

Department  
of the  
Treasury

Internal  
Revenue  
Service  
**Office of  
Chief Counsel**

# Notice

CC-2002-024

May 10, 2002

Subject: Court of Federal Claims  
Defense Letters

Cancel Date: Upon Incorporation  
into the CCDM

## Purpose

The purpose of this Notice is to advise all Chief Counsel employees that, effective for complaints filed in the Court of Federal Claims after May 15, 2002, all defense letters will be prepared by Division Counsel in the field. Until further notification, all such defense letters will be reviewed before issuance to the Department of Justice by the appropriate Associate Chief Counsel, regardless of whether they are classified as Standard or SOP. The list of issues eligible for SOP classification will be reviewed and revised by the Associates and Division Counsel and will be published within the next ninety days. Following the publication of this list of issues eligible for SOP classification, the list will be reviewed and published annually.

Division Counsel will also assume primary responsibility for working with the assigned attorney in the Court of Federal Claims Section at the Department of Justice. During the pendency of the case, all subsequent matters, such as settlement letters and supplemental defense letters, will be assigned to Division Counsel and reviewed by the responsible Associate Chief Counsel, unless the Associate Chief Counsel waives further involvement after reviewing the initial defense letter. Division Counsel will also bear primary responsibility for assisting the Department of Justice with discovery, but will coordinate with the responsible Associate Chief Counsel regarding the production of national office files.

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NO: Circulate      Distribute X to: All Personnel      Attorneys      In: all offices  
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Other National and Regional FOIA Reading Rooms  
Electronic Filename: DefLtrs .pdf Original signed copy in: CC:F&M:PM:P

## Discussion

Defense letters in Court of Federal Claims, regardless of whether they are classified as Standard or SOP, are due for review at TSS 4510 no later than 15 days before their due date to the Department of Justice. The preparation and review of defense letters should follow the procedures set forth in CCDM 35.18, except to the extent that they are modified by this notice. If there is difficulty in obtaining the administrative file so that the defense letter preparation must be delayed, the responsible Division Counsel attorney in the field will communicate with the assigned attorney at the Court of Federal Claims Section and discuss whether an extension of time to answer should be sought from the court. In such a case, the due date for the defense letter may be extended, but the extension must be approved by the assigned attorney's Associate Area Counsel and communicated to the responsible Associate office and the Post Litigation Unit (PLU).

Court of Federal Claims cases will continue to be assigned by the Post Litigation Unit, CC:PA:PLU (202-622-7890). The PLU will continue its current role in providing support and processing for Court of Federal Claims matters. The scope and duration of the PLU's support role may be reconsidered at a future date. Upon receipt of a new refund complaint from Court of Federal Claims Section, the PLU will

1. Open the case on TL-CATS, assigning the case to the appropriate Division Counsel field office as described below;
2. Create a legal file containing the complaint, a copy of the assignment sheet, a case history sheet, and a Court of Federal Claims Issue Tracking Sheet;
3. Contact Service Centers or Special Procedures Units, first orally and then in writing, to request litigation freeze codes be placed on the years and taxes at issue and to request that transcripts and administrative files be forwarded to the assigned field office;
4. Provide a copy of the memorandum requesting files and the assignment sheet to the Court of Federal Claims Section at the Department of Justice;
5. Send the newly created legal file to the appropriate Division Counsel field office;
6. Create a secondary Case Screen 2 assignment for each case to an Associate Chief Counsel and provide a copy of the complaint to that office to facilitate early coordination of significant issues.

In general, Court of Federal Claims cases will be assigned according to the Business Operating Division (BOD) and geographic location of the plaintiff. The PLU will consult IDRS to obtain the BOD for corporate taxpayers. The BOD will govern the Division Counsel to which the case is assigned, with the exception that all cases where the primary issue is employment tax will be assigned to TEGE, regardless of the plaintiff's BOD. The geographic

assignment used for the Tax Court will govern the field office that is assigned. The only exception to this geographic assignment rule is that all cases involving excise taxes in chapters 31, 32, 33, 35, 36 subchapters B and D, 38, and 40 of the Internal Revenue Code will be assigned to the Associate Area Counsel in Pittsburgh, in order to centralize excise tax expertise. Where there is more than one Associate Area Counsel for the assigned division in the assigned location, the PLU will assign the case to the division with a general assignment to the office without making a specific assignment to a particular Associate Area Counsel. When the case is received, local rules will govern the assignment to an Associate Area Counsel.

Upon receipt of the case, the assigned field attorney should complete the Court of Federal Claims tracking sheet and return it by fax to the PLU unit. The mailing address and telephone and fax numbers for the PLU are

Post Litigation Unit  
CC:PA:PLU, Room 4039  
Internal Revenue Service  
1111 Constitution Ave., NW  
Washington D.C. 20224  
Telephone 202-622-7890  
Fax # 202-622-5674

The Court of Federal Claims Section will also continue to route all written supplemental requests for assistance through the PLU, which will forward them to the responsible field office with a copy to the appropriate Associate Chief Counsel office.

If the Court of Federal Claims enters a judgment that is at least partially adverse to the Government, primary responsibility for the case will be transferred from the field to the national office for appeal consideration, as is presently done for district court refund cases. The transfer will include appropriate recommendations regarding the appeal. Similarly, if a taxpayer appeals from a Court of Federal Claims case, the case will be transferred to the national office for appeal monitoring.

All Court of Federal Claims cases should be sent to the PLU for closing.

This Notice does not affect pending Court of Federal Claims cases. Prime jurisdiction for such cases will remain with the Associate Offices with appropriate coordination with the Division Counsel.

