

Department  
of the  
Treasury

Internal  
Revenue  
Service

Office of  
Chief Counsel

# Notice

N(35)000-158a

November 25, 1998

Field Responsibilities with Respect to  
Obtaining and Disseminating

**Subject:** Chief Counsel Advice

**Cancellation Date:** May 24, 1999

The purpose of this Notice, a revision to the Notice dated October 1, 1998, is to apprise all District and Regional Counsel attorneys and managers of their responsibilities under the new Chief Counsel Advice procedures. The October 1 Notice identified certain changes in procedure relating to information that must be included in a request for Chief Counsel Advice in order to ensure compliance with the new Chief Counsel Advice provisions of the Restructuring and Reform Act of 1998 (the Act). This Notice modifies those procedures to include powers of attorney when applicable. This Notice also provides for limitations that must be placed upon the dissemination of Chief Counsel Advice in order to ensure taxpayer confidentiality and to safeguard information for which a privilege may be asserted.

## Background

Section 3509 of the Act amends I.R.C. § 6110 by adding "Chief Counsel Advice" (CCA) to the definition of written determinations open to public inspection. New subsection (i) of section 6110 defines CCA to mean:

written advice or instruction, under whatever name or designation, prepared by any national office component of the Office of Chief Counsel which—

(i) is issued to field or service center employees of the Service or regional or district employees of the Office of Chief Counsel, and

(ii) conveys—

(I) any legal interpretation of a revenue provision,

(II) any Internal Revenue Service or Office of Chief Counsel position or policy concerning a revenue provision, or

---

Filing Instructions: Binder Part (35) Master Sets: NO X RO X

NO: Circulate    Distribute X to: All Personnel    Attorneys X In: all divisions

RO: Circulate    Distribute X to: All Personnel    Attorneys X In: all divisions

Other National and Regional FOIA Reading Rooms

Electronic Filename: CCadvic2.pdf

Original signed copy in: CC:F&M:PA

(III) any legal interpretation of State law, foreign law, or other Federal law relating to the assessment or collection of any liability under a revenue provision.

The scope of the definition of CCA includes both taxpayer specific and nontaxpayer specific advice. It includes, but is not limited to, Field Service Advice, Technical Assistance Memoranda, Service Center Advice, Litigation Guideline Memoranda and Advisory Opinions from any National Office component of the Office of Chief Counsel to the field pertaining to revenue provisions. A National Office component of the Office of Chief Counsel includes the Field Service Division or any of the technical divisions within the Office of the Associate Chief Counsel (Domestic), the Office of the Associate Chief Counsel (Enforcement Litigation), the Office of the Associate Chief Counsel (EBEO), the Office of the Associate Chief Counsel (International) and the Office of the Associate Chief Counsel (F&M) or any successor offices to these offices that may result from any reorganization.

In accordance with these new provisions, CCA will be redacted to remove taxpayer identifying information and other specific information before being made available for public inspection in a manner similar to that provided for private letter rulings and technical advice memoranda. Section 6110(i)(4)(B) gives taxpayers, who are the subject of taxpayer specific CCA, the opportunity to participate in this redaction process, as it relates to taxpayer information. The Act requires the Service to mail a notice of intention to disclose the CCA to the taxpayer within 60 days after issuance of the CCA. The Notice must include a copy of the CCA on which the taxpayer identifying information that the Service proposes to delete is indicated.

Information that may be deleted includes names, addresses and other identifying details about the person to whom the CCA pertains and any other person identified in the CCA. The Service may also delete information protected from disclosure under 5 U.S.C. § 552 (b) and (c) (the Freedom of Information Act). This includes information compiled for law enforcement purposes if the release of the information could reasonably be expected to interfere with enforcement proceedings, would constitute an unwarranted invasion of privacy, could reasonably be expected to disclose the identity of a confidential source, would disclose law enforcement techniques or procedures if such disclosure could reasonably be expected to risk circumvention of the law, etc. Such information will be deleted before the taxpayer is consulted with respect to taxpayer identifying information. The taxpayer will not see the privileged information. Details of potentially applicable privileges were provided in the CCA Training Material.

#### Information Needed with CCA Request

In order to make proper deletions, and to process the taxpayer identifying deletions in coordination with the taxpayer, the National Office needs certain information which has not previously been required or submitted in requests for advice. Therefore, Field

attorneys who request taxpayer specific CCA must now include in the request with respect to the taxpayer who is the subject of the request:

1. The taxpayer's full name,
2. The taxpayer's last known mailing address,
3. The taxpayer's taxpayer identification number (TIN),
4. If a taxpayer has a representative who has a power of attorney to represent the taxpayer in the matter that is the subject of the request, the name and address of the representative (submit a copy of the power of attorney); to the extent that a particular matter is in court, the names and addresses of all attorneys who have entered their appearance,
5. Field attorneys should specify any information in the request, or other "background file documents" submitted with the request, that they believe should not be made available for public inspection.

If the Field attorney recommends against disclosure of information on grounds other than that disclosure would identify the taxpayer or the taxpayer's representative, the attorney must specify the FOIA exemptions for not disclosing the information. The recommendation for nondisclosure must describe the information proposed to be protected and the reasons for nondisclosure with sufficient specificity that the National Office can independently assess the grounds for nondisclosure.

Even where the CCA request is not taxpayer specific, field attorneys should detail the information described in Item 5 if they believe that such information should not be disclosed.

The new redaction procedures apply to any CCA issued on or after October 21, 1998. Consequently, Field attorneys should begin including this information with all requests for CCA after the date of issuance of this Notice. The National Office will contact Field attorneys for the necessary information with respect to pending requests for CCA that will be issued after October 21, 1998.

#### Redaction Process and Dissemination

CCA may contain return information subject to I.R.C. § 6103. CCA may also contain confidential information subject to attorney-client and deliberative process privileges and, if prepared in contemplation of litigation, subject to the attorney work product doctrine. In order to ensure taxpayer confidentiality and to safeguard any information for which privileges may be asserted, the following must be kept in mind:

- The redaction process will occur at the National Office. Field Offices are not authorized to prepare their own redacted versions of CCA for local use or dissemination.
- Only the official public version, the CCA available for public inspection, as redacted by the National Office, may be disseminated beyond those whose official tax administration duties require access to the original document.
- The recipient of an original, unredacted CCA may provide it only to those persons whose official tax administration duties with respect to that case require such disclosure.
- The Field attorney who requested the CCA may disseminate the original, unredacted CCA as indicated above and is responsible for communicating these limitations on disclosure to the client.
- Unredacted CCA may not be provided to Examination, Appeals, Counsel, or other persons beyond those specifically indicated.
- The original, unredacted CCA may not be disclosed to taxpayers or their representatives.

/s/

---

MARLENE GROSS  
Deputy Chief Counsel