

# **Publication of Reviewed Field Advice and Program Manager Technical Assistance**



# Objectives

- Reviewed Field Advice (RFA)
- Program Manager Technical Assistance (PMTA)

# **Reviewed Field Advice (RFA)**

# Reviewed Field Advice (RFA)

- RFA is formal written legal advice memoranda that is prepared by field counsel and is reviewed and approved in the Associate (or National) offices
  - Described in CCDM 33.1.2.3
- Chief Counsel Notice 2014-009
  - Defines RFA and provides the main guidelines regarding RFA

# Reviewed Field Advice (RFA)

- Tax Analysts v. I.R.S., Case No. 1:99CV00432 (D.D.C. Dec. 10, 2001).
- The IRS is required to publish RFA as the result of FOIA litigation

# Processing of RFA

- RFA should be prepared by field attorneys in the format outlined in CCDM 33.1.2.2.3.3, Format of Legal Advice.
- After an RFA is issued, the field attorney must process the RFA for release.
  - RFA is made available at the IRS's electronic FOIA reading room

## Processing of RFA (cont.)

- Field Attorneys should follow Chief Counsel Notice 2014-009
  - The Notice provides step-by-step instructions to process RFA

## Checksheet for Processing National Office Reviewed Field Advice

Case Control Name: \_\_\_\_\_

Case Control Number: \_\_\_\_\_ WLI # \_\_\_\_\_

Issuing Office Symbols: \_\_\_\_\_ Date of issuance (signed): \_\_\_\_\_

- \_\_\_\_\_ 1. Advice reflects the uniform issue list number(s).
- \_\_\_\_\_ 2. Advice contains taxpayer return information or information exempted from disclosure under the FOIA, including privileged information.
- \_\_\_\_\_ Redactions have been coordinated with the Associate Office/Division Counsel Headquarters Office. (Black/Gray copy sent to reviewing office within 5 business days after issuance; and comments from reviewing office received within 10 business days after receipt of black/gray copy).
- \_\_\_\_\_ Redactions have been coordinated with the recipient of the memorandum. (Black/Gray copy sent to addressee within 5 business days after issuance; and, comments from addressee received within 10 business days after receipt of black/gray copy).
- \_\_\_\_\_ If the advice is taxpayer specific, redactions have been coordinated with the subject taxpayer. (Concealed/Gray copy sent to taxpayer within 5 business days after agreement regarding redactions with reviewing office and addressee).
- \_\_\_\_\_ Memorandum to the file, identifying the specific exemptions being claimed, if any, and describing the harm that would result from disclosure of privileged matter, has been placed in the official case file.
- \_\_\_\_\_ 3. Advice (Black and Gray, if applicable)(redactions coordinated with Procedure & Administration branches 6 or 7 if necessary) has been e-mailed to the "Reviewed Field Advice Memorandum" mailbox. (If NOT taxpayer specific, then within 5 business days after agreement with reviewing office and recipient office regarding redactions; if taxpayer-specific and taxpayer agrees to proposed redactions or does not provide any response within 30 business days after the concealed/gray copy was sent to the taxpayer, then 31 days after mailing; and, if taxpayer-specific and the taxpayer challenges the proposed redactions, then immediately upon resolution of taxpayer's challenges).

Initiator: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_

Note: Initiators and Reviewers are responsible for ensuring that these procedures have been followed and that the documents have been sent to CC:LPD:DLS.



## Processing of RFA (cont.)

- When drafting RFA, CC Notice 2014-009 states: “To facilitate redaction, reviewed field advice should:
  - Be tailored to the needs of the recipient and the question posed
  - Generally should not contain extensive factual discussions when the facts are not disputed
  - Should generally not verbatim reproduce a taxpayer’s legal analysis
  - Should use identifying terms that are not taxpayer specific when practical

# Processing of RFA (cont.)

- RFA is released to the public through FOIA.
- All FOIA exemptions must be considered, including:
  - Exemption 3 in conjunction with I.R.C. § 6103.
    - I.e. all return information must be redacted; redactions are NOT limited to taxpayer-identifiers.
    - Return information is defined in I.R.C § 6103(b)
  - Exemption 5—which requires redaction of attorney-client privilege, word product doctrine, and deliberative process privilege

## Processing of RFA (cont.)

- The checksheet for processing RFA instructs the field attorney to coordinate redactions with the Associate offices.
- If RFA pertains to a specific taxpayer, redactions are also coordinated with the taxpayer (same as under 6110).
  - Use *Letter to Taxpayer Re Disclosure* to contact taxpayer—can be found attached to Chief Counsel Notice 2014-009 as Exhibit 2



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

[OFFICE SYMBOLS]  
[CASEMIS NUMBER]

**Via Regular Mail**

[Name and Address of Taxpayer]

Dear [Taxpayer]:

The Office of Chief Counsel publishes certain legal advice memoranda pursuant to requirements of the Freedom of Information Act (FOIA). These memoranda are available to the public in the electronic reading room of the following IRS website, <http://www.irs.gov/uac/Electronic-Reading-Room>.

In accordance with the above-referenced FOIA requirements, the Office of Chief Counsel must make the enclosed legal advice memorandum, which pertains to you, available to the public. In the enclosed memorandum, the shaded text is I.R.C. § 6103 "return information" that we intend to conceal from the public. Any other text concealed from your view consists of information that the Office of Chief Counsel has deemed privileged. Please note that the memorandum is not an I.R.C. § 6110 "written determination," and consequently the section 6110 procedures for review of redactions by the United States Tax Court are not applicable.

**If You Agree** with our determination regarding what "return information" will be concealed from the public, you do not need to take any further action. After thirty business days have passed from the date of this letter, I will initiate the procedures to make the enclosed memorandum, with any shaded text concealed, available to the public on the IRS website.

**If You Disagree** with our determination regarding what "return information" will be concealed from the public, please notify me, within thirty business days after the date of this letter, at [telephone number; mailing address] of any request for changes. Please note that I am not seeking comments regarding the analysis or conclusions of the memorandum.

Sincerely,

\_\_\_\_\_  
[NAME]  
[TITLE]  
[OFFICE]

Enclosure (1): Memorandum with Privileged Information Concealed and "Return Information" Marked for Concealment

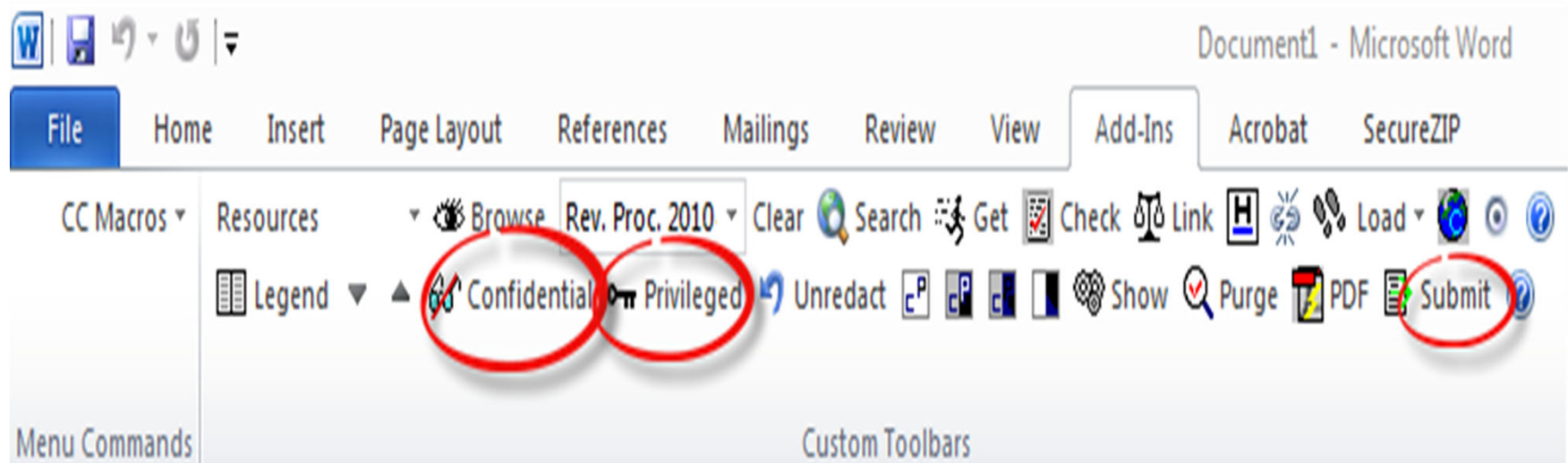
# Processing of RFA (cont.)

- After all the redactions are finalized and coordination is complete—the field attorney must submit the RFA document to the Office of Disclosure Services (DS)
- Must include in the official Case File:
  - (1) a copy of the agreed upon black and gray version of the advice, (2) a copy of the e-mail message sent to the “Reviewed Field Advice Memoranda” mailbox; and (3) a completed *Checksheet for Processing Reviewed Field Advice Memorandum*.

# Redacting RFA

- Use the Redaction Menu Bar that pops up when you click “Add Ins” in Word
  - Picture on next slide
- Confidential is for 6103 information (grayed out so taxpayer can see it)
- Privileged is for all other FOIA exemptions (DPP, AC, AWP--it is blacked out)

# eWord Toolbar



# Coordinating Redactions

- It is helpful to follow the instructions in CC Notice 2014-009 when coordinating redactions, since the notice contains timeframes for each office:
  - The issuing field office has five days after submitting the RFA to send the recipient and the Associate reviewing offices a black and gray version containing possible redactions
  - The recipient and Associate reviewing offices have 10 days to notify the issuing field office of any proposed redactions



# **Program Manager Technical Assistance (PMTA)**

# Program Manager Technical Assistance (PMTA)

- PMTA is formal legal advice described in CCDM 33.1.2.2.4 that is issued by an Associate or Division Counsel HQs office to an IRS program manager.
- RFA v. PMTA
  - RFA = originates in the Field, reviewed by National Office, and then sent back to the Field
  - PMTA = originates in CC National Office, and is then sent to IRS non-Field employees

# Publication of PMTA

- The IRS is required to publish PMTA as the result of FOIA litigation.
- See Tax Analysts v. I.R.S., Case No. 1:96-2285 (CKK) (D.D.C. 2007)
  - IRS agreed in a Stipulation of Dismissal to release on an ongoing basis all technical assistance memoranda to IRS program managers.
- PMTA is now considered formal Legal Advice under the CCDM

# Drafting Program Manager Technical Assistance (PMTA)

- Draft in Word using the Legal Advice Memo format
- Can be found under the “Add Ins” tab, then click on CC Macros, then eWord Macros in the drop down window, and select the Legal Advice memo option in the second drop down menu

AutoSave  Off

Document5 - Word No Label

File Home Insert Design Layout References Mailings Review View **Add-ins** Help Acrobat SecureZIP

CC Macros   Innocent spou  Search Get Check Link Load

Privileged Unredact Show Purge Burn PDF Submit

Custom Toolbars

- General Memo
- General Letter
- Fax and Express Routing >
- Buckslips and Transmittal Covers >
- Litigation Documents >
- Published Guidance >
- PLR's, TAM's and Legal Advice >
- General Forms and Administrative Documents >
- eWord Macros >**
  - Announcement
  - CC Notice
  - Clearance Record (Form 178)
  - Information Letter
  - Legal Advice Memo** Starts a New Field Service Advice Macro
  - Notices (IRS)
  - Private Letter Ruling/CAP CAM
  - Revenue Procedure
  - Revenue Ruling
  - Technical Advice Memo
- Word Formatting >
- Signatures >
- Add Form 1937a
- Remove Form 1937a
- Add Draft Box
- Remove Draft Box
- Delete Comments
- Personal Information
- Restart Macro System

# Processing of PMTA

- PMTA should be prepared in the format outlined in CCDM 33.1.2.2.3.3, Format of Legal Advice.
- PMTA must be sent to the “Informal Advice” resource mailbox after issuance for processing and public release.

# Processing of PMTA (cont.)

- PMTA is released to the public through FOIA (not under 6110).
- All FOIA exemptions must be considered, Exemption (b)(3) in conjunction with I.R.C. § 6103.
  - All return information must be redacted; redactions are NOT limited to taxpayer-identifiers.
  - Exemption 5—which requires redaction of attorney-client privilege, word product doctrine, and deliberative process privilege
- An attorney should include their proposed redactions with the submission to the “Informal Advice” mailbox.

**Questions?**