

CC-2004-027

August 03, 2004

Subject: Accelerated Review of Selected
Appeals Settlement Guidelines

Cancel Date: Upon incorporation
into CCDM

Purpose

This Notice announces new procedures to expedite the issuance of selected Appeals Settlement Guidelines. These procedures supplement the procedures for the review of Appeals Settlement Guidelines set forth in CCDM 33.6.1.

Background

The Service's enforcement effort with respect to tax shelter promotions has created a need to establish not only earlier issue coordination but also early Appeals assessment of the litigating hazards for an identified transaction. This early coordination and Appeals assessment will make it possible to provide for administrative resolutions that may be offered through the normal Appeals case consideration or through alternative resolution processes. To accomplish this, Appeals must complete selected Appeals Settlement Guidelines on an accelerated timetable and Counsel must review these ASGs on an expedited basis. The following procedures have been adopted by Counsel and Appeals to meet those objectives.

New Procedures

It is recognized that both Appeals and Counsel have resource limitations that limit the number of ASGs subject to accelerated preparation and review to about seven to ten annually. The Chief, Appeals (or his designate) will designate the high priority issues that will be subject to these procedures. When an issue is designated, Appeals will notify the Senior Legal Counsel (PFTG), the SBSE Counsel ATAT Manager or the TEGE Special Counsel for ATAT, as appropriate, who will coordinate the Counsel participation in the drafting process and the review of the finished ASG. It is anticipated that listed transactions will be strong candidates for inclusion in this process. A necessary prerequisite for inclusion in the accelerated process is the completion of a Coordinated Issue Paper by Compliance, except for issues with well-established legal

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positions. The determination of which transactions are included will be reevaluated quarterly to assess whether circumstances necessitate a differing prioritization.

For the identified transactions, Appeals and Counsel will take the following actions to expedite the completion of a final ASG:

Appeals

- For the transactions specified under this process, the Appeals ISP Coordinator (or the team assigned to the issue) will submit drafts on an ongoing basis to the primary Counsel attorneys designated to review the ASG. These submissions may be either piecemeal (issue by issue within the transaction) or ongoing drafts of the ASG. These drafts will be submitted for Counsel's preliminary review without undergoing formal Appeals review (either by the Appeals Director of Technical Guidance or through the final formal 30-day review). It is expected that this procedure will obviate the current seriatim process and allow a Counsel review that parallels Appeals' completion of its successive drafts.
- Appeals will deliver an approved settlement range within 60 days after completion of the following:
 1. Counsel articulation of the legal arguments it intends to raise with regard to an identified shelter transaction;
 2. Full development of the facts in the transaction and its variations by Compliance;
 3. Completion of a Coordinated Issue Paper by Compliance, except for issues with well-established legal positions; and
 4. Appeals exposure to sufficient cases to hear and appreciate fully the taxpayers' position. This may be supplemented by the presentations (and white paper submissions) by taxpayers or representatives.
- Appeals will complete the first draft ASG for final submission to Counsel within 60 days after determining the approved settlement range.
- Appeals will include proposed disclosure redactions in the final version of the ASG submitted for Counsel review.

Counsel

- For the transactions designated for the accelerated process, Counsel will "pre-identify" the primary attorneys for the issue. The primary attorneys will be the Industry Counsel or Issue Management Team (IMT) Counsel, as appropriate, and an attorney from an Associate office with primary subject matter jurisdiction over the issue. It is expected that the primary attorneys will have been involved in the drafting and clearance of any underlying Coordinated Issue Paper. These attorneys

