

┌ N(34)613-2 ┐  
└ CR: N(33)000-2 ┘

March 2, 1998

Prereview of Defense/Settlement  
Letters Re: Section 7433

**Subject:** Suits/Bivens Actions

**Cancellation Date:** August 29, 1998

In accordance with CCDM (34)613, all defense and settlement letters regarding any complaint filed against the United States which (1) seek relief under I.R.C. § 7433 or (2) state facts which are cognizable under section 7433, must be transmitted to the Office of the Assistant Chief Counsel (General Litigation) for prereview prior to sending these letters to the Department of Justice. This includes cases in which the 7433 claim appears to be frivolous or is not the primary claim in the Complaint. District counsel should send all letters, as well as the relevant portions of the administrative and legal files, to the attention of the Chief, Branch 3 (General Litigation), with sufficient time to ensure meaningful prereview.

CCDM (34)613(5), which allows post-review in cases where time does not permit prereview, is hereby suspended for such letters. When time is of the essence, district counsel should still ensure that the Chief, Branch 3 (General Litigation) has the opportunity to review the defense letter before it is transmitted to the Department of Justice and should raise with the National Office and the Department of Justice the possibility of obtaining an enlargement of time for the Government to respond. To ensure expedited review, district counsel should always enclose the relevant portions of the administrative and legal files with the proposed defense or settlement letter.

The Office of Assistant Chief Counsel (General Legal Services) will now prereview all defense and settlement letters in connection with any complaint filed against an employee of the United States which makes a *Bivens*-type claim in conjunction with either (1) a section 7433 claim or (2) factual allegations which indicate that the Internal Revenue Service ("Service") either should have obtained a Writ of Entry or else obtained an invalid Writ of Entry. Any question from the staff of the Assistant Regional Counsel (General Legal Services) as to whether the Service should have obtained a Writ of Entry should be referred to the Assistant Regional Counsel (General Litigation). The Office of Assistant Chief Counsel

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(General Legal Services) will coordinate the letters with Chief,  
Branch 3 (General Litigation).

\_\_\_\_\_/s/  
RICHARD J. MIHELICIC  
Associate Chief Counsel  
(Finance & Management)

\_\_\_\_\_/s/  
ELIOT D. FIELDING  
Associate Chief Counsel  
(Enforcement Litigation)