

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

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October 15, 2002

Subject: Appeals Settlement Guideline Upon Incorporation
Counsel Review Procedures Cancellation Date: into the CCDM

Purpose

This Notice sets forth the procedures for the Office of Chief Counsel's review of proposed new and revised Appeals Settlement Guidelines (ASGs) prepared by Large Business and Specialty Programs Appeals. Since ASGs are available to the public, subject to certain exemptions under the Freedom of Information Act (FOIA), the Office of Chief Counsel conducts a disclosure review in conjunction with the technical review of these guidelines prior to issuance.

Discussion

All proposed ASGs are sent by the National Chief of Appeals Office, via email, to the Division Counsel, Large & Mid Size Business (LMSB). Division Counsel, LMSB, will transmit, via email, all ASGs to the Technical Services Section (CC:PA:TSS) for Counsel assignment. TSS assigns the ASG review to the appropriate Associate office with primary subject matter jurisdiction over the issue in the ASG with an assistance WLI to Disclosure & Privacy Law (DPL).

The Associate office is responsible for ensuring that all issues contained in the ASG are reviewed by the Associate offices having jurisdiction over the relevant issues, including the disclosure review. One response will be issued to Appeals that contains all Chief Counsel comments on the proposed ASG.

Filing Instructions: Binder Part () _____ Master Sets: NO _____ RO _____
NO: Circulate ___ Distribute X to: All Personnel ___ Attorneys ___ In: all offices _____
RO: Circulate ___ Distribute X to: All Personnel ___ Attorneys ___ In: all offices _____
Other National FOIA Reading Room _____
Electronic Filename: ASGs.pdf _____ Original signed copy in: CC:F&M:PM:P _____

Every Friday, CC:PA:TSS will run a report of pending ASG assignments. Copies of this report will be furnished to each Associate, LMSB Division Counsel, and Appeals. If Appeals has any questions about the status of any ASG while under Counsel review, such questions should be directed to LMSB Division Counsel, Attn: Andrea Tucker, 202-283-8672.

Technical Review

Within seven calendar days of assignment, the assigned attorney should (a) contact the Appeals drafter of the ASG to inform the drafter that he or she is reviewing the ASG and that he or she will be in contact with any questions and concerns about the ASG, and (b) take steps necessary to enter into TECHMIS the assignment of the ASG. The Coordinated Issue Paper (CIP), if any, will accompany the proposed ASG when it is transmitted by Appeals. The attorney should contact Tom Lillie, Large Business & Specialty Programs Appeals, at 202-694-1808, if any information is needed to ascertain the identity of the ASG drafter or concerning the existence of a CIP.

If the attorney identifies issues that are outside the Associate's jurisdiction, he or she should send an assistance request, generally within seven calendar days of the initial assignment, along with a WLI TECHMIS control sheet for the assistance WLI, to each office from which he or she needs assistance. The attorney should also ensure that the WLI assistance information is entered into TECHMIS, so that the weekly ASG Reports are accurate and complete. All relevant background material (e.g., underlying CIP, prior draft ASG (if any), copy of prior Chief Counsel comments, etc.) will be attached to each assistance request.

The attorney will state on the assistance request the date by which the response is needed in order to respond to Appeals within 90 days. Generally, the office providing assistance should have no less than 45 calendar days to respond. The attorney will promptly elevate late outstanding assistance requests to a branch reviewer if the outstanding assistance threatens Counsel's ability to timely respond to Appeals within 90 days.

The attorney's review will encompass not only technical matters, but will also include a review of the extent to which the ASG will be made available for public inspection (*i.e.*, that the information contained in the "Settlement Guidelines" section is properly exempt under the FOIA and that the information contained in the other sections may properly be disclosed). The attorney should answer the questions provided on the attached check sheet to expedite the disclosure review.

As part of the review, the attorney will call the Appeals ASG drafter to discuss any questions about the ASG and any substantive, format, disclosure, or other concerns. Inasmuch as the ASG is limited to the issues in the underlying CIP, the attorney should not suggest that Appeals add issues to the ASG that are not addressed in the underlying CIP.

The proposed ASG is an Appeals, and not a Counsel, work product. If the attorney and reviewer determine that extensive redrafting of the ASG is needed, the attorney and reviewer should call Tom Lillie, 202-694-1808, to discuss the situation informally. If, after this discussion, it is determined that the ASG should be redrafted, the ASG will be returned to Appeals with a memorandum outlining the problems that need to be addressed. No disclosure review will be necessary in these circumstances.

Disclosure Review

When the attorney determines that the ASG is ready to be issued, but generally no later than fourteen calendar days before Counsel's response date, the attorney will send a copy of the ASG (with any pen-and-ink minor changes), along with the answers (including background material) to the items in paragraphs (a) through (d) of the checksheet, to CC:PA:DPL for a disclosure review.

In general, material that will be redacted prior to public release should be confined to the "Settlement Guidelines" section of the ASG. Material that may be protected would include evaluation of the hazards of litigation and settlement criteria and ranges. Guidelines that conclude that no cases should be settled or that cases should be settled simply on the basis of the Appeals officer's own evaluation of the facts and circumstances would, however, not be redacted.

Based upon the package of materials submitted for disclosure review, the DPL attorney will confirm that (a) any taxpayer-specific facts included within the ASG are contained in the judicial opinion (or other public record documentation accompanying the ASG); (b) none of the material proposed for redaction is included in other IRS documents that are available to the public (e.g., IRM, ASGs, CIPs, ISPs, CCA, etc.); and (c) no material contained in the discussion or background section should be withheld under one of the FOIA exemptions.

The DPL attorney will complete the disclosure review and provide written assistance back to the responsible Associate Office generally no later than seven calendar days before Counsel's response date. DPL's memorandum will either set forth any disclosure concerns with the proposed ASG or state its clearance of the ASG, as proposed.

Packaging Counsel's Response to Appeals

The attorney and, when appropriate, the assisting attorney in another Associate or Assistant office should have discussed substantive comments with the Appeals drafter during the review of the ASG. Discussions with the Appeals drafter should be noted in the response to Appeals.

Counsel's response to Appeals, which will address the disclosure review, should be sent to Diane Ryan, Director of Specialty Programs (Appeals LBS). A copy of the response will should also be furnished simultaneously to LMSB Division Counsel, Attn: Andrea Tucker, and the Director, Appeals Large Business and Specialty Programs, Attn: Tom Lillie.

Please contact George Bowden at 202-622-3400 or Andrea Tucker at 202-283-8672, if there are any questions about the procedures set forth in this Notice.

_____/s/_____
Deborah A. Butler
Associate Chief Counsel
(Procedure & Administration)

Appeals Settlement Guidelines Check Sheet

After technical review of the proposed Appeals Settlement Guideline is complete, the prime attorney assigned should complete this Check Sheet and furnish it to Disclosure & Privacy Law for a disclosure review:

(a) If there are any taxpayer-specific facts contained in the ASG, are all of the facts drawn directly from the judicial opinion of the case (or other portions of the public court record of the case), and not from internal IRS files?

9 There are no taxpayer-specific facts in the ASG.

9 All of the taxpayer-specific facts are drawn from the judicial opinion (or other portions of the public court record) in the case; they are attached.

(b) Is any material identified for nondisclosure under the Guidelines portion of the ASG reflected in (a) prior published ASGs; (b) CIPs, (c) Industry Specialization Papers, or (d) other publicly available IRS or Counsel documents on this issue? Please provide copies of these relevant public materials.

9 None of the material identified for nondisclosure is reflected in any published IRS or Counsel documents; they are attached.

(c) Is any material identified for nondisclosure a straightforward discussion of the law, and not in the nature of guidelines governing the settlement of issues? (In other words, is the material of the type that would be disclosed in Chief Counsel Advice or is the material of the type that would be considered privileged and placed under the Heading, "Case Development, Hazards, and Other Considerations"?)

9 None of the material identified for nondisclosure is the type of straightforward discussion of the law (including contrary legal arguments) that are to be disclosed in Chief Counsel Advice.

9 The material to be redacted is of the type that would be privileged in Chief Counsel Advice.

(d) For any material that is believed to be properly a law enforcement guideline that should not be disclosed to the public, provide an articulation as to the nature of the harm to the IRS should the material be disclosed.

Attorney Initials & Date: _____

Manager Initials & Date: _____