

Part IV – Items of General Interest

Requests for Documents Provided to Independent Auditors, Policy of Restraint and Uncertain Tax Positions

Announcement 2010-76

The Internal Revenue Service is expanding its policy of restraint in connection with its decision to require certain corporations to file Schedule UTP, Uncertain Tax Position Statement, and will forgo seeking particular documents that relate to uncertain tax positions and the workpapers that document the completion of Schedule UTP.

BACKGROUND

Schedule UTP requires a specified class of corporations to provide a concise description of each uncertain tax position for which the corporation or a related entity has recorded a reserve in its financial statements, or for which no reserve has been recorded because of an expectation of litigation. These uncertain tax positions are identified by corporations during the process of preparing financial statements under applicable accounting standards, such as FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109 (FIN 48).¹ In reviewing and verifying financial statements for compliance with FIN 48, independent auditors may ask for copies of legal opinions and other documents in order to

¹ Under the codification of accounting standards, the relevant portions of FIN 48 are now contained in Accounting Standards Codification subtopic 740-10, Income Taxes. FASB ASC 740-10.

understand transactions, to understand the legal bases for the treatment of transactions, and to determine the adequacy of reserves for contingent tax liabilities.

POLICY OF RESTRAINT

(1) If a document is otherwise privileged under the attorney-client privilege, the tax advice privilege in section 7525 of the Code, or the work product doctrine and the document was provided to an independent auditor as part of an audit of the taxpayer's financial statements, the Service will not assert during an examination that privilege has been waived by such disclosure.

(2) Paragraph (1) does not apply if

(a) the taxpayer has engaged in any activity or taken any action, other than those described in that paragraph, that would waive the attorney-client privilege, the tax advice privilege in section 7525 of the Code, or the work product doctrine; or

(b) a request for tax accrual workpapers is made under IRM 4.10.20.3 because unusual circumstances exist or the taxpayer has claimed the benefits of one or more listed transactions.

(3) Under current procedures, examiners request tax reconciliation workpapers as a matter of course. IRM 4.10.20.3. The taxpayer may redact the following information from any copies of tax reconciliation workpapers relating to the preparation of Schedule UTP it is asked to produce during an examination:

(a) working drafts, revisions, or comments concerning the concise description of tax positions reported on Schedule UTP;

(b) the amount of any reserve related to a tax position reported on Schedule UTP; and

(c) computations determining the ranking of tax positions to be reported on Schedule UTP or the designation of a tax position as a Major Tax Position.

(4) Other than requiring the disclosure of the information on the schedule, the requirement to file Schedule UTP does not affect the policy of restraint.

(5) This Announcement describes the policy of the Service for seeking the documents described in paragraph 1 and 3 from taxpayers and third parties during an examination. It does not create or imply the application of the attorney-client privilege, the tax advice privilege under section 7525 of the Code, or the work product doctrine to any document of any taxpayer or third party.

(6) These modifications to the policy of restraint will be incorporated into IRM 4.10.20.

DRAFTING INFORMATION

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