

# **IRS Alphabet Soup: Practical and Precedential Value of AODs, I.R.B.s, TAMs, & Other Guidance**

**By Tina R. Green and Nikki L. Laing**

## **I. INTRODUCTION<sup>1</sup>**

Have you ever come across an unfamiliar citation or abbreviation while reading an article in a tax law journal? Or, while working on a project for a client, have you ever wondered about the authority of a particular source that you encountered in your tax research? This article is the product of the authors having confronted similar queries in practice. It is the authors' hope that this article will help the practitioner to identify certain guidance that may be encountered during tax research, as well as determine the origin, reliability, and precedential value of that guidance.

## **II. SCOPE**

This article is intended to serve as a resource to explain some of the more common sources encountered during tax research. The sources covered in this article include statutes passed by the legislative branch of the government and administrative interpretations of the law issued by the executive branch of the government.

An extremely important component of tax law is the role of the judicial branch of the government in interpreting and applying statutes and administrative guidance. This article does not address the application of case law in tax research. In addition, this article does not address in any detail the legal force or level of judicial deference assigned by the various courts to IRS guidance.

## **III. INTERNAL REVENUE CODE**

The starting point for researching Federal tax law is the Internal Revenue Code (sometimes referred to in this article as "IRC" or the "Code"). It is a set of statutes passed by Congress and signed into law by the President, and it is the primary source of Federal tax law.<sup>1</sup> It imposes income, estate, gift, employment miscellaneous excise taxes, and provisions controlling the administration of Federal taxation. The Code is located in Title 26 of the United States Code (U.S.C.) which is made up of a total of 50 titles. Practitioners typically cite to the separate Internal Revenue Code as opposed to Title 26 of the U.S.C.

### **A. Definition**

The IRC is the domestic portion of federal statutory tax law in the United States. These tax laws are implemented by the Internal Revenue Service (sometimes referred to in this article as "the Service" or "IRS") through Treasury regulations and other interpretive guidance.

The Code is organized topically into subtitles, chapters, parts, subparts, sections, subsection, paragraphs, subparagraphs, and clauses. There are eleven subtitles to the Code. (See Appendix A for a listing of the subtitles.) The Code divides subtitles into chapters. The Code contains 100 chapters numbered consecutively without starting anew within each subtitle. Subchapters partition chapters. For

---

<sup>1</sup> An earlier version of this article appeared in the June-July 2013 issue of the JOURNAL OF TAX PRACTICE & PROCEDURE, a bimonthly publication by Wolters Kluwer.

example, a couple of the better-known subchapters in Chapter 1 include Subchapter C (dealing with corporations) and Subchapter K (covering partnerships). Parts and subparts further divide many subchapters. Because of extensive revisions made in the Tax Reform Act of 1986, Title 26 is known as the Internal Revenue Code of 1986.<sup>2</sup> See Appendix B for a listing of the contents of portions of Subtitles A and B of Title 26.

The Code is ever-changing as new laws are added and existing laws are amended or revoked. Therefore, it is important that practitioners determine the law applicable to the year the transaction that is being researched occurred.<sup>3</sup>

## **B. Precedential Value**

### **1. In General**

The Code is the primary source of all tax laws in the United States.<sup>4</sup> However, not every tax matter can be resolved solely by the language in the Code.<sup>5</sup> In cases where the literal language of the Code is ambiguous (which is more often than one might expect), the courts will consider the history of a particular Code section, including committee reports and other legislative history, Treasury regulations and other published guidance by the Service interpreting the Code section, and the relationship of the particular Code section to other Code sections.<sup>6</sup>

### **2. Penalty for Negligence or Disregard of “Rules or Regulations”**

The Code provides for an accuracy-related penalty of 20 percent of any portion of an underpayment of tax required to be shown on a return that is attributable to negligence or disregard of “rules or regulations.”<sup>7</sup> For the purpose of the penalty, the definition of “negligence” includes any failure to make a reasonable attempt to comply with the provisions of the internal revenue laws.<sup>8</sup> The Internal Revenue Code constitutes a “rule or regulation” that must not be disregarded.<sup>9</sup>

### **3. “Substantial Authority” Shelter from Understatement Penalty**

The Code imposes an accuracy-related penalty of 20 percent of any portion of an underpayment of tax required to be shown on a return that is attributable to a substantial understatement of income tax.<sup>10</sup> A taxpayer who may otherwise have been subject to the 20 percent underpayment penalty for a certain transaction may be sheltered if he can show that there was “substantial authority” for his tax position with respect to the transaction.<sup>11</sup> If there was “substantial authority” for the tax treatment of an item, the item is treated as if it were shown properly on the return for the taxable year in computing the amount of the tax shown on the return.<sup>12</sup> The substantial authority standard is an objective standard involving an analysis of the law and application of the law to relevant facts. All authorities relevant to the tax treatment of an item, including the authorities contrary to the treatment, are taken into account in determining whether substantial authority exists. Clearly, the Internal Revenue Code serves as “authority” for purposes of determining whether there is substantial authority for the tax treatment of an item.<sup>13</sup>

## **IV. TREASURY REGULATIONS**

While Code sections become law only after being passed by both the House and the Senate and then presented to and signed by the President, Treasury regulations are issued by the executive branch of the government. The Secretary of the Treasury is given authority by Congress to prescribe all necessary rules and regulations for the enforcement of the Internal Revenue Code.<sup>14</sup> Through the Commission of Internal Revenue, the Treasury Department issues regulations that expound upon the Code.<sup>15</sup>

## **A. Definition**

The Federal Tax Regulations (“Regs”) are the Service’s official interpretation of the Code.<sup>16</sup>

### **1. Classifications of Regulations**

There are three classes of regulations: proposed, temporary, and final.

#### **a. Proposed Regulations**

Generally, regulations are first issued to the public in proposed form.<sup>17</sup> Proposed regulations provide guidance concerning Treasury’s interpretation of a Code section.<sup>18</sup> The public is given an opportunity to comment on a proposed regulation, and a public hearing may be held if a sufficient number of requests to speak at a hearing are received.<sup>19</sup> Proposed Regulations are published in the *Federal Register* and posted on the IRS website. They are not in effect until adopted as final. Consequently, they carry no more weight than the arguments of the Service in a court brief.<sup>20</sup>

#### **b. Temporary Regulations**

Temporary regulations are published in the *Federal Register* and posted on the IRS website. Upon issuance, Temporary regulations are authoritative and have the same weight as final regulations.<sup>21</sup> However, they expire after 3 years or when replaced by final regulations.<sup>22</sup>

#### **c. Final Regulations**

The Treasury Department drafts final regulations after the public has had an opportunity to comment on proposed regulations. Final regulations supersede both temporary and proposed regulations. A final regulation is effective, unless stated otherwise, the day that it is published as a Treasury Decision in the *Federal Register*.<sup>23</sup> Final regulations are also known as Treasury Decisions and are codified in 26 Code of Federal Regulations.

## **B. Precedential Value**

### **1. In General**

Treasury regulations are the most authoritative source for determining the meaning of the Code, and they are binding upon the Service.<sup>24</sup> Final or temporary regulations may be relied on by taxpayers in planning transactions in the same manner in which taxpayers may rely upon a provision of the Internal Revenue Code. However, taxpayers generally may not rely on proposed regulations for planning purposes, except if there are no applicable final or temporary regulations in force and there is an express statement in the proposed regulations that taxpayers may rely on them currently. If there are applicable final or temporary regulations in force, taxpayers may only rely on proposed regulations for planning purposes in the limited circumstances that the proposed regulations contain an express statement permitting taxpayers to rely on them currently.

### **2. Judicial Deference**

As a general rule, Treasury regulations carry the force and effect of law. However, in rare instances, certain Treasury regulations have been denied the rank customarily recognized by the courts.<sup>25</sup> An analysis of the standards applied by the courts in determining the level of judicial deference to afford a given treasury regulation is beyond the scope of this article. A number of cases have endeavored to

articulate these standards.<sup>26</sup> However, scholars remain frustrated over the continued vagueness of such standards.<sup>27</sup>

3. Penalty for Negligence or Disregard of “Rules or Regulations”

The term "rules or regulations" of the § 6662(b)(1) penalty discussed in Section III.B.2, *supra*, includes temporary or final treasury regulations.<sup>28</sup>

4. “Substantial Authority” Shelter from Understatement Penalty

With respect to the § 6662(b)(2) understatement penalty discussed in Section III.B.3, *supra*, proposed, temporary and final regulations are all included in the definition of “authority” for purposes of determining whether there is substantial authority for the tax treatment of an item.<sup>29</sup>

## V. INTERNAL REVENUE BULLETIN

While Code sections and Treasury regulations both undergo comprehensive and formal processes before taking effect, many interpretations of law found in the Internal Revenue Bulletin (“IRB” or “Bulletin”) are informal guidance provided by the Service to taxpayers.

### A. Definition

The Treasury regulations define the Internal Revenue Bulletin as “the authoritative instrument of the Commissioner for the announcement of official rulings, decisions, opinions, and procedures, and for the publication of Treasury decisions, Executive orders, tax conventions, legislation, court decisions, and other items pertaining to internal revenue matters.”<sup>30</sup> The policy of the Service is to publish in the IRB “all substantive and procedural rulings of importance or general interest, the publication of which is considered necessary to promote a uniform application of the laws administered by the Service,” as well as “all rulings which revoke, modify, amend, or affect any published ruling.”<sup>31</sup> Published weekly, the Bulletin addresses issues and provides answers necessary to promote a uniform application of the substantive tax laws, including all rulings and statements of procedure that supersede, revoke, modify, amend, or affect any of those that have previously been published in the Bulletin.<sup>32</sup> The Service also utilizes the Bulletin to announce the Commissioner’s acquiescence or nonacquiescence in decisions of the United States Tax Court (other than decisions in memorandum opinions). While a variety of information is provided by the Bulletin, the most common guidance found in the Bulletin are revenue rulings, revenue procedures, and notices.

Some categories that the Service does not address in the Bulletin include (i) issues answered by statutes, treaties, or regulations; (ii) issues of little importance or interest, or that have been answered in a prior Bulletin; and (iii) determinations of fact rather than interpretations of law.<sup>33</sup> The Service also avoids disclosing private or confidential information, such as secret business practices and the identity of informers, when describing fact patterns in the Bulletin.

The contents of the weekly Internal Revenue Bulletins are consolidated into the Cumulative Bulletin to provide a permanent reference source.<sup>34</sup> The Cumulative Bulletin is issued on a semiannual basis. The Cumulative Bulletin is divided into four parts. Part I contains information pertaining to the Internal Revenue Code. Part II relates to treaties and tax legislation. Part III contains administrative and procedural guidance. Part IV posts notices of proposed regulations and rules, as well as a list of persons who have been disbarred or suspended from practicing before the Service. The Service recently announced that it will no longer create the Cumulative Bulletin.<sup>35</sup>

## **B. Precedential Value**

Although informal, the guidance published in the Bulletin is official and it carries precedential value. It is important to note that all rulings published in the Bulletin apply retroactively unless specified otherwise.<sup>36</sup> The guidance issued in the Internal Revenue Bulletin is generally understood to carry practical binding effect. However, it is not always clear the degree of binding effect that can be assigned to this non-legislative guidance. In addition, the degree of precedential value may vary among different types of guidance printed in the Bulletin. “The relative weight and significance of such informal guidance varies tremendously, although prudent regulated parties take seriously agency guidance in virtually any form.”<sup>37</sup>

## **C. Citing to Items Published in the Internal Revenue Bulletin**

Each Bulletin is identified by the week and year it is issued. For example, the IRB published in the third week of 2012 would be indicated by the following cite: “2012–3 I.R.B.”

Items appearing in a Bulletin that have not yet appeared in the Cumulative Bulletin would be cited by referring to the weekly Internal Revenue Bulletin. As an example, a revenue ruling would be cited as follows: “Rev. Rul. 96–55, 1996–49 I.R.B. 4.” In this example, the Internal Revenue Bulletin was issued in week 49 of the year 1996, and the particular guidance being cited, Revenue Ruling 96–55, can be found on page 4.

Items that have been published in a Cumulative Bulletin should be cited to the Cumulative Bulletin rather than to the Internal Revenue Bulletin in which they first appeared. Each Cumulative Bulletin published after December 31, 1936 is identified by the particular year covered, as well as whether it covers the first or second half of the year. For example, the citation “1963–1 C.B.” identifies the Cumulative Bulletin that covers the period from January 1, 1963 to June 30, 1963.

## **VI. REVENUE RULINGS AND REVENUE PROCEDURES**

Revenue rulings and revenue procedures are published in the Internal Revenue Bulletin. The purpose of publishing revenue rulings and revenue procedures is to promote correct and uniform application of the tax laws by informing Service personnel and the public of National Office interpretations of the internal revenue laws, related statutes, treaties, regulations, and statements of Service procedures affecting the rights and duties of taxpayers.<sup>38</sup> Internal Revenue Service employees must follow revenue rulings and revenue procedures, and taxpayers may rely on them or appeal their position to the Tax Court or other Federal court.<sup>39</sup> While revenue rulings and revenue procedures do not have the force and effect of statutes or regulations, they do reflect the current policies and positions of the Service.<sup>40</sup>

As discussed below, the traditional view is that revenue rulings provide interpretations of substantive tax law and revenue procedures communicate procedural information and instructions relative to forms, deadlines, and measurements. In fact, according to the Internal Revenue Manual, whether an item is published as a revenue ruling or revenue procedure depends on its content, and there should generally be a clear distinction between the content of a revenue ruling and a revenue procedure.<sup>41</sup> Furthermore, the Internal Revenue Manual states that a revenue ruling typically would not include a statement of Service practice or procedure and a revenue procedure would not ordinarily include a statement of Service position on a substantive tax issue, and when a matter does involve both a statement of Service position on a substantive tax issue and a statement of practice or procedure, it normally requires the issuance of both a revenue ruling and a revenue procedure.<sup>42</sup> However, a review of the content of many revenue rulings and revenue procedures reveals that the line between substantive and procedural is often blurred.<sup>43</sup>

Often, Rulings and Procedures expand upon or override prior Rulings and Procedures. When the practitioner finds a revenue ruling or revenue procedure upon which he or she plans to rely, it is important

for the practitioner to investigate whether the guidance supported by the Ruling or Procedure has been modified by a subsequent publication. Revenue rulings and revenue procedures that have an effect on earlier published guidance use the following terms to describe the effect:

- *Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the original fact situation.
- *Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, confusion. It is not used where a position in a prior ruling is being changed.
- *Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.
- *Modified* is used where the substance of a previously published position is being changed.
- *Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. The term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.
- *Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.
- *Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desirable to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, “modified and superseded” describes a situation where the substance of previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self-contained. In this case the previously published ruling is first modified and then, as modified, is superseded.
- *Supplemented* is used in situations in which a list, such as a list of the name of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.
- *Suspended* is used in rare situations to show that the previously published ruling will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.<sup>44</sup>

## A. Revenue Rulings

### 1. Definition

A revenue ruling is an official interpretation by or communication from the Service which has been published in the Internal Revenue Bulletin.<sup>45</sup> Revenue rulings are issued only by the National Office and are published for the information and guidance of taxpayers, Internal Revenue Service officials, and others concerned.<sup>46</sup> Topics addressed by revenue rulings arise from various sources, including prior private rulings to taxpayers, technical advice to district offices, court decisions, and suggestions from tax practitioner groups.

A revenue ruling is often presented as the Service's response to a hypothetical situation.<sup>47</sup> When presented in such a format, the conclusions expressed in a revenue ruling will be directly responsive to and limited in scope by the pivotal facts stated in the revenue ruling.

Sometimes, hypothetical fact patterns modeled in revenue rulings are based on actual situations encountered by taxpayers or the Service. In those cases, the Service publishes as much as is necessary for readers to understand the position stated, but identifying details and confidential information (such as names and addresses of persons involved) are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.<sup>48</sup> It bears repeating that such a ruling represents the conclusions of the Service on the application of the law only to the specific set of facts stated in the revenue ruling.<sup>49</sup>

While many revenue rulings follow the traditional pattern of presenting a hypothetical, analyzing the relevant laws, and providing the Service's interpretation of the law with respect to a certain set of facts, some provide information in other formats.<sup>50</sup> For example, revenue rulings are regularly used to provide taxpayers with updated lists and tables of variable interest rates and adjustable percentages.<sup>51</sup>

### 2. Precedential Value of Revenue Rulings

#### a. In General

According to the Treasury regulations, revenue rulings are published to provide precedents to be used in the disposition of other cases, and may be cited and relied upon for that purpose.<sup>52</sup> Although revenue rulings do not have the force and effect of statutes, Treasury regulations, or Treasury Decisions, they may be used as precedents.<sup>53</sup>

Revenue rulings may be used as precedents in the disposition of cases with analogous fact patterns.<sup>54</sup> As with any other precedent, when applying published rulings, the effects of subsequent legislation, regulations, court decisions, procedures, and other rulings must be considered.

Taxpayers generally may rely upon revenue rulings published in the Bulletin in determining the tax treatment of their own transactions and need not request specific rulings applying the principles of a published revenue ruling to the facts of their particular cases.<sup>55</sup> However, since each revenue ruling represents the conclusion of the Service as to the application of the law to the precise set of facts involved, caution is urged against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same.<sup>56</sup>

#### b. Retroactivity

By default, revenue rulings (except for those relating to the qualification of pension annuity, profit-sharing, stock bonus, and bond purchase plans) apply retroactively unless the revenue ruling includes a specific statement indicating otherwise.<sup>57</sup>

A revenue ruling may be revoked retroactively if it is contrary to law. However, to avoid penalizing taxpayers' reliance on revenue rulings when carrying out a transaction, revocation or modification of a previous revenue ruling is usually made nonretroactive to the extent that the new revenue ruling has adverse tax consequences to taxpayers.<sup>58</sup> In fact, with respect to litigation, Chief Counsel attorneys may

not take a position that is less favorable to a taxpayer than the position set forth in a revenue ruling in existence at the time of the matter being litigated.<sup>59</sup>

c. **Judicial Deference**

Although revenue rulings do not carry the weight of law, they are generally entitled to some level of judicial deference if they have not been affected by subsequent legislation, regulations, other revenue rulings, or cases. Case law indicates that revenue rulings should be given weight because they are official interpretations of law by the Service, but they do not deserve the same level of judicial deference as Treasury regulations.<sup>60</sup> The exact level of deference that should be afforded to IRB publications remains a matter under substantial debate.<sup>61</sup>

d. **Penalty for Negligence or Disregard of “Rules or Regulations”**

Revenue rulings are included in the term “rules or regulations” for purposes of the § 6662(b)(1) penalty discussed in Section III.B.2, *supra*.<sup>62</sup>

e. **“Substantial Authority” Shelter from Understatement Penalty**

Revenue rulings are included in the definition of “authority” for purposes of the “substantial authority” exception to the § 6662(b)(2) underpayment penalty discussed in Section III.B.3, *supra*.<sup>63</sup>

3. **Citation**

Elements of a revenue ruling citation include: (1) the year the ruling was issued; (2) the chronological number assigned to the ruling from a series of consecutive numbers that start over at the beginning of each year; (3) the volume number of the Internal Revenue Bulletin or Cumulative Bulletin in which the ruling was published; and (4) the page number on which the text of the ruling begins in the Internal Revenue Bulletin or Cumulative Bulletin.

The first revenue ruling was published in 1953, and revenue rulings published during that year were numbered simply as “Rev. Rul. 1,” “Rev. Rul. 2,” and so on, followed by the applicable cite for the Cumulative Bulletin in which they were published. For example, the cite for the thirty-eighth revenue ruling published on page 16 of the Cumulative Bulletin released during the first half of 1953 is “Rev. Rul. 38, 1953-1 C.B. 16.”

In 1954, the Service added the last two digits of the year of publication to its revenue ruling titles, so the second revenue ruling published in the year 1954 would be labeled as “Rev. Rul. 54-2” followed by reference to the Cumulative Bulletin in which it was published.

For revenue rulings published on or after January 1, 2000, the title includes the full year. For example, the first revenue ruling published in the year 2000 would be cited as “Rev. Rul. 2000-1” followed by the applicable Cumulative Bulletin cite.

**B. Revenue Procedures**

1. **Definition**

A revenue procedure is defined as a statement of procedure that affects the rights or duties of taxpayers or other members of the public under the Code and related statutes or information that, although not necessarily affecting the rights and duties of the public, should be a matter of public knowledge.<sup>64</sup> Some revenue procedures are issued to assist taxpayers in complying with procedural issues that deal with tax return preparation and compliance and to announce practices and procedures for guidance of the public.<sup>65</sup> Other revenue procedures provide lists and tables for information that fluctuates frequently, such as interest rates and inflation rates. One important function that revenue procedures serve is keeping

taxpayers and practitioners informed of certain transactions that are likely to be closely scrutinized by the Service.<sup>66</sup>

## 2. Precedential Value of Revenue Procedures

### a. In General

According to the Regulations, the purpose of revenue procedures is to promote correct and uniform application of the tax laws by Internal Revenue Service employees and to assist taxpayers in attaining maximum voluntary compliance.<sup>67</sup> Revenue procedures are published in order to inform Service personnel and the public of the Service's official interpretations of tax laws, related statutes, treaties, regulations, and statements of Service procedures affecting the rights and duties of taxpayers.<sup>68</sup>

The Service is generally bound to follow the legal position of an unrevoked, unmodified revenue procedure, and Service attorneys may not take a position that is less favorable to a taxpayer than the legal position contained in a revenue procedure.<sup>69</sup> Therefore, a taxpayer should be able to rely on a revenue procedure if the facts of the taxpayer's case are substantially similar to the facts set forth in the revenue procedure.

Before placing reliance in a revenue procedure, a taxpayer should confirm that the taxpayer's situation is analogous to the facts outlined in the revenue procedure. Furthermore, the taxpayer must investigate whether the position supported by the revenue procedure has been modified by a subsequent statute, regulation, or IRB publication. Finally, if the federal tax law conclusion of a revenue procedure is predicated upon a certain provision or interpretation of law other than federal tax law, a taxpayer who plans to rely on the revenue procedure should determine whether such relevant nontax law has changed materially from that used in the revenue procedure.<sup>70</sup>

As with revenue rulings, the Service has the power to revoke or modify revenue procedures.<sup>71</sup> As a result, a taxpayer can reasonably rely on the continued vitality of statements made in a published revenue procedure that has not been revoked or modified by the Service.

### b. Judicial Deference

Although revenue procedures do not carry legal force, they are generally entitled to judicial deference. As discussed in Section VI.A.2.c, *supra*, the precise level of deference that should be given to IRB publications in general remains unclear.

### c. Penalty for Negligence or Disregard of "Rules or Regulations"

With respect to the § 6662(b)(1) penalty discussed in Section III.B.2, *supra*, revenue procedures are not automatically considered to be included in the term "rules or regulations" because revenue procedures are not generally substantive in nature. However, considering all facts and circumstances, a revenue procedure may be treated as a "rule or regulation" for purposes of the penalty if it contains substantive interpretations of tax law.<sup>72</sup>

### d. "Substantial Authority" Shelter from Understatement Penalty

For purposes of the § 6662(b)(2) underpayment penalty referenced in Section III.B.3, *supra*, revenue procedures are included in the definition of "authority" for purposes of determining whether there is "substantial authority" for the tax treatment of an item.<sup>73</sup>

## 3. Citation

The citation of a revenue procedure follows the same format as a revenue ruling: (1) the year the Procedure was issued; (2) the number assigned to the Procedure from that year's chronological numerical

series; (3) the volume number of the Internal Revenue Bulletin or Cumulative Bulletin in which the Procedure was published; and (4) the page number on which the text of the Procedure begins in the Internal Revenue Bulletin or Cumulative Bulletin.

The first revenue procedure was published in 1955. Revenue procedures published from 1955 through 1999 are identified by the last two digits of the year of publication, followed by the number showing its chronological sequence for that year and then its location in the Internal Revenue Bulletin or Cumulative Bulletin. For example, the second revenue procedure published in the year 1957 is titled “Rev. Proc. 57-2.” Its complete citation of “Rev. Proc. 57-2; 1957-1 C.B. 723” indicates that it is located on page 723 of the Cumulative Bulletin published for the first half of the year 1957. Revenue procedures published on or after January 1, 2000, are identified by the four digits of the year of publication (e.g., Rev. Proc. 2000-1), followed by its applicable Internal Revenue Bulletin or Cumulative Bulletin citation.

## VII. NOTICES

### A. Definition

A notice is a public announcement issued by the Internal Revenue Service that is published in the Internal Revenue Bulletin.<sup>74</sup> Notices are compiled in the Cumulative Bulletin. They can serve as “informal statements of IRS policy regarding enforcement [or] other issues.”<sup>75</sup> They have also been described as “press releases” that state the position of the Service on certain issues.<sup>76</sup> Notices may be used in circumstances where a revenue ruling or revenue procedure would not be appropriate.<sup>77</sup> The Service “often resorts to notice . . . when there is need for guidance on an expedited basis.”<sup>78</sup>

A notice can serve one of several functions. For example, it may contain guidance that involves substantive interpretations of the Internal Revenue Code or other provisions of the law.<sup>79</sup> Another function that a notice may serve is to solicit public comments on issues under consideration in connection with non-regulatory guidance, such as a proposed revenue procedure. A notice can also be used to relate to taxpayers and practitioners what regulations will say in situations where the regulations may not be published in the immediate future. One particularly important use a notice may have is disseminating information regarding “reportable transactions” under I.R.C. § 6011.<sup>80</sup>

### B. Precedential Value

According to the Internal Revenue Manual, Chief Counsel attorneys must follow legal positions established by notices in papers filed in Tax Court or in defense letters or suit letters sent to the Department of Justice. In addition, Chief Counsel attorneys may not rely on case law to take a position that is less favorable to a taxpayer in a particular case than the position set forth in a notice.<sup>81</sup>

#### 1. Penalty for Negligence or Disregard of “Rules or Regulations”

Notices which contain substantive interpretations of federal tax law fall within the definition of “rules or regulations” for purposes of the § 6662(b)(1) accuracy-related penalty discussed in Section III.B.2, *supra*.<sup>82</sup>

#### 2. “Substantial Authority” Shelter from Understatement Penalty

With respect to the underpayment penalty imposed by § 6662(b)(2), discussed in Section III.B.3, *supra*, notices are treated as “authority” for purposes of determining whether there is substantial authority for the tax treatment of an item.<sup>83</sup>

## VIII. ANNOUNCEMENTS

In addition to revenue rulings, revenue procedures, and notices, a number of miscellaneous documents having application to tax law interpretation and administration are published in the Internal Revenue Bulletin. One such document is an announcement.

### A. Definition

An announcement is a public pronouncement that is used to summarize the law or regulations without making any substantive interpretation. An announcement is issued when guidance of a substantive or procedural nature is needed quickly.<sup>84</sup> It can also be used to notify taxpayers of matters of general interest, such as the existence of an election, effective dates of temporary regulations, an approaching deadline for making an election, or clarification of rulings and form instructions.<sup>85</sup>

One characteristic that sets announcements apart from other guidance found in the Bulletin is that an announcement generally has only immediate or short-term value.<sup>86</sup> Commentators note that announcements are distinguishable from other guidance found in the Bulletin because they often merely highlight information that taxpayers could obtain from other sources.<sup>87</sup>

### B. Precedential Value

According to the Internal Revenue Manual, announcements can be relied on to the same extent as revenue rulings and revenue procedures.<sup>88</sup> In addition, Chief Counsel attorneys must follow legal positions established by IRB publications in papers filed in Tax Court or in defense letters or suit letters sent to the Department of Justice, and they may not rely on case law to take a position that is less favorable to a taxpayer in a particular case than the position set forth in an IRB publication.<sup>89</sup>

#### 1. Penalty for Negligence or Disregard of “Rules or Regulations”

Announcements are not included in the definition of "rules or regulations" for purposes of the 20 percent accuracy-related penalty imposed by § 6662(b)(1), referenced in Section III.B.2, *supra*.<sup>90</sup>

#### 2. “Substantial Authority” Shelter from Understatement Penalty

For purposes of the understatement penalty imposed by § 6662(b)(2) (discussed in Section III.B.3, *supra*), announcements published in the Internal Revenue Bulletin are considered “authority” when determining whether there is substantial authority for the tax treatment of an item.<sup>91</sup>

### C. Citing to Announcements

Announcements are identified by a two or four digit number (representing the year) and a sequence number separated by a hyphen, followed by its location in the Internal Revenue Bulletin or Cumulative Bulletin. For example, the citation “I.R.S. Ann. 96-124, 1996-49 I.R.B. 22” indicates that the announcement was the 124<sup>th</sup> announcement published in the year 1996, and it could be found on page 22 of Internal Revenue Bulletin No. 1996-49, which was issued in the forty-ninth week of the year 1996 (December 2, 1996).

## IX. PUBLICATIONS

### A. Definition

Service publications explain the law in plain language for taxpayers and their advisors. They typically highlight changes in the law, provide examples illustrating Service positions, and include worksheets. Publications are written from the point of view of the government and issued primarily to assist taxpayers in preparing their tax returns. An example of a publication is *Publication 15, (Circular E), Employer's Tax Guide*, which explains an employer's tax responsibilities and provides current tax withholding tables.

### B. Precedential Value

Publications are nonbinding on the Service and do not necessarily cover all positions for a given issue. While a good source of general information, publications should not be cited to sustain a position.<sup>92</sup>

## X. PRIVATE LETTER RULINGS

When published guidance provides insufficient direction for a taxpayer involved in a complex financial transaction, the taxpayer may wish to seek a private letter ruling.

### A. Definition

A private letter ruling (PLR) is a written determination issued by the Service to a taxpayer in response to the taxpayer's written inquiry, submitted prior to the filing of returns or reports that are required by the tax laws, about its status for tax purposes or the tax effects of its acts or transactions.<sup>93</sup> A PLR interprets federal tax laws and applies them to the taxpayer's specific set of facts.<sup>94</sup>

Private letter rulings can provide assurance to a taxpayer involved in a complex transaction, and they have been described as “a policy of insurance that is a practical prerequisite to a merger of corporate giants.”<sup>95</sup> In addition to the comfort of having a ruling that the taxpayer can rely on, another advantage to requesting a PLR is that the Service will often consider how the taxpayer might alter the transaction to comply with federal tax laws.<sup>96</sup> If a less than favorable letter ruling is indicated, the branch representative may tell the taxpayer whether minor changes in the transactions or adherence to certain published positions would bring about a favorable ruling.<sup>97</sup>

PLRs are made public once all information that could identify the taxpayer has been removed.<sup>98</sup> Released PLRs can be accessed through the Electronic Reading Room found on the IRS website, located at the following link: <http://www.irs.gov/uac/Electronic-Reading-Room>.

#### 1. How to Obtain a PLR

The procedures and user fees for applying for a PLR are published annually in the first revenue procedure of each calendar year. The third annual revenue procedure updates the list of those areas of the Code in which the Service will not issue advanced guidance. The third revenue procedure establishes three general no ruling areas: 1) areas in which the Service will not issue rulings; 2) areas in which the Service will not ordinarily issue a ruling; and 3) areas that are under extensive study. Therefore, a taxpayer interested in obtaining a PLR should not only review the first revenue procedure published each year but also the third to make sure that the issue the taxpayer is wanting an advance ruling on is not one that the Service has determined it will not issue. Even if the taxpayer's issue is not one that the Service has published it will not rule on, the Service may decline to issue a PLR when appropriate in the interest of sound tax administration or on other grounds whenever warranted.

The Service does not rule on an oral request. The taxpayer must prepare a letter to the Service and comply with numerous requirements set forth in the first revenue procedure of the calendar year (*e.g.*, Rev. Proc. 2015-1). Requests for PLRs must not be submitted by fax.

The Service will examine the incoming documents for completeness, process the user fee, and forward the file to the appropriate assistant chief counsel which will then assign the letter ruling to one of its applicable branches.

The Service is supposed to communicate with the taxpayer or the authorized representative within 21 calendar days after a PLR request has been received. If the request lacks the central information required for the processing of the PLR, the taxpayer will have 21 days to supply the information requested. If it is not received within the 21 calendar day time period, then the Service will close the transaction. However, an extension of time may be granted if justified in writing and approved by the Service.

Generally, before the PLR is issued, the branch representative will inform the taxpayer of its conclusions. If the Service is going to rule adversely to the taxpayer, the taxpayer should be offered the opportunity to withdraw the letter ruling request. The user fee will not be refunded for a letter ruling request that is withdrawn.

## 2. What To Include in a PLR Request

There are a number of necessary items which must be included in the PLR request, specifically the following:

- Complete statement of facts and other information;
- Identity of the district office that has or will have examination jurisdiction over the return;
- True copies of all contracts, wills, deeds, agreements and other documents pertinent to the transaction must be submitted with the request;
- Statement regarding whether the same or similar issue previously ruled on or requested is currently pending;
- Statement of supporting authority;
- Statement identifying pending legislation;
- Statement indicating the desired deletions before the PLR is made public;
- Signature of the taxpayer or authorized representative;
- A penalties of perjury statement;
- A request for a conference (it is highly recommended that the conference be requested in writing at the time of filing); and
- Checklist which must be completed, signed, and placed on top of the ruling request.

## **B. Precedential Value**

### 1. In General

A PLR represents the conclusion of the Service for an individual taxpayer. The application of a PLR is confined to the specific case for which it was issued, unless the issue involved was specifically covered by statute, regulations, ruling, opinion, or decision published in the Internal Revenue Bulletin.<sup>99</sup> A PLR serves to establish with certainty the federal tax consequences of the fact situation before the taxpayer has entered into the transaction or before the federal tax return has been filed.

The PLR is binding on the Service for the taxpayer that requested the PLR so long as the taxpayer fully and adequately discloses the transaction and carries it out as described in the ruling request. However, a PLR may not be relied on as precedent by any other taxpayer or Service personnel.

A PLR, which by definition relates only to a sole taxpayer's particular case, should not be applied or relied upon as a precedent in the disposition of other cases.<sup>100</sup> However, a PLR can provide insight with regard to the Service's position on the law and serve as a guide.<sup>101</sup> When the facts in a PLR are

substantially similar to a particular taxpayer's circumstances and it is the only available source of guidance, it may be reasonable, from a practical perspective, for the taxpayer to rely upon the conclusions in the PLR. For legal purposes, however, it is more effective for the taxpayer to rely upon an independent analysis of the underlying authorities cited in the PLR. An analysis of the authorities cited in the PLR could prove of great assistance to taxpayers considering a particular transaction. This assists the taxpayer in reducing the risk of entering into a transaction substantially similar to those over which a PLR has previously been issued.

## 2. Judicial Deference

According to the Code, PLRs may not be used or cited as precedent.<sup>102</sup> "Most courts therefore, do not find private letter rulings, issued to other taxpayers, to be of precedential value in deciding the tax claims before them."<sup>103</sup> However, some courts have found that PLRs may provide persuasive authority for taxpayers other than to whom the PLR was issued.<sup>104</sup>

## 3. Penalty for Negligence or Disregard of "Rules or Regulations"

Private letter rulings are not included in the definition of "rules or regulations" for purposes of the 20 percent accuracy-related penalty imposed by § 6662(b)(1), referenced in Section III.B.2, *supra*.<sup>105</sup>

## 4. "Substantial Authority" Shelter from Understatement Penalty

Private letter rulings issued after October 31, 1976, are included in the definition of "authority" for purposes of the "substantial authority" exception to the § 6662(b)(2) underpayment penalty discussed in Section III.B.3, *supra*.<sup>106</sup>

# XI. TECHNICAL ADVICE MEMORANDUMS

## A. Definition

A technical advice memorandum (TAM) is a written memorandum furnished by the Office of Associate Chief Counsel of the Service upon request of specified Service personnel.<sup>107</sup>

A TAM is advice furnished by an Associate office in a memorandum that responds to a request for assistance on any technical or procedural question that develops during any proceeding before the Service.<sup>108</sup> Proceedings before the Service include: (1) the examination of a taxpayer's return; (2) the consideration of a taxpayer's claim for credit or refund; (3) any matter under examination or in Appeals pertaining to tax-exempt bonds, tax credit bonds, or mortgage credit certificates; and (4) any other matter involving a specific taxpayer under the jurisdiction of a Director.<sup>109</sup>

Personnel in any examination or Appeals office may request a TAM when the application of the law to the facts involved is unclear. The question must be on the interpretation and proper application of tax laws, tax treaties, regulations, revenue rulings, notices, or other precedents to a specific set of facts that concerns the treatment of an item in a period under examination or appeal.<sup>110</sup> However, a TAM may not be requested for prospective or hypothetical transactions.

## B. Precedential Value

### 1. In General

While technical advice memorandums are binding on the Service in relation to the taxpayer who is the subject of the ruling, they cannot be used or cited as precedent.<sup>111</sup> However, they may be useful to other taxpayers in providing an indication of the Service's position in a particular area.<sup>112</sup>

2. Penalty for Negligence or Disregard of “Rules or Regulations”

For purposes of the § 6662(b)(1) accuracy-related penalty referenced in Section III.B.2, *supra*, the term "rules or regulations" does not include technical advice memorandums.<sup>113</sup>

3. “Substantial Authority” Shelter from Understatement Penalty

Technical advice memoranda issued after October 31, 1976, are treated as “authority” for purposes of determining whether there is substantial authority for the tax treatment of an item under the § 6662(b)(2) underpayment penalty discussed in Section III.B.3, *supra*.<sup>114</sup>

## **XII. GENERAL COUNSEL MEMORANDUMS**

### **A. Definition**

A general counsel memorandum (GCM) is a legal memorandum from the Office of Chief Counsel prepared in connection with the review of certain proposed rulings.<sup>115</sup> They are formal legal opinions on substantive and procedural matters issued by the Office of Chief Counsel. They provide legal analyses of substantive and procedural issues which can be helpful in understanding the reasoning behind a particular ruling and the Service’s response to similar issues in the future.<sup>116</sup> General counsel memorandums are no longer issued, except to revoke earlier GCMs.<sup>117</sup>

### **B. Precedential Value**

1. In General

General counsel memorandums cannot be used or cited as precedent, and they do not provide legal advice.<sup>118</sup>

2. Penalty for Negligence or Disregard of “Rules or Regulations”

With respect to the § 6662(b)(1) accuracy-related penalty referenced in Section III.B.2, *supra*, the term "rules or regulations" does not include general counsel memorandums.<sup>119</sup>

3. “Substantial Authority” Shelter from Understatement Penalty

General counsel memoranda issued after March 12, 1981, (as well as GCMs published in pre-1955 volumes of the Cumulative Bulletin) are included in the definition of “authority” for purposes of determining whether there is substantial authority for the tax treatment of an item under the § 6662(b)(2) underpayment penalty discussed in Section III.B.3, *supra*.<sup>120</sup>

## **XIII. ACTION ON DECISION**

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings of lower courts in certain cases that involve significant issues decided adversely to the government.<sup>121</sup> The Service makes such an announcement using a two-pronged method. First, the Office of Chief Counsel prepares a memorandum containing its recommendation and the substantive reasoning behind its position. Second, the Service publishes a succinct statement in the Internal Revenue Bulletin declaring its position to taxpayers.

## **A. Definition**

### **1. Action on Decision—the Document**

An Action on Decision (AOD) is a document prepared by the Office of Chief Counsel to alert Service personnel and the public to its current litigating position.<sup>122</sup> The purpose of this document is to convey the Office's recommendation as to whether the Service will follow a significant adverse opinion.<sup>123</sup> This document is not published in the Internal Revenue Bulletin. Instead, it is released to the public via the Electronic Reading Room found on the IRS website. The Electronic Reading Room can be accessed at the following link: <http://www.irs.gov/uac/Electronic-Reading-Room>.

Generally, an Action on Decision is prepared when a court decides one or more significant issues adversely to the Government. An issue is decided adversely to the Government when the Service's legal position is adversely affected by the court's opinion.<sup>124</sup>

There are only three possible recommendations that can be stated in an Action on Decision: acquiescence, acquiescence in result only, or nonacquiescence.<sup>125</sup>

#### **a. Acquiescence**

"Acquiescence" means that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. Acquiescence indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions.

#### **b. Acquiescence in Result Only**

"Acquiescence in result only" means that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. In contrast to a position of mere "acquiescence," it indicates disagreement or concern with some or all of the court's reasons behind its decision.

#### **c. Nonacquiescence**

A recommendation of "nonacquiescence" signifies that the Service does not agree with the holding of the court and generally will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a statement of "nonacquiescence" indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

### **2. Action on Decision—Printed in the Internal Revenue Bulletin**

Every week, the Internal Revenue Bulletin contains a list of the Actions on Decision that have been issued.<sup>126</sup> The list simply states the name of the case and whether the Commissioner does or does not acquiesce in the court's decision—it does not contain any substantive content.

## **B. Precedential Value**

There is a significant difference between the reliance that can be placed in an Action on Decision by the Service and by taxpayers.

### **1. Reliance on AOD by the Service**

Generally, an Action on Decision is issued where guidance would be helpful to Service personnel working with the same or similar issues. An Action on Decision may be relied upon within the Service

only as the conclusion, applying the law to the facts in the particular case at the time the Action on Decision was issued.<sup>127</sup> Counsel attorneys are required to follow the litigating positions announced in AODs in future litigation or dispute resolution.<sup>128</sup>

## 2. Reliance on AOD by Taxpayers

Unlike a Treasury regulation or a revenue ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as guidance to taxpayers and may not be cited as precedent.<sup>129</sup> In fact, each Action on Decision contains a disclaimer stating that “THIS DOCUMENT IS NOT TO BE RELIED UPON OR OTHERWISE CITED AS PRECEDENT BY TAXPAYERS.”

### a. Penalty for Negligence or Disregard of “Rules or Regulations”

The term “rules or regulations” contained in § 6662(b)(1), discussed in Section III.B.2, *supra*, does not include Actions on Decision.<sup>130</sup>

### b. “Substantial Authority” Shelter from Understatement Penalty

Actions on Decisions issued after March 12, 1981, are included in the long list of items that are accepted as “authority” for purposes of the § 6662(b)(2) underpayment penalty discussed in Section III.B.3, *supra*.<sup>131</sup>

## **XIV. CONCLUSION**

As with most subjects, the more you research, study, and learn about IRS guidance, the more the pieces of the puzzle start to come together. The authors hope that you have found this article enlightening, and the next time that you have to research a tax-related topic, you will be more familiar with the guidance encountered as well as the origin, reliability, and precedential value of the guidance.

**APPENDIX A**

**ELEVEN SUBTITLES TO THE CODE**

<b><u>Subtitle</u></b>	<b><u>Topic</u></b>	<b><u>Sections</u></b>
A	Income Taxes	1–1564
B	Estate and Gift Taxes	2001–2801
C	Employment Taxes	3101–3510
D	Miscellaneous Excise Taxes	4001–5000C
E	Alcohol, Tobacco, and Certain Other Excise Taxes	5001–5891
F	Procedure and Administration	6001–7874
G	The Joint Committee on Taxation	8001–8023
H	Financing of Presidential Election Campaigns	9001–9042
I	Trust Fund Code	9500–9602
J	Coal Industry Health Benefits	9701–9722
K	Group Health Plan Requirements	9801–9834

## APPENDIX B

### TABLE OF CONTENTS FOR SELECTED PORTIONS OF SUBTITLES A AND B

#### SUBTITLE A - INCOME TAXES

##### CHAPTER 1—NORMAL TAXES AND SURTAXES (§§ 1–1400U3)

- Subchapter A—Determination of Tax Liability (§§ 1–59B)
- Subchapter B—Computation of Taxable Income (§§ 61–291)
- Subchapter C—Corporate Distributions and Adjustments (§§ 301–391\_to\_395)
- Subchapter D—Deferred Compensation, Etc. (§§ 401–436)
- Subchapter E—Accounting Periods and Methods of Accounting (§§ 441–483)
- Subchapter F—Exempt Organizations (§§ 501–530)
- Subchapter G—Corporations Used to Avoid Income Tax on Shareholders (§§ 531–565)
- Subchapter H—Banking Institutions (§§ 581–601)
- Subchapter I—Natural Resources (§§ 611–638)
- Subchapter J—Estates, Trusts, Beneficiaries, and Decedents (§§ 641–692)
- Subchapter K—Partners and Partnerships (§§ 701–777)
- Subchapter L—Insurance Companies (§§ 801–848)
- Subchapter M—Regulated Investment Companies and Real Estate Investment Trusts (§§ 851-860H\_to\_860L)
- Subchapter N—Tax Based on Income From Sources Within or Without the United States (§§ 861–1000)
- Subchapter O—Gain or Loss on Disposition of Property (§§ 1001–1111)
- Subchapter P—Capital Gains and Losses (§§ 1201–1298)
- Subchapter Q—Readjustment of Tax Between Years and Special Limitations (§§ 1301–1351)
- Subchapter R—Election To Determine Corporate Tax on Certain International Shipping Activities Using Per Ton Rate (§§ 1352–1359)
- Subchapter S—Tax Treatment of S Corporations and Their Shareholders (§§ 1361–1379)
- Subchapter T—Cooperatives and Their Patrons (§§ 1381–1388)
- Subchapter U—Designation and Treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas (§§ 1391–1397F)
- Subchapter V—Title 11 Cases (§§ 1398–1399)
- Subchapter W—District of Columbia Enterprise Zone (§§ 1400–1400C)
- Subchapter X—Renewal Communities (§§ 1400E–1400J)
- Subchapter Y—Short-Term Regional Benefits (§§ 1400L–1400U3)

##### CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME (§§ 1401–1403)

- § 1401. Rate of tax
- § 1402. Definitions
- § 1403. Miscellaneous provisions

##### CHAPTER 2A—UNEARNED INCOME MEDICARE CONTRIBUTION (§ 1411)

- § 1411. Imposition of tax

##### CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS (§§ 1441–1465)

- Subchapter A—Nonresident Aliens and Foreign Corporations (§§ 1441–1446)
- Subchapter B—Application of Withholding Provisions (§§ 1451–1465)

##### CHAPTER 4—TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN ACCOUNTS (§§ 1471–1474)

- § 1471. Withholdable payments to foreign financial institutions
- § 1472. Withholdable payments to other foreign entities
- § 1473. Definitions
- § 1474. Special rules

[CHAPTER 5—REPEALED] (§§ 1491, 1492–1494)

CHAPTER 6—CONSOLIDATED RETURNS (§§ 1501–1564)

Subchapter A—Returns and Payment of Tax (§§ 1501–1505)

Subchapter B—Related Rules (§§ 1551–1564)

**SUBTITLE B - ESTATE AND GIFT TAXES**

CHAPTER 11—ESTATE TAX (§§ 2001–2210)

Subchapter A—Estates of Citizens or Residents (§§ 2001–2058)

Subchapter B—Estates of Nonresidents Not Citizens (§§ 2101–2108)

Subchapter C—Miscellaneous (§§ 2201–2210)

CHAPTER 12—GIFT TAX (§§ 2501–2524)

Subchapter A—Determination of Tax Liability (§§ 2501–2505)

Subchapter B—Transfers (§§ 2511–2519)

Subchapter C—Deductions (§§ 2521–2524)

CHAPTER 13—TAX ON GENERATION-SKIPPING TRANSFERS (§§ 2601–2664)

Subchapter A—Tax Imposed (§§ 2601–2604)

Subchapter B—Generation-Skipping Transfers (§§ 2611–2614)

Subchapter C—Taxable Amount (§§ 2621–2624)

Subchapter D—GST Exemption (§§ 2631–2632)

Subchapter E—Applicable Rate; Inclusion Ratio (§§ 2641–2642)

Subchapter F—Other Definitions and Special Rules (§§ 2651–2654)

Subchapter G—Administration (§§ 2661–2664)

CHAPTER 14—SPECIAL VALUATION RULES (§§ 2701–2704)

§ 2701. Special valuation rules in case of transfers of certain interests in corporations or partnerships

§ 2702. Special valuation rules in case of transfers of interests in trusts

§ 2703. Certain rights and restrictions disregarded

§ 2704. Treatment of certain lapsing rights and restrictions

CHAPTER 15—GIFTS AND BEQUESTS FROM EXPATRIATES (§ 2801)

§ 2801. Imposition of tax

## APPENDIX C

### INTERNAL REVENUE CODE

Citation Format	<p>The Code is found at Title 26 of the United States Code (U.S.C.) which has a total of 50 titles. An example:</p> <p style="text-align: center;">26 U.S.C. § 170(b)(1)(A)(i).</p> <p>Practitioners usually cite to the Internal Revenue Code, rather than to the United States Code. The Internal Revenue Code is abbreviated “I.R.C.” followed by a space, the symbols § or §§ followed by a space, and the section number. The date is enclosed in parentheses. Practitioners sometimes do not include the year if citing to the current version of the I.R.C. An example:</p> <p style="text-align: center;">I.R.C. § 170(b)(1)(A)(i).</p> <p>When citing to a Code section, usually no reference is made to the title, subtitle, chapter, subchapter, or part. Code sections are divided into subsections, paragraphs, subparagraphs, and clauses. For example, IRC § 170(b)(1)(A)(i) is subdivided as follows:</p> <p style="text-align: center;">I.R.C. § 170 → Code section, Arabic numbers</p> <p style="text-align: center;">Subsection (b) → lower case letter in parentheses</p> <p style="text-align: center;">Paragraph (1) → Arabic number in parentheses</p> <p style="text-align: center;">Subparagraph (A) → capital letter in parentheses</p> <p style="text-align: center;">Clause (i) → lower case Roman numeral in parentheses</p>
What is it?	<p>The Internal Revenue Code is enacted by Congress. It is the primary source of Federal tax law. It imposes income, estate, gift, employment, miscellaneous excise taxes, and provisions controlling the administration of Federal taxation.</p>
Precedential Value	<p>The Code is the definitive source of all tax laws in the United States and has the force of law in and of itself.</p> <p>All Code provisions are included in the definition of “rules or regulations” for purposes of the negligence/disregard prong of the § 6662(b)(1) accuracy-related penalty.</p> <p>The Code is considered “authority” for purposes of the “substantial authority” exception to the § 6662(b)(2) understatement penalty.</p>

## APPENDIX D

### TREASURY REGULATION

Citation Format	<p>Treasury regulations are located in Title 26 of the Code of Federal Regulations (26 C.F.R.). An example:</p> <p style="text-align: center;">26 C.F.R. § 1.61-9(a)(1957).</p> <p>Practitioners usually cite to separate Treasury regulations, rather than to the Code of Federal Regulations. The citation includes the source abbreviation, section symbol followed by one space, and a section number; enclose the year of promulgation in parentheses. An example:</p> <p style="text-align: center;">Treas. Reg. § 1.61-9(a)(1957).</p> <p>If the regulation is unamended, cite to the year of promulgation. If amended, cite to the year of last amendment. Practitioners often do not include the year if citing to the current version of the Treasury regulations.</p> <p>Cite temporary regulations as “Temp.” and proposed regulations as “Prop.”</p>
What is it?	<p>A Treasury regulation is an official Treasury Department interpretation of one or more provisions of the Internal Revenue Code.</p>
Precedential Value	<p>The Service is bound by Treasury regulations; however, courts are not.</p> <p>Treasury regulations are included in the definition of “rules or regulations” for purposes of the negligence/disregard prong of the § 6662(b)(1) accuracy-related penalty.</p> <p>They are also considered “authority” for purposes of the “substantial authority” exception to the § 6662(b)(2) understatement penalty.</p>

## APPENDIX E

### REVENUE RULING

Citation Format	<p>To cite to a revenue ruling, write the abbreviation “Rev. Rul.” and then list the year the ruling was issued and its sequential number, separated by a hyphen. Follow with the citation for the revenue ruling’s location in the Internal Revenue Bulletin or Cumulative Bulletin, as applicable.</p> <p style="text-align: center;">Rev. Rul. 2012-1, 2012-1 C.B. 255.</p>
What is it?	<p>A revenue ruling is an official interpretation by the Service of the Internal Revenue Code, related statutes, tax treaties and regulations. It is the conclusion of the Service on how the law is applied to a specific set of facts. Revenue rulings are published in the Internal Revenue Bulletin to provide information and guidance to taxpayers, Service personnel, and tax professionals.</p>
Precedential Value	<p>Revenue rulings are published to provide precedents to be used in the disposition of other cases, and may be cited and relied upon for that purpose in the disposition of cases with analogous fact patterns. Taxpayers generally may rely upon revenue rulings published in the Bulletin. However, as with any other precedent, when applying published rulings, the effects of subsequent legislation, regulations, court decisions, procedures, and other rulings must be considered.</p> <p>Revenue rulings are included in the definition of “rules or regulations” for purposes of the negligence/disregard prong of the § 6662(b)(1) accuracy-related penalty.</p> <p>Revenue rulings are also considered “authority” for purposes of the “substantial authority” exception to the § 6662(b)(2) understatement penalty.</p>

## APPENDIX F

### REVENUE PROCEDURE

Citation Format	<p>To cite to a revenue procedure, write the abbreviation “Rev. Proc.” and then list the year the Procedure was issued and its sequential number, separated by a hyphen. Follow with the citation for the Procedure’s location in the Internal Revenue Bulletin or Cumulative Bulletin, as applicable.</p> <p style="text-align: center;">Rev. Proc. 2011-1, 2011-1 C.B. 1.</p>
What is it?	<p>A revenue procedure is an official statement of a procedure that affects the rights or duties of taxpayers or other members of the public under the Internal Revenue Code, related statutes, tax treaties and regulations and that should be a matter of public knowledge. It is published in the Internal Revenue Bulletin. While a revenue ruling generally states a Service position, a revenue procedure typically provides return filing or other instructions concerning a Service position.</p>
Precedential Value	<p>The Service is generally bound to follow the legal position of an unrevoked, unmodified revenue procedure, and IRS attorneys may not take a position that is less favorable to a taxpayer than the legal position contained in a revenue procedure. Therefore, a taxpayer should be able to rely on a revenue procedure if the facts of the taxpayer’s case are substantially similar to the facts set forth in the revenue procedure.</p> <p>Revenue procedures are not automatically included in § 6662(b)(1)’s definition of “rules or regulations.” However, a revenue procedure that contains substantive interpretations of tax law may be treated as a “rule or regulation.”</p> <p>Revenue procedures are considered “authority” for purposes of the “substantial authority” exception to the § 6662(b)(2) understatement penalty.</p>

## APPENDIX G

### NOTICE

Citation Format	<p>Cite by listing the two or four digit number representing the year of publication and a sequence number, followed by its location in the Internal Revenue Bulletin or Cumulative Bulletin.</p> <p>I.R.S. Notice 95-67, 1995-2 C.B. 343.</p> <p>I.R.S. Notice 2009-2, 2009-1 C.B. 344.</p> <p><i>Weighted Average Interest Rate Update</i>, I.R.S. Notice 99-7, 1999-1 C.B. 351.</p>
What is it?	<p>A notice is a public pronouncement by the Service that may contain guidance that involves substantive interpretations of the Internal Revenue Code or other provisions of the law. Alternatively, notices may be used to solicit public comments on issues under consideration.</p> <p>Notices are published in the Internal Revenue Bulletin.</p>
Precedential Value	<p>Chief Counsel attorneys must follow legal positions established by notices in papers filed in Tax Court or in defense letters or suit letters sent to the Department of Justice.</p> <p>A notice that contains substantive interpretation of tax law is considered a “rule or regulation” for purposes of the negligence/disregard prong of the § 6662(b)(1) accuracy-related penalty.</p> <p>Notices are included in the definition of “authority” for purposes of the “substantial authority” shelter from the § 6662(b)(2) understatement penalty.</p>

**APPENDIX H**  
**ANNOUNCEMENT**

<p>Citation Format</p>	<p>Cite to the year of publication and the unique sequence number, followed by its location in the Internal Revenue Bulletin or Cumulative Bulletin. Some examples:</p> <p style="text-align: center;">I.R.S. Announcement 2011-1, 2011-2 I.R.B. 304.</p> <p style="text-align: center;">I.R.S. Ann. 2011-1, 2011-2 I.R.B. 304.</p> <p style="text-align: center;"><i>Foundations Status of Certain Organizations</i>, I.R.S. Ann. 2001-57, 2001-20 I.R.B. 1187.</p>
<p>What is it?</p>	<p>An announcement is a public pronouncement that has only immediate or short-term value. For example, announcements can be used to summarize the law or regulations without making any substantive interpretation, to state what regulations will say when they are certain to be published in the immediate future, or to notify taxpayers of the existence of an approaching deadline.</p>
<p>Precedential Value</p>	<p>Announcements can generally be relied on to the same extent as revenue rulings and revenue procedures. However, most announcements have only short-term value.</p> <p>An announcement is not a “rule or regulation” for purposes of the negligence/disregard prong of the § 6662(b)(1) accuracy-related penalty.</p> <p>Announcements are included in the definition of “authority” for purposes of the “substantial authority” shelter from the § 6662(b)(2) understatement penalty.</p>

**APPENDIX I**

**PUBLICATION**

Citation Format	Cite the title of the publication in italics, the publication number, the page (if applicable), and the year. An example:  <i>Tax Guide for Individuals</i> , I.R.S. Pub. No. 17, at 31 (1998).
What is it?	Publications explain the law in plain language for taxpayers and their advisors, primarily for the purposes of assisting taxpayers in preparing tax returns. They typically provide instructions, examples, and worksheets.
Precedential Value	Publications are nonbinding on the Service cannot be cited as precedent.  A publication is not a “rule or regulation” for purposes of the negligence/disregard prong of the § 6662(b)(1) accuracy-related penalty.  Publications are not included in the definition of “authority” for purposes of the “substantial authority” shelter from the § 6662(b)(2) understatement penalty.

## APPENDIX J

### PRIVATE LETTER RULING

Citation Format	<p>Cite to the year followed by a hyphen, the week of release followed by a hyphen, and the three-digit sequential item number for the week; enclose the date of issue in parentheses.</p> <p>I.R.S. Priv. Ltr. Rul. 90-31-022 (May 7, 1990).</p> <p>I.R.S. P.L.R. 1991-08-030 (Nov. 27, 1990).</p>
What is it?	<p>A private letter ruling is a written statement issued by the Service upon receiving a written request from the taxpayer. The PLR interprets federal tax law and applies it to the specific fact situation submitted by the taxpayer. It establishes with certainty the federal tax consequences of the fact situation before the taxpayer has entered into the transaction or before the federal tax return has been filed. PLRs are made public once all information that could identify the taxpayer has been removed. They are posted on the electronic reading room on the IRS website.</p>
How do you request a PLR?	<p>The procedures and user fees for applying for a PLR are published annually in the first revenue procedure of each calendar year. The current procedure is detailed in Rev. Proc. 2015-1.</p>
Filing Fee	<p>Filing fees are listed in the appendix to the first revenue procedure published in a calendar year.</p>
Precedential Value	<p>A PLR is binding on the Service if the taxpayer fully and adequately discloses the transaction and carries it out as described to the Service. However, a PLR may not be relied on as precedent by any other taxpayer or Service personnel.</p> <p>A PLR is not a “rule or regulation” for purposes of the negligence/disregard prong of the § 6662(b)(1) accuracy-related penalty.</p> <p>A PLR is included in the definition of “authority” for purposes of the “substantial authority” shelter from the § 6662(b)(2) understatement penalty.</p>

## APPENDIX K

### TECHNICAL ADVICE MEMORANDUM

Citation Format	<p>Cite the year followed by a hyphen, the week of release followed by a hyphen, and the three-digit sequential item number; enclose the date of issue in parentheses.</p> <p>I.R.S. Tech. Adv. Mem. 87-14-008 (Dec. 17, 1986).</p> <p>T.A.M. 2001-02-051 (Jan. 12, 2001).</p>
What is it?	<p>A technical advice memorandum (TAM) is a memorandum furnished by an Associate office of the Service that responds to a request for assistance on any technical or procedural question that develops during any proceeding before the Service. The field office may request a TAM when the application of the law to the facts involved is unclear.</p>
Precedential Value	<p>Technical advice memorandums cannot be used or cited as precedent. However, they may be useful to other taxpayers by providing an indication of the Service's position.</p> <p>A technical advice memorandum is not a "rule or regulation" for purposes of the negligence/disregard prong of the § 6662(b)(1) accuracy-related penalty.</p> <p>Technical advice memoranda issued after October 31, 1976, are included in the definition of "authority" for purposes of the "substantial authority" shelter from the § 6662(b)(2) understatement penalty.</p>

## APPENDIX L

### GENERAL COUNSEL MEMORANDUM

Citation Format	<p><u>Section 318 Constructive Ownership of Stock</u>, GCM 37162, I-526-76 (June 14, 1977).</p> <p>I.R.S. G.C.M. 39,417 (Sept. 30, 1985).</p>
What is it?	<p>General counsel memorandums are legal memorandums from the Office of Chief Counsel prepared in connection with the review of certain proposed rulings (revenue rulings, TAM, PLRs, etc.). They contain legal analyses of substantive issues and can be helpful in understanding the reasoning behind a particular ruling and the Service's response to similar issues in the future.</p> <p>General counsel memorandums are no longer issued, except to revoke earlier GCMs.</p>
Precedential Value	<p>General counsel memorandums cannot be used or cited as precedent, and they do not provide legal advice.</p> <p>A general counsel memorandum is not a "rule or regulation" for purposes of the negligence/disregard prong of the § 6662(b)(1) accuracy-related penalty.</p> <p>General counsel memoranda issued after March 12, 1981 (as well as general counsel memoranda published in pre-1955 volumes of the Cumulative Bulletin) are included in the definition of "authority" for purposes of the "substantial authority" shelter from the § 6662(b)(2) understatement penalty.</p>

## APPENDIX M

### ACTION ON DECISION

Citation Format	<p>To cite to the memorandum, list the initials “A.O.D.,” followed by the year the memorandum was issued and the memorandum’s sequential number for that year.</p> <p style="text-align: center;">A.O.D. 2011-2</p> <p>To cite to the brief statement of position published in the Internal Revenue Bulletin, write the name of the case in italics, followed by the memorandum’s citation, the I.R.B.’s citation, and the date of publication.</p> <p style="text-align: center;"><i>Norris v. Comm’r</i>, A.O.D. 2011-52, 2011-52 I.R.B. (Dec. 27, 2011).</p> <p>To indicate the Service’s acquiescence or nonacquiescence, cite to the case as follows:</p> <p style="text-align: center;"><i>Lemmen v. Comm’r</i>, 77 T.C. 1326 (1981), <i>acq.</i>, 1983-1 C.B. 1.</p> <p style="text-align: center;"><i>Dean v. Comm’r</i>, 35 T.C. 1083 (1961), <i>nonacq.</i>, 1973-2 C.B. 4.</p>
What is it?	<p>An Action on Decision is a legal memorandum issued by the Service Chief Counsel’s office when a court makes a significant ruling against the government in a case. The memorandum recommends the action the Service should take in response to the decision.</p>
Precedential Value	<p>An Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.</p> <p>An Action on Decision is not a “rule or regulation” for purposes of the negligence/disregard prong of the § 6662(b)(1) accuracy-related penalty.</p> <p>Actions on Decision are considered “authority” for purposes of the “substantial authority” shelter from the § 6662(b)(2) understatement penalty.</p>

<sup>1</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.1.1 (Jan. 1, 2006).

<sup>2</sup> Pub. L. No. 99-514, § 2, 100 Stat. 2095 (Oct. 22, 1986).

<sup>3</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.1.3 (Jan. 1, 2006).

<sup>4</sup> *See, e.g., United States v. Quality Stores, Inc.*, 134 S. Ct. 1395, 1399 (2014) (“The beginning point is the relevant statutory text.”)

<sup>5</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.1.1 (Jan. 1, 2006).

<sup>6</sup> *Id.*

<sup>7</sup> I.R.C. § 6662(b)(1).

<sup>8</sup> I.R.C. § 6662(c).

- <sup>9</sup> Treas. Reg. § 1.6662-3(b)(2).
- <sup>10</sup> I.R.C. § 6662(b)(2).
- <sup>11</sup> I.R.C. § 6662(d)(2)(B).
- <sup>12</sup> Treas. Reg. § 1.6662-4(d)(1).
- <sup>13</sup> Treas. Reg. § 1.6662-4(d)(3)(iii).
- <sup>14</sup> I.R.C. § 7805(a).
- <sup>15</sup> Treas. Reg. § 301.7805-1.
- <sup>16</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.3.1 (Jan. 1, 2006).
- <sup>17</sup> See 1 West's Legal Forms, Business Organizations Div. I § 2:2 (3d ed.).
- <sup>18</sup> See 1 West's Legal Forms, Business Organizations Div. I § 3:14 (3d ed.).
- <sup>19</sup> See 1 West's Legal Forms, Business Organizations Div. I § 2:2 (3d ed.).
- <sup>20</sup> 1 Mertens Law of Fed. Income Tax'n § 3:38.
- <sup>21</sup> *Id.*
- <sup>22</sup> See I.R.C. § 7805(e)(2).
- <sup>23</sup> I.R.C. § 7805(b)(1).
- <sup>24</sup> See Treas. Reg. § 601.601(a)(1) (“The most important rules are issued as regulations and Treasury decisions prescribed by the Commissioner and approved by the Secretary or his delegate.”); INTERNAL REVENUE MANUAL § 4.10.7.2.3.4 (Jan. 1, 2006) (“The Service is bound by the regulations”).
- <sup>25</sup> See, e.g., *United States v. Home Concrete & Supply, LLC*, 132 S. Ct. 1836 (2012).
- <sup>26</sup> See, e.g., *United States v. Mead Corp.*, 533 U.S. 218 (2001); *Mayo Found. for Med. Educ. & Research v. United States*, 131 S. Ct. 704 (U.S. 2011).
- <sup>27</sup> See Kristin E. Hickman, *IRB Guidance: The No Man’s Land of Tax Code Interpretation*, 2009 MICH. ST. L. REV. 239; Leandra Lederman, *The Fight Over “Fighting Regs” and Judicial Deference in Tax Litigation*, 92 B.U. L. REV. 643 (2012).
- <sup>28</sup> Treas. Reg. § 1.6662-3(b)(2).
- <sup>29</sup> Treas. Reg. § 1.6662-4(d)(3)(iii).
- <sup>30</sup> Treas. Reg. § 601.601(d)(1).
- <sup>31</sup> *Id.*
- <sup>32</sup> See Rev. Proc. 89-14, 1989-1 C.B. 814; INTERNAL REVENUE MANUAL § 4.10.7.2.4 (Jan. 1, 2006).
- <sup>33</sup> Rev. Proc. 89-14, 1989-1 C.B. 814.
- <sup>34</sup> *Id.*
- <sup>35</sup> See I.R.S. Announcement 2013-12, 2013-11 I.R.B. 651.
- <sup>36</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.4 (Jan. 1, 2006).
- <sup>37</sup> Kristin E. Hickman, *IRB Guidance: The No Man’s Land of Tax Code Interpretation*, 2009 MICH. ST. L. REV. 239, 240.
- <sup>38</sup> Treas. Reg. § 601.601(d)(2)(iii).
- <sup>39</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.6 (Jan. 1, 2006).
- <sup>40</sup> See 1 West's Legal Forms, Business Organizations Div. I § 2:2 (3d ed.).
- <sup>41</sup> INTERNAL REVENUE MANUAL § 32.2.2.4 (Aug. 11, 2004).
- <sup>42</sup> *Id.*
- <sup>43</sup> See Kristin E. Hickman, *IRB Guidance: The No Man’s Land of Tax Code Interpretation*, 2009 MICH. ST. L. REV. 239, 244–45.
- <sup>44</sup> INTERNAL REVENUE MANUAL § 32.2.2.8.1 (Aug. 11, 2004).
- <sup>45</sup> Rev. Proc. 89-14; 1989-1 C.B. 814.
- <sup>46</sup> Treas. Reg. § 601.601(d)(2)(i)(a).
- <sup>47</sup> See *Limited, Inc. v. Comm’r*, 286 F.3d 324, 337 (6th Cir. 2002).
- <sup>48</sup> Rev. Proc. 89-14; 1989-1 C.B. 814; INTERNAL REVENUE MANUAL § 4.10.7.2.6 (Jan. 1, 2006).
- <sup>49</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.6.1 (Jan. 1, 2006).
- <sup>50</sup> See Kristin E. Hickman, *IRB Guidance: The No Man’s Land of Tax Code Interpretation*, 2009 MICH. ST. L. REV. 239, 244–45.
- <sup>51</sup> *Id.*
- <sup>52</sup> Treas. Reg. § 601.601(d)(2)(v)(d).
- <sup>53</sup> See *id.*; INTERNAL REVENUE MANUAL § 4.10.7.2.6.1 (Jan. 1, 2006).
- <sup>54</sup> See Rev. Proc. 89-14, 1989-1 C.B. 814; INTERNAL REVENUE MANUAL § 32.2.2.10 (Aug. 11, 2004).
- <sup>55</sup> Treas. Reg. § 601.601(d)(2)(v)(e).
- <sup>56</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.6.1 (Jan. 1, 2006).
- <sup>57</sup> Treas. Reg. § 601.601(d)(2)(v)(c).
- <sup>58</sup> INTERNAL REVENUE MANUAL § 32.2.3.5.1.2.7(3) (Aug. 11, 2004).
- <sup>59</sup> See Donald L. Korb, *The Four R’s Revisited: Regulations, Rulings, Reliance, and Retroactivity in the 21st Century: A View From Within*, 46 DUQ. L. REV. 323, 335–36 (2008).
- <sup>60</sup> See *United States v. Mead Corp.*, 533 U.S. 218 (2001); *Mayo Found. for Med. Educ. & Research v. United States*, 131 S. Ct. 704 (U.S. 2011). See also 47A C.J.S. Internal Revenue § 10 (explaining that revenue rulings are “persuasive, and entitled to weight in the interpretative process as expressing the views of the agency which is entrusted with administration of the Internal Revenue Code, but do not have the force or effect of regulations or Treasury decisions, much less that of law.”).

- <sup>61</sup> See generally, Kristin E. Hickman, *IRB Guidance: The No Man's Land of Tax Code Interpretation*, 2009 MICH. ST. L. REV. 239; Ryan C. Morris, Comment, *Substantially Deferring to Revenue rulings After Mead*, 2005 B.Y.U. L. REV. 999.
- <sup>62</sup> See Treas. Reg. § 1.6662-3(b)(2); T.D. 8381, 1992-1 C.B. 374.
- <sup>63</sup> See Treas. Reg. § 1.6662-4(d)(3)(iii).
- <sup>64</sup> Treas. Reg. § 601.601(d)(2)(i)(b); Rev. Proc. 89-14; 1989-1 C.B. 814.
- <sup>65</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.6 (Jan. 1, 2006); Treas. Reg. § 601.601(d)(2)(vi).
- <sup>66</sup> See Donald L. Korb, *The Four R's Revisited: Regulations, Rulings, Reliance, and Retroactivity in the 21st Century: A View From Within*, 46 DUQ. L. REV. 323, 337 (2008).
- <sup>67</sup> Treas. Reg. § 601.601(d)(2)(iii).
- <sup>68</sup> *Id.*
- <sup>69</sup> See INTERNAL REVENUE MANUAL § 32.2.2.10 (Aug. 11, 2004).
- <sup>70</sup> See Rev. Proc. 89-14; 1989-1 C.B. 814.
- <sup>71</sup> Treas. Reg. § 601.601(d)(1).
- <sup>72</sup> See T.D. 8381, 1992-1 C.B. 374.
- <sup>73</sup> Treas. Reg. § 1.6662-4(d)(3)(iii).
- <sup>74</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.4.1 (Jan. 1, 2006).
- <sup>75</sup> Kristin E. Hickman, *IRB Guidance: The No Man's Land of Tax Code Interpretation*, 2009 MICH. ST. L. REV. 239, 242.
- <sup>76</sup> *Id.* at 242 n.12.
- <sup>77</sup> INTERNAL REVENUE MANUAL § 32.2.2.3.3 (Aug. 11, 2004).
- <sup>78</sup> Donald L. Korb, *The Four R's Revisited: Regulations, Rulings, Reliance, and Retroactivity in the 21st Century: A View From Within*, 46 DUQ. L. REV. 323, 339 (2008).
- <sup>79</sup> INTERNAL REVENUE MANUAL § 32.2.2.3.3 (Aug. 11, 2004).
- <sup>80</sup> See Donald L. Korb, *The Four R's Revisited: Regulations, Rulings, Reliance, and Retroactivity in the 21st Century: A View From Within*, 46 DUQ. L. REV. 323, 339-40 (2008).
- <sup>81</sup> INTERNAL REVENUE MANUAL § 32.2.2.10.4 (Aug. 11, 2004).
- <sup>82</sup> See Treas. Reg. § 1.6662-3(b)(2); T.D. 8381, 1992-1 C.B. 374.
- <sup>83</sup> See Treas. Reg. § 1.6662-4(d)(3)(iii); Rev. Rul. 90-91, 1990-2 C.B. 262.
- <sup>84</sup> See 1 Mertens Law of Fed. Income Tax'n § 3:42.
- <sup>85</sup> See INTERNAL REVENUE MANUAL § 32.2.2.3.4 (Aug. 11, 2004); INTERNAL REVENUE MANUAL § 4.10.7.2.4.1 (Jan. 1, 2006).
- <sup>86</sup> See INTERNAL REVENUE MANUAL § 32.2.2.3.4 (Aug. 11, 2004).
- <sup>87</sup> See Kristin E. Hickman, *IRB Guidance: The No Man's Land of Tax Code Interpretation*, 2009 MICH. ST. L. REV. 239, 240 n.5.
- <sup>88</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.4.1 (Jan. 1, 2006).
- <sup>89</sup> INTERNAL REVENUE MANUAL § 32.2.2.10 (Aug. 11, 2004).
- <sup>90</sup> Treas. Reg. § 1.6662-3(b)(2).
- <sup>91</sup> See Treas. Reg. § 1.6662-4(d)(3)(iii); Rev. Rul. 90-91; 1990-2 C.B. 262.
- <sup>92</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.8 (Jan. 1, 2006).
- <sup>93</sup> Rev. Proc. 2015-1, 2015-1 I.R.B. 1.
- <sup>94</sup> See *id.*; Treas. Reg. § 601.201(a)(2).
- <sup>95</sup> Donald L. Korb, *The Four R's Revisited: Regulations, Rulings, Reliance, and Retroactivity in the 21st Century: A View From Within*, 46 DUQ. L. REV. 323, 343 (2008).
- <sup>96</sup> Rev. Proc. 2015-1 at § 8.03, 2015-1 I.R.B. 1.
- <sup>97</sup> *Id.*
- <sup>98</sup> See 1 West's Legal Forms, Business Organizations Div. I § 2:2 (3d ed.).
- <sup>99</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.10.1 (Jan. 1, 2006).
- <sup>100</sup> See I.R.C. § 6110(k)(3).
- <sup>101</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.10.3 (Jan. 1, 2006).
- <sup>102</sup> See I.R.C. § 6110(k)(3).
- <sup>103</sup> *AmerGen Energy Co. v. United States*, 94 Fed. Cl. 413, 418 (Fed. Cl. 2010).
- <sup>104</sup> See, e.g., *Glass v. Comm'r*, 471 F.3d 698, 709 (6th Cir. 2006); *Thom v. United States*, 283 F.3d 939, 943 n.6 (8th Cir. 2002); *ABC Rentals of San Antonio, Inc. v. Comm'r*, 142 F.3d 1200, 1207 n.5 (10th Cir. 1998).
- <sup>105</sup> Treas. Reg. § 1.6662-3(b)(2).
- <sup>106</sup> Treas. Reg. § 1.6662-4(d)(3)(iii).
- <sup>107</sup> See INTERNAL REVENUE MANUAL § 33.2.1.2 (Aug. 11, 2004).
- <sup>108</sup> Rev. Proc. 2015-2, 2015-1 I.R.B. 105.
- <sup>109</sup> See INTERNAL REVENUE MANUAL § 33.2.1.2(1) (Aug. 11, 2004).
- <sup>110</sup> Rev. Proc. 2015-2, 2015-1 I.R.B. 105.
- <sup>111</sup> See INTERNAL REVENUE MANUAL § 4.10.7.2.10 (Jan. 1, 2006); I.R.C. § 6110(k)(3).
- <sup>112</sup> See INTERNAL REVENUE MANUAL § 4.10.7.2.10 (Jan. 1, 2006).
- <sup>113</sup> Treas. Reg. § 1.6662-3(b)(2).
- <sup>114</sup> Treas. Reg. § 1.6662-4(d)(3)(iii).

---

<sup>115</sup> See INTERNAL REVENUE MANUAL § 4.10.7.2.11 (Jan. 1, 2006).

<sup>116</sup> See INTERNAL REVENUE MANUAL § 4.10.7.2.11 (Jan. 1, 2006).

<sup>117</sup> See Donald L. Korb, *The Four R's Revisited: Regulations, Rulings, Reliance, and Retroactivity in the 21st Century: A View From Within*, 46 DUQ. L. REV. 323, 362 n.185 (2008).

<sup>118</sup> See I.R.C. § 6110(k)(3).

<sup>119</sup> Treas. Reg. § 1.6662-3(b)(2).

<sup>120</sup> Treas. Reg. § 1.6662-4(d)(3)(iii).

<sup>121</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.9.8.1 (Jan. 1, 2006).

<sup>122</sup> INTERNAL REVENUE MANUAL § 36.3.1.1 (Mar. 14, 2013).

<sup>123</sup> *Id.*

<sup>124</sup> INTERNAL REVENUE MANUAL § 36.3.1.2.1 (Mar. 14, 2013).

<sup>125</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.9.8.1.4 (Jan. 1, 2006).

<sup>126</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.9.8.2 (Jan. 1, 2006).

<sup>127</sup> *Id.*

<sup>128</sup> INTERNAL REVENUE MANUAL § 36.3.1.1 (Mar. 14, 2013).

<sup>129</sup> INTERNAL REVENUE MANUAL § 4.10.7.2.9.8.1 (Jan. 1, 2006).

<sup>130</sup> Treas. Reg. § 1.6662-3(b)(2).

<sup>131</sup> Treas. Reg. § 1.6662-4(d)(3)(iii).