

TAX DIVISION SETTLEMENT REFERENCE MANUAL

I. INTRODUCTION

Civil tax controversies in the courts are either resolved by settlement or by judicial decision. Litigation and settlement are twin aspects of the Tax Division's role in tax policy and tax administration. This reference manual focuses generally on questions concerning resolution by settlement, a term which includes both compromises and outright concessions, as well as alternative dispute resolution.

In settlement, as in every aspect of civil litigation handled by the Tax Division, it is the Trial Attorney who has the laboring oar. The Trial Attorney has the primary responsibility on an ongoing basis of evaluating the litigation potential (and, thus, the settlement potential) of a case. It is the Trial Attorney who negotiates a compromise, prepares the written justification therefor, and, in the subsequent correspondence and implementation of a settlement, assures that the Government gets all that it bargained for and gives away no more.

While there are some cases that should be litigated rather than settled and others that, ideally, should be settled but that, for one reason or another, cannot be, the Division settles many cases in whole or in part. Compromises result when the terms negotiated are both just and in the Government's best interests. And, to the extent that the Government's position is clearly wrong, an issue or a case should be conceded.

Generally, settlement is most readily achieved in refund cases (where the Government already has the money, and the taxpayer wants it back). Refund cases involving counterclaims are the next easiest to settle--typically, the taxpayer is at least represented by counsel, and has taken the initiative to pay for the institution of litigation. On institution of every refund suit, the taxpayer is sent a sheet setting out general information concerning the settlement of such suits.

Clearly, settlement becomes more difficult to the extent that collection is involved, since in many of these cases the Service has tried and failed to collect administratively. Suits to reduce assessments to judgment, fraudulent conveyance actions, etc., are substantially more difficult to settle. Bankruptcy cases are so varied that no general estimate can be made about the degree of difficulty in settlement; specific problems with respect to bankruptcy are discussed subsequently.

This reference manual first addresses the delegation of settlement authority in tax cases (Part II), 1/ and goes on to address the settlement process (Part III), peripheral matters in refund cases (offset, double allowances--mitigation of limitations, and equitable recoupment) (Part IV), collectibility settlements (Part V), and alternative dispute resolution (Part VI).

Except to the extent that binding authority is referenced (e.g., in Part II, with respect to settlement authority), the discussion and suggested procedures in this reference manual reflect internal guidelines only and do not bind the Tax Division.

1/ A quick reference sheet re settlement authority as to cases in the Civil Trial Sections and Court of Federal Claims Section is found in the pocket part at the front of this Manual. Like all summaries, it is not comprehensive and Part II should be consulted, particularly with reference to the conditions and limitations on delegations, the dollar limits on settlement authority with respect to claims by the United States, and the determination of the dollar limitation.