

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

May 26, 2016

Control Number: PGLD-11-0516-0002
Expiration Date: 05-26-2018
Impacted IRMs: 11.3.35 & 1.2.49

MEMORANDUM FOR: ALL DISCLOSURE EMPLOYEES

FROM: Phyllis T. Grimes *Phyllis T. Grimes*
Director, Governmental Liaison, Disclosure, & Safeguards

SUBJECT: Interim Guidance on Changes to the Testimony Tables in
Delegation Order 11-2

This memorandum issues guidance on the editorial and organizational changes affecting the Testimony Tables in Delegation Order 11-2 until the publication of IRM 11.3.35 and IRM 1.2.49. Please ensure that this information is distributed to all affected employees within your organization.

Purpose: Because of the collapse of the HQ FOIA & Disclosure Program Operations (DPO) group and the realignment of the Tax Law Specialists (TLS) into the field Disclosure Offices, the authorities outlined in the Testimony Tables are updated to reflect this organization change.

Background/Source(s) of Authority: Title 26 Code of Federal Regulations §§ 301.9000-1.

Procedural Change: There are no changes to the existing delegations of authority. Beginning immediately, requests and demands for testimony will be prepared, reviewed and approved in accordance with the attached tables. All requests and demands for testimony previously processed by the HQ FOIA and DPO TLS will be sent to the Disclosure Centralized Processing Unit for indexing in AFOIA and assignment to a TLS in a field Disclosure Office. There are no changes to the procedures pertaining to requests and demands normally processed by field Disclosure Office personnel.

Effect on Other Documents: This guidance will be incorporated into IRM 11.3.35, *Requests and Demands for Testimony and Production of Documents*, and IRM 1.2.49, *Servicewide Policies and Authorities, Delegations of Authority for Communications, Liaison and Disclosure Activities* by May 26, 2018.

Effective Date: May 26, 2016

Contact: Anne M. Jensen on 267-941-6402

Distribution: www.irs.gov

Attachment Interim Guidance: PGLD-11-0516-0002

The following changes are, hereby, effective **05-26-2016** for IRM 11.3.35 and the Reference Chart in IRM Exhibit 1.2.49-1.

Exhibit 11.3.35-3 (05-26-2016)

Table 1: Testimony Authorizations Treas. Reg. § 301.9000-1 US Tax Proceedings		
No testimony authorization is required in a U.S. Tax Court case when testimony or production of records is requested on behalf of the Commissioner†		
Table 1		
Prepared By...	For Organization...	Authorized/Denied By...
Chief Counsel attorney	SB/SE	Area Counsel*
Chief Counsel attorney	LB&I	Area Counsel
Chief Counsel attorney	W&I	Area Counsel*
Chief Counsel attorney	TE/GE	Area Counsel
Chief Counsel attorney	Headquarters	Associate Chief Counsel
Chief Counsel attorney	GLS	Associate Chief Counsel

Note: † Includes whistleblower proceedings in Tax Court pursuant to [I.R.C. § 7623\(b\)](#)

* Matters involving taxpayers falling under the jurisdiction of the Office of Division Counsel (Wage & Investment) are coordinated by area SB/SE offices.

Table 2:		
Referred IRS Tax/Privacy Act/Freedom of Information Act (FOIA) Judicial Proceeding (Non-Tax Court) IRS/Government (on behalf of IRS*) is a Party and is Represented by Department of Justice (DOJ) Tax Division or U.S. Attorney†		
U.S. District Court Refund, Collection, and Summons Litigation (SB/SE, LB&I, W&I, TE/GE)		
U.S. Bankruptcy Court Litigation (SB/SE)		
U.S. Court of Federal Claims (SB/SE, LB&I, W&I, TE/GE)		
State Court Collection Litigation (SB/SE, LB&I, W&I, TE/GE)		
U.S. District Court Criminal Tax Prosecution (CC:CT)		
U.S. District Court Disclosure, Privacy Act, and FOIA Actions (CC:PA)		
No testimony authorization is required when testimony or production of records is requested on behalf of the Government		
Table 2		
Prepared By...	For Organization...	Authorized/Denied By...
Chief Counsel attorney	SB/SE	Area Counsel**
Chief Counsel attorney	LB&I	Area Counsel
Chief Counsel attorney	W&I	Area Counsel**
Chief Counsel attorney	TE/GE	Area Counsel
Chief Counsel attorney	CT	Area Counsel
Chief Counsel attorney	Headquarters	Associate Chief Counsel

Note:

* TIGTA prosecutions/cases are not IRS cases. See Tables 4 and 5 for authorizations for Service personnel/contractors for such requests.

** Matters involving taxpayers falling under the jurisdiction of the Office of Division Counsel (Wage & Investment) are coordinated by area SB/SE offices.

† Referrals to DOJ based on the investigatory authority granted to the Commissioner under Treasury Directives [15-41](#) (Bank Secrecy Act), [15-42](#) (Money Laundering), [15-43](#) (Reviews for Compliance with Economic Sanctions Programs) and [31 C.F.R. Chapter X § 1010.810\(g\)](#) (FBAR Enforcement) fall under this Table.

Table 3	
IRS Matters (General Legal Services)	
Judicial and Administrative Proceedings	
IRS/Government (on behalf of IRS) is a Party	
Personnel, Labor Relations (Worker's Compensation, Unemployment Compensation, EEO)	
Procurement, Bivens, Federal Tort Claims Act, Matters Related to Informant Claims†	
No testimony authorization is required when testimony or production of records is requested on behalf of the Government	
No testimony authorization is required when testimony or production of records is requested: <ul style="list-style-type: none"> • under the rules of the relevant judicial (or quasi-judicial administrative) forum; • by a party to a proceeding <ul style="list-style-type: none"> a. in which the Service is also a party (whether such party is aligned with or adverse to the Government) or b. where the Government is defending a Service employee sued in his/her individual capacity; • provided the Associate Chief Counsel (General Legal Services) or an attorney acting under that official's authority and representing the Service (if before a quasi-judicial administrative forum) has actual knowledge of the request; • either <ul style="list-style-type: none"> a. no objection or motion for protective order is made by the Government with respect to the testimony or document being requested or b. such motion has been made and overruled and no appeal has been, or is likely to be filed concerning the disposition on such motion; and • by a GLS attorney who so advises the witness either orally or in writing. 	
Table 3	
Prepared By...	Authorized/Denied By...
GLS attorney	Deputy Associate Chief Counsel (General Legal Services); Area Counsel (GLS) with concurrence of Associate Chief Counsel (GLS) or Deputy Associate Chief Counsel (GLS)

Note:

† Testimony authorizations for Matters Related to Informant Claims pursuant to [I.R.C. § 7623\(a\)](#) are governed by Table 3. For whistleblower actions pursuant to [I.R.C. § 7623\(b\)](#), see Table 1.

Table 4	
Non-IRS Matters	
Judicial and Administrative Proceedings	
IRS/Government (on behalf of IRS) is Not a Party	
Testimony or the Production of Records is sought from Any Employee, Any Function, who is assigned to Headquarters	
Table 4	
Prepared By...	Authorized/Denied By...
Field Disclosure Tax Law Specialist Reviewed by the Office of Associate Chief Counsel (Procedure and Administration)	Deputy Associate Directors, Disclosure East and West

Table 5	
Non-IRS Matters	
Judicial and Administrative Proceedings	
IRS/Government (on behalf of IRS) is Not a Party	
Testimony or the Production of Records is sought from Any Employee, Any Function, who is not assigned to Headquarters	
Table 5	
Prepared By...	Authorized/Denied By...
Disclosure Manager Reviewed by liaison Area Counsel servicing the Disclosure Manager's geographical location (See IRM 11.3.35.7(1))	Deputy Associate Directors, Disclosure East and West

Table 6:	
Non-IRS Matter Involving Testimony or the Production of Title 31, Bank Secrecy Act Information	
Judicial and Administrative Proceedings	
Federal/State/Local Government is a Party	
Expert testimony is sought by a government party from an IRS employee relative to records contained in SB/SE or Criminal Investigation Title 31 examination or investigation files†. Disclosures must conform to Bank Secrecy Act Dissemination Guidelines or other official procedures.	
Table 6	
Prepared By...	Authorized/Denied By...
Field Disclosure Tax Law Specialist Coordination with SB/SE or CID as appropriate Reviewed by the Office of Associate Chief Counsel (Procedure and Administration)	Deputy Associate Directors, Disclosure East and West

Note:

† Requests for certified copies of the reports required to be filed under the Bank Secrecy Act are handled by FinCEN.

† Table 2 controls if testimony is requested in a case referred by IRS to DOJ pursuant to Treasury Directives [15-41](#) and [15-42](#) (money laundering) and [31 C.F.R. Chapter X § 1010.810\(g\)](#) (FBAR enforcement))

Table 7

Any Matter Involving Requests by Congress, including Committees,
Where the Production of Records is sought
From Any Employee, Any Function, in IRS or Chief Counsel

Table 7

Prepared By...	Authorized/Denied By...
Staff designated directly by the Director, Legislative Affairs	Deputy Commissioner for Services and Enforcement or Deputy Commissioner for Operations Support for requests by Congressional committees involving matters under their jurisdiction
Reviewed by the office of Associate Chief Counsel (Procedure and Administration)	The authority to authorize interviews (but not testimony) of IRS employees may be delegated to the Director, Legislative Affairs

Table 8		
Privileges		
Table 8		
Privilege	Who Asserts	Who May Waive
Attorney-Client	Trial Attorney	Trial Attorney, after appropriate coordination with the client
Attorney Work Product	Trial Attorney	Trial Attorney
Government Privileges, including the deliberative process, informant, and investigatory files privileges	Trial Attorney	† Trial attorney, after appropriate coordination with the client
State Secret	Commissioner	

Note:

† See [Delegation Order 30-4](#) (or successor order) for certain courts in which the claim of the deliberative process privilege requires assertion of the privilege by the Deputy Associate Chief Counsel (Procedure and Administration)