

Alert | Tax Controversy and Litigation



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IRS Pilots New Alternative Dispute Resolution Procedures

Go-To Guide

- IRS launches pilot programs to expand alternative dispute resolution options for taxpayers.
- Fast Track Settlement now allows partial case resolution and does not prevent later Post Appeals Mediation.
- New “Last Chance Fast Track Settlement” offers small business taxpayers an additional opportunity to resolve issues.
- IRS must now provide explanations for ADR request denials, with first-line executive approval required.

On Jan. 15, 2025, the Internal Revenue Service (IRS) announced three new pilot programs in an effort to expand the reach and appeal of alternative dispute resolution (ADR) processes available to taxpayers. These ADR processes are designed to allow taxpayers and the IRS to resolve their disputes more efficiently than through the traditional resolution paths.

While the IRS announcement refers to three pilot “programs,” there is only one truly new program, Last Chance Fast Track Settlement. The other “pilots” are changes to the existing Fast Track Settlement (FTS) program.

Background

The IRS has offered ADR options since the late 1990s, when it began focusing on ways to streamline and expedite the dispute resolution process. Until then, an unagreed issue at examination could take years to resolve, creating a large inventory of cases that lingered in the administrative system for years, with many proceeding unnecessarily to litigation. Over the years, the IRS has added several tools to its ADR “toolbox” seeking to reduce the time it takes to resolve a dispute. It is generally beneficial for both taxpayers and the IRS to resolve matters at the lowest possible level; ADR tools make that possible.

Fast Track Settlement (FTS) was piloted in 2001 for Large and Mid-Size Business division taxpayers. (LMSB is the predecessor to Large Business & International (LB&I)). It became permanent in 2003, and eventually expanded to include Small Business and Self Employed (SBSE) taxpayers, Tax Exempt/Government Entity taxpayers (TEGE), and taxpayers with collection issues. FTS is a mediation-like process through which taxpayers can resolve their issues while still in examination’s jurisdiction. A specially trained appeals case team leader (ACTL), who serves as mediator, facilitates the mediation.

Post Appeals Mediation (PAM) is also a mediation process, but PAM occurs after a taxpayer has been unable to resolve its matter using the traditional appeals process. In PAM, the taxpayer and the appeals officer work with an appeals mediator to try and reach resolution. Historically, taxpayers have been unable to proceed to PAM if they utilized FTS during examination.

Pilot Program Changes

Changes to FTS and PAM

Under the pilot program, FTS can be applied to one or more issues in the case. Historically, if there was an ineligible FTS issue, the entire case was ineligible. This “rule” had somewhat loosened over the years, but with this announced change, it is now “official.”

A key change to FTS is that participation in FTS will not prevent the taxpayer from seeking PAM. This is a meaningful change as it provides taxpayers with an additional opportunity to obtain resolution without proceeding to litigation.

In addition, requests to participate in FTS and PAM may not be denied without first-line executive approval. In the event of a denial, the taxpayer will receive an explanation for the denial, something that was not previously required.

Last Chance FTS

Also being piloted is a new program for SBSE taxpayers called Last Chance FTS. Under this new program, SBSE taxpayers may enter FTS after the issuance of a 30-Day Letter and/or filing a protest to the IRS Independent Office of Appeals. This is a major change from the traditional FTS process, in which a taxpayer cannot seek FTS once the 30-Day Letter has been issued. To encourage more SBSE taxpayers to seek mediation, SBSE taxpayers will remain eligible for FTS even after the protest has been filed. Last Chance FTS provides one more opportunity to resolve an issue. The IRS is hoping to learn whether offering a “last chance” for FTS and reminding taxpayers of their mediation options immediately before the case moves into appeals jurisdiction would increase overall use of the programs.

ADR Considerations

The ability to resolve cases at the earliest possible level in the process may benefit both taxpayers and the IRS. Early resolution means earlier certainty and reduced interest costs, two key considerations for most taxpayers. Nonetheless, the ultimate decision as to whether ADR makes sense in a particular situation should be thoughtfully considered. Taxpayers should consult with experienced counsel in reviewing the available resolution options and in determining whether ADR is a good fit for their matter.

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