

CC-2014-009

September 22, 2014

Subject: Processing National Office Reviewed Field Advice for Release to the Public
Cancel Date: Upon incorporation into CCDM

Purpose

This Notice provides guidance to Chief Counsel attorneys regarding the processing of National Office reviewed field advice for public inspection. Reviewed field advice are written legal advice memoranda drafted by a Chief Counsel field attorney that provide substantive or procedural guidance about the tax law and that are reviewed by an Associate Office attorney prior to issuance. Reviewed field advice is maintained on file in Chief Counsel's National Office located in Washington, D.C. and is available in the electronic reading room at <http://www.irs.gov/uac/Electronic-Reading-Room>.

Making Redactions

The Office of Chief Counsel makes reviewed field advice available for public inspection pursuant to a court order. This order requires that legal advice memoranda providing substantive or procedural guidance about the tax law drafted by a field attorney and reviewed by an Associate Office be made publicly available. See *Tax Analysts v. IRS*, No. 1:99CV00432 (D.D.C., Dec. 10, 2001). Before the reviewed field advice is released to the public, all taxpayer return information, including taxpayer identifying information, as defined by section 6103 and the regulations thereunder must be redacted. Additionally, in most circumstances, all other information that falls within an exemption to the Freedom of Information Act (FOIA) should be redacted. As provided by FOIA exemption (b)(5), this includes information subject to the attorney-client privilege, work product doctrine, and deliberative process privilege. Privileged or exempt information may only be disclosed after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure and after the decision has received the appropriate level of review. The CCDM sets out Chief Counsel's policy regarding when a privilege or FOIA exemption may be waived as a matter of agency discretion. CCDM 30.11.1.6, *Discretionary Disclosure*.

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.

Distribute to:	Tax Litigation staff	Tax Litigation staff & Support personnel
	X All Personnel	X Electronic Reading Room
Filename:	CC-2014-009	File copy in: CC:FM:PMD

Processing Reviewed Field Advice

After a Counsel field office issues a reviewed field advice, the field attorney in the office that issued the advice (issuing office) is responsible for preparing the advice memorandum for public release, coordinating redactions, and obtaining taxpayer input on the redactions. The Disclosure and Litigation Support Branch in the Legal Processing Division of Procedure and Administration (DLS) is responsible for releasing the redacted reviewed field advice to the public. Exhibit 1, *Checksheet for Processing Reviewed Field Advice*, is an updated checklist that outlines the requirements for and steps in processing reviewed field advice for public release.

Initial Redactions by Issuing Office

The field attorney in the issuing office is responsible for initially preparing the advice for release, including making proposed redactions. As discussed above, this includes redaction of all taxpayer return information, which includes all taxpayer identifying information, and other information that falls within a FOIA exemption, such as privileged information. To safeguard against the accidental release of return information or taxpayer identifying information, the drafting attorney should use Word's "find" function to locate taxpayer identifying information and other return information that may appear throughout the document in combination with a manual review of the advice for information that should be redacted.

To facilitate release of the memorandum, reviewed field advice must be drafted in Word using the eWord macro template titled "Legal Advice Memo," and redactions must be made using the eWord redactions toolbar located under the "Add-Ins" tab in Word. Using the eWord redactions toolbar, the drafting attorney must mark all taxpayer return information and taxpayer identifying information as "confidential" and all other information subject to a FOIA exemption as "privileged." Once redacted, text identified as confidential will be highlighted in gray and the text identified as privileged will be highlighted in black. This is the black and gray version of the advice. Instructions for using eWord, including the redactions toolbar, can be found on the Chief Counsel intranet site.

Both the drafting field attorney and his or her reviewer must be involved in making the proposed redactions and must review the document before the redactions are coordinated with the recipient of the advice and the Associate Office.

Coordination of Redactions

Within five business days from the date the reviewed field advice was issued, the issuing office must submit the black and gray version of the advice to the recipient of the advice (recipient office) and to the Associate Office that reviewed the advice (reviewing office). The recipient and reviewing offices must also review the advice for information that should be redacted.¹ The recipient office (if available) and the reviewing office should use the eWord toolbar to make additional redactions or edit the initial redactions made by the issuing office. If the recipient office does not have the eWord toolbar, the recipient office should otherwise provide the issuing office with proposed changes to the redactions, and the issuing office will make the appropriate

¹ Coordination with the recipient office is principally to ensure that all taxpayer return information has been redacted because the recipient office will be in the best position to identify taxpayer return information.

changes using the eWord toolbar. Review must include the employee or attorney assigned to the advice and his or her supervisor or reviewer.

Within ten business days from the date the issuing office coordinated the black and gray version of the advice, the recipient and the reviewing offices must notify the issuing office of any changes to the proposed redactions. If the recipient or reviewing office fails to notify the issuing office of any changes within the ten-business-day period, the recipient or reviewing office will be treated as concurring with the proposed redactions. In the unusual circumstance that the issuing, recipient, and reviewing offices cannot agree upon redactions, the issuing office must coordinate the proposed redactions with Branch 6 and Branch 7 of Procedure and Administration.

If the memorandum does not pertain to a specific taxpayer, within five business days after the issuing, recipient, and reviewing offices agree on proposed redactions or reconcile a disagreement, the issuing office must submit the black and gray version of the advice to DLS. The black and gray version of the advice is submitted by e-mailing the Word document to the "Reviewed Field Advice Memoranda" mailbox.

The issuing office must also 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*.

Taxpayer Review of Proposed Redactions

If the memorandum pertains to a specific taxpayer, within five business days after the issuing, recipient, and reviewing offices agree on proposed redactions or reconcile a disagreement, the issuing office must coordinate the proposed redactions with the taxpayer or the taxpayer's representative, if applicable. First, the issuing office must prepare the document for transmittal to the taxpayer by concealing any privileged information. The privileged information is concealed using the view function in the eWord toolbar that conceals text highlighted in black. This is the gray only version of the advice – the taxpayer return information and taxpayer identifying information is highlighted in gray and the privileged information is concealed by black boxes. On the same date, the issuing office must mail the gray only version of the advice to the taxpayer along with the letter in Exhibit 2, *Letter to Taxpayer Re Disclosure*. The taxpayer has thirty business days to respond to the proposed redactions.

Thirty business days after mailing the gray only version of the advice to the taxpayer, the issuing office must send the black and gray version of the advice to DLS if (1) the taxpayer agreed to the redacted version of the reviewed field advice or (2) the taxpayer did not respond to the proposed redactions. Failure by the taxpayer to respond within the thirty-business-day period will be treated as concurring with the proposed redactions.

If the taxpayer objects to the proposed redactions the issuing office will work with the taxpayer to reach agreement regarding the information that should be redacted, mindful of Counsel's obligation to publish all non-exempt material.² Disputes with the taxpayer regarding redactions of return information should be coordinated with Branch 6 and Branch 7 of Procedure and

² The taxpayer should direct any substantive concerns regarding the memorandum to the issuing office and the issuing office may include the reviewing office. The review set forth in this notice is limited to the redaction of taxpayer identifying information and any other taxpayer return information.

Administration. After any taxpayer objections are resolved, the issuing office must submit the black and gray version of the memorandum to DLS. If agreement regarding redactions cannot be reached with the taxpayer, the memorandum will be released with the proposed redactions, and the issuing office must submit the black and gray version of the memorandum to DLS.

The black and gray version of the advice is submitted by e-mailing the Word document to the "Reviewed Field Advice Memoranda" mailbox. See Exhibit 1, *Checksheet for Processing Reviewed Field Advice Memorandum*. Also, the issuing office must include the following in the official case file: (1) a copy of the documents sent to the taxpayer, (2) a copy of the agreed upon black and white version of the advice, (3) a copy of the e-mail message sent to the "Reviewed Field Advice Memoranda" mailbox; and, (4) a completed *Checksheet for Processing Reviewed Field Advice Memorandum*.

Making Available for Public Inspection

Upon receipt of the black and gray version of the advice, DLS must review and proof the memorandum for publication. The review will include a review for taxpayer return information, including taxpayer identifying information, and will be conducted by an employee and a reviewer or supervisor in DLS. DLS will coordinate any changes to redactions with the issuing office. Although DLS will provide important pre-publication review, it remains the primary responsibility of the issuing office to ensure that the memorandum is publication ready, proofed, and redacted. This includes redaction of all taxpayer return information, including taxpayer identifying information, and information that is exempt from disclosure under the FOIA, including privileged information. Within twenty business days from receipt of the reviewed field advice and the above-referenced e-mail message, DLS will make the redacted advice available to the public in the electronic reading room on the IRS website: <http://www.irs.gov/uac/Electronic-Reading-Room>.

Questions concerning this Chief Counsel Notice, redacting documents, or reviewed field advice should be directed to Branch 6 (202-317-6833) or 7 (202-317-6834) of Procedure and Administration.

/s/
Drita Tonuzi
Associate Chief Counsel
(Procedure & Administration)

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.



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