



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

DEPUTY COMMISSIONER

January 27, 2012

MEMORANDUM FOR NINA E. OLSON
NATIONAL TAXPAYER ADVOCATE

FROM:


Steven T. Miller

Deputy Commissioner for Services and Enforcement

Beth Tucker 
Deputy Commissioner for Operations Support

SUBJECT: Taxpayer Advocate Directive 2012-3

Pursuant to Delegation Order No. 13-3, which grants the Deputy Commissioner the authority to modify or rescind any form of Taxpayer Advocate Directive, this memorandum sets forth the modifications of Taxpayer Advocate Directive (TAD) 2012-3.¹

Issuance of TAD 2012-3

On January 12, 2012, the National Taxpayer Advocate issued TAD 2012-3 to the Deputy Commissioner for Services and Enforcement, Deputy Commissioner for Operations Support, and the Chief Counsel.

Taxpayer Advocate Directive 2012-3 was issued to direct the following:

1. Convene a high-level cross-functional team, including the National Taxpayer Advocate, to review the Service's priorities in the examination process, particularly with respect to correspondence examination, to determine how we can better protect taxpayer rights, improve taxpayer service, and further compliance. The review should address the issues raised by the National Taxpayer Advocate 2011 Annual Report to Congress Volume II Study: *An Analysis of the IRS Examination Strategy: Suggestions to Maximize Compliance, Improve Credibility, and Respect Taxpayer Rights* including specific recommendations to (a) Reverse the erosion of the taxpayer's right to avoid unnecessary and repetitive examinations of the same returns that has occurred

¹ See Internal Revenue Manual (IRM) 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev. 1), *Authority to Issue Taxpayer Directives* (Jan. 17, 2001). See also IRM 13.2.1.6.2 *Tax Appeal Process*. We also note that because TAD 2012-3 was issued directly to the Deputy Commissioner Services and Enforcement, this response serves as the decision on appeal.

as the IRS has increased its use of automated processes; (b) Update Treas. Reg. section 301.7605-1; (c) Ensure that taxpayers who are subject to examinations have direct contact information for the assigned examiner, and that this same examiner will work the case to resolution; and (d) Expand the use of virtual service delivery methods and other technologies that will allow better communication with and service to taxpayers who are under audit or similar automated adjustment process.

Modification of Taxpayer Advocate Directive 2012-3

The IRS takes very seriously the protection of taxpayer rights and in ensuring that its procedures adhere to all legal requirements relating to due process for each taxpayer. The IRS appreciates the views and concerns expressed by the Office of the National Taxpayer Advocate, but strongly disagrees with the assertion that there has been an erosion of taxpayer rights in the examination process. The IRS remains committed to running a balanced and fair system that provides services for taxpayers trying to comply with the tax law, and runs compliance programs that detect and deter non-compliance in a way that fundamentally respects taxpayer rights. Taxpayer rights form the central foundation that our tax administration efforts are built upon and we respect this in enforcement actions.

Taxpayer Advocate Directive 2012-3 is modified as follows:

The issues raised in the original TAD will be considered during the next regularly scheduled IRS Enforcement Committee meeting. The Enforcement Committee is the high-level cross-functional team that guides the development and implementation of Service-wide enforcement strategies. This Committee is the appropriate forum to address the issues subject to the original TAD. This modification will allow all offices with enforcement responsibilities to provide input as to the issues raised by the Office of the National Taxpayer Advocate. The Office of the National Taxpayer Advocate is represented on the IRS Enforcement Committee and is encouraged to discuss views related to the original TAD with the Committee.

Procedural issues

Notwithstanding the above modification of TAD 2012-3, it is our view that the requirements under IRM 13.2.1.6.1.3 for issuance of the TAD without the intervening step of a proposed TAD have not been satisfied in this case. The IRM, which contains the procedural limitations imposed on the authority delegated in Delegation Order No. 13-3, does not contemplate that the inclusion of an issue in the National Taxpayer Advocate Annual Report to Congress serves as a proposed TAD.

We have consulted with the Office of Chief Counsel and concluded that the National Taxpayer Advocate has no authority to issue a TAD to the Chief Counsel. Moreover, the procedures governing the issuance of TADs provide that a TAD may not be issued to interpret the law, and that procedural limitation remains in effect today. The Chief Counsel concurs with our interpretation regarding the limitations on the issuance of TADs.

Accordingly, as to the Chief Counsel, TAD 2012-3 is rescinded as beyond the scope of Delegation Order 13-3. As to any other issues, not specifically addressed in the above modification, TAD 2012-3 is rescinded.

cc: Bill Wilkins, Chief Counsel