

Inventory of IRS Guidance Documents — A Draft

The IRS provides guidance regarding the tax laws to its employees and the public through many different types of documents. Some are well known, such as regulations and revenue rulings. Others are more obscure, such as service center advice and litigation guideline memorandums.

Some of the documents, such as the publications that supplement the instructions that accompany tax forms, deal with the basics. Others, such as field service advice, can deal with issues of interest to only a handful of taxpayers.

Some of the documents have always been publicly available, such as notices or other items published in the Internal Revenue Bulletin and later collected in the Cumulative Bulletins. Other documents, such as private letter rulings, only became public after the IRS was forced to disclose them following court action brought by Tax Analysts, the publisher of *Tax Notes*.

Some documents, such as actions on decisions and even technical advice memorandums, seem to be falling out of favor at the IRS. New documents, such as advance pricing agreements, have become increasingly popular.

The number of types of IRS guidance documents continues to grow. The agency is currently developing new documents, such as prefilling agreements and voluntary agreements on compliance, that will provide individualized guidance.

One question raised by the number and variety of IRS guidance documents is: Do we need them all? Some, of course, serve very specific and important needs. IRS announcements, for example, have only immediate or short-term value, but they are a means of alerting the tax community to a new development. Others seem to serve little purpose any longer. General Counsel Memorandums are all but extinct. So is it time to restructure the IRS's system for providing guidance to taxpayers?

Below is a list of IRS guidance documents followed by a glossary providing a brief explanation of each one. It represents the work of several people at Tax Analysts, but we recognize that it is probably not complete. To our knowledge, there is no comprehensive list of IRS guidance documents, so in addition to posing questions about the organization of the IRS's guidance document structure, another reason we are publishing the list is to find out if our readers know of additional documents — including our readers at the IRS and the Treasury Department.

Please e-mail any additional information or comments on the list to sheryl_stratton@tax.org. We plan to publish an updated list in a future issue.

IRS Guidance Documents*

- Actions on Decisions
- Advance Pricing Agreements
- Announcements
- Business Plan
- Bulletins
- Chief Counsel Notices
- Circular 230
- Closing Agreements
- Compliance Officer Memorandums
- Cumulative Bulletin
- Delegation Orders
- Determination Letters
- District Counsel Advice
- Field Directives
- Field Service Advice
- Forms and Instructions
- General Counsel Memorandums
- Industry Specialization Papers and Settlement Guidelines Information Letters
- Internal Revenue Bulletin
- Internal Revenue Manual
- Legal Memorandums (and Other IRS Memorandums)
- Litigation Guideline Memorandums
- Market Segment Specialization Program Papers
- National Resource Center
- News Releases
- Notices
- Office Memorandums
- Private Letter Rulings
- Publications
- Regulations
- Revenue Procedures
- Revenue Rulings
- Reviewed Briefs
- Service Center Advice
- Technical Advice Memorandums
- Technical Assistance

* public unless otherwise stated

Glossary

Actions on Decisions

AODs are prepared by National Office attorneys in the office of chief counsel's field service division (formerly the tax litigation division). AODs indicate whether the Service will follow a significant adverse opinion of the Tax Court, district court, Court of Federal Claims, a bankruptcy court, or an appellate court. The recommendation is summarized as an acquiescence, a nonacquiescence, or an acquiescence in result only. AODs are

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intended to alert IRS personnel to the chief counsel's current litigating position, and not to be guidance or cited as precedent.

Advance Pricing Agreements

An APA is a legally binding contract negotiated between the IRS and the taxpayer governing the determination and application of transfer pricing methodologies (TPM) for international transactions. The agreed on TPM applies to any apportionment or allocation of income, deductions, credits, or allowances between or among two or more entities owned or controlled by the same interests. Congress recently enacted a statute protecting APAs and their accompanying background materials from disclosure as confidential return information under section 6103(b).

Announcements

IRS Announcements are public pronouncements written by chief counsel attorneys that have only immediate or short-term value. They are published in the Internal Revenue Bulletin and are not included in the Cumulative Bulletin. For example, announcements can be used to summarize the law or regulations without making any substantive interpretation; to state what regulations will say when the regulations are certain to be published in the immediate future; or to notify taxpayers of the existence of an election or an approaching deadline for making an election.

Bulletins: Criminal Tax, Disclosure Litigation, General Litigation, Tax Litigation

These bulletins are monthly publications circulated to attorneys handling criminal, disclosure, general, and tax litigation in the IRS's National Office and in district and regional counsel offices. The bulletins summarize recent developments in those respective areas. Their function has been described as informational. The bulletins serve to make attorneys aware of currently pending issues. For example, TLBs contained summaries of cases, field service advice, litigation guideline memos, and appeal and *certiorari* recommendations prepared within the office of chief counsel. While the tax litigation bulletin was discontinued in 1996, the others are still being published and publicly released.

Business Plan

The IRS and Treasury publish an annual guidance priorities list, commonly referred to as the "business plan," usually in the spring. The annual business plan projects when guidance, typically in the form of regulations, revenue rulings, or revenue procedures, will be issued.

The IRS also publishes a semiannual regulatory agenda, listing reg projects under development.

Case Summaries

Case summaries are prepared by attorneys in the office of assistant chief counsel (corporate) for letter rulings, technical advice memos, and field service advice memos after they are issued. The purpose of case summaries is to increase communication among the corporate attorneys and promote consistency in their ruling positions. Case summaries are designed to save research time by informing attorneys of issues that have been resolved at the assistant chief counsel level or higher. In addition to including how the issue was resolved, the summary is also supposed to reflect any fact an attorney found troubling or a legal issue that required more than minimal research, and anything that gave the attorney or reviewer pause.

Chief Counsel Notices

Chief counsel notices are temporary directives by the IRS National Office disseminating policies, procedures, instructions, or delegations of authority to chief counsel employees. The notices generally have a cancellation date of 90 days after issuance.

Closing Agreements

A closing agreement is a final agreement between the IRS and a taxpayer on specific issues or liabilities. Closing agreements are sometimes used to cover aspects of a settlement not disposed of by a decision in a docketed case, including resolution of disputed issues for years not yet in litigation. Binding on both parties, closing agreements are accompanied by a chief counsel settlement memorandum that is executed before processing the proposed settlement agreement. The settlement memo includes the basis and justification for entering into a closing agreement affecting years not before the Tax Court. Closing agreements are not disclosed. However, in a few cases involving tax-exempt organizations, the IRS has made disclosure a condition of entering into a settlement.

Compliance Officer Memorandums

Compliance officer memos consist of written advice from non-chief-counsel national compliance, appeals, and field service offices and the Taxpayer Advocate to all regional compliance and appeals officers concerning compliance and taxpayer rights issues.

Circular 230

Circular 230 reproduces the portions of Title 31 regulations that govern the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing clients before the IRS. Circular 230 contains rules relating to authority to practice before the IRS; the duties and restrictions relating to that practice; rules relating to disciplinary proceedings; rules applicable to disqualification of appraisers; and various general provisions, including provisions relating to the availability of official records.

Cumulative Bulletin

Since 1919, the IRS has been compiling and indexing the weekly Internal Revenue Bulletin (IRB) on a semiannual basis into the Cumulative Bulletin (CB). The IRB is the authoritative instrument for the publication of official rulings and procedures issued by the IRS as well as other tax documents of interest to taxpayers and tax practitioners. The documents published include revenue rulings, revenue procedures, notices, congressional committee reports, delegation orders, proposed regulations, public laws, Treasury Decisions, and announcements. All publications are reprinted in the CB, except announcements.

Delegation Orders

Delegation Orders are internal IRS documents that grant authority to certain government officials to perform specific administrative functions. Delegation Orders are numbered sequentially and remain in effect until revoked or superseded.

Determination Letters

A determination letter is a written statement issued by a district director that applies tax law principles and precedents previously announced by the National Office to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in the statute, a tax treaty, or the regulations, or based on a conclusion in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin that specifically answers the questions presented.

In income, gift, employment, and excise tax matters, district directors issue determination letters in response to taxpayers' written requests on completed transactions that affect returns within their examination jurisdiction. In estate and generation-skipping transfer tax matters, district directors issue determination letters in response to written requests affecting the estate tax and GSTT returns within their examination jurisdiction. Under the Employee Plans Determination

Letter Program, employers can submit their retirement plans to the IRS for review as to form and, in some areas, operational features as well. When the plan meets the qualification requirements of the code, a favorable determination letter is issued to the employer.

A determination letter may be relied on only by the taxpayer to which it is issued, and it may be revoked or modified if found to be in error.

District Counsel Advice

District counsel advice memorandums are internal legal memos prepared by IRS field attorneys to provide guidance to IRS examining agents and appeals officers. The memos instruct IRS field personnel by providing legal analysis of issues arising out of taxpayer-specific cases.

Field Directives

Field directives are a type of staff instructions prepared by the Service's Employee Plans Division on the commissioner's side, rather than the chief counsel side.

Forms and Instructions

The tax forms and instructions are the most widely disseminated guidance from the IRS. And many would argue they are the most important guidance the agency issues.

Field Service Advice

Field Service Advice memos (FSAs) are a mechanism for IRS agents, attorneys, and appeals officers to get advice from attorneys in the National Office. FSAs are intended to provide nonbinding advice, guidance, and analysis to field personnel to help them develop an issue or determine litigation hazards for both substantive and procedural issues. Each FSA includes a statement of issues, conclusions, a statement of facts, and legal analysis. They are similar to technical advice memorandums except that the taxpayer is not involved in the process. FSAs can be formal (written) and informal (one-page handwritten summaries of oral advice given in response to telephone inquiry).

General Counsel Memorandums

Formerly prepared by the Interpretative Division, GCMs originally were the way the office of chief counsel communicated legal advice to the IRS assistant commissioner (technical), which eventually merged into the office of chief counsel. After that point, GCMs became the formal legal opinion of the chief counsel responding to inquiries from a National Office function outside of chief counsel or explaining the legal basis for the position taken in a TAM, letter ruling, or revenue ruling. They were and continue to be

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used as an important research source for IRS personnel but are not to be regarded as a statement of policy or as the position of the Service. GCMs are rarely written anymore except to repeal old GCMs.

Industry Specialization Papers and Settlement Guidelines

Industry Specialization Program papers provide guidance to IRS agents who are auditing firms in the Coordinated Examination Program for large corporate taxpayers. ISP papers are also known as coordinated issue papers, some of which have corresponding ISP settlement guidelines approved by IRS Appeals for purposes of allowing examination agents to settle issues. The settlement guidelines are also sometimes referred to as Appeals settlement guidelines.

Information Letters

Prepared by the staff in the IRS National Office or by IRS district directors, information letters are statements issued to call attention to a well-established interpretation or principle of tax law without applying it to a specific set of facts. Information letters may be issued if the taxpayer's inquiry indicates a need for general information or if the taxpayer's request does not meet the requirements of a revenue procedure and the Service thinks general information will help the taxpayer. Information letters are advisory only, and have no binding effect.

Internal Revenue Bulletin

Published weekly, the IRB is the authoritative instrument for the publication of official rulings and procedures issued by the Service as well as other tax documents of interest to taxpayers and tax practitioners. The documents published include revenue rulings, revenue procedures, notices, congressional committee reports, delegation orders, proposed regulations, public laws, Treasury Decisions, and announcements.

Internal Revenue Manual

The IRM is the single official compilation of policies, delegated authorities, procedures, instructions, and guidelines relating to the organization, functions, administration, and operations of the IRS. Twenty-two of its parts are available to the public.

Legal Memorandums

Legal memos are prepared by IRS chief counsel attorneys to assist in the preparation and review of proposed revenue rulings. The legal memo serves as briefing material for the reviewers, providing a comprehensive summary of the drafter's legal research as well as the drafter's evaluation of the

proposed ruling's strengths and weaknesses. The accompanying memo, if any, is archived with the rest of the publication package, but there is no indexing or retrieval system for them. A federal district court has held that they are protected from disclosure by the deliberative process privilege because they are not updated or officially reconciled, and they reflect the agency "give-and-take" leading up to the position taken in the underlying revenue ruling. Tax Analysts is appealing the district court's holding.

Other IRS Memorandums

Other IRS memorandums are the various legal memos prepared by chief counsel attorneys in the National Office containing written responses to IRS district counsel queries to address a specific issue or situation.

Litigation Guideline Memorandums

LGMs are written guidance from the IRS National Office to attorneys in the field instructing them on how to litigate a particular issue. LGMs pose variations on fact patterns and advise attorneys on the tactical approaches to be taken. They have been likened to the chief counsel's equivalent to the IRS law enforcement manual. LGMs contain discussions of cases and precedents to be followed in the federal circuits.

Market Segment Specialization Program Papers

The Market Segment Specialization Program focuses on developing highly trained examiners for a particular market segment. A market segment may be an industry, a profession, or an issue. MSSP papers are detailed studies describing how the IRS reviews tax returns for specific types of businesses.

Audit Techniques Guides

MSSP audit techniques guides are designed to provide IRS examiners with technical support for identifying and developing issues related to specific industries. The guides include examination techniques, common and unique industry issues, business practices, industry terminology, and other information to assist examiners in performing examinations. Some guides state that the material was designed specifically for training purposes only, and that the contents should not be used or cited as authority for setting or sustaining a technical position.

Market Segment Understandings

A Market Segment Understanding identifies a particular area in which the facts or the law, or both, are unclear, or noncompliance is widespread, within an identified market seg-

ment. MSUs describe how the IRS views employee/independent contractor issues in the specific industry for which an MSU is issued. (The three most recent MSUs contained tip reporting or tip rate determination agreements in which the employer and the IRS agree on the current law requirements for reporting cash and charged tips and for determining the employer's liability for employment taxes.)

National Resource Center

The National Resource Center is an IRS intranet Web site developed in 1998 to provide guidance and coordinated responses to more than 1,200 IRS employees regarding the various IRS restructuring act provisions. Established to coordinate policy and program questions, the resource center has been described as a multifunctional working group, which includes chief counsel attorneys.

News Releases

News releases are nontechnical publications targeted at the nonpractitioner taxpayer public. A news release is issued when there is a significant need to alert the general news media (as distinguished from the commercial "tax services" and the financial, professional, and trade publications that normally disseminate information published in the Internal Revenue Bulletin). Because news releases are, in effect, proposed articles for newspapers to run, technical discussion is kept to a minimum, although they may contain the IRS's position on substantive issue.

Notices

IRS Notices are public pronouncements containing guidance that involves substantive interpretations of the code or other provisions of the law. Notices may also be used for materials that would be appropriate for an announcement, but otherwise need to be preserved in the Cumulative Bulletin. Notices can be used to relate what regulations will say in situations when publication of the regulations may be delayed and taxpayers need immediate guidance.

Office Memorandums

Formerly prepared by the Interpretative Division, OMs were internal formal, legal opinions addressing an issue of significance arising in litigation. The IRS has agreed to release OMs.

Private Letter Rulings

A PLR (also referred to as a letter ruling or LTR) is a written response by the IRS National Office issued to a taxpayer interpreting and applying tax laws to that taxpayer's specific set of

facts. The purpose of obtaining a PLR is to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed. PLRs may be relied on only by the taxpayer receiving the ruling and may be revoked or modified, unless accompanied by a closing agreement.

Publications

Publications inform and educate taxpayers about a specific subject related to federal tax. Many publications are issued on a yearly basis before the tax return filing season to offer assistance to taxpayers in completing their returns and supplement the instructions that accompany various returns. New or revised publications are generally initiated and developed by the Forms and Publications Division, Assistant Commissioner (Taxpayer Service).

Regulations

Regulations are the most authoritative statement of IRS and Treasury positions, regulations are published in the *Federal Register*. They are drafted and reviewed by a team of attorneys from IRS chief counsel and Treasury.

Found in Title 26 of the Code of Federal Regulations, final regulations are either legislative or interpretive. Legislative regulations respond to directions in the statute requiring the Secretary (meaning Treasury and the IRS together as a practical matter) to prescribe detailed rules carrying out the statute. Legislative regulations are very difficult to overturn. Interpretive regulations state the administrative interpretation of statutory language. They have less force than legislative regulation but still may not be overturned unless unreasonable and clearly beyond statutory purpose. Both kinds of regulations are issued as Treasury Decisions and may also describe a procedure or practice requirement. They are signed by both the IRS Commissioner and the Assistant Secretary of the Treasury for Tax Policy. Generally, before a regulation becomes a final regulation, it first must be proposed.

Signed by the IRS Commissioner only, proposed regulations are generally issued in the form of a notice of proposed rulemaking that solicits comments from the public and often announces the time and place for a public hearing. Sometime after the comment period and hearing (if one is held), the IRS will generally issue the final regulation in a Treasury Decision. Proposed regulations may not be relied on (except for purposes of the accuracy-related penalty).

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Whenever Treasury and the IRS determine that the public needs immediate guidance on a particular issue or procedure, a temporary reg is issued. A Treasury Decision adopting the temporary regulation is issued simultaneously with a notice of proposed rulemaking. Signed by both the IRS Commissioner and the Assistant Secretary of the Treasury for Tax Policy, temporary regs may be relied on until they have expired, have been withdrawn, or have been replaced by a final regulation (by means of a Treasury Decision). They are usually effective on publication and expire after three years.

Revenue Procedures

A revenue procedure is an official statement of a procedure that affects the rights or duties of taxpayers under the code, related statutes, tax treaties, or regulations. They are issued by the IRS National Office to provide information and guidance to taxpayers, IRS personnel, tax practitioners, and others. Unlike revenue rulings, which state the IRS's position on a substantive tax issue, revenue procedures provide return filing or other instructions concerning the agency's position. Taxpayers generally may rely on revenue procedures if their facts and circumstances are substantially the same as those in the revenue procedure.

Revenue Rulings

Drafted by attorneys and issued by the National Office, revenue rulings present the IRS's position on substantive tax issues. They provide official interpretations of the code, related statutes, tax treaties, and regulations. Often presented in the context of hypothetical fact situations, revenue rulings describe how the IRS will apply the law to a specific set of facts. Revenue rulings may be relied on and cited by taxpayers if their facts and circumstances are substantially the same as those in the revenue ruling. However, revenue rulings do not have the force and effect of regulations and are affected by subsequent legislation, treaties, regulations, revenue rulings, revenue procedures, and U.S. Supreme Court decisions. Revenue rulings may be amplified, clarified, distinguished, modified, obsoleted, revoked, superseded, supplemented, or suspended by the Service.

Reviewed Briefs

Reviewed briefs are briefs filed by IRS attorneys in the Tax Court that the IRS chief counsel has determined are of significance. The briefs are kept on file in the IRS FOIA Reading Room beginning two weeks after they are filed with the court. The documents reveal which issues

the IRS considers of major importance in Tax Court litigation.

Service Center Advice

Service center advice memos are a relatively new form of guidance designed to provide legal advice to IRS service centers and related IRS functions concerning their tax administration responsibilities. "Significant" advice generally addresses the interpretation or application of the code and is not legal advice intended primarily to assist in the resolution of a specific taxpayer's case.

"Routine" advice generally involves the application of well-settled principles of law to the facts of a particular taxpayer's case. Routine advice is not used or cited as precedent for the resolution of similar issues for other taxpayers.

Technical Advice Memorandums

When a technical or procedural dispute arises during the examination of a taxpayer's return or on appeal, a district director or appeals chief may request (on his or her own initiative or by granting a taxpayer's request) advice from the chief counsel attorneys in the National Office to resolve the issue. The resulting TAM represents the National Office's interpretation of the proper application of the laws to a taxpayer's specific set of facts. The taxpayer participates in the process of providing information to the National Office. A TAM may be relied on only by the taxpayer for whom technical advice was requested, and usually applies retroactively.

Technical Assistance

Technical assistance memos are prepared by attorneys in the four technical divisions within the office of associate chief counsel (domestic) in response to requests from many different offices for many different purposes. Technical assistance contains legal analysis on a substantive issue over which the responding division has subject-matter jurisdiction, and addresses a technical problem that has arisen other than in an examination of a particular taxpayer's return.

Technical assistance issued to IRS district or regional offices, field offices of chief counsel, or service centers is disclosable as Chief Counsel Advice under section 6110. Disclosure of four other categories remains under litigation: technical assistance issued to program managers in the National Office, to component offices of the National Office of chief counsel, to specific taxpayers, and to federal and state government agencies. ■