

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

N o t i c e
+ ,

CC-2003-003

December 12, 2002

Processing for Public Inspection
Certain Advice Issued
subject: by Field Attorneys Upon Incorporation
Cancellation Date: Into CCDM

Purpose

This Notice provides instructions for processing for public inspection written advice prepared by any Field attorney, which advice was reviewed by any Associate Office and subsequently issued to field or service center campus employees of the Internal Revenue Service. These procedures contemplate that such memoranda are reviewed prior to issuance and that discussions occur between Field and Associate Office attorneys prior to the advice being sent for review to the Associate Office. These procedures do not apply to written advice that is prepared by the Field and not reviewed by the Associate Offices.

Format for Advice

After the advice is reviewed and issued by the Field, it will be made available for public inspection, after appropriate deletions are made, under these procedures. To make the redaction and disclosure of these memoranda to the public easier, it is suggested that the same format used to prepare Chief Counsel Advice be used for this advice. The memorandum MACRO is available to facilitate the preparation of these memoranda using this format.

Filing Instructions: Binder _____ Master Sets: NO ___ RO _____ NO: Circulate ___ Distribute X
To: All Personnel X Attorneys ___ In: all offices
RO: Circulate ___ Distribute X to: All Personnel ___ Attorneys ___ In: all offices
Other National FOIA Reading Rooms
Electronic Filename: PubInsp.pdf Original signed copy in: CC:FM:PM:P

Procedures for Requesting National Office Review

Requests for Associate Office review under these procedures are to be submitted as an attachment to an email message to the "TSS4510" mailbox. Email messages sent to TSS4510 must be transmitted using "normal" sensitivity. Also, any background material needed by the Associate Office to review the advice that is not in electronic format should be sent to the Technical Services Section, Office of the Chief Counsel, Internal Revenue Service, CC:PA:TSS, Room 4510, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. The Field attorney should send copies of the request for Associate Office review through their own reviewers consistent with Division Counsel procedures. The Associate Office will review the advice and complete the documentation described, below, in 14 calendar days. The time period for the Associate Office to respond may be extended after consultation with the Field, for a time period not to exceed an additional 14 calendar days. Once review is completed, the Associate Office attorney shall prepare a Response Form (see Exhibit 1) reflecting its consideration.

Depending on the nature of the response the following process will be followed:

- A. Agreed: If the Associate Office attorney agrees with the Field attorney's memorandum, the Associate Office attorney responsible for the review will orally inform the Field attorney that the advice has been approved and may be signed, dated, and issued to the IRS field office. The Associate Office attorney also will prepare and send by email a Response Form to reflect the concurrence.
- B. Modified: If the Associate Office attorney disagrees with the advice and believes that the advice should be modified, the Associate Office attorney will orally communicate the recommended modifications to the Field attorney, prepare the Response Form, and email the form to the Field attorney. If the Field attorney agrees with the modification, the advice will be revised by the Field attorney, signed, dated, and issued to the IRS field office. If the Associate Office attorney disagrees with the advice and believes it cannot be modified (*i.e.*, the advice should not be issued), the Associate Office attorney will orally inform the Field attorney that the request for Associate Office review should be withdrawn and the Field attorney should not issue the advice to the IRS field office. If the Field attorney does not agree with the Associate Office attorney's recommendation, the disagreement must be reconciled pursuant to established procedures.
- C. Converted: If the Associate Office attorney believes the advice submitted by the Field attorney would be more appropriate if issued as Chief Counsel Advice or as published guidance, the Associate Office attorney will orally notify the Field attorney and discuss the appropriate form for the advice. If the decision is to continue the review of the field advice and issue additional Chief Counsel Advice or a form of published guidance, the procedures in A or B above will be followed with respect to the field advice. Note that the procedures in B may be appropriate if it is anticipated that the published guidance cannot be issued in time to resolve the matter addressed in the

memorandum. If the decision is that field advice should not be issued and that another form of advice or published guidance is more appropriate, the Associate Office attorney will memorialize that decision in a Response Form, email the form to the Field attorney, and copy CC:PA:TSS on that email.

TSS will close the existing assignment and open a new assignment with the correct category if the decision is made to issue Chief Counsel Advice. If the decision is made to issue published guidance, the Associate Office will open an appropriate case. The Field attorney will contact the IRS field office requesting the advice and advise them of the decision. If supplemental information is needed by the Associate Office attorney, the request for information from the Field attorney should be made as soon as practicable.

Redaction Procedures

Field advice reviewed under these procedures will be made available to the public pursuant to procedures and principles similar to the Chief Counsel Advice procedures. Appropriate redactions will be made from these documents before they are released. It should be noted that the name and signature of the person signing the advice, and any contact person named in the memorandum, generally will not be deleted from the document that is made available for public inspection.

The following procedures will ensure this advice is timely and properly processed for release:

A. Preparing and Submitting the Redactions for Review. The Field attorney will, within three business days from the date on which the approved and signed advice is transmitted to the IRS field office, submit the proposed redactions to the Associate Office for review as an attachment to an email message sent to the Associate Office attorney who had primary responsibility for reviewing the advice before it was issued. The Field attorney will prepare the redacted versions of the memorandum using the redaction toolbar. (Information on how to install and use the redaction toolbar is available on the Chief Counsel intranet, http://casecn01.irs.counsel.treas.gov/intranet_new/redaction/default.asp.) Any taxpayer identifying information should be redacted in white and any material for which a privilege applies, and for which the attorney believes the privilege should be asserted, should be redacted in black. The Field attorney also will prepare a memorandum to the file that identifies the privileges claimed and provides the reasons the Service is claiming such privileges. A black and white version of the document and the memorandum discussing the claimed privileges should be sent by email to the Associate Office attorney for review.

B. Standard of Review. The Associate Office attorney will review the proposed redactions to ensure that the material deleted either identifies the taxpayer or is privileged. Within three business days from the date on which the redacted advice has been submitted to the Associate Office for review of the proposed deletions, the Associate Office attorney will send a response to the Field attorney.

1. If the Associate Office attorney agrees with the Field attorney's proposed deletions, the Associate Office attorney will email the Field attorney indicating concurrence and that the redacted version may be transmitted to the Disclosure Unit for processing.

2. If the Associate Office attorney believes that the proposed deletions need to be modified or additional deletions be made, the Associate Office attorney will communicate the recommended modifications, along with an articulation of the reasons for the modified or additional deletions, to the Field attorney by email. If the Field attorney agrees with the modifications, he or she will revise the redacted advice and resubmit it to the Associate Office clearly marking the e-mail as a resubmission. The Field attorney will affix the Associate Office attorney's email, reflecting the modifications and reasons therefor, to the memorandum to the file prepared by the Field attorney that identifies the privileges claimed and provides the reasons the Service is claiming such privileges. If the Field attorney does not agree with the modifications, the disagreement must be reconciled pursuant to established procedures.

C. Transmitting the Redacted Advice to the Disclosure Unit. Within one business day after agreement is reached on the proposed redactions, the Field attorney will send the redacted (black and white) version of the issued advice and a completed check sheet (see Exhibit 2) as an attachment to an email message to the "6110 Disclosure" mailbox. The email must be sent using "normal" sensitivity and the advice and the subject line of the email should be named or renamed using the CASE-MIS (or case control) number, WLI, and ".wpd" suffix. The Field attorney will retain a copy of the black and white version of the advice, the completed check sheet, and the memorandum to the file noting the applicable authority for the specific privileges being claimed, in the official case file.

D. Disseminating the Redacted Advice. The Disclosure Unit will make the redacted advice available for public inspection using procedures similar to the procedures employed for Chief Counsel Advice (normally within 60 days after the original, signed advice was issued to the IRS field office).

Effective Date

These procedures will apply to any documents submitted by any Field attorney to any Associate Office for pre-issuance review on or after January 1, 2003. Documents submitted under existing procedures, including, but not limited to, the nondocketed significant advice review procedures contained in CCDM 35.3.19.4, before January 1, 2003, will continue to be processed for public inspection under the staggered timetable set forth in the parties' stipulation in *Tax Analysts v. IRS*, No. 1.99 CV00432 (D. D.C.).

Questions concerning the mechanics of the redaction process should be directed to Richard Goldstein at 202-622-7820. Questions concerning other aspects of this Notice should be directed to A.M. Gulas at 202-622-4560.

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

Attachments:

- Exhibit 1 (Response Form)
- Exhibit 2 (Check sheet)

Exhibit 1 (Response Form)

Field Advice Reviewed by the Associate Office Response Form

Case Control Name: _____

Case Control Number: _____

Field Office Symbols: _____ Associate Office Symbols: _____

Date Assigned in CC:PA:TSS: _____ Response Due Date: _____

Assigned Attorney and Reviewer: _____

The assigned Associate Office attorney will review the attached proposed Field advice and call the Field attorney with the Associate Office's response within 14 business days (extensions may be granted in consultation with the Field). Coordination is contemplated, but only the attorney making the call to the Field attorney should complete this Form. Completed forms and a copy of the e-mail or memorandum memorializing the telephonic response is to be returned to Technical Services Section (Procedure and Administration (CC:PA:TSS) in Room 4510 within 14 business days. If an extension is requested and received, a copy of this Form indicating the new date for responding to the Field is to be returned to, CC:PA:TSS, in Room 4510, within 14 business days.

We have reviewed the Field advice prepared in the above case and have contacted the Field to discuss our comments. We

_____ Agree

_____ Disagree/Suggest Modification

_____ Converted

_____ Received an extension until _____.

Associate Office Attorney Signature: _____ Date: _____

Associate Office Reviewer Signature: _____ Date: _____

For TSS 4510 Personnel Only: _____ Assignment entered into database

_____ Response entered into database

cc:

_____ Ms. Johnson _____ CBS _____ INTL

_____ Ms. Butler _____ DPL _____ PSI

_____ APJP _____ FIP _____ TEGE

_____ CORP _____ ITA

WLI Requested _____

UIL No. _____

Exhibit 2 (Check Sheet)

Check sheet for Processing Field Advice Reviewed by the Associate Offices

Case Control Name: _____

Case Control Number: _____ WLI # _____

Issuing Office Symbols: _____ Date of issuance (signed): _____

_____ 1. Does the advice reflect the uniform issue list number(s)?

_____ 2. Does the advice contain any taxpayer identifiers or privileged matter?

_____ If yes, have the taxpayer identifiers and/or privileged matter been redacted from the advice?

_____ 3. Was the redacted (black and white -- privilege matter redacted in black and § 6110 information highlighted in white) version and an unredacted version (or, if no redactions, only the unredacted version) of the advice sent to the proper Associate Office for comment on redactions (or potential redactions) **within 3 business days of the date that the advice was issued (signed)**?

_____ Did the Associate Office attorney (or his or her manager) verify receipt (e.g., telephonically, by email "read" return receipt, etc.) of this transmission from the Field attorney within 1 business day after it was sent?

_____ If the Associate attorney (or his or her manager) did not contact the Field attorney to confirm receipt of the transmission within 1 business day after it was sent, did the Field attorney (or his or her manager) telephone or email the Associate Office attorney (or his or her manager) to confirm that the transmission was received and that the Associate attorney (or his or her manager) knew that their comments on the proposed redactions (taxpayer identifiers and privileges) were needed no later than 3 business days after the transmission was sent and that the Field attorney would assume that they had no comments if a response was not received within that time?

_____ 4. Did the Associate Office attorney provide any comments on the proposed redactions? Any discussions with the Associate Office on the proposed redactions should be noted on the case history sheet.

_____ If the Associate Office provided comments on the proposed redactions, has the redacted version of the advice been revised to reflect these comments (disagreements on potential redactions must be reconciled in accordance with applicable Chief Counsel procedures)?

_____ 5. Has a memorandum to the file been prepared and placed in the official case file identifying the specific privileges being claimed, if any, and describing the harm which would result from disclosure of the privileged matter?

_____ 6. Has a Black and White version (privileged matter redacted in black and § 6110 information redacted in white) been prepared (note: if the original advice was date-stamped, the date that the document was signed should be inserted directly below the letterhead on the first page of the Black and White version) and one copy retained in the official case file)?

_____ 7. Has an electronic Black and White version been named (or renamed) with its TECHMIS (or case control) number, WLI, and ".WPD" suffix, and e-mailed to CC:PA:T:CRU's mailbox - "6110 Disclosure"? For example, the advice may be named/renamed "TL-N-12345-98WLI2.wpd". The e-mail must be sent using "Normal" sensitivity. **A copy of the e-mail transmitting the electronic version to the "6110 Disclosure" mailbox must be placed in the office's official case file.**

Initiator: _____ Date: _____

Reviewer: _____ Date: _____

Note: Initiators and Reviewers are responsible for ensuring that these procedures have been followed and that the documents have been sent to CC:PA:T:CRU.

The following is a nonexclusive list of taxpayer identifiers:

- a. Taxpayer's name, address (but not necessarily location) and identification number wherever mentioned, including the subject line;
- b. Identifying details that a member in the "appropriate community" could use to determine the identity of the taxpayer. See IRC Section 6110(i).
 - i. Per se unique facts
 - (1) Court Docket number(s) (whether or not the docket number appears in the Techmis number);
 - (2) Policy numbers;
 - (3) Outside consultants (names of individuals, not necessarily firm names);
 - (4) Authorized representatives (names of individuals, not necessarily firm names);
 - (5) "Brand name" product lines;
 - (6) References to another case involving the same taxpayer(s);
 - (7) Beneficiaries;
 - (8) Patents and trademarks;
 - (9) Trade secrets;
 - (10) Any quotations from an opinion or searchable data base (i.e., SEC filings), if they are associated with the taxpayer(s).
 - ii. Potential unique facts
 - (1) Dollar figures (do not redact \$ sign);
 - (2) Dates, including tax years;
 - (3) Percentages (do not redact % symbol);
 - (4) Type of business if unique or industry is small;
 - (5) Shareholder information;
 - (6) Taxpayer location, including State of incorporation;
 - (7) Countries of operation;
 - (8) Business location (city and state);
 - (9) Region, district, city, including symbols, circuit court;
 - (10) References to state law;
 - (11) References to unique federal law that impacts few industries or individuals;
 - (12) Names of local IRS officers and employees;
 - (13) "Generic" product lines;
 - (14) Taxpayer hired consultants (Firm names);
 - (15) Firms authorized to represent taxpayer(s);
 - (16) Other information which could be cross referenced in other publicly available sets of information including electronic databases such as Lexis.

(Dec. 2002)