

CC-2014-005

May 20, 2014

Subject: Updated Requirements for National
Office Coordination

Cancel Date: Upon incorporation
into the CCDM

Purpose

This notice alerts attorneys that the CCDM is being revised to reflect updated requirements for coordinating issues, code sections, and documents with the appropriate Associate Chief Counsel in the National Office. This notice also informs attorneys of updated requirements for coordination of economic substance doctrine cases.

Discussion

The Office of Chief Counsel recently reviewed the list of issues, code sections and documents requiring Associate office review contained in CCDM Exhibits 31.1.1-1 and 35.11.1-1 (Issues Requiring Associate Office Review), and CCDM Exhibits 31.1.1-2 and 35.11.1-2 (Direct Filing and Service of Documents). This review was intended to eliminate burden resulting from outdated review requirements and to update the list to accurately reflect those items that require Associate office review.

Updated CCDM Exhibits 31.1.1-1 and 35.11.1-1 contain a list of generic and specific significant issues requiring Associate office review. The two Exhibits are identical but are included in two parts of the CCDM for ease of accessibility. A document or case raising an issue or involving a code section on the list must be coordinated with the appropriate Associate office. The updated Associate office review list is attached to this notice for convenience. Although certain Associate offices may not have a specific issues list, appropriate coordination of generic significant issues with those Associate offices is nonetheless required.

Former CCDM Exhibits 31.1.1-2 and 35.11.1-2 contained a list of Tax Court documents and provided that any Tax Court document not on the list required Associate office review prior to its filing. These Exhibits are being deleted to eliminate that procedure. Instead, CCDM Exhibits 31.1.1-1 and 35.11.1-1 include a limited number of Tax Court documents requiring review based on document type.

Every Associate Chief Counsel has the responsibility, in consultation with affected Division Counsel, to regularly consider issues and code sections that should be added to, or deleted from, the list of issues and code sections requiring Associate office review. This review should be done on at least an annual basis. In addition, National Office review requirements contained in new

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CCDM Exhibits 31.1.1-1 and 35.11.1-1 Issues Requiring Associate Office Review

Certain issues listed below by respective Associate office require National Office review. An issue on the Associate office review list must be coordinated regardless of the stage of the case in which the issue arises (e.g., whether in examination or in litigation). Advice issued to the client, briefs and motions filed with the Tax Court and suit and defense letters sent to the Department of Justice must reflect positions consistent with Service legal positions and policies, and uphold the office's reputation for the highest quality of written product. In order to ensure these attributes, documents involving novel or significant issues contained on the Associate office review list will be reviewed in Associate offices before issuance or filing of the document. The Associate Chief Counsel and Division Counsel will consult regarding the prompt removal of any pre-review requirement once the Service's position has become sufficiently established that pre-review is no longer necessary.

The issues list set forth below contains both generic and specific significant issues. Any issue included on either list must be coordinated with the affected Associate offices. Although some Associate offices may not have a specific issue list, appropriate coordination of generic issues with those offices is required.

There are issues that do not require Associate office review. An issue not described in the generic or specific issues list is presumed not to require Associate office review. Court documents that contain no issues requiring Associate office review and that are not of a nature that requires Associate office review may be filed directly without Associate office review. Defense and suit letters that do not contain issues on this list may be sent to the Department of Justice without Associate office review regardless of their classification as Standard or S.O.P. See *CCDM 34.8.1, Settlement Procedures Overview*.

Even though a case does not contain any of the issues described below, novel, unusual, or unique questions may be presented. It is the responsibility of the docket attorney and the reviewer in the field to identify those issues presenting such questions as to warrant review by the Associate offices, and to forward the brief for both prerule and review according to current procedures. For those briefs, motions, and letters which are directly filed or sent to the Department of Justice by the field office, it is the responsibility of the field reviewer to ensure that they are correct factually and legally and of the highest quality. In addition, docket attorneys and reviewers in the field are still required to perform any necessary substantive issue coordination among Division Counsel offices pursuant to existing issue coordination procedures.

Note: the below list of issues, code sections, and documents requiring Associate office review is contained in CCDM Exhibits 31.1.1-1 and 35.11.1-1.

I. Generic Significant Issues that Require Associate Office Review with the Affected Associate Office

A case will be significant such that it requires relevant Associate office review if it involves any of the following matters, regardless of the underlying code section or subject matter:

1. The validity of a regulation, temporary regulation, revenue ruling, revenue procedure, or other published guidance item (coordination with P&A also required)
2. A proposed Treasury regulation
3. An issue where the Government attempts to distinguish a regulation, proposed regulation, temporary regulation, revenue ruling, or revenue procedure
4. A change in litigation position
5. An argument contrary to Chief Counsel advice issued in the case
6. Any statute or statutory amendment that has been enacted within the year preceding the filing date of the document or the due date of the letter to the Department of Justice
7. Matters to be submitted to the Justice Department Office of Legal Counsel
8. Nonfrivolous constitutional challenges to statutes, regulations, published guidance or Service administrative practices or any nonfrivolous assertion of the application of the Religious Freedom Restoration Act. Examples of frivolous constitutional issues that need not be reviewed are contained in The Truth About Frivolous Tax Arguments that can be found at http://www.irs.gov/pub/irs-utl/friv_tax.pdf
9. Issues appearing on the current Guidance Priority List of pending published guidance projects
10. A case involving an issue of importance to tax administration, such as:
 - An issue of first impression
 - An interpretation of a statute or regulation when there have been no prior judicial opinions addressing the interpretation
 - An issue affecting large numbers of taxpayers or an industry
 - An issue falling within an operating division's major strategic goal
11. A case or issue likely to attract congressional or public attention on a national level

II. Other Specific Issues Requiring Associate Office Review

In addition to the foregoing issues, the following specific issues require Associate office review:

Corporate

1. Valuation of corporate stock with restrictive sales agreements
2. Section 385(c)

Income Tax and Accounting

1. Section 36 credit claimed by first-time homebuyer
2. Section 36B refundable credit for coverage under a qualified health plan
3. Section 162 limited to deductibility of a payment of a shareholder's expenses in the context of a corporate reorganization or buyout and unreasonable compensation in the context of mergers or buyouts or golden parachute payments
4. Section 170 charitable contribution deductions involving quid pro quo issues for contributions to churches or religious organizations

5. Section 274(a), except where the issue is whether an activity constitutes entertainment, amusement, or recreation, or where the issue is the deductibility of country club dues, section 274(d), except where the substantiation issue is strictly factual, section 274(e), section 274(g), section 274(k), section 274(m), section 274(n)
6. Section 6055 reporting of health insurance coverage

Passthroughs and Special Industries

1. A corporate tax shelter that is a listed transaction within the description in Treas. Reg. § 1.6011-4(b)(2)
2. Valuation of minority interest discounts or post-death events or valuation issues in the context of family limited partnerships
3. Chapter 49 and sections 9008 and 9010 of the Affordable Care Act
4. Sections 513, 543 and 613 regarding rents and royalties paid for oil and gas interests or whether payments to tax-exempt organizations constitute rent or royalties
5. Sections 4001 through 4907 — excise taxes in chapters 31, 32, 33, 35, 36 subchapters B and D, 38, and 40

Procedure and Administration

1. The applicability of the Administrative Procedure Act
2. Bankruptcy issues under B.C § 523(a)(1)(B)(i) involving a Form 1040 filed after assessment
3. Any suit letter recommending that the government:
 - Join with other creditors to commence an involuntary bankruptcy case against an individual, partnership, or corporation.
 - File an objection to confirmation under B.C. § 1129(d) on the ground that the that the principal purpose of the plan is tax avoidance
4. General receiver appointments requested by the Government
5. Injunction, mandamus, or declaratory judgment sought by the Government
 - Preparer/promoter injunction referrals and injunctions to prevent pyramiding, however, do not require Associate office review unless the case involves a novel substantive issue
6. The ex parte rules on communications with Appeals unless the resolution of the issue is clearly addressed in published guidance, a Chief Counsel notice, or a CCDM provision.
7. Privilege logs and similar documents identifying third parties, see CC Notice CC-2002-028
8. Novel privilege and taint issues involving informants, including those described in CC-2010-004
9. The disclosure or potential disclosure of the identity of a confidential source, including any potential disclosure of a whistleblower's identity or any anticipated use of a whistleblower as a witness.
10. Sanctions officer issues, including misconduct on the part of Service employees or field counsel or opposing counsel, disqualification of counsel, recusal or disqualification of judges, referrals to the Office of Professional Responsibility or other ethical issues in litigation
11. Statistical sampling used by taxpayers to support a refund claim or audit adjustment if Rev. Proc. 2011-42 does not address the issue
12. Suppression of evidence
13. Any conscience-based objections to the use of a dependent's Social Security Number (SSN) or Taxpayer Identification Number (TIN) to claim an exemption under Section 151. Objections may include that the requirement is contrary to the Religious Freedom Restoration Act of 1993 or any provision of the Constitution, such as the Due Process and Equal Protection Clauses of the 14th Amendment, the Due Process Clause of the 5th Amendment, or the Free

Exercise and Establishment Clauses of the First Amendment, or cases in which the taxpayer states a belief that a SSN or TIN is the “mark of the beast.”

14. The application of common law economic substance doctrine in novel cases, as well as the application of the codified economic substance doctrine under section 7701(o) and related penalties in any case
15. Defense of Marriage Act
16. Section 66 relief from spousal liability in community property states. Jurisdictional issues and challenges to the interpretation and formulation of the factors provided in guidance for equitable relief under section 66(c). Cases solely involving the analysis of the facts of the case under the section 66(c) factors do not require Associate Office review
17. Section 6015 — Dispositive motions (e.g., motion for summary judgment, motion to dismiss for lack of jurisdiction or for mootness); the effect on the allocation of a deficiency due to the tax benefits rule of section 6015(d)(3)(B); res judicata and meaningful participation under section 6015(g)(2); jurisdictional issues under section 6015(e); claims solely for relief from unpaid interest or penalties; and challenges to the interpretation and formulation of the factors provided in guidance under section 6015(f). Cases solely involving the analysis of the facts of the case under the section 6015(f) factors do not require Associate Office review
18. Section 6109 — the issuance or use of individual taxpayer identification numbers (ITINs); objections to the use of a dependent’s Social Security Number or Taxpayer Identification Number to claim a dependency exemption.
19. Sections 6221 through 6234 TEFRA partnership/S corporation procedural issues, unless the issue is routine application of those provisions
20. Section 6330 and 6320 Collection Due Process — briefs, motions, and other Tax Court documents (including motions for summary judgment) raising novel or significant issues. Issues that are considered novel or significant include (but are not limited to):
 - Challenges to the admission of evidence based on the administrative record rule;
 - Whether the following issues are “liability issues” for purposes of determining standard of review and liability preclusion: challenges to the validity of an assessment, whether assessment or collection occurred within the applicable period of limitations, or whether payments or credits were properly applied;
 - TEFRA partnership issues;
 - Issues involving whether the Tax Court has general equitable authority to order the Service to take or refrain from taking certain collection actions;
 - Issues involving whether a Notice of Determination was issued in violation of the automatic stay;
 - Issues involving whether the Tax Court has jurisdiction over a petition from a denial of a hearing under section 6330(g); and
 - Arguments regarding proper appellate venue.
21. Section 6332(d)(2) — penalty for failure to honor levy
22. Sections 6601, 6611, and 6621(d) involving issues of restricted interest or global netting
23. Section 6673(a)(2) — penalty against counsel for unreasonable and vexatious multiplication of proceedings in Tax Court
24. Section 6721(e) and 6722(c) — penalties for intentional disregard of information reporting requirements
25. Section 7121— closing agreements that will include taxpayer’s consent to public disclosure;
26. Section 7430 — responses or briefs filed in opposition to taxpayers’ motions for attorneys’ fees under section 7430. For the requirements of such documents, see *CCDM 35.10.1.1.1*, Motions for Attorneys’ Fees and Costs; for the rules regarding approval of settlements of section 7430 claims, see *CCDM 35.10.1.1.2*, Settlement Authority.
27. Section 7433(e) — civil damages for unauthorized collection

28. Section 7435 — civil damages for unauthorized enticement of information disclosure
29. Section 7502 limited to cases where the taxpayer argues timely mailing is timely filing based on *Wood* or *Anderson*;
30. Section 7522 limited to arguments regarding the application of *Shea v. Commissioner*
31. Section 7602 — limited to designated summonses, John Doe summonses, promoter summonses, summonses for audit or tax accrual workpapers, or where the Right to Financial Privacy Act or Health Insurance Portability and Accountability Act has been argued in a suit to enforce or quash summons
32. Section 7623 whistleblower claims except coordination is not required for routine whistleblower privilege reviews
33. Section 7805(b) retroactive relief from the effect of a ruling or regulation

Tax Exempt and Government Entities

1. Employee independent contractor issues under section 530 of the Revenue Act of 1978 not involving section 7436
2. Taxpayers who are federal, state or local governments including Indian Tribal Governments
3. 45R — employee health insurance expenses of small employer
4. Sections 401 through 418 — the qualification of or deductions for employee benefit plans
5. Section 501(r) — additional requirements for certain hospitals
6. Section 3402(q) where the definition of wagering transaction is in dispute
7. Section 3401(d)(1) — definition of “employer” for employment tax purposes where the person for whom the individual performs or performed services does not have control of the payments of the wages for such services
8. Section 3504 — acts to be performed by agents
9. Section 4958 — excess benefit transaction issues
10. Section 4971— pension underfunding taxes in bankruptcy cases
11. Section 4980H — shared responsibility for employers regarding health coverage
12. Section 5000A requirement to maintain minimum essential coverage
13. Section 6056 — certain employers required to report on health insurance coverage

III. Specific Tax Court Documents Requiring Review

A Tax Court document may be directly filed with the Tax Court unless:

1. The document raises an issue or Code section identified in this Exhibit as an issue or Code section requiring Associate office review; or
2. The document is a Motion to Take Deposition of a Party or a Motion to Compel Deposition.