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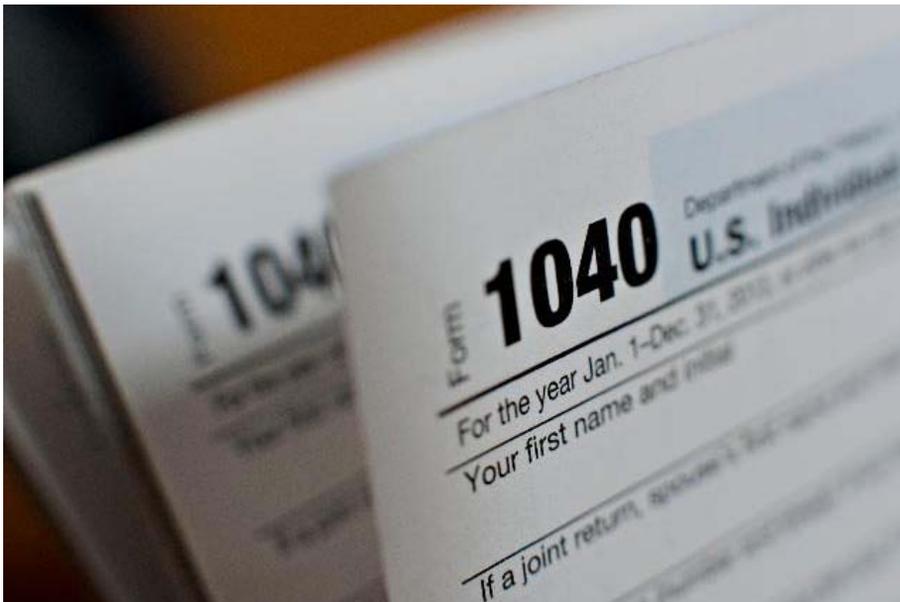
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Amazingly, IRS Says You Can't Rely On IRS Instructions

If the IRS gives you instructions how to complete a tax form, you can rely on them, right? You would think so. Yet, instructions *are not* actually part of the tax law. In fact, there are many tax cases in which well-meaning taxpayers claim their tax position is justified by IRS instructions or publications. In most instances, taxpayers lose, even if they have a credible reading.

Call it the ultimate Catch-22. A long line of cases says the only authoritative sources of tax law are official statutes, regulations, and judicial decisions. Does this impressive weight of authority mean taxpayers can *never* cite form instructions? As is so common with blanket statements in our Byzantine tax system, not always. That is important if you are a confused but well-meaning taxpayer. First, let's see what you are up against.



U.S. Department of the Treasury Internal Revenue Service (IRS) 1040 Individual Income Tax forms. (Photo credit: Daniel Acker/Bloomberg)

Usually, courts reject attempts to rely on IRS instructions, including these:

- Joe claimed a settlement payment was not subject to Social Security taxes, because an IRS publication said settlement proceeds should be reported as “Other Income” on line 21 of Form 1040. Joe lost.
- Sally claimed her housekeeper was an independent contractor, because an IRS publication stated that “individuals who furnish personal attendance, companionship, or household care services to children,” and who are not employees of a placement service, “are generally treated as self-employed for all federal tax purposes.” Sally lost too.
- Jose said that at the time he filed his return, an IRS publication supported his position that a deduction for educational expenses did not have to be reduced by benefits paid by the VA. Jose also lost.
- Ellen claimed her contributions to an IRA were not subject to excise taxes based on language in an IRS publication. It said you can contribute to an IRA if you are not an active participant “during any part of the tax year.” Ellen lost, and the excise tax applied.
- Victor claimed he was a foreign resident despite living in the United States, citing a Treasury Department Tax Guide for U.S. Citizens Abroad that suggested all he needed was a clear intention to return to his country of origin. Victor lost too.
- David argued that an IRS handbook on Domestic International Sales Corporation rules, published after the statute had gone into effect but before the regulations had been issued, was controlling. The IRS won.
- Frankie claimed that a court order regarding custody entitled her to take a dependency exemption on her taxes. After all, the instructions to IRS Forms 501 and 504 were “less than clear and may even be misleading,” although the statute required the custodial parent to sign a release. Frankie lost too.

This is a daunting list. In fact, only a very few courts have held the IRS to what it says in its instructions and publications. But think about the business world. Could a toy manufacturer escape liability by arguing that its instructions how to assemble a toy are not relevant and not part of the product? Hardly, and the IRS should be held to the same standard.

A key taxpayer victory that may give you some hope is [*Wilkes v. United States*](#), 50 F. Supp. 2d 1281, 1287 (M.D. Fla. 1999). The case is more than 15 years old, but it has apparently never actually been cited by another court on

this point! The court stated that “general principles of equity dictate that the IRS should not be allowed to issue instructions for completing its forms and later disavow those instructions.”

The *Wilkes* decision shows that the IRS’s own instructions to its forms can sometimes be cited to support a taxpayer’s position. Depending on the facts, it should be possible to hold the IRS to its own forms and its own publications where one is reading them reasonably. After all, shouldn’t the IRS be required to write reasonable instructions, just like a toy manufacturer?

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.