

CC-2016-009

June 30, 2016

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.

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). This review was intended to eliminate burden resulting from outdated review requirements and to modernize the list to accurately reflect those items that require Associate office review.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 issues with those Associate offices is nonetheless required.

The two Exhibits were also revised to emphasize to both Division Counsel offices and Associate offices that when an issue is identified as significant and requires coordination, it is the responsibility of the Division Counsel office to timely seek advice and the Associate office to timely provide advice. As such, coordination on these issues should be commenced at the earliest opportunity and well before litigation, if possible.

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 Chief Counsel Notices should be incorporated in CCDM Exhibits 31.1.1-1 and 35.11.1-1 (and elsewhere in the CCDM as appropriate) as soon as practicable.

Distribute to:	Tax Litigation staff	Tax Litigation staff & Support personnel
	X All Personnel	X Electronic Reading Room
Filename:	CC-2016-009	File copy in: CC:FM:PMD

Questions regarding this Chief Counsel notice should be directed to Procedure and Administration at (202) 317-3400.

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

Exhibit 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). Coordination on these issues should be commenced at the earliest opportunity and well before litigation, if possible.¹ 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, coordination of generic significant issues with those offices is required and should be done at the earliest opportunity.

There are issues that do not require Associate office review. An issue not described in the generic or specific significant 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. The Division office is expected to communicate informally with the appropriate Associate office when these issues arise. In some cases, the Associate office will want to review certain documents before they are filed or issued. It is the responsibility of the trial attorney and the reviewer in the Division Counsel to identify those issues that warrant review by an Associate office, and to forward the document 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 Division Counsel office, it is the responsibility of the Division Counsel reviewer to ensure that they are correct factually and legally and of the highest quality. In addition, trial attorneys and reviewers in Division Counsel are still required to perform any necessary substantive issue coordination among Division Counsel offices pursuant to existing issue coordination procedures.

When an issue is identified as significant and requires coordination, it is the responsibility of the Division Counsel office to seek and the Associate offices to provide timely advice. Generally, the Division and Associate office attorneys will come to an agreement with respect to the timing of the advice that will be given, and if an agreement cannot be reached, then the issue should

¹ With respect to "S" cases it is recognized that coordination might take place later than normally expected with regular cases, typically after they are returned from Appeals.

be elevated through the respective management chains. In exigent situations, such as an expiring statute of limitations or court deadline, the Division and Associate office attorneys should discuss the urgency for the advice and the advice should be provided by the Associate office in sufficient time to take the appropriate action before the exigent event. If the advice is not timely sought by the Division Counsel office, or is not timely provided by the Associate office, the Division Counsel office may proceed with the proposed position subject to modifying or changing the position, as appropriate, to reflect the correct legal position after the advice request has been fully considered and coordinated. Before doing so, however, the Division Counsel office must notify the appropriate Associate office and their Division Counsel of their intent to do so. The attorney in the Associate office who receives such notice must promptly notify his or her Associate Chief Counsel of the Division Counsel office's intent. The failure to timely seek or provide advice when circumstances would have permitted timely coordination is a performance issue that should occur only in rare circumstances. It should be addressed at the management level. This will typically require a post-filing review of the circumstances leading to the event and a discussion between the relevant Division Counsel and Associate Chief Counsel as to how to prevent a reoccurrence.

Note: The below list of issues, code sections, and documents requiring Associate office review is also contained in Exhibit 31.1.1-1.

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 case involving an issue of importance to tax administration, such as:
 - a. An issue of first impression
 - b. An interpretation of a statute or regulation when there have been no prior judicial opinions addressing the interpretation
 - c. An issue affecting large numbers of taxpayers or an industry
 - d. An issue falling within an operating division's major strategic goal
3. A case or issue likely to attract congressional or public attention on a national level
4. An issue where the Government attempts to distinguish a regulation, proposed regulation, temporary regulation, revenue ruling, or revenue procedure
5. A position that is inconsistent with a proposed Treasury regulation
6. A change in litigation position as identified in a Chief Counsel Notice
7. An argument contrary to Chief Counsel advice issued in the case

8. 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
9. 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 [https://www.irs.gov/PUP/taxpros/The%20Truth%20-%20February%202016\(checked\).pdf](https://www.irs.gov/PUP/taxpros/The%20Truth%20-%20February%202016(checked).pdf)
10. Issues appearing on the current Priority Guidance Plan (PGP) of pending published guidance projects. The current PGP can be found at <https://www.irs.gov/uac/priority-guidance-plan>
11. An issue considered for designation for litigation under CCDM 33.3.6, which is subject to the separate procedures under that section that control the coordination between the Division Counsel and Associate offices
12. An issue that will not be referred to Appeals under Rev. Proc. 2016-22, 2016-15 I.R.B. 577, sec. 3.03, for a technical tax reason, as opposed to a strategic or tactical reason involving the preparation and trial of the case, if the issue is otherwise considered significant
13. Matters to be submitted to the Justice Department Office of Legal Counsel

II. Other Specific Issues Requiring Review by an Associate Office or the Special Counsel to the National Taxpayer Advocate

In addition to the foregoing issues, the following specific issues require review by an Associate office or the Special Counsel to the National Taxpayer Advocate:

CNTA

1. Section 7811, including the authority to issue a Taxpayer Assistance Order and the tolling of the statute of limitations

Corporate

1. Section 351 (formation of a corporation) with a repatriation transaction
2. Section 355 (spin off transactions), specifically
 - a. The device factor relating to nature and use of assets as described in Notice 2015-59.
 - b. The weighing of significant device factors (other than pro rata distributions) with business purpose
 - c. Planned sales of stock after the transaction
 - d. Distributing corporation debt to be retired with Controlled corporation securities
3. Section 385 (debt v. equity)

Income Tax and Accounting

1. Section 36B refundable credit for coverage under a qualified health plan
2. 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
3. Section 162(l) – limited to issues involving the interaction of section 162(l) (health insurance costs of self-employed individuals) and section 36B (premium tax credit)
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 5000A requirements to maintain minimum essential coverage
7. Section 6055 reporting of health insurance coverage

Passthroughs and Special Industries

1. A 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
6. Sections 6415, 6416, 6426, and 6427 – certain excise tax refunds and credits
7. Treas. Reg. § 1.701-2 – Partnership Anti-Abuse Rule

Procedure and Administration

1. The applicability of the Administrative Procedure Act
2. Bankruptcy issues under 11 U.S.C. § 523(a)(1)(B)(i) involving a Form 1040 filed after the due date
3. Any suit letter recommending that the Government:
 - a. Join with other creditors to commence an involuntary bankruptcy case against an individual, partnership, or corporation
 - b. File an objection to confirmation under 11 U.S.C. § 1129(d) on the ground that the that the principal purpose of the plan is tax avoidance
4. 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
5. Disclosure and novel privilege issues involving informants. Coordination is required before any disclosure regarding the existence or identity of a confidential source (e.g., prior to use of a whistleblower as a

- witness). Novel privilege issues include taint issues described in CC Notice CC-2010-004
6. Sanctions officer issues, including misconduct on the part of Service employees or Division counsel or opposing counsel, disqualification of counsel, recusal or disqualification of judges, referrals to the Office of Professional Responsibility, section 6673(a)(2) penalty against counsel for unreasonable or vexatious multiplication of proceedings in Tax Court or other ethical issues in litigation
 7. Any constitutional or conscience-based objections to the use of a Social Security Number (SSN) or Taxpayer Identification Number (TIN)
 8. Novel issues related to same-sex marriage
 9. Section 6015 – The effect on the allocation of a deficiency under section 6015(c) due to the tax benefits rule of section 6015(d)(3)(B); res judicata and meaningful participation under section 6015(g)(2); claims solely for relief from unpaid interest or penalties
 10. Section 6050W – requirement to file information returns for payment card and third party network payments on Form 1099-K, including penalties for failure to file and for filing incorrect returns
 11. Section 6109 – the issuance or use of individual taxpayer identification numbers (ITINs) after the effective date of section 203 of the PATH Act of 2015
 12. Sections 6221 through 6241 – All issues relating to new provisions for partnership audit and adjustment contained in the Bipartisan Budget Act of 2016 (BBA) (sec. 1101 of the BBA)
 13. Section 6306 – Contracting for collection services
 14. 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):
 - a. Challenges to the admission of evidence based on the administrative record rule;
 - b. 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;
 - c. Issues involving whether a Notice of Determination was issued in violation of the bankruptcy automatic stay
 15. Section 6332(d)(2) – penalty for failure to honor levy
 16. Section 6404(g) – Tax Court jurisdiction over interest suspension (Corbalis issue)
 17. Sections 6601 and 6611 issues involving restricted interest; section 6621 issues involving the appropriate interest rate to be used; section 6621(d)(interest netting); Tax Court Motions to Redetermine Interest; suits for additional overpayment interest filed in the Court of Federal Claims or District Court
 18. Section 7345 – Revocation or denial of passport
 19. Section 7430 – any purported qualified offer; motions for costs; responses or briefs filed in opposition to taxpayers' motions for costs; settlements of section 7430 claims that require approval. For more specific coordination requirements in section 7430 matters, see CCDM 35.10.1.

20. Section 7602 – limited to designated summonses, John Doe summonses, summonses to third parties for foreign-based records (so-called Bank of Nova Scotia summonses), LB&I promoter summonses, summonses for audit or tax accrual workpapers, cases where section 7612, the Right to Financial Privacy Act or Health Insurance Portability and Accountability Act has been argued in a suit to enforce or quash summons, cases where the government advocates assertion of the tax shelter exception of section 7525(b)
21. Section 7623 whistleblower matters (including briefs, motions, and other Tax Court filings) involving novel or significant issues. Issues that are considered novel and significant include: non-routine privilege and taint issues, potential identification of a whistleblower, scope and standard of review or remand issues, any arguments requiring an interpretation of the statute, any arguments requiring an interpretation or application of the regulations, and any dispositive motion (except summary judgment motions in cases where the IRS took no action on the whistleblower's information)
22. Section 7701(o) – The application of the codified economic substance doctrine under section 7701(o) in novel cases

Tax Exempt and Government Entities

Employment Tax

1. Issues regarding scope of Additional Medicare Tax under FICA, RRTA, or SECA
2. Section 530 of the Revenue Act of 1978 - relief from employment tax liability is claimed when taxpayer treated workers as employees for the periods at issue.
3. Section 1402(a)(13) – identification of partner as limited partner or general partner for purposes of application of self-employment tax
4. Section 3401(d)(1) – issues regarding identification of employer in control of the payments of the wages
5. Section 3504 – issues involving application of Treas. Reg. § 31.3504-2
6. Section 3509 – special employment tax rates are claimed when taxpayer treated workers as employees for the periods at issue.
7. Section 3511 – determination of liability if a Certified Professional Employer Organization is involved
8. Section 7705 – issues regarding CPEO certification, suspension or revocation

Employee Plans/Qualified Plans/Executive & Nonqualified Compensation/IRAs

1. Section 107 – exclusion for parsonage or parsonage allowances
2. Sections 401 through 418 – qualification issues for employee benefit plans involving diversion or misuse of plan assets, egregious failures relating to coverage, nondiscrimination, or benefit limitations, and deductions issues for employee benefit plans involving non-cash contributions
3. Section 409(l)(3) and 409(p) – issues involving preferred stock or synthetic equity
4. Section 409A – issues involving nonqualified deferred compensation plans
5. Section 414(e) – definition of a church plan
6. Section 420 – transfer of excess pension assets to retiree health accounts
7. Section 457A – issues involving nonqualified deferred compensation plans of nonqualified entities
8. Section 4971 – pension underfunding taxes in bankruptcy cases

9. Section 4975 – issues involving prohibited transactions and individual retirement arrangements (IRAs)
10. Section 4976 – excise tax on welfare benefit funds providing a disqualified benefit
11. Section 4985 – excise tax on stock compensation on insiders of inverting corporations

Health and Welfare Plans

1. Section 45R – employee health insurance expenses of small employer
2. Section 79 – issues involving group term life insurance plans utilizing cash value life insurance policies
3. Section 4980D – excise tax for failure to meet certain group health plan requirements
4. Section 4980H – shared responsibility payment for employers regarding health coverage
5. Section 6056 – certain employers required to report on health insurance coverage

Government Entities

1. Issues regarding identification of taxpayers as federal, state or local governments or Indian Tribal Governments

Tax-exempt Organizations

1. Section 501(c)(3) – issues involving internet churches or schools
2. Section 501(c)(3) – issues involving health maintenance organizations
3. Sections 501(c)(3) and 511-514 – issues involving joint ventures or partnerships
4. Sections 501(m) and 511-514 – issues involving commercial type insurance
5. Section 501(r) – additional requirements for certain hospitals
6. Section 509(a)(3) – issues involving whether supporting organizations satisfy the relationship test.
7. Section 512 – issues involving unrelated business taxable income (UBTI) and voluntary employee beneficiary associations (VEBAs)
8. Section 529A – Qualified ABLE Programs
9. Section 4958 – excess benefit transaction issues involving indirect transactions, the rebuttable presumption, the interaction with the requirements for exemption, and interaction with section 4967 (taxes on prohibited benefits)