

Reimagining Tax Administration: Adjudicating Disputes in Tax Benefits Programs

Christine Speidel

Associate Professor and Director, Federal Tax Clinic

Villanova University Charles Widger School of Law

Claim and Dispute Process

Transfer Benefits (SSI, etc.)

1. Application
2. Initial adjudication
3. **Fair hearing or ALJ appeal**
4. Administrative appeal board
5. Judicial review

Tax Benefits (EIC, CTC, etc.)

1. Tax return
2. Return processing filters
3. **Adjudicative processes** - IVO, IWV, math error, AQC, AUR, exam, etc.
4. IRS Appeals
5. Tax Court (Deficiency or CDP)

Reimagined Adjudication: Key Decision Points

1. Timing and submission of claims
2. Selecting claims for audit, math error, or other processes leading to nonpayment of the claim unless the claimant responds
3. Notice to claimants of disputes
4. Who adjudicates?
5. Adjudication procedures

Reimagined Adjudication: Goals

Administrative goals include:

- Prompt benefit delivery to eligible claimants, to achieve the goals of the program (e.g. improve child welfare)
- Efficiency for the agency, minimizing costs and re-work
- Accurate, targeted delivery of benefits: minimize overpayments; ensure that all eligible children benefit
 - Minimize learning, compliance, and psychological costs to claimants (see Workshop 3)
- Acting in accordance with taxpayer rights, IRC 7803(a)(3)

1. Timing and Submission of Claims

- Currently
 - Claims are made on the annual tax return (simplified or not)
 - Only one tax return per year per TIN can be e-filed
 - Competing claims to a child must be mailed, causing delay in surfacing and adjudicating the dispute
 - Tax software and preparers will ask a claimant if they would like to remove the child whose TIN has already been claimed, so the return can be e-filed (see Workshop 5)
 - No supporting documents are requested with the tax return
 - CTC UP does not yet support the filing of a new claim

1. Timing and Submission of Claims (2)

- Early identification of disputes furthers multiple administrative goals
 - How claims are submitted impacts possibilities for reducing burden at the next steps of the process
- Pressure to e-file an incorrect return abridges taxpayer rights
 - For income tax credits claimed on an original return: the IRS must follow math error procedures or deficiency procedures before reducing or removing the credits
 - A claimant who removes a child from their return in order to e-file loses the right to deficiency procedures (incl. pro-se friendly Tax Court review) of that claim

1. Timing and Submission of Claims (3)

Recommendations:

- Allow competing claims to be e-filed
 - Consider requesting supporting documents at filing, if a dispute is identified at filing
- Explore auto-enrollment for nonfilers, across benefit programs
- Support ongoing, community-focused help for claimants

See especially Workshop3 and Workshop 6

2. Selection of Claims for Review or Denial

- False positives prevent delivery of tax benefits to eligible claimants
 - Suggestion: reconsider the relative priority of administrative goals
 - Preventing overpayments versus delayed and denied benefits due to false positives
 - Mission and culture change likely needed
- Data available to IRS does not always match up with benefits eligibility criteria
 - Option: simplify or change program rules
 - Option: change and improve data available to IRS
 - Current timing and submission rules for claims (Step 1) create delays in identifying competing claims

3. Notice to Claimants of a Dispute

- AdvCTC: currently a black box; no notice is provided of the reason payments are reduced, stopped, or never begun
 - For some, benefits stop or arrive in wrong amounts for no discernable reason
 - Immediate notice would alert a claimant of the need to keep proof of their circumstances and increase the quality of information provided in a dispute
- At filing: e-file reject or acceptance is fast and electronic (e.g. 1 day); all other notices take longer and arrive by mail
 - There are many return processing filters, stations, and compliance programs, each with their own notices and procedures (see Workshop 1)
 - Many taxpayers find IRS notices intimidating, confusing and hard to follow

3. Notice to Claimants of a Dispute (2)

- Accessible appeal procedures promote full participation and getting benefits to the right recipient
- Adequate notice gives claimants a meaningful opportunity to contest adverse agency action
 - In public benefits context, notice must include the reason for the action, explain any appeal rights, the appeal deadline, and how to appeal. (See Workshop 5; *Mullane v. Central Hanover Bank & Trust Co.*)
 - A notice should have enough information for the claimant to understand what the IRS changed, and why
- Inadequate notice abridges important taxpayer rights
 - E.g. summary “math error” assessments under 6213(b)(1)

3. Notice to Claimants of a Dispute (3)

- Suggestions:
 - Use behavioral research and pilot projects to understand claimant behavior
 - Support ongoing, community-focused help for claimants
 - Support feedback loops and be open to suggestions for improvement
 - Use plain language principles
 - Plain language helps people find what they need, understand what they find, and take action. plainlanguage.gov
 - The notice of (proposed) change should not look like a tax bill
 - Include simple appeal forms for claimants to return
 - See workshops 3, 5, and 6

4. Who should decide tax benefit disputes?

- Accessibility concerns with correspondence-based dispute resolution processes
- Employees need technical knowledge but also the ability to empathize and support the aims of the benefits program
- Recommendation: consider a specialized unit to adjudicate worker and family benefit claims
 - Should this unit assist claimants with all disputes including claim processing issues (e.g. TPP), or should it only handle substantive disputes related to the specific benefits under its purview?
- See Workshop 6

5. Dispute Resolution Procedures

- Dispute = a return was filed; we aren't going to pay unless you respond and overcome this obstacle; a person looks at your response.
 - Encompasses both processing issues and substantive issues
- Why should we think about processing and substantive disputes together?
 - Processing issues stop an increasingly large volume of returns
 - The line between substantive and procedural is sometimes hazy
- The returns stopped by processing issues are usually valid returns under the test in *Beard v. Commissioner*. A claim has been made and the claimant should have the right to dispute the nonpayment of that claim.

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Tax Benefits (EIC, CTC, etc.)

1. Tax return
2. Return processing filters
3. **Adjudicative processes**
 - a. Return processing barriers
 - b. Adjustments
4. IRS Appeals (sometimes)
5. Tax Court (deficiency); or refund claim

5. Dispute Resolution Procedures (2)

Why focus on examinations and other initial tax dispute processes instead of on the IRS Independent Office of Appeals?

- Response rates to correspondence-based compliance programs are low, and so are appeal rates
 - There is an opportunity to redesign the process to reduce claimant burdens
- A cost-minimizing, batch-processing approach to disputes at this stage conflicts with the goal of delivering benefits to every eligible claimant

Adjudication Process Examples

SSI Denial Appealed

1. In person (or video/phone) hearing
2. Assigned to an ALJ
3. Claimant can review SSA's evidence, and submit evidence
4. SSA is mandated to assist the claimant in getting evidence to support their claim, including by requesting records and issuing subpoenas
5. Opportunity for direct and cross examination, and the ALJ also asks questions at the hearing

procedurallytaxing.com/the-importance-of-notice-and-hearing-rights-for-the-advanced-child-tax-credit/;

Workshop 5

EIC Examination

1. Correspondence-based; there is no hearing
2. Assigned to a campus, not an individual; claimant will likely speak with a different person each time they call the IRS
3. Examiner reviews any documents submitted by claimant and conducts research through computer sources. No right to see the IRS file (except through FOIA)
4. Audit letter may include a request for specific records and a chart of the eligibility rules and records that can satisfy them. It also includes information about LITCs.
5. No witnesses or testimony; any phone calls are not recorded, sworn, or transcribed

5. Dispute Resolution Procedures (3)

Should procedures from later appeals stages be brought to examinations?

- From IRS Independent Office of Appeals
 - The right to see the IRS administrative file
 - The expectation of a “conference” before a decision is made
 - usually a phone call, sometimes WebEx, sometimes in person
- From the U.S. Tax Court
 - The right to subpoena witnesses and documents
 - The right to see the IRS evidence and use discovery-like *Branerton* procedures to narrow the issues and develop the case
 - The right to a trial before a single judge (if there is a genuine dispute of material fact)
 - On Zoom or in person (or, rarely, by phone)
 - Testimony heard under oath, on the record, with opportunity for cross examination

5. Dispute Resolution Procedures (4)

- Adversarial or inquisitorial?
 - An inquisitorial process is more consistent with a mission to deliver benefits to all eligible claimants
 - The IRS could develop (or Congress could mandate) an inquisitorial framework for tax benefit disputes similar to that used in SSI (or Mass. UC) appeals (see workshops 3, 5)
 - The attitude of the adjudicator (as directed by the agency's mission, culture, and explicit instructions) will affect the claimant's experience and impact administration goals for benefits programs
 - There is likely more educational value in an inquisitorial approach, which may reduce future erroneous claims

5. Dispute Resolution Procedures (5)

- Adversarial or inquisitorial? Additional considerations
 - Recommendation: IRS examiner should have a duty to develop the facts, including questioning the claimant and requesting records.
 - Behavioralist research has suggested that paperwork burdens are very difficult for people to navigate on their own (Greiner & Wolos Pattanayak 2012; workshop 3)
 - With taxpayer consent, examiners could send a template substantiation letter or a questionnaire to relevant third parties identified by the claimant
 - Case example: Mr. S, an unmarried father who works in landscaping, claimed his son for the first time after his girlfriend got sick and could not work. His claim was audited, and he needed to establish residency and paternity to win his case.