduce the usefulness of this type of review as a control mechanism. These factors are

- reviewers frequently do not have enough information to properly evaluate case settlements, and
- much of the information gathered during the reviews is not reported back to the field personnel who handled the cases.

Nationwide reviews are conducted on a rotating basis by the seven regional Appeals offices. Issues reviewed are selected by the national office from regional suggestions as well as from issues (1) on which appeals officers have frequently requested technical assistance, (2) in which the national office has special interest, and (3) which are most frequently appealed. Each region then forwards appropriate documentation for cases involving the designated issues to the reviewing region. Cases forwarded are those closed in the previous 6 months.

Nationwide special issue post reviews are of limited scope. For example, the special issue post reviews covered only nine issues involving 1,105 cases in fiscal year 1979, a very small portion of the available issues and cases. For the same period, over 46,000 cases involving thousands of tax issues were closed out by Appeals.

IRS officials believe that their current approach to performing nationwide post reviews makes the most effective use of the limited resources available to conduct these reviews. They believe that by concentrating on a few issues representing the more difficult and complex Appeals decisions, the nationwide reviews are covering a substantial portion of existing quality control problems. Managers at the regional and national office level told us that IRS cannot increase the number of issues examined using nationwide reviews because the staff and time needed to do so would be too great. Furthermore, the national office staff is unwilling to consider reviewing fewer cases per issue

to increase the number of issues covered because the purpose of nationwide reviews is to insure uniform and consistent treatment of issues. Accordingly, they believe that all cases involving a given issue should be examined.

Case documentation is inadequate for reviews

Reviewers and national officials told us that supporting statements, which document Appeals actions on a case, generally should provide sufficient information for a post review. The Internal Revenue Manual defines the supporting statement as an internal report which explains the appeals officer's conclusion for disposition of a case. The manual leaves the length and content of supporting statements up to the appeals officer's judgment. It suggests that statements discuss the issues before Appeals, the proposal for settlement, facts, applicable laws, pertinent regulations and rulings, the merits of the issues, special features, recommendations, and conclusions.

On several recent nationwide reviews, a frequent problem reviewers identified with the cases they reviewed was insufficient information in the supporting statement to assess whether the disposition of the case was proper. In fact, each of the five post review reports from September 1977 through September 1979 we reviewed contained references to problems with supporting statements. The nationwide review report for the period ending March 1979, for example, mentioned several times that the actions being taken were not adequately explained or justified in supporting statements.

The reviewers conducting one of the reviews decided to request administrative files because one-fourth of the supporting statements included in their review were so inadequate that cases could not be properly analyzed.

The administrative file is IRS' most complete source of information about a tax case. This file contains the tax return, the examiner's report and supporting workpapers, the taxpayer's protest or petition, the appeals officer's workpapers, and notes on conferences held at Appeals.

In practice, however, reviewers request administrative files very infrequently because of the time and trouble involved in obtaining them from IRS Service Centers or Federal Records Centers. For the five nationwide post reviews, the reviewers used administrative files only once. In the single instance in which the administrative files were used, the reviewers had difficulties in obtaining the 24 administrative files. This difficulty caused the final post review report to be delayed for several months.

The Director of Appeals said he is not satisfied with the quality of supporting statements and is aware of the problems reviewers have had. He believes that requiring better supporting statements could be a more efficient solution than requiring the use of administrative files on all cases under review. He maintained that although the decision to request administrative files should be an option open to reviewers, the supporting statements should continue to be the main source of information of post reviews.

No assurance that appeals officers receive feedback to help improve future performance

Post reviewers compile notes and comments on individual settlements into a report describing general trends they observed in each issue area and the specific problems or exceptions they identified. The reports usually show the number of exceptions by region but do not identify which branch offices settled the problem cases. The Director of Appeals attaches a cover letter highlighting national office views on the review results and distributes this package to the regional directors of Appeals for their information and action.

The Director of Appeals expects the regional directors to disseminate information on the nationwide reviews to their staffs and to take any necessary followup action. Regional officials stated that the reports are not specific enough to be useful to them but they do circulate the reports to their branch chiefs. The branch chiefs, in turn, are responsible for advising appeals officers of post review findings.

We found no indications that individual branch office appeals officers received specific feedback on the settlements they handled which were included in the national reviews. The results of our appeals officer questionnaire showed that nationwide post reviews were never a source of feedback on fiscal year 1979 settlements. Officials in two regions attributed this to the fact that the information received on nationwide reviews is too general to evaluate at the branch office level and that they cannot always determine which branch office handled the cases to which the reviewers took exception. This may be true; however, the national office retains the reviewers' comment sheets and can break down review statistics according to branch offices if the regions so desire.

CONCLUSIONS

IRS could more effectively use its post reviews to monitor appeals decisions. The present form of the reviews, however, limits their potential usefulness. Before the post reviews can be relied on as an accurate indicator of the level of uniformity and consistency being achieved, IRS needs to revise both reviews so that they are more useful to all levels of Appeals.

Currently, there is too much variation in the regional post reviews, and, as such, the national office has difficulty comparing results. Specifically, vague review guidelines allow reviewers' opinions and interpretations to play too great a role in the review process, both in judging the uniformity and consistency of settlements and in recording review results. IRS needs to improve post review guidelines so that reviewers have a clearer understanding of what standards they should measure Appeals settlements against. Establishing more specific measures of materiality, for example, would assist reviewers in determining whether or not it is appropriate to raise a new issue at the Appeals level. Clearer guidance on how review results should be recorded as well as an improved form for recording these results would also provide more meaningful documentation of the reviewer's assessments.

Variations in selection of cases for post review and reporting practices among regions make it difficult to consolidate regional results to produce data on the uniformity and consistency of Appeals settlements nationwide. IRS should introduce some standardization into the regional review process so that data can be generated on the overall level of uniformity and consistency the Division is achieving. But, before this can be done, appeals officers must adequately document the rationale for their settlement decisions.

Finally, Appeals does not routinely insure that appeals officers and managers receive feedback on either regional or nationwide post reviews and that corrective action is taken on review results. Feedback to appeals officers and supervisors could be more effective if more comprehensive review results were disseminated to them. Such feedback would enable appeals officers to correct deficiencies in their work as well as improve their performance by learning from problems encountered by others. Also, regional review would be of more value if all regions were informed of the review results of other regions.

Through our work and its own effort, IRS' national office has already become aware of some of the weaknesses discussed above and is planning corrective action. IRS should continue its current plans to improve the post review programs and should insure that any planned revisions cover the problem areas we identified.

PROPOSALS TO THE
COMMISSIONER OF INTERNAL REVENUE

In a draft of this report, we proposed that the Commissioner of Internal Revenue:

- Furnish more guidance to appeals officers on the information needed in supporting statements to adequately explain action taken on cases in order to improve file documentation quality.
- Revise the system for recording regional review results so that reviewers can communicate their results more accurately and uniformly.
- Establish criteria for consolidating and reporting regional review results to produce data which can be further analyzed and compared at the national office level.
- More clearly define the standards against which settlements are measured.
- Improve appeals officers' awareness of new technical information by providing branch supervisors and appeals officers with comprehensive information on the results of all regional post reviews.
- Furnish a synopsis of all regional review results to Appeals regional directors so that each region can benefit from the collective review effort.

AGENCY COMMENTS AND OUR EVALUATION

IRS agreed with the above proposals regarding management reviews. The following actions taken by IRS should improve the Appeals post review process.

- IRS substantially revised its manual for preparing supporting statements. According to IRS these revisions will improve the quality of the appeals officers' write-ups explaining and supporting the bases for decisions rendered in cases.
- IRS revised its manual to specify how regional review results will be recorded and reported.
- IRS revised its manual for regional reporting requirements to insure that specific information is uniformly covered. According to IRS, the quality of regional reports will continue to be closely monitored at the national office level.

--IRS better defined standards by requiring reviewers to measure settlements in accordance with Post Review Guidelines.

--IRS revised its manual to require regions to provide appeals officers with comprehensive information on the results of the regional post review.

IRS also said that it would disseminate the regional post review findings to all regions so that each region can benefit from the collective review.

CHAPTER 5

TAXPAYERS ARE GENERALLY SATISFIED

WITH THE RESULTS OF THEIR APPEALS

In order for our tax system of voluntary self-assessment to function, the administration of the tax laws must not only be fair, but must also be perceived by the taxpayers as being fair. However, there is considerable congressional concern that taxpayers feel dissatisfied with their treatment by IRS.

Numerous pieces of legislation have been proposed in both the House and the Senate to help safeguard taxpayer rights and insure impartial treatment by IRS. Such proposals often contained (1) measures to increase taxpayer satisfaction with the convenience and quality of IRS' service, and (2) procedures to allow taxpayers to recover the costs of resolving disputed audits.

The majority of individual taxpayers we contacted were satisfied with the settlements they received and their treatment by Appeals personnel. Although some taxpayers expressed dissatisfaction with how their appeals were handled, most of the dissatisfaction focused on the amount of time required for case settlement. Thus, measures intended to increase taxpayer satisfaction should be designed to concentrate on areas where the timeliness of the audits and appeals process could be improved.

The majority of taxpayers who responded to our questionnaire were not represented by a tax professional in their appeals. The most frequent reason taxpayers gave for why they were not represented was because they thought they could deal with IRS themselves. According to our analysis, whether or not a taxpayer had a paid professional to represent him or her did not influence either the rate of settlement or the taxpayer's satisfaction with the final outcome of the appeal. A number of the respondents, however, said that the major reason they agreed to the settlement was that they could not afford to plead their cases in the courts. Relating to this, both Houses of Congress have recently passed bills which provide for reimbursing legal fees to certain taxpayers who prevail in the Tax Court.

CONGRESSIONAL INTEREST IN IRS' TREATMENT OF TAXPAYERS

The Congress has shown extensive concern with protecting the rights of taxpayers in their dealings with IRS. Over the period 1977 to 1980, Members of both the House and the Senate proposed

over 15 pieces of legislation designed to safeguard taxpayer rights. These legislative proposals were generally intended to make taxpayers more aware of their rights as well as to restructure some legal avenues and IRS procedures to put taxpayers on a more equal footing with IRS. Similar provisions in the various pieces of legislation proposed the following:

- Preparation and distribution of pamphlets which explain in nontechnical terms the procedures, rights, and obligations of both IRS and taxpayers during audits, appeals, refund claims, and other actions which can result in taxpayer complaints about how the IRS enforces revenue laws.
- Establishment within IRS of an Office of Taxpayer Services or a similar group to serve as an advocate for taxpayers. Responsibilities of this Office would include answering questions and providing taxpayers with tax and audit information as well as locating documents or payments submitted to IRS. Additionally, the Office would be responsible for surveying taxpayers to evaluate the quality of IRS' service and for providing personnel in local IRS offices to receive, evaluate, and take action on complaints concerning IRS.
- Requirement that interviews be scheduled upon request between taxpayers and IRS at locations and times most convenient to the taxpayers.
- Reimbursement of legal costs to taxpayers who prevail in disputes involving tax issues. 1/

Although IRS supports the principles on which these proposals are based, it opposes some of the proposals either because it feels that present IRS procedures and practices are sufficient or that the potential benefits would not justify the anticipated cost. IRS supports the concept of reimbursing taxpayers for the

1/Two laws have been passed which allow for the reimbursement of legal fees to certain taxpayers who prevail against IRS in court. The Civil Rights Attorney's Fees Awards Act (1976) has been interpreted so narrowly that very few taxpayers have qualified for reimbursement. The Equal Access to Justice Act (1980) effective October 1, 1981, is not clear as to whether it covers reimbursement to taxpayers who prevail in the Tax Court, where most tax cases are tried. Both Houses of Congress have recently passed bills which essentially provide for this relief. On May 19, 1982, conferees from the House of Representatives and the Senate met to consider passage of the subject legislation (H.R.4717). As of July 16, 1982, this legislation had not been reported out of the Conference Committee.

costs of resolving their disputes with IRS in court, providing that adequate safeguards are present to prevent Tax Court congestion. Some safeguards IRS feels would be necessary include setting ceilings on the amount of recoverable costs, requiring that IRS' actions be shown to be unreasonable, and allowing recovery only after exhaustion of all administrative remedies.

The information we obtained from individual taxpayers who appealed their audits may help in determining what kind of legislative measures are needed to assist taxpayers.

MOST TAXPAYERS VIEW THE RESULTS OF THEIR APPEALS FAVORABLY

We assessed taxpayer satisfaction with the appeals process by asking our sample group of 422 individual taxpayers to express their opinions on the following aspects of their cases:

- The courtesy and competency of Appeals personnel.
- The final settlement, both in terms of the amount and in terms of IRS' interpretation of the facts or legal issues involved.
- The time it took to settle the case.

Most of the taxpayers were satisfied with the courtesy and competency of appeals officers, and a majority of them were satisfied with the terms of the agreement. Fewer than half, however, were pleased with the amount of time it took to settle their cases.

A number of factors ^{1/} caused taxpayers to be satisfied or dissatisfied with various aspects of the appeal, but no one factor greatly influenced the taxpayers' satisfaction with any aspect of their cases. In fact, our analysis did not show a statistical relationship for some factors which we expected to influence taxpayer satisfaction, such as how much proposed adjustments were changed by Appeals in final settlements.

^{1/}We used regression analysis to test the influence that several factors had on various aspects of taxpayer satisfaction. Our analysis postulated that as certain factors had more or less influence in the case, there would be a corresponding change in the level of reported taxpayer satisfaction. For example, using this type of analysis we were able to determine that the more frequently taxpayers noted problems with gathering additional documentation in support of their case, the more likely they were to be dissatisfied with the appeals officers' courtesy and competency.

Taxpayers report high satisfaction with appeals officers' courtesy and competency

As shown below, we estimate that 95 percent of the individual taxpayers at the three locations were satisfied with the appeals officers' courtesy.

Taxpayers' Satisfaction With The Appeals Officers' Courtesy

	<u>Docketed</u>	<u>Nondocketed</u>	<u>All taxpayers</u>
	----- (percent) -----		-----
Very to generally satisfied or neutral	94	95	95
Very to generally dissatisfied	<u>6</u>	<u>5</u>	<u>5</u>
Total	<u>100</u>	<u>100</u>	<u>100</u>

As shown below, almost as many taxpayers, or 88 percent, were satisfied with the appeals officers' competency.

Taxpayers' Satisfaction With The Appeals Officers' Competency

	<u>Docketed</u>	<u>Nondocketed</u>	<u>All taxpayers</u>
	----- (percent) -----		-----
Very to generally satisfied or neutral	89	88	88
Very to generally dissatisfied	<u>11</u>	<u>12</u>	<u>12</u>
Total	<u>100</u>	<u>100</u>	<u>100</u>

We asked taxpayers to give us the reason that best described why they settled their cases at the Appeals level. The table below shows that about a third of the responses attributed the main reason for the settlement to the fact that the appeals officer either listened to the taxpayer's side of the argument or better explained the facts and issues.

Taxpayers' Reasons for Case
Settlement at the Appeals Level

<u>Taxpayers' reason for agreeing to settlement</u>	<u>Percent</u>
I felt IRS was more willing to compromise.	10
I felt the appeals officer explained the facts and issues better.	6
I felt the appeals officer listened to my side of the argument.	27
I was able to present information not previously available.	7
I believed it would be too costly to continue.	22
I did not want to go to court.	10
Other	<u>18</u>
Total	<u>100</u>

Most taxpayers were satisfied
with their settlements

We asked the taxpayers in our sample to assess their overall satisfaction with their settlements in terms of two categories:

- Satisfaction with the dollar value of the settlement.
- Satisfaction with IRS' final interpretation of the facts or legal issues involved.

As shown below, almost two-thirds of the taxpayers who responded said they were satisfied with the dollar amount of the settlements.

Taxpayers' Satisfaction With the
Dollar Amount of the Settlements

	<u>Docketed</u>	<u>Nondocketed</u>	<u>All taxpayers</u>
	------(Percent)-----		
Very to generally satisfied or neutral	70	60	63
Very to generally dissatisfied	<u>30</u>	<u>40</u>	<u>37</u>
Total	<u>100</u>	<u>100</u>	<u>100</u>

Note: Sampling error does not exceed ± 11.5 percent.

Slightly fewer taxpayers were satisfied with IRS' final determination of the factual or legal issues in question. As shown below, 55 percent of the taxpayers who answered this question were satisfied.

Taxpayers' Satisfaction With IRS'
Determination of Factual or Legal Issues

	<u>Docketed</u>	<u>Nondocketed</u>	<u>All taxpayers</u>
	------(Percent)-----		
Very to generally satisfied or neutral	67	50	55
Very to generally dissatisfied	<u>33</u>	<u>50</u>	<u>45</u>
Total	<u>100</u>	<u>100</u>	<u>100</u>

Note: Sampling error does not exceed ± 12 percent.

As shown in the two tables, there were some differences in the degree of satisfaction expressed by taxpayers with docketed and nondocketed cases. However, these differences did little to explain taxpayer satisfaction with either aspect of the settlements.

Almost a third of the taxpayers cited the cost of continuing to dispute IRS' position and a desire to avoid going to court as the reasons which best explained why they settled their cases at the Appeals level. However, these factors were not found to be statistically significant in explaining taxpayer satisfaction with the dollar amount of the settlements and the final interpretation of facts or issues.

We found no significant association between the level of taxpayer satisfaction with the percent of settlement or the final resolution of issues and such factors as the location of the appeal, the taxpayer's income, and whether or not the taxpayer retained professional representation.

Taxpayers are not satisfied with the time it took to settle the cases

A majority of the taxpayers were dissatisfied with the amount of time it took to settle their cases, as shown below.

Taxpayers' Satisfaction With the Time Taken to Settle Their Cases

	<u>Docketed</u>	<u>Nondocketed</u>	<u>All taxpayers</u>
	----- (Percent) -----		
Very to generally satisfied or neutral	59	43	47
Very to generally dissatisfied	<u>41</u>	<u>57</u>	<u>53</u>
Total	<u>100</u>	<u>100</u>	<u>100</u>

Note: Sampling error does not exceed + 12.5 percent.

We asked taxpayers to assess the seriousness of any time-related problems they encountered in appealing their cases either because they were required to be away from their work or business or because of the distance they had to travel. As shown below, about a fourth of the taxpayers considered these aspects of settling their cases to be moderate problems, and a similar number considered them serious or very serious problems.

Seriousness of Time Problems at Appeals

	<u>Little to some problem</u>	<u>Moderate problem</u>	<u>Serious to very serious problem</u>
	----- (percent) -----		
Time lost from work or business	49	24	27
Travel time or distance	53	27	20

Specifically, our analysis showed that the more serious a problem taxpayers had with time lost from work or business, the more likely they were to be dissatisfied with the overall amount of time it took to settle the cases.

We could not determine the total amount of time required to settle the cases because many of the case files did not contain sufficient information, particularly at the Examination level. However, some taxpayers made the following comments on the amount of time it took to resolve their cases.

"[It] took 1 year for [the examiner] to get audit data to me. [It] took [an] additional year for [the] supervisor to get [the case] to Appellate Division. Took two more years to get [through] Appellate. Total length of time from initial meeting on audit to settlement--four and one-third years."

"IRS kept changing agents and [attorneys]. I had to start from scratch with at least six different individuals over the 4-year process."

"I felt I had to waste a lot of time dealing with IRS personnel who did not have authority to settle the case in my favor."

"The IRS takes their [time] reviewing these cases--months and months between answers. During this time, interest is piling up. I feel this [is] extremely unfair."

REPRESENTATION NOT ESTABLISHED AS A FACTOR INFLUENCING TAXPAYER SATISFACTION

A number of Members of the Congress have expressed concern with how well taxpayers are able to deal with IRS and with taxpayers' ability to afford the cost of resolving disputed audits. Much of this cost involves retaining professional representation, such as an accountant or attorney.

A majority of the taxpayers in our survey were unrepresented. Although some taxpayers told us they were not represented because of cost, most were not represented because they felt they could deal with IRS themselves. Further analysis of their responses showed that taxpayers who were represented were not more satisfied than unrepresented taxpayers were with either the terms of the settlement or with how IRS personnel resolved the case. Furthermore, our analysis discussed in chapter 2 failed to show that representation influenced changes in the variations in final settlements at Appeals. In other words, taxpayers who settle at the Appeals level appear to obtain about the same results whether or not they are represented.

Why taxpayers were unrepresented

Fifty-five percent of the individual taxpayers we questioned did not have a tax professional, such as an accountant, lawyer,

or enrolled agent, representing them at meetings with IRS auditors at the Examination level. The number of taxpayers unrepresented in meetings with Appeals dropped slightly to 53 percent.

We asked unrepresented taxpayers what reasons best explained why they decided to handle their own audits and appeals. Almost half responded that they did not have a representative because they felt they could deal with IRS themselves. An additional 20 percent of the unrepresented taxpayers said the cost of professional help was the reason.

As previously noted, cost was also a factor when we asked taxpayers to state the reason that best describes why they decided to settle at Appeals. Twenty-two percent said they settled because it was too costly to continue. Much of the concern with cost centered on representation. A fourth of all respondents cited the expense of professional representation as a serious problem. Comments we received from taxpayers also indicated that some decisions to settle had more to do with the cost of representation than with agreements with IRS. Some of these comments follow:

"I paid the tax because I felt I had no choice. I did not agree with their findings * * * I felt that the low income taxpayer does not have any choice, because they do not make enough to pay a lawyer and, therefore, IRS has the upper hand."

"If we could have afforded even \$500, we could have beaten them hands down. We were told this by two tax lawyers and a CPA."

"I chose not to go any further with this matter because my tax bill was reduced * * * Thus, at this point, I felt I would need an attorney to go further and his fee would most certainly be more than the final tax bill."

Representation shown not to influence appeals results

Although some taxpayers believed they would have fared better beyond the Appeals level if they could have afforded the representation that would have allowed them to continue to contest proposed IRS adjustments, our analysis did not indicate a relationship between settlements made at Appeals and whether or not the taxpayer was represented. Nor could we show that taxpayer representation during appeal was a significant factor in explaining taxpayer satisfaction with such aspects of settlements as the courtesy and competency of appeals officers, the dollar amounts and explanations of settlements, and the time it took to settle the cases.

The appeals officers who settled the cases in our sample agreed that the amounts of final settlements for unrepresented taxpayers would not have been materially different if the taxpayers were represented. They did feel, however, that about a third of the unrepresented taxpayers would have benefited at least moderately from the improved organization of cases and understanding of the tax issues which representatives would provide. Their comments are summarized below.

Appeals Officers' Comments on Extent to Which Representation Would Have Helped the Taxpayer

	<u>Little to small</u>	<u>Moderate</u>	<u>Large to very large</u>	<u>Unknown or no basis to judge</u>
	-----(Percent)-----			
Taxpayer would have better understanding of legal aspects of the case	63	19	15	3
Taxpayer's case would have been better organized and/or presented	68	15	14	3
Settlement would have been more favorable to the taxpayer	98	0	0	2

Most taxpayers' decisions to be represented would not change

Most taxpayers' decisions to be represented or not would not change even after their experiences of being audited and subsequently appealing their cases. We questioned the taxpayers at the three locations as to whether their experiences would affect their decisions to be represented or not in any future dealings with IRS. We estimate that if the occasion arose, 81 percent of the taxpayers who were represented at Appeals would secure representation for future IRS appeals. Conversely, 66 percent of the taxpayers who were not represented during the appeal would continue to be unrepresented in future dealings with IRS. These figures indicate that the majority of taxpayers in both groups plan to maintain the same status regarding representation in the future as they had in the past.

IRS INTERNAL AUDIT REPORT
CONTAINED SIMILAR FINDINGS

A November 1980 study by IRS' Internal Audit Division reported similar findings to ours on taxpayers' perceptions of the appeals process. The study said that: (1) the taxpayers contacted were generally satisfied with how Appeals resolved their tax disputes; (2) unrepresented taxpayers generally felt that the appeals system allowed them to adequately represent themselves--only 7 percent of the unrepresented taxpayers said in retrospect that they wished they had retained a representative; and (3) the only area in which a notable problem existed was in the excessive amount of time it took from when the taxpayer requested an appeal until when an appeals officer got in touch with the taxpayer.

The study could not determine where the delays occurred in processing cases to Appeals. The study concluded, however, that taxpayer relations could be improved by establishing servicewide guidelines for sending disputed cases to Appeals in a timely manner.

In response to the study, IRS' Assistant Commissioner for Compliance said that a nationwide work planning and control system was being implemented which will (1) allow closer monitoring of unagreed cases and (2) insure they are moved to Appeals in a timely manner. The Assistant Commissioner also said that a change underway in the Examination Division's automated management information system should assist in preventing processing delays.

CONCLUSIONS

Taxpayer dissatisfaction with our tax system must be dealt with because, if extensive, it could affect compliance with the tax laws. We found that the majority of individual taxpayers who appealed their cases were satisfied with the aspects of their settlements that we questioned except the amount of time it took to resolve their cases. Taxpayers also tended to be satisfied with the terms of their settlements, although they were more satisfied with the dollar amounts than they were with IRS' final interpretations of the facts or legal issues in their cases.

The timeliness of IRS settlements was a major element influencing taxpayer dissatisfaction with the appeals process. The amount of time it took to settle cases was the only aspect of the process we examined where a majority of taxpayers reported dissatisfaction. IRS is now taking steps to address the timeliness of settlements.

The docketed status of cases shown in chapter 2 to influence the settlement rate did not have a similar influence on taxpayer satisfaction. A higher percentage of docketed taxpayers than nondocketed taxpayers were satisfied with the amount of their settlements and with IRS' final interpretations of facts and issues as well as with the amount of time their cases consumed. However, these differences between docketed and nondocketed cases do not appear to be major factors explaining taxpayer satisfaction.

Our analysis did not indicate a relationship between levels of taxpayer satisfaction with their treatment by Appeals and numerous other factors, including the amount of the settlement, the taxpayer's income, and whether or not the taxpayer was represented.

The majority of the taxpayers were unrepresented. Only one in five of the unrepresented taxpayers cited cost as the reason. About half were unrepresented because they felt they could deal with IRS themselves. Our study bears out this assumption.

Taxpayer representation was not found to have had an influence on the percent of dollar settlement. Also, our analysis did not indicate a relationship between representation and taxpayer satisfaction with Appeals handling of cases. Our analysis indicated that unrepresented taxpayers were not unduly disadvantaged in their dealings with IRS at the Appeals level. The majority of taxpayers who were represented said they would continue to be represented in future dealings with IRS, while a majority of unrepresented taxpayers said they would remain unrepresented in future IRS contacts.

However, many individual taxpayers who responded to our questionnaire indicated that they believed it too costly to continue their cases. The cost of taking a case to court, therefore, may have caused taxpayers to accept settlements they did not agree with. Relating to this, both Houses of Congress have recently passed bills which provide for reimbursing legal fees to certain taxpayers who prevail in the Tax Court.

COMMISSIONER OF INTERNAL REVENUE

Washington, DC 20224

APR 1 1982

Mr. William J. Anderson
Director, General Government Division
United States General Accounting Office
Washington, DC 20548

Dear Mr. Anderson:

Thank you for the opportunity to review your draft report entitled "Changes to the Administrative Appeals Process Could Produce More Uniform and Consistent Settlements."

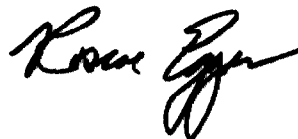
We have enclosed comments which address certain report findings and recommendations. For the most part, we have already taken action on the report recommendations, the substance of which have been addressed in recent revisions to the Internal Revenue Manual as noted in our comments. However, regarding the recommendation that there be supervisory review of proposed settlements before agreement between the appeals officer and the taxpayer, we feel that this would be impractical, would have the effect of inhibiting settlement of cases and duplicating effort in the vast majority of cases where no difference occurs. This issue is more fully addressed in our comments.

The report also includes a "Matter for Consideration by the Congress," ^{1/} which favors taxpayer recovery of attorney fees after exhaustion of administrative remedies with no allowance for costs incurred during the administrative appeals process. Both Houses of Congress have passed bills which essentially provide for this relief. We have been advised that House and Senate conferees may consider the differences between their respective bills shortly.

We hope our comments will be helpful to you in the preparation of your final report.

With kind regards,

Sincerely,



Enclosure
As Stated Above

^{1/}This "matter for consideration..." has been eliminated from the final report. On May 19, 1982, conferees from the House of Representatives and the Senate met to consider passage of the subject legislation (H.R. 4717). As of July 16, 1982, this legislation had not been reported out of the Conference Committee.

Comments on GAO Draft Report
Changes To The Administrative Appeals
Process Could Produce More Uniform
And Consistent Settlements

1. Uniform and Consistent Settlements

Finding by GAO

Appeals settlements are not always as uniform or consistent as possible.

IRS Comments

GAO made a statistical analysis which suggests that taxpayers may not be receiving consistent and uniform treatment in Appeals' settlements. The report states on page 12 that GAO "... found that differences existed among locations as to how strongly six factors influence the appeals settlement decision. These differences raise additional questions as to whether settlements are uniform and consistent." GAO arrived at the six factors by asking Appeals Officers and managers to give their opinions as to what factors should be frequently considered in making settlement decisions. They were: need to foster voluntary compliance; quality of the case as prepared by the examiner; complexity of the tax law; taxpayer's credibility; hazards of litigation; and quality of the taxpayer's documentation.

Based on a sample of Appeals settlements, GAO found that there were statistically significant differences among Appeals locations on how these factors influenced settlement decisions, indicating a lack of uniformity in the use of the factors. For example, GAO found that the quality of the case prepared by the examiner was considered an important influence in 48% of the settlement decisions for docketed cases in one location but was an important influence in only 13% of docketed cases at another location. In another instance, GAO found that the need to foster voluntary compliance was a major influence in 55% of corporate nondocketed case decisions in one office compared to 17% in another office.

Obviously, the reasons given as the major influencing factors in the settlement decisions were not consistent in each location. However, this does not support a conclusion in and of itself that the settlements reached did not reflect the relative merits in the positions taken by the taxpayer and the Government.

Of greater significance is the fact that the technical quality of the settlements was not considered by GAO in reaching its conclusion. This would appear desirable before a valid opinion could be expressed on the uniformity and consistency of Appeals settlements.

2. Supervisory Case Reviews

Findings by GAO

- (a) Branch supervisors are not taking full advantage of providing feedback to improve or maintain the uniformity and consistency of Appeals work.
- (b) IRS guidelines do not specify how supervisors should monitor the quality of individual settlements. Furthermore, supervisory reviews of recommended settlements are often cursory in nature, and documentation of the Appeals Officer's performance on the case is very limited.
- (c) Supervisory review takes place after the Appeals Officer has concluded settlement negotiations with the taxpayer. This makes it very difficult for the supervisor to introduce any substantive change in the settlement proposal. In practice, Appeals supervisors only rarely alter proposed settlements on review.

Recommendations

We recommend that the Commissioner

- initiate changes to existing guidelines to require, when possible, supervisory review of proposed decisions before an agreement on the settlement has been reached with the taxpayer,
- require documentation of the supervisor's assessment of the case,
- require that regional managers monitor supervisory review procedures at the branch offices to insure that existing guidelines and those to be generated are consistently applied and that the depth and detail of the reviews being performed are adequate to insure that the settlements reached conform with IRS policy regarding consistency and uniformity, and
- more clearly define the standards against which settlements are measured.

IRS Comments

- (a) These findings are addressed in a proposed revision to the Appeals Managers' Handbook, IRM 8(24)40.

Paragraphs 631.1 through 631.5 of the Handbook provide specific guidelines for use in providing timely feedback to Appeals Officers. Frequent workload reviews are required where serious performance deficiencies have been identified in an Appeals Officer's work. Even the most competent Appeals Officers are subject to at least one workload review each year. Also, live case reviews are prescribed for problem cases at any time the case is under active consideration within the office.

Also, detailed instructions are given on how to conduct the reviews and how to give appropriate and effective feedback (both orally and in writing) to the Appeals Officer.

It is the principal responsibility of the Regional Director of Appeals (RDA) to ensure that quality reviews are being made at the branch office level. The National Office, under its coordination visitation program, also evaluates the performance of the RDA in meeting this responsibility.

- (b) Paragraph 711.2 of the Handbook requires that the supervisor make a review of sufficient depth to assure the correctness of the action proposed by the Appeals Officer. The degree of the review is tailored to the ability and experience of the Appeals Officer and the characteristics (difficulty, etc.) of the specific case. Regional post reviews are also provided for.

Paragraph 450 of the Handbook properly places the responsibility on the supervisor to develop and encourage self-reliance and independence on the part of the Appeals Officer. After receiving proper training and experience, the Appeals Officer is expected to recommend dispositions which are fully acceptable in the vast majority of cases.

Advice or assistance from the supervisor should be required only under circumstances that clearly warrant it. Appeals Officers needing continuous close review are those with identified performance deficiencies, those going into new areas of marked increased difficulty, and relatively new Appeals Officers.

Paragraph 711.3 of the Handbook provides instructions to the supervisor for documenting on the case card an evaluation of the manner in which the case was managed, decided and written-up by the Appeals Officer. It stresses the importance for making this evaluation, e.g., identifying possible areas of weakness which call for further training, complimenting the Appeals Officer on strengths demonstrated, and providing facts to use when rating time comes. Comments are furnished the Appeals Officer and discussed when appropriate to improve performance. Comments are not necessary when the case handling is fully acceptable but neither commendatory nor deficient.

Guidelines issued in the Appeals manual on May 26, 1981, provide for review at the regional office level of both technical and case management factors in the handling and review of a case at the branch office. The case cards of both the supervisor and the Appeals Officer, the supporting statement and the administrative file are utilized by the Regional Director of Appeals (RDA) in monitoring the effectiveness of the supervisory reviews. The RDA informs the Appeals managers of any discrepancies noted and is required to follow-up to ensure that appropriate corrective action is taken.

In addition, IRM 8(23)50 was substantially revised on March 19, 1981, to require that prescribed guidelines be followed relating to the regional evaluation and reports on the operations of Appeals offices. It contains an exhaustive list of ongoing program and operational matters for the RDA to evaluate for each Appeals office at least once a year. A written report is prepared which must be discussed with the Chief of the Appeals office. Two copies of the report are sent to the Deputy Commissioner and an additional copy is sent to the Director, Appeals Division for further monitoring, as required.

- (c) To place the Appeals function in its proper perspective, it should be recognized that the majority of issues referred to Appeals are debatable and rest upon judgment and opinion on which reasonable and honest people may hold divergent views. In this type situation, the supervisor ordinarily should not substitute personal judgment for that of the Appeals Officer when the latter is fairly supported by facts and applicable law.

An efficient Appeals operation must reduce to a minimum, as early as possible, the number of cases which will ultimately go to trial. Settlement of controversial cases in large numbers presupposes legitimate disputes. Often, there is substantial uncertainty in the event of litigation as to how the courts would interpret and apply the law, or as to what facts the court would find. In these situations, a resolution of the dispute involves concessions for the purpose of settlement by both parties based on the relative strength of the opposing positions. Therefore, if the supervisory review process shows that the Appeals Officer understands and correctly applies basic Appeals settlement philosophy, the Appeals Officer's conclusions resting on judgment will ordinarily be accepted unless a different result is apparent or required for sake of uniformity and consistency.

It should also not be surprising that a supervisor only rarely finds it necessary to disapprove a recommended disposition of a case. Appeals Officers are encouraged to consult with and learn from each other, particularly with respect to the handling of unusual or difficult type issues. An Appeals Officer will often learn from his supervisor whether or not a similar type issue has been recently handled by another Appeals Officer within the office. When this occurs, the Appeals Officer may review the supporting statement in the closed case. The supervisor is also available for special advice and assistance when needed prior to the conclusion of settlement negotiations. Furthermore, the Appeals Officer through training and experience and knowledge of the particular case is in a position to work out a settlement proposal with the taxpayer which only rarely should fall outside an acceptable range and, thus, be overturned by the Appeals supervisor.

GAO has proposed that the supervisory review of a proposed decision, when possible, take place before an agreement on the settlement has been reached with the taxpayer. This proposal suggests that the Appeals Officer first decide the case, secure the supervisor's concurrence, and then attempt to convince the taxpayer to accept the decision. This seems impractical because the proposed decision is usually a negotiated one reached at the conference table. During this process, at least one of the parties, and frequently both, change their position to some extent in order to reach a mutually acceptable disposition of the case. GAO's recommendation would seriously impede Appeals ability to negotiate settlements.

3. Regional Post Reviews

Findings of GAO

- (a) Review guidance is too vague to be consistently interpreted or applied.
- (b) Lack of uniformity exists in regional reports to National Office.
- (c) It is not possible to assess quality of settlements nationwide.
- (d) There is no requirement that appropriate feedback from regional post reviews be made available for use by the other regions in avoiding the same mistakes.

Recommendations

We recommend that the Commissioner

- revise the system for recording regional review results so that reviewers can communicate their results more accurately and uniformly;
- establish criteria for consolidating and reporting regional review results to produce data which can be further analyzed and compared at the National Office level;
- furnish a synopsis of all regional review results to Appeals regional directors so that each region can benefit from the collective review effort.

IRS Comments

- (a) IRM 8(23)63(3)1, issued on May 26, 1981, requires the regions to take into account the specific Post Review Guidelines listed in Exhibit 8(23)00-1. In addition, the National Office recently issued Exhibit 8(23)00-2 reflecting required random sampling procedures for regional post review to assure a statistically valid coverage of closed cases. Copies of these exhibits are attached.

The Appeals Officers' monthly inventory reports (Form 2568), which reflect workload, are also available to reviewers when needed to evaluate certain case management factors.

- (b) IRM 8(23)63 provides specific regional reporting requirements to the National Office of each region's post review. Certain flexibility is built into such requirements in order to assure all essential information is reported to the National Office.

- (c) Finding 3(c), on page 6, is not valid so long as regional reports are timely submitted and contain all essential information for the National Office annual summary report. The quality of the regional reports will continue to be closely monitored at the National Office level.
- (d) The National Office will disseminate the regional post review findings to all regions. Visitations to regions by National Office personnel will effectively monitor feedback and effectiveness.

4. Nationwide Special Issue Post Reviews

Findings by GAO

- (a) Documentation available to reviewer is insufficient to evaluate the decision.
- (b) No assurance that results are furnished by regions to Appeals supervisors or discussed with Appeals Officers.

Recommendations

We recommend that the Commissioner

- furnish more guidance to appeals officers on the information needed in supporting statements to adequately explain action taken on cases in order to improve file documentation quality;
- improve appeals officers' awareness of new technical information by providing branch supervisors and appeals officers with comprehensive information on the results of regional post reviews.

IRS Comments

- (a) Finding (a) above, has been addressed in IRM 8(23)62.3(4), issued on May 26, 1981, which provides for securing the administrative file, when necessary, to determine the appropriateness of the settlement.

IRM 8(21)00, Supporting Statements, was also substantially revised on February 10, 1981, to improve the quality of the Appeals Officer's write-up explaining and supporting the basis for the decision reached in the case. National Office will continue its strong emphasis on preparation of quality supporting statements and closely monitor the region's performance in this area through evaluation visits to each region. Compliance with requirements for a quality supporting statement should reduce significantly the need for administrative files during the review process.

- (b) IRM 8(23)63(1)(5), issued on May 26, 1981, requires each RDA to ensure that Appeals managers and Appeals Officers receive comprehensive information on the results of the regional post review.

IRM 8(23)62.4, requires the Regional Director of Appeals to ensure that the results of the nationwide post review reports are disseminated and discussed with all affected personnel. This requirement will also be effectively monitored through evaluation visits by the National Office.

5. Taxpayers Are Generally Satisfied With The Results Of Their Appeals

Findings by GAO

- (a) A vast majority of taxpayers interviewed were satisfied with Appeals Officers' courtesy and competency.
- (b) Most taxpayers were satisfied with their settlement.
- (c) A small majority were dissatisfied with the amount of time it took to settle their case.
- (d) A majority of taxpayers plan to maintain their same status regarding representation at the Appeals level in the future as they had in the past.

IRS Comments

The only problem area noted was the excessive amount of time it took between the date the taxpayer requested an appeal at the District Director level until the date when an Appeals Officer contacted the taxpayer. GAO quotes an IRS Internal Audit report which earlier had found that the delays occurred in processing the cases to Appeals. It notes further that the response by the Assistant Commissioner (Compliance) to this finding stated that a nationwide work planning and control system is being implemented which will (1) allow closer monitoring of unagreed cases and (2) ensure that they are moved to Appeals in a timely manner. Also, the report points out that a change underway in the Examination Division's automated management information system should assist in preventing processing delays.

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(2-10-82)

Exhibit 8(23)00-1**Review Guidelines** ◇**I. Technical Evaluation Factors**

- (a) High Quality Disposition
 - (1) Nuisance settlement.
 - (2) New issues raised consistent with Manual provisions.
 - (3) Settlement adequately measures strengths of opposing positions.
 - (4) Closing or Collateral Agreements secured where appropriate.
 - (5) Settlement in reconsideration cases consistent with prior evaluation.
- (b) Uniformity and Consistency
 - (1) Taxpayers treated the same in docketed status as in nondocketed status.
 - (2) Disposition consistent with the treatment of the issues regionally.
- (c) Clear and Concise Writeup Supporting Decision
 - (1) Excessive Citations and Quotations.
 - (2) Formal vs. Informal Supporting Statement, IRM 8(21)12.
 - (3) Waived issues identified rather than discussed.
 - (4) Initial discussion of facts in Law and Argument, IRM 8(21)26.
 - (5) Personal references and derogatory remarks avoided.
- (d) Procedural Compliance
 - (1) Form 5402
 - a. Potential refund litigation cases properly identified.
 - b. Appropriate agreement form secured.
 - c. Follow-up action noted where necessary.
 - d. Excessive number of conferences in relation to complexity of case.
- (e) Other

II. Case Management Evaluation Factors

- (a) Preliminary Review Consistent with IRM 8221
 - (1) Did case constitute a premature referral?
- (b) Prompt Conference
 - (1) Early conference offered consistent with complexity of case and Appeals Officer's workload
- (c) Expeditious Follow-up
 - (1) Prompt inquiries regarding promised information
 - (2) Significant time lags between case activity
- (d) Prompt Decision and Writeup
 - (1) Decision reached soon after all the final conferences and all facts are in.
 - (2) Writeup completed shortly after agreement is secured keeping in mind complexity of case and Appeals Officer's workload.
- (e) Other
 - (1) Case appropriately graded.

Exhibit 8(23)00-2**Random Sampling Procedures for Regional Post Review** ◇

(Reference: IRM 8(23)63.(3)(f) and IRM 8(23)63.(4)(c))

These procedures are furnished for selecting closed work units in each Appeals Office to be included in the Regional Post Review.

Regional Office Procedures

(a) The region projects the total number of Appeals work units expected to be closed for the coming year. The previous year's work unit data may be used as a guide for this projection. An adjustment may be applied if special circumstances are expected to affect the work unit data significantly within the region.

(b) Using the projected number of Appeals work units to be closed, refer to Table 1 in Exhibit 8(23)00-3 to determine the appropriate skip interval for the under \$50,000 work units and for the \$50,000 and over work units.

(c) The random starts are furnished annually to the region by the National Office prior to the beginning of the fiscal year being sampled. A random start is furnished based on the number of work units closed per annum similar to the schedule provided for the skip interval in Table 1, Exhibit 8(23)00-3 for work units under \$50,000 as well as for work units of \$50,000 or more.

(d) Using the projected number of Appeals work units to be closed, refer to the random start furnished by the National Office to determine the appropriate random start for the under \$50,000 and for the \$50,000 and over work units.

(e) The region provides the random start and skip intervals to each Appeals Office to be used in selecting the work units to be post reviewed. The sampling process can be performed on a monthly, quarterly or semi-annual basis at the discretion of the region.

Appeals Office Procedure

(a) Each Appeals Office establishes and maintains two logs; one log for work units closed under \$50,000 and another log for work units closed \$50,000 and above.

(b) The work units closed are placed in the appropriate log and assigned a sequential number.

(c) Each Appeals Office selects work units for post review by applying the skip interval and random start provided by the regional office to the appropriate log. The skip interval will remain the same for the fiscal year. The random start may vary depending on whether the region furnishes a new random start on a monthly, quarterly, semi-annual or annual basis.

(d) For each log, group the work units closed in the month (quarter or six-month period if selecting quarterly or semi-annually) including left over work units from the preceding month so that the number of work units in each group is equal to the skip interval. Remainder work units not in a complete group are to be grouped in the following month.

(e) For each log, select the work unit corresponding to the random start for the month (quarter or six-month period as the case may be) from each complete group of that month (quarter or six month period as the case may be).

(f) Repeat the process described in (d) and (e) above each month, quarter, or six-month period as the case may be.

(g) Example: For log 1 the skip interval is 7. For the first month the random start is 5 and for the second month the random start is 3. Assume that 38 work units are closed in the first month and 41 work units are closed in the second month for a total of 79 work units closed in the first two months.

(1) Selection for the first month—The work units have been numbered 1 through 38 according to (b) above. Group the work units according to (d) above into the following groups 1 through 7, 8 through 14, 15 through 21, 22 through 28, and 29 through 35. The remainder units 36, 37 and 38 are to be grouped in the next month. Select for review according to (e) above the 5th, 12th, 19th, 26th, and 33rd work units for the first month.

(2) Selection for the second month—The work units closed up to the end of this month have been numbered 1 through 79 according to (b) above. According to (d) above, groups for this month are 36 through 42, 43 through 49, 50 through 56, 57 through 63, 64 through 70, and 71 through 77. The remainder work units of this month are 78 and 79. According to (e) above, select the 36th, 45th, 52nd, 59th, 66th, and 73rd work units for the second month.

Processing Results of the Regional Post Review

(a) To determine the overall settlement quality of the region, the post review data shall be summarized for each log listing the Appeals Office, the number of work units reviewed, and number of work units found acceptable according to the following format:

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Exhibit 8(23)00-2 Cont.

Random Sampling Procedures for Regional Post Review ◇

(Reference: IRM 8(23)63.(3)(i) and IRM 8(23)63.(4)(c))

1. Provide a schedule of the results as follows:

Appeals Office	LOG 1		LOG 2	
	Number Work Units Reviewed	Number of Work Units Acceptable	Number of Work Units Reviewed	Number of Work Units Acceptable
—	—	—	—	—
Total	(n ₁)	(x ₁)	(n ₂)	(x ₂)

2. Calculate $n = n_1 + n_2$

$$P_1 = x_1/n_1$$

$$P_2 = x_2/n_2$$

where n_1, x_1, n_2 and x_2 are the total obtained in 1 above

3. Calculate $P = 0.75 P_1 + 0.25 P_2$

4. Determine the quality level using Table 2A for 95 percent confidence or Table 2B for 90 percent confidence. If P is less than the lower limit in the table, the quality is not acceptable with the specified confidence. If P is greater than the upper limit, the quality is acceptable with the specified confidence. If P is between the lower limit and the upper limit, neither acceptability nor unacceptability can be concluded with the confidence specified.

(b) The results of the Regional Post Review are included in the narrative report according to the format set forth above as an attachment.

METHODOLOGY USED TO ANALYZERANDOM SAMPLE OF APPEALSCASE SETTLEMENTS

We selected a random sample of 577 individual and corporate cases settled by the Appeals Division branch offices in Baltimore, Cincinnati, and San Francisco during fiscal year 1979. The sample was selected from a total universe of 1,778 settlements. The procedures we used to collect and analyze data pertaining to the settlements in our sample are described below.

DATA COLLECTION INSTRUMENTS

We requested that IRS provide us with the case administrative file for each case in our sample. We collected information from the files we received, and we had the appeals officer who settled the case fill out a questionnaire related to how he or she handled the case. For individual taxpayer cases, we also sent questionnaires to the taxpayers to obtain their thoughts and perceptions on the settlements. Copies of the case file instrument and the two questionnaires are contained in appendices IV to VI.

Case file data

We incorporated IRS guidance on appeals procedures and techniques into a manual and developed a data collection instrument for recording the results of the settlement and other information. We tested the instrument and the manual on actual cases and modified them where appropriate. All the members of our audit team attended training sessions on the use of the manual and the instrument. Once we started our review, questions relating to either the instrument or the manual were centrally answered and each location was notified by phone and in writing of any further changes. If required, we reevaluated cases already completed in light of the approved modifications. GAO staff supervisors or another of our employees compared the information recorded on each instrument with the related case file and signed off on the accuracy of the recorded information.

Our staff members who had overall responsibility for the review visited each location and reviewed cases for conformance to the manual. When data collection was completed, the information was keypunched. The resulting data base was verified and checked for logic errors using machine and manual edits.

Questionnaire data from appeals officers and taxpayers

From discussions held with IRS employees during the initial phase of this assignment, we developed two questionnaires. One was designed for taxpayers who initially disputed the results of an audit and ultimately agreed to a settlement at the Appeals level. The other questionnaire was designed for the appeals officer who settled the case.

We pretested the questionnaires by administering them to selected taxpayers who had appealed prior audits and to appeals officers and other IRS employees. We asked for their comments and opinions about the questionnaires, and we discussed their answers with them to see if they understood the questions and what the answers meant. As a result of the information gathered during the pretest, we modified the two questionnaires and determined that the taxpayer questionnaire would only be sent to individuals. The appeals for the corporations we pretested were generally handled by someone other than the taxpayer, and attempts at getting responses were unproductive.

A GAO staff member reviewed each completed questionnaire for completeness and determined whether or not the respondent's answers indicated an understanding of the question. Optional written comments were also reviewed to gain a better understanding of the respondents' opinions. As in the case of the data collection instrument, the responses were keypunched and the resulting data base was checked to insure its accuracy.

METHODS OF ANALYSIS

We analyzed the computerized data bases we developed using the chi-square test of independence and regression analysis to determine the impact certain factors had on a given variable.

Chi-square

We used the chi-square test of independence to establish the association between the variables tested. In interpreting the analysis results, we used a confidence level of 95 percent.

Regression analysis

We used regression analysis to determine what impact certain factors had on a given variable. For example, can the variance in the amount of disputed taxes IRS ultimately settled for be explained in terms of certain characteristics of the case, such as the adjusted gross income reported by the taxpayer?

PROJECTION OF SAMPLE RESULTS

In drawing our sample at each location, we treated the cases as four groups: docketed and nondocketed individuals, and docketed and nondocketed corporations.

The branch offices often handled too many cases of a given type to allow us to examine every case. In these instances, we used random sampling to select the cases we examined. For types of cases where the total number was relatively small, we selected all cases of that type for our review.

Our sampling plan called for taking 100 percent of the cases when only a small number were in that category. Where we did not take a 100-percent sample, we weighted the computerized data in order to project the sample results to all the 1778 cases in which agreements were reached with individual and corporate taxpayers in the three branch offices during fiscal year 1979.

The following example illustrates our weighting methodology. One branch office processed 413 individual docketed cases, of which we selected 70. We calculated the weighting factor by dividing the universe size by the sample size ($413/70 = 5.9$). Therefore, any observed condition about one sample case of this type in this branch office can be projected to 5.9 cases in that office. This approach was used to weight responses to the questionnaires as well as to the case file instrument.

Except where a 100-percent sample was used, our figures are subject to some variation. Our major findings are expressed as percentages. For this data we can project with a confidence level of 95 percent, subject to a precision limit. The precision limits are shown in many of the tables in the report.

The universe, sample sizes, and weights for the four categories of cases we examined at the three branch offices are shown below:

<u>San Francisco</u>	<u>Universe</u>	<u>Sample</u>	<u>Weight</u>
Individual docketed	413	70	5.9000
Individual nondocketed	559	77	7.2597
Corporate docketed	26	26	1.0000
Corporate nondocketed	72	27	2.6667
 <u>Cincinnati</u>			
Individual docketed	44	44	1.0000
Individual nondocketed	311	86	3.6163
Corporate docketed	5	5	1.0000
Corporate nondocketed	56	56	1.0000
 <u>Baltimore</u>			
Individual docketed	57	57	1.0000
Individual nondocketed	194	88	2.2045
Corporate docketed	8	8	1.0000
Corporate nondocketed	<u>33</u>	<u>33</u>	1.0000
Total	<u>1,778</u>	<u>577</u>	

Income level categories of the individual taxpayers in our sample taken from the three branch offices are shown below:

<u>Adjusted gross income</u>	<u>Percent</u>
Low -- \$15,000	29
15,001 30,000	37
30,001 45,000	19
45,001 60,000	7
60,001 120,000	6
120,001 High	<u>2</u>
	<u>100</u>

Corporate taxpayers were in the following asset levels:

<u>Total assets</u>	<u>Percent</u>
Low -- \$100,000	14
100,001 500,000	21
500,001 1,000,000	15
1,000,001 10,000,000	35
10,000,001 100,000,000	10
100,000,001 High	<u>5</u>
	<u>100</u>

CHANGES TO ADJUSTMENTS PROPOSED IN EXAMINATIONAS A RESULT OF SETTLEMENT IN THE THREE APPEALS BRANCH OFFICES(PERCENT OF CASES)(note a)

<u>Case category</u>	<u>Original adjustment reduced to zero</u>	<u>Between 1-99% of original adjustment reduced</u>	<u>Original adjustment sustained in full or increased</u>	<u>Total</u>
Individual docketed	6	19	5	30
Individual nondocketed	7	42	10	59
Corporate docketed	0	2	0	2
Corporate nondocketed	<u>2</u>	<u>6</u>	<u>1</u>	<u>9</u>
Total	<u>15</u>	<u>69</u>	<u>16</u>	<u>100</u>

a/Sampling error does not exceed ± 0.5 percent for individual categories or for totals.

U.S. GENERAL ACCOUNTING OFFICE

APPEALS OFFICER QUESTIONNAIRE

FOR GAO USE ONLY

Case No. (1-4)

Card No. (5)

What is the status of this case? (6)

1. Completed

2. Not completed

INSTRUCTIONS

As part of our Appeals study, we are interested in learning about your opinions and experiences in handling specific Appeals cases. To do this, we have selected a number of cases at random from those closed in fiscal year 1979.

The process we would like you to follow is to refamiliarize yourself with the contents of the case file and then answer the questionnaire as accurately and frankly as possible. Remember, because this case was selected at random, the answers you provide us will be used to represent those of other cases closed at that time, but which we will not review.

The questionnaire is designed with you in mind; it will not require a lot of writing on your part. Although the questionnaire must be answered in terms of the specific case from our sample, we have provided a space at the end for any other comments about the case or the Appeals process which you think are important.

Throughout this questionnaire there are numbers printed within parentheses to assist our keypuncher in coding responses for computer analysis. Please disregard these numbers.

1. What is your grade?

(7-8)

2. How many years have you been with IRS?

(9-10)

3. Which of the following degrees or professional certificates do you hold? (Check all that apply.) (11-17)

- 1. Member of the Bar
- 2. CPA
- 3. Law degree
- 4. Advanced degree - Accounting or Tax
- 5. Advanced degrees - Other
- 6. Degree - Accounting
- 7. Degree - Other

4. Did the Associate Chief provide technical guidance on this case prior to the settlement proposal? (Check one.) (18)

- 1. Yes (Continue)
- 2. No (Go to 6)

5. Which of the following best explains why the Associate Chief got involved in the case prior to the settlement? (Check one.) (19)

- 1. Requested by the taxpayer or representative
- 2. You requested additional guidance and/or instruction
- 3. It was part of the supervisory case review process
- 4. Other (Please explain.) _____

6. From which, if any, of the following sources did you receive feedback on the quality of the technical aspects of your settlement proposal on this case? If feedback was received, please tell us whether it was oral or written and whether or not it was commendatory. (Provide complete responses for each line where a yes is checked under "Feedback Received".)

List of Sources	Feedback Received		Was the Feedback Oral or Written?		Was the Feedback Commendatory?		
	Yes	No	Oral	Written	Yes	No	
	1	2	1	2	1	2	
National Post Review							(20-22)
Regional Post Review							(23-25)
Chief, Appeals Office							(26-28)
Associate Chief or Acting Associate Chief							(29-31)
Other Appeals Officer							(32-34)
District Examination Division (includes Review Branch)							(35-37)
Other _____							(38-40)

(If you did not have any yes responses to the feedback question, go to question 8.)

7. Consider the feedback you received on this case. In your opinion, to what extent, if at all, was this feedback helpful? (Check one response for each line.)

	1	2	3	4	5	6	
	Little or no extent	Small extent	Moderate extent	Large extent	A very large extent	No basis to judge	
1. In better understanding the technical aspects of this case?							(41)
2. In better understanding the case management aspects of this case?							(42)
3. In better understanding how to improve your future performance?							(43)

8. To what extent, if at all, was the settlement altered by reviewing officials? (Check only one.) (44)

1. Little or no extent
2. Small extent
3. Moderate extent
4. Large extent
5. A very large extent

9. For the case as a whole, what role, if any, do you feel each of the following played in causing this case to be unagreed at the examination level? (Check one response for each line.)

	1	2	3	4	5	
	Little or no role A small role A moderate role A large role A very large role					
1. Disagreement over interpretation of the facts or issues involved						(45)
2. Failure to agree on applicability of rulings, regulations and/or prior court decisions						(46)
3. Disagreement over basis of explanation as to why the tax return was changed						(47)
4. Disagreement over acceptability of written taxpayer documentation						(48)
5. Disagreement over acceptability of taxpayer oral statement or oral evidence						(49)
6. Taxpayer believed the amount owed would be reduced enough to be worth the time and effort to appeal						(50)
7. Other (Specify.)						(51)

10. In your opinion, which of the following best describes the reason this case was unagreed out of examination? (Check one.) (52)

- 1. Causes related to the examiner
- 2. Causes related to the taxpayer or his/her representative
- 3. Causes related to factual or legal complexity of the case (i.e., the case involved a legitimate dispute which properly was sent to Appeals for resolution)

11. In your opinion, were there problems with how the examiner handled the case which contributed to its being appealed? (Check one.) (53)

- 1. Yes
 - 2. Probably yes
 - 3. Uncertain
 - 4. Probably no
 - 5. No
- } (Continue)
- } (Go to question 13)

19. Our discussions with IRS officials and other knowledgeable individuals have shown that the final agreement reached with the taxpayer is the culmination of a complex decision and negotiation process. We have identified some of the factors which Appeals Officers may consider in determining the final settlement amount for any given case. Considering only this case, to what extent, if at all, did each of the following factors influence your decision to increase, decrease, or let the proposed deficiency stand? For example, if voluntary compliance was an important influence in your decision to sustain the examiner, the extent of influence would be recorded as being great or very great. (Check one response for each line.)

	1	2	3	4	5		
		Little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	
1. Need to foster voluntary compliance							(85)
2. How the taxpayer or representative cooperated/acted during audit and appeal							(86)
3. Potential for increasing judicial workload							(87)
4. Taxpayer's or representative's audit and appeal history							(88)
5. Taxpayer's ability to pay							(89)
6. Workload or time pressures							(90)
7. Complexities of or difficulties in establishing the facts							(91)
8. Number of issues in dispute							(92)
9. Taxpayer's or representative's credibility							(93)
10. Quality of the case as prepared by examiner							(94)
11. Complexity of the tax laws							(95)
12. Hazards of litigation							(96)
13. Amount of dollars in dispute							(97)
14. Quality of the taxpayer's documentation							(98)
15. Representation or lack of representation by the taxpayer							(99)
16. Other _____ _____							(100)

20. Was the taxpayer represented during any discussions at the Appeal level? (101)

1. Yes (Go to question 22.)
2. No (Continue)

21. In your opinion, to what extent, if at all, would a representative have helped the taxpayer in the following areas? (Check one for each line.)

	Little or no extent	Small extent	Moderate extent	Large extent	Very large extent	No basis to judge	
	1	2	3	4	5	6	
1. Providing taxpayer a better understanding of the legal aspects of the case							(102)
2. Taxpayer's case would have been better organized and/or better presented							(103)
3. Settlement would have been more favorable to the taxpayer							(104)
4. Other (Please specify)							(105)

22. If you care to comment on any related topics, please do. We are greatly interested in your views. (106)

Additional comments.

U.S. GENERAL ACCOUNTING OFFICE
 SURVEY OF TAXPAYERS WHO HAVE
 APPEALED THE RESULTS OF THEIR TAX AUDITS

INTRODUCTION

The U.S. General Accounting Office is an agency of the Congress responsible for evaluating Federal programs. We are interested in learning of your opinions of, and experiences with, the Internal Revenue Service (IRS) during the audit and appeal of your Federal income tax return and noted in our letter to you.

Your name was selected at random from those taxpayers whose returns were audited and who chose to appeal the results of that audit. This questionnaire is numbered to aid us in our follow-up efforts and will not be used to identify you with your responses in any report which we issue.

Throughout this questionnaire there are numbers printed within parentheses to assist our keypuncher in coding responses for computer analysis. Please disregard these numbers.

Please complete and return the questionnaire in the enclosed postage-paid envelope within 5 days to:

William P. Johnston
 Room 6126, GAO Building
 441 G Street, N.W.
 Washington, D.C. 20548

Thank you for your cooperation.

AUDIT PROCESS

The following series of questions asks about your opinions and experiences during the audit which resulted in your appeal.

1. Did you have a tax professional, such as an accountant, lawyer, or enrolled agent, represent or accompany you to any of the meetings with the IRS auditor? (6)

1. Yes (Go to question 3.)
 2. No (Continue)

2. Which of the following best explains why you decided to handle your own audit? (Check one.) (7)

1. Because of the cost
 2. Discussed issues with tax professional and that was all the help I needed
 3. Believed I could deal with IRS myself
 4. Believed it would take less of my time
 5. Never occurred to me to obtain help
 6. Other (specify) _____

3. If you were to be audited again, would you, or would you not, pay a tax professional, such as an accountant, lawyer, or enrolled agent, to accompany you to the audit? (Check one.) (8)

1. Yes
 2. Probably yes
 3. Undecided
 4. Probably no
 5. No

4. What role, if any, did each of the following have in your deciding to appeal the auditor's position that you owed more money? (Check one for each line.)

	1	2	3	4	5	
	Little or no role A small role A moderate role A large role A very large role					
1. Disagreement over the interpretation of the facts or issues involved						(9)
2. Failure to agree on applicability of rulings and/or prior court decisions						(10)
3. Disagreement over basis of explanation as to why the tax amount was changed						(11)
4. Disagreement over acceptability of my written documentation						(12)
5. Disagreement over acceptability of my oral statements						(13)
6. Believed the amount owed would be reduced enough to be worth the time and effort to appeal						(14)
7. Other (specify)						(15)

5. Overall, how satisfied or dissatisfied were you with the courtesy and technical competency of the auditor? (Check one for each attribute.)

	1	2	3	4	5	6	
	Very satisfied Generally satisfied Neither satisfied nor dissatisfied Generally dissatisfied Very dissatisfied Can't recall						
1. Courtesy							(16)
2. Competency							(17)

DISCUSSION WITH AUDITOR'S SUPERVISOR

Under IRS procedures, taxpayers sometimes discuss any disagreement they have with the auditor's supervisor. This series of questions asks about your opinions and experiences with this stage of the audit process.

6. Did you discuss the results of your audit with the auditor's supervisor? (18)

- 1. Yes (Go to question 8.)
- 2. No (Continue)

7. If no, which of the following best describes why you didn't discuss your audit with the supervisor? (Check one, then go to question 12.) (19)

- 1. Was not told by the auditor that I could
- 2. Thought it would not change matters
- 3. It was too much trouble
- 4. Other (specify) _____

8. Was your contact with the supervisor at a meeting or by telephone? (Check one.) (20)

- 1. Meeting
- 2. Telephone
- 3. Both meeting and telephone

9. When did contact with the supervisor first take place? (Check one.) (21)

- 1. Immediately following the audit
- 2. At a different appointment, requiring a separate trip
- 3. Other (specify) _____

10. What role, if any, did each of the following have in your deciding to protest the position of the auditor's supervisor that you owed more money? (Check one for each line.)

	1	2	3	4	5	
						Little or no role
						A small role
						A moderate role
						A large role
						A very large role
1. Disagreement over the interpretation of the facts or issues involved						(22)
2. Failure to agree on applicability of rulings and/or prior court decisions						(23)
3. Disagreement over basis of explanation as to why the tax amount was changed						(24)
4. Disagreement over acceptability of my written documentation						(25)
5. Disagreement over acceptability of my oral statements						(26)
6. Believed the amount owed would be reduced enough to be worth the time and effort to appeal						(27)
7. Other (specify)						(28)

11. Overall, how satisfied or dissatisfied were you with the courtesy and technical competency of the auditor's supervisor? (Check one for each attribute.)

	1	2	3	4	5	6	
							Very satisfied
							Generally satisfied
							Neither satisfied nor dissatisfied
							Generally dissatisfied
							Very dissatisfied
							Can't recall
1. Courtesy							(29)
2. Competency							(30)

APPEALS PROCESS

This series of questions deal with your opinions and experiences with IRS's formal appeals process.

12. In your opinion, which of the following best describes why your case was settled on appeal? (Check one.) (31)

1. I was able to present information not previously available
2. I believed it would be too costly to continue
3. I felt IRS was more willing to compromise
4. I did not want to go to court
5. I felt the appeals officer explained the facts and issues better
6. I felt that the appeals officer listened to my side of the argument
7. Other (specify) _____

13. Did anyone in the IRS tell you of your right not to accept the settlement proposed at appeal? (Check one.) (32)

1. Yes (Go to question 16.)
2. No (Continue)

14. Did you know that you had a right to reject the settlement proposed at appeal? (Check one.) (33)

1. Yes (Go to question 16.)
2. No (Continue)

15. If you had known you could have rejected the proposed settlement at appeal, would you have? (Check one.) (34)

- 1. Definitely no
- 2. Probably no
- 3. Undecided
- 4. Probably yes
- 5. Definitely yes

16. Overall, how satisfied or dissatisfied were you with the following terms and considerations of the settlement? (Check one for each line.)

	1	2	3	4	5	
	Very satisfied	Generally satisfied	Neither satisfied nor dissatisfied	Generally dissatisfied	Very dissatisfied	
1. The dollar amount of the settlement						(35)
2. IRS's final interpretation of the facts or legal issues involved						(36)

17. Overall, how satisfied or dissatisfied were you with the courtesy and competency of the appeals officer? (Check one for each attribute.)

	1	2	3	4	5	6	
	Very satisfied	Generally satisfied	Neither satisfied nor dissatisfied	Generally dissatisfied	Very dissatisfied	Can't recall	
1. Courtesy							(37)
2. Competency							(38)

18. How satisfied or dissatisfied were you with the time it took to get your case settled? (Check one.) (39)

- 1. Very satisfied
- 2. Generally satisfied
- 3. Neither satisfied nor dissatisfied
- 4. Generally dissatisfied
- 5. Very dissatisfied
- 6. Don't recall

19. How serious, if at all, were the cost and time problems you incurred as the result of your appealing? (Check one for each line.)

	1	2	3	4	5	
	Little or no problem	Some problem	Moderate problem	Serious problem	Very serious problem	
1. Time lost from work or business						(40)
2. Travel time or distance						(41)
3. Expenses related to gathering additional information not supplied at audit						(42)
4. Expense for professional tax assistance related to the appeal						(43)

20. Did you have a tax professional, such as an accountant, lawyer, or enrolled agent, represent or accompany you to any of the meetings with the IRS appeals officer? (44)

- 1. Yes (Go to question 22.)
- 2. No (Continue)

21. Which of the following best explains why you decided to handle your own appeal? (Check one.) (45)

- 1. Because of the cost
- 2. Discussed issues with tax professional and that was all the help I needed
- 3. Believed I could deal with IRS myself
- 4. Believed it would take less of my time
- 5. Never occurred to me to obtain help
- 6. Other (specify) _____

22. If you were to go through the appeals process again, would you, or would you not, pay a tax professional, such as an accountant, lawyer, or enrolled agent, to accompany you to the appeal? (Check one.) (46)

- 1. Yes
- 2. Probably yes
- 3. Undecided
- 4. Probably no
- 5. No

26. If you have any other comments, please use the space provided below. (50)

23. Did you file a formal petition with the Tax Court? (Check one.) (47)

- 1. Yes (Continue)
- 2. No
- 3. Don't remember } (GO TO QUESTION 25)

24. Which, if any, of the following reasons best explains why you filed the petition? (Check only one.) (48)

- 1. I felt IRS would take my objections to the audit more seriously
- 2. Time ran out on me and I had no other choice
- 3. The notice I received from IRS (Notice of Deficiency) said a petition should be filed
- 4. The auditor and/or his supervisor suggested that I file a petition
- 5. It was my understanding this was the normal process
- 6. Other (please specify) _____

25. In some instances, it would be helpful if we could discuss your answers with you. If you would be willing to talk with us, please include your name and telephone number below.

(49)

DCI FOR APPELATE CASES

INSTRUCTIONS:

- 1. Read the coding manual
2. Use blue or red pen or pencil
3. Make certain that all entries are clear and legible
4. Right justify all dollar values to the nearest dollar
5. Enter case number where required

Prepared By: _____

Date: _____

Location: _____

Reviewed By: _____

- 1. GAO case number
2. Card number
3. Latest tax year of return(s) under appeal
4. Adjusted gross income/total assets
5. Amount of taxes due as determined by examining officer
6. Amount of penalties due as determined by examining officer
7. What were revised taxes as agreed to at appeals level?
8. What were revised penalties as agreed to at appeals level?
9. Date IRS sent notice to taxpayer regarding start of the audit
10. Date case transmitted to Appeals Division
11. Date supporting statement prepared

- 12. Was contact established with the taxpayer or representative prior to appeal?
13. Check the highest level of contact attained during audit.
14. If no contact made, which of the following ways did the examiner attempt to make contact?
15. Does file indicate taxpayer was reluctant to meet with the examiner?

16. /1/80-81 How many issues were determined by the auditor at the end of the examination?
17. /1/82-83 Of the total issues determined by the examiner in question #16, how many were agreed to by the taxpayer as a result of the audit?
18. /1/84-85 Of the total issues actually in dispute at the appeals level, (question #16 minus question #17), for how many issues did the appeals officer sustain the examiner's position in full?
19. /1/86 Was the taxpayer's position documented by the examiner's workpapers?
1. Yes
 2. No
20. /1/87 Where taxpayer's position was not documented, does examination file indicate an attempt was made to obtain the information?
1. Yes
 2. No
 7. Not applicable (taxpayer's position was sufficiently documented, or contact was not made)
21. /1/88 Is the reason for disagreement best explained by legal or documentation problems?
1. Legal
 2. Documentation
22. /1/89 Do the files indicate that the examiner's group manager or designee had contact with the taxpayer to try and resolve the issues?
1. Yes - issues were discussed
 2. Yes - offer was made to discuss issues but declined by taxpayer or designee
 3. No - attempts were made but no contact
 4. No - file does not indicate any effort to contact taxpayer
23. /1/90 Does file indicate that any issues disputed by the taxpayer were changed as the result of the group manager's review or contact with the taxpayer?
1. Yes - changed through review
 2. Yes - changed due to taxpayer contact
 3. Yes - some changed for each reason
 4. Yes - but files not always clear as to reason
 5. No
24. Which of the following types of contact did the group manager have with the taxpayer?
- /1/91 Telephone
- /1/92 Interview
- /1/93 Mail
1. Yes
 2. No
 7. Not applicable (no record of contact)
25. /1/94 Was the taxpayer represented while his case was being handled by Examination (before it went to Appeals)?
1. Yes
 2. No
 7. Not applicable (no contact)
26. /1/95 Does the file indicate the Exam Division's Review Staff looked at the case?
1. Yes
 2. No
27. /1/96 Does the file indicate Review Staff returned the case to the examiner for further work on unagreed or new issues?
1. Yes - further audit work on unagreed issues
 2. Yes - further audit work on new issues
 3. Yes - further audit work on unagreed and new issues
 4. Yes - procedural reasons only on unagreed or new issues
 5. No - case not returned for unagreed or new issues
 7. Not applicable

- 28. 1/97 Does the file indicate that any issues disputed by the taxpayer were changed as the result of evaluation by Review?
 - 1. Yes
 - 2. No
 - 7. Not applicable

- 29. 1/98 If case was returned to Exam by Appeals, what was the reason?
 - 1. Appeals determined that case was not properly developed
 - 2. To evaluate new documentation or facts provided by the taxpayer
 - 3. Both of the above reasons
 - 4. To perform exam since taxpayer avoided audit
 - 7. Not applicable (case not returned to Exam)
 - 9. Unknown (file indicates case returned to Exam, but reason is unknown)

- 30. Do the files indicate that any of the following methods of feedback were provided by Appeals to Exam on the settlement?
 - 1/99 Exam attended appeals conference
 - 1/100 Exam received copy of 5402
 - 1/101 5380 prepared (applicable only if settlement was less than 50 percent of \$10,000 in proposed tax; if not, answer 7, not applicable)
 - 1/102 Other correspondence to Exam
 - 1/103 Files indicate discussion with Exam
 - 1. Yes
 - 2. No
 - 7. Not applicable (use 5380 only)

- 31. 1/104 If condition for issuing a 5380 were met but Appeals did not prepare the form, was it because of litigating hazards?
 - 1. Yes
 - 2. No
 - 7. Not applicable (5380 was issued or was not applicable)

- 32. 1/105 Was deficiency changed by appeal?
 - 1. Yes
 - 2. No

- 33. Which of the following reasons were cited by the Appeals Officer for changing the deficiency?

- 1/106 New or additional documentation supplied
- 1/107 Hazards of litigation/mutual concession
- 1/108 Technical problem in Exam's development of the case
- 1/109 Change in legal situation subsequent to completion of audit (new law or court ruling or change in Service's position)
- 1/110 New issue raised
- 1/111 Oral testimony deemed acceptable
- 1/112 Between year adjustments of tax or return items
- 1/113 Penalty was dropped
- 1/114 Revised findings by District Director
- 1/115 Appeals interpreted fact or law differently than Examiner
- 1/116 Other _____

- 1. Yes (see below)
- 2. No
- 7. Not applicable (deficiency not changed)

Basis for Yes responses: _____

TWENTY-FIVE VARIABLES GAO USED TO MEASURE
EFFECTS ON PROPOSED ADJUSTMENTS

<u>Variable</u>	<u>CROSS REFERENCE TO GAO</u> <u>DATA COLLECTION INSTRUMENTS</u>
	<u>Appeals officer questionnaire</u> <u>(see appendix IV)</u>
1. Disagreement over interpretation of the facts or issue involved	Question No. 9-1
2. Failure to agree on applicability of rulings, regulations, and/or prior court decisions	Question No. 9-2
3. Disagreement over basis of explanation as to why the tax return was changed	Question No. 9-3
4. Disagreement over acceptability of written taxpayer documentation	Question No. 9-4
5. Disagreement over acceptability of taxpayer oral statement or oral evidence	Question No. 9-5
6. Taxpayer believed the amount would be reduced enough to be worth the time and effort to appeal	Question No. 9-6
7. Need to foster voluntary compliance	Question No. 19-1
8. Complexities of or difficulties in establishing the facts	Question No. 19-7
9. Taxpayer's or representative's credibility	Question No. 19-9

<u>Variable</u>	<u>Appeals officer questionnaire</u> <u>(see appendix IV)</u>
10. Quality of the case as prepared by examiner	Question No. 19-10
11. Complexity of the tax laws	Question No. 19-11
12. Hazards of litigation	Question No. 19-12
13. Case unagreed out of examination due to examiner-related causes	Question No. 10-1
14. Case unagreed out of examination due to taxpayer or representative-related causes	Question No. 10-2
	<u>DCI for appellate cases</u> <u>(see appendix VI)</u>
15. Of total issues determined by auditor at the end of examination, the number agreed to by taxpayer as result of the audit	Question No. 17
16. Appeals officer changed deficiency because new or additional documentation supplied	Question No. 33 (1/106)
17. Appeals officer changed deficiency because of hazards of litigation or mutual concession	Question No. 33 (1/107)
18. Appeals officer changed deficiency because appeals interpreted fact or law differently than examiner	Question No. 33 (1/115)
19. Taxpayer represented during the appeal	Question No. 40

<u>Variable</u>	<u>DCI for appellate cases</u> <u>(see appendix VI)</u>
20. Adjusted gross income/ total assets	Question No. 4
21. Amount of taxes due as determined by examining officer	Question No. 5
22. Time difference between the date case transmitted to Appeals division and date supporting statement prepared	Question Nos. 10, 11
23. Difference between number of issues determined by auditor at end of exam and number of issues agreed to by taxpayer as result of audit	Question Nos. 16, 17
24. Percent of issues not agreed to by taxpayer not sustained	Question Nos. 16, 17, 18
25. Percent of issues not agreed to by taxpayer sustained	Question Nos. 16, 17, 18

(268091)

22713

AN EQUAL OPPORTUNITY EMPLOYER

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