

Getting to “Finished” Faster:

The Massachusetts Department of Revenue’s Expedited Settlement Process

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In April 2014, the Massachusetts Department of Revenue (MDOR) rolled out their new Expedited Settlements process. The program is one of three initiatives, which includes Early Mediation and Limited Information Settlements, designed to increase the efficiency and expediency of the MDOR’s settlement processes. The particular goal of Expedited Settlements is to complete tax disputes presented for settlement within four months.¹

With a little more than a year under its belt, the expedited program appears to be working. Since introduced, the MDOR reports they have completed 143 cases under the Expedited Settlement program with 41 cases pending; the oldest pending case is aged 4 months but the median age is only 1 month.² Currently, the estimate to resolve cases ranges from 1 week to 4 and ½ months. Smaller “pro se” cases are usually settled faster than cases with a larger amount in dispute.³

These results seem to indicate that the expedited settlement process offers an effective option to quickly bring a stressful experience to closure. However, this process isn’t always a “one size fits all” solution. Certain taxpayers may be a better fit than others. Thus, taxpayers are well-advised to be aware of the additional requirements of participation and how the expedited settlement process differs from the standard settlement process.

¹ As of April 28, 2015 per e-mail communication dated the same date from Maryann Merigan Director of Communications, Massachusetts Department of Revenue.

² *Id.*

³ “The Appeals Process: Early Mediation, Settlements and Fast Track Cases,” presented at the Boston Bar Association by members of the Massachusetts Department of Revenue on November 5, 2014. The presentation noted that smaller pro se cases took approximately 1-2 months to settle while larger cases were resolved in 3-4 months.

The Basics: The Standard Settlement Process within the MDOR

To better understand Expedited Settlements, it is helpful to review the MDOR's standard settlement process. The standard settlement process may be requested at any time by taxpayers with an appeal pending at the Office of Appeals. Settlement is faster than the appeals process which can often be expensive and take more than one-year to resolve.⁴

Form DR-1 and Settlement Recommendation. To initiate the standard settlement process, the taxpayer completes Form DR-1: Office of Appeals Form⁵ and offers a proposal for settlement. Upon receipt, an Appeals Officer reviews it and then may do one of two things: 1). request additional information, or 2). deem the settlement request to be valid and prepare a settlement recommendation. When evaluating the settlement request, the Appeals Officer will weigh the "potential hazards of litigation and the likelihood of a finding of liability against the taxpayer."⁶

Settlement Review Board. Once the Appeals Officer prepares a settlement recommendation, he or she presents it to either the Office of Appeals' management or, if larger amounts are involved, to the Settlement Review Board (SRB) for consideration and approval.⁷ The taxpayer's position and settlement offer will concurrently be considered⁸ but taxpayer will not be present at these reviews.⁹

⁴ See "Appeals Process FAQs," <http://www.mass.gov/dor/appeals-info/appeals-process-faqs.html>, last accessed April 27, 2015.

⁵ This assumes a Form CA-6: Application for Abatement/Amended Returns has already been filed.

⁶ MGL Ch. 62C § 37C(1).

⁷ See AP 628.4.3.1 Settlement Recommendations.

⁸ See "An Overview of the Appeals Process," Settlement Consideration: #2 Settlement Review, Commonwealth of Massachusetts Department of Revenue Office of Appeals brochure.

⁹ See AP 628.4.3.1 Settlement Recommendations

Negotiation Period. After the settlement recommendation is approved, the Appeals Officer will contact the taxpayer in an attempt to agree to settlement terms “consistent with the terms established during the review.”¹⁰ This negotiation period may take some time with a number of conversations occurring between the taxpayer and the MDOR. If the parties come to terms, a written settlement agreement signed by the taxpayer and the MDOR generally closes the matter.¹¹ If an agreement is not reached, this will be confirmed in writing and settlement will not be reconsidered by the Office of Appeals.¹²

How “Expedited Settlements” Differs from the Standard Settlement Process

The Expedited Settlements process comes as a direct result of “lessons learned”¹³ from the MDOR’s Early Mediation Program.¹⁴ Its purpose is to provide another option for the resolution of tax dispute matters, but this time allowing for broader taxpayer participation since a taxpayer may elect the expedited settlement option regardless of the amount in dispute. In contrast, Early Mediation is only available for amounts in dispute in excess of \$250,000.¹⁵

Expedited Settlement Election on Form DR-1. Requesting expedited settlement is similar to the standard settlement procedure; the taxpayer uses the same form and provides information about the tax dispute. However, there is an additional “check-the-box” condition which requires:

- a complete explanation of the facts and issues;

¹⁰ See AP 628.4.3.2 Settlement Discussions and AP 628.4.3.3 Completion of Settlement and Effect of Settlement Agreement.

¹¹ See AP 628.4.3.3 Completion of Settlement and Effect of Settlement Agreement and MGL Ch. 62C § 37C(2)(b).

¹² See AP 628.4.3.2 Settlement Not Reached.

¹³ “*The Appeals Process: Early Mediation, Settlements and Fast Track Cases*,” presented at the Boston Bar Association by members of the Massachusetts Department of Revenue on November 5, 2014.

¹⁴ For more information on the MDOR’s Early Mediation Program, see Morris N. Robinson’s February 12, 2014 blog, “Commissioner Amy Pitter Announces Impressive Mediation Goal: One-Third of All Disputes Involving \$250,000 or More To Be Mediated.”

¹⁵ See Footnote #15.

- a settlement proposal;
- all necessary support documentation; and
- an agreement to participate in a conference or hearing on an expedited basis with binding authority to settle the dispute at that time.¹⁶

Three Key Differences. Choosing this option does not guarantee acceptance into the program. Even if the taxpayer meets all of the criteria, “[t]he Office of Appeals retains the discretion to determine”¹⁷ if the case will be settled on an expedited basis. If accepted, the case is assigned to an Appeals Officer, who again considers the “hazards of litigation,” but, at this point, the process begins to differ from the standard process in three key ways.

1. Fully-Developed: All Facts, Including Legal Developments, Must Be Submitted

One of the major differences is that the taxpayer’s case must be fully-developed at the time they make the expedited election and all factual and legal information must be submitted with the form. Unlike the standard process, the Appeals Officer will not contact the taxpayer for additional documentation regarding the dispute. Nor may the taxpayer contact the Appeals Officer to provide additional facts or expand on legal positions. However, our experience has been that if extenuating circumstances exist, the MDOR has been receptive to clarifying information and may even make a request themselves.

2. A Specific Settlement Proposal Must Be Submitted

¹⁶ Form DR-1: Office of Appeals Form, Massachusetts Department of Revenue, page 2.

¹⁷ See AP 628.5.2 Expedited Settlements.

Another key difference is the requirement that the taxpayer must provide a specific settlement proposal for expedited settlement consideration. This means an actual dollar amount is required for acceptance. While a settlement proposal is also requested for standard settlements, that process offers more latitude and a specific figure is not required to proceed.

To a certain extent, this may provide the MDOR with a slight advantage, especially when interacting with an inexperienced taxpayer. Only the Appeals Officer has the complete view of all parties' information when he or she submits the recommendation for internal approval. If the taxpayers have made a proposal which is higher than their best interests, there is no feedback to alert them or for them to re-submit. However, with recommendations of Appeals Officers being approved about 90 percent of the time,¹⁸ this requirement contributes to creating efficiency and possibly saving the taxpayer time and other related costs.

3. Settlement Must Be Reached on Day of Expedited Settlement Conference

Finally, after approval of the recommendation, the Appeals Officer will schedule a conference or hearing with the taxpayer. The taxpayer agreed to participate in this conference earlier when they submitted Form DR-1. Either the taxpayer and/or the taxpayer's representative may attend, but the attending party must have "binding authority to settle the dispute at the time of any conference or hearing."¹⁹

¹⁸ "The Appeals Process: Early Mediation, Settlements and Fast Track Cases," presented at the Boston Bar Association by members of the Massachusetts Department of Revenue on November 5, 2014.

¹⁹ See AP 628.5.2 Expedited Settlements.

It is important to highlight that the Appeals Officer will only be able to settle for the approved recommendation amount at this conference. Most often, the approved amount is a percentage range of the amount in dispute and this conference represents a “one-shot” opportunity to negotiate and settle the case. If the taxpayer doesn’t sign the settlement agreement on the day of the conference or hearing, the window on an expedited settlement will be closed.

Conclusion

A taxpayer must evaluate the pros and cons of the expedited settlement process before electing this option. While it may be quicker than the standard settlement process, there are trade-offs. Importantly, the taxpayer must submit a fully-developed case, both factually and legally, at the time they make the election. The taxpayer also must be prepared for reduced levels of communication and flexibility which may limit his or her negotiating position.

For taxpayers confident in their submissions or short on time, the expedited settlement process may be the most beneficial solution. However, for taxpayers with more complicated tax disputes requiring on-going negotiation, the standard settlement process may still be preferred. Speaking to a tax professional in advance can assist the taxpayer in making that determination.

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If you have questions or need assistance with regard to the filing delinquent international information returns, the attorneys at M. Robinson & Company may be able to assist you. Please feel free to contact us at 617-428-6900.

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