

Chief Counsel FedState Coordination Pilot Program

Introduction. The FedState Program involves unique legal and policy issues that arise from joint administration initiatives with state and qualifying local agencies. Currently, the district FedState Coordinators request advice on legal issues generally from District Counsel and the Office of FedState Relations requests advice either directly from Counsel's national office functions or through the Special Counsel (Modernization & Strategic Planning).

In order to gain a better understanding of FedState issues, ensure timely and accurate advice on FedState projects, and facilitate the Service's efforts to coordinate the FedState program, Chief Counsel is establishing, effective with this Notice, a one-year FedState pilot program. At the conclusion of the pilot program period, the results of the coordination efforts will be reviewed to determine how best to continue providing legal advice on FedState matters.

Issues Covered by these Procedures. FedState matters generally involve the sharing or use of government resources or information between the Service and a state or qualifying local agency, and the legal and policy issues arising from such activities. They do not involve taxpayer-specific matters (*e.g.*, a levy on a state for collection of a specific state employee's federal taxes).

FedState Liaison Contacts

Field Office FedState Liaison. District Counsel offices will serve as Counsel's principal contact points for providing legal advice to the districts on their FedState activities. The District Counsel personally should assume responsibility for establishing a working relationship with the District Director with respect to FedState matters, as well as with the district FedState coordinator. Each District Counsel will appoint a specific attorney to serve as the liaison to the District Director and that attorney will also establish a working relationship with the district FedState coordinator.

To facilitate coordination on FedState matters at the regional level, each Regional Counsel will designate either the Assistant Regional Counsel (General Litigation) or the Assistant Regional Counsel (General Legal Services) as the Regional Counsel FedState Coordinator, who will establish a working relationship with the respective regional IRS FedState Coordinator. If the regional IRS FedState Coordinator requests advice directly from Regional Counsel, the Regional Counsel FedState Coordinator will determine whether Regional Counsel or District Counsel will coordinate the request and provide the advice to the region and/or district. The Regional Counsel will ensure that District Counsel coordinates significant FedState matters with the appropriate national office function(s) and review the related advice to ensure consistency on FedState matters within the region. Regional and District Counsel offices will be responsible for reviewing the FedState Regional Quarterly Report on pending FedState projects.

National Office FedState Liaison. The Special Counsel (Modernization and Strategic Planning) will serve as the Chief Counsel FedState Liaison with responsibility for coordination between Counsel's national office functions and the Office of FedState Relations.

Coordination of Requests for Legal Advice

Standard Coordination Procedures. When considering specific issues arising in the FedState program, District Counsel offices must follow the standard procedures for coordination with the national office. In accord with the standard procedures, significant matters, such as initiating legislation or amending statutes regarding electronic lien filing, will require coordination with the appropriate national office function.

Special Coordination Procedures. FedState activities frequently involve complex or unusual issues within the particular expertise of General Legal Services (GLS) or Disclosure Litigation (DL). Accordingly, to identify and address potential GLS and DL issues, the following procedures establish special coordination requirements for FedState legal advice:

1. Initial Coordination. Upon receipt by District Counsel of a written or oral request for advice on a FedState matter, District Counsel will forward copies of the request (reduce oral requests to writing), via email or fax, to the: (1) Assistant Chief Counsel (General Legal Service), (2) Assistant Chief Counsel (Disclosure Litigation), (3) respective Assistant Regional Counsel (GLS), (4) respective Regional Counsel FedState Coordinator, and (5) Special Counsel (Modernization & Strategic Planning).

2. GLS and Disclosure Review. Within 10 calendar days of receipt of a copy of a request for advice on a FedState matter forwarded by District Counsel, the ACC(GLS), ACC(DL), and ARC(GLS) will: (1) review the request for any issue on which advice should be provided to District Counsel; (2) coordinate to determine whether advice will be provided to District Counsel from either function; and (3) notify District Counsel, the Regional Counsel FedState Coordinator, and the Special Counsel (Modernization & Strategic Planning), whether advice will be provided.

3. GLS and Disclosure Advice. Written advice generally will be submitted to District Counsel within 45 calendar days after notifying District Counsel that advice will be provided. If the request involves both GLS and DL issues, the ACC(GLS), ACC(DL), and ARC(GLS), will coordinate their response(s) to District Counsel. Copies of all responses will be provided to the respective Regional Counsel FedState Coordinator and the Special Counsel (Modernization & Strategic Planning).

4. District Counsel Legal Advice. Upon receipt of the written advice on GLS/DL issues (or notification that advice will not be provided), District Counsel will respond to the District's request for advice. District Counsel's advice should, as needed, either incorporate, or attach a copy of, the GLS/DL advice. Copies of any District Counsel

advice, whether or not addressing GLS/DL issues, will be provided to the respective Regional Counsel FedState Coordinator and the Special Counsel (Modernization & Strategic Planning).

Nature of Written Advice to IRS on FedState Matters

Style of Written Advice. It is contemplated that advice on FedState matters will generally not include information restricted from disclosure by IRC § 6103 or other disclosure rules. If possible, written advice should generally be drafted without inclusion of information protected under IRC § 6103 or otherwise privileged or confidential. Advice should not ordinarily include investigative tolerances, prosecutorial criteria, settlement guidelines, analysis of litigation hazards of current or proposed Service positions, or similar information. The advice should be written in a tactful, objective, and balanced manner; while it may discuss alternative legal analyses and different possible conclusions, the alternative view points should not be attributed to particular individuals.

Synopsis of Advice. The beginning of the advice should include a synopsis, or abstract of the issue involved and related legal conclusion, suitable for internal dissemination to those who have an interest in the FedState program. The district may use the synopsis or abstract in its proposed FedState template. The advice memorandum itself should not be disclosed beyond the offices or individuals originating the request for advice and working on the matter with the requisite need to know, or attached to or incorporated in a proposed template. The advice is limited by the particular facts and the applicable federal and local (state, county, city, etc.) law, rules, regulations, practices and procedures. Because of this, and the importance of what may be seemingly minor variances in the facts, as well as the changing nature of the applicable authority, the advice memorandum should not be relied upon in other circumstances.

Restrictive Legend. The first page of any advice on FedState matters must contain the following restrictive legend in bold print:

This opinion is provided to [insert name of requesting office] in response to a request from [insert name of requester], dated [insert date], in connection with [insert subject of the request or name of project]. This opinion is intended to convey confidential legal advice to IRS personnel whose official duties require their involvement in this matter. It should not be disclosed to any other person, including representatives of [insert name of state, city, etc.].

This opinion is based on the specific facts of this matter and the laws and procedures of [insert name of state, city, etc.]. Accordingly, this opinion may not be relied upon in any other matter.

If the FedState advice includes information protected from disclosure by IRC § 6103, or other sensitive information protected by statute or privilege, the following additional restrictive legend should be added:

THIS DOCUMENT MAY CONTAIN CONFIDENTIAL INFORMATION SUBJECT TO IRC § 6103 OR OTHER PROVISIONS OF LAW, LAW ENFORCEMENT TOLERANCES OR CRITERIA, INFORMANT INFORMATION, LITIGATION ANALYSIS, OR PRIVILEGED MATTER. UNAUTHORIZED DISCLOSURE OF THIS DOCUMENT MAY RESULT IN CIVIL OR CRIMINAL PENALTIES.

Responsibilities of Chief Counsel FedState Liaison

The Chief Counsel FedState Liaison serves primarily as the coordinator between the Office of FedState Relations and Chief Counsel national office functions. The position is not responsible for determining substantive legal conclusions, but instead acts as a catalyst to ensure that policy and legal issues are brought to the attention of and addressed by the appropriate field and national office Counsel functions. The Special Counsel (Modernization and Strategic Planning) is the designated Chief Counsel FedState Liaison. The liaison's responsibilities include:

- Representing Counsel on the FedState Steering Committee;
- Serving as the liaison between the Office of FedState Relations and Counsel functions responsible for providing FedState legal advice, and, as requested, with external program constituents (*e.g.*, Federation of Tax Administrators);
- Coordinating FedState training for and by Counsel;
- Coordinating the Counsel response on the legal aspects and policy implications of proposed final templates provided to Counsel by the Office of FedState Relations;
- Coordinating requests for advice received directly from the Office of FedState Relations;
- Distributing within Chief Counsel a periodic FedState Relations newsletter that summarizes FedState legal and policy issues that have been addressed; and,
- Providing Regional Counsel, the ARC(GLS), and the Regional Counsel FedState Coordinators, as well as District Counsel, GLS, and DL, with copies of the FedState Regional Quarterly Report, which lists and describes the FedState projects and issues pertaining to them.

If you have any questions regarding this Notice or need additional information, please contact Craig R. Gilbert at (202) 622-3360.

/s/

STUART L. BROWN
Chief Counsel