

N(35)000-143a

CR: N(34)(11)44-2

February 16, 1999

Revisions to Service Center Advice  
Procedures to Conform Dissemination

**Subject:** of Chief Counsel Advice

**Cancellation Date:** August 15, 1999

## I. OVERVIEW AND DEFINITIONS

### A. Scope and Purpose.

**1. Purpose.** This Notice is a revision to the Notice N(35)000-143, dated February 10, 1997, which set forth the procedures to be followed by the Office of Chief Counsel in providing legal advice to IRS Service Centers and related IRS functions with respect to their tax administration responsibilities. The February 10 Notice, among other things, established procedures to provide for dissemination of acknowledged Service Center Advice (SCA) to the public through the Freedom of Information (FOI) Reading Room.

**2. Modifications.** Subsequently, section 3509 of the Internal Revenue Service Restructuring and Reform Act of 1998 amended section 6110 of the Code by adding "Chief Counsel Advice" (CCA) to the definition of written determinations open to public inspection. Service Center Advice issued by the National Office falls within this broader category of CCA. This Notice modifies the previous SCA procedures to conform those procedures to the processing procedures of CCA. Most notably, the procedures are modified so as to eliminate the acknowledgment process and to provide that the SCA will be made available to the public in electronic form. Specifically, the following changes are made in the prior SCA procedures:

- a. Paragraphs IV.A.5.(a) and V.B.5. have been substantially revised to eliminate the prior "acknowledgment" procedures and to provide more streamlined coordination.
- b. Paragraphs IV.A.6 and V.B.6. have been revised to provide for processing of SCA as Chief Counsel Advice and for provision of SCA in electronic form.
- c. Other paragraphs have minor conforming changes.

**3. Scope.** These Service Center Advice procedures are intended:

- (i) To clarify the different responsibilities of the National, Regional and District Counsel offices in providing different categories of legal advice;

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(ii) To ensure that there is appropriate coordination between all Counsel offices responsible for providing advice to the Service Centers; and

(iii) To provide for the dissemination of significant written advice to all affected IRS functions and Counsel offices and to the public consistent with the procedures for dissemination of CCA under I.R.C. § 6110(i), as amended by section 3509 of RRA98.

This Notice applies only to legal advice relating to the tax administration responsibilities of the Service Centers and related functions. Advice with respect to other issues (e.g., personnel, labor, procurement, and disclosure matters) will continue to be provided through the Assistant Regional Counsel (General Legal Services) and Assistant Chief Counsel (Disclosure Litigation) in accordance with CCDM (30)313.4 and (30)312.33.

**B. General Division of Responsibilities Within Counsel.** These procedures contemplate a close working relationship among all Chief Counsel offices that are involved in providing legal advice to the Service Centers. Although different offices are assigned different primary areas of responsibility, it is anticipated that the offices and individuals assigned to these matters will share their expertise in these issues on a national basis.

1. District Counsel. District Counsel offices are expected to serve as the first point of contact for any request for legal advice from the Service Centers assigned to them. In general, District Counsel offices will answer requests for routine advice directly without prior coordination with the National Office, and will respond to requests for significant advice after coordination with the National Office. Exhibit (35)300-1 lists the District Counsel offices designated to provide advice to each Service Center.
2. Regional Counsel. The Assistant Regional Counsel (Tax Litigation) are expected to oversee and ensure the quality, timeliness and consistency of advice and training provided to the Service Centers by District Counsel within their respective regions. The Assistant Regional Counsel also will monitor the correctness of the classification of advice by District Counsel and the requests for significant advice referred to the National Office for timeliness.
3. National Office. The National Office serves as the first point of contact for requests for legal advice from the Executive Office for Service Center Operations ("EOSCO"), the National Director of Customer Service Operations ("NDCSO") or from any other IRS National Office function with respect to matters affecting the Service Centers. The National Office is also responsible for advising District Counsel with respect to requests for significant advice from the Service Centers. Finally, the National Office is responsible for ensuring that there is appropriate dissemination of advice provided pursuant to this Notice.

**C. Distinction Between Significant and Routine Advice.** In general, the procedures for providing legal advice for Service Centers issues will depend upon whether the advice is considered "routine advice" or "significant advice."

1. Significant Advice. For purposes of these procedures, "significant advice" means any legal advice that is material to any aspect of the tax administration functions of any Service Center, or any related IRS activities, that:

(a) Is expected to guide the application of the tax laws or administrative procedures in national, regional or district programs, or in any significant number of cases; or

(b) Involves a legal issue that cannot be resolved with a high degree of certainty by application of settled principles of law, either to the particular facts of the case or to the issue presented.

Notwithstanding the above, significant advice does not include advice that is consistent with significant advice previously rendered under these procedures on the same or a substantially identical issue.

2. Routine Advice. For purposes of these procedures, "routine advice" means any legal advice that is material to any aspect of the tax administration functions of any Service Center, or any related IRS activities, that is not significant advice as defined in Paragraph C.1. above. Generally, the category of "routine advice" is intended to cover advice that involves the application of well-settled principles of law to the facts of a particular taxpayer's case. Routine advice will not be used or cited as precedent for the resolution of similar issues for other taxpayers. Routine advice under these procedures will generally be comparable to the type of advice described in CCDM (35)272 and (35)273, which describe routine oral and written advice to district director and local appeals functions.

**D. Form and Content of Significant Advice.**

1. In general. Significant advice provided under these procedures will address the interpretation or application of the internal revenue laws generally and is not legal advice that is intended primarily to assist in the resolution of a specific taxpayer's case.

2. Style and content. Significant advice furnished under these procedures will serve as internal guidance for Counsel and IRS employees. At the same time; however, it is expected that significant advice will generally be available to the public. Accordingly, this advice --

(a) Should neither focus on the particulars of any specific taxpayer's case nor contain any other information that is protected from disclosure under the provisions of I.R.C. § 6103;

(b) Should not ordinarily include investigative tolerances, prosecutorial criteria, settlement guidelines, analyses of litigation hazards of current or proposed Service positions, or similar information; and

(c) May discuss differing or inconsistent points of view on an issue, but should not attribute them to particular individuals or offices.

3. Format. For further guidance concerning the appropriate format for significant advice, See Exhibits (35)300-2 and 3.

**E. Definition of Service Centers.** For purposes of these procedures, the term "Service Center" includes any of the ten processing centers, as well as the Martinsburg and Detroit Computing Centers. Except for National Office programmatic oversight provisions of these procedures, all of these centers are referred to as Service Centers.

**F. Dissemination of Advice.** These procedures contemplate that all significant (but not routine) advice provided to Service Centers, Computing Centers, EOSCO, NDCSO, and related IRS functions, will be distributed to all Counsel offices responsible for providing advice to Service Centers, Computing Centers, EOSCO, and NDCSO. This distribution of significant advice to other Counsel attorneys is intended to keep those attorneys apprised of significant issues relating to Service Centers and to assist them in providing related advice and training. It is also anticipated that, in general, significant advice will be made available to the public in accordance with the rules of I.R.C. §§ 6103 and 6110(i), and other applicable disclosure and privacy laws.

## **II. SERVICE CENTER VISITATIONS BY DISTRICT COUNSEL**

**A.** District Counsel managers and attorneys should make regular visits to the Service Center for which they are responsible.

**B.** During visits to the Service Centers, attorneys may be called upon to provide legal advice in response to specific questions. However, attorneys should be careful not to provide oral responses to issues that should be addressed by or coordinated with the National Office as set forth in these procedures. When a visiting attorney is unclear as to the implications of any question raised during a visitation, the attorney should request that the issue be submitted to District Counsel as a written request for advice.

**C.** For purposes of initiating contact and general coordination, the Chief, Quality Assurance and Management Support Division (QAMS) is generally the appropriate Service Center resource to utilize.

### III. DISTRICT COUNSEL PROCEDURES -- ADVICE TO SERVICE CENTERS

**A. Initiation of Requests.** In general, Service Centers will be encouraged to communicate directly with the District Counsel offices assigned to them to request legal advice on any matter affecting their tax administration responsibilities. Each District Counsel office designated to serve a Service Center should take the initiative to inform the appropriate Service Center personnel of the availability of District Counsel assistance and of the manner in which requests for advice should be submitted. District Counsel managers and attorneys are encouraged to meet regularly with the appropriate Service Center personnel.

**B. Determination of Whether Advice Is Routine or Significant.** The District Counsel office receiving a request for advice from a Service Center has the initial responsibility to determine whether the advice provided in response will be routine or significant, as defined in Paragraph I.C. above. The Service Center is not expected to make this determination, although the requester may be asked to provide factual information that will assist in the classification (e.g., How many cases in the IRS are believed to raise the issue? Do other Service Centers have similar cases? Is the issue related to the design of a program intended to deal with a significant number of cases?). When in doubt as to whether the issue is routine or significant, the District Counsel office should consult with the National Office before determining that the question may be handled as routine advice.

**C. Procedures for Routine Advice.** Generally, existing guidelines in (35)272 and (35)273 should be followed in providing routine advice to Service Centers. Copies of any written routine advice that are provided to the Service Center should be sent only to the Regional Office (Attn: Assistant Regional Counsel (Tax Litigation)), for programmatic oversight, and to the National Office (Attn: Assistant Chief Counsel (Field Service)). See Paragraph IV.B. below.

**D. Procedures for Significant Advice.** Requests for significant advice must be coordinated with the National Office before District Counsel provides a response to the Service Center.

1. Submit request to National Office. Requests for significant advice are to be submitted in writing to the National Office (Attn: Assistant Chief Counsel (Field Service)), with a copy to the Regional Office (Attn: Assistant Regional Counsel (Tax Litigation)). District Counsel should provide all necessary assistance to the National Office during its consideration of the request; for example, District Counsel should be prepared to obtain any further information or documentation from the Service Center that may be required for the preparation of the response.

2. Form of request. District Counsel should draft the requests for significant advice in the same manner outlined in Paragraph I.D.2. above. Drafting the request in this manner is intended to facilitate the ultimate dissemination of the

response to all Service Centers and other Counsel and IRS offices, while protecting against inappropriate disclosure of the information described in Paragraphs (a) - (c) of Paragraph I.D.2.

3. Time for National Office response. District Counsel should monitor the progress of the request while it is in the National Office. In general, District Counsel should receive a response to a request for significant advice within 90 days after the request is submitted to the National Office. This time period for a response may be extended by agreement of the National Office and District Counsel, with the approval of the Assistant Regional Counsel (Tax Litigation). District Counsel should notify the Assistant Regional Counsel (Tax Litigation) of any request that does not receive a timely response.

4. Transmitting advice to Service Center. District Counsel is responsible for providing specific advice to the Service Center based on the National Office response. In some cases, District Counsel may simply transmit the National Office response to the Service Center. In other situations, such as when additional taxpayer specific advice would be helpful to the Service Center in handling the particular matter that gave rise to the request, District Counsel should provide a separate memorandum to reflect this additional advice. A copy of any such separate memorandum should be provided only to the Regional Office (Attn: Assistant Regional Counsel (Tax Litigation)) and to the National Office (Attn: Assistant Chief Counsel (Field Service)).

5. Expedited procedure. When time constraints make it impractical to follow the procedures outlined in Paragraphs 1. through 4. above, District Counsel will consult with the National Office by telephone to coordinate a response to the Service Center. Within 15 days after significant advice is provided on an expedited basis, District Counsel will submit to the National Office a written request to confirm such advice; such requests will be handled in accordance with Paragraphs 1. through 4. above. This request should explain the circumstances that made expedited advice necessary.

#### **IV. NATIONAL OFFICE PROCEDURES FOR ADVICE REQUESTS FROM DISTRICT COUNSEL**

**A. Requests for Significant Advice.** As indicated above, it is expected that all requests for significant advice will be coordinated with the National Office prior to advice being provided to the requesting Service Center.

1. Receipt and assignment by Field Service. All District Counsel requests for significant advice are to be sent to Field Service. Within three days after receipt of the request, Field Service will:

(a) Assign the request to the National Office division that is to be primarily responsible for providing the response; and

(b) Provide a copy of the request to EOSCO or NDCSO with a request for such additional information or comment as that office might wish to provide.

(c) Ensure that the case has been appropriately entered into TECHMIS so that the case assignments may be appropriately tracked.

2. Initial communication from National Office division. Within three days of assignment of the request, the National Office division assigned primary responsibility for a request for significant advice should inform both the submitting District Counsel office and EOSCO or NDCSO of the name of the manager or attorney to whom the request has been assigned.

3. Coordination within National Office. The National Office division assigned primary responsibility for a request for significant advice is also responsible for all necessary coordination with other Counsel divisions in the National Office (based on subject matter jurisdiction over the issues raised) and with EOSCO, NDCSO, or other IRS National Office functions.

4. Time for response. Absent an agreement extending the time period, the National Office division assigned primary responsibility for the request will provide a response to District Counsel within 90 days of the receipt of the request in Field Service.

5. Delivery of responses. The National Office response will be provided to District Counsel. Field Service will provide copies to EOSCO or NDCSO.

(a) Upon receipt of the National Office response, District Counsel will provide advice to the Service Center as described in Paragraph III.D.4., above. District Counsel will inform Field Service of the date on which the advice was provided to the Service Center, and will provide a copy of any written advice provided to supplement the National Office response.

(b) EOSCO or NDCSO will undertake whatever additional coordination with other IRS functions it believes is required, and, within 45 days after receipt of the advice, will respond to the division that provided the advice with any comments, clarifications, or further inquiries it believes are appropriate, if any. To the extent that comments, clarifications or further inquiries arise, reconsideration of the issued significant advice will follow. Reconsideration will be treated as a new request for advice. Dissemination of the original issued significant advice will be in accordance with Paragraph 6. To the extent that reconsideration requires new or revised significant advice, a new or revised significant advice will be issued and disseminated in accordance with Paragraph 6.

6. Further dissemination of significant advice. At the same time that the significant advice is provided to the requesting District Counsel office and to

EOSCO or NDCSO, Field Service will send a copy of the National Office advice to: (a) All District Counsel responsible for providing advice to Service Centers; and (b) All Assistant Regional Counsel (Tax Litigation). Field Service will then transmit an electronic version to CC:DOM:CORP:T. CC:DOM:CORP:T will take the necessary steps to ensure that the SCA is available in the Freedom of Information Reading Room and electronically on the IRS Internet site. To the extent that the significant advice may include tax information protected by I.R.C. § 6103, or other information that is protected by law, Field Service will not distribute the advice without prior coordination with the Assistant Chief Counsel (Disclosure Litigation).

**B. Requests for Routine Advice.** It is expected that District Counsel will respond to requests for routine advice from Service Centers without prior consultation with the National Office, and that such advice will not be post-reviewed in the National Office. A copy of all routine advice will be sent to Field Service to permit the identification of emerging issues or trends that might not be apparent to individual District Counsel offices and to ensure that the advice was properly classified as routine. The copies of routine advice will not be digested, indexed, maintained, or used as precedent.

## **V. NATIONAL OFFICE PROCEDURES FOR ADVICE REQUESTS FROM IRS NATIONAL OFFICE FUNCTIONS**

**A. Offices Included.** For purposes of these procedures, National Office functions include all headquarters or program functions within the Commissioner's office or within the Office of Chief Counsel.

### **B. Procedures.**

1. Receipt and assignment by Field Service. All requests for significant advice from National Office functions are to be sent to Field Service. Within three days after receipt of the request, Field Service will:

- (a) Assign the request to the National Office division that is to be primarily responsible for providing the response;
- (b) If the request is not made by EOSCO or NDCSO, provide a copy of the request to the EOSCO or NDCSO, as appropriate, with a request for such additional information or comment as that office might wish to provide;
- (c) If the request involves a particular Service or Computing Center, provide a copy of the request to the District Counsel principally servicing that center; and
- (d) Ensure that the case has been appropriately entered into TECHMIS so that the case assignments may be appropriately tracked.



2. Initial communication from National Office division. Within three days of assignment of the request, the National Office division assigned primary responsibility for a request for significant advice should inform both the submitting function and EOSCO or NDCSO of the name of the individual manager or attorney to whom the request has been assigned.
3. Coordination within National Office. The National Office division assigned primary responsibility for a request for significant advice is also responsible for all necessary coordination with other Counsel divisions in the National Office (based on subject matter jurisdiction over the issues raised) and with EOSCO, NDCSO, or other IRS National Office functions.
4. Time for response. Absent an agreement extending the time period, the division assigned primary responsibility for the request will provide a response to the submitting function and EOSCO or NDCSO (if not the submitting function) within 90 days of the receipt of the request in Field Service.
5. Delivery of responses. The National Office response will be provided both to the submitting function and to EOSCO or NDCSO (if not the submitting office). EOSCO or NDCSO will undertake whatever additional coordination with other IRS functions it believes is required, and, within 45 days after receipt of the advice, will respond to the division that provided the advice with any comments, clarifications or further inquiries it believes are appropriate, if any. To the extent that comments, clarifications or further inquiries arise, reconsideration of the issued significant advice will follow. Reconsideration will be treated as a new request for advice. Dissemination of the original issued significant advice will be in accordance with Paragraph 6. To the extent that reconsideration requires new or revised significant advice, a new or revised significant advice will be issued and disseminated in accordance with Paragraph 6.
6. Further dissemination of significant advice. At the same time that the significant advice is provided to the requesting District Counsel office and to EOSCO or NDCSO, Field Service will send a copy of the National Office advice to: (a) All District Counsel responsible for providing advice to Service Centers; and (b) All Assistant Regional Counsel (Tax Litigation). Field Service will then transmit an electronic version to CC:DOM:CORP:T. CC:DOM:CORP:T will take the necessary steps to ensure that the SCA is available in the Freedom of Information Reading Room and electronically on the IRS Internet site. To the extent that the significant advice may include tax information protected by I.R.C. § 6103, or other information that is protected by law, Field Service will not distribute the advice without prior coordination with the Assistant Chief Counsel (Disclosure Litigation).

## **VI. NATIONAL OFFICE PROCEDURES FOR REQUESTS RECEIVED DIRECTLY FROM THE SERVICE CENTERS**

**A. Classification of Requests.** It is not expected that the Service Centers will request advice directly from the National Office. See Paragraphs I.B.1. and III.A. However, any request for advice received by any National Office division directly from a Service Center will be classified as either routine or significant in accordance with the criteria set forth in Paragraph I.C. The National Office division receiving the request will coordinate with the District Counsel office assigned to the Service Center and with Field Service to ensure that a complete record of significant requests is maintained there.

**B. Requests for Significant Advice.** Requests for significant advice received directly from Service Centers or Computing Centers will be referred to EOSCO or NDCSO to determine whether the National Office should address the question. If EOSCO or NDCSO requests that the question be answered by the National Office, the request will be considered a request for advice from EOSCO, NDCSO, or the appropriate National Office function in accordance with the procedures set forth in Paragraph V.

**C. Requests for Routine Advice.** Requests for routine advice will be forwarded to the District Counsel assigned to that Service Center for handling in accordance with Paragraph III.

## **VIII. ELECTRONIC TRANSMISSION OF DOCUMENTS**

**A. Electronic Transmissions Preferred.** To facilitate the dissemination of documents under this procedure to various District Counsel, Regional Counsel, and National Office personnel as required, all documents sent to Field Service will be created and transmitted electronically via e-mail or floppy disk. The request for advice should be transmitted as an attachment to an e-mail message. Any request for advice sent as a paper copy should include a transmittal memorandum and a floppy disk containing the advice or request for advice.

**B. Identification of Contents.** Any transmittal to Field Service from District Counsel will identify the source of the request, any prior National Office contacts with respect to the subject matter, and specify that the document is being transmitted pursuant to these procedures. The transmittal of any response to Field Service from the National Office will identify the request to which it responds. All transmissions should include a TECHMIS workload identification number for ease of tracking and association.

## **IX. PERMANENT GUIDELINES**

**A. Chief Counsel Directives Manual.** These procedures will be incorporated into the Chief Counsel Directives Manual in Part (35) and cross-referenced in Part (34). CCDM (34)(11)44 will be conformed to these procedures.



## Exhibit (35)300-1

### DISTRICT COUNSEL CONTACTS

Andover Service Center	William Hayes CC:NER:NED:BOS	617-565-7899
Atlanta Service Center	Sheldon Kay CC:SER:GEO:ATL	404-331-1382
Austin Service Center	Lewis Hubbard CC:MSR:STX:AUS	512-499-5440
Brookhaven Service Center	Donald Schwartz Jody Tancer CC:NER:BRK	516-832-2408
Cincinnati Service Center	William Shouse CC:SER:KYT:LOU	502-582-6028
Fresno Service Center	Debra Moe CC:WR:CCA:SJ	408-494-7850
Kansas City Service Center	James Cannon CC:MSR:KSM:KCY	816-283-3046
Memphis Service Center	Vallie Brooks & Nancy Hale CC:SER:KYT:NAS	615-736-5500
Odgen Service Center	Mark Howard CC:WR:RMD:SLC	801-799-6620
Philadelphia Service Center	Stephen Kesselman CC:NER:PEN:PHI	215-597-3442
Detroit Computing Center	Mark S. Pendery & Robert D. Heitmeyer CC:NER:MIC:DET	313-226-4790
Martinsburg Computing Center	Mary Ann Waters CC:SER:VWV:RCH	804-771-2332

**Exhibit (35)300-2**



**OFFICE OF  
CHIEF COUNSEL**

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

**MEMORANDUM FOR ASSISTANT CHIEF COUNSEL (FIELD SERVICE)**  
Attn: Technical Services Function

**FROM:** District Counsel

**SUBJECT:** Significant Service Center Advice Request

Provide a generic (no taxpayer identification information) description of the facts and the resulting issue(s) for which the requesting office seeks advice.

Explain why the requesting office identifies the above facts and/or issue(s) as significant.

Exhibit (35)300-3



OFFICE OF  
CHIEF COUNSEL

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

Enter date for electronic version

UILC:        xxxx.xxxx

MEMORANDUM FOR DISTRICT COUNSEL OR NATIONAL OFFICE FUNCTION

FROM:                    Assistant Chief Counsel  
                              CC:XXXX

SUBJECT:                Significant Service Center Advice

**The Memorandum MACRO for Field Service Advice can be used. Delete “Field Service Advice” from the heading and insert “Service Center Advice.” Because SCA is intended to be nontaxpayer specific, the use of a legend ordinarily will not be necessary. Instead of the FSA introductory paragraph, use the following introductory paragraph.**

This responds to your request for Significant Advice dated \_\_\_\_\_ , in connection with a question posed by the \_\_\_\_\_ function of the \_\_\_\_\_ Service Center.

**Issue(s)**

State the issues as presented by the requesting office. Also, whenever appropriate, state any additional issues that the incoming request did not specifically raise, or restate the issue presented to identify the real question at hand.

**Conclusion**

Provide a specific statement setting out the conclusion reached for each issue. Write the conclusion clearly, leaving no doubt as to its meaning. Also, make sure to mention that it is based solely on the facts presented.

## **Facts**

Concisely set out the statement of facts offered by the requesting office, without sacrificing clarity. Fully present the essential facts, but do not refer to specific taxpayers. Using short quotations from the incoming statement may help focus on particular areas, especially when the conclusion depends on the interpretation of such language. However, whenever practicable, avoid lengthy quotations from documents contained in the file.

## **Discussion**

Set forth clearly and concisely the pertinent law, regulations, published rulings of the Service, and case law or other precedent. Ensure that all citations are directly on point. Use quotations judiciously, and avoid lengthy ones whenever practicable.

Provide sufficient rationale to bridge any gaps between the issue, law, and conclusion. Recall that this is a public document. Use caution and keep in mind all restrictions on technical assistances.