

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

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July 7, 1998

Responsibility for Ascertaining
Subject: Continuing Validity of Prior Guidance **Cancellation Date:** January 3, 1999

This Notice is intended to clarify procedures to ensure that all attorneys take responsibility (a) for ascertaining whether recent legislation, litigation or administrative action affects the continuing validity of guidance previously provided with respect to an issue or case assigned to them and (b) for coordinating matters assigned to them with all appropriate offices within Counsel.

Background

The Service has a responsibility to re-evaluate, and revise when necessary, its announced positions with regard to issues of both substantive tax law and tax administration. Often these changes in position are prompted by external developments, such as new legislation or court decisions. In addition, guidance issued by the Service on one matter often requires it to take a fresh look at a previously announced position with respect to another matter. Even case-specific guidance provided during the pendency of an audit or litigation can be rendered inappropriate or invalid by subsequent changes in the law or in the Service's litigating position prior to the time the case is closed. In such cases, our continued assertion of the positions expressed in the prior guidance would not only squander the agency's resources but, more importantly, impose an unfair burden on the taxpayers involved.

Responsibilities of Attorneys

Regularly update research. Chief Counsel attorneys, during the period a case is assigned to them, should update their research with respect to particular issues affecting the case to ensure that changes in the law and changes in Service position are appropriately considered. In determining current Service position, attorneys should consult published forms of IRS guidance, such as regulations, revenue rulings, revenue procedures, notices, and actions on decisions (AODs); and statements of Chief Counsel positions and policies, which are made available to all Regional and District Counsel offices, such as Litigation Guideline Memoranda and Chief Counsel Notices. Although not precedential, attorneys should also review technical advice memoranda and private letter rulings for discussions of legal analysis as applied to particular factual scenarios.

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Coordinate with other offices. An attorney who has received guidance and who thereafter becomes aware of developments which may affect its continuing validity, such as the issuance of a new statute, regulation, ruling, or AOD, should consult with the office which provided the prior guidance to determine if the guidance has been affected by the new development.

When an attorney receives a request for assistance on an issue over which another office shares jurisdiction, the attorney must coordinate the response with the other office. When an attorney receives a request for assistance that raises an issue over which the attorney does not have jurisdiction, the attorney must coordinate with the office that does have jurisdiction or, if appropriate, direct the inquiring attorney to contact the other office for assistance.

These procedures will be included in the next series of revisions to the CCDM.

/s/ Marlene Gross
for STUART L. BROWN
Chief Counsel