

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

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N(35)270-001

October 25, 2000

New Rules Governing Ex Parte
Communications Between Chief Counsel Upon Incorporation
Subject: Attorneys and Employees of Appeals **Cancel Date:** into the CCDM

The purpose of this Notice is to inform all Chief Counsel attorneys and managers about new rules relating to communications between employees of Appeals and Chief Counsel attorneys that will go into effect on October 23, 2000. Section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, required the Commissioner of Internal Revenue to "develop and implement a plan to reorganize the Internal Revenue Service." As part of that plan, the Commissioner was required to --

ensure an independent appeals function within the Internal Revenue Service, including the prohibition in the plan of ex parte communications between appeals officers and other Internal Revenue Service employees to the extent that such communications appear to compromise the independence of the appeals officers.

Effective with respect to communications that take place after October 23, 2000, the date on which the Internal Revenue Service will publish Rev. Proc. 2000-43 in the Internal Revenue Bulletin, new rules will govern communications between Appeals employees and attorneys in the Office of Chief Counsel. These rules are set forth in Question and Answer 11 of the Revenue Procedure:

Q-11 *Does the prohibition on ex parte communications have any impact on the relationship between Appeals and Counsel?*

A-11 Chief Counsel is the legal adviser to the Commissioner of Internal Revenue and his or her officers and employees (including employees of Appeals) on all matters pertaining to the interpretation, administration and enforcement of the internal revenue laws and related statutes. Attorneys in the Office of Chief Counsel are expected to

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provide legal advice based on a determination of "the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them," without bias in favor of either the Government or the taxpayer. Rev. Proc. 64-22, 1964-1 C.B. 689. To balance Appeals employees' need to obtain legal advice with the requirement that they avoid ex parte communications that would appear to compromise Appeals' independence, the following limitations will apply to communications between Appeals employees and attorneys in the Office of Chief Counsel in cases not docketed in the United States Tax Court:

- Appeals employees should not communicate ex parte regarding an issue in a case pending before them with Counsel field attorneys who have previously provided advice on that issue in the case to the IRS employees who made the determination Appeals is reviewing. Counsel will assign a different attorney to provide assistance to Appeals. If an Appeals employee believes it is necessary to seek advice from any Counsel field attorney who previously provided advice to the originating function regarding that issue in the case, the taxpayer/representative will be provided an opportunity to participate in any such communications.
- Appeals' requests for legal advice that raise questions that cannot be answered with a high degree of certainty by application of established principles of law to particular facts will be referred to the Chief Counsel National Office and will be handled as requests for field service advice or technical advice, as appropriate, in accordance with applicable procedures. The response of the National Office to Appeals will be disclosed to the taxpayer in accordance with § 6110.

Appeals employees are cautioned that, while they may obtain legal advice from the Office of Chief Counsel, they remain responsible for independently evaluating the strengths and weaknesses of the specific issues presented by the cases assigned to them, and for making independent judgments concerning the overall strengths and weaknesses of the cases and the hazards of litigation. Consistent with this assignment of responsibility, Counsel attorneys will not provide advice that includes recommendations of settlement ranges for an issue in a case pending before Appeals or for the case as a whole.

The foregoing limitations on ex parte communications do not apply to cases docketed in the United States Tax Court. Docketed cases will be handled in accordance with Rev. Proc. 87-24, 1987-1 C.B. 720, and the Tax Court Rules of Practice and Procedure.

Questions regarding these rules may be directed to Henry Schneiderman, Special Counsel to the Associate Chief Counsel (Procedure & Administration) at (202) 622-3400.

/s/
Judith C. Dunn
Deputy Chief Counsel (Operations)