

INTERNAL REVENUE SERVICE DOCUMENTS

Treasury Regulations: Title 26 of the Code of Federal Regulations

The IRS issues tax regulations, officially known as Treasury Regulations. Its regulations are the Treasury Department's official interpretations of the Internal Revenue Code. The IRS issues three types of regulations: final, temporary and proposed. Final regulations provide legally binding guidance. Temporary regulations are effective upon publication in the Federal Register and may be valid for no more than three years from their date of issuance. Proposed regulations do not become effective until after comments and testimony have been received and reviewed and a final version of the regulations have been issued. Temporary and final regulations are initially published as Treasury Decisions ("TD"). TD's include an explanatory preamble, which can be a great source for research. TD's as well as proposed regulations are published in the Federal Register. Final and temporary regulations are later codified in Title 26 of the Code of Federal Regulations ("C.F.R."), however, the explanatory preambles are not published in the C.F.R. Numbering of Treasury regulations corresponds to the U.S. Code section which they interpret. For example, 26 C.F.R. § 1.221-1(a)(1) interprets 26 U.S.C. 221(a).

Officially Published IRS Documents

Internal Revenue Bulletin/Cumulative Bulletin

The IRS produces many documents, most of which are published in the weekly Internal Revenue Bulletin (IRB). The IRB has four main parts: the Code (which includes revenue rulings, final regulations, and Supreme Court tax decisions relating to the provisions of the IRC); Treaties and Tax Legislation (which includes treaties, tax legislation, and committee reports); Administrative, Procedural, and Miscellaneous (which includes notices and revenue procedures); and Items of General Interest (which includes notices of proposed rulemakings and announcements). The IRB also publishes notices of IRS acquiescence or nonacquiescence of judicial decisions against the government. The IRB is later compiled into the Cumulative Bulletin which is published twice per year.

Revenue Rulings

Revenue Rulings are official interpretations of the Internal Revenue Code and Treasury Regulations, issued by the Internal Revenue Service (IRS) in response to a taxpayer's request for clarification of the law. If the IRS decides that a ruling, an application of law to a certain set of facts, is of general interest, it will publish it in the IRB as a Revenue Ruling. If the ruling is not of general interest the IRS will issue a Private Letter Ruling, discussed in more detail below. Revenue Rulings have modest weight and can be relied on by a taxpayer whose factual situation is substantially similar to that described in a Revenue Ruling. Revenue Rulings, however, are not as authoritative as a Treasury Regulation, and, therefore, a conflicting Regulation trumps a Revenue Ruling. Revenue Rulings can be revoked, modified or become obsolete with the issuance of a future Revenue Ruling or Treasury Decision. Revenue Rulings contain several segments including: Purpose, Issue, Facts, Law and Analysis, Civil and Criminal Penalties, Holding and Drafting Information. Revenue Rulings are numbered with a two-part numbering system; the first number corresponds to the year and the second to the number of that ruling for that year in order of publication. Before 1953, Revenue Rulings had many different names including: Appeals and Review Memoranda, General Counsel's Memoranda, Internal Revenue Mimeograph, Income Tax Unit Ruling, Law Opinion, and Office Decision. These can only be found in the Cumulative Bulletin.

Revenue Procedures and Procedural Rules

Revenue Procedures and Procedural Rules are the official statements of the IRS on its internal practices and procedures. The Revenue Procedures are added to the Procedural Rules in 26 CFR Part 601. They are available in the IRB, the CB, in Westlaw on the Tax tab, and in Lexis in the Research Task for Tax. CCH's Standard Federal Tax Reporter contains annotations to Revenue Procedures in its compilation volumes following each IRC section. CCH's online product, CCH Tax Research NetWork. RIA's United States Tax Reporter contains annotations to Revenue Procedures in its compilation volumes following each IRC section. RIA's online product, RIA Checkpoint, contains the text of Revenue Procedures, which can be accessed via the "Rulings/IRB" section on the left side of the screen under Find By Citation, or by searching in the "IRS Rulings and Releases" database under the Primary Source Materials heading.

Notices of Acquiescence or Nonacquiescence

These notices are important because they reveal whether the IRS will continue to litigate an issue it has lost in a judicial proceeding. An acquiescence describes why the IRS will not appeal and a nonacquiescence describes the reasons the IRS will appeal a judicial decision favorable to a taxpayer. Until 1993, the IRS issued the notices only for Tax Court Regular decisions, but now the IRS issues these notices for all trial and circuit courts. They are only available from 1981 forward and cannot be cited as precedent. They are available in the IRB, the CB, in the CB databases on Lexis (this database contains acquiescence and nonacquiescence tables), and Westlaw, in CCH's Standard Federal Tax Reporter in the Rulings Section, and in RIA's United States Tax Reporter in the IRS Rulings volume. In addition, citators indicate the existence of an acquiescence or nonacquiescence with a notation of A, Acq., N, or Nonacq. next to the case citation.

Publicly Released IRS Documents

The documents discussed below are helpful in determining the IRS' position on certain issues. The documents do not have precedential value and, therefore, should not generally be cited in court documents. Some of the documents may, however, constitute authority for avoiding the substantial underpayment penalty.

Private Letter Rulings

Private Letter Rulings (also known as Letter Rulings) are written by the national office of the IRS in response to taxpayer questions seeking guidance concerning the tax consequences of future transactions. They are only binding on the taxpayer to whom they are specifically addressed, and only he can rely on that ruling. They are not officially published and lack precedential value. Therefore, other taxpayers cannot cite to them. If the issue could affect many other taxpayers, the IRS may issue a Private Letter Ruling as a Revenue Ruling. These are available on Lexis, Westlaw as well as both print and online in CCH and RIA.

Determination Letters

Determination Letters are similar to Private Letter Rulings, but they are issued by local offices of the IRS rather than the national office. They describe how tax law applies to a completed

transaction. Local offices will only write Determination Letters if clear precedent and well-established rules apply to a transaction. If there is no clear precedent, the national office will handle the inquiry. Determination Letters are not published in the IRB; they are available in the Daily Tax Report, Tax Notes (available in Lexis), and in CCH's IRS Letter Rulings Reporter.

Technical Advice Memoranda

The national office of the IRS issues Technical Advice Memoranda (TAM) to local offices of the IRS to promote the consistent application of law to completed taxpayer transactions. TAMs are specific to a taxpayer and are usually written in connection with an audit or claim for refund. Although taxpayers can request that an issue be submitted to the national office, the local offices of the IRS decide whether or not to request a TAM from the national office. Like a judicial opinion, TAMs usually contain a restatement of the facts and discussions of precedent, reasoning and conclusions specific to the request. TAMs are available on both Lexis and Westlaw.

General Counsel Memoranda

The Office of the Chief Counsel of the IRS issues General Counsel Memoranda (GCM) in response to requests for advice from IRS personnel. They generally answer questions relating to Technical Advice Memoranda, Private Letter Rulings, and Revenue Rulings and provide the reasoning and authority used and relied on in those documents. GCMs are numbered sequentially from the original date of publication. GCMs are available on Lexis, Westlaw, and RIA Checkpoint.

Actions on Decisions

Actions on Decisions (AODs) are legal memoranda prepared by IRS tax litigation attorneys when the IRS loses a case. AODs provide two recommendations: 1) whether to appeal or not appeal an adverse decision and why and 2) whether to acquiesce or not acquiesce and why. This distinction is important because the IRS may decide not to appeal a specific decision at the same time that it decides not to acquiesce and to continue litigating the same issue in future cases. AODs are numbered sequentially by year. AODs are available on Lexis, Westlaw, and RIA Checkpoint.