

ID: CCA_2013050719154266

Office:

UILC: 9999.92-00

Number: **201320020**

Release Date: 5/17/2013

From:

Sent: Tuesday, May 07, 2013 7:15:54 PM

To:

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Subject: RE: Procedural question regarding ex parte communications

Yes, an originating function (such as Exempt Organizations) may alert Appeals to a court opinion. The court's opinion is in the public domain and the case to which the opinion relates is no longer open in Appeals. In fact, at the present time it does not appear as if there are any open cases in Appeals involving the issue in question, although one or more cases involving that issue are working their way through the administrative pipeline and it is anticipated that Appeals may see the issue in the near future. The contemplated communication will be a generic, nontaxpayer-specific discussion of an issue, which is permissible under section 2.02(6) of Rev. Proc. 2012-18. Additionally, to the extent that the communication discusses the particular case, the discussion will be about a closed case, which is permissible under the ministerial, administrative, or procedural matters exception to the ex parte communication rules. See sections 2.03(2)(a)(vi) and (vii) of Rev. Proc. 2012-18. Hence, the communication will not violate the ex parte communication rules. In this regard, there is no taxpayer or representative with whom the communication will have to be shared.

In terms of logistics, if the issue in question is an Appeals coordinated issue, it is recommended that the communication from the originating function be sent to the Appeals person who is responsible for coordinating that issue within Appeals. If it is not an Appeals coordinated issue, then it is recommended that the communication from the originating function be sent to an Appeals person who has program responsibilities relating to that issue. That Appeals program person could then decide whether or how to disseminate the information within Appeals. It is preferable that the communication from the originating function not be sent directly to a first-line Appeals employee who directly handles live cases.

Moreover, if an Appeals employee chooses to rely on the court opinion, in whole or in part, as part of their consideration of a live case down the road,

the Appeals employee should include a reference to that opinion in their discussion of the issue with the taxpayer/representative. It is not necessary, however, for the Appeals employee to share the communication from the originating function discussed above or other internal communication regarding the opinion, with the taxpayer/representative.