

Associate Chief Counsel (International), Branch 6

Presenters (in order of appearance):

Elizabeth Beck, Branch Chief

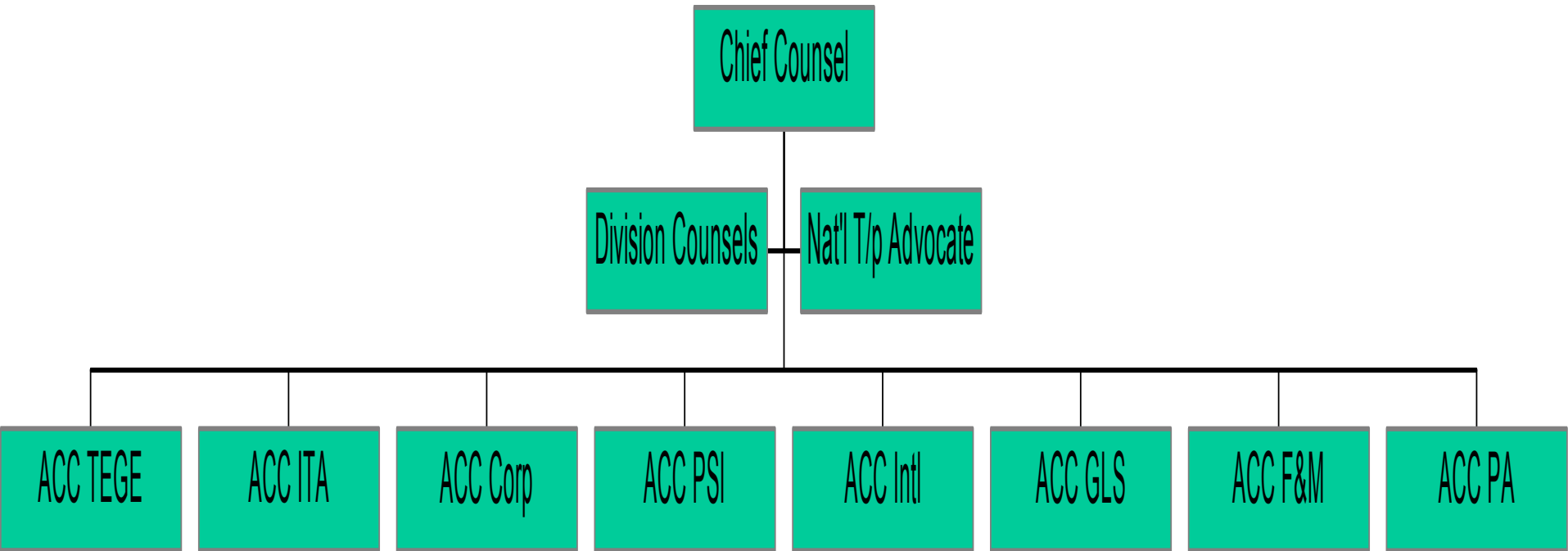
John Breen

Peter Luedtke

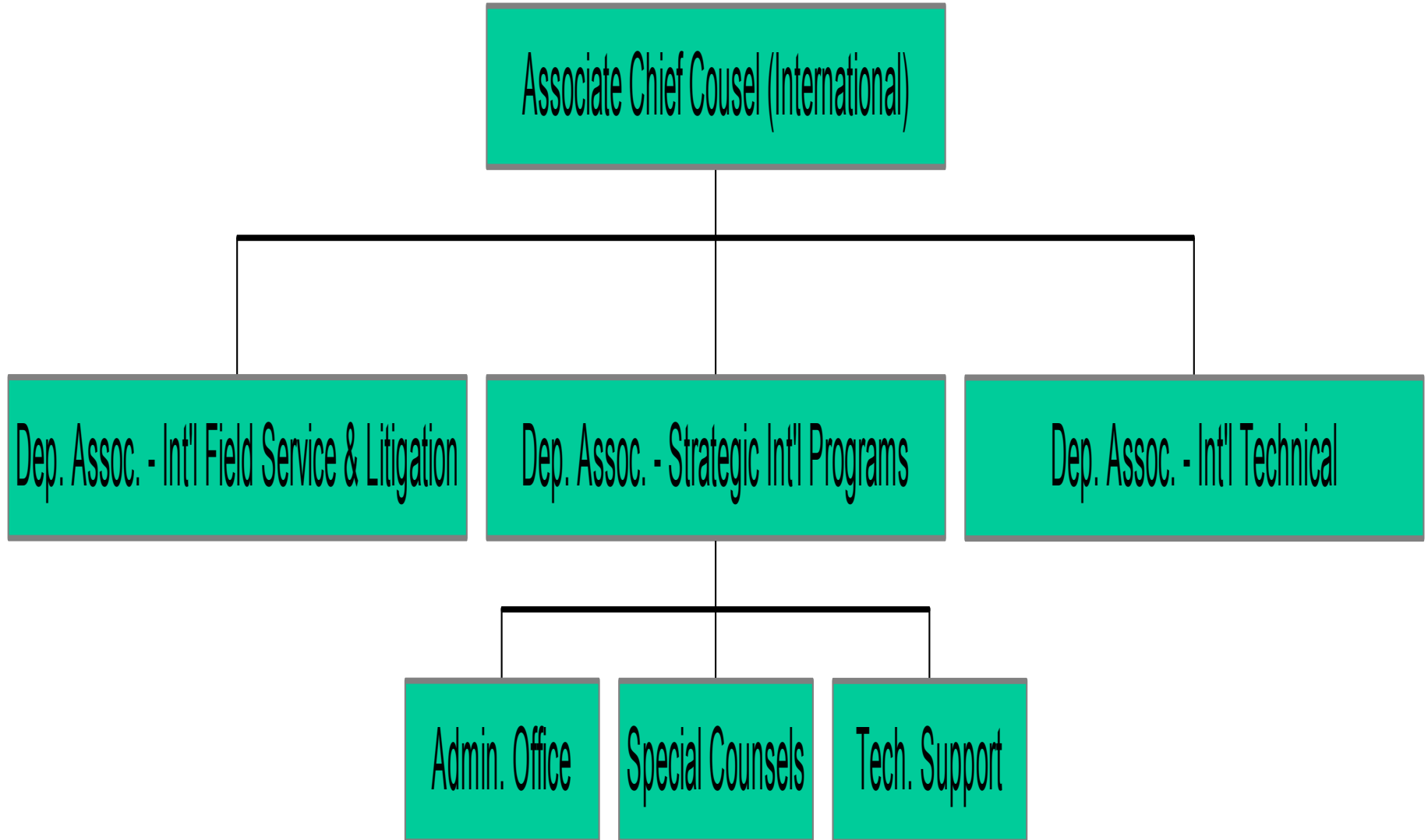
Douglas Giblen

**Office of the
Associate Chief
Counsel
(International)**

Chief Counsel - National Office



ACC International





July 2001

Associate Chief Counsel (International)
 John Staples
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 (202) 622-3800

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* Detail
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Executive Assistant: Nancy Swaja
 Admin Officer: Nancy Watkins
 Admin Asst: Charlene Frederick
 CASE/CATS Prog. Analyst: Richard Witt
 Comp. Specialist: Rodney Thomas

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 SPC: Roger Brown (202) 622-3800

SPC (Technical): Kelly Kogan (202) 622-3810

SPC (Field Service & Litigation):
 Vacant (Natural Resources) 622-3830
 Kristine Roth (Communications, Tech. & Media) 622-3810
 Jack Feldman (ISP, Retail, Food & Pharmaceuticals, Heavy Manufacturing & Transportation) 622-3830
 Richard Fultz (Financial Service & Health Care) 622-3830

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 TLS/ Case Assign: Gerard Trafficanti (202) 622-3619
 Legal Tech: Vacant (202) 622-3830

Reference Room
 Paralegal: Katina Cooper (202) 622-3278

Paralegal: Glenice Sibley (202) 622-3437

Support Serv. Asst.: James Bobbitt (202) 622-3810
 Travel Assistant: Sandy Kalinowski (202) 622-3830

Branch 1 Branch Chief: Elizabeth Karzon (202) 622-3880		Branch 2 Branch Chief: Phyllis Marcus STR: Valerie Mark (202) 622-3840		Branch 3 Branch Chief: Barbara Felker STR: Vacant (202) 622-3850		Branch 4 Branch Chief: Charles Besecky STR: Michael Frankel (202) 622-3860		Branch 5 Branch Chief: Jeffrey Dorfman STR: Paul Epstein (202) 622-3870		Branch 6 Branch Chief: Elizabeth Beck STR: Vacant (202) 874-1490		Advance Pricing Agreement Program Director: Sean Foley SPC: Craig Gilbert Secretary: Brenda Robinson (202) 874-4360						
<p>STR (Main Bldg.): Ed Williams (202) 622-3880</p> <p>Patty Bray Nina Chowdhry Amanda Ehrlich Grace Fleeman# David Lundy Karen Rennie Quarrie Bill Yates</p> <p>Support: Marina Charles</p>	<p>STR (L'Enfant): Ricardo Cadenas (202) 874-1490</p> <p>David Alvarez Bobby Burns Mze Lew Bill Lowrance Vijay Rajan</p> <p>Paralegal: Jackie Blackiston</p> <p>Support: Tishaun Montue</p>	<p>Carl Cooper Margaret Fung Laurie Hatten-Boyd Kate Hwa Jeff Vinnik</p> <p>Support: Vacant</p>	<p>Melissa Arndt David Bergkuist Richard Chewning Ginny Chung Anne Devereaux# Teresa Hughes Bethany Ingwalson David Juster</p> <p>Support: Carolyn Bazile</p>	<p>Ken Allison Eliana Dolgoff# Camille Evans Aaron Farmer Ronald Gootzeit Kay Holman Bob Lorence Mark Pollard David Sotos</p> <p>Support: Simoya Williams</p>	<p>Milton Cahn Kenneth Christman Garrett Gregory Steven Jensen# Shelia Ramaswamy John Rogers</p> <p>Support: Jocelyn Robinson</p>	<p>Ed Barret Chris Bello John Breen Doug Giblen Alexandra Helou Peter Luedtke Anne Shelburne#</p> <p>Support: Vacant</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">APA: BR1</th> <th style="text-align: center;">APA: BR2</th> <th style="text-align: center;">APA: BR3</th> <th style="text-align: center;">APA: BR4 (West Coast)</th> </tr> <tr> <td style="vertical-align: top;"> <p>Branch Chief: Mindy Piatoff (202) 874-4360</p> <p>Lewis Brickates Bree Ermentrout Thomas Herring Melissa Muhammed Peyton Robinson Leslie Rubinstein Carla Seebald Carolyn Ungar Robert Weissler Support: Kimberly Clay</p> </td> <td style="vertical-align: top;"> <p>Branch Chief: Joseph Baniewicz (202) 874-4360</p> <p>David Alvarez Walter Bottiny Kris Kim Russell Kwiat Richard Thomas</p> <p>Support: Senita Smith</p> </td> <td style="vertical-align: top;"> <p>Branch Chief: David Bowen (202) 874-4360</p> <p>James Armitage Mark Dean Mary Goode Dan Karen Nancy Kim Martin Morris Richard Osborne Joseph Rosenthal Thomas Ralph David Varley</p> </td> <td style="vertical-align: top;"> <p>Branch Chief: Patricia McCarroll (202) 874-4360</p> </td> </tr> </table>				APA: BR1	APA: BR2	APA: BR3	APA: BR4 (West Coast)	<p>Branch Chief: Mindy Piatoff (202) 874-4360</p> <p>Lewis Brickates Bree Ermentrout Thomas Herring Melissa Muhammed Peyton Robinson Leslie Rubinstein Carla Seebald Carolyn Ungar Robert Weissler Support: Kimberly Clay</p>	<p>Branch Chief: Joseph Baniewicz (202) 874-4360</p> <p>David Alvarez Walter Bottiny Kris Kim Russell Kwiat Richard Thomas</p> <p>Support: Senita Smith</p>	<p>Branch Chief: David Bowen (202) 874-4360</p> <p>James Armitage Mark Dean Mary Goode Dan Karen Nancy Kim Martin Morris Richard Osborne Joseph Rosenthal Thomas Ralph David Varley</p>	<p>Branch Chief: Patricia McCarroll (202) 874-4360</p>
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Branch

Subject Matter

Jurisdiction

Branch 1

- Tax Treaties
- Mutual Agreement Assistance
- Pension
- Trusts/Estate & Gift
- Expatriation
- Transportation & Shipping
- Insurance Excise
- Branch Profits Tax

Information Gathering & Procedural Group

- Treaty Summons
- Foreign document requests
- Treaty collection
- Central Withholding Agreements
- Procedural Matters
- Tax Information Exchange Agreements

Branch 2

- Withholding - 1441 (nonresident aliens) and 1442 (foreign corporations)
- Anti-deferral regimes
 - Subpart F - 951-964
 - Passive Foreign Investment Companies (PFIC) - 1291-1298
 - Foreign Personal Holding Companies (FPHC) - 551-558
- Conduit rules of 7701(1)
- Contract manufacturing
- Taxation of US citizens/residents living abroad - 911-913
- International boycott factor - 999
- Related information returns - 6038, 6041-6050P

Branch 3

- Foreign tax credits
- Earnings and profits
- Allocation & apportionment of expenses –1.861-8
- Source rules for personal property sales - 865
- Source rules for income wholly within or without U.S. under 861-862
- Foreign government & international organizations
- Definition of resident alien and nonresident alien under 7701(b)

Branch 4

- Corporations – Subch. C including 1504(d)
- Partnerships & foreign partner's share of effectively connected income under 864(c)
- Business trusts - including 1057, 1491
- Dual consolidated losses - 1503(d)
- US real property interests – 897 disposition & 1445 withholding
- Related information returns - 6031, 6038B, 6046A

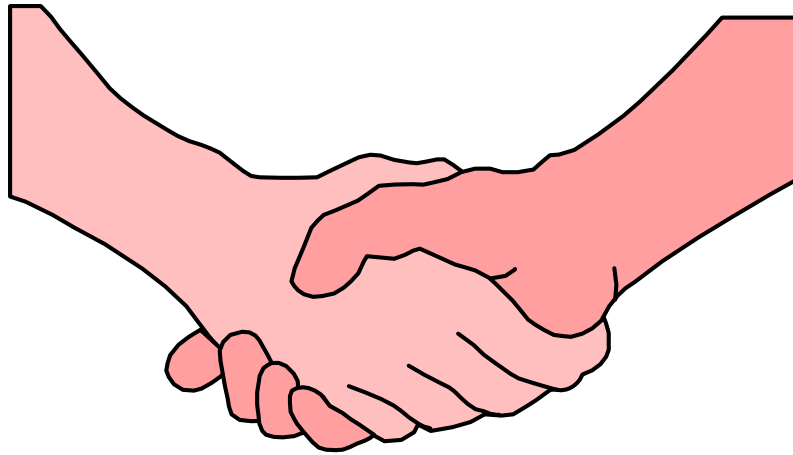
Branch 5

- Banking - including effectively connected income under 864 (c) & 163(j) debt interest
- Financial products
- Insurance
- Currency
- Debt equity
- Sham, economic substance, step transaction
- Related information returns - 6038B

Branch 6

- Transfer pricing & 6662(e), (h) documentation penalties
- Special transfer pricing regimes
 - 936 possession corporation tax credit
 - FSC/DISC
 - Extraterritorial income exclusion
- Related information reporting - section 6038A
- Split sourcing - 863
- E commerce

Branch 6 & APA Partnership



- APA assistance to Branch 6
- Branch 6 assistance to APA

Sample of Section 482-Related Projects

Litigation

Field Service Advice

Regulations

Compaq Computer Corp. v. Commissioner, T.C. Memo 1999-220

Issue: Transfer price for printed circuit assemblies (PCAs) produced by Singapore subsidiary

T/P Position: Inexact CUP, based on prices paid to unrelated U.S. producers, under consignment contracts;

Disputed adjustments for:

- turnkey vs. consignment transactions
- differences in physical characteristics, volume
- other terms in uncontrolled transactions
- time lag (declining component prices)

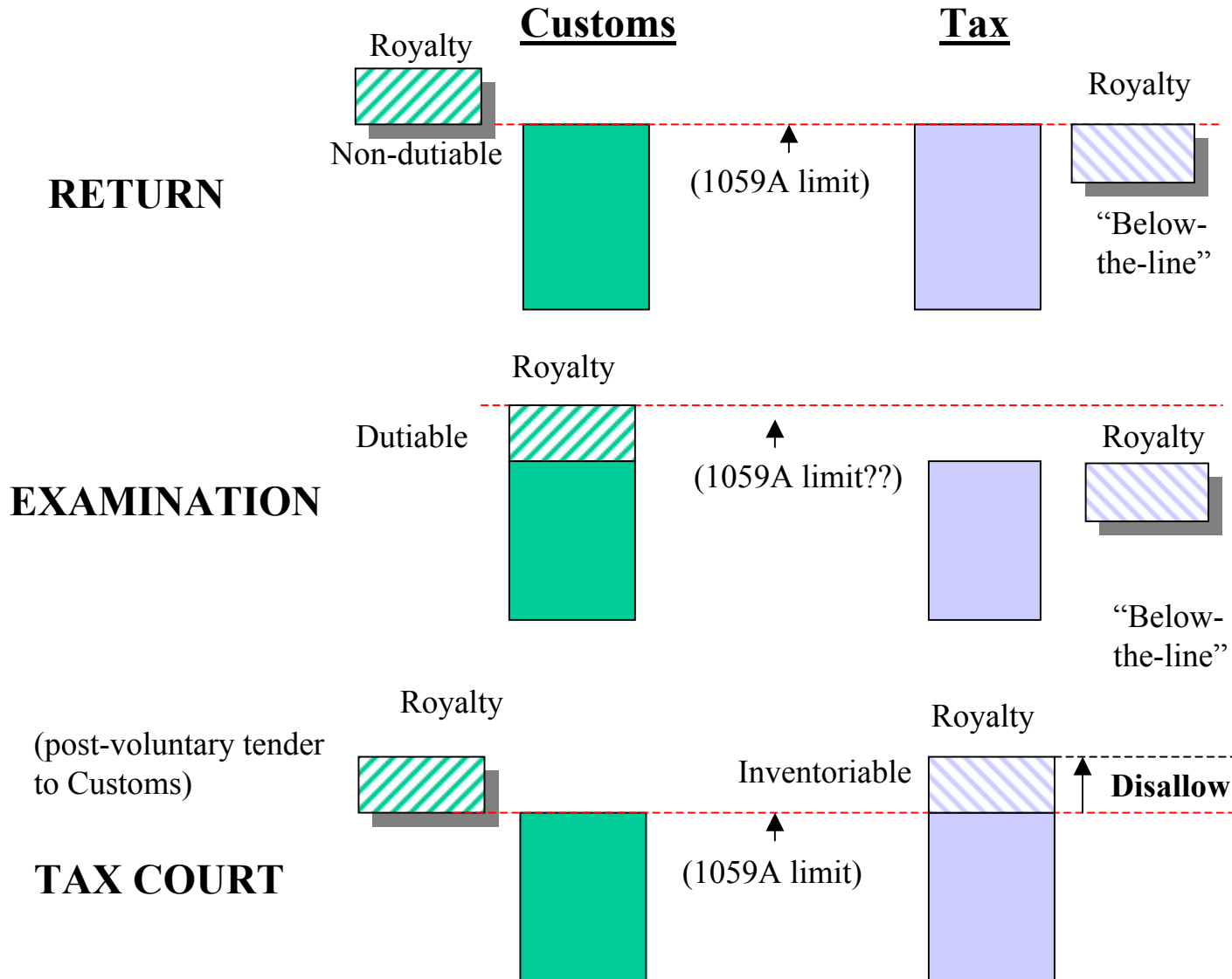
Compaq Computer (cont'd)

IRS Position: too many adjustments for inexact CUP; most significant input in “turnkey-equivalents” was standard costs of Compaq-Houston (circular analysis)

IRS determined Singapore mark-up based on U.S. contract mfgs.: mark-up of 7.5% on Singapore costs

Tax Court: T/p methodology was a valid inexact CUP, IRS determination was arbitrary and capricious

FSA 200036015: Section 1059A



FSA 199945011:

Antidumping Duties and Comparable Profits Method

<i>“No dumping”</i>	<i>Dumping, no A/D Duties</i>	<i>A/D Duties imposed</i>	<i>A/D Duties imposed</i>
<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 (Scenario One)</u>	<u>Year 3 (Scenario Two)</u>
resale price 170	resale price 150	resale price 150	resale price 170
transfer price 100	transfer price 80	transfer price 60	transfer price 80
expenses 20	expenses 20	expenses 20	expenses 20
A/D duty n/a	A/D duty n/a	A/D duty 20	A/D duty 20
net income 50	net income 50	net income 50	net income 50

For each year, assume that net income of 50 constitutes arm’s-length income under CPM analysis, independent of A/D duty considerations.

FSA 200019026: “Umbrella Marketing”

FACTS:

Foreign parent purchased U.S. corporation with existing, recognized intangibles, and successful products.

USSub required to use FP trademark in conjunction with its own sales and marketing (no royalty paid),

In subsequent year, FP trademark had become recognized, FP required a royalty payment.

FSA 200019026 (cont'd)

ISSUES:

Marketing intangible under 1968/1994 regulations?

Who owned the U.S. intangible?

USSub entitled to compensation as an assister?

Impact of U.S. registration of trade name (transfer)?

Imputed contract?

Marketing Intangibles Regulation Project

Update/revision of Treas. Reg. 1.482-4(f)(3), and related provisions

On this year's Business Plan

Transfer Pricing for Services

Regulatory Project to Update
Treas. Reg. § 1.482-2(b)(2)

Two Main Issues

- Has a service been rendered by one member of a controlled group to another member for which a charge is appropriate?
- How should the appropriate arm's length charge be determined?

Whether a Service has been Rendered

- The Benefit Test
(Treas. Reg. § 1.482-2(b)(2)(i))
- Duplicate Service
(Treas. Reg. § 1.482-2(b)(2)(ii))
- Stewardship Activities
(Treas. Reg. § 1.861-8(e)(4))

Arm's Length Charge

- Integral Services - - Arm's length charge
- Non-integral Services - - Arm's length charge deemed equal to the costs or deductions incurred with respect to such services (the "cost safe harbor")

Background of Present Rule

- Multinational companies were U.S.-based
- Support activities at cost an established practice
- Services rendered primarily by individuals
- Cost approximated value of routine services
- Ease of administration
- Lack of comparable uncontrolled transactions
- Some services viewed as unrelated to profits

Services are integral if - -

- Renderer or recipient provides same or similar services to unrelated parties as trade or business
- Providing services to related parties a principal activity of Renderer
- Renderer peculiarly capable of providing services
- Recipient receives substantial amount of services from related parties

Changes Since 1968

- Multinational activity both inbound and outbound
- Large part of economy now based on services provided for profit
- Services often involve use of technology or other kinds of valuable tangible and intangible property
- Many kinds of services may contribute to profits
- Value of services may vary significantly from the costs or deductions incurred to provide them