

[CC-2004-019]

June 04, 2004

**Subject:** Significant Case Coordination **Cancel Date:** Upon incorporation into CCDM

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## Purpose

This notice announces revised procedures for the coordination of significant cases. These procedures will be incorporated into the IRM as IRM 31.1.5 Significant Case Coordination and replace the procedures in IRM 35.3.19 as revised by Exhibit 18-4 of the Chief Counsel Desk Guide.

## Significant Case Coordination

### **31.1.5.1 Basic Principles of Significant Case Coordination**

(A) Introduction. The significant case program is an aspect of tax administration of critical importance to the Internal Revenue Service. In support of this program, the Office of Chief Counsel plays an essential role in the development of appropriate technical positions to be taken and in the proper development and disposition of significant cases, including the litigation of such cases in the United States Tax Court and other federal courts. In recognition of the unique challenges of this program, it is the policy of the Office of Chief Counsel to utilize a coordinated approach to deal with the most significant case matters. This approach is designed to ensure that the best resources of the Office of Chief Counsel as a whole will be available to deal with those cases that have the greatest importance to tax administration.

(B) See CCDM Part 31.1 for the Guiding Principles that apply generally to coordination between the Associate Chief Counsel and Division Counsel offices.

(C) Essential Elements of Significant Case Coordination. The Division Counsel and Associate Chief Counsel offices have successfully coordinated significant cases in the United States Tax Court for many years. Extrapolating from this experience, the

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procedures in this chapter focus on principles essential to successful case management and extend these principles to litigating cases in other federal courts and providing legal advice to IRS divisions in nondocketed cases.

(1) In every case, it is the role of the Office of Chief Counsel to ensure the uniform application of the tax laws. It is, therefore, important that Division Counsel and Associate Chief Counsel, individually and collectively, ensure the fulfillment of that objective. The role of the Associate Chief Counsel will be the interpretation of the Code and the development of technical positions of the Internal Revenue Service for use in published guidance and in the development and litigation of cases consistent with published guidance. The role of Division Counsel will be the development and execution of the litigation strategy that implements those positions to ensure that the position taken in specific cases is one that is reasonable, based on the facts of the case, and contributes to sound tax administration.

(2) In nondocketed cases, Division Counsel will be responsible for providing legal advice relating to case development to their respective IRS client divisions that is consistent with Service position as reflected in published guidance of the Service and well established case law. To the extent that a regulation or ruling does not provide clear guidance on the position to be taken in litigation, or the position of the Internal Revenue Service is not clear from existing case law or the unambiguous language of the Code, Division Counsel must coordinate with the Associate Chief Counsel concerning the position of the Service. In addition, where there is a statutory change or a new regulation, or there are no reported opinions, or when published guidance is pending, or there is a significant new court opinion, Division Counsel, in coordination with the Associate Chief Counsel, must ensure that the advice provided to their respective IRS client divisions or the position they intend to take in litigation is consistent with the Service's position on the law. The advice of the IRS client divisions will be sought concerning the need for published guidance in lieu of individual case development and litigation.

(3) In docketed cases, there must be an active working partnership between the Division Counsel and Associate Chief Counsel offices. This partnership must span the entire process of significant case coordination from initial case planning and development through pretrial practice, trial preparation, trial of the case, submission of briefs, and appellate consideration. Every person and every office involved in the case must be encouraged to contribute to the entire process. Executives in both the Division Counsel and Associate Chief Counsel offices must be directly engaged in all significant cases within the scope of their respective roles. Executives will be expected to participate in the development of substantive legal positions, decisions about litigation tactics and strategy, and substantive review of significant pleadings, motions, and briefs. Their involvement must go well beyond traditional notions of management review and oversight. Litigation decisions, such as whether to try or settle a case, whether to

use mediation/arbitration, or whether to employ an expert witness, should be made by Division Counsel after appropriate coordination with the Associate Chief Counsel offices. In addition, Division Counsel offices must keep their respective IRS client divisions apprised of the status of docketed significant cases through consultation and the use of pertinent information from the Significant Tax Court and Department of Justice Cases Bi-Monthly Reports, described in CCDM 31.1.5.5.5 (A) Significant Tax Court Cases Bi-Monthly Report, and CCDM 31.1.5.5.5 (B) Significant Department of Justice Cases Bi-Monthly Report, below.

(4) In both nondocketed and docketed cases, coordination should occur as early in the process as is practicable and should continue through case development, litigation, and resolution, as appropriate. In most cases, informal coordination and advice should be sufficient.

(5) Any disagreements between Division Counsel and Associate Chief Counsel offices, or between the Office of Chief Counsel and the Department of Justice, should be resolved through existing reconciliation procedures.

(D) Overview of Procedures. This chapter incorporates these basic principles into specific procedures for the management of significant cases. These procedures do not mandate a set of rules to be rigidly followed in every case. Rather, they establish an overall framework for dealing with significant cases and, within this framework, suggest general guidelines for actions in each case.

### **31.1.5.2 Definitions**

(A) Significant Case. A “Significant Case” as defined in this section will be reported and coordinated under these procedures unless excluded.

(B) Discretion to Exclude Cases. A case that otherwise meets the definition of a Significant Case may be excluded from these procedures as a result of the screening processes described in CCDM 31.1.5.4 Division Counsel Screening and Reporting of Significant Cases Approaching Litigation, and CCDM 31.1.5.5 Screening and Reporting of Significant Tax Court and Department of Justice Cases, below.

(C) Significant Nondocketed Cases. For nondocketed cases, the term “Significant Case” includes any case described in one or more of the following categories:

(1) A case involving the validity of a statute or a regulation;

(2) A case involving an issue of importance to tax administration, such as a case of first impression; one involving the interpretation of a new statute or regulation when there are no reported opinions or when published guidance is pending; one affecting large numbers of taxpayers or an industry; or one falling within an operating division’s major strategic goal;

- (3) A case likely to attract congressional or public attention on a national level; or
- (4) A case in which the Government seeks to distinguish a position set forth in published guidance.

Industry Counsel should be consulted when determining the significance of a case involving industry and issue specialization issues. See CCDM 33.6.2.4.

(D) Significant Cases Approaching Litigation. For cases that are near the stage at which a statutory notice of deficiency or Final Partnership Administrative Adjustment (FPAA) may be issued to the taxpayer, or likely to be litigated as refund, bankruptcy, declaratory judgment, injunction, or summons cases, the term “Significant Case” includes any case described in one or more of the categories set forth in CCDM 31.1.5.2 Definitions paragraph (C), above, and further:

- (1) A case with an issue that has been designated for litigation or is under consideration for designation for litigation;
- (2) A case involving an Industry Program Coordinated issue; or
- (3) A tax shelter case involving a “Listed Transaction” or substantially similar transaction within the meaning of Treas. Reg. § 1.6011-4T(b)(2).

(E) Significant Docketed Cases. For cases docketed in the United States Tax Court, or any other federal court, including refund actions, bankruptcy cases involving the merits of the tax, declaratory judgment suits, injunction suits, and summons enforcement actions (Department of Justice Cases), the term “Significant Case” includes any case described in one or more of the categories set forth in CCDM 31.1.5.2 Definitions at paragraph (D), above.

(F) Levels of Coordination in Tax Court Cases. A Tax Court case may be classified under one coordination procedure and, as the case is developed, the coordination procedure may be changed.

(1) National Coordination. Tax Court cases determined to be significant in accordance with these procedures will be formally coordinated on a national basis between Division Counsel and Associate Chief Counsel offices. Such cases will have a Lead Division Attorney and Principal Associate Attorney, and will be subject to the National Work Plan coordination procedures described in CCDM 31.1.5.7 Coordination of Litigation Work Plans for Significant Tax Court Cases at paragraphs (A-D), below.

(2) Division Coordination. Tax Court cases determined to be significant, but which do not require formal national coordination between Division Counsel and Associate Chief Counsel offices, may be subject to Division Counsel coordination. Such cases will have a Lead Division Attorney, and will be subject

to the Division Work Plan coordination procedures described in CCDM 31.1.5.7 Coordination of Litigation Work Plans for Significant Tax Court Cases at paragraph (E), below.

(3) National Project Coordination. In order to provide efficient centralized control for case handling, common or related issues in Tax Court cases may be coordinated within a project on a national basis between Division Counsel and Associate Chief Counsel offices. Each identified project will have a Project Coordinator and a Principal Associate Attorney, and will be subject to the National Project Work Plan coordination procedures described in CCDM 31.1.5.7 Coordination of Litigation Work Plans for Significant Tax Court Cases at paragraph (F), below. The details of National Project Coordination procedures are contained in Exhibit I, Significant Case Procedures - Coordination of National Project Cases, attached hereto. Division Counsel may also elect to use, but at the Division Counsel level only, the National Project Coordination procedures described in CCDM 31.1.5.7 Coordination of Litigation Work Plans for Significant Tax Court Cases at paragraph (F), below.

(G) Coordination in Department of Justice Cases. Coordination in Department of Justice cases is described in CCDM 31.1.5.9, below.

(H) Lead Division Attorney. In the United States Tax Court, the Lead Division Attorney will be the lead counsel of record, responsible for the development, litigation, and resolution of the case, and responsible for all court filings in consultation with the other team members. In other federal court litigation, the Lead Division Attorney will have primary responsibility for all aspects of coordination with the Department of Justice, including the preparation of defense, enforcement, and settlement letters. In nondocketed cases, the Lead Division Attorney will have primary responsibility for interaction with the IRS client division.

(I) Principal Associate Attorney. In all cases, the Principal Associate Attorney will be responsible for coordinating Associate Chief Counsel participation in the case and will be expected to become knowledgeable about the case as a whole. The Principal Associate Attorney may participate in the trial of a United States Tax Court case at the request and direction of the Lead Division Attorney and with the concurrence of the Associate Chief Counsel.

(J) Project Coordinator. The Project Coordinator will be a Division Counsel attorney who is responsible for the development, management, coordination, and control of all cases within the nationally identified project.

(K) Litigation Work Plan. A litigation work plan is essential to the proper development and litigation of every significant case docketed in the United States Tax Court. The specific form and contents of the work plan will be determined by the responsible executives on a case-by-case basis, according to the nature, importance, and difficulty of the legal and factual issues presented by the case, the activity, or status of the case,

and the availability of resources. The requirements for work plans are described in CCDM 31.1.5.6 Development of Litigation Work Plans for Significant Tax Court Cases, below. In general, work plans will be created and revised through the development of the case using the APOLLO program. Working with Associate Chief Counsel personnel, Division Counsel personnel are responsible for entering updates into the APOLLO program to ensure accurate and up-to-date information in the database.

(L) Project Work Plan. A project work plan is essential for every project. The lead case in the project will have a fully developed Litigation Work Plan. See Exhibit 1, Significant Case Procedures - Coordination of National Project Cases.

(M) APOLLO. APOLLO is a nationwide tracking system for significant cases. APOLLO resides in CASE-MIS and interacts with TLCATS. APOLLO tracks information on issues, work plans, litigation dates, expert witnesses, attorney contacts, and amounts in issue.

(N) LMSB Management Analyst. The Management Analyst in LMSB Counsel Headquarters is responsible for receiving all screening and reporting information and generating reports of significant case activity.

(O) Email Inbox. An email inbox will be established in LMSB Counsel Headquarters to facilitate the exchange of information on significant cases. Messages sent to the inbox should not be marked private.

(P) Monthly and Bi-Monthly Reports. Significant cases will be reported on the following reports:

(1) Significant Nondocketed Cases Bi-Monthly Report, described in CCDM 31.1.5.3 (D), below.

(2) Significant Cases Approaching Litigation Monthly Report, described in CCDM 31.1.5.4 Division Counsel Screening and Reporting of Significant Cases Approaching Litigation in paragraph (E), below.

(3) Significant Tax Court Cases Monthly Screening Report, described in CCDM 31.1.5.5.4 Significant Tax Court and Department of Justice Cases Monthly Screening Reports, below.

(4) Significant Department of Justice Cases Monthly Screening Report, described in CCDM 31.1.5.5.4 Significant Tax Court and Department of Justice Cases Monthly Screening Reports, below.

(5) Significant Tax Court Cases Bi-Monthly Report, described in CCDM 31.1.5.5.5(A) Significant Tax Court Cases Bi-Monthly Report, below.

(6) Significant Department of Justice Cases Bi-Monthly Report, described in CCDM 31.1.5.5(B) Significant Department of Justice Cases Bi-Monthly Report, below.

### **31.1.5.3 Coordination Procedures in Nondocketed Significant Cases**

(A) General. When issues in examination are significant, as described in CCDM 31.1.5.2 Definitions in paragraph (C), above, coordination is required. Coordination in nondocketed cases may take many forms. The nature of the issue and the stage of development of the case will generally provide a guide to the type of coordination required. Whether a case is significant, and the appropriate coordination required for a particular case, is a matter of sound judgment to be exercised by both Division Counsel and Associate Chief Counsel personnel. Advice and work products on significant cases are cleared at appropriate levels of the organization and with all concerned offices.

(B) Division Counsel. Types of coordination available to Division Counsel personnel may include the following from among existing forms of coordination and advice:

(1) Informal discussion with IRS client experts, such as Technical Advisors, and Division Counsel experts, such as Industry Counsel, Associate Area Counsel (Industry Programs), Area Counsel and Division Counsel headquarters staff. Such discussions may cross to other Division Counsel experts. For example, TEGE issues can arise in LMSB cases, and LMSB Division Counsel personnel should coordinate with TEGE Division Counsel personnel.

(2) Informal discussion with the Associate Chief Counsel office.

(3) Submission of a formal request for legal advice to the Associate Chief Counsel office.

(4) Submission of legal advice provided to examiners for pre-review by the Associate Chief Counsel office.

(5) Submission of technical advice memoranda and technical expedited advice memoranda requests to the Associate Chief Counsel office.

(6) Recommendation for published guidance to the Associate Chief Counsel office.

(C) Associate Chief Counsel. When Division Counsel personnel raise issues either informally or formally with an Associate Chief Counsel office, Associate Chief Counsel personnel should ensure that:

(1) Division Counsel personnel requesting informal advice are aware of pending published guidance or broader policy concerns.

(2) Cases with overlapping jurisdiction with other Associate Chief Counsel offices are coordinated properly.

(3) The Associate Chief Counsel is informed of pending significant issues and cases.

(4) All written work products reflect the position of the Office of Chief Counsel.

(5) Advice and work products on significant cases are cleared at appropriate levels of the organization and with all concerned offices in the exercise of sound judgment.

(D) Significant Case Aspect Code in TECHMIS. When a nondocketed case poses a significant issue, the Division Counsel office is responsible for inputting the Significant Case Aspect Code (NSC). This aspect code will be used to generate the Significant Nondocketed Cases Bi-Monthly Report or other related TECHMIS reports.

#### **31.1.5.4 Division Counsel Screening and Reporting of Significant Cases Approaching Litigation**

(A) General. Nondocketed cases approaching litigation will be screened in the Division Counsel office and reported to Chief Counsel executives in the Significant Cases Approaching Litigation Monthly Report as provided in this section. The primary purpose of such screening and reporting is to identify those significant cases that may become the subject of future litigation in order to allow the Office of Chief Counsel and the Department of Justice to anticipate resource requirements associated with such cases. Relevant portions of the report will be shared with the Department of Justice with taxpayer identifying information redacted.

(B) LMSB Division Screening and Reporting. Because of their day-to-day involvement with the LMSB operating division, Associate Area Counsel are uniquely positioned to identify nondocketed cases that are approaching litigation and would constitute docketed significant cases as defined in CCDM 31.1.5.2 Definitions in paragraph (E), above. Accordingly, Associate Area Counsel will regularly screen their nondocketed cases in order to identify potential docketed significant cases that are near the stage at which a statutory notice of deficiency or FPAA may be issued to the taxpayer; likely to be litigated as refund, bankruptcy, or summons cases; or are under consideration for designation for litigation. One aspect of consideration is whether the case merits assistance from or assignment to a Special Trial Attorney.

(1) If such a case is identified, the Associate Area Counsel will complete an LMSB Significant Case Approaching Litigation form and forward it to the Associate Area Counsel (Strategic Litigation) (AAC(SL)). The form will be accompanied by an Executive Summary for each significant issue. The Executive Summary will set forth clearly and succinctly: a) a brief discussion of the issue; b) a statement of the issue's significance; c) a brief summary of

coordination that has occurred to date, whether with an Associate Chief Counsel office, Industry Counsel, Technical Advisor, or other field personnel working similar issues; and d) anticipated expert witness needs. The coordination summary will also reference prior written advice (e.g., PLR, TAM, formal request for legal advice, Coordinated Issue Paper) and will be accompanied by copies of such advice, if feasible, and key email messages relating to the issue.

(2) The LMSB Significant Case Approaching Litigation form will include the identity of the court in which it is anticipated the case will become docketed and the time frame for such docketing. If the case is one that is near the stage at which a statutory notice of deficiency or FPAA may be issued to the taxpayer, the form will also include the Associate Area Counsel's recommendation that the case be: a) transferred to a Strategic Litigation group for statutory notice review; b) assigned to a Special Trial Attorney for joint statutory notice review with the Associate Area Counsel attorney; c) assigned to a Strategic Litigation group after the case becomes docketed in the United States Tax Court; or d) retained by the Associate Area Counsel. Upon docketing, refund, bankruptcy, or summons enforcement cases are generally handled by Associate Area Counsel.

(3) Upon receipt of an LMSB Significant Case Approaching Litigation form, the AAC(SL) will forward the form to the Area Counsel and the Division Counsel. If the case involves an industry issue relevant to another Area Counsel, the AAC(SL) also will provide a copy to the other Area Counsel and the AAC(SL) for that Area. The AAC (SL) will evaluate the case and the Associate Area Counsel's recommendations, and forward his or her recommendations for case assignment together with the form. In addition to determining case assignment, if the Area Counsel and Division Counsel agree that the case is a significant case approaching litigation, the Associate Area Counsels and Associate Area Counsel (SL) will be so notified, and the case will be added to the Significant Cases Approaching Litigation Monthly Report.

(4) The LMSB Significant Case Approaching Litigation form is attached hereto as Exhibit 2.

(C) SB/SE Division Screening and Reporting. Because of their day-to-day involvement with the SB/SE operating division, Associate Area Counsel are uniquely positioned to identify nondocketed cases that are approaching litigation and would constitute docketed significant cases as defined in CCDM 31.1.5.2 Definitions in paragraph (E), above. Accordingly, Associate Area Counsel will regularly screen their nondocketed cases in order to identify potential docketed significant cases that are near the stage at which a statutory notice of deficiency or FPAA may be issued to the taxpayer; likely to be litigated as refund, bankruptcy, or summons cases; or are under consideration for designation for litigation.

(1) If such a case is identified, the Associate Area Counsel will complete an SB/SE Significant Case Approaching Litigation form and forward it to the Area

Counsel and Tax Litigation-Examination Manager. The form will be accompanied by an Executive Summary for each significant issue. The Executive Summary will set forth clearly and succinctly: a) a brief discussion of the issue; b) a statement of the issue's significance; c) a brief summary of coordination that has occurred to date, whether with an Associate Chief Counsel office or other field personnel working similar issues; and d) anticipated expert witness needs. The coordination summary will also reference prior written advice (e.g., PLR, TAM, formal request for legal advice, Coordinated Issue Paper) and will be accompanied by copies of such advice, if feasible, and key email messages relating to the issue.

(2) The SB/SE Significant Case Approaching Litigation form will include the identity of the court in which it is anticipated the case will become docketed and the time frame for such docketing. Upon docketing, Tax Court, refund, bankruptcy, or summons enforcement cases are generally handled by Associate Area Counsel.

(3) Upon receipt of an SB/SE Significant Case Approaching Litigation form, the Area Counsel and Tax Litigation-Examination Manager will evaluate the case and the Associate Area Counsel's recommendations. If the Area Counsel and Tax Litigation-Examination Manager agree that the case is a significant case approaching litigation, the Associate Area Counsel will be so notified for inclusion in the Significant Cases Approaching Litigation Monthly Report.

(4) The SB/SE Significant Case Approaching Litigation form is attached hereto as Exhibit 3.

(D) TEGE Division Screening and Reporting. Because of their day-to-day involvement with the TEGE operating division, TEGE Area and Deputy Area Counsel and national office branches are uniquely positioned to identify nondocketed cases that are approaching litigation and would constitute docketed significant cases as defined in CCDM 31.1.5.2 Definitions at paragraph (E), above. Accordingly, TEGE Area and Deputy Area Counsel, and national office branch managers, will regularly screen their nondocketed cases in order to identify potential docketed significant cases that are near the stage at which a statutory notice of deficiency or FPAA may be issued to the taxpayer, likely to be litigated as refund, bankruptcy, summons or declaratory judgment cases; or are under consideration for designation for litigation.

(1) If such a case is identified, the Area or Deputy Area Counsel or branch manager will complete a TEGE Significant Case Approaching Litigation form and forward it to the Division Counsel/Associate Chief Counsel. The form will be accompanied by an Executive Summary for each significant issue. The Executive Summary will set forth clearly and succinctly: a) a brief discussion of the issue; b) a statement of the issue's significance; c) a brief summary of coordination that has occurred to date, whether with an Associate Chief Counsel office, Industry Specialist, or other field personnel working similar issues;

and d) anticipated expert witness needs. The coordination summary will also reference prior written advice (e.g., PLR, TAM, formal request for legal advice, Coordinated Issue Paper) and will be accompanied by copies of such advice, if feasible, and key email messages relating to the issue.

(2) The TEGE Significant Case Approaching Litigation form will include the identity of the court in which it is anticipated the case will become docketed and the time frame for such docketing. Upon docketing, Tax Court, refund, bankruptcy, or summons enforcement cases are handled by Associate Area Counsel. The form will also include any recommendation that a) informal TEGE national office branch assistance be sought in statutory notice review; b) the case be assigned to a specific senior trial attorney with greater expertise in the subject matter area involved; or c) a request for a Special Trial Attorney should be considered if the case becomes docketed in the United States Tax Court.

(3) Upon receipt of a TEGE Significant Case Approaching Litigation form, in addition to determining case assignment, if the Area Counsel and the Division Counsel/Associate Chief Counsel agree that the case is a Significant Case approaching litigation, the Area or Deputy Area Counsel or branch manager will be so notified for inclusion in the Significant Cases Approaching Litigation Monthly Report.

(4) The TEGE Significant Case Approaching Litigation form is attached hereto as Exhibit 4.

(E) Significant Cases Approaching Litigation Monthly Report. The LMSB HQ Management Analyst will generate the Significant Cases Approaching Litigation Monthly Report based on the information provided by the Division Counsel offices. The report will be distributed to all Executives in the Office of Chief Counsel and to the Assistant Attorney General for Tax at the Department of Justice (with taxpayer identifying information redacted).

#### **31.1.5.5 Screening and Reporting of Significant Tax Court and Department of Justice Cases**

(A) Screening of Tax Court Petitions. Tax Court petitions (including amended petitions) will be screened in the Associate Chief Counsel and Division Counsel offices and reported to Chief Counsel executives in the Significant Tax Court Cases Monthly Screening Report as provided in this section. The primary purpose of such screening is to determine which of the petitions represent Significant Cases, and to establish whether such a case will be subject to National, Division, or National Project Coordination as defined in CCDM 31.1.5.2 Definitions at paragraph (F), or excluded. Even though a case may meet the definition of Significant Case in CCDM 31.1.5.2 Definitions in paragraph (E) above, the Associate Chief Counsel and Division Counsel offices have discretion in nominating the case for coordination.

(B) Screening of Complaints. Complaints in refund cases initiated in the United States District Court, bankruptcy cases involving the merits of a tax liability, declaratory judgment suits, and summons actions recommended for enforcement, will be screened in Division Counsel offices and reported to Chief Counsel executives in the Significant Department of Justice Monthly Screening Report as provided in this section. Complaints in refund actions initiated in the Court of Federal Claims will be screened in the Division Counsel and Associate Chief Counsel offices, and similarly reported. The primary purpose of screening is to determine which of the complaints or recommended summons enforcement actions represent Significant Cases. Such classification is not intended to supersede the existing procedures for classifying a case as "Standard" or "S.O.P." for purposes of referral to the Department of Justice. A case deemed Significant should be classified as "Standard." However, not all "Standard" cases are Significant Cases.

#### **31.1.5.5.1 Associate Chief Counsel Screening**

(A) The Associate offices will screen all Tax Court petitions that present issues within their jurisdiction with contested deficiencies or FPAAs in excess of \$1,000,000, and all complaints in Court of Federal Claims cases, as provided below.

(B) The Docket, Records & User Fee Branch of the Office of Associate Chief Counsel (Procedure & Administration) will identify and provide copies of all Tax Court petitions to all Associate offices and to Division Counsel Headquarters (LMSB and SB/SE) within five business days of the date the petition or amended petition is served. The Disclosure & Litigation Support Branch of the Office of Associate Chief Counsel (Procedure & Administration) will provide copies of all Court of Federal Claims complaints to all Associate offices and to Division Counsel Headquarters (LMSB and SB/SE) within five business days of the date the complaint is served.

(C) Tax Court petitions and Court of Federal Claims complaints will be screened by each Associate Chief Counsel office to identify and consider for coordination those issues in the case that are within the subject matter jurisdiction of that office.

(D) For each Tax Court petition screened, the Associate Chief Counsel office will determine whether the case should be classified as a Significant Case (National, Division, or National Project) or excluded. For each Court of Federal Claims complaint screened, the Associate Chief Counsel office will determine whether the case should be classified as a Significant Case, or excluded.

(E) In Tax Court cases, for each proposed National or National Project Significant Case, and in each Court of Federal Claims Significant Case, the Associate Chief Counsel will personally approve the proposal.

(F) In Tax Court cases, for each proposed National or National Project Significant Case, and in each Court of Federal Claims Significant Case, the Associate Chief Counsel

office will designate a Principal Associate Attorney for the issues under the jurisdiction of that Associate office.

(G) Within five business days after a determination that a case should be classified as a Significant Case, the Associate Chief Counsel office will so notify the affected Division Counsel Headquarters office. That headquarters office will be responsible for notifying the appropriate Division Counsel personnel.

(H) If the Associate Chief Counsel office believes that the Tax Court petition or the Court of Federal Claims complaint cannot adequately be screened because of an inadequate description or explanation of the issues involved, the Associate Chief Counsel office will contact the Division Counsel attorney to determine whether Service files can provide information to determine the significance of the issues. If the significance cannot be determined within the initial screening period, by agreement of the Associate Chief Counsel office and the affected Area Counsel, screening may be deferred for a period of 30 days. This period of time may not be further extended. Under such circumstances, the case will temporarily be classified as "deferred" for purposes of the monthly report described below. The case will be re-screened in the following month, with the benefit of greater knowledge of the significance of the issue, and a determination made whether the case should be classified as a Significant Case.

(I) Within ten days after the end of each month, each Associate Chief Counsel office will provide to the Division Counsel (LMSB) HQ Management Analyst a list of all Tax Court petitions and Court of Federal Claims complaints assigned to that Associate Chief Counsel office for screening during the month, and the proposed classification of each case.

(J) The Associate Office Significant Case Petition or Complaint Review form used to facilitate the screening of Tax Court petitions and Court of Federal Claims complaints is attached hereto as Exhibit 5.

#### **31.1.5.5.2 Division Counsel Screening**

(A) Screening of Tax Court Petitions. All Tax Court petitions will be screened by the assigned Division Counsel office, as provided below. The primary purpose of screening is to determine which of the petitions represent Significant Cases, and to establish whether such a case will be subject to National, Division, or National Project Coordination as defined in CCDM 31.1.5.2 Definitions at paragraph (F), or excluded. In addition, the screening may be used within the Division Counsel office to determine the best allocation of Division Counsel resources to meet the needs of the case.

(B) Screening of Department of Justice Complaints and Other Actions. All complaints in refund cases initiated in the United States District Courts and Court of Federal Claims, bankruptcy cases involving the merits of a tax liability, declaratory judgment suits, and summons actions recommended for enforcement, will be screened by the assigned Division Counsel office, as provided below. The primary purpose of screening is to

determine which of the complaints or recommended summons enforcement actions represent Significant Cases. In addition, the screening may be used within the Division Counsel office to determine the best allocation of Division Counsel resources to meet the needs of the case.

(C) LMSB Division Counsel Screening. The LMSB Associate Area Counsel, using the LMSB Significant Case Screening Form, will be responsible for initiating the screening of all Tax Court petitions to determine whether the case should be classified as a Significant Case (National, Division, or National Project) or excluded; and for initiating the screening of all complaints in District Court and Court of Federal Claims cases and summons actions recommended for enforcement, to determine whether the case should be classified as a Significant Case or excluded.

(1) For each petition, complaint or enforcement action screened, the Associate Area Counsel, within five business days after receiving the petition, complaint or recommending the enforcement action, will forward the completed LMSB Significant Case Screening Form, together with a copy of the petition, complaint or referral letter, to the Associate Area Counsel (Strategic Litigation). The form must be accompanied by an Executive Summary for each proposed significant issue. The Executive Summary should set forth clearly and succinctly: a) a brief discussion of the issue; b) a statement of the issue's significance; c) a brief summary of coordination that has occurred to date, whether with an Associate office, Industry Specialist, or other field personnel working similar issues; and d) anticipated expert witness needs. The coordination summary should also reference prior written advice (e.g., PLR, TAM, formal request for legal advice, Coordinated Issue Paper) and should be accompanied by copies of such advice if feasible and key email messages relating to the issue.

(2) Within five business days after receiving the LMSB Significant Case Screening Form, the AAC(SL) will supplement the form with recommendations and forward the form to the Area Counsel and Division Counsel, and when appropriate, the AAC(SL) and Area Counsel with industry interest in the taxpayer or significant issue. If inter-Area coordination is appropriate, the AAC(SL) will consult and make recommendations to their respective Area Counsel.

(3) Within five business days after receiving the LMSB Significant Case Screening Forms from Associate Area Counsel and AAC (SL), the Area Counsel will consult with other affected Area Counsel, when appropriate, and the Division Counsel to determine whether, in a Tax Court case, the case should be classified as a National, Division, or National Project Significant Case or excluded; or whether, in a Department of Justice case, the case should be classified as Significant Case or excluded. The Division Counsel and Division Counsel (LMSB) HQ Management Analyst will provide this information to the appropriate Associate offices, and to any other affected Division Counsel, in all Tax Court cases recommended for National or National Project coordination and in all Department of Justice cases. All Tax Court cases screened will be reflected on

the Significant Tax Court Cases Monthly Screening Report. All Department of Justice cases screened will be reflected on the Significant Department of Justice Case Monthly Screening Report. If the case is classified as a Significant Case, the Area Counsel will open the case in APOLLO for inclusion in the Significant Tax Court Cases Bi-Monthly Report or the Significant Department of Justice Cases Bi-Monthly Report.

(4) If the Area Counsel believes that the petition, complaint or referral letter cannot be adequately screened because of an insufficient description or explanation of the issues involved, the Area Counsel will so advise the affected Associate Chief Counsel office. If the significance cannot be determined within the initial screening period, by agreement of the Associate Chief Counsel office and the affected Area Counsel, screening may be deferred for a period of 30 days. This period of time may not be further extended. Under such circumstances, the case will temporarily be classified as "deferred" for purposes of the monthly report described below. The case will be re-screened in the following month, with the benefit of greater knowledge of the significance of the issue, and a determination made whether the case should be classified as a Significant Case.

(5) The LMSB Significant Case Screening Form is attached hereto as Exhibit 6.

(D) SB/SE Division Counsel Screening. The SB/SE Associate Area Counsel assigning a regular Tax Court case will be responsible for screening the petition to determine whether the case should be classified as a Significant Case (National, Division, or National Project) or excluded. The SB/SE Associate Area Counsel will be responsible for screening all complaints in Court of Federal Claims and District Court refund cases and bankruptcy pleadings which raise an issue as to the merits of the tax liability, and summons actions recommended for enforcement, to determine whether the case should be classified as a Significant Case or excluded. The results of screening will be recorded by the Associate Area Counsel on the SB/SE Significant Case Screening Form.

(1) For each petition, complaint or enforcement action recommended to be a Significant Case, the Associate Area Counsel, within five business days after reviewing the petition, will forward the SB/SE Significant Case Form, together with a copy of the petition, complaint or referral letter and an Executive Summary to the Area Counsel and the Tax Litigation-Examination Manager. The Executive Summary should set forth clearly and succinctly: a) a brief discussion of the issue; b) a statement of the issue's significance; c) a brief summary of coordination that has occurred to date, whether with an Associate office, the client, or other Counsel field personnel working similar issues; and d) anticipated expert witness needs. The coordination summary should also reference prior written advice (e.g., PLR, TAM, Chief Counsel Advice, Coordinated Issue Paper)

and should be accompanied by copies of such advice if feasible, and key email messages relating to the issue.

(2) Within five business days after receiving the Associate Area Counsel recommendation, the Area Counsel and the Tax Litigation-Examination Manager will consult and determine whether, in a Tax Court case, the case should be classified as a National, Division, or National Project Significant Case or excluded; or whether, in a Department of Justice case, the case should be classified as a Significant Case or excluded. The Tax Litigation-Examination Manager will advise the appropriate Associate Chief Counsel office, the Division Counsel (LMSB) HQ Management Analyst, and any other affected Division Counsel offices of all cases recommended for National or National Project coordination and in all Department of Justice cases. All Tax Court cases screened will be reflected on the Significant Tax Court Cases Monthly Screening Report. All Department of Justice cases screened will be reflected on the Significant Department of Justice Cases Monthly Screening Report. If the case is classified as a Significant Case, the Area Counsel will open the case in APOLLO for inclusion in the Significant Tax Court Cases Bi-Monthly Report or the Significant Department of Justice Cases Bi-Monthly Report.

(3) If the Area Counsel believes that the petition, complaint or referral letter cannot be adequately screened because of an inadequate description or explanation of the issues involved, the Area Counsel will contact the affected Associate Chief Counsel office. If the significance of the issue cannot be ascertained within the initial screening period, screening may be deferred, by agreement of the Associate Chief Counsel office and the Area Counsel, for a period of 30 days. The case will then be re-screened in the following month, with the benefit of greater knowledge of the significance of the issue and a determination made whether the case should be classified as a Significant Case.

(4) The SB/SE Significant Case Screening Form is attached hereto as Exhibit 7.

(E) TEGE Division Counsel Screening. The TEGE Area and Deputy Area Counsel, using the TEGE Significant Case Screening Form, will along with the Division Counsel/Associate Chief Counsel (TEGE) national office branches be responsible for screening of all Tax Court petitions to determine whether the case should be classified as a Significant Case (National, Division, or National Project) or excluded; and for screening all complaints in District Court and Court of Federal Claims cases, declaratory judgment suits, and summons actions recommended for enforcement to determine whether the case should be classified as a Significant Case or excluded.

(1) For each petition, complaint or enforcement action screened, the Area Counsel or Deputy Area Counsel, or national office branch manager, within five business days after receiving the petition, will forward the completed TEGE Significant Case Screening Form, together with a copy of the petition, complaint

or referral letter, to the Division Counsel/Associate Chief Counsel (TEGE). The form must be accompanied by an Executive Summary but only for each proposed significant issue. The Executive Summary should set forth clearly and succinctly: a) a brief discussion of the issue; b) a statement of the issue's significance; and c) a brief summary of coordination that has occurred to date, whether with an Associate office, Industry Specialist, or other field personnel working similar issues; and d) anticipated expert witness needs. The coordination summary should also reference prior written advice (e.g., PLR, TAM, formal request for legal advice, Coordinated Issue Paper) and should be accompanied by copies of such advice if feasible and key email messages relating to the issue.

(2) After receiving the TEGE Significant Case Screening Forms from the Area or Deputy Area Counsel or from its national office branches, within five business days the Division Counsel/Associate Chief Counsel (TEGE) will consult with the appropriate Area and Deputy Area Counsel along with any other affected Division Counsel when appropriate to determine whether, in a Tax Court case, the case should be classified as a National, Division, or National Project Significant Case or excluded; or whether, in a Department of Justice case, the case should be classified as a Significant Case or excluded. If determined to be significant, a copy of this information will be provided also to the front office paralegal to the Division Counsel/Associate Chief Counsel (TEGE) for placement on the TEGE Significant Case Monthly Report. The Division Counsel/Associate Chief Counsel (TEGE) will provide this information to the Division Counsel (LMSB) HQ Management Analyst, to the appropriate Associate offices, and to any other affected Division Counsel, in all Tax Court cases recommended for National or National Project coordination and in all Department of Justice cases. All Tax Court cases screened will be reflected on the Significant Tax Court Cases Monthly Screening Report. All Department of Justice cases screened will be reflected on the Significant Department of Justice Cases Monthly Screening Report. If the case is classified as a Significant Case, the Area Counsel will open the case in APOLLO for inclusion in the Significant Tax Court Cases Bi-Monthly Report or the Significant Department of Justice Cases Bi-Monthly Report.

(3) If the TEGE Area or Deputy Area Counsel or the Division Counsel/Associate Chief Counsel (TEGE) believes that the petition, complaint or referral letter cannot be adequately screened because of an insufficient description or explanation of the issues involved, the Division Counsel/Associate Chief Counsel (TEGE) will so advise the affected Associate Chief Counsel offices. If the significance cannot be determined within the initial screening period, by agreement of the Associate and the affected Area Counsel, screening may be deferred for a period of 30 days. This period of time may not be further extended. Under such circumstances, the case will temporarily be classified as "deferred" for purposes of the monthly report described below. The case will be re-screened in the following month, with the benefit of greater knowledge of the

significance of the issue, and a determination made whether the case should be classified as a Significant Case.

(4) The TEGE Significant Case Screening Form is attached hereto as Exhibit 8.

### **31.1.5.5.3 Case Classification**

(A) Reconciliation of Case Classifications. Any disagreements between Division Counsel and Associate Chief Counsel offices over docketed case classification should be resolved through existing reconciliation procedures.

(B) Reclassification/Exclusion of Cases. A Tax Court case that is initially excluded from the procedures of this chapter, or initially classified as a National, Division, or National Project case, may later be reclassified if, as the case progresses, it is determined (in accordance with the standards used for initial classification) that such reclassification is appropriate. Likewise, a Tax Court case originally classified as a Significant Case may subsequently be excluded from such treatment (in accordance with the standards used for initial classification) when proposed by either the Division Counsel or Associate Chief Counsel offices. A Department of Justice case that is initially excluded from the procedures of this chapter may later be reclassified if, as the case progresses, it is determined (in accordance with the standards used for initial classification) that such reclassification is appropriate. Likewise, a Department of Justice case originally classified as a Significant Case may subsequently be excluded from such treatment (in accordance with the standards used for initial classification) when proposed by either the Division Counsel or Associate Chief Counsel offices.

### **31.1.5.5.4 Significant Tax Court and Department of Justice Cases Monthly Screening Reports**

(A) The Division Counsel (LMSB) HQ Management Analyst will prepare a Significant Tax Court Cases Monthly Screening Report and a Significant Department of Justice Cases Monthly Screening Report reflecting the results of screening.

(B) The Significant Tax Court Cases Monthly Screening Report and the Significant Department of Justice Cases Monthly Screening Report will compile the information provided by the respective Associate Chief Counsel and Division Counsel offices regarding the petitions, complaints and enforcement actions assigned to them for screening during the previous month. These reports will be distributed to all Associate and Deputy Associate Chief Counsel, all Division and Deputy Division Counsel, and all Area Counsel, Associate Area Counsel (Industry Program), and Associate Area Counsel (Strategic Litigation), not later than 15 days following the close of the month during which the listed petitions, complaints and enforcement actions were screened.

(C) Within ten days after receipt of the Significant Tax Court Cases Monthly Screening Report and the Significant Department of Justice Monthly Screening Report, the

respective Associate and Division Offices will advise the Division Counsel (LMSB) HQ Management Analyst of any disagreement with any item in the report, of any additional cases or information that should be included in the report, and of any cases that cannot be properly evaluated pending receipt of the administrative file.

#### **31.1.5.5.5 Significant Tax Court Cases and Department of Justice Cases Bi-Monthly Reports**

(A) Significant Tax Court Cases Bi-Monthly Report. The Division Counsel (LMSB) HQ Management Analyst will prepare a Significant Tax Court Cases Bi-Monthly Report from APOLLO. The report will contain a section for pending significant Tax Court cases, subdivided by LMSB, SB/SE and TEGE Division Counsel cases. The report will contain the due dates for the Litigation Work Plan, the Associate and Division Counsel signature dates, the case status, issue descriptions, and identifying information for the Lead Division Attorney and Principal Associate Attorney. The report will be distributed to the Chief Counsel, Deputy Chief Counsel, all Associate and Deputy Associate Chief Counsel, all Division and Deputy Division Counsel, and all Area Counsel, Associate Area Counsel (Industry Program), and Associate Area Counsel (Strategic Litigation), not later than 15 days following the close of every other month.

(B) Significant Department of Justice Cases Bi-Monthly Report. The Division Counsel (LMSB) HQ Management Analyst will prepare a Significant Department of Justice Cases Bi-Monthly Report. The report will contain a section for pending significant Department of Justice cases, subdivided by LMSB, SB/SE and TEGE Division Counsel cases. The report will contain the case status, issue descriptions, and identifying information for the Lead Division Attorney and Principal Associate Attorney. The report will be distributed to the Chief Counsel, Deputy Chief Counsel, all Associate and Deputy Associate Chief Counsel, all Division and Deputy Division Counsel, and all Area Counsel, Associate Area Counsel (Industry Program), and Associate Area Counsel (Strategic Litigation), not later than 15 days following the close of every other month.

#### **31.1.5.6 Development of Litigation Work Plans for Significant Tax Court Cases**

(A) Litigation Work Plan. A litigation work plan is essential to the proper development, trial, and briefing of every Significant Tax Court Case. The specific form and contents of the work plan will be determined by the responsible executives on a case-by-case basis, according to the nature, importance, and difficulty of the legal and factual issues presented by the case, whether the case requires team litigation, the activity or status of the case, and the availability of resources. The following guidelines are intended to facilitate the creation of appropriate work plans.

(B) Pretrial activities are discussed in detail in CCDM 35.4.

(C) Contents of Litigation Work Plan. The Lead Division Attorney, in consultation with the Principal Associate Attorney, is responsible for the preparation and updating of the litigation work plan. A complete work plan will set forth the essential facts, legal issues,

respondent's position, and petitioner's position on the issues, litigation strategy, milestones, and time tables that are expected to apply to the case. It is expected that the work plan will become more specific and fully developed as the case progresses. The work plan also serves as a working document for everyone associated with the case. The work plan will be prepared using the APOLLO System. Details of the format and content of the work plan are set forth in Exhibit 31.1.5.6-1. In general, a complete work plan should:

- (1) State whether the case is to be referred to Appeals (in whole or in part) for consideration or retained by Counsel or returned from Appeals, if appropriate, for factual development, pursuant to existing procedures, and provide a schedule for monitoring the progress of the case (or part thereof) while it is with Appeals to ensure adequate time for development of any issue that is not resolved by agreement.
- (2) Describe further action needed to properly develop the legal and factual issue(s) presented by the case, and describe anticipated evidentiary issues. Depending on the case, the required actions may include clarification of office position on legal issues, retention of expert witnesses, and determination of the need for party and third party discovery.
- (3) Establish an overall schedule for the case through trial, including a schedule for completion of the actions noted in subparagraph (C)(1) above, as well as the ordinary landmarks of litigation and milestones (e.g., discovery, expert witness reports, stipulations of fact, trial memorandum, trial, and briefing).
- (4) Identify the responsibilities of each Associate Chief Counsel and Division Counsel attorney assigned to the case. Because the role of each participant will vary depending on the particulars of each case, the work plan should set forth the specific tasks and projected completion dates for each participant to avoid misunderstandings and disagreements.
- (5) The trial memorandum and the briefs filed by the respondent shall not be inconsistent with the work plan without the consent of the Associate Chief Counsel and Division Counsel executives responsible for approving the work plan.

### **31.1.5.7 Coordination of Litigation Work Plans for Significant Tax Court Cases**

(A) National Coordination. Significant Tax Court cases require the highest levels of coordination between Division Counsel and Associate Chief Counsel. Each significant case will be assigned at least one Lead Division Attorney and one Principal Associate Attorney. In the event a case contains multiple separate and distinct coordinated issues, more than one Lead Division Attorney and Principal Associate Attorney may be assigned. For example, if an LMSB case contains both a coordinated international issue and a separate and distinct coordinated corporate issue, Division Counsel may

assign different Lead Division Attorneys to each issue. And, regardless of whether there are one or two Lead Division Attorneys, there would be a Principal Associate Attorney for the international issue and one for the corporate issue. On the other hand, if the coordinated issue is primarily an international issue requiring coordination and assistance on the corporate issue, there would be one Principal Associate Attorney for the issue who is responsible for coordination within the National Office.

(B) Work Plan Coordination. The work plan of a significant case must contain all the elements discussed in paragraph (A) of CCDM 31.1.5.6 above. The work plan is written by the Lead Division Attorney, in consultation with the Principal Associate Attorney. The Principal Associate Attorney provides technical expertise to ensure that the legal positions in the work plan reflect the position of the Office of Chief Counsel. The Lead Division Attorney must bring to the attention of the Principal Associate Attorney any material changes of fact as the case is developed for trial. The Principal Associate Attorney must notify the Lead Division Attorney of any changes in the position of the Office of Chief Counsel as to the legal issues set forth in the work plan.

(C) Approval of Work Plans. The initial work plan will be due to the Area Counsel (LMSB), Division Counsel (SB/SE) or Division Counsel/Associate Chief Counsel (TEGE) 60 days after the answer is filed. After approval by the appropriate Division Counsel executive and following consultation with the Division Counsel personally, the work plan will be forwarded to the Principal Associate Attorney for the concurrence on the technical position by the Associate Chief Counsel. Such concurrence will occur within 30 days after approval by the Division Counsel executive. After the initial work plan is approved, subsequent work plans are due no later than six months from the respective approval and concurrence by the appropriate Division Counsel executives and the Associate Chief Counsel. The work plan is a dynamic document, subject to change based on significant milestones as the case progresses within the framework of every six months. For example, if case development or other events calls for a change in the technical position within the six month period, the work plan should be updated, approved by the appropriate Division Counsel executive after consultation with the Division Counsel personally and forwarded to the Principal Associate Attorney for the concurrence on the technical position by the Associate Chief Counsel. On the other hand, not every interim updated work plan requires the concurrence of the appropriate Division Counsel executive and the Associate Chief Counsel. Some changes may be accompanied by email alerts to Division Counsel executives and the Principal Associate Attorney, such as, for example, a change in the planned use of an expert witness.

(D) Retention of Work Plans. APOLLO will reflect the most recent, updated work plan. The final work plan will be retained in APOLLO indefinitely. The Principal Associate Attorney is responsible for assuring that the signed original of each approved work plan is returned to the Lead Division Attorney, who will maintain this paper copy in the legal file. If an electronic approval system is adopted, the Lead Division Attorney will print each signed and approved work plan for inclusion in the legal file.

(E) Division Coordination. Division Coordination cases are unique to each division and are coordinated at the discretion of a Division or Area Counsel.

(1) A Division Coordinated case may be assigned a Principal Associate Attorney, at the discretion of the Division or Area Counsel and the Associate Chief Counsel.

(2) The work plan will be prepared by the Lead Division Attorney and will contain whatever information the Division or Area Counsel deems necessary.

(3) The Area Counsel will set the due dates for the initial and all subsequent work plans.

(F) National Project Coordination. Project coordination cases pose significant issues but are not the lead litigation cases. Generally these cases will follow a lead case that will be coordinated under the National Coordination procedures. Each case within a project will be assigned to a Division attorney who will coordinate with the Project Coordinator and Principal Associate Attorney for the project. The project will also have an Area Counsel who, along with the Project Coordinator, will define the parameters of the project work plan. The details of National Project Coordination procedures are contained in Exhibit I, Significant Case Procedures - Coordination of National Project Cases, attached hereto.

(1) The project work plan will not be as detailed as a National Coordination work plan. The project work plan will describe the issue(s) involved, the relevant coordination required, and significant target dates. The Project Coordinator is responsible for preparation of the project work plan, with assistance from the Principal Associate Attorney and the Lead Division Attorney on the lead case. The work plan is subject to the approval process set forth in paragraph C, above.

(2) All Division attorneys with cases in a project must bring to the attention of the Project Coordinator and Principal Associate Attorney any material changes of fact and status as cases are developed for trial. The Project Coordinator and Principal Associate Attorney must notify the Lead Division Attorney on the lead case and any Division attorneys with cases in a project of any changes in the position of the Office of Chief Counsel as to the legal issue(s) involved, or whether the status of a case originally designated as a Project Coordination case will change to a National Coordination case.

(3) There may be circumstances where a case within a coordinated project moves forward faster in litigation than the original lead case. In such circumstances, the project coordinated case should also become subject to National Coordination.

### **31.1.5.8 Significant Tax Court Case Issue Results Report**

(A) A Significant Tax Court Case Issue Results Report will be prepared within 60 days of the date of the following events:

- (1) Settled issue: the earlier of the filing of the decision document or a stipulation of settled issues covering the coordinated issue.
- (2) Tried issue (including dispositive motions) not appealed: the conclusion of the 90 day appeal period following entry of the Tax Court decision.
- (3) Appealed issue: when the Tax Court decision becomes final.

(B) Preparation, Review and Approval. The Lead Division Attorney will prepare the Significant Tax Court Case Issue Results Report for settled or tried issues. The Principal Associate Attorney will prepare the report for appealed issues, except that if the issue is remanded and not appealed after remand, the report will be prepared by the Lead Division Attorney. The report will be reviewed and approved by the Area Counsel, and the Associate Chief Counsel or designee. Upon approval, the report will be provided to the LMSB Management Analyst for inclusion in Apollo.

(C) Removal of case from the Significant Tax Court Cases Bi-Monthly Report. Upon receipt of the Significant Tax Court Case Issue Results Report, the LMSB Management Analyst will remove the issue from the Significant Tax Court Cases Bi-Monthly Report.

(D) The Significant Tax Court Case Issue Results Report form is attached hereto as Exhibit 9.

### **31.1.5.9 Coordination Procedures in Significant Department of Justice Cases**

(A) General. Significant Department of Justice cases require the highest levels of coordination between Division Counsel and Associate Chief Counsel. Each significant case will be assigned a Lead Division Attorney and Principal Associate Attorney. The Lead Division Attorney and the Principal Associate Attorney are responsible for assuring an active working relationship with the Department of Justice on significant cases.

(B) In those Department of Justice cases classified as Significant, the Division Counsel office will designate a Lead Division Attorney. Ordinarily, the Lead Division Attorney will be the Associate Area Counsel attorney assigned to the case. The Lead Division Attorney will be primarily responsible for coordination with the Tax Division of the Department of Justice, as well as with the Associate Chief Counsel and Division Counsel Headquarters offices where appropriate. In addition, in bankruptcy cases there may be SB/SE Division Counsel attorneys assigned as Special Assistant United States Attorneys to handle aspects of the case.



## **Significant Case Procedures Coordination of National Project Cases**

A Project consists of a group of tax shelter cases or any other group of similar or related cases that the Division Counsel, in consultation with Associate Chief Counsel, determines would benefit from monitoring through use of Apollo Project workplans. A Project can contain only nondocketed cases, only docketed cases, or a mix of both. At its inception, the Project will be assigned its own POSTSP ("Special Project—Post Filing") number in CASE-MIS and will be assigned a UIL (Uniform Issue List) number. Each individual case in the Project should have this same UIL number input as part of the CASE-MIS record for the case.

The Project Apollo workplan will address all cases and activity in the Project overall in a collective manner. The "Project Coordinator" for the Project is responsible for timely preparation and updating of Project workplans. Project workplans are subject to the same approval process as National Coordination Case workplans.

In the initial information fields of the Project Apollo, basic information about the Project will be provided and significant persons involved with the Project will be identified. Utilizing a CASE-MIS link, the Project Apollo will reflect as "Related Cases" a list of all cases in the Project, identified automatically by means of the Project UIL number. For each case in the Project, this list will reflect the case name, case type, assigned attorney, his/her organization, office, and telephone number, and the current CASE-MIS status code for the case.

For each issue involved in a typical case within the Project, the Project Apollo will state an "Issue Description," a "Statement of Facts" setting forth the typical fact pattern for the issue for cases in the project, the "Government Position" including reference to all relevant published guidance, and the "Taxpayer Position" setting forth typical taxpayer arguments in this type of case to the extent these are yet known. Penalties will be handled as distinct issues, with specific discussions of the facts, government position, and taxpayer position relating to each penalty. As appropriate, the texts dealing with the parties' positions can provide cites to the Project's Website (if any) for further information. In the "Case Workplan" portion of the Apollo, the Project Coordinator will address:

(1) the specific status of the project overall, including the characteristics, status, and whereabouts of particular cases or groupings of cases, plus information concerning any upcoming litigation of any case or cases in the Project, and

(2) future strategy and plans for controlling, advancing and disposing of the Project, including target dates. To complete and update this section, the Project Coordinator may have to contact other attorneys handling individual cases for information to supplement his or her knowledge as Project Coordinator.

It is likely that the Area Counsel for the Project, in coordination with appropriate others involved in the project, may identify a docketed case, or small number of docketed cases, in the Project, to be the "lead docketed case" (or cases), *i.e.*, a sample, or "test", case. This may be the first case that becomes docketed, or another case selected for its particular characteristics or other reasons. Since the handling of such a lead docketed case will have broad impact, it is desirable that such a case receive the benefit of the best efforts of Chief Counsel's Office as a whole. Thus normally the lead case in a Project will be considered a National Coordination case under the Significant Case Procedures and will be subject to normal workplan due dates and workplan signature requirements for such cases. As with all National Coordination cases, the selection of a lead docketed case must be approved by the Division Counsel and concurred in by the relevant Associate Chief Counsel. It will have an independent Apollo report reflecting the issues, facts, legal considerations, and workplan specifically for that case.

Any such lead case for the Project will be among the cases in the Project inventory list in the Project Apollo and will be mentioned in the discussion of the overall status of the Project. Extensive discussion of the particulars of the lead docketed case is not required in the Project Apollo as such specifics are available in the traditional National Coordination Litigation workplan for that particular case. All other cases in the Project that are not the lead docketed case (or cases) will not have individual, separate Apollos, but will be covered as part of the overall Project Apollo.

Project Apollo workplans will contain fields for the following information:

#### Case level information

- Project Name
- CASE-MIS POSTSP Number for the Project
- Project UIL Number
- Promoters (multiple) – Name of promoter firm, Address, Key Individual
- Project Coordinator – Name, Organization, Phone Number
- Division Attorney -- Name, Organization, Phone Number
- Project Area Counsel – Name, Organization Symbols, Phone Number
- Principal Associate Attorney – Name, Organization Symbols, Phone Number
- IRS Executive Champion – Name, Organization Symbols, Phone Number
- DFO – Name, Organization Symbols, Phone Number
- Steering Committee Members (multiple) – Name, Organization Symbols, Phone Number
- IRS Technical Advisor – Name, Organization Symbols, Phone Number
- Other Exam Contacts (multiple) – Name, Organization Symbols, Phone Number
- Project Appeals Officer – Name, Organization Symbols, Phone Number
- Related Cases – Download from CASE-MIS of all cases with the Project UIL number
- Workplan (comprehensive narrative discussing current Project status and future strategy including target dates)

## Issue level information

- UIL Number(s) applicable to the substantive issue
- UIL Descriptions
- Tax Periods
- Issue Description
- Summary of Facts (narrative)
- Government Position (narrative)
- Taxpayer Position (narrative)

# LMSB Significant Case Approaching Litigation<sup>1</sup>

DATE: 05/04/2004

TO: \_\_\_\_\_ FROM: \_\_\_\_\_  
 (Strategic Litigation Group) (LMSB Practice Group)

PRACTICE GROUP ATTY/ACC: \_\_\_\_\_ Phone: \_\_\_\_\_

TAXPAYER: \_\_\_\_\_ CASE-MIS #: \_\_\_\_\_

ASPECT CODE: \_\_\_\_\_

**CASE TYPE:**

- Tax case ( deficiency  adjustment FPAA  or refund amount \$ \_\_\_\_\_)
- Bankruptcy, merits of tax (disputed amount \$ \_\_\_\_\_)
- Declaratory Judgment
- Summons Enforcement
- Promoter Injunction

**CLIENT OFFICE:**

IRS DIVISION (city): \_\_\_\_\_  APPEALS (city): \_\_\_\_\_

TAXPAYER HQ:

\_\_\_\_\_  
 (City, State)

ANTICIPATED ISSUANCE  
 OF STATUTORY NOTICE OR OTHER  
 SPECIFIED SERVICE ACTION DATE:

AUDIT SITE RELEVANT TO THE ISSUE(S): \_\_\_\_\_

**PROBABLE COURT:**

- U.S. TAX COURT
- U.S. CLAIMS COURT
- U.S. DISTRICT COURT (location) \_\_\_\_\_
- U.S. BANKRUPTCY COURT

POSSIBLE FILING DATE: \_\_\_\_\_  
 (Month/Year)

OPPOSING COUNSEL (Name & Firm): \_\_\_\_\_

STATUTE EXPIRATION OR  
 OTHER TIME CONSTRAINT (explain): \_\_\_\_\_

**IRS CLASSIFICATION OF TAXPAYER**

- Financial Services
- Heavy Manufacturing & Transportation
- Retailers, Food, Pharmaceuticals & Healthcare
- Natural Resources & Construction
- Communications, Technology & Media

**AUDIT TEAM**

- 
- 
- 
- 
- 

<sup>1</sup> Report should be promptly submitted to a Division Official pursuant to CCDM 31.1.5.4 instructions for any case where the AAC has determined that the case may benefit from STA involvement and/or may be a "Significant Case Approaching Litigation," as defined in CCDM 31.1.5.2(D).

**TAXPAYER:** \_\_\_\_\_ **CASE-MIS #:** \_\_\_\_\_

**SIGNIFICANT CASE CATEGORIES: (check all applicable boxes):**

- Potential for Significant Docketed Case Coordination
- Validity of a Statute or Regulation
- Important to Tax Administration
- Likely to Attract National Attention
- Government Seeking to Distinguish Published Guidance
- Significant Industry Issue
- Issue Designated for Litigation or Under Consideration
- Industry Program Coordinated Issue
- Listed Transaction or similar transaction per Temp. Reg. ' 1.6011-4T(b)(2)

(identify transaction type): \_\_\_\_\_

Other (i.e., Related Case(s), etc.; explain): \_\_\_\_\_

**ATTACHMENTS:**

- EXECUTIVE SUMMARY FOR EACH SIGNIFICANT ISSUE (REQUIRED)**
- Revenue Agent Report (pertinent issues)
- Proposed Issue, Form 886
- Appeals Supporting Statement (pertinent issues)

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**PRACTICE GROUP RECOMMENDATION:**

- Transfer to SL Group
- Assign STA to work with Practice Group Attorney
- Assign to SL Group once case is docketed in Tax Court
- Retain in Practice Group

Associate Area Counsel: \_\_\_\_\_ Date: \_\_\_\_\_

**STRATEGIC LITIGATION GROUP RECOMMENDATION:**

- Transfer to SL Group
- Assign STA to work with Practice Group Attorney
- Transfer to SL Group once case is docketed in Tax Court
- Reconsider STA involvement after case is docketed
- Retain in Practice Group

**PROPOSED STA ASSIGNMENT:** \_\_\_\_\_

Associate Area Counsel (SL): \_\_\_\_\_ Date: \_\_\_\_\_

Area Counsel: \_\_\_\_\_ Date: \_\_\_\_\_

(duplicate as necessary)

## EXECUTIVE SUMMARY FORM

TAXPAYER: \_\_\_\_\_ CASE-MIS #: \_\_\_\_\_

### SIGNIFICANT ISSUE:

UIL Issue No.: \_\_\_\_\_

Amount of Adjustment: \$ \_\_\_\_\_ Taxable Years: \_\_\_\_\_

### Relevant Industry Area of Issue (if applicable):

- Financial Services
- Heavy Manufacturing & Transportation
- Retailers, Food, Pharmaceuticals & Healthcare
- Natural Resources & Construction
- Communications, Technology & Media

Project Name (if applicable): \_\_\_\_\_

### Description of Issue

a) Brief Discussion of the Issue: \_\_\_\_\_

b) Statement of the Issue's Significance: \_\_\_\_\_

c) Summary of Coordination to Date: *(Include coordination with Associate Chief Counsel office, Industry Counsel, Technical Advisor, or other field personnel working similar issues.)*

d.) Anticipated Expert Witness Needs: Number of Experts: \_\_\_\_\_  
Estimated Cost: \$ \_\_\_\_\_ Fiscal Year(s): \_\_\_\_\_

**Prior Written Advice:** *(e.g., PLR, TAM, formal request for legal advice, Coordinated Issue Paper) Attach copies of such advice, if feasible, and key email messages relating to the issue.*

# SBSE Significant Case Approaching Litigation<sup>1</sup>

DATE: \_\_\_\_\_

TO: \_\_\_\_\_ FROM: \_\_\_\_\_  
(AC & Division Counsel) (AAC)

ATTORNEY/AAC TO CONTACT: \_\_\_\_\_  
PHONE: \_\_\_\_\_

TAXPAYER: \_\_\_\_\_ TECH-MIS: \_\_\_\_\_

LOCATION OF CASE:  
 IRS DIVISION (city): \_\_\_\_\_  APPEALS (city): \_\_\_\_\_

**PROBABLE COURT** (check box below): POSSIBLE FILING DATE: \_\_\_\_\_  
 U.S. TAX COURT (Month/Year)  
 U.S. CLAIMS COURT  
 U.S. DISTRICT COURT (location) \_\_\_\_\_  
 U.S. BANKRUPTCY COURT

OPPOSING COUNSEL (Name & Firm): \_\_\_\_\_

STATUTE EXPIRATION OR  
OTHER TIME CONSTRAINT (explain): \_\_\_\_\_

ANTICIPATED DATE OF ISSUANCE OF STATUTORY NOTICE: \_\_\_\_\_

**SIGNIFICANT CASE CATEGORIES:**

- Potential for Significant Docketed Case Coordination
- Validity of a Statute or Regulation
- Important to Tax Administration
- Likely to Attract National Attention
- Government Seeking to Distinguish Published Guidance
- Significant Industry Issue
- Issue Designated for Litigation or Under Consideration
- Industry Program Coordinated Issue
- Listed Transaction or similar transaction per Temp. Reg. ' 1.6011-4T(b)(2)  
(identify transaction type): \_\_\_\_\_
- Other (i.e., Related Case(s), etc.; explain): \_\_\_\_\_

<sup>1</sup> This form should be promptly submitted to both the Area Counsel and the Tax Litigation - Examination Manager (Division Counsel), pursuant to CCDM 31.1.5.4, for any case that the AAC is recommending be coordinated as a "Significant Case Approaching Litigation" (as defined in CCDM 31.1.5.2(D)).

**TAXPAYER:** \_\_\_\_\_ **Techmis No:** \_\_\_\_\_

**ATTACHMENTS**

- EXECUTIVE SUMMARY FOR EACH SIGNIFICANT ISSUE (REQUIRED)**
- Petition
- Revenue Agent Report (pertinent issues)
- Proposed Issue, Form 886a
- Appeals Supporting Statement (pertinent issues)

**NO SIGNIFICANT ISSUES OR NOTICE ISSUES IDENTIFIED**

**AAC RECOMMENDATION:**

- National  Division or  National Project Coordination

Associate Area Counsel: \_\_\_\_\_ Date: \_\_\_\_\_

(attach additional copies of this page if needed)

## EXECUTIVE SUMMARY FORM

TAXPAYER: \_\_\_\_\_ TL-N: \_\_\_\_\_

**SIGNIFICANT ISSUE:**

UIL Issue No.: \_\_\_\_\_

Amount of Adjustment: \_\_\_\_\_ Taxable Years: \_\_\_\_\_

**Project Name** (if applicable): \_\_\_\_\_

**Description of Issue**

**a) Brief Discussion of the Issue:**

**b) Statement of the Issue's Significance:**

**c) Summary of Coordination to Date** (Including coordination with Associate Chief Counsel):

**d) Anticipated Need for an Expert Witness:**  Yes  No Est. Cost: \_\_\_\_\_

Fiscal Year(s): \_\_\_\_\_

**e) Additional Comments:**

**Prior Written Advice** (e.g., PLR, TAM, formal request for legal advice, Coordinated Issue Paper):

Attach copies of such advice, if practicable, and significant e-mail messages relating to the issue.

## TEGE Significant Case Approaching Litigation

DATE: 05/04/2004

TO: TEGE Executive FROM: \_\_\_\_\_  
 (TEGE Field/ACC Manager)

TEGE FIELD/ACC ATTY: \_\_\_\_\_ Phone: \_\_\_\_\_

TAXPAYER: \_\_\_\_\_ TECHMIS #: \_\_\_\_\_

BOD Code: \_\_\_\_\_ Aspect Code: \_\_\_\_\_ WLI #: \_\_\_\_\_

**CASE TYPE:**

- Tax case ( deficiency  adjustment (FPAA)  or refund amount \$ \_\_\_\_\_)
- Bankruptcy, merits of tax (disputed amount \$ \_\_\_\_\_)
- Declaratory Judgment (specify type): \_\_\_\_\_
- Section 7436 (Determination of Employment Status)
- Summons Enforcement
- Promoter Injunction

**CLIENT OFFICE:**

IRS DIVISION (city): \_\_\_\_\_  APPEALS (city): \_\_\_\_\_

**TAXPAYER HQ:**

\_\_\_\_\_  
 (City, State)

**ANTICIPATED ISSUANCE OF STATUTORY NOTICE OR  
 OTHER SPECIFIED SERVICE ACTION DATE:**

\_\_\_\_\_

**AUDIT SITE RELEVANT TO THE ISSUE(S):** \_\_\_\_\_

**PROBABLE COURT:**

- U.S. TAX COURT
- U.S. COURT of FEDERAL CLAIMS
- U.S. DISTRICT COURT (location) \_\_\_\_\_
- U.S. BANKRUPTCY COURT

**POSSIBLE FILING DATE:** \_\_\_\_\_

(Month/Year)

**OPPOSING COUNSEL (Name & Firm):** \_\_\_\_\_

**STATUTE EXPIRATION OR**

**OTHER TIME CONSTRAINT (explain):** \_\_\_\_\_

**TYPE OF TAX:**

- Income
- Employment
- Excise (specify, e.g., 4975): \_\_\_\_\_
- Other (specify): \_\_\_\_\_

**TECHMIS #:** \_\_\_\_\_

**TAXPAYER:** \_\_\_\_\_

**WLI #:** \_\_\_\_\_

**CLASSIFICATION OF ISSUE (check all applicable boxes):**

- Qualified Plans
- Executive Compensation
- Health & Welfare
- Exempt Organizations
- Employment Tax
- Tax Exempt Bonds
- Federal State & Local Governments
- Indian Tribal Governments

**SIGNIFICANT CASE IDENTIFIERS (check all applicable boxes):**

- Potential for Significant Docketed Case Coordination
- Validity of a Statute or Regulation
- Important to Tax Administration
- Likely to Attract National Attention
- Government Seeking to Distinguish Published Guidance
- Significant Industry Issue
- Issue Designated for Litigation or Under Consideration
- Industry Program Coordinated Issue
- Listed Transaction or similar transaction per Temp. Reg. ' 1.6011-4T(b)(2)  
(identify transaction type): \_\_\_\_\_
- Other (i.e., Related Case(s), etc.; explain): \_\_\_\_\_

**ATTACHMENTS:**

- EXECUTIVE SUMMARY FOR EACH SIGNIFICANT ISSUE (REQUIRED)**

**ACTION TO BE TAKEN:**

**Approved by: (Name & Date):** \_\_\_\_\_

(duplicate as necessary)

## EXECUTIVE SUMMARY FORM

TECHMIS #: \_\_\_\_\_

TAXPAYER: \_\_\_\_\_

WLI #: \_\_\_\_\_

**SIGNIFICANT ISSUE:**

UIL Issue No.: \_\_\_\_\_

Amount of Adjustment: \$ \_\_\_\_\_ Taxable Years: \_\_\_\_\_

Type of Tax: \_\_\_\_\_

**Relevant Area of Issue (if applicable):**

- Qualified Plans
- Executive Compensation
- Health & Welfare
- Exempt Organizations
- Employment Tax
- Tax Exempt Bonds
- Federal State & Local Governments
- Indian Tribal Governments

**Project Name (if applicable):** \_\_\_\_\_

**Description of Issue:**

**a) Brief Discussion of the Issue:**

**b) Statement of the Issue's Significance:**

**c) Summary of Coordination to Date:** *(Include coordination with Associate Chief Counsel office, Industry Counsel, Technical Advisor, or related case information.)*

**d) Anticipated Expert Witness Needs:** \_\_\_\_\_ Est. Cost: \_\_\_\_\_ Fiscal Year(s): \_\_\_\_\_

**Prior or Pending Written Advice on Issue:** *(e.g., PLR, TAM, formal request for legal advice, Coordinated Issue Paper) Attach copies of such advice, if feasible, and key email messages relating to the issue.*

# Associate Office Significant Case Petition or Complaint Review

Case:

CASE-MIS No. \_\_\_\_\_ Court \_\_\_\_\_ Docket No. \_\_\_\_\_

Date Filed \_\_\_\_\_ Date Assigned to Branch \_\_\_\_\_

Field Office \_\_\_\_\_  LMSB  SBSE  TEGE

Tax Type  Income  Excise  Estate/Gift Tax at Issue \_\_\_\_\_  Deficiency  FPAA  
 Employment

Penalty/Addition \_\_\_\_\_  Declaratory Judgment

Short Issue Statement (Maximum 40 characters)

\_\_\_\_\_  
 \_\_\_\_\_

## Significant Case Recommendation

Associate Office	Attorney/Reviewer/Executive	Date	N/D/P/R/X*
------------------	-----------------------------	------	------------

(prime)/ (coord.)			
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### SIGNIFICANT CASE IDENTIFIERS (check all applicable)

- Validity of a Statute or Regulation
- Important to Tax Administration
- Likely to Attract National Attention
- Government Seeking to Distinguish Published Guidance
- Significant Industry Issue
- Issue Designated for Litigation
- Industry Program Coordinated Issue
- Listed Transaction or similar transaction per Treas. Reg. § 1.6011-4(b)(2) (identify transaction):
- Other (i.e., Related Case(s), etc.; explain):

\*N= National D=Division P=National Project Coordination R=Refund X=Exclude

### Significant Issues (Attach additional issue sheet if necessary)

Code section \_\_\_\_\_ UILC Numbers \_\_\_\_\_

Issue: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Each Associate Office has direct access to the Significant Case Petitions database and should enter the necessary data.  
**Within 6 business days, Associate Office attorneys must ensure that all appropriate entries have been made to the database.**

# Associate Office Significant Case Petition or Complaint Review Additional Issues

Case:

Code section \_\_\_\_\_ UILC Numbers \_\_\_\_\_

Issue:

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Code section \_\_\_\_\_ UILC Numbers \_\_\_\_\_

Issue:

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Code section \_\_\_\_\_ UILC Numbers \_\_\_\_\_

Issue:

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Code section \_\_\_\_\_ UILC Numbers \_\_\_\_\_

Issue:

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Code section \_\_\_\_\_ UILC Numbers \_\_\_\_\_

Issue:

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# LMSB Significant Case Screening Form <sup>1</sup>

DATE: 05/04/2004

TO: \_\_\_\_\_ FROM: \_\_\_\_\_  
 (Strategic Litigation Group) (LMSB Practice Group)

PRACTICE GROUP ATTORNEY/AAC: \_\_\_\_\_  
 PHONE: \_\_\_\_\_

CASE NAME: \_\_\_\_\_ CASE-MIS #: \_\_\_\_\_

ASPECT CODE: \_\_\_\_\_ COURT: \_\_\_\_\_ COURT DOCKET # \_\_\_\_\_

DATE RECEIVED BY PG: \_\_\_\_\_ CIC EXAMINATION:  YES  NO

TOTAL TAX DEFICIENCIES:	\$	OR	TOTAL PENALTIES/ADDITIONS	\$	
FPAAD ADJUSTMENT	\$	OR			
REFUND AMOUNT	\$				

PLACE OF TRIAL: \_\_\_\_\_

OFFICE THAT ISSUED THE STATUTORY NOTICE OR CONSIDERED THE CLAIM:  
 IRS DIVISION (city): \_\_\_\_\_  APPEALS (city): \_\_\_\_\_

OPPOSING COUNSEL: \_\_\_\_\_

ANSWER OR OTHER FIRST ACTION: \_\_\_\_\_

AUDIT SITE RELEVANT TO THE ISSUE(S): \_\_\_\_\_

**IRS CLASSIFICATION OF TAXPAYER**

- Financial Services
- Heavy Manufacturing & Transportation
- Retailers, Food, Pharmaceuticals & Healthcare
- Natural Resources & Construction
- Communications, Technology & Media

**SIGNIFICANT CASE IDENTIFIERS (check all applicable boxes):**

- Validity of a Statute or Regulation
- Important to Tax Administration
- Likely to Attract National Attention
- Government Seeking to Distinguish Published Guidance
- Significant Industry Issue
- Issue Designated for Litigation
- Industry Program Coordinated Issue
- Listed Transaction or similar transaction per Temp. Reg. ' 1.6011-4T(b)(2)  
 (identify transaction): \_\_\_\_\_
- Other (i.e., Related Case(s), etc.; explain): \_\_\_\_\_

Form due to local AAC(SL) within 5 working days of receipt of docketed case by LMSB Practice Group.

**CASE:** \_\_\_\_\_ **DKT. NO.:** \_\_\_\_\_

**ATTACHMENTS**

- EXECUTIVE SUMMARY FOR EACH SIGNIFICANT ISSUE (REQUIRED)**
- Petition
- Revenue Agent Report (pertinent issues)
- Proposed Issue, Form 886A
- Appeals Supporting Statement (pertinent issues)

**NO SIGNIFICANT ISSUES OR NOTICE ISSUES IDENTIFIED**

-----  
**PRACTICE GROUP RECOMMENDATION:**

- Transfer to SL Group for assignment to STA
- National  Division or  National Project Coordination  Exclude
- Retain Case in Practice Group

Associate Area Counsel: \_\_\_\_\_ Date: \_\_\_\_\_

**STRATEGIC LITIGATION GROUP RECOMMENDATION:**

- Transfer to SL Group for assignment to STA
- National  Division or  National Project Coordination  Exclude
- Retain in Practice Group

**PROPOSED STA ASSIGNMENT:** \_\_\_\_\_

Associate Area Counsel (SL): \_\_\_\_\_ Date: \_\_\_\_\_

**INTER-AREA/ DIVISION COUNSEL CONSULTATION:**

Approved: \_\_\_\_\_ Area Counsel \_\_\_\_\_ Date: \_\_\_\_\_

(duplicate as necessary)

## EXECUTIVE SUMMARY FORM

**CASE:** \_\_\_\_\_ **DKT. NO.:** \_\_\_\_\_

**SIGNIFICANT ISSUE:** \_\_\_\_\_

UIL Issue No.: \_\_\_\_\_

Amount of Adjustment: \_\_\_\_\_ Taxable Years: \_\_\_\_\_

**Relevant Industry Area of Issue** (if applicable):

- Financial Services
- Heavy Manufacturing & Transportation
- Retailers, Food, Pharmaceuticals & Healthcare
- Natural Resources & Construction
- Communications, Technology & Media

**Project Name (if applicable):** \_\_\_\_\_

### Description of Issue

**a) Brief Discussion of the Issue:**

**b) Statement of the Issue's Significance:**

**c) Summary of Coordination to Date:** *(Include coordination with Associate Chief Counsel office, Industry Specialist, Industry Counsel, Technical Advisor, or other field personnel working similar issues.)*

**d.) Anticipated Expert Witness Needs:** Number of experts: \_\_\_\_\_

Estimated Cost: \$ \_\_\_\_\_ Fiscal Year(s): \_\_\_\_\_

**Prior or Pending Written Advice:** *(e.g., PLR, TAM, formal request for legal advice, Coordinated Issue Paper) Attach copies of such advice, if feasible, and key email messages relating to the issue.*

# SBSE Significant Case Screening Form <sup>1</sup>

DATE: \_\_\_\_\_

TO: \_\_\_\_\_ FROM: \_\_\_\_\_  
 (AC & Division Counsel) (AAC)

ATTORNEY/AAC TO CONTACT: \_\_\_\_\_  
 PHONE: \_\_\_\_\_

CASE: \_\_\_\_\_ CASE-MIS: \_\_\_\_\_  
 COURT: \_\_\_\_\_ DKT. NO.: \_\_\_\_\_

TOTAL DEFICIENCIES: \_\_\_\_\_ OR FPAA ADJUSTMENT \_\_\_\_\_  
 TOTAL PENALTIES: \_\_\_\_\_

OFFICE THAT ISSUED THE STATUTORY NOTICE OR CONSIDERED THE CLAIM:  
 IRS DIVISION (city): \_\_\_\_\_  APPEALS (city): \_\_\_\_\_

OPPOSING COUNSEL: \_\_\_\_\_  
 DUE DATE FOR ANSWER OR OTHER FIRST ACTION: \_\_\_\_\_

**LEVEL OF COORDINATION**

National  Division or  National Project Coordination

**SIGNIFICANT CASE IDENTIFIERS**

- Validity of a Statute or Regulation
- Important to Tax Administration
- Likely to Attract National Attention
- Government Seeking to Distinguish Published Guidance
- Significant Industry Issue
- Issue Designated for Litigation
- Industry Program Coordinated Issue
- Listed Transaction or similar transaction per Temp. Reg. ' 1.6011-4T(b)(2)  
 (identify transaction type): \_\_\_\_\_

Other (*i.e.*, Related Case(s), etc.; explain): \_\_\_\_\_

---

This form is only to be completed if the AAC is recommending that a case be coordinated. Fax this form and a copy of the petition to the Area Counsel and the Tax Litigation-Examination Manager (Division Counsel) within 5 working days of receipt of petition for the docketed case, pursuant to CCDM 31.1.5.5.2. For each significant issue identified, provide copies of pertinent sections of the Revenue Agent Report or the Appeals Supporting Statement.

**CASE:** \_\_\_\_\_ **CASE-MIS:** \_\_\_\_\_

**ATTACHMENTS**

- EXECUTIVE SUMMARY FOR EACH SIGNIFICANT ISSUE (REQUIRED)**
- Petition
- Revenue Agent Report (pertinent issues)
- Proposed Issue, Form 886a
- Appeals Supporting Statement (pertinent issues)

**NO SIGNIFICANT ISSUES OR NOTICE ISSUES IDENTIFIED**

**AAC RECOMMENDATION:**

- National  Division  National Project Coordination or  Excluded

Associate Area Counsel: \_\_\_\_\_ Date: \_\_\_\_\_

(attach additional copies of this page if needed)

## EXECUTIVE SUMMARY FORM

CASE: \_\_\_\_\_ DKT. NO.: \_\_\_\_\_

Project Name (if applicable): \_\_\_\_\_

### Description of Issue

a) Brief Discussion of the Issue:

b) Statement of the Issue's Significance:

c) Summary of Coordination to Date (Including coordination with Associate Chief Counsel):

d) Anticipated Need for an Expert Witness:  Yes  No Est. Cost: \_\_\_\_\_

Fiscal Year(s): \_\_\_\_\_

e) Additional Comments:

**Prior Written Advice** (e.g., PLR, TAM, formal request for legal advice, Coordinated Issue Paper):

Attach copies of such advice, if feasible, and key email messages relating to the issue.

## TEGE Significant Case Screening Form

DATE: 05/04/2004

TO: TEGE Executive FROM: \_\_\_\_\_  
 (TEGE Field Manager)<sup>1</sup>

TEGE FIELD ATTY: \_\_\_\_\_ PHONE: \_\_\_\_\_

CASE NAME: \_\_\_\_\_ CASE MIS. NO.: \_\_\_\_\_

COURT: \_\_\_\_\_ COURT DKT. NO.: \_\_\_\_\_

BOD Code: \_\_\_\_\_ Aspect Code: \_\_\_\_\_

DATE RECEIVED BY FIELD ATTY.: \_\_\_\_\_ PLACE OF TRIAL: \_\_\_\_\_

TOTAL TAX DEFICIENCIES: \$ \_\_\_\_\_ FPAА ADJ.: \$ \_\_\_\_\_

TOTAL PENALTIES/ADDITIONS: \$ \_\_\_\_\_ REFUND AMOUNT: \$ \_\_\_\_\_

**TYPE OF TAX:**

- Income
- Employment
- Excise (specify, e.g., 4975): \_\_\_\_\_
- Other (specify, e.g. 7476): \_\_\_\_\_

**STATUTORY NOTICE, CLAIM DISALLOWANCE OR OTHER SERVICE ACTION ISSUED BY:**

IRS DIVISION (city): \_\_\_\_\_  APPEALS (city): \_\_\_\_\_

**OPPOSING COUNSEL (Name & Firm):** \_\_\_\_\_

**ANSWER OR OTHER FIRST ACTION (SPECIFIED) DUE DATE:** \_\_\_\_\_

**CLASSIFICATION OF ISSUE (check all applicable boxes):**

- Qualified Plans
- Executive Compensation
- Health & Welfare
- Exempt Organizations
- Employment Tax
- Tax Exempt Bonds
- Federal State & Local Governments
- Indian Tribal Governments

<sup>1</sup> If an EO or TEB Branch has primary responsibility, this form needs to be completed substituting "Branch" for "Field" and their form should be approved by their Assistant CC.

**CASE:** \_\_\_\_\_ **CASE MIS or DKT. NO.:** \_\_\_\_\_

**SIGNIFICANT CASE IDENTIFIERS (check all applicable boxes):**

- Validity of a Statute or Regulation
- Important to Tax Administration
- Likely to Attract National Attention
- Government Seeking to Distinguish Published Guidance
- Significant Industry Issue
- Issue Designated for Litigation
- Industry Program Coordinated Issue
- Listed Transaction or similar transaction per Temp. Reg. ' 1.6011-4T(b)(2)  
(Identify transaction): \_\_\_\_\_
- Other (i.e., Related Case(s), etc.; explain): \_\_\_\_\_

**ATTACHMENTS:**

- EXECUTIVE SUMMARY FOR EACH SIGNIFICANT ISSUE (REQUIRED)

**CASE PREVIOUSLY IDENTIFIED AS A SIGNIFICANT CASE APPROACHING LITIGATION:**

- No
- Yes (include Name & TECHMIS #): \_\_\_\_\_

**LEVEL OF COORDINATION:**

- National  Division  Project Coordination or  Excluded

**RECOMMENDATION FOR HANDLING FROM MANAGER:<sup>2</sup>**

**ACTION TO BE TAKEN:<sup>3</sup>**

**Approved by (Name & Date):** \_\_\_\_\_

<sup>2</sup> For example, indicate nature of coordination and with whom. If project case state whether this is the first docketed case and whether a work plan is needed. Also, indicate any special assignment needs.

<sup>3</sup> For example, put on the Apollo report; defer this action pending receipt of information; do not put on report.

(duplicate as necessary)

## EXECUTIVE SUMMARY FORM

CASE: \_\_\_\_\_ CASE MIS. or DKT. NO.: \_\_\_\_\_

SIGNIFICANT ISSUE:

UIL Issue No.: \_\_\_\_\_

Amount of Adjustment: \$ \_\_\_\_\_ Taxable Years: \_\_\_\_\_

Type of Tax: \_\_\_\_\_

Relevant Area of Issue (if applicable):

- Qualified Plans
- Executive Compensation
- Health & Welfare
- Exempt Organizations
- Employment Tax
- Tax Exempt Bonds
- Federal State & Local Governments
- Indian Tribal Governments

Project Name (if applicable): \_\_\_\_\_

Description of Issue:

a) Brief Discussion of the Issue:

b) Statement of the Issue's Significance:

c) Summary of Coordination to Date: *(Include coordination with Associate Chief Counsel office, Industry Specialist, Industry Counsel, Technical Advisor, or related case information.)*

d) Anticipated Expert Witness Needs: \_\_\_\_\_ Est. Cost: \_\_\_\_\_

Fiscal Year(s): \_\_\_\_\_

Prior or Pending Written Advice on Issue: *(e.g., PLR, TAM, formal request for legal advice, Coordinated Issue Paper) Attach copies of such advice, if feasible, and key email messages relating to the issue.*

Counsel Automated Systems Environment

Report: LC Case Report  
Version: 6.0.7  
Filename: Sample WP.doc  
Run By: WRETBXS  
Report Date: 05/05/2004

+-----+

Parameter Values

Case ID: TL-14384-99  
Case Name: CLI  
Workplan Sequence: Action Date  
Print Report: All

+-----+

LC CASE REPORT

Page: 1

Report Date: 05/05/2004

Case ID: TL-14384-99

Last Update: 05/03/2004

Case Name: CLI  
TIN: 943059999

Primary Office: CC:LM:CTM:SLSF  
Lead Trial Attorney: Attorney A  
Lead Atty Office: CC:LM:CTM:SLSF  
Lead Atty Phone: 111-222-3333

Litigation Team Assigned: Yes

Team Manager: Manager A

Attorney: Attorney B

Attorney: Attorney C

Petitioner's Attorney: Smith, Joseph E

City: SAN FRANCISCO  
Phone: 111-222-3333

Appeals Officer: Appeals A

City: SAN FRANCISCO  
Phone: 333-222-1111

Amounts At Issue

TAX PERIOD	DEFICIENCY	PENALTY	OVERPAYMENT
199309	4,196,196	0	67
199409	2,626,712	0	2,382,198
199509	307,496	0	0
----- TOTAL	7,130,404	----- 0	----- 2,382,265

Results (on Decision)

TAX PERIOD	DEFICIENCY	PENALTY	OVERPAYMENT
199309	0	0	0
199409	0	0	0
199509	0	0	0
----- TOTAL	----- 0	----- 0	----- 0

Case Type: B - CORPORATION (CIC)

**Exhibit 9**

Status: R - SUBMITTED, AWAITING OPINION

Judge: Doe

Place of Trial: SAN FRANCISCO, CA

Date of Trial: 06/23/2003

SNOD Issued By: EXAM

SNOD Issued in City: OAKLAND, CA

Exam Issued Division: LMSB

Exam Issued Industry: CTM

Jurisdiction: APPEALS

Date Sent to Appeals: 10/27/1999

Date Rcvd by Counsel: 11/02/2001

Reviewed by Counsel: Yes

Reviewer: Reviewer A

Current Case is a Lead Case: Yes

Related Cases:

Case ID	Case Name	Lead Case Relationship
TL-10712-01	CLI	No
TL-10713-01	CLI	No
TL-9129-00	CLI	No

LC CASE REPORT

Page: 2

Case ID: TL-14384-99

Report Date: 05/05/2004

Case Name: CLI

Trial Dates:

Informal Discovery Start Date: 06/15/2000

Formal Disc. Start Date: 11/02/2000

Pretrial Order Issue Date: 01/07/2003

Trial Memorandum File Date: 05/30/2003

Stip. of Facts Start Date: 04/04/2003

Stipultn of Facts End Date: 06/27/2003

Tried Begin Date: 06/23/2003

Scheduled Trial End Date: 06/27/2003

Actual Trial End Date: 06/27/2003

Open/Seriatim Brief File: 09/15/2003

Reply Filed Date: 10/30/2003

Opinion Filed Date: 09/15/2003

Rule 155 Filed Date: 11/01/2004

Tax Court Opinion Number:

Decision Entered Date: 12/01/2004

Closed to Appeals Date:

LC CASE REPORT - SIGNIFICANT ISSUES

Page: 3

Case ID: TL-14384-99

Report Date: 05/05/2004

Case Name: CLI

Issue Number: 1

UIL Number: 165.11-00

UIL Description: Other

Field Attorney: Attorney A

Phone: 111-222-3333

Office: CC:LM:CTM:SLSF

Tax Periods: 199209, 199309

Adjustments	SNOD/Pleadings	Results
Taxable Income	35,763,000	0
Credits		0
Penalties	0	0
Overpayments	0	0

Private Letter Ruling: No

Technical Advice Issued: No

Designated for Lit: No

Chief Counsel Advice: Issued

CC Advice Sent Date: 05/12/1998

CC Adv. Reply Rcvd Date: 09/08/1998

Industry Program Issue: No

Status: R - SUBMITTED, AWAITING OPINION

Chief Counsel Notice: COORDINATED

NO Attorney: Attorney B

Phone: 111-222-3333

Office: CC:PSI:B06

Trial Dates:

Informal Discovery Start Date: 06/15/2000  
Depositions Start Date:

Formal Disc. Start Date: 11/02/2000  
Pretrial Order Issue: 01/07/2003

**Exhibit 9**

Trial Memorandum File Date:05/30/2003	Date:
Stip. of Fact Start Date: 04/04/2003	Stip. of Fact End Date:06/27/2003
Issue Trial Begin Date: 06/23/2003	Issue Trial End Date: 06/27/2003
Open/Seriatim Brief File: 09/15/2003	Respondent Reply File 10/30/2003
Opinion File Date:	Date: Tax Court Opinion Number:
Expert Witness:	
Expert Required:Yes	Expert Yes Identified:
Expert Name: Donnelly, Jeffrey	Expert Firm: Acme Inc.
Type of Service:ALUATION	
Cumulative Cost:471,595	Undercontract:Yes
Expert Report Due 04/25/2003	Rebutal Report Due 05/30/2003
Date:	Date:

LC CASE REPORT - SIGNIFICANT ISSUES

Page: 4

Case ID: TL-14384-99

Report Date: 05/05/2004

Case Name: CLI

Issue Number: 1

UIL Number: 165.11-00

UIL Description: Other

ISSUE NARRATIVES

Issue Description:

Under this section of the work plan narrative, set forth a statement of the issue.

Summary of Facts:

Under this section of the work plan narrative, set forth a synopsis of the facts, including the government's and the taxpayer's view of the facts. An affirmative statement should be made concerning whether further factual development is necessary.

Government Position:

Under this section of the work plan narrative, set forth the government's arguments with respect to this issue.

Taxpayer Position:

Under this section of the work plan narrative, set forth the taxpayer's position, if known, or possible arguments with respect to the issue.

LC CASE REPORT - CASE WORKPLAN

Page: 5

Case ID: TL-14384-99

Report 05/05/2004

Case CLI  
Name:

Date:

## APPEALS ACTIVITY 10/01/2002:

(include as needed) The trial team and the appropriate Appeals officials should consult with each other and make a conscious decision as to how, when, and under what terms Appeals will receive the case or specific issues for settlement. Selection as a significant case is not a "designation for litigation." The taxpayer will be advised of Appeals' settlement role in the case or that the case has been referred to Appeals generally. The joint decision should be reflected in the work plan.

## MOTIONS 10/02/2002:

(include as needed) This category should cover all motions ( e.g., motions for assignment of a judge, motions in limine, motions for summary judgment) unless a more specific topic is applicable. For example, a motion to exclude an expert witness should be included in the "expert witness" category. The work plan should expressly address the use of summary judgment.

## CONFERENCES 10/03/2002:

(include as needed) All significant conferences including those with the National Office, Examination or Appeals, or petitioners should be included in this category unless they relate to a more specific category such as a discovery conference or a stipulation of facts conference.

## DISCOVERY 10/04/2002:

(include as needed) All significant discovery activity should be included under this category. Include informal and formal discovery, requests for admissions, depositions, and discovery enforcement. Specify the type of discovery and the target materials or subject areas. The roles of the team members should be specifically defined and target dates established.

## TECHNICAL COORDINATION 10/05/2002:

(include as needed) Include under this heading, coordination to establish the position or arguments to be taken or made in the litigation. Included within this discussion would be a recitation of coordination efforts with Associate Chief Counsel office(s), Industry Specialist(s), Industry Counsel(s), Technical Advisors(s), or other field personnel working similar issues and reliance on any prior written advice, e.g., PLR, TAM, Coordinated Issue Paper.

## EXPERTS 10/06/2002:

(include as needed) The determination of the need for experts, the types of experts and subject areas, and timetables for hiring and working with them should be included under this heading. Included within this discussion would be the intended use of the expert, e.g., filing an expert report, testifying, rebutting taxpayer's expert, or trial assistance.

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TRIAL PREP 10/07/2002:

(include as needed) This category should include the more specific areas of trial preparation such as the need for daily transcripts; locating, interviewing and subpoenaing fact witnesses; plans for introducing nonstipulated documents into evidence; and trial strategy, generally.

COURT HEARINGS 10/08/2002:

(include as needed) Discuss any upcoming hearings unless a specific category is more appropriate.

STIPULATION OF FACTS 10/09/2002:

(include as needed) Discuss progress of the stipulation, stipulation conferences, and motions to compel stipulations, and indicate dates. The degree of National Office participation should be agreed specifically.

TRIAL MEMORANDUM 10/10/2002:

(include as needed) Allocate responsibilities for preparation of the trial memorandum. All trial memoranda will be discussed with the National Office. Adequate time for trial memorandum preparation should be allowed in the work plan schedule.

TRIAL 10/11/2002:

(include as needed) If not already set, the projected trial date should be estimated, as well as its length. The specific roles of the National Office at trial should be considered. If significant participation in a trial is planned, the commitment of such resources needs to be identified early and clearly agreed to by all parties.

BRIEF 10/12/2002:

(include as needed) Drafting responsibilities, coordination, and due dates for field and National Office attorneys are important areas to be addressed in this part of the work plan.

RULE 155 COMPUTATIONS 10/13/2002:

(include as needed) Include whether significant questions exist about the interpretation of an opinion, and if so, the National Office coordination planned.

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CLOSING ACTIVITIES 10/14/2002:

(include as needed) Steps being taken to close the case, i.e., the projected closing date, and any unusual support necessary to close the case should be identified in this area.

ATTORNEY COMMENTS 10/15/2002:

(include as needed) State any peculiar aspects of the case that do not fit logically in any of the other subject areas, such as judicial comments. This field may include input from the National Office as well as the field.

MANAGER COMMENTS 10/16/2002:

(include as needed) The manager with responsibility for supervising the case may want to include his/her comments here.

OTHER 10/17/2002:

(include as needed) In general, this category should be used for various administrative support issues that arise in the course of litigation, assigned responsibilities, and due dates. Examples are: scheduling the National Office litigation offices or other office space; obtaining revenue agent support; transportation of files to and from the trial site; foreign travel; unusual pretrial logistical needs like offsite copiers or microfiche readers; hotel reservations for the trial team; and arrangements for electronic courtroom or other computer support and other significant support needs. If the trial team is not fully constituted, discuss additional members required.

CASE STATUS 10/18/2002:

Under this section of the work plan narrative, set forth important milestones in treatment of the case or issue.

## ISSUE RESULTS

**CASE NAME:** \_\_\_\_\_  
**OFFICE:** \_\_\_\_\_  
**DOCKET NO:** \_\_\_\_\_  
**N.O. FUNCTION:** \_\_\_\_\_  
**UIL:** \_\_\_\_\_

**NOTICE ISSUE:** [A brief statement of the National Coordination Issue]

**DISCUSSION:** [A narrative description of the issue’s significance, including, where appropriate, remarks about the factual & legal basis for the Service’s determination.]

**DISPOSITION:** [One of the following: tried & decided; settled —Appeals; settled-Counsel; excluded]

**RESULT NARRATIVE:** [A narrative description of the result achieved, including a summary of the hazards considered in settled cases or the court’s reasoning in tried cases.]

**SUSTENTION RATE ON NOTICE ISSUE:**

1. Adjustment Amount in Dispute: \$\_\_\_\_\_ [The dollar amount of the National Coordination Issue adjustment]

2. Amount of Last Settlement Offer [Settlement offers, if known, expressed as a dollar amount or as a percentage of the amount in dispute.]

- During Appeals Consideration
  - By Petitioner \$\_\_\_\_\_ (or\_\_\_\_\_%)
  - By Appeals \$\_\_\_\_\_ (or\_\_\_\_\_%)
- During Counsel Consideration
  - By Petitioner \$\_\_\_\_\_ (or\_\_\_\_\_%)
  - By Counsel \$\_\_\_\_\_ (or\_\_\_\_\_%)

3. Adjustment Amount on Result:      Notice Issue:

- By Settlement, or                      \$ \_\_\_\_\_
- By Tax Court opinion                      \$ \_\_\_\_\_  
 (regardless of appeal)
- After Appeal                              \$ \_\_\_\_\_  
 (if applicable)

Approved: \_\_\_\_\_  
 Division Counsel (or delegate)

Approved: \_\_\_\_\_  
 Associate Chief Counsel (or delegate)