

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

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October 13, 1999

Subject: Classification of Documents as "Official Use Only" **Cancel Date:** Upon Incorporation Into the CCDM

This Notice (1) provides procedures for use of the "Official Use Only" administrative classification, and (2) declassifies documents issued by the Office of Chief Counsel which are inappropriately, or no longer need to be, classified Official Use Only.

Background

By memorandum dated December 17, 1998, the Assistant Commissioner (Examination), pursuant to a request by the Commissioner, set into motion a Servicewide review of documents bearing the Official Use Only administrative classification to determine whether the classification is appropriate and, if not, to declassify them. Within the Office of Chief Counsel, the Assistant Chief Counsel (Disclosure Litigation) has coordinated this effort. This notice is the culmination of that review within the Office of Chief Counsel.

Standards and Procedures for Classification of Documents

There are only two classifications of non-national security official documents authorized within the Office of Chief Counsel: "Limited Official Use" and "Official Use Only." The former classification "For Official Use Only" is no longer used; older documents classified "For Official Use Only" are to be considered as classified "Official Use Only."

Documents may be classified "Limited Official Use" only by the Commissioner. This classification is reserved only for materials intended for use by the highest officials within the Internal Revenue Service or addressed to officials of the Department of the Treasury. Such materials contain information of such an important, delicate, or sensitive nature that they should be treated confidentially, and restricted to those officials and their immediate subordinates who need to know such information.

Only the persons authorized in Delegation Order No. 89, as revised, may classify documents "Official Use Only." Delegation Order No. 89 (Rev. 9) grants the authority to classify (and declassify) documents "Official Use Only" in the Office of Chief Counsel only to the Chief Counsel, the Deputy Chief Counsel, and the Associate Chief Counsel; this authority may not be redelegated.

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The primary intention of classifying a document "Official Use Only" is to prevent the automatic distribution to the public of printed materials (*i.e.*, materials which have been reproduced by any method other than office copying machines) which should not be subject to such distribution. The classification system promotes uniformity by precluding the possibility that a document could be withheld from the public by one office while being released by another.

The absence of an "Official Use Only" designation from any document does not indicate that the document may be released to the public, but merely means that its releasability depends on appropriate factors. The limited distribution of Service documents, such as reports of investigation, memoranda and correspondence, and the normal safeguarding of Service files as required by law, *e.g.*, I.R.C. § 6103, Fed. R. Crim. P. 6(e), and the Privacy Act of 1974, to prevent unauthorized disclosures makes administrative classification generally unnecessary.

The overall principle is that the greatest amount of information be made available to the public whenever possible. The classification "Official Use Only" in the Office of Chief Counsel will generally be used only for law enforcement matters of the type found in the Chief Counsel Law Enforcement Manual (LEM), including Litigation Guideline Memoranda (LGMs). Classification is generally word by word or line by line, such that only the specific words or lines that need to be classified are in fact classified.

The issuance of Law Enforcement Manuals, or the classification of documents as "Official Use Only," requires the concurrence of the Office of the National Director, Governmental Liaison and Disclosure. Issuance of Law Enforcement Manuals and classification of documents "Official Use Only" in the Office of Chief Counsel shall be coordinated with the Office of the Assistant Chief Counsel (Disclosure Litigation), which will serve as the Office of Chief Counsel's liaison with the Office of Governmental Liaison and Disclosure.

This Notice does not extend to documents classified because of national security concerns (Top Secret, Secret, Confidential, etc.). Authority to classify information which is not entitled to protection in the interest of national security under appropriate Executive Order, but which requires protection, is provided by Treasury Directives Manual TD 71-02.

For additional guidance on the use of the "Official Use Only" classification, please refer to IRM 1.3.12, Disclosure of Official Information Handbook.

Declassification of Documents

Pursuant to the review described above, the following documents are hereby declassified. Please note that declassified documents are not automatically available to the public through mere declassification.

- "Criminal Tax Developments," undated
- "Field Service Litigation Updates"
- "Guidelines for Inbound Transfers of Tangible Property," undated
- "Industry Specialization Program (ISP) Status Reports"
- "Korean Permanent Establishment Case (Taxpayer Name Omitted)," undated
- "Large Case Program Suspension/Recovery Rate Analysis FY94-FY96," undated
- "List of Insurance Issues," undated
- "Notice Case Program Annual Report (Draft)," undated, including Appendix
- "Permanent Establishments in Korea (Taxpayer Name Omitted)," undated, including attachment, control No. 785-89, "Part II, United States Draft Model Income Tax Treaty"
- "Proposed Bankruptcy Fraud Prosecution Standards," Arkansas-Oklahoma District, undated
- "Guideline of Taxation on a Foreign Company Which Operates Plant Construction and Sales Business," November 1988, translated November 18, 1989
- "Analysis of Arm's Length Pricing in Inbound Distribution Cases," July 16-20, 1990
- "Large Case Workshop User Guide," January 1991
- "Can Income Be Allocated to a Branch Under Section 482?," January 29-31, 1991
- "Calculation of Effectively Connected Income from Inbound Sales," January 29-31, 1991
- "Issues Regarding § 482 Cost Sharing Arrangements, International CPE," April 29-May 3, 1991
- "Forfeitures," Document 9283, August 1994
- "Criminal Tax issues in Motor Fuel Excise Tax Enforcement," Document 9356, January 1995
- "Bankruptcy Referral Guidelines," January 1995
- "Final Report and Recommendations of the Insolvent Financial Institutions Working Group; How Should IRS Handle Failed S&Ls?" and appendices, August 15, 1991
- "Criminal Tax Developments – 1995," Document 9415, June 1995
- "Forfeitures," Document 9283, January 1996
- "Money Laundering from the Federal Perspective," Document 7919, January 1996
- "Tax Crimes Handbook," Document 9482, February 1996
- "Criminal Tax Developments – 1996," Document 9415, July 1996
- "Large Case Program Suspension Rate/Recovery Rate Report," August 21, 1996

- "Criminal Tax issues in Motor Fuel Excise Tax Enforcement," Document 9356, October 1996
- "National CLE: New Service Center Issues; TBOR 2 and other 1996 Tax Legislation," February 1997
- "Study of Refund Claim Practices in the Coordinated Exam Program, Background Materials," April 1, 1997
- "Orientation to Criminal Tax," Document 10024, April 1997
- "Notice Case Program Review," April 4, 1997
- "Forfeitures," Document 9283, August 1997
- "Money Laundering from the Federal Perspective," Document 7919, September 1997
- "Notice Case Program," January 14, 1998
- "Notice Case Program," June 15, 1998
- "Sustension Rate Report (CEP and Over \$10 Million Corporate Cases FY 1994-1997)," June 30, 1998
- "Outline for IRS Continuing Professional Education Re: May Department Stores Interest Issues," September 22, 1998
- "Notice Case Program," October 30, 1998
- "Outline for ARC Meeting Re: May Department Stores Interest Issues," November 3, 1998
- "Sustension Rate Report (CEP and Over \$10 Million Corporate Cases FY1994-1997)," July 30, 1999

Pursuant to the review described above, the following document is hereby declassified in part.

- "The Willful Evasion Exception to Discharge Under Section 523(a)(1)(C) of the Bankruptcy Code," Document 10275, August 1997

To the extent that any memoranda issued by the Office of Chief Counsel, however styled, bears the Official Use Only designation, such memoranda are not entitled to this administrative classification and are hereby declassified.

Any "pseudo-classifications" which have been affixed to documents produced in the Office of Chief Counsel, such as, but not limited to, "Internal Use Only," "Counsel Use Only," "Eyes Only," "Official Government Use Only," "IRS Internal Use," and "Not for Public Release," are unauthorized and are not to be used. All documents bearing these or similar designations are hereby declassified.

Inquiries concerning this Notice may be directed to the Office of the Assistant Chief Counsel (Disclosure Litigation) at (202) 622-4560.

/s/

STUART L. BROWN
Chief Counsel