

Department  
of the  
Treasury

Internal  
Revenue  
Service

Office of  
Chief Counsel

**N o t i c e**  
+ ,

CC-2002-028

.

-

July 19, 2002

Privilege Logs or Similar  
Subject: Documents Identifying Third Parties  
Upon Incorporation  
Cancel Date: into CCDM

Purpose

This notice establishes requirements for review of privilege logs or similar documents that identify third parties and for coordination of the disclosure of these documents with the Associate Chief Counsel (Procedure & Administration).

Discussion

Taxpayers and other parties may respond to Service requests for documents either in the context of a summons enforcement matter or discovery in the Tax Court by asserting claims of privilege. In those cases, a privilege log identifying documents responsive to the request may be submitted to support the privilege claims. Privilege logs typically identify the document by a general description of the nature of the document, the document's author and the document's addressee, either of whom may be a third party not directly involved in the matter as a party, a party's employee, or a party's agent.

Filing Instructions: Binder \_\_\_\_\_ Master Sets: NO \_\_\_\_ RO \_\_\_\_

NO: Circulate\_\_Distribute\_X\_ to: All Personnel\_\_Attorneys\_\_In: \_\_\_\_\_

RO: Circulate\_\_Distribute\_X\_ to: All Personnel\_\_Attorneys\_\_In: \_\_\_\_\_

Other National and Regional FOIA Reading Rooms \_\_\_\_\_

Electronic Filename: PrivLog.pdf \_\_\_\_\_ Original signed copy in: CC:FM:PM:P \_\_\_\_\_

Counsel should closely examine any privilege log or similar document that will be made public in the course of litigating a matter to determine whether the information concerning the identity of any third party contained in the privilege log or similar document should be redacted. Specifically, privilege logs and similar documents identifying third parties who may be involved in transactions with the taxpayer should be scrutinized to determine whether the identity of the third party is essential to the matter before the court. It should be presumed that the identification of third parties, who are not parties to the litigation, is not essential to the matter before the court.

The names of third parties should be redacted before the privilege log or similar document is provided to the Tax Court or to the Department of Justice. The unredacted information should also continue to be provided to the Department of Justice. The transmittal to the Department of Justice of the redacted and unredacted information must be accompanied by a request that they take appropriate steps to protect that information from disclosure except as the interests of justice require. For example, the Service might request that the privilege log not be attached to the petition or complaint or that the log be submitted in a redacted form with an offer to produce the unredacted log for the court in camera. The letter should also request that the Department of Justice contact the Associate Chief Counsel (Procedure & Administration) to discuss how to protect the third party information and the steps it will take to address the privacy concerns of those third parties.

Disclosure of any privilege logs or similar documents that contain the names of third parties must be coordinated with the Associate Chief Counsel (Procedure & Administration) prior to inclusion in a Tax Court filing or delivery to the Department of Justice. This includes privilege logs submitted in conjunction with Motions to Compel, as exhibits at trial, or as part of the summons enforcement referral to the Department of Justice. A redacted copy of the privilege log should be prepared, if appropriate, along with an explanation of the potential privacy concerns of the third parties. Both should be attached to the proposed correspondence to the Department of Justice for summons enforcement actions and for proposed filings with the Tax Court. The original privilege log, correspondence and proposed Tax Court filings should be submitted to TSS 4510, via email to mailbox TSS4510, faxed to TSS at 202-622-5674, or mailed to the following address:

Technical Services Section  
Room 4510  
CC:PA:TSS  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

Please do not mark email to TSS "Private."

