

Office of  
Chief Counsel **N o t i c e**  
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CC-2003-012

April 9, 2003

Upon Incorporation

Subject: Obtaining Tax Accrual Workpapers      Cancel Date: into CCDM

Purpose

This notice sets out procedures to be used in connection with the Service's policy regarding requests for tax accrual and other financial audit workpapers relating to the tax reserve for deferred tax liabilities and to footnotes disclosing contingent tax liabilities appearing on audited financial statements. It also modifies existing procedures for requests for audit and tax accrual workpapers that are not affected by Announcement 2002-63.

New Procedures for Examination of Returns Involving Listed Transactions

Announcement 2002-63 provides that the Service may request Tax Accrual Workpapers in the course of examining any return filed on or after July 1, 2002, that claims any tax benefit arising out of a transaction that the Service has determined to be a listed transaction at the time of the request within the meaning of Treas. Reg. § 1.6011-4(b)(2). (Treas. Reg. § 1.6011-4(b)(2) defines listed transactions to include substantially similar transactions.) If the listed transaction was disclosed under Treas. Reg. § 1.6011-4, the Service will routinely request the tax accrual workpapers pertaining only to the listed transaction. If the listed transaction was not disclosed, the Service will routinely request all tax accrual workpapers. In addition, if the Service determines that tax benefits from multiple investments in listed transactions are claimed on a return, regardless of whether the listed transactions were disclosed, the Service, as a discretionary matter, will request all tax accrual workpapers. Similarly, if, in connection with the examination of a return claiming tax benefits from a listed transaction that was disclosed, there are reported financial accounting irregularities, such as those requiring restatement of earnings, the Service, as a discretionary matter, will request all tax accrual workpapers. In general, these requests will be limited to the tax accrual workpapers for the years under examination but may extend to other years if directly relevant to the years under examination.

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For a return filed prior to July 1, 2002, that claims any tax benefit arising out of a listed transaction, the Service may request tax accrual workpapers pertaining to the listed transaction, if the taxpayer had an obligation to disclose the transaction under Treas. Reg. § 1.6011-4, and failed to do so. The required disclosure may have been made (1) on the return; (2) under Rev. Proc. 94-69, 1994-2 C.B. 804, if applicable; or (3) pursuant to Announcement 2002-2, 2002-2 I.R.B. 304 (Jan. 14, 2002).

In general, the information document request (IDR) will be limited to the tax accrual workpapers related to the listed transaction for the years under examination. It will be directed to the taxpayer or the independent accounting firm, based on the Service's determination as to the location of the tax accrual workpapers. The Service will, however, request all tax accrual workpapers for those years, if (1) the taxpayer failed to disclose a listed transaction on a return filed after July 1, 2002; (2) the taxpayer claimed benefits from multiple investments in listed transactions on a return filed after July 1, 2001, regardless of whether the transactions are disclosed, or (3) there are reported financial irregularities. The announcement provides that circumstances (2) and (3) will lead to a request for all tax accrual workpapers as a discretionary matter.

The initial request for tax accrual workpapers should be coordinated with field counsel and prior approval must be obtained from the Director Field Operations, LMSB, or the Area Compliance Director, with the concurrence of the Director of Compliance Policy, SB/SE. Field counsel should coordinate the requests for tax accrual workpapers with Branch 3 of the Collection Bankruptcy and Summonses Division in the office of the Associate Chief Counsel (Procedure & Administration). They can be reached at 202-622-3630. Counsel will treat the review of the IDR as a high priority matter and complete the review as soon as possible so as not to delay the examination process.

To the extent the Service must use a summons to obtain the information, Counsel will review the summons before it is issued to ensure that it is addressed to the proper party, that any claims of privilege have been identified and addressed, and that the summons would otherwise be enforceable. The summons will be directed to the taxpayer or to the independent accounting firm based on a determination as to the location of the tax accrual workpapers.

All summonses will be approved prior to issuance by the Director of Field Operations, LMSB, or the Area Compliance Director, with the concurrence of the Director of Compliance Policy, SB/SE, and reviewed by Counsel. Counsel's review of the summons will be coordinated by field counsel through the appropriate Division Counsel and the Associate Chief Counsel (Procedure & Administration). Counsel will treat the review of the summons as a high priority matter and complete the review as soon as possible so as not to delay the examination process.

If neither the taxpayer nor the accounting firm comply with the summons, the Service will refer the matter to Counsel for enforcement of the summons. The summons enforcement letter will be approved by the Deputy Chief Counsel (Operations) after review by the responsible Division Counsel and coordination with the Associate Chief Counsel (Procedure & Administration).

### Procedures Applicable to Requests for Audit and Tax Accrual Workpapers Not Covered by the Announcement

Examiners normally request audit and tax accrual workpapers only in unusual circumstances and when the necessary factual data used to support the return cannot be obtained from the taxpayer's records. If a decision is made to seek this information, the examiner's request should be limited to the portion of the workpapers that are material and relevant to the examination. Whether an item is considered to be material is based on the examiner's judgment and an evaluation of the facts and circumstances in the case. Any request for tax accrual workpapers requires the prior written approval of the Director of Field Operations, LMSB or the Area Compliance Director with the concurrence of the Director of Compliance Policy, SB/SE. See Memorandum from Commissioner, Large and Mid-Size Business Division and Commissioner, Small Business/Self-Employed Division, *Obtaining Tax Accrual Workpapers Related to Abusive Tax Avoidance Transactions* dated June 17, 2002.

If a determination is made that a summons for tax accrual workpapers will be issued, the summons should be submitted to field counsel for review and comment. Field counsel will then coordinate issuance of the summons with the Associate Chief Counsel (Procedure & Administration). To the extent the summons is not complied with, any summons enforcement letter to the Department of Justice must be coordinated with, and prereviewed by, the Associate Chief Counsel (Procedure & Administration). CCDM 34.12.3.7.2.

### Applicability of Procedures to Tax Reconciliation and Audit Workpapers

Neither existing procedures nor those set out in Announcement 2002-63 apply to requests for tax reconciliation workpapers. See CCDM 34.12.3.13.2(c). Tax reconciliation workpapers are used in assembling and compiling financial data preparatory to placing it on a tax return. Tax reconciliation workpapers may be routinely requested in the course of an examination. Typically these workpapers will include final trial balances for each entity and a schedule of consolidating and adjusting entries. They include information used to trace financial information to the tax return.

Announcement 2002-63 also does not apply to audit workpapers. Audit workpapers are retained by the independent accountant to establish the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to its examination. Audit workpapers may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the auditor. The audit workpapers provide important support for the independent certified public accountant's opinion as to the fairness of the presentation of the financial statements in conformity with generally accepted auditing standards. Any summons for the audit workpapers should be coordinated with Counsel prior to the issuance of the summons. See CCDM 34.12.3.13.1(2)a.

Discovery of Tax Accrual Workpapers

Existing CCDM procedures require discovery requests and subpoenas for tax accrual workpapers to be coordinated with Branch 3 of the Administrative Provisions and Judicial Practice Division in the office of the Associate Chief Counsel (Procedure & Administration). Discovery requests for tax accrual workpapers that are subject to Announcement 2002-63 will be coordinated through Division Counsel with the Associate Chief Counsel (Procedure & Administration). Subpoenas for tax accrual workpapers subject to the Announcement directed to third party accounting firms will also be coordinated through Division Counsel with the Associate Chief Counsel (Procedure & Administration).

Any questions about this notice should be directed to the Office of the Associate Chief Counsel (Procedure & Administration): with regard to summonses, Branch 3, Collection, Bankruptcy and Summonses, at 202-622-3630, or with regard to discovery matters, Branch 3, Administrative Provisions and Judicial Practice, at 202-622-7940. Documents sent for review by, or coordination with, the office of the Associate Chief Counsel (Procedure & Administration) should be sent to TSS4510 for assignment.

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DEBORAH A. BUTLER  
Associate Chief Counsel  
(Procedure and Administration)