Understanding IRS Rulings*

The Internal Revenue Service (IRS), a bureau of the Treasury Department, is the nation’s tax collection agency and is charged with enforcement of the Internal Revenue Code (IRC). In its tax administrative role, the IRS translates federal tax laws into detailed regulations, rules and procedures. The IRS Office of Chief Counsel produces several different types of documents and publications, which are meant to provide guidance to taxpayers, tax professionals and IRS personnel. This document provides an overview of many common IRS documents and publications, referred to as IRS pronouncements or IRS rulings.

Internal Revenue Bulletin (IRB)

To promote uniform application of tax law, certain IRS pronouncements are announced in the Internal Revenue Bulletin (IRB), published weekly.

IRS pronouncements that are published in the IRB include the following:

- Treasury Decisions (T.D.)—including the text of final and temporary regulations
- Proposed Regulations (NPRM)
- Revenue Rulings (Rev. Rul.)
- Revenue Procedures (Rev. Proc.)
- Notices
- Announcements
- Acquiescence and nonacquiescence

* This document covers many common IRS pronouncements but does not provide an exhaustive list. Regulations are covered in more detail in a separate presentation and document (see “Treasury Regulations” in this series).
The IRB is divided into four main parts.

**The IRS Mission**

**Part I.—1986 Code.**
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

**Part II.—Treaties and Tax Legislation.**
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

**Part III.—Administrative, Procedural, and Miscellaneous.**
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

**Part IV.—Items of General Interest.**
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

- **Part I:** Rulings, final regulations and select court decisions
- **Part II:** Treaties, tax legislation and committee reports
- **Part III:** Revenue Procedures and Notices
- **Part IV:** Notices of Proposed Rulemaking and Announcements

Twice a year, the contents of the IRBs are compiled into a Cumulative Bulletin (CB). In actuality, the IRS has not produced a Cumulative Bulletin in several years. With the proliferation of online research services and the expansion of the IRS website, tax practitioners generally cite to the IRB rather than the CB.

**Types of IRS Pronouncements**

The Office of Chief Counsel provides legal support needed by the IRS. In that role, the Office of Chief Counsel is responsible for preparing several different types of documents that provide
public guidance, such as Revenue Rulings, Revenue Procedures, Letter Rulings and Actions on Decisions. In general, IRS pronouncements fall into four main categories: IRS Positions, Letter Rulings, IRS Internal Documents and Taxpayer Assistance.

**IRS Positions**

The IRS issues numerous documents that are essentially statements of the IRS’s position on various issues, including Treasury Regulations, Revenue Rulings, Revenue Procedures, Notices and Announcements.

**Treasury Regulations**

The IRS, under the supervision of the Treasury Department, issues Treasury Regulations to provide guidance for new legislation or to address issues that arise with respect to existing IRC sections. Treasury Regulations interpret the IRC, set forth the IRS’s position and give directions on complying with tax laws. Generally, regulations are first published as proposed regulations in the Federal Register. The public is invited to participate in the rulemaking process. Based on the rulemaking record and public input, a proposed regulation may be modified or withdrawn, or the agency may proceed with a final rule. Final regulations (and temporary regulations) are published as Treasury Decisions in the Federal Register. They are republished in the Internal Revenue Bulletin. Regulations are discussed in detail in the “Treasury Regulations” segment of this series.

**Treasury Decisions**

A Treasury Decision (TD) is the vehicle by which the IRS promulgate final and temporary regulations. A TD contains two main parts: (1) the preamble that describes the content of the new or amended regulations as well as providing background and the reasons behind the changes and additions, and (2) the text of the new regulations. A TD will often provide an effective date for the regulations and contact information at the IRS for obtaining more information. While the preamble is not afforded nearly the authoritative weight as the text of the regulation itself, it can be a great source of information for practitioners trying to understand what changes were made and what issue the regulation is trying to address.

**Notice of Proposed Rulemaking**

The IRS promulgates proposed regulations via a document called a Notice of Proposed Rulemaking (NPRM). Like TDs, NPRMs contain both a preamble and the text of the proposed regulations. The preamble provides a background behind the proposed regulations, an explanation of the regulations, as well as information concerning where to send written comments on the proposed regulations. Both NPRMs and TDs are published in the Federal Register as well as in the weekly Internal Revenue Bulletin.
Revenue Rulings

A Revenue Ruling applies the law to a specific fact situation and can be relied on by a taxpayer and guide the taxpayer in a similar situation. Some Revenue Rulings are primarily directed to the nationwide tax administrative system. Others are issued to clarify various points of interpretation. Revenue Rulings are also used to announce various rates and amounts.

The emphasis of the Revenue Ruling program is to provide uniformity of interpretation. Informing taxpayers of the IRS’s position in a published ruling reduces the need for taxpayers to request a letter ruling on the same subject.

A Revenue Ruling generally contains several sections, as follows: Issue, Facts, Law and Analysis, Holdings and Drafting Information. Revenue Rulings and Revenue Procedures are numbered sequentially (the first number corresponds to the year, and the second number is the number of the ruling for that year of publication).

Revenue Procedures

Revenue Procedures outline procedures for complying with the tax law and may be cited as authority. While a Revenue Ruling generally states an IRS position, a Revenue Procedure provides return filing or other instructions concerning an IRS position. Revenue Procedures cover a broad spectrum of administrative and procedural matters, such as procedures related to the adoption of new accounting methods, and methods of electronic filing.
Notices and Announcements

Generally, the IRS issues Notices and Announcements to provide substantive or procedural guidance on an expedited basis, with respect to matters of general interest that would otherwise be covered by a regulation, Revenue Ruling or Revenue Procedure. A Notice is a public pronouncement that may contain guidance involving substantive interpretations of the IRC or other provisions of the law. For example, notices can be used to advance the IRS’s position in situations where regulations are still in the drafting phase and have not yet been released. As such, IRS Notices are often very authoritative and the only guidance available on a particular tax issue.

An IRS Announcement has only immediate or short-term value. For example, Announcements can be used to summarize the law or regulations without making any substantive interpretation, or to notify taxpayers of an approaching deadline. In the past, Announcements were not published in the semi-annual Cumulative Bulletin. Now that the CB is simply a compilation of the weekly Internal Revenue Bulletins, Announcements are included.

A taxpayer may rely on a Notice or Announcement to the same extent as a Revenue Ruling or Revenue Procedure.

IRS Letter Rulings

The purpose of the IRS Letter Rulings program is to provide a timely response to taxpayers trying to ascertain the effects of their acts or transactions for tax purposes.

Regulations and published IRS rulings provide general guidance as to interpretation of tax law but are not intended to address every specific fact situation, issue or problem. For many taxpayers, published IRS rulings provide enough guidance to determine the tax consequences of their transactions. However, taxpayers are often involved in complex transactions involving scenarios that are not clearly covered by the regulations. The IRS Letter Rulings program allows taxpayers to question the IRS as to their position on a given situation or issue.
Private Letter Ruling (PLR or LTR)

A Private Letter Ruling is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is carried out or before the taxpayer's return is filed.

A PLR is issued in response to a written request submitted by a taxpayer. The procedures and user fees for obtaining a letter ruling are published annually in the first Revenue Procedure of each calendar year.

A PLR is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. A PLR may not be relied on by other taxpayers or IRS personnel. PLRs are generally made public after all information has been removed that could identify the recipient taxpayer. Although Private Letter Rulings are not binding precedent for taxpayers other than the recipient, they are extremely useful to tax practitioners as they provide the IRS’s position and interpretation on areas that are often gray or uncertain in the law.

There are a number of areas in which the IRS will not issue a Private Letter Ruling, for example, whether compensation is reasonable for tax deductibility. In the first Rev. Proc. issued each calendar year, the IRS publishes an annual list of issues for which they will not respond to letter rulings requests.

Determination Letter

Determination Letters are issued in response to taxpayer requests involving completed transactions and have the same force and effect as Private Letter Rulings. Determination Letters apply to a particular set of facts and are issued only when a determination can be made on the basis of clearly established rules as set forth in the tax law statutes or Treasury Regulations, or by rulings, opinions or court decisions published in the IRB.

Technical Advice Memorandum (TAM)

A Technical Advice Memorandum is guidance furnished by the Office of Chief Counsel in response to a request by an IRS official, regarding technical or procedural questions that develop during a proceeding. Like a PLR, a TAM applies to a specific taxpayer. A request for a TAM usually stems from an audit or a taxpayer’s claim for a refund or credit. TAMs are issued only on completed transactions and represent a final determination of the IRS’s position, but only with respect to the specific issue in that specific case. Similar to a judicial opinion, a TAM usually contains a restatement of the facts, discussions of precedent, analysis and conclusions specific to the request. TAMs are normally made public after all information has been redacted that could identify the taxpayer at issue.
Chief Counsel Advice

Chief Counsel Advice includes written advice or instructions prepared by the Office of Chief Counsel and issued to IRS field or service center employees. The advice conveys certain legal interpretations or positions of the IRS or Chief Counsel concerning existing or former revenue provisions. “Revenue provisions” refers to internal revenue laws; regulations; Revenue Rulings; Revenue Procedures; other administrative interpretations or guidance, whether published or unpublished; tax treaties; and court opinions.

IRS Internal Documents

The IRS discloses many internal documents (intra-agency and inter-agency memoranda) to the public. Generally, IRS internal documents do not represent a final determination of the IRS’s position and should not be cited as authority.

Internal Revenue Manual (IRM)

The IRS Internal Revenue Manual is the official source of instructions to IRS personnel relating to the organization, administration and operation of the IRS. The IRM contains directions IRS employees need to carry out their responsibilities in administering IRS obligations, such as detailed procedures for processing and examining tax returns.

Procedures set forth in the IRM are not mandatory and are not binding on the IRS. The provisions are not issued pursuant to a mandate or delegation of authority by Congress and do not have the effect of a rule of law. Nonetheless, IRM offers insights into IRS procedures, and many tax practitioners use the IRM for guidance.
Audit Techniques Guides (ATGs)

Audit Techniques Guides assist IRS examiners during audits by providing insight into issues and accounting methods unique to specific industries. The guides explain industry-specific issues, examination techniques, business practices and terminology. ATGs are designed to provide guidance for IRS employees but are also useful to small business owners and tax professionals who prepare returns.

ATGs should not be used or cited as authority for setting or sustaining a technical position.

Actions on Decisions (AODs)

When the IRS loses a case, an Action on Decision may be prepared by the IRS Office of Chief Counsel. An AOD is a legal memorandum that announces the future litigation position the IRS will take regarding the court decision. AODs provide recommendations regarding whether or not to appeal an adverse decision and whether or not to acquiesce, as well as the reasoning for the recommendation.

Taxpayer Assistance

The IRS provides numerous publications and resources—such as IRS publications and form instructions—to aid taxpayers in complying with requirements of the IRC and Treasury Regulations. The information contained in such publications is valuable, and the IRS makes efforts to ensure that the information is correct. However, guidance contained in IRS informal
publications is not binding and should not be cited as legal authority. It is possible that such information is outdated, unclear or inaccurate, and taxpayers rely on such publications at their peril.

**IRS Publications**

IRS Publications explain tax law in plain language for taxpayers and their advisors. Typically, IRS Publications provide numerous examples and tips, define important terms and include sample worksheets. Many IRS Publications are updated annually and highlight recent changes in the tax law. While IRS Publications are a good source of general information, such publications should not be cited to sustain a position.

Examples of IRS Publications:

- Pub. 15  Circular E, Employer’s Tax Guide
- Pub. 17  Your Federal Income Tax (for Individuals)
- Pub. 334  Tax Guide for Small Businesses
- Pub. 463  Travel, Entertainment, Gift, and Car Expenses
- Pub. 501  Exemptions, Standard Deduction, and Filing Information
- Pub. 502  Medical and Dental Expenses
- Pub. 505  Tax Withholding and Estimated Tax

**Forms and Form Instructions**

IRS forms and form instructions lead taxpayers step-by-step through the process of filling out tax returns to report information required by law. However, such publications do not bind the IRS. Forms and instructions are provided for guidance only, and taxpayers should not rely solely on such documents.

**IRS Frequently Asked Questions and Answers (IRS FAQs)**

Increasingly, the IRS offers informal guidance such as frequently asked questions and answers posted on the IRS website. IRS FAQs briefly summarize the law and provide links to relevant publications, such as forms and IRS Publications, for a large number of tax topics. The IRS may post FAQs to provide guidance on an expedited basis, when there is a statutory change, for example. There are no published procedures or formal process to issue or update such guidance. FAQs are not routinely archived on the IRS website, and there is no history of changes.
made to FAQs. Information contained in IRS FAQs may be outdated or inaccurate. Taxpayers should not rely solely on such information to answer questions.

Weight of Authority

In the hierarchy of federal tax authorities, IRS rulings and pronouncements generally fall below statutes, regulations and judicial decisions. Reliance on IRS rulings is discussed below. (IRS pronouncements are generally listed in descending order of importance.)

IRS Positions

Regulations

Final and temporary regulations are the highest administrative authority issued by the Treasury Department and generally rank above all other IRS pronouncements. Regulations must be followed by the IRS. Although proposed regulations can be useful in indicating the IRS’s position, neither the IRS nor the courts are bound by proposed regulations.

Revenue Rulings

Generally, a taxpayer may rely on a published Revenue Ruling in planning and carrying out a transaction if the taxpayer’s facts and circumstances are substantially similar. However, such taxpayers are advised to consider the effect of subsequent legislation, regulations, court decisions and revenue rulings. Revenue Rulings have lower weight of authority than regulations. Accordingly, Revenue Rulings can be revoked or modified or become obsolete when new Revenue Rulings or Treasury Decisions are issued.

Revenue Procedures

Published Revenue Procedures have similar effect as Revenue Rulings in that Revenue Procedures inform taxpayers of IRS procedures that affect them. However, Revenue Procedures generally do not cover matters that affect the rights and duties of taxpayers. Therefore, Revenue Procedures do not typically provide guidance in planning transactions or determining positions to be taken on returns.

Notices and Announcements

Similar to other published IRS Positions, taxpayers may rely on Notices and Announcements. They are binding on the IRS to the extent that they are factually on point.
**Letter Rulings**

IRS policy, supported by several judicial decisions, is to limit reliance on letter rulings to the recipient of the ruling.

**IRS Internal Documents Disclosed to the Public**

The IRS had resisted disclosure of various internal documents that were not prepared for public use. However, as the result of court decisions and IRC §6110, documents such as Chief Counsel Advice, Actions on Decisions, and other IRS memoranda must be disclosed. Although the IRS now discloses many internal documents, the agency maintains the position that a taxpayer may not rely on such documents as legal authority.

**Taxpayer Assistance**

Tax forms and form instructions are an underutilized source for tax research, particularly with respect to computing the amount of tax or various credits. Often, information and examples are included within form instructions that are not otherwise published. However, these forms of taxpayer assistance—IRS Publications, forms and form instructions—are provided for guidance only. Taxpayers should not rely solely on such documents.
The following table summarizes the hierarchy of authority for IRS pronouncements.

<table>
<thead>
<tr>
<th>IRS Positions</th>
<th>Next level of authority below IRC provisions.</th>
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<tbody>
<tr>
<td>Regulations</td>
<td></td>
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<tr>
<td>• Final and Temporary Regulations</td>
<td>Final Regulations—Approved by Treasury Department. Highest administrative authority. May be relied on in planning transactions.</td>
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<tr>
<td>• Proposed Regulations</td>
<td>Temporary Regulations—Provide guidance until final regulations adopted. Same level of authority as final regulations. Proposed Regulations—Taxpayers may not rely on proposed regulations in planning transactions, unless regulation directly states otherwise.</td>
</tr>
<tr>
<td>Revenue Rulings</td>
<td>If substantially similar facts and circumstances, taxpayer may rely on Revenue Ruling in planning and carrying out a transaction.</td>
</tr>
<tr>
<td>Revenue Procedures</td>
<td>Similar effect as Revenue Rulings. However, Revenue Procedures generally do not cover matters affecting taxpayer rights and duties, so they are not useful in planning transactions or evaluating positions to be taken on returns.</td>
</tr>
<tr>
<td>Notices and Announcements</td>
<td>Provide guidance on an expedited basis. Binding on IRS to extent factually on point. Taxpayers can rely on IRS Notices and Announcements to similar extent as Revenue Rulings and Procedures.</td>
</tr>
<tr>
<td>Letter Rulings (e.g., PLR, Determination Letter, TAM)</td>
<td>Issued in response to specific taxpayer inquiries. Only recipient of letter ruling may rely on it.</td>
</tr>
<tr>
<td>IRS Internal Documents (e.g., IRM, Audit Technique Guides)</td>
<td>Intended as guidance for IRS employees, rather than the public. IRS makes such documents available pursuant to Freedom of Information Act. Taxpayers may not rely on IRS internal memorandums in planning transactions or taking positions on returns.</td>
</tr>
<tr>
<td>Taxpayer Assistance (e.g., IRS Publication, IRS FAQs, form instructions)</td>
<td>Informal guidance only. Taxpayers should not rely solely on such documents.</td>
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IRS Pronouncements as Authority for Defense of Certain Penalties

Several types of IRS pronouncements provide recognized authority for the possible defense of the negligent and substantial understatement penalties provisions of IRC §6662.

IRC §6662 imposes a 20% penalty for negligence or disregard of rules or regulations or for significant understatement of income tax liability. However, the penalties are waived if the taxpayer relied on “substantial authority” for the position taken on the return. Many of the documents discussed above constitute authority for avoiding the negligent and substantial underpayment penalties.

According to Treas. Reg. §1.6662-4(d)(3)(iii), “substantial authority” includes the following:

- Internal Revenue Code
- Other statutory provisions
- Treasury Regulations of all types
- Court cases
- Revenue Rulings
- Revenue Procedures
- Tax treaties
- Treasury Decision official explanations of treaties
- Committee Reports
- Floor statements made prior to bill enactment by manager
- Blue Book
- Private Letter Rulings
- Technical Advice Memoranda
- Actions on Decisions
- General Counsel Memoranda
- IRS press releases, notices, announcements
- Other IRS pronouncements published in the Internal Revenue Bulletin