UNITED STATES TAX COURT

ABBOTT LABORATORIES AND US SUBSIDIARIES, ET AL., Petitioner,	)	Docket No. 20193-24
v.	)	Judge Emin Toro Paper Filed
COMMISSIONER OF INTERNAL REVENUE Respondent.	)	

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PETITIONER

Caitlin R. Tharp
Alizain Devshi
STEPTOE LLP
1330 Connecticut Ave NW
Washington, DC 20036
Tel: (202) 429-3000

Kevin R. Palmer
Christopher J. Walker
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062
Tel: (202) 463-5337

Counsel for the Chamber of Commerce of the United States of America

Corporate Disclosure Statement

Pursuant to Rule 20(c) of the United States Tax Court Rules, amicus curiae Chamber of Commerce of the United States of America states that it does not have a parent corporation and that no publicly held company owns 10% or more of the stock of the amicus.

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Interest of Amicus Curiae[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the business community.

The Chamber respectfully submits this brief as *amicus curiae* in support of Petitioner. This case presents a question of significant importance to the Chamber and its members: whether section 7803(e) of the Internal Revenue Code confers to taxpayers a judicially enforceable right to an administrative appeal of their case before the Internal Revenue Service Independent Office of Appeals ("Appeals").[2]

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[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] Unless otherwise indicated, all textual references to "section" herein are references to sections of the Internal Revenue Code of 1986, as amended ("Code"). References to "Treas. Reg. §" are to the Treasury regulations issued thereunder. All Rule references are to the Tax Court Rules of Practice and Procedure.

The availability of Appeals confers numerous benefits to the Chamber's members—namely, resolving disputes with the IRS without the delay, expense, and uncertainty of litigation. Respondent's position—that it can delay referral of a case to Appeals by filing a motion for summary judgment—undermines those benefits and the mandates of section 7803(e). If Respondent were able to circumvent taxpayers' right to Appeals in this manner, the procedural guarantees of section 7803(e) would be rendered toothless.

Furthermore, this is not the only instance in which Respondent has tried to circumvent the right to Appeals and notice-and-protest requirements of section 7803(e). For example, in *Cavallaro*, Docket No. 1128-21, Respondent referred the case to Appeals but then filed a motion for summary judgment only a few months later. Appeals, in turn, suspended proceedings because dispositive motion practice was ongoing. Order at 2, *Cavallaro v. Comm'r*, Docket No. 1128-21 (Aug. 13, 2024). Respondent should be precluded from engaging in this workaround of section 7803(e)'s requirements.

Introduction and Summary of Argument

In the Taxpayer First Act of 2019, Congress codified taxpayers' right to a process to resolve federal tax controversies "without litigation" and on a "fair and impartial" basis. § 7803(e)(3), (4). The text, structure, and history of section 7803(e) confirm that Congress conferred a right, not a privilege. "Shall" prescribes a mandatory duty, and "generally" is the textual hook for the narrow class of exemptions Congress provided in section 7803(e)(5)—that is, only those exemptions that comply with the procedural safeguards therein described are permitted.

Congress guaranteed access to Appeals for good reason. Appeals is inexpensive, informal, and confidential, and it takes into account the hazards of litigation when negotiating settlements. Consequently, Appeals is a mechanism for efficiently resolving tax disputes on a basis that is fair to both taxpayers and the Commissioner.

Because Congress specified the exclusive path by which a referral may be denied, the Commissioner may not deny it on any other terms. He may not deny it where he provides no notice of protest procedures or opportunity to protest. And he may not deny it by bypassing the notice requirements altogether and filing a motion for summary judgment.

The Court should not permit its own adjudicatory process to be used to eliminate a procedural right Congress made available precisely as an alternative to litigation. The Court has authority to remedy this violation. Tax Court Rules 1, 50, and 103 empower the Court to prescribe procedure where the Rules are silent, to secure the speedy and inexpensive determination of the action, to defer disposition of a pending motion, and to withhold summary adjudication where the sounder course is otherwise. This Court's rulings on section 6751(b)'s procedural requirements show that it has regularly exercised its authority to enforce procedural requirements which precondition the assessment of a tax. Accordingly, the Court should deny or defer ruling on the motion for summary judgment and order the Commissioner to either refer the case to the Independent Office of Appeals or comply with section 7803(e)(5)(A).

Argument

In the Taxpayer First Act of 2019 ("TFA"), Pub. L. No. 116-25, § 1001, 133 Stat. 981, Congress amended section 7803(e) to codify the right to a referral to Appeals, transforming what was previously a discretionary matter principally governed by administrative grace into a taxpayer right governed by statute. Paragraph (3) identifies the process Congress protected: a process for resolving federal tax controversies "without litigation." Paragraph (4), captioned "Right of appeal," directs that this process "shall be available generally to all taxpayers." And paragraph (5) imposes concrete limitations on the Commissioner's ability to deny that process to a taxpayer who has received a notice of deficiency: the Commissioner must provide a detailed, fact-specific explanation for the denial and an opportunity to protest it. § 7803(e)(3)-(5).

Those provisions matter here because Petitioner timely invoked the process Congress protected, but the Commissioner neither provided it nor formally denied it in the manner Congress prescribed. While Respondent contends that Petitioner is being denied the statutorily required referral "temporarily," Respondent requests that this Court dispose of some of the withheld issues by ruling on Respondent's motion for partial summary judgment. That action denies Petitioner's statutory right to Appeals.

I. Section 7803(e)(4) and (5) vest in taxpayers an enforceable right to a referral to the Independent Office of Appeals.

In section 7803(e), Congress enacted an integrated sequence of provisions that identifies a particular process, grants taxpayers access to it, and regulates the Commissioner's ability to deny that access.

A. The text, structure, and history of section 7803(e) establish a procedural right to the Appeals process.

When interpreting statutes, courts begin with the text. *Soroban Cap. Partners LP v. Comm'r*, 161 T.C. 310, 320 (2023); *Ross v. Blake*, 578 U.S. 632, 638 (2016). Section 7803(e)(4) provides: "The resolution process described in paragraph (3) shall be generally available to all taxpayers." Three features of the text compel the conclusion that Congress conferred a right, not a discretionary grace.

First, Congress used "shall." Unlike "may," which implies discretion, "shall" ordinarily "imposes a mandatory duty." *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171–172 (2016); *Shapiro v. McManus*, 577 U.S. 39, 43 (2015); *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) ("shall" creates an obligation "impervious to judicial discretion").

Second, Congress captioned the paragraph "Right of Appeal." While a heading cannot substitute for operative text, headings and titles are legitimate "tools available for the resolution of a doubt" about statutory meaning.

Almendarez-Torres v. United States, 523 U.S. 224, 234 (1998) (internal quotations omitted)*; accord Yates v. United States*, 574 U.S. 528, 539-40 (2015) (plurality op.). If any doubt existed about whether “shall be generally available” creates an entitlement, Congress resolved it by naming the paragraph a “right.”

Third, the right runs to “all taxpayers.” Congress chose the language of universality, not the language of eligibility. The TFA’s direction that Appeals “shall be generally available to all taxpayers” expressed Congress’ intent to ensure access to Appeals would be the rule, not the exception. The qualifier “generally” does not transform the entitlement into a matter of agency discretion. Read in context, “generally” is the textual hook for the bounded class of exceptions that Congress addressed in the very next paragraph—section 7803(e)(5), captioned “Limitation on designation of cases as not eligible for referral to Independent Office of Appeals.” That paragraph contemplates that some controversies may be designated as ineligible for Appeals, but it surrounds any denial of a referral request with mandatory requirements: a written notice containing a detailed description of the facts involved, the legal basis for the denial, a detailed explanation of how that legal basis applies to those facts, and a description of the procedures for protesting the denial. § 7803(e)(5)(A), (A)(i), (A)(ii), (C).

That structure is a familiar one: a general rule followed by defined exceptions. Exceptions to a statute’s general rule are construed narrowly to preserve the rule's primary operation. *Comm'r v. Clark*, 489 U.S. 726, 739 (1989) ("In construing provisions such as § 356, in which a general statement of policy is qualified by an exception, we usually read the exception narrowly in order to preserve the primary operation of the provision."). Further, where Congress has specified the circumstances and procedures under which a right may be withheld, it has by negative implication excluded ad hoc, unexplained, and unreviewable refusals. *See Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit,* 507 U.S. 163, 168 (1993) ("*Expressio unius est exclusio alterius*.").

Having established that a plain reading of the text of section 7803(e)(4) confers a right to a particular process, the text further identifies what process Congress established a right to access. Section 7803(e)(4) guarantees a right to a "resolution process described in paragraph (3)." Section 7803(e)(3) reads:

> It shall be the function of the Internal Revenue Service Independent Office of Appeals to resolve Federal tax controversies without litigation on a basis which—
>
> (A) is fair and impartial to both the Government and taxpayer,
>
> (B) promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and
>
> (C) enhances public confidence in the integrity and efficiency of the Internal Revenue Service.

The defining features of the process described in section 7803(e)(3) are the resolution of controversies "without litigation" on a basis "fair and impartial to both the Government and the taxpayer." Two consequences follow.

First, the right is temporal: a process for resolving disputes without litigation is only meaningful while a non-litigated resolution remains possible. An Appeals process referral offered after a case has been through dispositive motion practice is not a process "without litigation" at all.

Second, the right is structural. Congress deliberately separated Appeals from the IRS's litigating function. Section 7803(e)(6)(B) provides that when Appeals obtains legal advice from the IRS Office of Chief Counsel ("Chief Counsel"), that advice must, "to the extent practicable," come from attorneys "who were not involved in the case" and "who are not involved in preparing such case for litigation." Congress thus understood Appeals to be an alternative to litigation that should be walled off from IRS litigators.

The legislative history confirms what the text says. The House report accompanying the TFA explained that certain provisions of section 7803(e) were intended to "mak[e] access to Independent Appeals generally available to all taxpayers," while other provisions were intended to "prescribe notice and protest procedures" and make "[s]uch protest procedures . . . available to taxpayers." H.R. Rep. No. 116-39, at 31 (2019). During the immediately prior Congress, the House released a report accompanying proposed language identical to that found in section 7803(e) as eventually enacted, in which it expressed concern that "over time, the agency has exercised its discretion to prevent certain taxpayers from accessing the review process." H.R. Rep. No. 115-637, at 14-15 (2018). The Committee further wrote they had become "aware of several instances in which a taxpayer's request for Appeals consideration was denied, but the taxpayer was not clearly advised of the reasoning that resulted in the denial." *Id.* at 17. The intent of the law was to "provide guidelines for administrative procedures that the IRS must follow in denying requests for an independent administrative review." *Id.*

Section 7803(e)(5) was Congress' response to the growing number of unexplained denials of Appeals consideration. Congress expressly established taxpayers' right to appeal IRS determinations to an independent forum; limited exceptions to that right; prescribed safeguards when referral is denied, including requiring a written explanation of the basis therefore and an opportunity to protest such denial; insulated Appeals from personnel involved in the litigation of the case; and specified that such administrative review shall be a process "without litigation." § 7803(e)(3)–(6). This detailed framework confirms that referral is the rule and denial is a limited, reviewable exception.

B. Access to Appeals is vital to allowing taxpayers to resolve disputes expeditiously and fairly outside of litigation.

Congress did not codify the right to Appeals as an empty formalism. Since its inception in 1927, Appeals has resolved the overwhelming majority of cases it considers without litigation, to the benefit of taxpayers, the public treasury, and this Court alike. In 2025, Appeals opened 60,933 cases and closed 52,997 cases, with

40,313 cases pending. INTERNAL REVENUE SERVICE DATA BOOK, 2025 at 64 Tbl. 4-3 (Apr. 2026) (https://www.irs.gov/pub/irs-pdf/p55b.pdf). Of the cases reviewed by Appeals between 2013 and 2022, 59% were fully resolved, with another 10% partially resolved. U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-105552, TAX ENFORCEMENT: IRS COULD BETTER MANAGE ALTERNATIVE DISPUTE RESOLUTION PROGRAMS TO MAXIMIZE BENEFITS at 18 Fig. 4. (May 2023) (https://www.gao.gov/products/gao-23-105552). Of those designated for Fast Track, 77% of cases were fully resolved, with another 2% partially resolved. *Id.* In surveys, 65% of taxpayers were satisfied with Appeals, with 83% of taxpayers finding Appeals professional, and 74% feeling the Appeals Officer considered their side of the case. *Independent Office of Appeals Customer Satisfaction Surveys, Fiscal Year 2025* (Jun. 28, 2026) (https://www.irs.gov/appeals/independent-office-of-appeals-customer-satisfaction-surveys). The IRS reports that the average Appeals cycle time of non-docketed cases, from receipt to closure, was 271 days. *Id.* For non-docketed cases received from Exam, that time was 265 days. *Id.* In short, Appeals is relatively fast, efficient, fair, and inexpensive.

Such conclusions are bolstered by three structural features of Appeals, which make the Appeals process irreplaceable by litigation.

First, Appeals is statutorily impartial and does not require strict compliance with the rules of evidence. Section 7803(e)(3)(A) obligates Appeals to resolve controversies on a basis “fair and impartial to both the Government and the taxpayer.” No comparable duty runs to Chief Counsel, whose attorneys represent the Commissioner in this Court, and whose professional obligation is zealous advocacy for their client’s position. While this Court ultimately weighs the taxpayer’s position against the Commissioner’s, the taxpayer must first support its position with admissible evidence. Evidence could be inadmissible for failure to comply with a host of formalities, and witnesses may be unavailable to testify. The evidentiary burdens imposed are costly to any taxpayer, and the attorneys’ fees in complying can cost as much as the tax liability in dispute. At Appeals, by contrast, the officer evaluates the practical strengths and weaknesses of each side’s position without such procedural prerequisites.

Second, the Appeals process is faster and cheaper than litigation, as well as confidential. An Appeals conference is informal; it involves no discovery, no motions process, no expert disclosures, no trial preparation, and no trial. Taxpayer return information exchanged in the process remains protected by section 6103, whereas litigation unfolds on a public record. For small businesses in particular, the difference between an informal conference and a full Tax Court adjudication is frequently the difference between vindicating a position and abandoning it on the grounds of cost alone.

Third, Appeals possesses the authority to settle cases based on the hazards of litigation. An Appeals officer may settle for a percentage of the amount in dispute based on the probability that each side would prevail on each issue. By describing the hazards of litigation, the Appeals process provides both parties the opportunity to take stock of the weaknesses of their positions and evaluate their likelihood of success. Appeals' probabilistic decision making allows disputes with genuine uncertainty to be resolved sensibly rather than tried expensively.

Appeals access serves judicial efficiency. Every controversy Appeals settles is a trial this Court need not conduct and an opinion it need not write. The practice of referring docketed cases to Appeals for settlement consideration exists precisely because the administrative settlement function and the judicial function are complimentary. A construction of section 7803(e) that permits the Commissioner to bypass Appeals at will would not only frustrate congressional intent but would divert to this Court's docket disputes that Congress intended to be resolved administratively.

II. Respondent violated the requirements of section 7803(e)(5)(A).

A. Respondent's motion for summary judgment is a denial of the referral right.

When a taxpayer has requested referral to Appeals, and the Commissioner responds by moving for partial summary judgment, he has denied the request in substance. The right conferred by section 7803(e)(4) is a right to a process for resolving the controversy "without litigation." A motion for summary judgment is the opposite. It is a demand that the controversy be resolved through litigation and with finality. If the motion is granted, the issue has been decided by the Court, and the right to Appeals is extinguished. While there is the possibility that Respondent's motion for summary judgment will be denied, for that possibility to come to fruition, Petitioner will first have to engage in summary judgment briefing. But even this conditional access to Appeals is a denial of the right: a process cannot resolve a tax controversy "without litigation" after a court has decided it through litigation.

A statutory entitlement cannot be subjugated by the expedient of never saying "no" while acting so as to make "yes" impossible. Agency conduct that forecloses a statutory right operates as a constructive denial of that right. Any alternative reading—*e.g.*, that section 7803(e)(5)(A) is not avoided by ignoring the referral request and simply litigating—would read out of the Code both the right established by section 7803(e)(4) and the section 7803(e)(5)(A) requirements which impose preconditions on any lawful denial. The canon against surplusage confirms that each provision of section 7803(e) must be given effect. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.” (citation and internal quotation marks omitted)); ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 174 (2012) (“If possible, every word and every provision is to be given effect. … None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.”).

Here, the Commissioner has evaded the statutory notice and protest procedures in section 7803(e)(5)(A) and has simply begun litigating. This is a de facto denial of the referral request and disregards the statutory restrictions Congress requires before any lawful denial is authorized.

B. A valid denial must rest on an identified exception and a right to protest.

Section 7803(e)(5)(A) prescribes the exclusive path by which a referral request from a taxpayer in receipt of a notice of deficiency may be denied:

> If any taxpayer which is in receipt of a notice of deficiency authorized under Section 6212 requests referral to the Internal Revenue Service Independent Office of Appeals and such request is denied, the Commissioner of Internal Revenue shall provide such taxpayer a written notice which
>
> (i) provides a detailed description of the facts involved, the basis for the decision to deny the request, and a detailed explanation of how the basis of such decision applies to such facts, and
>
> (ii) describes the procedures prescribed under subparagraph (C) for protesting the decision to deny the request.

Subparagraph (C) directs the Commissioner to prescribe procedures for protesting a denial, and subparagraph (D) requires an annual written report to

Congress identifying the number of denials and the reasons for them (described by category). The only denials Congress excused from this regime are those based on frivolous positions. § 7803(e)(5).

Three consequences follow. First, a lawful denial presupposes an articulable basis—a recognized ground of ineligibility that can be described in detail and applied to the particular facts of a given case. A refusal that rests on no identified exception, or that does not provide a "detailed explanation of how the basis of such decision applies to such facts," is therefore not a denial the statute permits.

Second, the notice must come at a time when the protest it describes can still accomplish something. A reason-giving requirement paired with a protest right is a mechanism for reconsideration. It presupposes that the decision is not irrevocable.

Third, the requirements are enforceable. It is true that Congress only prescribed that protest procedures be promulgated and the taxpayer be notified of such procedures, and it did not define the scope of judicial review over such procedures. But there is no question that this Court would be able to review such protest procedures if they were patently unreasonable and unfair. *See Pung v. Isabella County*, 146 S. Ct. 1964, 1970, 1972 (2026) (holding that a taxpayer is entitled to "fairly conducted" procedures in the collection of a tax debt). Further, this Court's involvement with section 6751(b)'s written supervisory approval requirements demonstrates that other statutory provisions that prescribe preconditional conduct are enforced in deficiency proceedings. *See Graev v. Comm'r*, 149 T.C. 485 (2017) (enforcing section 6751(b)'s written supervisory approval requirement by placing the burden of production as to compliance on the Commissioner), *supplementing and overruling in part*, 147 T.C. 460 (2016).

C. Respondent's denial of Appeals rights is unlawful.

Simply put, Respondent's denial of Petitioner's Appeals rights is unlawful due to his failure to communicate in writing an applicable exception, factual basis, and protest procedures applicable to the denial. The absence of any one of those required elements renders the denial invalid.

Section 7803(e)(5)(A) does more than regulate how denials are communicated, it defines what a lawful denial is. Treas. Reg. § 301.7803-3 implements the statutory notice requirement: when a taxpayer in receipt of a statutory notice of deficiency requests referral and is denied, the IRS "must provide" a written notice containing a detailed description of the facts involved, the basis for the decision, a detailed explanation of how the basis applies to the facts, and a description of the procedures for protesting the denial. The regulations further demonstrate that detailed notice-and-protest procedures are a mandatory ingredient of every lawful denial: the Commissioner "must provide" them. Treas. Reg. § 301.7803-3(a). A denial of referral that identifies no exception and provides no protest opportunity is unlawful under both the Code and the Commissioner's own rules. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–67 (1954) (articulating the "*Accardi* doctrine" that federal agencies must follow their own established regulations, policies, and procedures).

Further, Treas. Reg. § 301.7803-2(c) specifically enumerates 24 exceptions to the right to Appeals consideration. None of these specifically enumerated exceptions permit the Commissioner to deny referral to Appeals so he can file a dispositive motion. This alone renders the denial impermissible. *See Leatherman,* 507 U.S. at 168 ("*Expressio unius est exclusio alterius*."); SCALIA & GARNER, *supra,* at 107 ("The expression of one thing implies the exclusion of others (*expressio unius est exclusion alterius*)."). And even if the denial met an enumerated exception under the regulations (it does not), that cannot save Respondent's position where he has not complied with the notice-and-protest requirements.

The only potentially applicable exception omits from the referral right "[a]ny case or issue designated for litigation, or withheld from Appeals consideration in a Tax Court case, in accordance with guidance regarding designating or withholding a case or issue." Treas. Reg. § 301.7803-2(c)(21). But the Commissioner has not invoked that exception, or any exception for that matter. Moreover, the Commissioner has not received the approval necessary to invoke this exception. The preamble to the regulations states, with respect to -2(c)(21), that "[t]he determination to withhold a case or issue from Appeals requires a high-level review, with the decision ultimately resting with the Division Counsel or a higher-level Chief Counsel official." T.D. 10030, 2025-11 I.R.B. 1066. Respondent has not put forward evidence of such higher-level review here.

In section 7803(e), Congress required that the Commissioner provide a protest mechanism specifically to ensure that the withholding of such cases is not solely left up to a singular determination by an IRS attorney. With respect to cases designated for litigation, the regulations' preamble confirms that a higher-level review must be conducted to invoke withholding on that basis. Where high-level review is required and Congress requires protest mechanisms, the failure to abide by the statute invalidates any denial on that basis.

Agencies have no right to revise statutory schemes to accord with their own sense of how the scheme should work. *See Util. Air. Regulatory Grp. v. EPA*, 573 U.S. 302, 327 (2014) ("Nothing … remotely authorizes an agency to modify unambiguous requirements imposed by a federal statute."). That is doubly true where the practice embodied by the agency construction is the very practice Congress legislated against. *See* H.R. Rep. No. 115-637, at 14-15 (2018) (in which Congress expressed concern that "over time, the agency has exercised its discretion to prevent certain taxpayers from accessing the review process").

D. The amendments to section 7803(e) supersede Revenue Procedure 2016-22.

The only authority the Commissioner invokes to justify its failure to refer this action is Revenue Procedure 2016-22. *See* Rev. Proc. 2016-22, § 3.04 (permitting Chief Counsel to "delay forwarding a docketed case to Appeals when Counsel anticipates filing a dispositive motion"). That revenue procedure was issued three years before the TFA added subsections 7803(e)(4)-(5). It governed Appeals consideration of docketed Tax Court cases against a backdrop of complete agency discretion of all requests for referral. Congress had not yet codified the Appeals process as a right to which taxpayers were entitled, and courts had held that there was no such right. *See Moya v. Comm'r*, 152 T.C. 182, 201 (T.C. 2019) (no right to Appeals existed); *Facebook, Inc. v. Internal Revenue Serv.*, 2018 WL 2215743, at *2 (N.D. Cal. May 14, 2018) (the Taxpayer Bill of Rights did not confer a right to an Appeals process). Accordingly, the Revenue Procedure confers no authority on the IRS to maintain its discretionary practices where Congress has clearly spoken to restrain such practices.

And Congress did speak: it legislated in 2019 to restrain the discretionary practices embodied in the revenue procedure. Congress stripped the Commissioner of unfettered ability to deny referrals based on Revenue Procedure 2016-22's designation-for-litigation rationale. The amendments to section 7803(e) gave taxpayers a right to Appeals and cabined any denials.

Where Congress by statute has divested the Commissioner of the power to lawfully deny such requests, Revenue Procedure 2016-22 cannot retroactively give it back. A revenue procedure does not carry the force of law, and even a regulation adopted with full notice and comment is a nullity to the extent it conflicts with the statute it implements. Revenue Procedure 2016-22 survives only insofar as it operates consistently with the current statute. Where it diverges, section 7803(e) controls.

III. This Court has authority to order a referral to Appeals.

A. The Commissioner's failure to refer a case to Appeals is reviewable in this Court.

While section 7803(e) does not expressly state what mechanisms are available to remedy noncompliance, that is of no moment. To the contrary, the presumption of judicial review of non-discretionary agency action "may be rebutted only if the relevant statute precludes review…." *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 23 (2018) (citing 5 U.S.C. § 701(a)(1)). Similarly, although "no provision of the Code—or of any other statute—grants us jurisdiction to determine respondent's compliance with section 6751(b)(1) as an abstract, stand-alone, matter," this Court has found the IRS's violation of section 6751(b) is reviewable via deficiency proceedings. *Computer Scis. Corp. v. Comm'r*, 165 T.C. 119, 132 (2025). Like section 6751(b) cases, this Court has jurisdiction to adjudicate the Commissioner's compliance with section 7803(e)(5)'s preconditional procedural requirements.

Indeed, the Eleventh Circuit affirmed dismissal of a case challenging a violation of section 7803(e) on the basis that the Tax Court can provide such a remedy. *Hancock Cnty. Land Acquisitions, LLC v. United States*, No. 21-12508, 2022 WL 3449525, at *3 (11th Cir. Aug. 17, 2022) (per curiam). From that decision, it follows that this Court is the only court with jurisdiction to review the IRS's failure to follow section 7803(e). If enforcement of section 7803(e)(5) were unavailable here, the procedural right Congress authorized would be judicially unenforceable. That result is at odds with the "strong presumption" that Congress favors judicial review of administrative action. *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 486 (2015).

Moreover, section 7803(e)(5)'s protest requirements provide a mechanism for reconsideration, indicating that Chief Counsel's determinations must be subject to review. Congress mandated that the taxpayer must have an opportunity for the Commissioner to review Chief Counsel's determination under Treas. Reg. § 301.7803-2(c)(21) that any such withheld issue cannot be resolved without a full concession. In doing so, Congress stripped Chief Counsel from having unreviewable powers to determine that the regulatory exception applies.

B. The Court's rules authorize an order directing referral, or, at minimum, deferring ruling on Respondent's motion pending compliance with section 7803(e)(5).

As to remedies, Tax Court Rule 1(d) directs that the Rules be construed to "secure the just, speedy, and inexpensive determination of every action and proceeding." Where there is no applicable procedure, the Court "before whom the matter is pending may prescribe the procedure." TAX CT. R. 1(b). No rule speaks specifically to the remedy for the Commissioner's noncompliance with section 7803(e)(5) in a docketed case. Rule 1(b) therefore empowers the presiding judge to prescribe one. An order staying disposition of the pending motion and directing referral to Appeals, or deferring consideration of the motion until Respondent complies with the statute by issuing the notice with its requisite explanations and protest procedures, falls squarely within Rule 1's grant and advances the values of "just, secure, and inexpensive determination[s]." TAX CT. R. 1(d).

Rule 50, which governs motion practice generally, confirms that the Court's control over the disposition of motions includes such orders as described above. To dispose of a motion, the Court "may take such action as the Court in its discretion deems appropriate, on such prior notice, if any, which the Court may consider reasonable." TAX CT. R. 50(b)(3). In deciding how to apply that discretion, the Court can consider its inherent authority "'over [its] own process, to prevent abuse, oppression and injustice.'" *Ash v. Comm'r*, 96 T.C. 459, 470 (1991) (quoting

Gumbel v. Pitkin, 124 U.S. 131, 146 (1888)). Respondent invoked the Court's process by filing a motion for partial summary judgment. It therefore follows that the Court can preclude the abuse of that process by deferring consideration of issues that were brought before it in violation of applicable law.

Further, Rule 103 is instructive on the breadth of the Court's protective powers. On motion, "or on the Court's own, and for good cause, the Court may make any order that justice requires to protect a party from . . . undue burden or expense," including that a "particular method or procedure" be used or not be used. TAX CT. R. 103(a)(1), (3). The Court may use its inherent authority to issue an order under Rule 103 that applies to conduct beyond its confines. *See Westreco, Inc. v. Comm'r*, 60 T.C.M. (CCH) 824 (T.C. 1990) (prohibiting Respondent's counsel from participating in the examination of the petitioner's returns for subsequent years). The unlawful denial of a procedural right which unduly exposes taxpayers to costly litigation is an "undue burden or expense" Rule 103 exists to prevent. Deferral of a motion for summary judgment pending Appeals consideration is an ordinary exercise of the Court's authority.

Nor would an order directing Appeals consideration be novel. Obviously, the Court frequently issues remand orders in Collection Due Process cases, where there is no explicit statutory grant. The Court has directed referral to Appeals in deficiency cases as well. *See* Order, *Cavallaro v. Comm'r*, Docket No. 1128-21

(Aug. 13, 2024) (denying motion for summary judgment without prejudice and requiring the Commissioner to "take whatever action is necessary to facilitate the prompt consideration of this case by Appeals"). A short stay while Congress's chosen administrative process runs its course is a modest exercise of a court's inherent power to manage its own docket.

If the Court did not provide the relief requested here, the Commissioner would be able to subvert the requirements of section 7803(e)(5)(A) without consequence.

Conclusion

Congress codified the Independent Office of Appeals, captioned its availability a "Right of Appeal," commanded the right be "generally available" to "all taxpayers," and prescribed the exclusive, procedurally safeguarded paths by which a referral may be denied. The Commissioner may not extinguish that right by moving for summary judgment in violation of section 7803(e)(5)(A). Further, this Court has the authority to remedy the Commissioner's violation of the statutorily conferred right. The Chamber respectfully submits this Court should 1) deny or defer ruling on the Commissioner's motion for summary judgment, and 2) order the Commissioner to either refer this case to Appeals or to comply with the notice-and-protest requirements of section 7803(e)(5)(A).

Dated: July 30, 2026

Respectfully Submitted,

Caitlin R. Tharp (TC0284)
Alizain Devshi (DA25126)
STEPTOE LLP
1330 Connecticut Ave NW
Washington, DC 20036
Tel: (202) 429-3000
ctharp@steptoe.com

Kevin R. Palmer
Christopher J. Walker
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062
Tel: (202) 463-5337

Counsel for the Chamber of Commerce of the United States of America

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing paper was served on Petitioners and on counsel for Respondent both by electronic mail and by sending the same on July 30, 2026, via FedEx overnight delivery addressed as follows:

Daniel A. Rosen
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178-0060

Michael T. Shelton
Office of Chief Counsel
Internal Revenue Service
John Weld Peck Federal Building
550 Main Street, Suite 9-351
Cincinnati, OH 45202

Dated: July 30, 2026

Respectfully Submitted,

Caitlin R. Tharp (TC0284)