

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC- 2002-022

June 12, 2002

SBSE Division
Subject: Counsel Informal Advice Cancellation Date: Upon incorporation into the CCDM

Purpose

The purpose of this Notice is to set forth procedures to be followed by field attorneys in the Office of Division Counsel, Small Business/Self-Employed, when requests for informal advice are received from the Small Business/Self-Employed client functions and from Appeals. These procedures include the process to be followed in memorializing the informal advice and maintenance of records so that the advice is retrievable.

Discussion

I. List of Designated Counsel Contacts for SBSE and Appeals

Each SBSE Counsel post of duty will create a list of designated Counsel contacts for the Appeals, Compliance and other SBSE posts of duty for which it provides legal services. Designated Counsel contacts, at local option, may be either attorneys or managers, or a combination of attorneys and managers. The contact list will include the names and telephone numbers of the Counsel contacts and specify the client functions assigned to each designated Counsel contact. The Counsel contact list will be updated at least twice annually: once at the start of the fiscal year, and once at midyear (more often if desirable). A copy of the Counsel contact list will be provided each time it is updated to the Appeals, Compliance and other SBSE Area Directors and each Territory Manager served by the SBSE Counsel post of duty. Copies of these updated Counsel contact lists shall be sent to the Area Counsel and to the Division Counsel (electronic form is sufficient) with a certification that the updated list has been forwarded to the client functions as specified in this Notice. A copy of the Counsel contact list shall be distributed to Appeals Officers, Advisors, Revenue Officers, Revenue Agents and Group Managers during any field Counsel visitations with the client functions.

Filing Instructions: Binder Part () _____ Master Sets: NO ____ RO ____
NO: Circulate ___ Distribute X to: All Personnel ___ Attorneys ___ In: ___ All offices _____
RO: Circulate ___ Distribute X to: All Personnel ___ Attorneys ___ In: ___ All SBSE offices _____
Other National and Regional FOIA Reading Rooms _____
Electronic Filename: SBAAdvice.wpd Original signed copy in: CC:FM:PM:P _____

II. Providing and Memorializing Informal Advice

Upon receiving a written request for advice, the Counsel office shall open a formal advisory and shall respond in writing, tracking the advice through the existing database processes. Upon receiving an oral request for advice, the Counsel contact shall ask the following questions:

1. Does this matter relate to a specific taxpayer?
2. Has Counsel been asked for advice, or has Counsel rendered any advice, regarding this taxpayer in the past?
3. Are there any documents which require review in order to render advice?

In considering whether it is appropriate to render informal advice, the Counsel attorney should consider the complexity of the factual and legal issues, whether or not review of documents is necessary, and the nature of the action which the client function is considering. For example, if the matter involves a proposed seizure or levy, the action would have a serious and immediate effect on the taxpayer in question. If the Service employee has concerns or questions about the proposed action it may be the best course to suggest that written, formal Counsel advice be sought. If in the exercise of the attorney's best judgment the matter is deemed appropriate for informal advice, and requires less than two hours of attorney time, then informal advice may be provided via email (subject to existing security concerns) or orally. If responding to an oral request for advice will require more than two hours of attorney time, then a formal advisory should be opened.

Any informal advice shall be memorialized in a writing which contains the following information:

1. Name of attorney providing advice and date of advice
2. IRS employee name and phone number
3. Taxpayer name and TIN
4. Facts, including statement re documents reviewed in providing advice
5. Issue(s) raised
6. Advice rendered
7. Cross references to other case files related to this taxpayer, including GL, TL or Techmis case numbers

The form attached as Exhibit A may be used for this purpose. The informal advice write-up should be post reviewed and initialed by an Associate Area Counsel or a Grade 15 attorney. Once it is post reviewed, a copy of the informal advice may be shared with the Service employee who requested the advice. Any concerns regarding the post reviewed advice should be raised with the reviewer, and the attorney shall be given an opportunity to provide input in responding to concerns.

III. Record System for Retrieving Informal Advice

To save resources, one generic file should be opened in each office at the commencement of each fiscal year to physically store all informal advice memoranda prepared during that year. This file should be closed at the end of each fiscal year. In addition, for each piece of informal advice rendered, an electronic case should be opened on the appropriate database (GL CASE for collection matters, TECHMIS for Tax Litigation matters), by taxpayer name where the matter involves a specific taxpayer, and be cross-referenced to the generic file and to any other files involving the same taxpayer. Any documents, including the written record of advice, should be filed in the generic paper file so that the informal advice can be retrieved if necessary. The electronic file should be closed after supervisory review and filing of the related advice memorandum in the generic paper file.

/s/
Kevin M. Brown
Division Counsel
Small Business/Self-Employed

Exhibit A

REQUEST FOR COUNSEL ADVICE

DATE:

ATTORNEY:

Employee Name:

PHONE:

FAX:

TAXPAYER (S) :

TIN (S) :

Cross-references:

FACT (S) :

ISSUE (S) :

ADVICE:
