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TAXES 08/05/19

# Will IRS Approve Your Taxes In Advance? Sometimes, Yes

Will IRS give you a straight—and binding—answer in advance? Yes, if you get an [IRS private letter ruling](#). It involves costs and delays, and there are risks of asking and not getting it. A common choice is between getting a [tax opinion](#) or an IRS ruling, but how do you decide which way to go? The dynamics are a little odd. You want to ask the IRS, which means you are uncertain. Yet if your tax position is weak or uncertain, the government may not rule. Conversely, if your position is plainly correct, the government may *also* not rule, considering it a 'comfort ruling.' If you are in the sweet spot, a ruling can make sense, but often, tax opinions are more sensible. Yet tax opinions don't bind the IRS, and private letter rulings do. That is one reason you must attach a copy of the ruling to your tax return when you file it. You never attach an opinion.

A tax opinion can be written on just about anything. Not rulings. The IRS has [long lists of subjects](#) on which it will not rule that change periodically. A first line of query should be whether your subject is on a no-rule list. Rulings cover a narrow bandwidth. Many taxpayers believe the middle ground, where you *can* get a ruling, is generally where you do not need one! Opinions fill the gaps.

Do not ask for a ruling unless there is a high likelihood you can get the answer you want. There is a [range of fees](#) for requesting a ruling, and a common fee is \$28,300. If the IRS says no, you can withdraw your request and may get the fee back. You don't want a “no” answer on the books. But when you withdraw your request, the IRS sends an audit notice to your local IRS field office. Your tax return could be flagged.

An opinion can be knocked out in days or weeks. A ruling takes months. There are exceptions, and ways to leapfrog, but rulings are always more time consuming than opinions. You need to be specific in a ruling request and cannot keep modifying it. In contrast, simultaneously planning a transaction and writing an opinion makes sense. The opinion can help shape the transaction. Certificates, declarations, etc., may strengthen the opinion, and are more helpful if prepared

contemporaneously with the closing or, at the latest, at tax return time when the transaction is being reported.

Almost no ruling request is submitted without an informal trial run. You talk to the IRS and get their general view on your proposed ruling. Then, you submit a short memo about the facts and the ruling you want. The IRS meets informally in person or by phone, usually with 2 to 5 IRS attorneys covering different aspects. If all is positive, you prepare and submit your ruling request. If not, you do not. Either way, the informal request is not official and triggers no fee and no audit notice.

Rulings give a binding conclusion by the IRS. You generally don't care about the reasoning. In contrast, a good opinion should argue both sides, thoroughly examining the facts and authorities.

You do not need to consider penalty protection if you get a ruling. In contrast, tax opinions help to avoid penalties. Still, if the opinion merely saves penalties, it has largely failed. No client wants the claimed tax position to fail. Clients want to have their tax position upheld, or at least compromised on an acceptable basis.

If you want an opinion, don't wait until an audit. There is rarely time. Even if there were, it would hardly be the same as one written before the transaction or tax return filing. If an opinion is to have any value, it must be done *before* the tax return is filed. A copy of a ruling is attached to a tax return. In contrast, a legal opinion is usually prepared by lawyer for client and is subject to attorney-client privilege. Be careful whom you copy, including return preparers, since that simple act may waive the privilege. Return preparers can receive a short directive letter about what to put on the return and what to disclose. It should state that the opinion is privileged and will not be disclosed.

If you have a ruling, there should be no controversy unless the IRS claims you went outside the ruling or changed your transaction. Opinions are invaluable for the small percentage of tax cases that end up in audit, IRS Appeals or in court. There is rarely enough time to respond fully to IRS requests. Having a thorough legal opinion to cut and paste into advocacy letters is a luxury. It can spell the difference between a good and a bad result, or at least between an outstanding and a middling one.

*This is not legal advice. For tax alerts or tax advice, email me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com).*