

TECHNICAL ASSISTANCE ADVISORY No. 1986-001

Re: General Procedures Regarding Requests For Issuance And Effect Of Technical Assistance Advisories

A "Technical Assistance Advisory" (AA) is a written statement issued by the State Tax Commissioner to a taxpayer. A TAA interprets and applies the tax laws of this State to a specific set of facts provided by the taxpayer or the taxpayer's authorized representative. TAA's are issued only by the State Tax Commissioner.

All TAA's are issued pursuant to W. Va. Code § 11-10-5r and set forth the position of the State Tax Commissioner upon the tax consequences, under existing statutes, court decisions, rules or policies, of the stated transaction or event.

The State Tax Commissioner may decline to issue a TAA if, in his discretion, he deems it unwise or unnecessary to do so. A TAA may not be issued to a particular taxpayer with respect to an issue or issues involved in a petition for reassessment or refund or in litigation.

The taxpayer or his representative should submit a request for a TAA to the State Tax Commissioner. The taxpayer must specifically request a TAA; otherwise, the State Tax Commissioner may treat the taxpayer's request for information simply as general correspondence. However, the State Tax Commissioner may issue a TAA if, in his opinion, the issue involved in the general correspondence warrants such treatment. This will be done in instances where a particular issue is of general application.

A TAA request must be accompanied by a declaration in the following form:

Under penalties of perjury, I declare that I have examined this request, including the accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested TAA are true, correct, and complete.

The declaration may be made by the taxpayer or the taxpayer's authorized representative. It must be signed by the person or persons on whose behalf the request is made. The person who must sign for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts. The person signing for a trust or partnership must be a trustee or partner who has personal knowledge of the facts.

Unless specifically stated otherwise, a TAA has no precedential value except to the taxpayer requesting the Advisory, and then only for the specific transaction addressed. TAA's shall be modified prospectively only. However, any change in the applicable statutes, court decisions or regulations utilized in the TAA may constitute a modification which would be effective on the date the change became effective.

The State Tax Commissioner is required to publish the Technical Assistance Advisories. Any identifying characteristics or facts about the taxpayer requesting the TAA shall be omitted or modified in the advisory released to the public.

Technical Assistance Advisories are issued based upon a specified factual situation to which are applied current concepts of tax law, as reflected in regulations, administrative decisions, court decisions, and Tax Department policy. Change in any of these may render any particular

TAA moot, in whole or in part.

Technical Assistance Advisories will normally be numbered first in the year of their issuance, followed by a number based upon chronological order of issuance, i.e, TAA No. 1986-002. The 001 is reserved each year for announcement of any changes in the procedure for obtaining a TAA.

A TAA is not a statement of policy or interpretation of general application and future effect. It is not a "rule" as defined in W. Va. Code § 29A-1-2(i). Therefore a taxpayer may not rely upon a TAA issued to another taxpayer. However, a TAA does reflect the State Tax Commissioner's view of the tax consequences of the specified transaction as of the date it was issued; and, in this limited context and to that extent, it provides some guidance to other taxpayers. A taxpayer who wishes to rely on a TAA should request issuance of a TAA as hereinbefore provided.

A TAA may be expressly revoked or modified by the Tax Commissioner at any time under appropriate circumstances. Such revocation or modification will apply beginning the day written notice of its revocation or modification is sent to the person who requested issuance of the TAA. Any such notice will also be published as a TAA.

Summary

This Technical Assistance Advisory sets forth the general procedures regarding the issuance and effect of TAA's. this TAA will be updated as necessary.

Michael E. Caryl

State Tax Commissioner

Issued to be effective as of

December 29, 1986

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