



School of Business & Public Management
IBI – The Institute of Brazilian Issues
Minerva Program
Fall 2013

**THE TAX APPEAL PROCESS IN THE TREASURY SECRETARIAT OF
THE STATE OF RIO DE JANEIRO AND IN THE INTERNAL REVENUE
SERVICE**

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Washington, DC
December 2013

Abstract

Appeals play a role in the protection of taxpayer rights by having authority to resolve disputes between taxpayers and Government, and provides an administrative opportunity to resolve the matter without litigation. This paper's objective is to discuss the appeals process in the Treasury Secretariat of the State of Rio de Janeiro and in the Internal Revenue Service separately, to show the practice of appeals in these two institutions. After that, compare both processes, quantitative and qualitatively, pointing similarities and differences. Then, make conclusions about the administrative models used, the duration of processes and compliance costs involved. Finally, after the analysis, make suggestions that could improve appeals in the State of Rio de Janeiro.

Key-Words: Public Administration, Appeals, Appeals Process, Treasury Secretariat of the State of Rio de Janeiro, Internal Revenue Service, IRS, Brazil, United States of America.

I. Introduction to the Tax Appeals Process

Appeals are a way to resolve tax disputes between the taxpayers and the Government. Whenever taxpayers disagree with the tax adjustment, partially or completely, they have the right to request its review to the Administration, which starts the appeals process. This process exists to protect the taxpayers' rights in the tax determination and collection, and also allows the Administration to adjust or cancel wrong bills. The review of the tax adjustment by an independent administrative office is an alternative to the court which is able to promote fairness to the liability. It presents the advantages, among others, of celerity and the review by experts in the subject.

Appeals are expressly stated in the Brazilian Federal Constitution, in its art. 5, LV. In the Treasury of the State of Rio de Janeiro, the appeals process is shown in Book III, Title III of Decree-Law 05/1975 (State Tax Code) and Decree 2.473/1979. It is characterized by a formal dispute between two parts, the strict obedience of the process to the law, the multiple levels of appeals, the decisions being made by single agents or a group of agents, and the mandatory review in case decisions of the 1st level of appeals don't favor the government. Although stated in art. 191 of the State Tax Code, the institute of the transaction is not verified in the practice of appeals.

The tax appeals process in the American Internal Revenue Service (IRS) has many different characteristics than the previously mentioned for the State Treasury. Actually, it is a total different process. The IRS Office of Appeals, responsible for deciding taxpayer's protests, is not only limited to the application of the law to the case, but may also observe the hazards of litigation, and try to settle an agreement with the taxpayer in cases that could create unfavorable jurisprudence in court. In other words, one of the objectives of the Appeals Officer is to establish an agreement with the taxpayer and avoid litigation when appropriate to the Service. Thus, those Officers have more subjectivity involved in their work than other auditors of the Service, and must act as negotiators, a characteristic not seen in Rio de Janeiro's appeals. Another feature of this process is its informality, since conferences with appeals officers are not necessarily face to face, and may occur by phone or mail. In addition, as it also happens in the Treasury of the State of Rio de Janeiro, the review of the deficiency by the Office of Appeals may result in the increase of the tax bill.

Therefore, the objective of this paper is to compare the tax appeals processes in the State of Rio de Janeiro and the IRS, pointing out their differences and similarities, qualitative and quantitatively. Also, that this study may result into improvements to the tax appeals management in the State of Rio de Janeiro, in particular its contribution to the tax liability. The IRS was chosen as object of comparison because of the abundance of bibliography available about its appeals process, and also for its big structure, in comparison to other American State Treasuries and Agencies.

This study is divided into three parts besides the introduction. Initially, the tax appeals process in the State of Rio de Janeiro will be explained in details. After that, the tax appeals in the IRS will be discussed. With all the information gathered in previous chapters, a comparison between the two processes will be made. Then, conclude about the administrative models used, duration of processes, compliance costs. Finally, after the analysis, make suggestions that could improve appeals in the State of Rio de Janeiro. This paper pretends to show the practice of appeals in these institutions.

II. The Tax Appeal Process in the State of Rio de Janeiro

The Organizational Structure of the Appeals in the State of Rio de Janeiro

The appeals structure of the Treasury of the State of Rio de Janeiro is composed of many levels and independent offices. The first level of appeals is the first opportunity for the taxpayer to appeal as soon as he gets the notice of deficiency. If the decision of the first level authority does not favor the taxpayer, partially or totally, he may appeal that decision to the second level authority. When the case reaches the second level, that authority may maintain or modify the decision of the first level. In special situations, when the decision of the second level authority does not favor the State, it may be reviewed by the Secretary of Treasury, a process of which the taxpayer does not participate.

Therefore, the taxpayer has two chances to cancel or modify the tax bill. This could be done either on the first and second level of appeals by filing a formal written protest. Also, on the second level of appeals, and only there, he may present his arguments in person to the Appeals Officers.

The following agents and offices are responsible for the appeals:

1. Chief of the office that issued the notice of deficiency (1st Level);
2. *Junta de Revisão Fiscal* (1st Level);
3. *Conselho de Contribuintes* (2nd Level);
4. Secretary of Treasury of the State of Rio de Janeiro (Special Level).

The examination of taxpayers in Rio de Janeiro is the responsibility of several offices, divided by region, subject, and traffic inspection. Regional offices are responsible for auditing local taxpayers, usually local, small commerce. Specialized offices are responsible for performing audits that may require knowledge of specific business and law, such as electrical energy, telecommunications, international trade, oil, vehicle property and real estate transmission. Taxpayers are designated to these offices based on the economic activity they practice, not their location. Traffic inspection offices are located on the borders of Rio de Janeiro, and inspect the product transportation between the States, as the main State tax, the *ICMS*, may incur over the circulation of goods. For more details about the structure of the State Treasury and the competencies of its offices, see Dec. 40613/07, Res. SEFAZ 45/07 and Res. 2.861/97.

For small deficiencies, the chief of the office who issued them will be responsible for the appeals. So, any chief from the auditing offices mentioned before may be responsible for deciding an appeal, which will occur when the value of the tax or the penalty is small. Reasons for giving this authority to the chief may be to make the process faster and less expensive to the State in small and, usually, less complex cases. However, it's unlikely that big and complex companies of the specialized offices have cases like this.

When the case is not qualified as small, and when the chief of the office that issued the notice of deficiency has any legal impediment, the *Junta de Revisão Fiscal* (JRF, or Assembly of

Tax Review, free translation from Portuguese), an independent office of appeals, created for this purpose, will decide about the case.

So, the JRF is the office that decides most of the cases, and the most valuable ones in the first level of appeals. Since November of 2013 (Port. JRF 9/13), the JRF is integrated by 60 Appeals Officers, called *Auditores Tributários* (Tax Law Auditors, free translation from Portuguese), divided into groups of 3, called *Turmas*. Every year those groups are formed by public casting lots (Dec.-Law 5/75 – State Tax Code, art. 246, §2º).

Each protest is decided by one of this groups, chosen randomly (procedures on how groups are chosen will be explained further on this paper). The group reviews the notice of deficiency, analyses the arguments on the protest, may ask for additional explanation to the parties involved and even third-related parties, may ask for modifications on the case, and then decides the case based on law and on Administrative positions.

The group of the JRF decides the case in public appeals sessions, of which the taxpayer or his legal representative can watch, but not participate. The taxpayer does not communicate with the Appeals Officers on the first level except for the formal written protest.

After the decision of the first level authority, the case may or may not reach the second level of appeals. If the decision favors the taxpayer (or doesn't favor the State), partially or totally, or in cases the notice of deficiency is cancelled, there's a mandatory review of that decision by the second level authority. If the decision doesn't favor the taxpayer (or totally favors the State), the taxpayer may or may not appeal of that decision to the second level authority.

There's only one second level appeals authority, the *Conselho de Contribuintes do Estado do Rio de Janeiro* (CCERJ, or Taxpayers' Council of the State of Rio de Janeiro, free translation from Portuguese). It is also an independent office of appeals created for this purpose, but separated from the JRF. The CCERJ has no hierarchical power over the JRF or any Examination Office Chief, as each one has its own management, and the former cannot force the result of the decision of the others. However, the CCERJ has authority to modify and even cancel the decision, returning the case to the first level authority when needed. In other words, if the case goes to the second level authority, its decision prevails over the first authority.

The CCERJ includes 16 Appeals Officers, called *Conselheiros* (Counselors, free translation from Portuguese), from which 8 represent the State, and the other 8 represent taxpayers. All of the State's representatives are Treasury's auditors. About the taxpayers' representatives, 3 represent industries, 2 represent commerce, 1 represent agriculture, 1 represent transportation services, and 1 represent communications. The Appeals Officers are divided into groups of 4, called *Câmaras*, including 2 State's representatives and 2 taxpayers' representatives. Each case is decided by a group, chosen randomly.

State attorneys also participate of the appeals process in the second level, by analyzing the case and giving a legal opinion before the group receives it. They are called *Representantes da Fazenda* (Treasury Attorneys, free translation from Portuguese), and are not hierarchically subordinated to the CCERJ, but to a Treasury Attorney General, called *Representante Geral da Fazenda*. 2 State Attorneys participate of each group.

The group of the CCERJ decides the case in public appeals sessions, of which the taxpayer or his legal representative can participate by defending his opinion to the Officers.

When a group's decision is not unanimous or diverges from another decision within the CCERJ, the taxpayer or the State may appeal to all members of the CCERJ together, situation in which they are called the *Conselho Pleno*. In this particular case, only the interpretation of the law that caused the disagreement may be discussed, not the facts.

When a decision made by a group, or by less than $\frac{3}{4}$ of all members of the CCERJ together, does not favor the State and is opposite to the law or the facts about the case, the Treasury Attorney General may appeal to the Secretary of Treasury, a political agent chosen by the Governor to be the chief executive of the State Treasury. In this situation, the taxpayer may defend his understanding of the case by filing a formal protest.

If there is no more opportunity to appeal in the second level, the decision is final. In the case the taxpayer is still not satisfied with the decision, he may take the case to the court. By the way, the taxpayer may take the case to the court anytime, before or after the Administrative decision. If the taxpayer decides to appeal to the court when an administrative appeal is

ongoing, the process is ended and the last Administrative position about the case is maintained.

In summary, this is the structure of the appeals in the State of Rio de Janeiro.

1st Level of Appeals (reviews the case)	2nd Level of Appeals (reviews the first level decision)	Special Level (reviews the second level decision. Only in special situations)
<p>A. Chief of the Office that issued the notice of deficiency (for small cases and no legal impediment)</p> <p>B. <i>Junta de Revisão Fiscal</i> – JRF (all other cases)</p>	<p><i>Conselho de Contribuintes – CCERJ</i></p>	<p>Secretary of Treasury of the State of Rio de Janeiro</p>

Before the Appeals Process Starts

In Rio de Janeiro, a taxpayer may have his tax liability checked by State’s auditors through examination of tax-related documentation, like filed reports and tax books. If they conclude there is any tax owed, the taxpayer will receive a notice of deficiency, which may or may not include penalties (art. 72 and 93, Dec. 2.473/79). There are two distinct types of notices in Rio. The first, called *Nota de Lançamento* (tax debt notice, free translation from Portuguese), is issued when only the tax is demanded, and there is no penalty involved. The second, called *Auto de Infração* (penalty notice, free translation from Portuguese), is issued when tax and penalty are demanded together, or when just the penalty is demanded. The last case occurs when the taxpayer failed to obey any rule of compliance and there is no tax debt. For example, missing to file a mandatory report, or make commercial activity without registration on the Treasury, or not stopping a truck with products for examination in the Traffic Inspection Office.

If the taxpayer decides to pay the deficiency, he will get some reduction to its value. If he disagrees with it, he may appeal the notice of deficiency.

The taxpayer cannot reduce or cancel the assessment by informally talking to the auditor when the notice of deficiency has already been issued. He can only do this through a formal appeals process.

The Tax Appeals Process in the State of Rio de Janeiro

The taxpayer may appeal the notice of deficiency by filing a formal written protest, which starts the appeals process, and suspends the possibility for the State to demand the questioned debt in court (art. 69, Dec. 2.473/79).

The protest must be presented to the office that issued the adjustment within 30 days of notification, along with the payment of a service fee (art. 25, inc. III, 1; art. 70 and art. 86 Dec. 2.473/79). In 2013, the value of the fee is R\$ 271.40, which is approximately US\$ 116.41 in November 2013. This value is reduced by 70% for small firms included in the national simplified tax compliance rules (art. 5, Law 5.147/07). Not only may a notice of deficiency be subject to appeals, but also the decision of the Treasury which denies a refund to the taxpayer, and the refusal by the Treasury to accept a tax payment (art. 69, Dec. 2.473/79). However, this paper will only discuss about the appeals of notices of deficiencies, as they are the most frequent.

If the taxpayer misses the deadline to file the protest, he may ask the Treasury to accept it within 10 days. However, the acceptance is subjective and depends on the relevance of the arguments (art. 92, Dec. 2.473/79).

The taxpayer has two chances to have the notice of deficiency cancelled or reduced. Initially, the protest will be received by the first level appeals authority. If the decision in the first level does not favor him, partial or totally, and he is not satisfied with it, the taxpayer may appeal that decision to the second level appeals authority. Notice that in the State of Rio de Janeiro there is also a special level of appeals, only for decisions that do not favor the Government, which will be explained further.

The First Level of Appeals

The first level appeals authority will decide about the protest. For small cases, the authority will be the Chief of the Office responsible for issuing the notice of deficiency (art. 105, Dec. 2.473/79; art. 1, Res. SER 42/03). If the Chief has any legal impediment, and for values not qualified as small cases, the authority will be the JRF, an independent office of appeals, created for this purpose.

Since May of 2013, a small case is the one with a contested value of less than 450 UFIR-RJ in the date of the issuance (Res. SER 42/03 altered by Res. 618/13). The UFIR-RJ is a fiscal monetary reference valid only in the State of Rio de Janeiro to update the tax values, inspired in the ones used by governments in Brazil in times of high inflation. Values that are linked to the UFIR-RJ, like the one used to qualify small cases, are automatically updated every year. In 2013, small cases are tax discussions of less than R\$ 1,082.97, which is approximately US\$ 464.30 in November 2013.

The JRF is the office that decides most of the cases, and the most valuable. Since November of 2013 (Portaria JRF 9/13), the JRF has 60 Appeals Officers, divided into groups of 3. Every year these groups are formed by public casting lots.

When the Chief of the Office that issued the notice of deficiency receives a protest, he will review the notice, the taxpayer's arguments, and then decide if the tax bill is due, based on the facts and the application of the law to the case. The decision has some requirements, and should contain a brief summary of the case, the reasons for the decision, the legal basis, a conclusion, the resulting value for the tax and the penalty, and the notification order (Dec. 2473/79, art. 107).

When the JRF receives a protest, the case is randomly assigned to an Appeals Officer. Cases with big values have priority in distribution over small values. As well as the Chief, the Officer will review the notice of deficiency, the taxpayer's arguments, the facts and the

application of the law to the case. Then he will make a conclusive report with his understanding of the case, and how it should be decided. His decision should contain the same requirements as listed above. The report should be done within 30 days (Dec. 2473/79, art. 25, III, 2), but, if requested by the Appeals Officer, depending on the complexity of the case, the Chief of the JRF may extend this deadline to 90 days (Dec. 2473/79, art. 113; Dec.-Law 5/75 – State Tax Code, art. 246, §3^o). However, it's usually finished in 30 days.

After that, the Appeals Officer presents the report to his group in a public session where they will decide about the case. The other two members of the group may agree or not with the report. Finally, the group's decision about the case may be unanimous or not. Also, the taxpayer or his legal representative may watch this session, but cannot participate. The written protest is the only kind of communication between the taxpayer and the Appeals Officers in the first level.

The first level authority has autonomy to decide, but it has some limitations. The decision must always be justified and based on the facts, the law and the formal positions of the Administration. In the Treasury, other authorities are responsible to interpret grey areas of the tax law, and to create standards to controversial subjects. The decisions of the first level appeals authority must follow their interpretations and standards. Also, the first level authority cannot decide a law is unconstitutional.

Before the first level authority decides, the notice of deficiency may be modified. That procedure is usually done to correct non substantial errors, like a small mistake on the legal basis, or to increase the value of the tax bill. However, the notice of deficiency may not be modified to have its values reduced (Port. JRF 3/04, art. 5). The name of this procedure is called *termo de retificação* in Portuguese.

Also before the decision, either the Chiefs, individual Appeals Officers, or a JRF's group in session may request additional measures intended to clarify the case, which could be information, investigation, calculations, specialized inspection (like in accountability or engineering), attach proofs and make corrections to the notice of deficiency. The first level appeals authority cannot make a safe decision before the issue is resolved. Those measures should be taken by someone in the Treasury or by a third party, but usually it is taken by the

auditor who issued the notice of deficiency. That is a common situation. In 2012, approximately 40% of the cases in the JRF required additional measures. This procedure in Portuguese is called *diligência*. The time to complete the requested tasks and to the case return to the JRF depends of their complexity. This could take several days, like answering a couple of questions, or months, like having a new examination over the taxpayer's documents.

The result of the first instance authority's decision may be one of the following.

- a. The State fully disagrees with the taxpayer's arguments. No changes to the notice of deficiency. This result is called in Portuguese *procedente*.
- b. The State partially agrees with the taxpayer's arguments. The value of the notice of deficiency is partially reduced. This result is called in Portuguese *procedente em parte*.
- c. The State totally agrees with the taxpayer's arguments. The tax or penalty is not owed. This result is called in Portuguese *improcedente*.
- d. The notice of deficiency has flaws or issues and should be cancelled (Dec. 2473/78, art. 48). This may happen when the facts are not clear to make sure tax is owed, or when the taxpayer wasn't given the right to properly defend during the process. A new examination of the taxpayer may occur. This result is called in Portuguese *nulo*.

The taxpayer is then notified of the result of his case. If he agrees with the decision, he may pay the debt with some reduction to the penalty.

If the decision favors the taxpayer (or doesn't favor the State), partially or totally, or in cases the notice of deficiency is cancelled, there is a mandatory review of that decision by the second level authority (Situations B, C and D above). This procedure is called in Portuguese *recurso de ofício*. If the decision does not favor the taxpayer (or totally favors the State), the taxpayer may appeal that decision to the second level authority within 30 days (Situation A above). This procedure is called in Portuguese *recurso voluntário*.

If there is a mandatory review or the taxpayer appeals the first level authority's decision, the second level authority, the CCERJ, receives the case.

The Second Level of Appeals

When the decision of the first instance authority does not favor the taxpayer, the latter can appeal that decision by paying a new service fee and filing a protest within 30 days of the notice.

The CCERJ receives the case and randomly assign it to a group. Then, a group's Treasury Attorney reviews the case and give it a legal opinion. After that, the case is assigned to one of the Appeals Officers. Each group has 4 Appeals Officers, 2 of them are Treasury's Auditors, civil service employees, and 2 are Taxpayers' representatives, who are not State employees. Any of them may receive a case to decide, and their work is the same.

According to Alcântara (2013, p.35), the CCERJ gives another chance to the taxpayer have his case reviewed by an office with more independence to decide than the first level appeals authorities, which raises the probability of a favorable decision to him in the second level. The participation of the Taxpayers' Representatives, who are not bonded to the Treasury's positions, and have their own interpretation of the law, is one reason for that.

The Appeals Officer reviews the first level authority decision, the taxpayer's arguments, the facts and the application of the law to the case. Then he will make a conclusive report with his understanding of the case, and how it should be decided.

After that, the Appeals Officer presents the report to the group in a public session where they will decide about the case. Unlike in the first level, the taxpayer or his legal representative may be heard in session via oral arguments to defend his understanding. The Treasury Attorney may also make oral arguments in session.

Like in the first level, the group may request additional measures to clarify the case, which suspends the decision by undefined period, until the issues are resolved. However, in the

CCERJ, unlike in the first level, no modifications are allowed to the notice of deficiency. If there are problems remaining, it should be cancelled.

When a group's decision is not unanimous or diverges from another decision within the CCERJ, the taxpayer or the Treasury Attorney may appeal to all 16 members of the CCERJ together. As mentioned before, only the interpretation of the law that caused the disagreement may be discussed, not the facts. This procedure prevents divergent decisions to happen within the CCERJ. Also, with the participation of all members together, there is an improvement in the discussion of the subject.

Special Level of Appeals

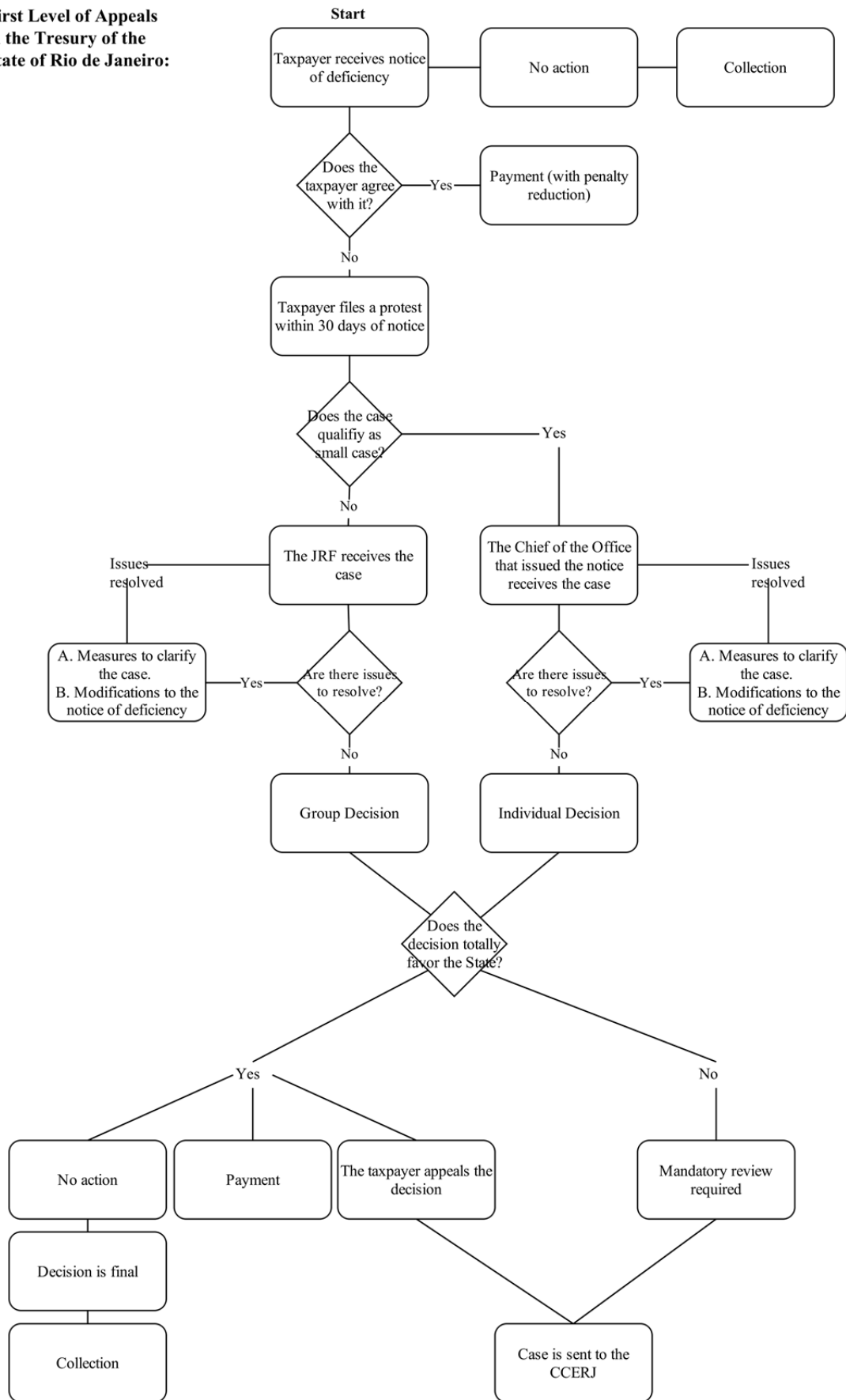
When a decision made by a group, or by less than $\frac{3}{4}$ of all members of the CCERJ together, does not favor the State and is opposite to the law or the facts about the case, the Treasury Attorney General may appeal to the Secretary of Treasury, the chief executive of the State Treasury. In this situation, the taxpayer may defend his understanding of the case with a formal protest.

According to Alcântara (2013, p. 35-36), the participation of a political agent in a technical and independent process is criticized. However, there are reasons for that. First, the decision of the appeals is final for the Administration. Unlike the taxpayer, the Government cannot appeal to the court against its own decision. Second, the Administration must cancel its own decisions when they contain errors.

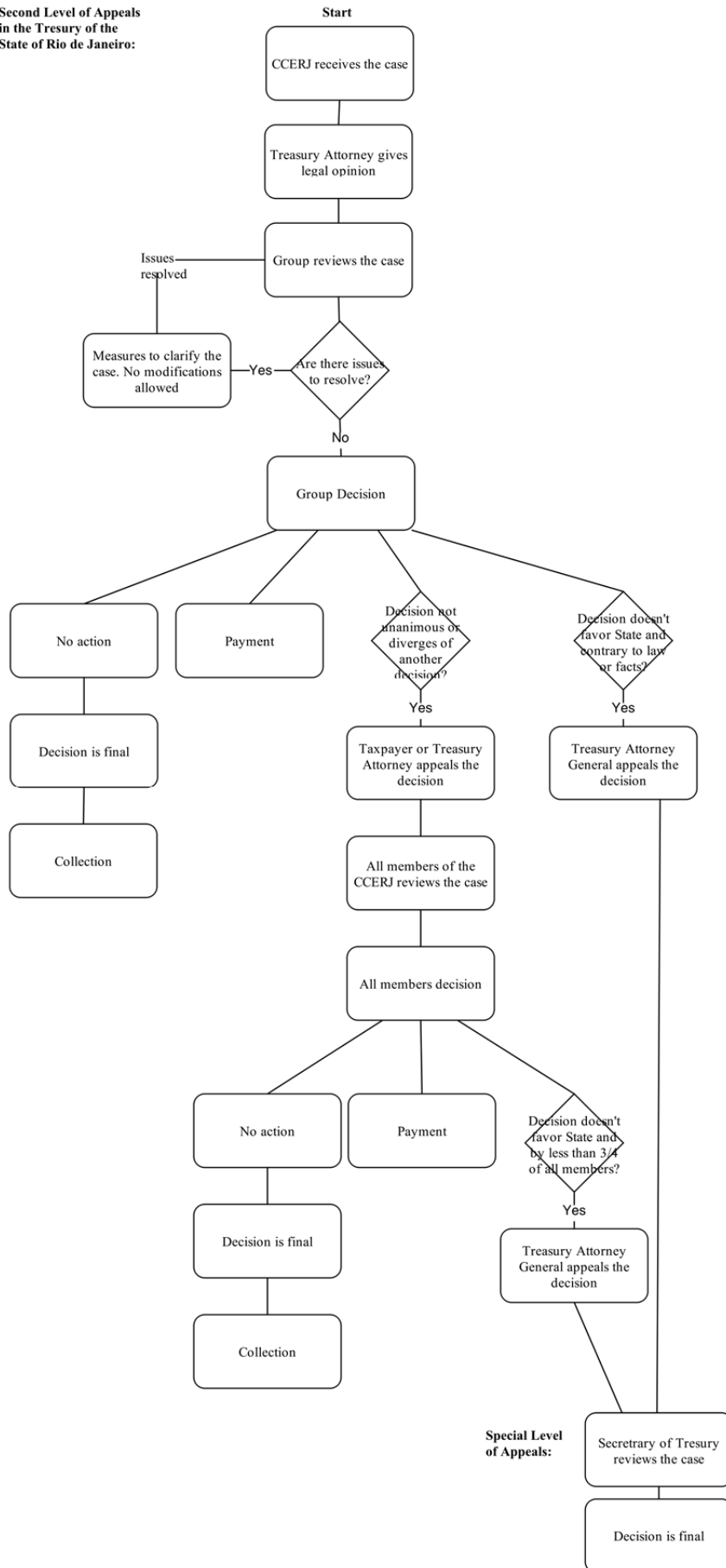
When there is no more opportunity to appeal or review, the decision is final. The taxpayer still has the right appeal to the tax court. The taxpayer may appeal the notice of deficiency to the court anytime, he doesn't need to wait the administrative appeals process to finish.

2.3.3. Process Flowchart

**First Level of Appeals
in the Treasury of the
State of Rio de Janeiro:**



**Second Level of Appeals
in the Treasury of the
State of Rio de Janeiro:**



Statistics

JRF Statistics

The JRF publishes its productivity results once every two months (Res. SER 23/03, art. 75, §2º) in the State's newspaper. Based on those publications, the table below shows, from 2008 to 2012, the number of resolved cases annually, the number of Appeals Officers and their possible results in the end of the first level of appeals. “%TFS” means the percentage of the decisions that Totally Favored the State. “%PFS” means the percentage of the decisions that Partially Favored the State (thus, they also partially favored the taxpayer). “%TFT” means the percentage of the decisions that Totally Favored the Taxpayer. “%CANC” means the percentage of the notices of deficiency that were cancelled in the first level due to issues that couldn't be solved. This column includes notices of deficiency that weren't properly prepared (work that may be redone by examination auditors), and cases with not enough proofs of the facts.

Year	# Appeals Officers	# Cases Resolved	Results			
			%TFS	%PFS	%TFT	%CANC
2012	48	4,397	51.0%	14.0%	13.7%	21.3%
2011	36	3,686	58.6%	13.8%	14.0%	13.6%
2010	38	2,625	49.1%	16.4%	14.9%	19.6%
2009	33	2,348	57.2%	21.1%	11.3%	10.4%
2008	33	2,348	61.3%	15.4%	14.7%	8.6%

The results PFS, TFT and CANC lead to the reduction of the tax bill and favor the taxpayer, at least partially. So, the following table divides the results above into two groups. The column “%FS” shows the percentage of results that totally favored the State, in which the taxpayer couldn't get any reduction of the tax bill. The column “%FT” is equal to the sum of PFS, TFT and CANC, and shows the percentage of results that favored the taxpayer, in which there was some or total reduction of the bill. Also, they show the numbers of cases that will be necessarily reviewed at the second level.

Year	%FS	%FT
2012	51.0%	49.0%
2011	58.6%	41.4%
2010	49.1%	50.9%
2009	57.2%	42.8%
2008	61.3%	38.7%

The numbers above should not be interpreted as the raw chance of success of the taxpayer within the appeals, as the cases' subjects may vary. The chance of success of the taxpayer depends on the position of the Appeals about a particular subject. While some subjects may favor the taxpayer, others do not. There may also be formal internal positions of the Administration about subjects that guide the results in the first instance, and usually do not favor the taxpayer. In that case, the taxpayer has more chance of success at the second level of appeals, which has more independence to decide.

The following table shows the number of times cases left the JRF for additional measures, like attaching proofs or calculations, from 2008 to 2012. Those numbers include notices of deficiency that weren't properly prepared (lack of proofs, for example), but could be corrected. Also, they include cases that left the JRF more than once on the same year (the case goes out of the JFR for additional measures, return, and then goes out again for another reason). The additional measures delay the decision and may consume most of the time of the appeals process. Notice that the numbers below may be as high as the numbers of cases resolved, what shows this is a frequent situation.

Year	# Times AM
2012	2,934
2011	2,838
2010	2,608
2009	1,922
2008	1,608

CCERJ and Special level Statistics

The CCERJ's productivity is shown on its webpage¹. It contains the monthly and annual productivity of the last three years. Based on that information, the table below shows the number of cases resolved by the CCERJ during the years of 2010 to 2012. It includes the sum of decisions made by each one of the 4 groups (column "A"), and also the decisions made by all members of the CCERJ together (column "B"). Those numbers cannot be added, as any decision made by all members is necessarily an appeal, a consequence, of a group decision. The table also shows the number of cases resolved by all members as a percentage of the total cases that reaches the second level. Also, it includes the number of cases that were decided by the Secretary of Treasury of the State of Rio de Janeiro (column "C"), absolute and as a percentage of the total cases of the second level. Cases decided by the Secretary of Treasury are a result of decisions made by a group or by all members that do not favor the State and were appealed by the Treasury Attorney General. The numbers of the CCERJ's decisions are higher than the ones shown for the JRF because they include the small cases that were decided at the first level by the Chiefs of the offices that issued the notices of deficiency.

Year	# Cases resolved - groups	# Cases resolved - all members	% of total cases	# Cases decided by the Secretary	% of total cases
	A	B	=B/A	C	=C/A
2012	4,018	359	8.9%	173	4.3%
2011	3,856	395	10.2%	218	5.7%
2010	4,047	241	6.0%	148	3.7%

The table below shows the one specific group's productivity in the second level (1st *Câmara*) in 2012. It shows the type of decision in the first level that caused the case to reach the second level, and the following result in the second level. Notice that 53.5% of the decisions that totally favored the State in the first level were maintained (row B), but 39.2% of them had changes that favored the taxpayer (sum of rows A, C and D), what shows that the taxpayer has more chance to get better results in the second level. Also, 93.8% of the decisions that did not favor the State in the first level were maintained (row H). So, many of the first level authorities' decisions were maintained in the second level (rows B and H). This is a common situation in the second level of appeals. Also, the group requested additional measures just for

¹ http://www.fazenda.rj.gov.br/sefaz/faces/sitios?_adf.ctrl-state=e8h8qltg7_4. Visited on november/2013.

a few cases (rows E and J). This happens because the first level authorities correct most of the cases' issues, preparing them for a safe decision in the first and the second level of appeals.

First Câmara's Total Cases in 2012	Type of decision in first level	Total Cases	% of total	Result in the second level	Total Cases	% of total cases (by decision in 1st lev.)	Row
851	1st Lev. decision totally favors the State. Taxpayer appeals	370	43.5%	CCERJ accepts taxpayer's arguments. Bill reduced	105	28.4%	A
				CCERJ doesn't accept taxpayer's arguments. Bill maintained	198	53.5%	B
				CCERJ partially accepts taxpayer's arguments. Bill reduced	26	7.0%	C
				CCERJ cancels the notice of deficiency after taxpayer's appeal	14	3.8%	D
				CCERJ requests additional measures. Decision suspended	25	6.8%	E
				CCERJ denies the appeal. Legal requirement missing	2	0.5%	F
	1st Lev. Decision doesn't favor the State. Mandatory review	481	56.5%	CCERJ changes the 1st level authority's decision	16	3.3%	G
				CCERJ maintains the 1st level authority's decision	451	93.8%	H
				CCERJ partially maintains the first authority decision	4	0.8%	I
				CCERJ requests additional measures	10	2.1%	J

III. The Tax Appeals Process in the IRS

The IRS Office of Appeals

Appeals plays a role in the protection of taxpayer rights by having authority to settle disputes between taxpayers and operating divisions within the IRS. Appeals provides the final administrative opportunity to resolve the matter before going to court.

According to the IRS publication 4227 (2010, p. 1), the mission of Appeals 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 the Service.

The local Appeals Office is separate from and independent of the IRS office that proposed the adjustment. An Appeals or Settlement Officer will review the issues in the case and give them an independent, impartial look. However, according to Carlson (1988, p. 8), the officer is an employee of the IRS, and any settlement must be consistent with positions taken by the Service. Appeals officers also are directed to consult with the district counsel for the IRS's

current litigation position on an issue and adhere to that position. A favorable court decision, therefore, will do the taxpayer little good at the appeals level if the IRS has not acquiesced in the case or wishes to relitigate the issue under a more favorable fact pattern. Though judicial precedents have some influence on the Appeals Office, the IRS's established interpretation of the law and the strength of the taxpayer's factual case are more important. Thus, in some cases a taxpayer might seem more likely to prevail in court than at the Appeals Office.

Daily (2007, p. 114) says the Appeals Office has nearly 2,000 employees, scattered throughout the United States. Fewer than one in ten audited taxpayers appeal.

According to the IRS news IR-2000-57 (2000, "Redesigned appeals division begins work at IRS", p. 1), Appeals reaches agreement with taxpayers on 90% of its cases. According to Daily (2007, p. 122), statistics shows 70% of appeals cases are settled. Berke Jr. and Berry (1986, p.189) say about 72% of the cases are settled. Although these statistics could not be confirmed on the IRS reports, and they may refer to different fiscal years, all sources lead to the conclusion that the chance for a settlement is high, and Appeals makes an effort to settle cases, what can benefit the taxpayer.

The table below was extracted from the IRS Data Book, which is published annually by the Service and contains statistical tables and organizational information on a fiscal year basis. This one refers to the fiscal year of 2005.

Table 17 -- Appeals Workload, by Status and Type of Case, Fiscal Year 2005

Category	Cases pending	Cases	Cases	Cases pending
	October 1, 2004 [2]	received [3]	closed [4]	September 30, 2005 [2,3,5]
	(1)	(2)	(3)	(4)
Total Cases [1]	64,787	99,918	102,597	60,831
Total Nondocketed Cases [6]	53,444	80,966	82,606	48,728
Collection due process	17,064	29,798	26,819	18,767
Offers in compromise	10,343	14,930	17,845	7,439
Innocent spouse	4,802	3,057	4,549	2,778
Penalty appeals	3,763	13,703	14,065	3,333
Coordinated industry cases	1,059	543	567	1,004
Industry cases	952	670	497	1,082
Examination	12,282	12,977	12,844	11,280
Other [7]	3,179	5,288	5,420	3,045
Total Docketed Cases [8]	11,343	18,952	19,991	12,103
Collection due process	125	12	1,069	92
Offers in compromise	--	4	5	3
Innocent spouse	268	284	620	190
Penalty appeals	**	--	**	--
Coordinated industry cases	51	9	43	39
Industry cases	108	80	167	116
Examination	10,777	18,559	17,966	11,655
Other [7]	**	4	**	8

Of the total of 102,597 cases closed during that year, 82,606 were nondocketed and 19,991 were docketed. Nondocketed cases are those in which the taxpayer has not filed a petition in the United States Tax Court. Docketed cases are those in which the taxpayer has filed a petition in the United States Tax Court. This means that approximately 80,52% of the cases were given a final solution by the IRS Appeals (nondocketed cases), as the conflict did not continue on the tax court. Unfortunately, from the fiscal year of 2006 to 2012, the IRS stopped dividing the cases between docket and nondocketed in the same table of the Data Book.

Daily (2007, p. 114), referring to the odds of winning an appeal, says the average appeal results in a 40% decrease in taxes, penalties and interest imposed by the auditor. This statistic could not be confirmed on the IRS reports.

Daily (2007, p. 114-115) defends that the taxpayers who had an adjustment have good reasons to appeal, based on pros and cons. About the pros of appealing, it is a simple process and costs nothing unless you use a tax professional, which is not usually necessary for success. Also, appealing, in the majority of cases, results in some savings, although rarely a total victory. Finally, appealing delays the audit tax bill for months, buying the taxpayer time to consider payment options. About the cons, the appeals officer can raise issues the auditor missed. The author says this almost never happens and, in this case, if the taxpayer is afraid that a missed item will be discovered and he may owe a lot more in taxes, he can skip the appeal altogether, going directly to tax court, where new issues can't be raised. The other con is that interest on the tax bill continues to run during the appeal. The author, however, believes that this may be a small cost compared with the likely tax savings resulting from most appeals. Finally, he concludes that there are three solid reasons for appealing an audit and two relatively weak reasons not to.

According to Cryan et al (2012, p.1), Appeals operates under a delegation of authority that allows it to settle cases based on "hazards of litigation". This authority means that, instead of resolving a case based on facts or a clear-cut interpretation of law, Appeals Officers can assess what would happen if the case were to go to trial, assign a percent possibility of success or failure in litigation, and then use that information to determine whether and how to settle a case.

Following is the organizational chart of the IRS Appeals, according to the Internal Revenue Manual, Part 1, Chapter 1, Section 7, updated October 10, 2012. Each staff's responsibilities can be seen on the referred manual.

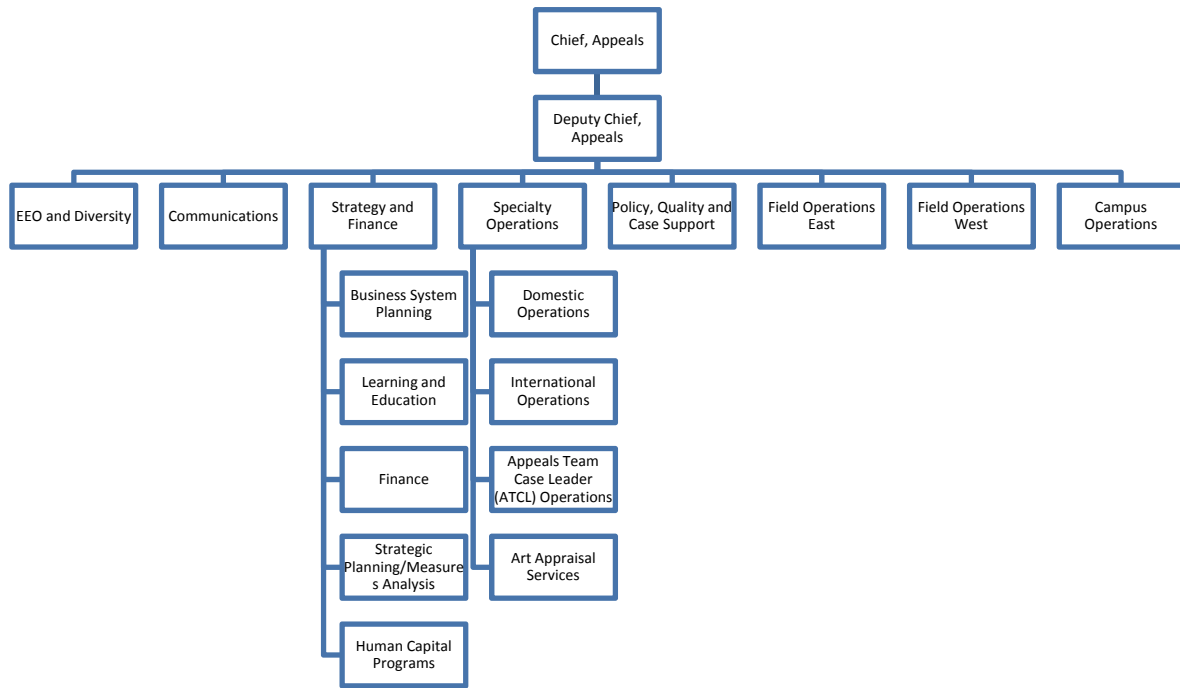


Figure: The IRS' Office of Appeals organizational chart.

Cryan *et al* (2012, p.1-2) also point that some issues need coordination. Appeals officers have restricted ability to settle coordinated issues. Today, within the Appeals organization, a greater number of managers report directly to the Chief of Appeals, creating a more top-down organization. Appeals Technical Guidance Coordinators, who have settlement authority in many cases, report up to the Director of Technical Services. While this structure may provide more consistency, it may also reduce settlement flexibility for taxpayers. Appeals coordinates three primary types of issues: Compliance Coordinated Issues, Appeals Coordinated Issues, and Emerging Issues.

1. Compliance Coordinated Issues (CCIs) originate from Examination and are deemed to require coordination on a national basis and consistency in settlements for similarly situated taxpayers. Most CCIs — today more than 60 — have an associated

Coordinated Issue Paper (CIP) that describes the position of the IRS. Appeals generally develops Appeals Settlement Guidelines for CCIs. Nonetheless, each CCI has an Appeals Technical Guidance Coordinator, and that individual's concurrence is required in any settlement involving that particular issue.

2. Appeals Coordinated Issues (ACIs) are issues coordinated at the Appeals level that have similar legal or factual issues or characteristics that Appeals believes should be resolved in a similar way. Unlike CCIs, ACIs originate with Appeals. There are more than 40 ACIs, many of them relating to tax shelters, complex issues, such as research credits or interest netting, or sensitive issues such as penalty applications. Like CCIs, settlement of an ACI requires the concurrence of the Appeals Technical Guidance Coordinator in charge of that particular ACI.
3. Emerging Issues can originate from Examination or Appeals. Typically, these are issues that have surfaced in an industry or specialty area in a number of Appeals cases and Appeals believes they require coordination. There are around 40 such issues today. Rules provide that the Appeals Officer should contact the Appeals Technical Guidance Coordinator for the particular issue, but unlike CCIs and ACIs, the coordinator's concurrence is not required.

The authors also add that in any appeals situation, the taxpayer will work with an assigned Appeals Officer and, with regard to issue programs, however, the assigned Appeals Officer and their manager may or may not have full settlement authority. For CCIs and ACIs, the individual who has the settlement authority will be the Appeals Technical Guidance Coordinator. For Emerging Issues, it is important to understand the relationship between the Appeals Officer and the Appeals Technical Guidance Coordinator, and the extent to which the former must consult with, but is not required to obtain the concurrence of, the latter.

Although the coordination causes the issues to be treated consistently, it can add to the time it takes to resolve a case in Appeals. As a result, according to the authors, Appeals conducts periodic reviews in an effort to reduce the number of coordinated issues.

Before the Appeals Process Starts

The income tax return is the document, filed by the taxpayer, which gives the IRS information about his tax liability. Some of the returns will be chosen for examination, and may require further explanation by the taxpayer, which can be conducted by mail or in person.

After the examination of a taxpayer's return, the IRS may accept it as filed or not. If the IRS accepts the return, the taxpayer will receive a letter stating that the examiner proposed no changes to it. If the IRS doesn't accept the return as filed, they will explain the proposed changes to the taxpayer.

As seen in the IRS publication 3498 (2004, p.5), if the taxpayer agrees with the proposed increase to tax, he should sign an agreement form and pay any additional tax he may owe, including interest and applicable penalties to the balance due. If he doesn't pay, he will receive a bill by mail. If the amount due is less than \$100,000 and the taxpayer pays it within 21 business days, no more interest will be charged. If the amount is \$100,000 or more, the period is reduced to 10 calendar days. The taxpayer has the option to pay whatever amount he wants and request an installment agreement for the remaining balance. The taxpayer can also be entitled to a refund, which will be received sooner if he signs the agreement form at the end of the examination.

If the taxpayer does not agree with the proposed changes, the examiner agent will explain his appeal rights. If the examination took place in an IRS office, the taxpayer may request an immediate meeting with the examiner's supervisor to explain his situation. The taxpayer may also enter into an Agreement to Mediate to help resolve disputes through Fast Track Mediation services. Mediation can take place at this meeting or afterwards. If an agreement is reached, the case will be closed.

About the Fast Track Mediation services, they are an option to resolve the dispute before appealing. It offers, as shown the IRS publication 3498 (2004, p.5), an expedited process with a trained mediator, who will help facilitate communication. The mediator will work with the taxpayer and the IRS to understand the nature of the dispute. The purpose is to help the two of them reach a mutually satisfactory resolution that is consistent with the applicable law. The

mediator has no authority to require either party to accept any resolution. The taxpayer may withdraw from the mediation process anytime. If any issues remain unresolved you will retain all of your usual appeal rights. According to the IRS, most cases qualify for Fast Track Mediation. To begin the process, the taxpayer may request the examiner or IRS representative to arrange a mediation meeting. Both he and the IRS representative must sign a simple Agreement to Mediate form. A mediator will then be assigned. Generally, within a week, the mediator will contact you and the IRS representative to schedule a meeting. After a brief explanation of the process, the mediator will discuss with you when and where to hold the mediation session. Additional information about the mediation services to resolve tax disputes with the IRS are explained on their Publication 3605.

If the taxpayer cannot reach an agreement with the supervisor at the meeting, or if the examination took place outside an IRS office or was conducted through correspondence with an IRS Campus employee, the examiner will prepare a report explaining the situation, and the case will be forwarded to the Area office for processing.

Then the taxpayer will receive from IRS:

1. A letter (known as a 30-day letter, or preliminary notice) notifying of his rights to appeal the proposed changes within 30 days;
2. A copy of the examiner's report explaining the proposed changes, and;
3. An agreement or a waiver form.

Thus, the taxpayer has 30 days from the date of the preliminary notice to decide whether he will accept the proposed changes or appeal them.

If the taxpayer do not respond to the 30-day letter, or if he responds but do not reach an agreement with the appeals officer, the IRS will send a 90-day letter, also known as a Notice of Deficiency, which is a legal document that explains the proposed changes and the amount of the proposed tax increase. He will have 90 days (150 days if it is addressed to you outside the United States) from the date of this notice to file a petition with the Tax Court. If he does not petition the Tax Court, the IRS will send a bill for the amount due.

The Appeals Process in the IRS

When, after the meetings with the agents and the mediation process (if applicable), the taxpayer keep disagreeing on the proposed tax increase, he still has the chance to appeal it within the IRS, without going to court. The main source for the following information was the IRS publication 3498 (2004, p.6).

The taxpayer may appeal the tax decision to a local IRS appeals office, which is separate and independent of the IRS office taking the action he disagrees with, by filing a formal written protest or a small case request, which will contain a request for an appeals conference. An appeals office is the only level of appeal within the IRS. Conferences with Appeals Office personnel may be conducted in person, through correspondence, or by telephone with the taxpayer or his authorized representative, who must be an attorney, a certified public accountant, or an enrolled agent authorized to practice before the IRS.

The reasons why the taxpayer disagrees may be based on a misinterpretation of the law by the IRS, or the IRS did not properly apply the law due to a misunderstanding of the facts, or the IRS is taking inappropriate collection action, or the taxpayer's offer in compromise was denied. So, those reasons must come within the scope of tax laws, and shouldn't be based only on moral, religious, political, constitutional, conscientious, or similar grounds. Also, the taxpayer should have all records or other evidence to support his position.

So, the appeals process usually starts with the protest. The formal written protest is required in all cases to request an appeals conference, unless the taxpayer qualifies for the Small Case Request procedure or another special appeal procedure. The protest must be filled when:

- a. The total amount of tax, penalties, and interest for any tax period is more than \$25,000;
- b. In all partnership and S corporation cases, regardless of the dollar amount;
- c. In all employee plan and exempt organization cases, regardless of the dollar amount;
- d. In all other cases, unless you qualify for other special appeal procedures, such as requesting appeals consideration of liens, levies, seizures, or installment agreements.

(more information on special collection appeals procedures can be seen on IRS publication 1660)

When a formal protest is required, it must be sent within the time limit specified in the received letter. Although there is no specific form, it must contain the following requirements.

Formal Written Protest Requirements:

1. Taxpayer's name, address and daytime telephone number.
2. A statement that the taxpayer wants to appeal the IRS findings to the Appeals Office.
3. A copy of the letter showing the proposed changes and findings the taxpayer does not agree with (or the date and symbols from the letter.)
4. The tax periods or years involved.
5. A list of the charges that the taxpayer does not agree with, and why not.
6. The facts supporting the taxpayer's position.
7. The law or authority, if any, on which the taxpayer is relying.
8. Sign the written protest, stating that it is true, under the penalties of perjury as follows:
"Under the penalties of perjury, I declare that I examined the facts stated in this protest, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete."
9. If the representative prepares and signs the protest for the taxpayer, he must substitute a declaration stating: That he submitted the protest and accompanying documents and whether he knows personally that the facts stated in the protest and accompanying documents are true and correct.

The small case request can be made if the total amount of tax, penalties, and interest for each tax period involved is \$25,000 or less, and the case do not meet one of the exceptions for which a formal protest is required. If more than one tax period is involved and any tax period exceeds the \$25,000 threshold, the taxpayer must file a formal written protest for all periods involved. The total amount includes the proposed increase or decrease in tax and penalties or claimed refund. For an Offer-in-Compromise, total unpaid tax, penalty, and interest due must be included.

To make a small case request, the taxpayer may send a brief written statement requesting an Appeals conference, and indicate the changes he does not agree with and the reasons for that.

After receiving the taxpayer's request, if the case qualifies for an appeal, an Appeals employee will review the issues and schedule a conference.

According to the IRS web page (2013, section "What can you expect from appeals"), response times from Appeals can vary, depending on the type of case and the time needed to review the file. Normally, the taxpayer can expect to hear from an Appeals employee within 90 days after he files the request. If it has been more than 90 days since he filed it, he should contact the office where he sent the appeal request for information.

Appeals conferences are informal and conducted by correspondence, telephone or in person. As seen on the IRS educational video (2013, "Appeals Process - Examination Issues"), during the appeals conference, the taxpayer will review the facts with the appeals officer and discuss how the law apply to the case, including related court decisions. Before the conference happens, the taxpayer may have already had some discussion or correspondence with the appeals employee to prepare additional evidence or documents he will need to provide.



Figure: The appeals conference in the IRS. Image taken from the IRS's educational video "Appeals Process - Examination Issues".

The appeals employee will consider the taxpayer's position and arguments, along with the government's. He will review all information the taxpayer presents. Sometimes the cases are clear, when facts and tax law are apparent. In other cases, the facts may be difficult to tie

down, or the law may be subject to different interpretations. When faced with these gray areas of the law, the appeals employee reviews public court decisions, to see how the courts have ruled in similar situations. He considers what the outcome might be if the case would go to court, and use this to find a mutually acceptable settlement. Based on that, he will make a final decision, a recommendation to the resolution of the dispute. In summary, these are the competencies of the appeals employee on the appeals process.

1. Schedules and conducts the conference;
2. Reviews the case, along with the taxpayer;
3. Recommends a resolution to the case, based on facts, law and court decisions;
4. Settles an agreement with the taxpayer, if applicable.

There's another party on this proceedings. The Appeals Team Manager, who is the manager of the appeals employees. He approves the final outcome of the case. When the decision of the case is made, the appeals employee will make a recommendation to the manager, including whether or not the agreement has been reached. The Appeals Team Manager will review the file and approve the case if the settlement is appropriate, or return to the appeals employee if additional work or consideration is needed. In summary, these are the competencies of the Appeals Team Manager on the appeal process.

1. Approves the final outcome;
2. Reviews and approves if appropriate;
3. Returns to employee if needed.

As a result of the discussion, there are three possible ways to resolve the taxpayer's case.

- a. Recommendation that the IRS fully concedes or gives up issue. When the facts and the law clearly support the taxpayer's case, or the facts and the law are less clear, but the court have ruled in favor of his position.
- b. Recommendation that the taxpayer fully concedes. When the facts and the law clearly do not support the taxpayer's case, or the court cases consistently ruled against his position.

- c. Settlement of the issue with concessions from both the IRS and the taxpayer. When either the facts or the law are unclear, or the courts have not ruled consistently on the issue. This is a common outcome in a large number of cases heard in appeals. Often one party must give up a larger portion the issue than the other party, depending on the facts, the law, or how courts have ruled. A settlement in this case, where an exact answer cannot be determined, might be computed as some percentage of the tax due.

Once the discussion is completed, the taxpayer will let the IRS know if you he agrees or still disagrees with the resolution of the case. If he agrees, an agreement form will be signed (form 870). If he does not, the appeals employee is responsible for the preparation of a statutory notice of deficiency (90-day letter). During the 90-day period, the taxpayer may file a petition with the tax court to resolve the dispute. The 90-day period is extended to 150 days if it is addressed to a taxpayer outside the United States. During this period, the IRS is precluded from making an assessment, except in specified situations.

In either case, the appeals employee will forward the case and the recommendation for settlement to the Appeals Team Manager, who reviews the work. The ATM will review the case to be sure that the settlement is a result that is impartial and in best interest of both parties.

If the taxpayer does not owe any tax or has a refund, he does not need to do anything else. The refund will be sent to him. If he owes and decides to pay the bill, he has the following payment options.

1. Payment in full immediately. This stops interest from accruing.
2. Payment plan. If the amount owed is under \$25,000, a payment plan can be arranged up to 60 months. If you owe a larger amount or need longer time to pay, you will be given the opportunity to speak with someone in the compliance division of the IRS
3. In doubt that you can pay, submit an offer in compromise. Form 656. Complex and limitations. Less amount.

Appeal Officers are Negotiators

According to Daily (2007, p. 122), IRS appeals officers are senior IRS employees with accounting or legal backgrounds, and many have been promoted up from the ranks of auditors. Appeals officers' main goal is to settle cases, not raising more money for the U.S. Treasury. They are trained to be flexible and are given discretion in dealing with taxpayers that auditors do not have. Proof of this lies in IRS statistics showing 70% of appeals cases are settled. Appeals officers' job performance is judged by their success in compromising with taxpayers—not how often they uphold IRS auditors.

Process Flowchart

The following flowchart shows the appeals process in the IRS and the in the tax court. It is the reproduction Carlson's book (1988), page 4. The tax court process is shown as additional information, and was not confirmed. Because the source of information is almost 25 years old, it may have changed.

Income Tax Appeal Procedure

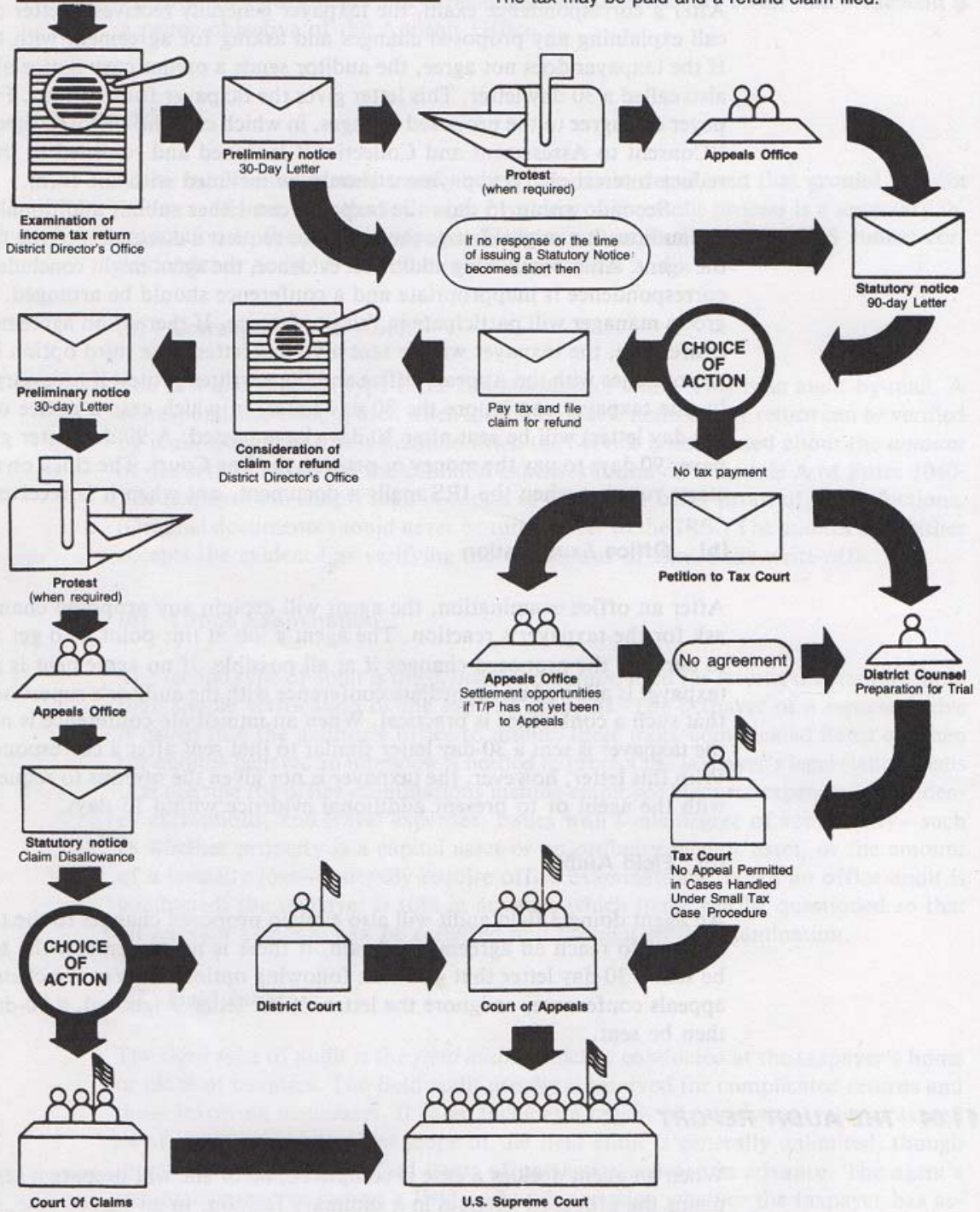
Internal Revenue Service

At any stage of procedure:

Agreement and payment may be arranged.

Requests for issuance of a notice of deficiency to allow petition to the Tax Court may be made.

The tax may be paid and a refund claim filed.



IV. Comparison between the Appeals Process in the Treasury of Rio de Janeiro and in the IRS

Both appeals processes, in the Treasury of Rio de Janeiro and in the IRS, have the same goal: to resolve the matter within the Administration, without the taxpayer going to court. Also, an independent and impartial review is made by a separate office of appeals. The appeals officers have authority to maintain, modify and cancel the cases.

In both processes, the taxpayer may give up the appeals anytime to go to the court. In addition, interest continues to add up to the tax bill during all process.

In the IRS there is a single level of appeals. So, the taxpayer has only one chance to review his case with the Appeals Officer and convince the IRS to give up the tax bill. After that, he may only appeal to the court. In the State of Rio de Janeiro, there are two necessary levels of appeals, and a special level in some situations. The taxpayer has two, sometimes three chances to appeal. The first is to the first level authority. The second is to the group in the second level. And the third chance may only happen when a group's decision is not unanimous or diverges from another decision within the CCERJ, so it will not necessarily happen. There is a Special level of appeals only when a decision of the CCERJ does not favor the State. In fact, it can be considered a review procedure during the second level, not an independent appeals level, as the taxpayer can not appeal an unfavorable decision to the Secretary of Treasury. However, as shown in chapter 2, only a small percentage of cases reaches the Special level.

In the IRS, cases are decided by an agreement between the Appeals Officer and the taxpayer. In fact, decisions are taken by the two parties together. In Rio de Janeiro, in any level of appeals, the taxpayer files a written protest, which will be analyzed and decided unilaterally by the Appeals Officers. In the second level of appeals the taxpayer or his representative may be heard in session via oral arguments.

The process is informal in the IRS. First, the taxpayer schedules a conference with the Appeals Officer. Conferences are usually conducted in person, but may also happen by correspondence or telephone. In Rio de Janeiro, the appeals process is formal and strictly

follows the law. Appeals Officers cannot do what is not stated by law. Decisions are taken on public sessions. Taxpayer has no participation on the schedule of the sessions.

In the IRS, Appeals Officers are negotiators. To settle an agreement is one of their goals. They can make concessions. In Rio de Janeiro, Appeals Officers are not allowed to negotiate, just apply the law to maintain, reduce, extinguish or cancel the tax bill. In addition they cannot make concessions at all, specially based on subjective variables (for example, the hazards of litigation), as the IRS does. However, the interpretation of law may be subjective (it usually is). Public service employees in Brazil cannot dispense the public money, because it is not their money to do what they want.

Appeals Officers are allowed to reduce either tax or penalties to settle an agreement. Decisions take into consideration the possible implications of the case in the future. The State may lose the money, but may gain in compliance and in other ways. It is an economic, a risk-based decision. The State may lose much more if the case reaches the court. In Rio de Janeiro, Appeals Officers are not allowed to reduce neither tax nor penalties by his own will. Bill is reduced by the interpretation of the facts and the law. Public interests are stated by law, which must be strictly followed by civil service employee. The Appeals Officers are worried about the application of the law to the case, not its future consequences. Decision is not risk-based.

In the IRS, one Appeals Officer conducts the process along with the taxpayer, and then makes a final recommendation. After that, the Appeals Team Manager reviews the process and has the authority to settle. In Rio, many Appeals Officers participate of the process. The decision is made, in the first level, by the Chief of the office that issued the notice of deficiency, or by a group of three Appeals Officers. In the second level, the decision is made by a group of four Appeals Officers. Two of them are Treasury's auditors and two are taxpayers' representatives, who are not State's employees. In some situations, all sixteen members of the CCERJ decide together, eight of represent the Treasury and eight the taxpayer. In both cases, there is parity between parties in the decision.

In Rio de Janeiro, a political agent, the Secretary of Treasury, may review the case in some situations which do not favor the State. Not all the States in Brazil allow this to happen, Rio is an exception. In the IRS, it is not expected the participation of a political agent. Besides the

Appeals Officer and the Appeals Team Manager, maybe other agents participate of the process, like the staff from CCI, CIP or ACI, but they are IRS' employees and also members of the appeals structure.

In the second level of Rio's appeal process, there are Appeals Officers that represent taxpayers, and are not Treasury's auditors. They represent industries, commerce, agriculture, transportation services and communications. They are not bonded to the State's positions, reason why they have more independence to decide. However, they must be fair and follow the law. They may have different interpretations of grey areas of law from State's auditors. This does not happen in the IRS, where Appeals Officers are all IRS' employees.

In the IRS, the hazards of litigation is considered, and an important variable, when settling an agreement. In Rio, they are not considered, unless there is an internal position based on court results.

In Rio, Treasury Attorneys participate of the process in the second level by giving a legal opinion, and also by requiring a review of the case to all members of the CCERJ or to the Secretary of Treasury. As they are the first to receive the case in the second level of appeals, even before the Appeals Officers, their legal opinion can affect the process. In the IRS, it has not been found in the Revenue Manual and other sources of information that State Attorneys participate of the appeals process.

In the IRS, Appeals Officers also participate of court litigation, by trying to settle an agreement with the taxpayer. In Rio, State's Attorneys represent the State in the court. Participation of the Appeals Officers is limited to the administrative appeals.

In the IRS, the taxpayer does not have to pay any fee to protest. In Rio, the taxpayer must pay a service fee to appeal to the first level authority, and another one to appeal to the second level authority. Small companies may have value of the service fee reduced.

In the IRS, it is part of the appeals policy to keep Appeals Officers away from the agents responsible for the examination. In Rio, there's no such policy. Appeals Officers may contact other auditors to ask simple questions about the case, but it is not usual. When there are issues to be clarified, Appeals Officers usually use a formal written request, because it's important to have the examiner's answer in the case's file as a proof which will influence their decision. The taxpayer may have a copy of his entire file.

In the IRS, the Appeals Officer has a superior that reviews his work and approves his recommendation. So, the Appeals Team Manager has the autonomy to settle, not the Appeals Officer. In Rio, the Appeals Officers have autonomy to decide. Their work is formally reviewed by superior levels of appeals which will give the final word about the case.

Both in the IRS and in Rio, Appeals Officers must follow the administrative positions, but it happens in different ways. In the IRS, administrative positions are issued by the Coordinated Issues staff, which may be part of the appeals structure or not. CCIs and EIs are not part of appeals, but ACIs are. In Rio, Appeals Officers must follow administrative positions, but they all come from offices that are not part of the appeals, responsible for the interpretation of the State tax law or for giving legal opinions. Also, the taxpayer's representatives in the second level of appeals are not bonded to the administrative positions, as they are not State's employees.

The discovery of new facts by the Appeals Offices may increase the deficiency, both in the IRS and in Rio. However, in the latter, changes to the notice of deficiency can only be made in the first level of appeals. The appeals in the IRS has a single level, so the changes to the deficiency may happen anytime.

In Rio, a decision in the first level which is contrary to the State may be necessarily reviewed by a second level authority. It may also be reviewed by all members of the CCERJ and the Secretary of Treasury. So, the same case may be reviewed up to three times. In the IRS, the Appeals Officers recommendations are only reviewed once, by the Appeals Team Manager.

In the IRS, there is technical staff within the appeals that directly reports to the Chief of appeals, like art appraisal and education. In Rio, technical support like that could only be requested outside.

Following is a chart with the summary of the comparisons.

Appeals in the IRS	Appeals in the Treasury of the State of Rio de Janeiro
Administrative opportunity to resolve the matter before the taxpayer goes to court. An independent and impartial review is made by a separate office.	
Authority over the previous examination results.	
The taxpayer may give up the appeals anytime to go to the court.	
Interest continues to add up to the tax bill.	
Single level of Appeals: Office of Appeals.	Two levels of Appeals in general, exceptionally a special one: 1 st level: Chief or the office that issued the notice of deficiency (small cases) or <i>Junta de Revisão Fiscal - JRF</i> 2 nd level: <i>Conselho de Contribuintes - CCERJ</i> Special Level: Secretary of Treasury
Agreement.	Unilateral decision.
Informal process. Conferences are conducted by correspondence, telephone or in person.	Formal process. Decisions are made in public sessions. Besides the formal written protests, taxpayers may be heard in session via oral arguments in the 2 nd level.
Appeals Officers are negotiators. To settle an agreement is one of their goals. Can make concessions.	Appeals Officers are not allowed negotiate, just apply the law to maintain, reduce, extinguish or cancel the tax bill. Can't make

	concessions.
Appeals Officers are allowed to reduce either tax or penalties.	Appeals Officers are not allowed to reduce neither tax nor penalties. Public money cannot be dispensed. Bill is reduced through the interpretation of the facts and the law.
One Appeals Officer conducts the process with the taxpayer, and makes a final recommendation. The Appeals Team Manager reviews the process and has the authority to settle.	Appeals Officers per level: 1 st : Decision is made by a group of three auditors or by the Chief of the office that issued the notice of deficiency 2 nd : Decision is made by four Appeals Officers. Two of them are treasury's auditors and two are taxpayers' representatives. Parity decision.
No expected participation of a political agent.	Participation of a political agent in exceptional cases (Secretary of Treasury).
No participation of taxpayers' representatives	Taxpayers' representatives participate of the process.
Hazard of litigation is considered. It's an important variable to settle the agreement.	Hazard of litigation is not considered.
No expected participation of State's Attorneys.	Participation of Treasury's Attorneys in the 2 nd level.
Appeals Officers participate of the tax court litigation (settling an agreement).	Appeals Officers do not participate of the tax court litigation.
No fee to protest.	There's a service fee prior to protest.
Ex parte restriction policy.	No ex parte restriction policy.
Appeals Officers work is reviewed by a superior.	Appeals Officer is independent do decide.
Appeals Officers must follow the administrative position. Coordinated issues reduce the flexibility to negotiate: Compliance Coordinated Issues (CCIs), Appeals Coordinated Issues (ACIs) and Emerging Issues.	Treasury's agents must follow administrative position, while taxpayers' representatives may not. Other offices create positions.
The discovery of new facts by the Appeals Office may increase the bill.	The discovery of new facts by the Appeals Office may increase the bill. (1 st level of Appeals only)
Technical staff inside the appeals structure	Technical support may be found outside

reports directly to the Chief of Appeals.	appeals.
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V. Conclusions

Administrative Models

Some conclusions may be taken by comparing both processes. First, the administrative models are totally different. The IRS appeals' process usually requires less people to resolve cases than in Rio. In many cases, one Appeals Officer and one Appeals Team Manager are enough to resolve a dispute. In complex cases, more employees may be involved, like the Coordination staff. In Rio, usually more Appeals Officers directly work on cases, especially if it reaches the second level. Also, Treasury's Attorneys may participate of appeals. However, small cases may be resolved by just one authority, the Chief of the office that issued the notice of deficiency, if they end in the first level.

However, the IRS has more people indirectly involved in appeals, because it is a national agency and its structure includes technical staff that does not exist in Rio.

It looks like the cases in the IRS may be resolved faster than in Rio, as there is only one level of appeal, with less people involved, and conferences are conducted informally. The data about the duration of the appeals process was not available, so this hypothesis could not be confirmed. Either in the IRS or in Rio, the duration of the process depends on the case's complexity.

In addition, the IRS' process is certainly more subjective than Rio's. Legal interpretations may already be subjective. However, in the IRS the Appeals Officers decide cases based on hazards of litigation, and there is no exact formula in the law for the reduction that should be applied to the tax or penalty. The results depend on the negotiation with the taxpayer.

The process in Rio is formal and rigid. Every step is stated in law. In the IRS, process looks less formal and rigid. Appeals have a mission and subjective ways to achieve their objectives.

Appeals Officers have different roles in the IRS and in Rio. They influence the collection in different ways. In the IRS, they are negotiators, and participate not only of the administrative appeals, but also of the litigation. In Rio, they decide unilaterally and only participate of the administrative appeals. State's Attorneys have the role to defend State's interests in litigation.

It was mentioned before that the IRS' Appeals Officers may reduce either tax or penalties values to settle an agreement. So, their decisions are economic, are risk-based. The Government makes concessions in the present to gain immediate compliance and to avoid litigation in the future. In Rio, Appeals Officers aim to give a fair decision, to apply the law to the case, they don't mind the future consequences. Their decisions are not economic or risk-based.

Also, it seems like there is more transparency in Rio's process. In the IRS, the results of agreements were not found on its website. In Rio, a summary of each of the JRF's decisions is shown on the internet. Also, the full content of the CCERJ's decisions can be found on its website.

In negotiations, like in the IRS' appeals, better agreements can be achieved when the party has more information about the subject being discussed, especially the court's position about it. So, in the IRS' Appeals Officers may have advantage over regular, uninformed taxpayers. Information that is crucial to taxpayers may not be easily found, what makes them look for specialists in appeals, like attorneys or accountants, which raise their compliance costs.

In the IRS, before appeals start, the taxpayer has the option to resolve the conflict by Alternative Dispute Resolution (ADR), and does not lose the right to appeal after that. This kind of procedure does not exist in Rio. According to Milne and Tucker (2010, p. 27-28), the IRS Restructuring and Reform Act of 1998, Congress required Appeals to implement ADR procedures. Since then, the IRS has gradually introduced a wide range of nontraditional methods of resolving disputes. The author says that, for the Large and Midsize Business Division (LMSB), fast-track settlement (FTS) is the primary ADR process, introduced in 2003. The process takes about four months, and cases/ issues remaining unresolved are still afforded regular Appeals hearings. FTS for the Small Business and Self Employed (SB/ SE) Division also exists, and cases are resolved in as little as two months.

In the IRS, the taxpayer has chances to informally modify the bill before the appeal or the ADR. He may have discussions with the auditor, with the auditor's manager, and convince them the tax is not owed. By the way, the final notice of deficiency is not formally issued while the bill is being discussed administratively, only after the appeals finishes or if the taxpayer requires (the final notice is required to litigate).

Process Duration and Compliance Costs

It is important to discuss about the duration of the process and its effects over compliance costs. No data about it was found either in the IRS or in the Treasury of Rio de Janeiro. Their productivity was easily found, but not the average duration of the cases.

According to Santos (2012), some administrative appeals in Brazil may take years to resolve, but the interest continues to add up, with no limit to stop. The author says this discourages taxpayers to appeal, because if the final decision does not favor them, they will have to pay high values, much more than the initially demanded, because of the long time it took to the Government to resolve the case. So, even if the Government takes too long to resolve the case, by its own fault, the taxpayer pays for that. Although unusual, this is a possible situation. The Brazilian Constitution assures the reasonable duration of the process as a right. In addition, in the federal Administration, the process should have no more than 360 days of duration. However, in Rio, there is no such limit. Despite the fact the Treasury's employees have a deadline to act stated in law, the case may need so many measures that will take long to finish the case. In Rio, Appeals offices are considered to be efficient, but the issues that frequently need to be solved (as shown in chapter 2) makes the process slower.

Another situation that does not favor the taxpayer occurs when the tax has not been paid many years ago, even more than five, but the Brazilian tax code still allows it to be demanded, which creates a great debt to the taxpayer. If the appeals process is slow, the debt owned will be even higher.

Therefore, in the Brazilian law, there is no limit for interest to keep adding up, which may leave the taxpayer in an unfavorable financial situation in the end of the process. In the IRS, the same situation seems to apply. For those taxpayers, a faster process is better.

However, some groups of taxpayers may benefit of a slow appeals process. The first would be taxpayers expecting for a tax amnesty. They aim not only the reduction of penalties and interest, but also payment plans (installment agreements). This allows them to restructure the debt, which can be paid in the long-run, with small impact over their finances, and also obtain a Debt Clearance Certificate, required in many situations, including some financial operations. Amnesties are not unusual in Rio. They happened, in different ways, in 2012, 2010, 2006, 2005, 2004, 2003, 2002, 1998, 1997, 1994 and 1991. The second would be the firms in a bad financial situation that do not really expect to pay the debt. However, those two statements need to be proved through quantitative analysis, which was not done in this paper.

Alm *et al* (1990, p. 34-46) made an interesting quantitative study of amnesties' effects in compliance. They concluded that amnesties usually reduce compliance, except in specific situations, as shown below. However, the authors recognized that their data should be viewed with caution and more discussion needs to be done about the subject, especially in the long-run.

Experimental evidence indicates that many—but not all—concerns about the long term effects of a tax amnesty on compliance are correct. The overall level of tax compliance falls after an amnesty. The decline in compliance stems from the behavior of those persons engaged in moderate levels of compliance prior to the amnesty; those who either comply completely or not at all are largely unaffected by the amnesty. The expectation of an amnesty also significantly reduces compliance. However, these negative impacts on compliance can be offset by greater post-amnesty enforcement efforts. More significantly, the combination of an amnesty and enforcement appears to be more effective in generating compliance than an equivalent change in enforcement alone. Compliance may therefore depend to some degree on individuals' recognitions that their decisions are interdependent and that there is some sort of fiscal exchange. It is here that their perceptions of fairness play a crucial role in the

compliance decision. If the government wants to increase penalties and audits in a manner that taxpayers perceive as fair, then it may be necessary to accompany these changes with an amnesty to provide a one-time grace period before the enforcement is increased.

About appeals' costs, according to Slemrod and Blumenthal (1996, p. 426), more than half of litigation and appeals work is done externally, so firms currently appealing or litigating a tax decision could be seen as having obviously more complex tax situations and could be expected to experience higher compliance costs. However, based on his statistical studies, the author concludes that having an ongoing appeal does not appear to be significantly associated with costs, whereas the relationship is statistically significant for ongoing litigation. This statement can be verified in Rio's appeals practice. Most of the taxpayers who appeal use attorney's offices or external accountants to represent them, what raises their compliance costs.

Finally, as Milne and Tucker (2010, p. 27-28) say, appeals adds many new dimensions to the enforcement process, one of which is a unique authority that brings with it the potential for resolution and to enhance the taxpayer's - and by extension the public's - perception of tax administration fairness and impartiality. Appeals are not an advocate for the taxpayer (who should be represented when the stakes are sufficiently high). Neither is it an advocate for the government; and should it be seen in that light any attempt to instill the perception of fairness and impartiality dissipates quickly.

Suggestions for Improvements in Rio's Appeals

It would be hard to implement in Rio's appeals an administrative model like IRS', which involves much more subjectivity. Appeals in the IRS have an active role in collection. Also, the same office participates either of administrative appeals and court appeals. So, it is a much bigger structure and broader functions.

Rio's model follows the principles of Brazilian public administration: objective, non personal, with two independent levels of appeals. Also, public civil employees are not allowed to make

concessions with public money, unless the law authorizes. That model fits its laws and culture.

However, improvements in transparency and celerity can always be made, without affecting taxpayers' rights, to reduce the administrative costs and increase the taxpayers trust in the process. At the same time this would reduce taxpayers' compliance costs.

Appeals in Rio are considered efficient and respect the legal deadlines. The CCERJ received the ISO 9001 certificate in 2009. However, when the cases leave appeals to resolve issues, a usual situation, it takes time to resolve them, which increases the process' duration. Also, examination offices, both appeals offices and the office which states the administrative positions are independent and usually communicate formally (written communication). Therefore, having a coordination staff overlooking all process, increasing the communication between participating offices, since the notice of deficiency is issued until it is paid or canceled, from the examination office to litigation, creating standards, would improve the process. In the IRS, coordination staff has authority over appeals, which give consistence, unity, to administrative final positions. However, notice that in Rio's process there are taxpayers' representatives at appeals, who would not be bound to coordination's positions. Also, improving the education of auditors and having a quality control of notices of deficiency would reduce the number of cancelled cases. It is important to understand the reasons why appeals or court are cancelling tax bills, to have their feedback. In the IRS, there is an education department just for appeals.

Nowadays, the Treasury of Rio publishes the full content of the CCERJ decisions in its website, as well as statistics about productivity and results. This is very positive, as the CCERJ is the office that usually gives the final decision about cases. In addition to that, studying and publishing average results of the process' duration would give more transparency to the appeals. Based on that information, in the future, create a limit to the total duration of the process, like in the Brazilian Federal Treasury, which could be extended for complex cases, would improve the appeals process, and make it more according to the Brazilian Federal Constitution principle which places the reasonable duration for the administrative process as a individual right.

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