

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2002-043

October 17, 2002

Following Published Guidance
Subject: Positions in Litigation

Upon Incorporation
Cancellation Date: into the CCDM

Purpose

The purpose of this notice is to remind Chief Counsel attorneys of the requirement to follow legal positions established by published guidance in papers filed in the Tax Court or in defense or suit letters sent to the Department of Justice. This notice also establishes a requirement that all briefs, trial memoranda and motions to be filed in the Tax Court or letters to the Department of Justice that seek to distinguish a position set forth in published guidance shall be subject to national office review prior to filing in the Tax Court or transmission to the Department of Justice.

Discussion

It has been a longstanding policy of the Office of Chief Counsel that we are bound by our published positions, whether in regulations, revenue rulings, or revenue procedures, and that we will not argue to the contrary. Accordingly, we do NOT take positions in litigation, TAMs, PLRs, CCAs, advisory opinions, etc., inconsistent with a position that the Service has taken in published guidance or in proposed regulations. This policy applies even when attorneys disagree with the published guidance or even if there are plans to revoke, change or clarify the position taken in the published guidance. The policy applies regardless of the age of the guidance and regardless of whether courts have chosen to follow the published position. So long as the published guidance remains on the books, the Office of Chief Counsel will follow it. Counsel can, however, take positions inconsistent with prior informal advice, such as TAMs, CCAs, etc., but should never take a position inconsistent with published guidance or proposed regulations. Our adherence to the Internal Revenue Code and our published guidance in articulating our litigating position was recently reiterated by the Chief Counsel in the Roles Memo issued on August 26, 2002.

Filing Instructions: Binder Part (35) _____ 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 and Regional FOIA Reading Rooms

Electronic Filename: PubGuid.pdf Original signed copy in: CC:FM:PM:P

