INTRODUCTION

This article will describe that part of the federal tax appeals procedure that settles 96 per cent of all federal tax controversy, namely: the Internal Revenue Service (Service) District Conference Staff and the Regional Appellate Division. These two primary forums of tax appeal hear all unlitigated tax disputes involving income, estate, gift, excise, wagering, highway use, narcotic drugs and marijuana, private foundation and employment taxes. They do not hear alcohol, tobacco or firearms tax cases.

Through the first four procedural phases our discussion will follow the flow chart "Income Tax Appeal Procedure," located in the Appendix. While the flow chart is entitled "Income Tax Appeal Procedure," its processes apply equally to estate and gift tax cases. The first four unlitigated procedures are also pertinent to excise and employment taxes. However, if agreement cannot be reached on excise or employment tax disputes at the conference or appellate level, the taxpayer is then required to pay the tax, file a claim for refund and ultimately petition either the district court or the court of claims for judicial review. The tax court does not hear excise and employment tax cases other than Chapter 42 Excise Tax cases. The first area of discussion will be the sources of tax controversy, that is, the Service's determination that more tax is due or that a claim for refund should be denied. This writer will then describe the legal procedures the Service must perform to communicate this determination of refund denial or tax assessment to the taxpayer. Finally, there will be a description of the organization and procedures of the conference staff and the appellate division.

SOURCE OF TAX CONTROVERSY — THE EXAMINATION OF TAX RETURNS

Tax controversy is most often derived from the Service's examination of tax returns and claims for refund. Taxpayers' dissents to the Service's conclusion, as a result of this audit, are not numerous. In 1972 for example, the Service examined 1,850,000 tax returns, error was found in approximately 1,100,000 of these returns, and an additional tax assessment was proposed by the Service in these cases. Ninety-five per cent of the taxpayers examined agreed to the assessment of additional tax at the examining agent level, and the

* Mr. Croasman is the Regional Commissioner for the Western Region of the Internal Revenue Service.
remaining 5 per cent appealed their cases to the various forums of
tax appeal.1

The Service also audited 124,000 claims for refund in 1972:2 Tax-
payers in these cases claimed that they had overpaid their tax
through a mathematical error, an omission of credit in the computa-
tion of tax, an erroneous accounting of income or expense or a
failure to correctly interpret the tax law. These taxpayers notified
the Service of their alleged overpayment by stating the facts and
circumstances of their error in a claim for refund3 (Form 843 or
Form 1040X). The filing of a claim for refund invites the audit
division of the Service to review the taxpayer's tax return to deter-
mine whether the taxpayer did in fact make the error he claims and
to determine if there are any offsetting errors. If the error the tax-
payer has made is apparent on the face of the return, and there are
no offsets in favor of the government, the claim will be allowed
without the auditing of the taxpayer's return. In 1972, 17 per cent or
27,000 claims of this type were paid; the remaining 83 per cent or
124,000 claimants were audited by the Service. In only 4,342 of these
cases was no agreement reached at the examining agent level; these
were appealed.

COMMUNICATION OF SERVICE’S DETERMINATION

Preliminary Notice or 30-Day Letter

The Service communicates its determination to assess additional
tax, or to deny a claim for refund, by sending the taxpayer a pre-
liminary notice. The preliminary notice is also called a "30-day
letter" because it gives the taxpayer 30 days in which to respond.

The preliminary notice is a form letter. One type of form letter
is sent to taxpayers when the Service proposes to assess additional
tax, Form L-191; and another type is sent when the Service proposes
to deny a claim for refund, Form L-192. It is the Commissioner's
determination4 as stated in the 30-day letter which is the basis for
all unlitigated tax appeal.

Description of Form L-191 - Preliminary Notice

As noted previously, Form L-191 communicates the Commis-
mioner's determination to assess additional tax. Its significant parts
are as follows:

We have enclosed a copy of our examination report that ex-
plains why we believe an adjustment of your tax liability may
be necessary.

1. INT. REV. SERVICE QUARTERLY STATISTICAL REPORT, June, 1972.
2. Id.
3. Id.
4. INT. REV. CODE OF 1954, § 6211. The Commissioner's determination to assess
additional tax is termed a "deficiency" as defined in § 6211.
If you accept our findings, please sign and return the enclosed agreement or waiver form. If additional tax is due, you may want to make a payment now. Follow the enclosed instructions please.

If you do not accept our findings, we recommend that you request a conference with a member of our conference staff to discuss the proposed adjustments. Most cases considered at a conference are settled satisfactorily. You may want to send us, with your conference request, a written statement outlining your position. The enclosed instructions concerning unagreed cases explain your appeal rights.

If we don’t hear from you within 30 days, we will have no alternative but to process your case on the basis of the adjustments shown in the examination report.

The examination report referred to in the Form L-191 letter is the report of the Service officer who audited the tax return. The report informs the taxpayer of the facts and law on which the examining officer based his conclusion that additional tax is due. The examiner’s report also shows the computation of the additional tax that resulted from the finding of error. Also enclosed with the L-191 is an agreement form, Form 870. If the taxpayer is in agreement with the Service’s proposal to assess additional tax he may indicate this assent by signing the Form 870, “Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment,” and returning it to the District Director’s Office. This signature permits the Service to assess and collect the additional tax shown in the examining officer’s report. It has the effect of terminating the tax controversy, except when the taxpayer pays the tax, files a claim, and sues for refund in district court or court of claims.

If the taxpayer does not agree with the examining officer’s findings, he will find enclosed with the Form L-191, instructions on how to file a protest with the conference or the appellate staff.

If the taxpayer does not respond to the preliminary notice, the Service will inform the taxpayer by Statutory Notice Form L-21, as follows:

This letter is to notify you — as required by law — that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver

---

5. Id. at § 6213.
6. These instructions are contained in IRS Publication 5. They will be discussed subsequently.
form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law and the Court cannot consider your case if your petition is filed late.

Description of Form L-192 - Preliminary Letter Denying Claim

The Commissioner communicates his determination to deny a claim for refund by sending the taxpayer a Form L-192 (30-day letter). This form letter informs the taxpayer that: "After examining your claim, we find that there are insufficient grounds for reducing your tax liability." Enclosed with the L-192 letter is the examining officer's report, which informs the taxpayer of the facts and the law on which the examining officer based his conclusion. The L-192 letter also offers the taxpayer the opportunity to agree with the Service's denial of his claim by signing a Form 3363, entitled "Acceptance of Proposed Disallowance of Claim for Refund or Credit." If the taxpayer signs this form, he thereby terminates his appeal rights with the Service. However, if he subsequently changes his mind and chooses to appeal further, he may request reconsideration of existing claims within two years from the date of the statutory notice of claim disallowance or file a new claim within the statutory period for filing claims. However, the period for filing of a suit is not extended by requesting reconsideration or by filing a new claim (which in effect constitutes a request for reconsideration). The Service will not usually entertain the taxpayer's new claim unless he has some bona fide grounds and will reject most claims by form letter. The taxpayer must then petition the court of claims or the United States district court for relief.

If the taxpayer chooses to protest the examining agent's disallowance of his claim, the Form L-192 letter supplies him with instructions on how to prepare the protest. This information is contained in Internal Revenue Service Publication 5 and will be discussed later.

In any event, if the taxpayer wishes to be heard in either the district conference or in the appellate staff, he must file his protest within 30 days from the date of the Form L-192 letter.

If the taxpayer chooses not to respond to the L-192 letter, the Service will send the taxpayer, by certified or registered mail, a statutory notification of claim disallowance. Thereafter, the taxpayer has two years in which to petition either the court of claims or the district court.

The Effect of the Preliminary Notice

1. The purpose of the preliminary notice is to place the taxpayer on notice that in the event he does not protest the examining officer's findings, the Service will perform the legal procedures required to deny the refund or to collect the tax deficiency proposed in the report.

2. It also offers the taxpayer the opportunity to protest the proposed tax deficiency to the district conference staff or the appellate division. If the taxpayer fails to respond to the 30-day letter he may not appeal to the district conference staff nor may he appeal to the appellate division in a non-docketed status.8

3. Finally, it offers the taxpayer the opportunity to protest to the conference staff and the appellate division the proposed denial of a claim for refund.

ORGANIZATION AND PROCEDURES OF THE CONFERENCE STAFF AND THE APPELLATE DIVISION

Preparation of the Protest and Representation Before the Conference Staff and Appellate Division Non-Docketed Case

The rules for a Service conference, and the rules of practice, are detailed in Section 601.501-09 of the Code of Federal Regulations. A summary of these sections of the tax law is found in Internal Revenue Service Publication 5, as follows:

A protest should contain:

1. A statement that the taxpayer wants a conference, and whether the district office or the appellate division is desired.

2. The taxpayer's name and address (the residence address of individuals; the address of the principal office or place of business of corporations).

3. The date and symbols on the letter transmitting the proposed adjustments and findings which the taxpayer is protesting.

8. Non-docketed status simply means that the taxpayer has not filed a petition in any available judicial forum.
4. The taxable year(s), period(s) or return(s) involved.

5. An itemized schedule of adjustments or findings with which the taxpayer does not agree.

6. A statement of facts supporting the taxpayer's position in contested factual issues. This statement and all major evidence submitted with the protest is to be declared true under penalties of perjury. This may be done by adding to the protest the following declaration signed by the taxpayer as an individual or by an authorized officer of a corporation:

   Under the penalties of perjury, I declare that I have examined the statement of facts presented in this protest and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete.

7. Instead of the declaration required in 6 above, if the taxpayer's representative prepares or files the protest, he may substitute a declaration stating:

   (a) Whether he prepared the protest and accompanying documents; and
   (b) Whether he knows personally that the statements of fact contained in the protest and accompanying documents are true and correct.

8. A statement outlining the law or other authority upon which the taxpayer relies. This statement is not required in offer of compromise cases based solely on doubt of collectibility.

   The taxpayer may represent himself, but if he plans to be represented by an attorney, certified public accountant, or enrolled agent, the representative must qualify to practice before the Service. If the representative attends a conference without the taxpayer he must file a power of attorney or a tax information authorization before he can receive or inspect confidential information. The taxpayer is entitled to bring any witness who knows the facts and can furnish evidence to support his position.

**INTERNAL REVENUE SERVICE DISTRICT AUDIT CONFERENCE STAFF**

A preponderance of taxpayers settle their tax differences with the Service by having their case heard by the district conference staff. In fiscal 1972 (July 1, 1971 to June 30, 1972), for example, taxpayers referred 89 per cent of all disputed tax cases to the conference staff for hearing. The conference staff was able to settle, with the agreement of the taxpayer, 73.6 per cent of the cases heard.9

The conference staff will hear all types of tax cases except certain alcohol, tobacco and firearms cases. It will not hear cases of failure or refusal to comply with the tax laws because of moral,
religion, political, constitutional, conscientious or similar grounds.  

The stated objective of a district conference staff is to give taxpayers a greater opportunity to reach an early agreement with respect to disputed items arising from office audits and field audits. The conference is instructed by Service rules to:

1. Provide the taxpayer a fair and courteous hearing at which the taxpayer may discuss the issues;
2. Make certain that all pertinent facts are included in the record and are considered in arriving at the proposed recommendation;
3. Make certain that the pertinent provisions of the Internal Revenue Code are applied in arriving at the proposed recommendation and that the proposed recommendation is in accord with the interpretations of the Service as expressed in regulations and rulings; and
4. Explain fully to the taxpayer the conclusions reached and the reasons therefor.

District conference staff personnel are under the jurisdiction of the district director. They are under the immediate supervision of the Chief, Audit Division. The district conference staff is autonomous, separate from the examination branch of the district audit division. This organizational position insulates it from the influence of the examining officers so that the conferee may exercise independent judgment. Conference personnel are selected for their demonstrated ability to interpret tax law and for their ability to meet and deal with taxpayers.

The district conference staff operates under certain restrictions that do not apply to other levels of tax appeal, such as the appellate staff or the tax court. These restrictions are:

1. The conference staff is required to follow all Revenue Rulings. All Service personnel, with the exception of the appellate staff, are required to follow the Commissioner's Rulings, even though there are tax court, district court and court of appeals decisions to the contrary.
2. The conference staff must also observe the Commissioner's non-acquiescence, as well as his acquiescence, to court decisions.
3. No member of the audit division, including the conference staff, may concede a "prime issue." These are issues selected and put on the prime issue list because they present legal questions of major importance in the administration of the Internal Revenue laws which have not been adequately tested in litigation. An issue is considered to present a question of major importance if its resolution:

(a) would test an important regulation or ruling;

(b) might establish a pattern for an entire industry, a large segment of an industry or a large number of taxpayers similarly situated; or
(c) might have serious administrative or revenue implications.

4. Conference personnel do not have the authority to settle a case on the basis of the "hazards of litigation," except where the appellate division has disposed of a substantially identical issue and the amount of the total proposed additional tax or proposed assessment, or claimed refund, does not exceed $2,500 for any year. The appellate staff has unlimited authority to evaluate the hazards of litigation in settling a case.

These limitations on the authority of the conference staff to settle cases seem formidable when seen in writing, but in practice they are important in only a very few cases. This is because approximately 80 per cent of all cases heard in conference are factual cases. The dispute over facts and not the law is a state of affairs which characterizes most tax disputes, including those reaching the tax court. This is apparent from the number of memorandum decisions which the tax court issues, outnumbering by far the court's regular decisions which deal almost entirely with questions of law.

Where the audit division feels that the conference staff is restricted in its ability to settle a case, they will advise the taxpayer to appeal directly to the appellate staff. This is communicated to the taxpayer by sending him a 30-day letter, Form L-191B, which states: "we recommend that you request a hearing with the Appellate Division...."

As explained earlier, the condition precedent to the hearing of a taxpayer's protest is the Commissioner's determination of a tax deficiency. This is communicated to the taxpayer by a preliminary notice. If the taxpayer's return was audited in an office of the Service he will be granted a district conference upon request, without submission of a written protest. Office audit cases are usually low income returns. A telephone call to the office of the conference staff is sufficient to schedule a hearing.

In the case of a field-audited return, no written protest is required if the amount of tax in dispute does not exceed $2,500. Cases where the proposed additional tax, proposed overassessment or claimed refund is in excess of $2,500 require a written protest. Hearings before the conference staff are informal and quasi-judicial.

Usually appeals are heard in the headquarters offices of the audit division of the district director's office. However, where there are a sufficient number of cases to be heard away from the headquarters office, the conference staff will hold hearings in cities that are central to the cases. As mentioned, the taxpayer may represent himself at the conference. In the alternative, he may be represented
by an enrolled agent who is admitted to practice before the Treasury Department or an attorney, or certified public accountant.

A hearing at the district conference level has the following effect on the taxpayer's appeal:

1. The district conference staff affords the taxpayer an additional forum for his appeal. If he by-passes the conference staff and goes directly to the appellate staff, or the courts, he has sacrificed an opportunity to be heard at a level of appeal where a difference of opinion may be most easily resolved.

2. The failure to win in district conference does not usually prejudice the taxpayer's subsequent appeal to the appellate staff or to the courts. The appellate staff will read the district conference report but is not bound to follow it. The courts will not see the conference staff report, so they will not be influenced by the fact that the taxpayer's appeal failed in conference. However, all evidence submitted to the conference staff by the taxpayer becomes a permanent part of the case file and is, therefore, available to the government counsel.

3. In most cases a hearing before the conference staff is the least expensive forum of appeal. It is also an effective forum since almost 75 per cent of the protested tax cases are settled there.

Appeals to the Regional Appellate Division

The appellate division offers the taxpayer a second and last opportunity to appeal his case in a non-docketed status. Appellate's ability to settle cases is attested to by the fact that in 1971, the appellate division was able to dispose of slightly in excess of 90 per cent of its cases by agreement.\textsuperscript{11}

The appellate staff hears two types of cases on appeal: non-docketed and docketed. Non-docketed cases are those in which the taxpayer files an appeal in response to the preliminary notice; docketed cases are those in which the taxpayer files a petition with the tax court in response to the statutory notice (90-day letter). We shall limit our discussion to non-docketed cases.\textsuperscript{12}

The non-docketed case comes to the appellate division by the taxpayer's response to the 30-day letter, in which he specifically requests that his case not be heard by the district conference staff, but go directly to the appellate division. Non-docketed cases are also referred to the appellate division by the conference staff. These are cases in which the taxpayer and the conference staff could not reach an agreement, and the taxpayer has requested the conference staff to send his case to appellate. A written request to the conference staff will accomplish this objective. All claim cases are non-docketed cases.

\textsuperscript{11} Commissioner of Int. Rev., 1971 Annual Report 33.

\textsuperscript{12} Treas. Reg. § 601.106 (1971) details the procedures of the appellate division.
The appellate mission is to resolve tax controversies without litigation on a basis which is fair and impartial both to the government and to the taxpayer. A fair and impartial resolution is defined to be one which reflects, on an issue-by-issue basis, the probable result in the event of litigation, or one which reflects mutual concessions for purpose of settlement based on relative strength of the opposing positions, where there is substantial uncertainty of result in the event of litigation. The point of this objective is that in a preponderance of cases heard in appellate, it is not possible to state with exactitude whether the government's position or taxpayer's position is correct. Such questions as the useful life of an asset, whether surplus has been accumulated beyond the reasonable needs of a corporation, the value of unlisted stock and numerous other factual questions cannot be stated with certainty. It is also true that in most cases neither side in a tax controversy can state with certainty that its position on a legal question will prevail in court.

However, while the appellate conferees settle a legal or factual issue, they may not entertain a taxpayer's offer in settlement which is based on nuisance value, and appellate conferees are prohibited from making a nuisance value offer to the taxpayer.

The authority of the appellate division does not include the authority to:

[i] Negotiate or make a settlement in any case docketed in the Tax Court on and after the opening date of the session at which the case is calendared for trial, or of any pre-trial hearing of or report session thereon, otherwise referred to as "session" cases;

[ii] Make or approve a settlement in presession cases docketed in the Tax Court, except with the concurrence of regional counsel;

[iii] Eliminate the ad valorem fraud penalty in any income, profits, estate, or gift tax case in which the penalty has been determined by the district office in connection with a tax year or period, or which is related to or affects such year or period, for which criminal prosecution against the taxpayer (or a related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, except upon the recommendation or concurrence of the Regional Counsel; nor

[iv] Act in any case in which a recommendation for criminal prosecution is pending, except with the concurrence of regional counsel.

Authority to negotiate and make a settlement or concession in a case docketed in the Tax Court in a session status referred to in subdivision [i] of this subparagraph is delegated to the regional counsel.\(^\text{13}\)
Most appellate division conferees are either attorneys or certified public accountants. The conferees are selected from senior district audit personnel who have demonstrated an extensive knowledge of tax law and an ability to arbitrate tax disputes. Many of these personnel come from the district conference staff.

The basic settlement work of the appellate division is performed in branch offices located throughout the United States. These offices are under the direction of the assistant regional commissioner (appellate), and each office is under the immediate supervision of a Chief, Appellate. The appellate division is not a part of the district director's office because its basic function is to hear taxpayers' appeals from tax determinations made by the audit division of the district director's office. It is also totally independent of the regional counsel's office in deciding non-docketed cases. The regional counsel is the Service's lawyer.

Protest requirements of the appellate division are essentially the same as those of the district conference staff, found in Internal Revenue Service Publication 5. All requests for an appellate conference should be filed with the district which issued the 30-day letter. The district will forward the protest to the appellate division. The filing of a petition with the tax court is all that is required in docketed cases. Appellate will hear all types of tax cases except those involving alcohol, tobacco, narcotics, firearms and wagering taxes.

**Hearing of the Protest**

a. **Place of the Conference**

The appellate hearing, like the district conference, is informal and is usually held in the appellate conferee's office. Hearings are held in other locations if there are a sufficient number of cases to warrant travel of the conferee. The taxpayer may represent himself at the hearing, or be represented by an attorney, certified public accountant or enrolled agent who is admitted to practice before the Treasury Department.

b. **Hearing of the Taxpayer's Appeal**

The appellate conferee is charged by his instructions to maintain a judicial attitude, defined as one which reasonably appraises the facts, law and litigating prospects, and uses sound judgment and ability to see both sides of a question. It is objective and impartial. Any approach which contemplates a maximum possible result in favor of the government in every case is incompatible with judicial attitude and the appellate mission.

The appellate conferee is required to assist the small pro se taxpayer in every way possible and is prohibited from taking advantage of a taxpayer's lack of technical knowledge.
The appellate conferee may make the following resolutions of a case:

1. He may concede the case in total.
2. He may accept the taxpayer's total concession of the case.
3. He may accept an intermediate settlement based upon a decision as to the merits of each issue, or a mutual concession-settlement which involves concessions by both the government and the taxpayer for purpose of settlement where there is substantial uncertainty in event of litigation as to how the courts would interpret and apply the law, or as to what facts the court would find. In this type of settlement there is substantial strength to the position of both the government and the taxpayer so that neither party is willing to concede in full the unresolved area of disagreement. A resolution of the dispute involves concessions for purpose of settlement by both parties based on relative strength of the opposing positions.
4. He may accept a split-issue settlement. Appellate may enter into settlements based on a percentage or stipulated amount of the tax in controversy. Appellate may accept split-issue settlements only where no other method of settlement is appropriate. This would occur where, if the issue were litigated, the court's decision would be completely in favor of the government or the taxpayer. The distinguishing feature of a split-issue settlement is that the agreed result would not be reached if tried.

Appellate conferees are required to inform the taxpayer as to what effect the split-issue settlement will have on tax liability and tax income. Closing agreements or collateral agreements governing the effect of the settlement may be entered into in this type of agreement.

Disposition and Settlement of Cases Before the Appellate Division

The method of disposition and settlement of cases before the appellate division is stated in Code of Federal Regulations § 601.106 (d)-(e).

If the taxpayer and the appellate conferee reach an agreement on the settlement of a case, the appellate conferee will request the taxpayer to sign a Form 870R or 870-AD, waiving restrictions on the assessment and collection of any deficiency and accepting any overassessment resulting under the agreed settlement. The form most commonly used in mutual-concession settlements is the Form 870-AD, "Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment." This is designed for use in cases involving income profits or gift taxes. For estate tax cases settled upon the basis of mutual concession,
Form 890-AD may be used. A form incorporating similar provisions for use in excise and employment tax cases is Form 2504-AD.

All of these AD forms become effective as a waiver of restrictions on the date of acceptance on behalf of the Commission — not as of the date executed by the taxpayer. When so accepted it is considered as binding upon both parties and as accomplishing a final disposition of the case in the absence of fraud, malfeasance, concealment or misrepresentation of material fact or an important mistake in mathematical calculation. Form 870-AD permits reopening of a case to correct excessive tentative allowances and for claims with respect to deductions for carrybacks. However, where a loss year carryback has been taken into account in closing the case, Form 870-AD is normally modified to exclude such carrybacks from reopening provisions. Where other unusual features are present in a case, the agreement form is modified and specific reservations or other conditions are added to the form.

Form 870-AD is considered a mutually advantageous agreement. There is need, of course, to put an end to the dispute - especially so when a debatable issue is settled with both sides sharing in the give and take. When agreement is finally reached after mutual concession, the case should normally be considered forever closed as to those issues in the absence of such exceptions as fraud, malfeasance, subsequent carrybacks, etc. It is this finality that is intended through the use of the Form 870-AD.

Where finality is not necessary or justified in view of lack of mutual concessions, as, for example, where a strictly factual issue is resolved, a regular Form 870 Agreement is used in the same way as if the case were closed at the district level. Cases closed without finality may be reopened by a taxpayer by appropriate means, such as filing a timely claim for refund. However, appellate will not initiate reopening of such a case unless the prior disposition involved fraud, malfeasance, concealment or misrepresentation of material facts, or an important mistake in mathematical calculation, or such other circumstances that would indicate that failure to take such action would be a serious administrative omission, and then only with the approval of the director of the appellate division.

Under certain unusual circumstances favorable to the taxpayer, such as retroactive legislation, a case closed with an 870-AD by the appellate division on the basis of mutual concessions may be reopened upon written application from the taxpayer, subject, however, to the approval of the director of appellate.

In the event that the taxpayer and the appellate conferee cannot reach an agreement, the appellate division will issue a statutory notice of deficiency. The taxpayer must then decide whether to petition the tax court or pay his tax, file a claim for refund and then petition the court of claims or the district court.
Taxpayers desiring to further contest disputed excise and employment taxes have no other alternative but to pay the additional tax when assessed and file a claim for refund within the statutory period. Their further appeal must also be made to either the court of claims or district court.

The taxpayer's case is not prejudiced by a failure to win an appeal before the appellate staff. Any discussion of settlement before the appellate staff is without prejudice to the taxpayer's rights before the tax court. The regional counsel lawyers may not introduce or refer to any offer of settlement made by the taxpayer to the appellate staff in trial before the tax court.

A direct appeal to the appellate division within 30 days after receipt of the preliminary notice or an appeal to the appellate division after a hearing in the conference staff will have the following effect:

1. A non-docketed hearing offers a level of appeal that would be missed if the taxpayer were to take his case directly to the courts.
2. It is an independent hearing by the appellate staff.
3. The appellate conferee may decide the case on the basis of the hazards of litigation. This permits him to settle on a basis involving mutual concessions within an area of substantial uncertainty of results in event of litigation.

CONCLUSION

The unlitigated federal tax appeals procedure is a demonstrably important phase of the tax appeal process. Over 96 per cent of all federal tax controversies are settled through these procedures, and this writer is sure that the legal community will find that a thorough understanding of the mechanics involved will be of great benefit in aiding their clients in the resolution of tax matters.