

Same Dispute, Alternative Resolution Path for Taxpayers

By Peter Haukebo, Esq.

When settlement discussions with the IRS Independent Office of Appeals fall apart, most taxpayers assume they are left with a quandary to either accept the government's position or go to court.

But there is a third option.

Post-Appeals Mediation (PAM) is an Alternative Dispute Resolution (ADR) program authorized by section 7123(b)(1) of the Internal Revenue Code. This overlooked option gives taxpayers one more structured negotiation, typically compressed into a single day, before anyone files a lawsuit.

A pair of pilot programs launched in 2025 has made PAM more attractive for taxpayers than at any point in the program's history, most notably by guaranteeing a fresh Appeals team—one with no connection to the failed negotiation—on the other side of the table.

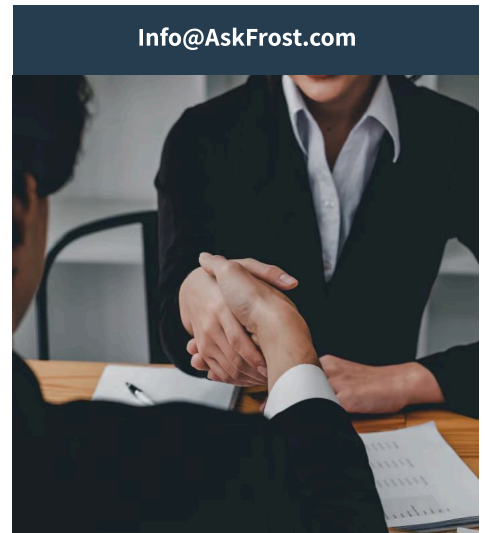
This article explains what post-appeals mediation is, what the 2025 pilots changed, what a mediation session actually looks like in practice, and a procedural wrinkle every taxpayer working with Appeals should watch—especially those with Employee Retention Credit (ERC) claims.

For people with a dispute that has stalled in Appeals, including ERC claims, Frost Law can help. Contact the firm at **(410) 497-5947** to discuss options.

What Is Post-Appeals Mediation?

PAM is nonbinding mediation between a taxpayer and Appeals, available when the parties have negotiated in good faith through the traditional Appeals process but cannot reach agreement. The governing procedures appear in IRS Revenue Procedure 2014-63, supplemented by Internal Revenue Manual

Info@AskFrost.com





provisions.

If a request is accepted by the IRS, the parties meet in an accelerated mediation session facilitated by a trained Appeals mediator with no connection to the underlying case. The Appeals mediator serves at no cost to the taxpayer, and the taxpayer may retain an outside co-mediator at its own expense. No mediator has the authority to impose a result; rather, the job is to define the issues, identify common ground, and pressure-test each side's litigating hazards. If the session fails, the taxpayer has lost little but time, and every litigation right survives.

PAM is one of several ADR programs Appeals administers. What distinguishes it is timing; it is the only program available after a traditional Appeals proceeding has run its course, making it the taxpayer's last off-ramp before litigation.

What the 2025 Pilots Changed

Two rounds of 2025 guidance have reshaped the program. First, IRS **Announcement 2025-6**, effective for alternative dispute requests made on or after January 15, 2025, widened access to Appeals ADR generally. Most relevant here: Participating in Fast Track Settlement no longer disqualifies a taxpayer from later requesting the PAM process, and no PAM request may be denied without first-line IRS executive approval and an explanation to the taxpayer.

The more consequential change came in the agency's **interim guidance issued September 11, 2025**, and **announced publicly on October 1**. Under this two-year pilot, an accepted PAM case is reassigned to a "receiving" Appeals team. That means a new Appeals Technical

Employee and Appeals Team Manager—neither of whom may have any connection to the underlying case—enter the conversation, and that new team represents Appeals in the mediation session. The mediator, likewise, cannot come from the team that handled the original appeal.

Why does that matter? Under prior procedure, the Appeals employee across the table in mediation was ordinarily the same one who had already declined to settle. However skilled the mediator, that structure asked one party to abandon a position it had just spent months defending. The pilot replaces that questionable dynamic with what the IRS calls "an expedited fresh look at the case."

In a taxpayer-friendly move, guidance tilts toward acceptance into the program. The receiving teams are directed to generally accept eligible requests unless Appeals is convinced the issues carry no litigation hazards for the government or Appeals lacks the authority to grant the requested relief—and even then, a denial requires concurrence from an executive in the IRS leadership ranks.

What a PAM Session Actually Looks Like

PAM is generally available for non-docketed cases still within Appeals' jurisdiction where the taxpayer and Appeals negotiated in good faith but failed to settle. It covers collection-type issues like Offers in Compromise (OIC) and Trust Fund Recovery penalty disputes and most examination issues, including disallowed Employee Retention Credit refund claims.

A few observations from our experience at Frost Law with the PAM process:

- The discussion summary drives the day. Each side



submits a concise brief framing the issues and its view of the hazards. A disciplined, record-cited summary—not a kitchen-sink protest—is the single best investment in the process.

- Sessions are efficient. A half day to a full day is typical, and while in-person attendance is an option (and may be pursued if desired), sessions are increasingly attended by videoconference, with the Appeals mediator presiding and counsel, the taxpayer, and any co-mediator attending remotely.
- A co-mediator can earn their fee. Taxpayers should seriously consider retaining an independent co-mediator. An independent voice validating (or challenging) each side's hazard assessment can move numbers that adversarial argument cannot.
- It is a negotiation, not a hearing. The mediator will not rule for anyone. Parties should arrive with a realistic settlement range, authority to commit, and a clear sense of their walk-away point.

If the parties settle, the case closes on the agreed basis. If not, the taxpayer proceeds to litigation no worse off than before.

The Takeaway, and How to Get Help

An unsuccessful Appeals conference no longer means choosing between conceding and litigating. The 2025 pilots make mediation a genuine third option—same dispute, but a new negotiation and fresh faces across the table. Both pilots are two-year programs (and the window is open now) but PAM is available only while your case remains within Appeals' jurisdiction. Once a file is released to another business unit, mediation is likely off the table.

If your dispute—whether it's ERC or another issue—has stalled at the IRS in Appeals, contact Frost Law at **(410) 497-5947** sooner rather than later.

More News Articles