

Federal Tax Controversy

November 9, 2021



John Hinding,
Director, Cross
Border Activities -
IRS

Robert J Kovacev,
Partner – *Norton
Rose Fulbright US
LLP*

Kathy Kruchten,
Director, Western
Compliance
Practice Area - *IRS*

Darren Lee,
Appeals Team
Manager – *IRS*

Chris Murphy,
Partner
Skadden, Arps LLP

Steven Shee,
Vice President Tax
Applied Materials

1



State of LB&I and Hiring

Current Priorities and Workload Prioritization

Key portfolio work and issues

Cross Border Activities, TCJA and Campaign Updates

Other recent updates



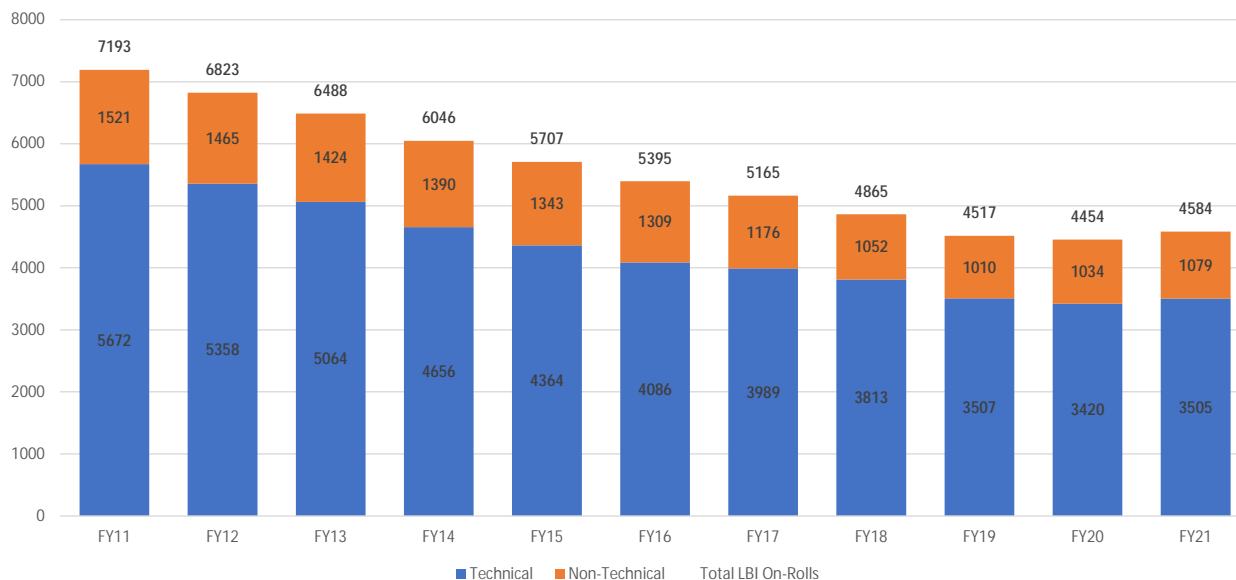


State of LB&I and Hiring

FY2022 LB&I Strategic Goals



LB&I STAFFING YEAR-OVER-YEAR
BEGINNING OF YEAR ON-ROLLS





Final # Added to Rolls **351**

LB&I Hiring – FY21



Current priorities and Workload Prioritization

LCC (successor program to CIC) – C Corporations

CAP – Publicly held C Corporations

Campaigns –



Large Corporate Compliance (LCC)

Large Corporate Compliance (LCC) Program replaces Coordinated Industry Case (CIC) program

LCC is one of the compliance programs in LB&I's portfolio

Ensures oversight for LB&I's largest taxpayers

Uses data analytics along with tax expertise to identify risk of the entire LB&I large corporate population

Deployed May 15, 2019 (2017 returns)

2019 return Production Run started May 28, 2021



LCC Overview and Benefits

LCC uses data analytics to help identify the best returns for the field – looking at all filings

LCC uses automatic pointing that reduces the burden on examiners and systemically identifies every corporate return meeting the program threshold, something that the CIC program did not do

LCC increases the likelihood examiners can work on high-risk issues

LCC aligns our workload identification efforts with the 2018-2022 IRS Strategic Goals; specifically, “Advance data access, usability and analytics to inform decision-making and improve operational outcomes.”



LCC - Impact to Taxpayers

LB&I Examination Process applies to LCC

Revenue Procedure 94-69 currently under review. For now, applies to LCC taxpayers under examination that

9



Compliance Programs – CAP Overview

CAP provides the IRS and taxpayers a cooperative model for early resolution of issues



Application Period - CAP 2022 Application Period open from September 1st to November 1st, 2021

Notification - Applicants will be informed in February 2022 if they are accepted into the program

Participation - Applicants return signed CAP Memorandum of Understanding (MOU) to secure participation in March 2022



Eligibility requirements continued from CAP 2021:

2 (two) open filed returns and 1 open unfiled return

Provide audited financial statements in accordance with U.S. GAAP

Exceptions – changes:

IRC Section 965 exception has been eliminated

More information about the CAP Program and FAQs can be found on the [CAP Program Webpage](#) at IRS.gov



What is a Campaign?

A holistic response to compliance risk

- Resources
- Treatment streams



4 Guiding Principles

- Cultivate environment of continuous learning
- Use data analytics and examiner feedback
- Employ an integrated set of tailored treatment streams
- Drive continual collection and analysis of data and feedback

58 Active Campaigns

Additional campaigns will continue to be rolled out



Campaigns – 2016 ----> present

- Transition to issue focused campaigns
- Capitalize on collective experience
- Campaigns may cover any type of LB&I return
- Some are cross-BOD
- Over 1,000 campaign suggestions received
- Over 50 LB&I Compliance Campaigns announced
- Practice units, Lessons learned
- Increasing percentage of overall Portfolio
- Current focus on TCJA



How Campaigns Function?

- Harnessing the combined intellect of our team
- A fundamental change to selecting and performing work
- Drive specific compliance objectives
- Improve our understanding of risk



The TCJA campaign will monitor issues more closely and share information learned throughout LB&I and the IRS

The goal of this campaign is to identify technical issues and better understand taxpayer behavior under the new law

The treatment streams for this campaign may include examinations, soft letters, outreach, new and improved practice units and development of future issue-based campaigns



Taxpayers have filed many challenges to TCJA regulations





Other Key Portfolio Items

Global High Wealth - Examinations of high-net-worth individuals that extend beyond individual income tax returns to include examining the entities that these taxpayers control. LB&I working to increase its coverage in this area

High-Income Exams - Joint effort between LB&I and the Small Business/Self Employed Division, in coordination with the Tax Exempt and Government Entities Division to address coverage for high-income taxpayers

Flow-Through Work - Increased hiring and coverage planned; as well as a form improvement effort to support improved identification of noncompliance



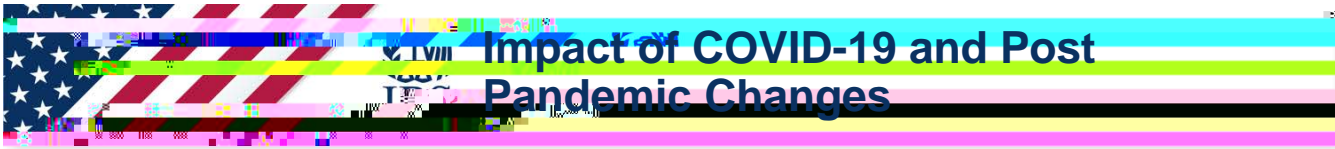
Ongoing focused effort on key issues:

Syndicated Conservation Easements Campaign

Micro-Captives Campaign

Fraud Referrals and Promoter Examinations

Virtual Currency Campaign



Impact of COVID-19 and Post Pandemic Changes

Continuing to monitor impact to taxpayers and our workforce, respond accordingly, and afford flexibility where feasible

- Revised IDR Directive guidance

- Revised case processing procedures

Expansion of digital transmissions will continue until further notice

Temporary deviation through December 31, 2021, allowing digital signatures on certain specified paper filings



CARES Act Highlights

Forms 1139 entering exam workstream

Joint Committee review process

Anticipate increase in filings of preliminary returns followed by subsequent filing of a superseding return

TCJA limitation for 163(j) was primarily based on 30% of Adjusted Taxable Income (ATI). The CARES act modified ATI limit to 50% instead of 30% for taxable years beginning 2019 and 2020

Corrected the QIP recovery to a 15-year recovery property under IRC §168(e)(3)(E) and 20 years under IRC §168(g)(3) retroactive to the date of the original TCJA provision, Dec. 31, 2017

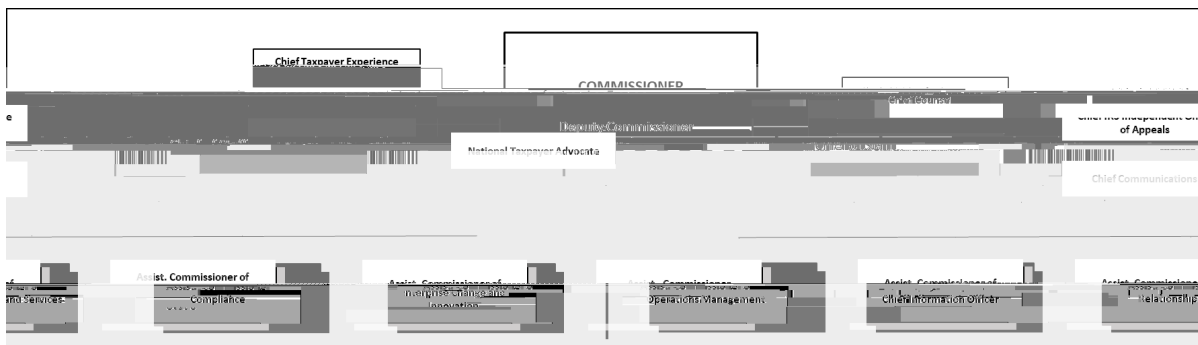


Three Major Components: Comprehensive Customer Service Strategy, Organizational Structures, and Training Strategy

Report to Congress submitted on January 11, 2021

Taxpayer Experience Office, led by the Chief Taxpayer Experience Officer, will set the strategic direction for improving the taxpayer experience across the IRS, and provide information

Organizational Redesign Strategy IRS Leadership



We'll work together over the Report's 10-year timeline to identify the steps and actions to:

- Improve the taxpayer experience and provide a continued emphasis on taxpayer

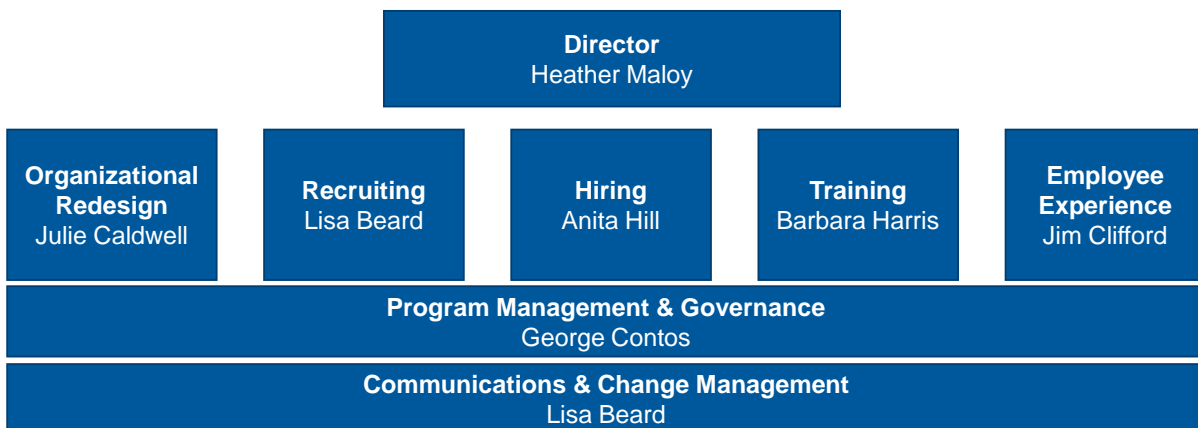
IRS NEXT: Background

- Over the last ten years, IRS' budgets have decreased or remained flat despite increasing demands on the agency. As a result, IRS personnel has dramatically reduced through attrition and hiring freezes, which has constrained the agency mission and business results.
- In January 2021, the Budget Control Act of 2011 (BCA) was reauthorized through the American Rescue Plan Act of 2021 (ARPA) and the Inflation Reduction Act of 2021 (IRA). The BCA imposes a 2% cap on federal discretionary spending for fiscal years 2022 through 2025. The ARPA provides for a 10% increase in discretionary spending for fiscal years 2021 and 2022. The IRA provides for a 10% increase in discretionary spending for fiscal years 2022 and 2023.

Report to Congress Strategy Implementation

- The Taxpayer Experience Office (TXO), led by Chief Taxpayer Experience Officer Ken Corbin, is standing up to implement the taxpayer experience strategies outlined in the Report to Congress.
- Ten cross-functional project teams have been established to help operationalize the Training Strategy. These teams are comprised of subject matter experts from the business units and training experts in the Human Capital Office.
- IRS NEXT will coordinate activities related to organizational redesign.

IRS NEXT Office Structure



IRS NEXT Organizational Redesign

Build out a structure that will:

- Improve operational efficiency
- Be more nimble so we can begin reducing the tax gap
- Improve the employee and taxpayer experience
- Make the IRS a compelling

Taxpayer Digital Communications (TDC): Publication 5425



Appeals' Organization

Andy Keyso
Chief, Appeals

Amalia (Lia) Colbert
Deputy Chief, Appeals

Shahid Barbar
Collection Appeals

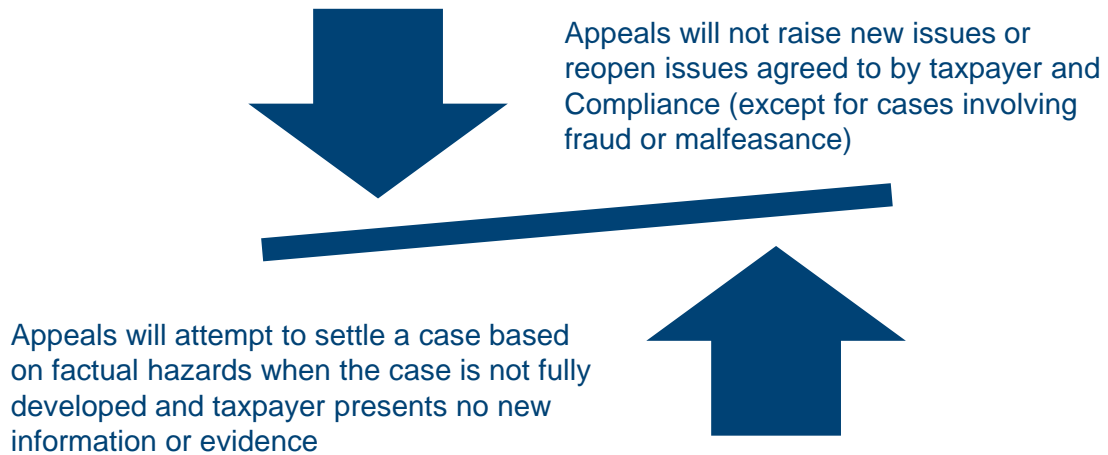
Area 1

Area 2

Area 3

Area 4

Business Systems
Planning



Independence policies

Limitations period

Most new case receipts in Appeals must have at least one year remaining on the statute of limitations

New information

Appeals generally returns non-docketed cases to Compliance when taxpayer submits new information or evidence or raises a new issue warranting investigation or additional analysis (exceptions apply)

New arguments

Appeals generally engages Compliance for review and comment (subject to *ex parte* requirements) when taxpayer raises a new theory or alternative legal argument on a non-docketed case

41

Mediation options

Fast track mediation—collection

Voluntary process for OIC Case 1a 539.28 14

Fast track settlement

Voluntary process for examination cases

Appeals employee serves as mediator and may propose settlement based on litigating hazards

If no settlement, taxpayer retains traditional appeal rights

Rapid appeals process

Voluntary process for large business and E&G cases

After pre-conference, ATCL may suggest mediation between taxpayer and Compliance as an alternative to a traditional conference

If a RAP is unsuccessful, Compliance leaves and settlement negotiations are conducted between the ATCL and the taxpayer

Post appeals mediation

Voluntary process available for exam, OIC and TFRP cases if traditional appeals negotiations fail

Taxpayer may request PAM, but Appeals manager decides if case should get PAM

New Appeals employee serves as mediator between original Appeals employee and taxpayer

Must use Appeals mediator, but taxpayer may also use non-IRS co-mediators (at own expense)

42



Hot Topics – Appeals conferences

Conference techniques include:

- In person
- Virtual (WebEx, Zoom)
- Telephone
- Correspondence

In-person conferences

(suspended until further notice as result of pandemic)

- Upon request, a taxpayer may obtain an in-person conference;

43



ATCL Conference Initiative:

Current status of Pilot- Started in May 2017, Appeals officially implemented the conference initiative pilot to improve

44

Appeals-related provisions-”New” Appeals:

- **Changed name to IRS Independent Office of Appeals, IRC 7803(e)(1)**
- **Codified mission statement**
- **Provided that the process by which Appeals resolves federal tax controversies is generally available to all taxpayers**
- **Codified Appeals’ right to legal advice from Chief Counsel**
- **Provided that certain specified taxpayers must be provided access to the nonprivileged portions of their case files regarding disputed issues at least 10 days prior to an appeals conference.**



R&E Credit Chief Counsel Memorandum

Robert J. Kovacev

Norton Rose Fulbright US LLP





New Chief Counsel Memo on R&E Claims

Memorandum 20214101F released 10/15/2021

Press release and memo: <https://www.irs.gov/newsroom/irs-sets-forth-required-information-for-a-valid-research-credit-claim-for-refund>

