

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2006-021

September 21, 2006

Subject: Significant Refund Litigation **Cancel Date:** Effective until further notice

I. PURPOSE

This Notice reemphasizes the procedures for handling significant refund litigation cases in the Office of Chief Counsel and for coordinating with the Department of Justice on such matters. While the Office of Chief Counsel does not directly litigate refund cases, the Office of Chief Counsel plays a significant tax administration role in these cases. This role includes evaluating refund cases, and assisting the DOJ attorney in case development, discovery and the litigation of the cases. Chief Counsel attorneys assigned to refund litigation matters are tax experts and advisors on the tax issues involved in the case. Chief Counsel attorneys assigned to refund litigation matters should actively support the DOJ in the litigation effort and ensure that the legal position of the IRS in the matter is accurate and clear. Chief Counsel attorneys should also ensure that legal advice given to the DOJ on positions to be taken in cases is consistent with the positions taken by the Service in published guidance, if any, as well as positions taken in other docketed cases. At all stages of the litigation of significant refund cases, after a referral has been made to the DOJ, Chief Counsel attorneys should actively coordinate with the DOJ to update our advice as the case develops.

II. DISCUSSION

The significant case coordination procedures, which are at [CCDM 31.2.1](#), Significant Case Program, were issued in June 2004. These procedures also apply to refund litigation matters:

- Involving the validity of a statute or a regulation;
- 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;
- Likely to attract congressional or public attention on a national level;
- In which the Government seeks to distinguish a position set forth in published guidance;

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- With an issue that has been designated for litigation or is under consideration for designation for litigation;
- Involving an Industry Program Coordinated issue; or
- Involving a "Listed Transaction" or substantially similar transaction within the meaning of Treas. Reg. § 1.6011-4(b)(2). See [CCDM 31.2.1.2](#) paragraphs (6), (3) and (5).

The coordination procedures for significant refund cases are set forth in CCDM [31.2.1.8](#), Coordination Procedures in Significant Department of Justice Cases. These coordination procedures require that for each significant refund matter, there be assigned to the case both a Lead Division Attorney and a Principal Associate Attorney. The Lead Division Attorney and the Principal Associate Attorney are responsible for ensuring an active working relationship with the DOJ. In dealing with the DOJ on any refund litigation matter, but particularly any "significant case," the responsible Chief Counsel attorneys should work as closely as possible with each other and with the DOJ attorney assigned to litigate the matter.

The Lead Division Attorney is the single point of contact (POC) for communicating the Service position to the Tax Division of the DOJ and is primarily responsible for coordination with the Associate Chief Counsel and Division Counsel Headquarters offices, where appropriate. The Lead Division Attorney (in CC:TEGE, this will be an Area Counsel attorney) prepares the defense letter and any settlement letter to the DOJ, in coordination with the Principal Associate Attorney and other subject matter experts. Detailed instructions for preparing such documents are contained in [CCDM 34.5](#), Suits Brought Against the United States. For significant refund cases, the defense letter should provide why an issue is considered to be significant to the Service, that the Lead Division Attorney is the primary contact, and the single POC for the Office of Chief Counsel on the matter and the titles of the Chief Counsel attorneys (including the Principal Associate Attorney and Industry/Issue Counsel) who have been involved in determining the Service's position in the case.

The Lead Division Attorney is responsible for remaining in close contact with the DOJ attorney assigned to the case as the case progresses in litigation. The Lead Division Attorney should be aware of the general status of the case, the milestones and timetables that are expected to apply and is expected to be available to assist in the key actions in case development (e.g., depositions) and the overall litigation strategy. The Lead Division Attorney should also take responsibility for timely coordinating required action by the Office of Chief Counsel, such as clarification of office position on legal issues in the form of supplemental correspondence, assistance in the retention of expert witnesses, or assistance with further factual development. The Lead Division Attorney should also coordinate defense letters with any Industry/Issue Counsel having responsibility for the issue or transaction (e.g., LILO/SILO) involved in the case. The Industry/Issue Counsel coordinates the overall issue or transaction within Counsel and with the Service.

Coordination by the Lead Division Attorney is not limited to ensuring the accuracy and consistency of the legal position. The Lead Division Attorney, in consultation with the Principal Associate Attorney, should regularly consult and discuss with the DOJ trial attorney case development and litigation strategy matters. As examples, this may include making recommendations regarding discovery issues; whether, and when, to file a motion for summary judgment; and providing assistance on expert witness issues.

