



OFFICE OF  
CHIEF COUNSEL

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

**ACTION ON DECISION**

**SUBJECT:** *Tax Analysts v. Internal Revenue Service*, 215 F. Supp.2d 192 (D.D.C. 2002), *reversed*, 350 F.3d 100 (D.C. Cir. 2003)

**Issue:**

Whether letter rulings issued by the Service that deny or revoke an organization's tax exempt status are subject to public inspection under I.R.C. § 6110.

**Discussion:**

Tax Analysts requested access under the Freedom of Information Act, 5 U.S.C. § 552, and I.R.C. § 6110 to letter rulings issued by the Service between 1997 and 1999 that denied or revoked the tax exempt status of organizations.

On the basis of Treas. Reg. §§301.6110-1(a) and 301.6104(a)-1, the Service determined that the letter rulings were not subject to public inspection in that the letter rulings remained the confidential return information of the organizations and were exempt from public disclosure under the FOIA. See 5 U.S.C. § 552(b)(3); I.R.C. § 6103(a).

The D.C. Circuit, in reversing the district court, held that the portions of Treas. Reg. §§ 301.6110-1(a) and 301.6104(a)-1(i) that include denials and revocations "within the ambit of section 6104" were invalid because those portions violated the plain language of section 6110. The circuit court reasoned that Congress passed the Tax Reform Act of 1976 to protect taxpayer privacy while requiring the Service to disclose written determinations. Accordingly, Treasury regulations that keep denials and revocations completely secret prevent the very monitoring of the Service that the Tax Reform Act was designed to facilitate. See *Tax Analysts v. IRS*, 350 F.3d 100, 104 (D.C. Cir. 2003), *citing* S. Rep. No. 94-938, pt. 1, at 305-06, reprinted in 1976 U.S.C.C.A.N. 2897, 3735.

The Service will no longer argue that letter rulings denying or revoking tax exempt status are not subject to public inspection under section 6110. The Service will make available for public inspection those letter rulings that denied or revoked tax exemption as required by this decision. In addition, the Service will institute procedures to process

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for public inspection under section 6110 future letter rulings that deny or revoke tax exempt status.

**Recommendation:**

Acquiescence in result only

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Approved:

DEBORAH A. BUTLER  
Associate Chief Counsel  
(Procedure & Administration)