



INDEPENDENT OFFICE
OF APPEALS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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MEMORANDUM FOR DIRECTOR, COLLECTION APPEALS
DIRECTOR, EXAMINATION APPEALS
DIRECTOR, SPECIALIZED EXAMINATION PROGRAMS AND
REFERRALS

FROM: Steven M. Martin /s/ *Steven M. Martin*
Director, Operations Support

SUBJECT: Procedures for Considering Restrictions on Case Assignments
and Conflicts of Interest for IRS Independent Office of Appeals
(Appeals) Employees

Purpose: This memorandum provides guidance for Appeals employees for considering restrictions on case assignments and addressing potential conflicts of interest matters. Please distribute this information to all affected employees within your organization.

Background/Source(s) of Authority: One of the core purposes of government ethics is to ensure IRS employees make decisions based on the public interest, without bias or self-dealing. For this reason, ethics rules generally prohibit federal employees from working on official matters that are likely to affect their financial interests or personal relationships.

All IRS employees continue to be subject to the criminal conflict of interest statutes (18 USC 202-209), Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR pt. 2635), Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (5 CFR pt. 3101), Department of the Treasury Employee Rules of Conduct (31 CFR pt. 0), and Employee Responsibilities and Conduct (5 CFR pt. 735).

The Department of the Treasury (Treasury) and IRS ethics rules are summarized in Document 12011, Internal Revenue Service Ethics Handbook. All federal employees must follow the Office of Government Ethics Standards of Ethical Conduct, which are included in the Ethics Handbook.

IRM 1.4.28.4.1.1, Considerations for Assignment of Work Units, IRM 8.6.1.5.2, Change of Appeals Technical Employee (ATE) After Initial Contact, IRM 8.7.11.3, Appeals Team Case Leader (ATCL) Position, and IRM 8.22.5.4.1, No Prior Involvement, contain guidance for assigning or reassigning cases.

Procedural Change: This memorandum provides additional IRM guidance, consistent with the ethics rules in the Ethics Handbook, for considering restrictions on case assignments and conflicts of interest.

Effect on Other Documents: This guidance will be incorporated into the affected IRM sections within two years from the date of this memorandum.

Effective Date: This guidance is effective as of the date of this memorandum.

Contact: Appeals employees should follow existing procedures to elevate questions through that employee's management chain and follow established procedures on How to Contact an Analyst.

Attachments (2)

cc: www.irs.gov

1.4.28.4.1.2 (new)

Financial Interests or Other Conflicts of Interests and Disclosure

(1) The Appeals Team Manager (ATM) will ensure that all personnel are aware of and understand the restrictions on Appeals employees having personal and substantial participation in a case for which the employee had prior involvement. The ATM will evaluate the potential prior involvement concern and will determine whether the case should be transferred to another Appeals employee.

- a. Prior involvement includes the ATE having worked on the specific case in a compliance capacity or having worked on the specific case as an employee outside of the IRS. Depending on the particular circumstances, prior involvement may include the ATE having previously worked on other matters for the particular taxpayer, whether in a compliance capacity or outside of the IRS.
- b. Prior involvement does not include an ATE having worked on other matters for the same taxpayer while in an Appeals capacity, other than for Collection Due Process (CDP) cases. See IRM 8.22.5.4.1, No Prior Involvement, for more information on CDP cases.

(2) At the start of every case assignment, any Appeals employee with personal and substantial participation in the case will report any financial conflict or other perceived conflict of interest. The employee's ATM will evaluate the potential conflict of interest and determine whether the case should be transferred to another Appeals employee. For examples see IRM 8.6.1.2.2, Financial Interests or Other Conflicts of Interest.

(3) "Personal and substantial" participation means involvement in a particular matter through decision, approval, disapproval, recommendation, investigation, or rendering of advice in a particular matter. See 5 CFR 2635.402(b)(4).

- a. "Personal" means direct participation, and it includes the participation of a subordinate in a matter when directed by the employee.
- b. "Substantial" means an employee's involvement is of significance to the matter or forms the basis for a reasonable appearance of such significance. It requires more than official responsibility, mere knowledge, perfunctory involvement, or involvement in an administrative or peripheral issue. However, participation often is substantial even if it does not determine the matter's outcome.

(4) If an Appeals employee has a conflict, financial or otherwise, the employee will complete Form 6782, Certification of Financial Interest in a Work Assignment, and submit it to the employee's ATM.

(5) The ATM will evaluate the potential conflict of interest and determine whether the case should be transferred to another Appeals employee. The ATM will review Form 6782 to assist in this process.

Attachment, IRM 1.4.28.4.1.2, Financial Interests or Other Conflicts of Interests and Disclosure

(6) If an ATM has a conflict, financial or otherwise, the ATM will report the conflict to the Area Director. If the Area Director concurs that there is a conflict, the Area Director will then reassign the case to an employee of another ATM.

(7) Appeals Directors, division-level, are authorized to make written determinations that the financial interest of an employee is not so substantial as to be deemed likely to affect the integrity of the services which the government may expect from such employee if the employee participates personally and substantially in a matter in which the employee has a financial interest. See IRM 1.2.2.2.18, Delegation Order 1-21 (formerly DO-188, Rev. 5), Authorization to Grant Case by Case Exemptions to the Financial Conflict of Interest Provision in 18 USC. Subsection 208(a). Such determinations may be made only with the coordination and affirmative legal opinion of the Deputy Ethics Official (DEO) or delegate.

(8) Affected employees include but are not limited to:

- a. Appeals Technical Employees
- b. Area Director
- c. Appeals Team Manager
- d. Technical Guidance Specialist
- e. Tax Computation Specialist
- f. Appeals Appraisers, Economists, and Engineers

(9) ATMs who need assistance with interpreting the ethics rules can contact their servicing Labor/Employee Relations Specialist or the DEO via e-mail at GLS.Ethics@irsounsel.treas.gov or by phone at 202-317-6999.

IRM 8.6.1.2.2 (new)

Financial Interests or Other Conflicts of Interest

(1) Appeals employees are prohibited from participating in any particular matter in which a reasonable person would question their impartiality or independence.

(2) If an employee believes that a conflict of interest exists with a new assignment or believes that a change in circumstances has created a conflict with a current assignment, then the employee shall immediately notify their direct supervisor of the facts and circumstances giving rise to the potential conflict.

(3) A conflict of interest exists if:

- a. an employee, or the employee's spouse, minor child, general partner, organization who is serving as officer, director, trustee, general partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest in the particular matter (see 18 USC 208; Document 12011, Internal Revenue Service Ethics Handbook, pages 9-10); or
- b. an employee believes that the circumstances would cause a reasonable person to question their impartiality (see 5 CFR 2635.502(a) and Document 12011, Internal Revenue Service Ethics Handbook, pages 28-31, for specific circumstances that are presumed to create an appearance issue).

(4) The following are examples of circumstances that may create conflicts for Appeals employees:

Example 1. A conflict of interest may exist if an Appeals employee worked the prior cycle of the same taxpayer in IRS business functions other than Appeals.

Example 2. A conflict of interest may exist if an Appeals employee, prior to employment with IRS, had a business relationship with the same taxpayer that would create, in the mind of a reasonable person (with knowledge of all relevant facts), an appearance of a lack of impartiality.

Example 3. A conflict of interest may exist if, within the past year, an Appeals employee has served, or sought to serve, as an employee, officer, director, trustee, general partner, agent, attorney, consultant, or contractor of the same taxpayer or a representative of the same taxpayer.

Example 4. A conflict of interest may exist if an Appeals employee has a personal or outside business relationship with a taxpayer, contractor, another employee, or any other person that would create in the mind of a reasonable person (with knowledge of all relevant facts) an appearance of a lack of impartiality.

(5) If an Appeals employee has a conflict, financial or otherwise, the employee shall complete Form 6782, Certification of Financial Interest in a Work Assignment, and submit it to his or her Appeals Team Manager (ATM).

(6) The ATM will evaluate the perceived conflict of interest and determine whether the case should be transferred to another Appeals employee.

(7) An Appeals employee who is disqualified from a matter because of a financial interest is eligible for an individual waiver under 18 USC 208(b)(1) if an Appeals Director, division-level, (or higher-level official) determines that the disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the government. See IRM 1.2.2.2.18, Delegation Order 1-21 (formerly DO-188, Rev. 5), Authorization to Grant Case by Case Exemptions to the Financial Conflict of Interest Provision in 18 USC. Subsection 208(a). Such determinations may be made only with the coordination and affirmative legal opinion of the Deputy Ethics Official (DEO) or delegate.

- a. The employee may not work on the assignment unless, and until, a waiver is granted, in writing, by an authorized official. 5 CFR 2640.301(a). Waivers are infrequent and available only in certain circumstances. Upon receipt of a waiver, the employee is free to participate in the matter, notwithstanding the financial interest.
- b. Employees seeking a waiver should still file a Form 6782, Certification of Financial Interest in a Work Assignment, with their supervisor. The employee must fully disclose the disqualifying financial interest, and the nature and circumstances of the particular matter or matters on the Form 6782. They may not participate in the particular matter unless, and until, they receive a waiver. See 5 CFR 2640.301(a).
- c. Waivers are available only in certain circumstances. The waiver process includes consultation with the Department of the Treasury and the Office of Government Ethics.
- d. See IRM 1.4.28.4.1.2, Financial Interests or Other Conflicts of Interest and Disclosure, for ATM procedures.
- e. Ethics rules are often complex and may require fact-specific analysis to determine how they apply under particular circumstances. Employees requiring assistance should talk to their manager or contact the DEO via e-mail at GLS.Ethics@irscounsel.treas.gov or by phone at 202-317-6999.

(8) If an ATM has a conflict, financial or otherwise, the ATM will report the conflict to the Area Director. If the Area Director concurs that there is a conflict, the Area Director will then reassign the case to an employee of another ATM.

(9) Related Resources:

- Document 12011, Internal Revenue Service Ethics Handbook
- Document 9300, 14 General Principles of Ethical Conduct for Federal Employees (5 C.F.R. Part 2635.101(b))
- 5 CFR pt. 2635, Standards of Ethical Conduct for Employees of the Executive Branch
- 5 CFR 2635.402, Disqualifying financial interests
- 5 CFR 2635.502, Personal and business relationships
- 5 CFR pt. 3101, Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury
- 31 CFR pt. 0, Department of the Treasury Employee Rules of Conduct
- [5 CFR pt. 735](#), Employee Responsibilities and Conduct
- 18 U.S.C. § 208, Acts affecting a personal financial interest