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Leo Unzeitig Addresses Proposed Regulations Concerning the Office of Appeals and Offers Solutions

Leo Unzeitig, Shareholder in Chamberlain Hrdlicka's Tax Controversy Practice in San Antonio Submits Comment Letter to the Internal Revenue Service regarding Proposed Regulations Concerning the IRS Independent Office of Appeals and its Ability to Consider

December 6, 2023

In a recent letter to the IRS and Treasury, Leo Unzeitig, tax controversy shareholder in Chamberlain Hrdlicka's San Antonio office addresses proposed regulations dealing with the IRS Office of Appeals. Specifically, Unzeitig addresses a provision proposing to remove Appeals' ability to consider litigation hazards raised by violations of the Administrative Procedure Act.

Unzeitig emphasizes the consequences of the proposed regulations by observing that "If [they] were in effect, they would prevent my clients and millions of other taxpayers from raising legitimate legal defenses provided by the Administrative Procedure Act. I believe that is unacceptable, a poor use of taxpayer and government resources, and inconsistent with the principles for having an independent administrative forum to resolve cases efficiently."

Speaking to the proposed regulations, Unzeitig also addresses the justifications raised by Treasury in support of the proposed regulations and offers reasoned disagreement.

He also suggests a solution. "My proposed solution is simple: allow Appeals to consider *all* litigation hazards, not just *some* litigation hazards. Existing Treas. Reg. 601.106(f)(2) already assumes this when it says 'Appeals will ordinarily give serious consideration to an offer to settle a tax controversy on a basis which fairly reflects the relative merits of the opposing views in light of the hazards which would exist if the case were litigated.'"

Unzeitig concludes, "Hundreds, if not thousands, of taxpayers have cases where they have made (or are entitled to make) APA challenges. The government has hazards in litigating those cases. Those hazards, just as all other legal hazards, should be recognized and considered as part of a settlement analysis. If not, Appeals fails in its important mission to resolve taxpayer disputes in an impartial and low-cost forum."