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No Virginia, You Can't Rely On IRS Rulings

Surely you can rely on IRS rulings, right? The answer **must** be yes, you'll say. The IRS is a big federal agency and like all bureaucracies, has more rules and policies than you can shake a stick at. So treating taxpayers inconsistently goes against everything the IRS stands for, right?

Not so fast. I'm talking about Private Letter Rulings (known by tax-pros as "PLRs" or just "letter rulings"). Don't confuse PLRs with published Revenue Rulings, as the latter are based on hypothetical facts and by definition **are** authority. You may not read these IRS epistles every night before bed the way I do, but there's still reason you should be concerned.

An IRS PLR is an individualized letter the IRS writes to a particular taxpayer. The taxpayer goes through a fairly elaborate (and usually expensive) procedure to get one, and it's sort of a contract with the IRS. In fact, you attach a copy to your return, and it controls the tax item. It might say your legal settlement isn't subject to tax, you qualify for disaster relief, you can divide your family company tax-free, your sale qualifies for installment reporting, or any one of thousands of other tax issues.

While a PLR is solely between you and the IRS, by law, PLRs are released to the public with names redacted, and they've come to be some of the most important "authority" the IRS produces. The IRS doesn't release these redacted PLRs out of generosity.

Lawsuits were brought by [Tax Analysts and Advocates](#) (an Arlington, Virginia nonprofit) to compel their release. You can thank Tax Analysts for breaking loose much of the otherwise secret IRS law, not only PLRs, but also Chief Counsel Advice, Technical Advice Memoranda, Field Service Advice, and many other IRS missives that shed light on what the IRS is doing and thinking.

In the early 1980s, the U.S. Supreme Court even cited PLRs. See [Rowan Cos., Inc. v. United States](#), 452 U.S. 247 (1981). Talk about “authority.” That unnerved the IRS and prompted a statutory change to require a notice on each PLR that it can’t be cited as precedent. But the real-life practice of tax lawyers didn’t change much. If anything, PLRs have become significantly **more** important since then.

But are they “authority” like a court case, Treasury Regulation or Revenue Ruling? Technically, PLRs are not “authority.” So says Internal Revenue Code [Section 6110\(k\)\(3\)](#). Nevertheless, tax lawyers read them and routinely rely on them in giving advice to clients. In fact, you almost **have** to. Our tax system is so vast and the amount of official “precedential” guidance in some areas is so downright sparse that you need to glean guidance from **somewhere**.

PLRs are often the best available information. If the facts for the unnamed taxpayer are just like yours, they can make you feel pretty confident. Perhaps they’re no three course meal, but PLRs are a welcome snack. That’s why a new tax decision seems frightening.

The U.S. Court of Federal Claims in [AmerGen Energy](#) ruled PLRs can’t even be admitted as evidence. See [AmerGen Energy Co., LLC, v. United States](#), F.3d (Fed. Cl. 2010). AmerGen tried to introduce PLRs from the IRS into evidence, but the court said no. AmerGen then sought to show that as a buyer in power plant transactions, it was an “interested party” in the described deals, giving it an even better case to rely. Again, the court said no.

This is disturbing, since real-life taxpayers read and “rely” on PLRs every day. Plus, the courts have often made exceptions to the rule that they’re not “authority” to cut taxpayers some slack, especially when it looks like

they were trying to find guidance in good faith. See for example [IBM v. United States](#), 343 F.2d 914 (Ct. Cl. 1965).

The jury is still out on what this means, and what the future will hold. Most taxpayers are probably still going to read and “rely” on PLRs. Most advisers are going to tell them to. But there may be a new level of concern about just how warm and fuzzy tax advisers and clients feel even if we have a raft of PLRs similar to our facts.

As for me, I’m looking for different bedtime reading material...

For more about PLRs and this case, see:

[IRS Ruling Inadmissible as Evidence](#)

[Understanding IRS Guidance — A Brief Primer](#)

For discussion of tax opinions, see [What Good is a Tax Opinion, Anyway?](#)

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