



Hello Summer!

With another 'Red, White and Blue' celebration upon us and summer officially in full swing, we're bringing you another issue packed with timely updates and critical insights from the world of tax controversy and tax litigation.

This quarter, we conclude our three-part series on the

IRS Appeals process under the new Treasury regulations. **Turn to page 3** to learn more about the newly required written notices for denied appeal requests and what it means for taxpayers moving forward.

We also spotlight rising controversy in California tax enforcement—**page 4** covers everything from income sourcing disputes to delayed FTB case resolutions, and the increasingly complex terrain surrounding sales factor apportionment and bad debt deductions.

On the national front, **IRS return and refund delays continue**, while frustrations grow around Employee Retention Credit processing and civil penalty administration. As always, we're tracking developments from Washington so our clients don't get caught off guard.

And speaking of global perspectives, I was honored to once again serve as a judge at the International Criminal Court Moot Court Competition in The Hague. Now in my third year on the judging panel, it's a privilege to represent Brager Tax Law Group among hundreds of esteemed legal professionals supporting the next generation of international advocates. You can read more about this special event **on page 4**.

As we all enjoy a little sunshine and summer slow-down, remember that the IRS never really takes a break—and neither do we. Whether you're dealing with a federal or state tax controversy matter, our team of former IRS attorneys is here to help protect what matters most—you!

From our Brager Tax Law Group family to yours, we wish you a safe and happy Fourth of July filled with great BBQs, warm travels, and celebratory fire works with the ones you love.

CHERYL R. FRANK: President
CPA, JD, Tax LLM



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Summer 2025 E-Newsletter

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Red, White & You

... Could Win!
See's Candies Hampers
for Five Lucky Readers

Only three readers

correctly answered our Spring Newsletter giveaway question — congrats to our winners including **Mike Habib of My IRS Tax Relief (EA from Whittier, CA)**, **Hratch J Karakachian (CPA and attorney from Glendale, CA)** and **Lee Willard (Tax consultant from Whittier, CA)** who each received a hamper assortment of **See's Chocolates valued at over \$50**.

We're keeping the sweet tradition going! This time, there's **no question to answer**—just **reply to this email link with "4th of July Chocolates from See's Candies and Brager Tax Law Group"** in the **subject line** to be entered. Five lucky readers will win our star-spangled summer treat.

CONTEST RULES:

- **Deadline is August 1st 2025**
- **Brager Tax Law Group staff or their families may NOT participate.**
- **Decisions are final.**
- **Prizes are not transferable for cash.**



Understanding IRS Appeals Under Revised Treasury Regulations What Is **NOT** Covered!

The IRS Independent Office of Appeals is barred from considering the following 24 specific types of controversies:

1. Frivolous positions.
2. Penalties assessed under sections 7702 (related to frivolous tax submissions) and 6682 (related to false information with respect to withholding).
3. Whistleblower award decisions.
4. Administrative determinations made by agencies other than the IRS.
5. Taxpayer Assistance Orders.
6. Decisions to make deletions from the text of written determinations made public per section 6110.
7. Denials of access to personal information under the Privacy Act.
8. Issues previously settled by a closing agreement.
9. Cases where the IRS erroneously returned or rejected an Offer in Compromise (OIC) as non-processable.
10. Criminal prosecutions or recommendations for criminal prosecution related to tax offenses that are pending.
11. Issues related to the allocation of fees for branded prescription drugs and health insurance providers.
12. Cases involving the certification or notice of certification of seriously delinquent federal tax debts to the Department of State (e.g., passport revocation).
13. Issues barred from consideration under the Collection Due Process (CDP) provisions.
14. Matters beyond Appeals' authority, such as certain treaty-based cases or cases referred to the Department of Justice, including:
 - i. Any case or issue in a case that has been referred to the Department of Justice for litigation.
 - ii. Any competent authority case under a United States tax treaty that is within the exclusive authority of the United States Competent Authority.
 - iii. Any decision of the IRS to not rescind a penalty under section 6707A of the Code for a non-listed reportable transaction.
- iv. Any request for innocent spouse relief when the non-requesting spouse is a party to a docketed case in the United States Tax Court and does not agree to granting full or partial relief under section 6015 to the requesting spouse.
- v. Any criminal restitution-based assessment under section 6201(a)(4) of the Code.
- vi. Any adverse action related to the initial or continuing recognition of tax-exempt status, an entity's classification as a foundation, the initial or continuing determination of the employee plan qualification, or a determination involving an obligation and the issuer of an obligation under section 103 of the Code if the tax-exempt recognition, classification, determination of employee plan qualification, or determination involving an obligation and the issuer of an obligation is based upon a technical advice memorandum (TAM) issued by an Office of Associate Chief Counsel before an appeal is requested.
15. Competent authority cases under U.S. tax treaties.
16. Decisions on rescinding penalties under section 6707A for non-listed reportable transactions.
17. Innocent spouse relief requests linked to docketed U.S. Tax Court cases.
18. Criminal restitution-based assessments under section 6201(a)(4).
19. Cases involving the recognition of tax-exempt status when based on a technical advice memorandum.
20. Cases docketed in Tax Court relying on a technical advice memorandum involving adverse actions.
21. Decisions regarding the issuance or content of letter rulings, including mitigation under sections 301.9100-1 through 301.9100-22.
22. Taxpayer arguments that a statute violates the U.S. Constitution without a court ruling.
23. Challenges to the validity of Treasury regulations or IRS procedures unless a court has invalidated them.
24. Cases designated for litigation by the IRS or where timely IRS Appeals consideration was not requested prior to Tax Court proceedings.

As we conclude our exploration of the 24 specific types of appeals excluded from consideration by the IRS, it's clear that understanding these limitations is crucial for effectively navigating the appeals process. In Part 3, we will discuss the new notification requirements that the IRS must follow when denying a request for referral to Appeals.

IRS Appeals Process: New Rules Aim for Greater Transparency and Accountability



With the IRS's implementation of new notification requirements, taxpayers now benefit from increased transparency when appeal requests are denied. Under the revised regulations—adopted January 15, 2025, and effective for requests received on or after February 14, 2025—the IRS must now provide taxpayers with a written notice explaining the reasons for denying an appeal.

This rule is especially relevant when a taxpayer receives a statutory Notice of Deficiency (NOD) and has not previously requested Appeals consideration for the same issue within the same tax year or period.

To qualify for Appeals consideration under 26 CFR § 301.7803-3, taxpayers must also meet the following requirements:

- The issue cannot involve a frivolous position, as defined in IRC § 6702(c).
- Appeals must not have previously reviewed the issue and determined it could not be settled, or the taxpayer must not have previously rejected a proposed settlement (except under certain early consideration programs).
- If multiple issues appear in the same NOD for a tax year, all must be submitted together in a single request for Appeals review.

The IRS must also now explain how its decision applies to the taxpayer's specific facts and inform the taxpayer of the procedures available to protest the denial. These updates are designed to ensure taxpayers fully understand both the reasoning behind IRS decisions and the steps they can take to challenge them.

This article is Part 3 of our three-part series on the revised Treasury regulations affecting IRS Appeals. Part 1 appeared in our previous newsletter, and Part 2 can be found in this current edition and can be found on page 2.

At Brager Tax Law Group, we remain committed to helping taxpayers confidently navigate these evolving regulations. Our team of former IRS tax attorneys stands ready to provide skilled representation at every stage of your tax controversy or tax litigation matters.

Cheryl Frank Returns to The Hague as ICC Moot Court Judge



Pictured above seated in the front row:
Cheryl Frank: Judge (far right); Carolyn Edgerton: President & Judge (Center); Darna Popova: Judge (Far Left)

For the third consecutive year, Cheryl Frank, President of Brager Tax Law Group, was invited to serve as a judge at the prestigious International Criminal Court Moot Court Competition (ICCMCC) in The Hague.

Hosted by the Grotius Centre for International Legal Studies at Leiden University, the ICC Moot brings together hundreds of legal professionals from around the world to evaluate and mentor the brightest aspiring advocates in international criminal law. This year's competition saw an extraordinary turnout, with nearly 400 evaluators and 200 judges contributing to its success—underscoring the global significance of this event and the collaborative spirit behind it.

In a message to all judges and evaluators, ICCMCC Project Leader Maria Jaramillo Gomez expressed heartfelt thanks, noting: *"Your involvement is critical to the success of our Competition...without whom the moot simply could not take place."*

The 2025 final round, held at the actual International Criminal Court, was won by Singapore Management University, marking their second consecutive victory. The Ateneo de Manila University (Philippines) and the University of Bonn (Germany) were awarded first and second runner-up, respectively, with special recognition given to Nikita Alyanna Cordova for Best Speaker.

For Cheryl, participating in this competition isn't just an honor—it's a powerful reminder of the role legal professionals can play in mentoring the next generation of international advocates. We are proud to see her represent Brager Tax Law Group on a global stage.

TAX RADAR



Taxpayer Trouble Signals: Insights from Cheryl's Desk

EMPLOYEE RETENTION CREDITS:

IRS delays in processing Employee Retention Credit refunds continue to result in uncertainty and are harming and frustrating business owners.

RETURN PROCESSING:

Continuing delays in IRS return processing are frustrating taxpayers and causing refund delays and this problem will be exacerbated if Congress fails to replace the 22% of IRS personnel who no longer work in its campuses.

CIVIL PENALTY ADMINISTRATION:

The IRS's unfair administration of penalties for not filing foreign information returns continues and is discouraging the efficient administration of the laws and tax compliance.

CRIMINAL VOLUNTARY DISCLOSURE:

In an effort to help allay concerns regarding the legal effect of making an explicit admission of willfulness, the IRS is revising Form 14457 (the form used to participate in its voluntary disclosure practice (VDP) program) by eliminating the willfulness checkbox requirement.



California Tax Controversies on the Rise: What Businesses and High- Income Earners Need to Know

General Areas of Controversy:

- **Resolution Delays:** The FTB has a significant backlog of open controversy cases, including audits, refund claims, protests, and appeals, which can cause delays for taxpayers seeking resolution.
- **Sourcing of Income:** Disputes can arise, particularly for out-of-state taxpayers with interests in California businesses, regarding the sourcing of income, especially when dealing with the sale of partnership interests or intangible assets.
- **Local Tax Disputes:** An appeals court recently held that taxpayers challenging city fees as unconstitutional without seeking a refund do not need to exhaust administrative remedies first, which could affect future disputes over local taxes and fees.

Recent Tax Law Challenges (Relevant for Future Controversies):

- **Net Operating Loss (NOL) Suspension and Credit Limitations:** California has suspended the NOL deduction and imposed a \$5 million annual limit on most income tax credits for corporate and individual taxpayers with California net income or modified adjusted gross income of \$1 million or more for tax years 2024 through 2026. This could lead to disputes for affected taxpayers.
- **Sales Factor Apportionment:** Changes were made to exclude income not included in the California tax base from the sales factor apportionment formula. This potentially increases California-sourced income for some businesses, which may lead to tax controversy.
- **Sales and Use Tax Bad Debt Deduction:** Starting in 2025, lenders and affiliates of retailers are excluded from the definition of a retailer for purposes of the sales and use tax bad debt deduction. This change may affect taxpayers previously relying on this deduction.

Note: The tax litigation and tax controversy landscape is constantly evolving. Taxpayers facing specific issues should consult with a qualified tax professional for personalized advice. Call Brager Tax Law Group for a complimentary consultation with one of our former IRS Tax Attorneys at 310-208-6200 or visit: www.bragerlaw.com for more information