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IRS Warns Don't Rely On IRS.Gov — It Isn't Authority

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Can you rely on the IRS? In an audit, can't you cite the IRS *to* the IRS? You would think so, but the big tax collection agency isn't exactly a warm and fuzzy place. Plainly, the IRS has a tough job to do. Our tax law is famously complex, and administering its twists and turns in a fair way isn't easy. Still, taxpayers and practitioners alike have complained for years that you cannot rely on things the IRS tells you over the phone. In the past, there even used to be surveys showing the track record of IRS employees answering tax questions. These surveys showed just how reliable (or *unreliable*), those employees were. Of course, now it's plenty difficult to just talk to a real person *at all*, so perhaps the reliability function is not as big a worry as it used to be.

These days, many taxpayers are likely to do their own research online, and that's where IRS.gov should come in. The IRS website is actually quite good, with a wealth of material on it. And surely, taxpayers can rely on that official IRS information, correct? Not so fast. Not long ago, the IRS's Small Business/Self Employed Division (SB/SE) issued a memorandum to IRS Field Examination Area Directors telling them that frequently asked questions (FAQs) and other items posted on www.irs.gov that have not been published in the Internal Revenue Bulletin, are not legal authority.

Now, if you are a taxpayer looking for guidance about IRS tax rules, you might well assume that items the IRS publishes for taxpayers on its own website would be, well, fair game. Yet, the IRS memorandum states that it is the policy of IRS to publish all substantive rulings necessary to promote a uniform application of the tax laws *in the Internal Revenue Bulletin*. It's the official place for guidance, more official than the IRS website. As a result, IRS employees are being directed to follow (just those) items published in the Internal Revenue Bulletin.

Taxpayers need to pay attention to that as well. It is true that the IRS makes frequent postings to its website, [IRS.gov](http://irs.gov). In many cases, these postings are in useful and user-friendly formats such as Frequently Asked Questions (FAQs). These things may or may not end up in *more formal* IRS publications, such as

the Internal Revenue Bulletin (where Revenue Rulings and other items are permanently ensconced). But if an FAQ is just on the website, and nowhere else more official, you are supposed to not take it too seriously, it appears. FAQs that appear on IRS.gov but that have not been published in the Internal Revenue Bulletin are *not* legal authority.

Tax law is complex, and the IRS does have to juggle priorities. But to most taxpayers, this seems like a form of inside baseball that is hard to justify. Not many taxpayers are likely to try to figure out if the FAQ they are reading to answer their tax questions is or is not in the Internal Revenue Bulletin. If they see it on the IRS website, shouldn't that be good enough? In an audit, IRS examiners are being told that they should draw a distinction between these 'good' FAQs, and the bad ones that are *only* on the IRS website.

You can read the IRS memo here: [SBSE-04-0517-0030](#). Yes, I think this one probably qualifies as authority.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.