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PROCEDURE UNDER THE BUREAU OF INTERNAL REVENUE REORGANIZATION*

GEORGE REISIMER**

Since most of the members of the Bar Association frequently have occasion to contact representatives of the Internal Revenue Service on behalf of their clients, I believe it would be in order to discuss some of the changes in procedure and operations brought about by Reorganization Plan No. 1, which became effective in Wisconsin on October 21, 1952.

One of the main objectives of the Internal Revenue Reorganization Plan is to provide a Federal Revenue Service of top efficiency. When a taxpayer pays out a sizeable part of his earnings for the support of his government, he has a right to expect as a matter of course that the collection of his taxes will be handled fairly, efficiently, and honestly.

Here are some of the things that this reorganization will mean in terms of improved service to the public and the taxpayer:

It will provide a one-stop service for the taxpayer to take up any revenue matter without leaving his state.

It will make possible the development of a strong corps of trained and experienced tax administrators available to serve where they are needed, by making them all a part of the career service, by giving them continuity of tenure on the basis of their merits, and by permitting key officials to be moved from one area to another as needed, whereas in the past Collectors were required to be residents of the areas they served.

It will streamline administration and make for tighter control and more efficient direction by providing for the Directors' field offices to be supervised by the District Commissioners' offices, which in turn will report directly to Washington.

It will permit the extension of many improvements by permitting consolidation of more mass operations in the District offices, the delegation of more operating functions to the taxpayer level, and the extension of modern mechanized operations which could not previously be economically applied in offices serving less populated areas and having smaller workloads.

It also maintains the recently created Inspection Service, through which the Commissioner and the Secretary of the Treasury

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**Director of Internal Revenue for the Collection District comprising the State of Wisconsin.

will have a direct line of supervision and information on the performance of offices and the conduct of personnel independent of administrative and operating channels, and will be better able to maintain high standards of service and behavior throughout the country.

Full development of the benefits of the new organization will require time, but the fundamental steps have now been taken.

Prior to the effective date of the Reorganization Plan, there were four independent Internal Revenue agencies in Wisconsin, namely, the Collector's office, the Office of the Internal Revenue Agent in Charge, the Intelligence Unit, and the Alcohol and Tobacco Tax Unit. These various agencies have now been consolidated, and will be under the direction and supervision of the Director of Internal Revenue.

The duties and responsibilities of the Director will be much broader in scope than those of the former Collector. The Director will be responsible, within the territorial limits of his collection district, for almost all the functions formerly carried on by the Collector, the Internal Revenue Agent in Charge, and the Special Agent in Charge. He also will be responsible for the functions formerly performed by the Alcohol and Tobacco Tax Unit's Investigator in Charge. In substance, all of the field functions formerly carried on by representatives of the Commissioner, with the single exception of the activities of the Appellate Staff, will be represented in the organization of the local Director's office.

Under the reorganization, the consolidation of most of the local functions of the Internal Revenue Service under the Director should clarify taxpayers' problems, since it will provide a central starting point at which the taxpayers can present his questions. Furthermore, the plans that are afoot to provide for housing all the local facilities under the jurisdiction of the Director in one building should make it more convenient for the taxpayer to conduct his business with the Bureau. While this housing change cannot be accomplished overnight, every effort is being made to achieve it just as quickly as possible.

In Directors' offices, streamlining of operations will be effected throughout a realignment of duties on a functional basis instead of on a tax basis. In place of the former Income Tax, Estate Tax, Wage & Excise Tax, Cashier's Division, Accounts Division, Revenue Agent's office, Intelligence Unit, Alcohol & Tobacco Tax Unit, all operations will be processed by functional divisions such as Administrative Division, Collections Division, the Audit Division, Intelligence Division, and the Alcohol & Tobacco Tax Division.

Formerly, the Collector's office had an audit division handling certain income tax returns and wage and excise tax returns. The Revenue Agent in Charge had under his jurisdiction the audit of various classes of income tax, and estate and gift tax returns. Now all audit activities, which of course also includes field investigations, will be under the direction of the Head of the Audit Division in the Director's office.

Another important change brought about by the Reorganization Plan is the discontinuance of political appointments. Hereafter, with the exception of the Commissioner of Internal Revenue in Washington, all positions from the top down will be Civil Service appointments, thus creating a true career service. In order to insure the appointment of the best qualified persons into the top-level positions, a Selection Board, made up of top Treasury and Bureau career officials, very carefully scrutinized the qualifications and past record of all applicants. After the Selection Board recommendations were approved by the Commissioner and the Secretary of the Treasury, the Civil Service Commission makes a further evaluation of the qualifications of the nominees and also investigates their fitness for the position before approving the recommendations.

Under the Reorganization Plan, many of the functions formerly performed in Washington will be decentralized to 17 District offices, each of which will be comprised of one or more states. Each District office will be headed by a District Commissioner. The District Commissioner has supervision over Directors' offices in his district, and it will be his responsibility to coordinate the work of the Directors, execute district policies, programs, and procedures.

Each former collection district, previously headed by a Collector of Internal Revenue, will now be under the supervision of a Director of Internal Revenue.

On October 21st, the State of Wisconsin became part of the Chicago District, which embraces the States of Illinois and Wisconsin. Presently we are engaged in changing our operations to conform with the Reorganization Plan, and while some progress in that direction has already been made, much work still remains to be done. However, with the exception of having all of our activities under one roof, we expect to be well under way by the time the next filing period comes along, and we have confidence that in the near future the effects of the reorganization will be evidenced with increased efficiency and improved service to the taxpaying public.

Now I would like to discuss some of the new features and procedures relating to the office audit and field examination of returns.

The function of auditing tax returns, formerly divided between the Offices of the Collector and Internal Revenue Agent in Charge, will be consolidated in the Audit Division of the Director's office. The Audit Division will examine all types and classes of tax returns except those involving alcohol, tobacco, firearms, narcotics, and wagering taxes. The Office Audit Branch will conduct the correspondence audits—those carried on entirely by letter—and the office audits—those made by having the taxpayer appear at the local Revenue Service office with his pertinent records. The Field Audit Branch will continue to make those examinations where it is necessary for an examining officer to go to the taxpayer's home or place of business to audit or check the books and records. In each instance the examining officers will be organized in groups, each of which will be under the immediate supervision of a Group Chief who will be administrator and technical advisor to the examiners assigned to him.

At the conclusion of the examination, whether it was made by Correspondence Audit, Office Audit, or by Field Audit, the examining officer will inform the taxpayer of his findings and will afford the taxpayer an opportunity to agree and to execute an appropriate agreement form. If the taxpayer agrees to the proposed changes and executes the agreement form, the examining officer will prepare his report and submit it, together with the agreement and the case file, to his Group Chief for approval. As soon as it is approved by the Group Chief, the report will go to the Review Group in the Audit Division where it will be subjected to a thorough technical review. When the Review Group approves the report, it will be typed, a copy sent to the taxpayer, and the case is ready for closing.

If the taxpayer is not in agreement with the changes proposed by the examining officer, or if the taxpayer does not wish to execute an agreement form, the examiner will inform the taxpayer of his right to an informal conference and will furnish the taxpayer a brief statement identifying the proposed adjustments and containing instructions with respect to arrangements for such a conference. The examining officer will then promptly furnish his Group Chief a copy of this statement so that the Group Chief may be prepared to arrange a conference when the taxpayer's request is received. While ordinarily the Group Chief will act as the Conferee, it should be noted that the conference may be conducted by any other qualified employee designated to do so. The examining officer should always be present at the informal conference.

The taxpayer may appear with or without representation, as he chooses, and may bring witnesses with him for the purpose of assisting in establishing the facts.

The objective of the informal conference procedure is to provide an opportunity to resolve issues at the earliest possible time after they have been raised by the examining officer, and to surround this opportunity with as few formalities as possible. It is for this reason that these conferences are held prior to the preparation of the examining officer's final report, and without the issuance of any 30-day letter by the Director or the filing of any written protest or brief by the taxpayer. The procedure is designed to provide for an oral discussion of the proposed adjustments which will produce agreement with respect to the pertinent facts so that the proper application of the law, regulations, and rulings may be made, and may be explained to the taxpayer. From the standpoint of the taxpayer it offers added assurance that the result is the correct one, made after consideration and approval by a responsible supervisory employee. From the standpoint of the Bureau, it provides the means for closer working relationships between Group Chiefs and examiners, improved supervision and coordination of examining officers, and increased opportunity for training and evaluation of the capabilities of field personnel.

In passing, it should be noted that the informal conference procedure may be denied by the Director in any case where assessment or collection of the tax is in jeopardy.

In the taxpayer requests an informal conference and if, following the conference, he agrees with the conclusions reached and executes the appropriate agreement form, then the examining officer will give effect to the conference conclusions in preparing the examination report and the entire file will be submitted to the Review Group through the Group Chief. Upon approval by the Review Group, the case will be made ready for closing and a copy of the examination report mailed to the taxpayer.

If the taxpayer does not agree with the proposed adjustments when they are explained to him by the examining officer at the close of the examination and declines an informal conference, the examining officer will prepare his report and submit it to the Group Chief for approval. When approved by the Group Chief, the report will be transmitted to the Review Group for its approval. Following consideration by the Review Group, the report will be typed and a copy mailed to the taxpayer under cover of a 30-day letter.

The 30-day letter will afford the taxpayer a period of thirty days in which he can choose one of three courses of action. First,

the taxpayer may file a formal protest, under oath, with the Director and request that the case be transferred to the Appellate Division of the District. Second, the taxpayer by request—or by simply failing to respond within the thirty-day period—can secure issuance of the statutory notice from which an appeal may be taken to the Tax Court. Third, the taxpayer can execute the agreement form enclosed with the 30-day letter and thereby close the case by accepting the proposed determination.

The same type of 30-day letter is mailed and the same three courses of action are available in cases in which the taxpayer does not reach an agreement following the informal conference. Taxpayers who cannot reach an agreement with the Audit Division of the Director's office may carry their cases further by filing a protest requesting transfer of the case to the Appellate Division of the District Commissioner's office or they may secure issuance of the statutory notice from the Director and file a petition with the Tax Court. In the latter event the case also moves to the Appellate Division, since it has jurisdiction to act for the Commissioner of Internal Revenue in the settlement of cases docketed in the Tax Court.

The Appellate Division of the District functions at the District Commissioner's level only. It is not a part of the Director's office since its basic function is to hear appeals from decisions made by the Director's office. It is headed by the Assistant District Commissioner, Appellate, who, by direct delegation from the Commissioner at Washington, has independent and final authority to make settlements with taxpayers of their contested tax liabilities.

In other words, in the hearing and settlement of disputed cases, the Assistant District Commissioner, Appellate, is for all intents and purposes the Commissioner of Internal Revenue. There is no administrative appeal from his decision to any other official of the Bureau. The jurisdiction of the Appellate Division extends to all taxes dealt with by the Audit Division of the Director's office and the only limitations on the settlement authority of the Assistant District Commissioner, Appellate, are the following:

- (1) He must secure the concurrence of Appellate Counsel before he can settle any case docketed in the Tax Court;
- (2) He must secure the concurrence of Appellate Counsel before he can eliminate the ad valorem fraud or negligence penalty in any nondocketed case;
- (3) In any case in which criminal prosecution has been recommended, he must wait until final disposition has been made of the criminal aspects of the case;

(4) In order to modify any decision of the Excess Profits Tax Council, he must secure the concurrence of the Council ; and

(5) His decisions in cases involving overassessments or overpayments in excess of \$200,000 are subject to review by the Chief Counsel and by the Joint Congressional Committee on Internal Revenue Taxation.

The Assistant District Commissioner, Appellate, has specific authorization to delegate all of his settlement powers in any case to his immediate assistant—known as the Associate Head of the Appellate Division of the District—and has similar power to delegate final settlement authority to any Assistant Head or Special Assistant to the Head of the Appellate Division of the District, in any case where the net deficiency or net overassessment determined by the Director does not exceed \$10,000, and the basis of settlement does not involve a net overassessment in excess of \$10,000.

The procedure in the Appellate Division in a case which is not docketed in the Tax Court begins with the receipt of the Administrative file from the Office of the Director of Internal Revenue. The case is then assigned to a Conferee who, after studying the examining officer's report, the taxpayer's protest, any informal conference report, and the other documents in the file, communicates with the taxpayer or his representative and arranges for a conference. If the case involves an important and novel question of law, the Conferee may request legal advice from Appellate Counsel in connection with his preparation of the case.

The procedure at the conference is informal. Here also, the taxpayer may appear with or without representation, depending upon his own desires, and he may bring such witnesses as he considers advisable for the purpose of assisting in establishing the facts. However, if additional statements of fact are to be added to the record, the taxpayer is required to have them reduced to writing and submitted in the form of affidavits. If important evidence bearing upon a basic issue in the case is presented for the first time after the case is in the Appellate Division, the data will be returned to the Director so that it can be verified. The Appellate Division does not have any investigative staff of its own and the taxpayer may not withhold evidence from the Director and present it for the first time on appeal.

The case is fully discussed at the conference and an opportunity is provided for the taxpayer or his representative to submit a proposal for disposition of the case. Such a proposal is carefully considered by the Conferee and then the taxpayer or his

representative is advised, at the conference or after further study, as to whether the Conferee will recommend acceptance of the proposal for settlement. If the Conferee is willing to recommend acceptance, he secures an agreement form which, when accepted on behalf of the Commissioner by the authorized officer of the Appellate Division, will be treated by the Bureau as a final disposition of the case.

The Conferee then prepares his report which is submitted to his immediate superior for review. Ordinarily, this superior will be Assistant Head of the Appellate Division, who is somewhat of a combination conferee-reviewer and Group Chief and who supervises the Conferees assigned to a local office.

If the Assistant Head approves the proposed settlement, he will accept the agreement on behalf of the Commissioner if the case is within his delegated authority and the case is ready for closing. If the case is not within his delegated authority, he will transmit it to the Associate Head of the Appellate Division for review and acceptance.

Should the Assistant Head decide that he cannot approve the proposed settlement, he will discuss the case with the Conferee and point out the reasons for his decision. If, after this discussion, the Assistant Head still is unwilling to approve the proposed settlement, the taxpayer will be notified of that fact and may ask for a hearing before the Assistant Head.

If the taxpayer does not agree with the Conferee's decision, the Conferee's report, together with the draft of the proposed statutory notice, will be reviewed by the Assistant Head. If he approves, the case will go to the Assistant District Commissioner, Appellate, who—after his review and after consideration of the statutory notice by Appellate Counsel—will issue the statutory notice to the taxpayer or direct its issuance by an authorized officer of the Appellate Division, and route the case to the Appellate Division's 90-day file.

Appellate Division procedure in cases that are docketed in the Tax Court provides further settlement opportunities. As previously explained, docketed cases may result from petitions filed in respect to statutory notices issued by the Director in cases which were not before the Appellate Division in non-docketed status, or from petitions filed in response to statutory notices issued by the Appellate Division after it has considered the cases in non-docketed status. If the case is one which the Appellate Division considered, but was unable to arrive at a settlement in non-docketed status, the initiation of settlement negotiations is

ordinarily left to the petitioner or occurs when the attorneys meet for the purpose of stipulating facts for trial purposes. If it is one which the Appellate Division did not have an opportunity to consider in non-docketed status, the petitioner may be invited to discuss settlement possibilities.

In either event, if a satisfactory settlement is arrived at, the Conferee will prepare a report for review and approval by his superior and for concurrence of Appellate Counsel. If accepted, the settlement will be stipulated before the Tax Court and the case closed in that manner. If rejected, settlement negotiations may be reopened or the case will be tried.

Before closing, I would like to add that in the administration of the tax law, the Government does not want anything that it does not have coming, but on the other hand, it is our duty to collect whatever taxes are rightfully due the Government. In carrying out this policy, it shall always be our aim to give impartial and fair treatment to all taxpayers.