

# CCACheck: How it Works

A faint, stylized image of a pair of scales of justice is visible in the background of the slide, centered behind the text.

New Attorney Orientation  
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# What Is It?

- CCACheck is an add-on feature to Outlook (Counsel's email system) that implements the D.C. Circuit's decision in Tax Analysts v. IRS, 495 F.3d 676 (D.C. Cir. 2007). The court determined that emailed legal advice sent to the field was CCA pursuant to I.R.C. § 6110(i).
- Captures email that national office professionals send to Field Counsel and all IRS employees, and then sorts them based on the sender's categorization.

# CCACheck

Message Categories ✕

**Before you can send this message, you must provide the information necessary to categorize this email message for purposes of the public disclosure provisions.**

Does this message contain a discussion of, legal analysis of, or recommendations about, the Internal Revenue Code, regulations and other items of published guidance, case law, and other legal authorities; other Federal or State law as they would apply to tax administration; or policies, practices, and instructions to staff affecting tax administration?

Yes  No

Is an intended recipient of this message a member of a Field component of Counsel or the IRS?

Yes  No

The Office does not make available for public inspection CCA that involves a matter which is the subject of a civil fraud or criminal investigation, or jeopardy or termination assessment. Does this CCA arise out of a civil fraud or criminal investigation, or a jeopardy or termination assessment?

Yes  No

The Office does not make available for public inspection CCA that is subject to the work product doctrine or is otherwise privileged in its entirety. Is this message prepared in anticipation of litigation, such that the work product doctrine, as the Office has defined it, applies? Is this message limited only to strategic advice, such that it is a confidential attorney-client communication, which is also privileged? If another privilege warrants withholding the CCA in its entirety, click on "See Definitions," and follow the instructions under "Other Exemptions" before responding "yes" to this question. If the answer to any of these questions is yes, please respond "yes." For further information, click on "See Definitions."

[See Definitions](#)  Yes  No

OK Cancel

# What is CCA?

- CCA is written advice or instruction by a national office component to field employees of the IRS or Counsel that
  - Conveys a legal interpretation of a revenue provision
  - Conveys a Service or Counsel policy or position concerning a revenue provision, or
  - Conveys a legal interpretation of state, foreign, or federal law relating to the assessment or collection of tax

# CCACheck Is Triggered By Email From Qualifying Sender To Qualifying Recipient

- Qualifying senders
  - Associate Offices, HQ office of Division Counsel, HQ office of Associate/Division Counsel
- Qualifying recipients
  - Field Counsel, Field IRS personnel
    - Not triggered by email to Treasury, to DJ, to other email addresses.
    - Dialog box will ask you to distinguish between HQ IRS and Field IRS personnel.

# CCA

From: \* \* \*

Sent: Tuesday, August 26, 2008 9:39 AM

To: \* \* \*

Cc:

Subject: RMA Rev Rul

-- These were our thoughts on the agency argument. A principal/agent relationship exists between the account owner and the financial institution. Further, under general principles of agency, the relationship may be revoked unilaterally by the account owner/principal and is terminated on the death of the principal. CJS Agency § 95 (2007). This is the case notwithstanding the existence of any express or implied agreement that the agency is irrevocable, and even though revocation might constitute a breach of contract. Snyder v. Westover, 217 F.2d 928 (9th Cir. 1954); Ireland v. Wynkoop, 36 Colo. App. 205, 539 P.2d 1349 (1975). Because the account owner can terminate the arrangement at any time, the allowable discount, if any, should be limited to the potential damages for breach of contract, which would ordinarily be significantly less than the lack of control minority/marketability discounts claimed. \* \* \*

# Question 1: When Is Email Not Considered CCA?

- Email that does not provide advice or instruction by making an *explicit* statement of how the law is to be interpreted, such as:
  - Acknowledgment of receipt of request
  - Request for more information about question or more facts so that you can then answer the inquiry
  - Request to clarify question
  - Asking the field a question, or soliciting information
  - Simple agreement with incoming email

# Examples

- "Okay. I will give you our views by Monday of next week. Will that do it?"
- "Could you please send me copies of the attachments to your September 8th e-mail?"
- Simple agreement:

**From:** \*\*\*\*\*  
**Sent:** Thursday, October 08, 2009 2:57 PM  
**To:** \*\*\*\*\*  
**Subject:** RE: TEFRA Question Revisited

Right and right.

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**From:** \*\*\*\*\*  
**Sent:** Thursday, October 08, 2009 2:57 PM  
**To:** \*\*\*\*\*  
**Subject:** RE: TEFRA Question Revisited

Thanks. So, if the income is reported on the partnership return, we have to go attack it in the partnership proceeding. Right?

If he had not reported this on the partnership return, we could simply issue the stat notice for unreported income. Right?



# More Email That Is Not Considered To Be CCA

- Email seeking field input on published guidance projects
- Email transmitting changes to Service documents, i.e., a marked-up version of
  - Revenue Agent Reports
  - Deficiency Notices, FPAA
  - Coordinated Issue Paper

# Example

- **From:** \*\*\*  
**Sent:** Thursday, August 06, 2009 2:15 PM  
**To:** \*\*\*  
**Subject:** SNOD

Attached is a revised draft of the \*\*\* SNOD.

[snod.doc]

- Attorney revised the SNOD by inserting the following text:

REDACTED

# Caveat

- If the email transmitting the marked-up Service/Counsel work product includes legal analysis, or any comments inserted into the marked-up version, sets forth legal analysis in support of the changes, then the email is CCA.
  - The marked-up document (except for any comment that contains legal analysis) can be redacted in full on the basis of the deliberative process privilege.

# Example of Redacted Document Attached to Message

**From:** \*\*\*  
**Sent:** Thursday, August 06, 2009 2:15 PM  
**To:** \*\*\*  
**Subject:** SNOD

Attached is a revised draft of the \*\*\* SNOD.

[snod.doc]

## ATTACHMENT

[Redacted text block]

[Redacted text block]

**Comment [kaz 1]:** Since the First Circuit has decided Smith in our favor, these transactions are a distribution of money under section 358 (a)(1) and this should be our principal argument in these cases.

# More Email That Is Not Considered To Be CCA

- Email transmitting changes to litigation documents, i.e., a marked-up version of a brief or motion
  - Email transmitting an opinion in a case
  - Email reporting outcome of motion or other litigation matters
- Email to DOJ (on which field personnel aren't copied) on pending litigation

# Email That May or May Not Be CCA

- Matters prepared collaboratively and shared among participants in collaboration
  - Conference or task force memoranda provided solely to field participants in the conference or task force
    - If sent to any other Field recipient, it will be CCA
    - Same treatment for the development of training material among members of the training cadre
  - IMTs
    - Advice relating to the development of issues is not CCA
    - Case-specific advice is CCA

## Email That Is Not CCA

- Matters not providing an interpretation of internal revenue provisions
  - For example, GLS advice relating to labor law or procurement law

# Email That Is Not Considered To Be CCA

- Email transmitting electronic copies of written determinations (TAMs, PLRs, and CCA) to the intended recipient
  - Coordinating drafts of these documents with field is also not CCA.
  - But remember to process the written determination itself by submitting it through Documentum and sending a paper version with appropriate check sheet to LPD.



# Second Question

- Is at least one intended recipient of this message a member of a Field component of either Counsel or the IRS?
  - Only email to field components, whether on the Service or Counsel side, are CCA
  - Campuses are generally considered field components of the Service. However, keep in mind that some national program manager offices have staff in the campuses (*e.g.*, the Innocent Spouse Coordinator within the Office of the Director, Reporting Compliance), but they are not considered field for purposes of this question

## Third Question: Exclusion

- Does the CCA arise out of a civil fraud or criminal investigation, or a jeopardy or termination assessment?
  - At this time the civil fraud penalties that trigger this exclusion are 6663, 6651(f), 6700(a)(2)(A), 6709(b), 6674, and 6690
- Is the CCA part of, or reflects, background to a pre-filing agreement, closing agreement, or APA?
  - General legal discussions of the law relating to these types of agreements are not subject to the exclusion
- Does the CCA contain tax convention information (information received from, or that reflects information received from, a treaty partner)?

## Fourth Question: Withhold In Full

- Is this message prepared in anticipation of litigation, such that the work product doctrine applies?
  - You must have facts, rather than speculation, to support a reasonable anticipation of litigation if the matter does not involve either a docketed case or an issue that has been designated for litigation.
- Is this message limited only to strategic advice, such that it is a confidential attorney-client communication, which is also privileged?
- Use the [See definitions](#) link for more explanation of the criteria for work product, as well as the other privileges that can be the basis to withhold CCA in its entirety

# Some Writing Tips

- Don't embed your answer in incoming email or incorporate the email string by reference
  - CCA Check strips the incoming email from the response for processing
  - Need to ensure that your response is fully contained in the outgoing email

# Incorporation by Reference

**From:** \*\*\*  
**Sent:** Thursday, October 22, 2009 2:14 PM  
**To:** \*\*\*  
**Subject:** RE: TEFRA Penalties on Withholding Issue

We agree with your analysis in the below e-mail message: the failure to report capital gain and the related penalties would be addressed in an FPAA to the tier partner. We would add only that, without a prior FPAA to the key case entity, the Service will be bound by the partnership items of the key case entity, including the components of the tier partner's outside basis utilized in calculating the gain at the partner level.

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**From:** \*\*\*  
**Sent:** Thursday, October 22, 2009 6:48 AM  
**To:** \*\*\*  
**Subject:** RE: TEFRA Penalties on Withholding Issue

The 1446 withholding issue for the TEFRA LLC would be a partnership item and would go on the 4605-A in the remarks section. You'd use a narrative format and reference an 886-A which would explain the tax, law, argument, etc. If you are applying penalties at the TEFRA entity-level, they too would be a paragraph in the remarks section and reference an 886-A for the penalties.

If this goes unagreed and FPAAs are issued, both of these partnership items would be reflected in the FPAA.

# More Examples

**From:** \*\*\*  
**Sent:** Tuesday, September 01, 2009 4:25 PM  
**To:** \*\*\*  
**Subject:** RE: Assessment on Defaulted SND case (CCAR)

The short answer is that yes, it is legally permissible to assess less than the amount in the statutory notice of deficiency.

However, doing so without entering into a closing agreement or having some kind of signed document means the assessment is based on an IRS initiated adjustment. Special interest rules apply (section 6611(e)(3)).

REDACTED

# Processing Email CCA

- If you respond “yes, yes, no, no” to the four dialog box questions, an eWord document will appear with the text of your email.
- Fill in the UILC by clicking in field. You can leave the office symbols field empty.
- Redact the email using the eWord toolbar. You should redact the names of employees and Service/Counsel organizations in the email.
  - TP identifiers are confidential; all other redactions are privileged.
- **Save the eWord document!**

# Example

["View Checksheet"](#)

ID:	CCA-711122-08	
Office:		
UILC:	3406.00-00	

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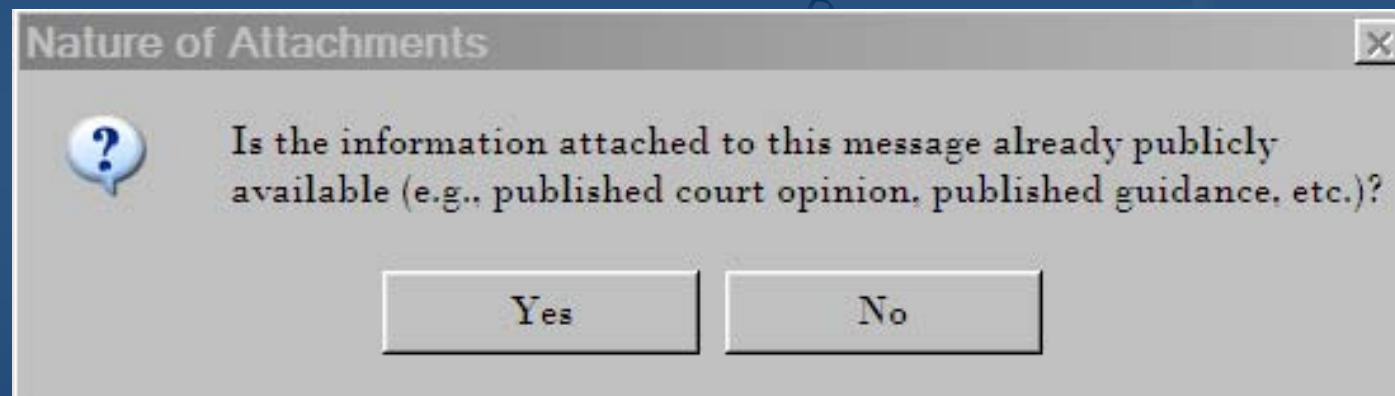
**From:**  
**Sent:** Fri 7/11/2008 12:25 AM  
**To:**  
**Cc:**  
**Subject:** tp ext and BWH

Notice 2006-12 that we discussed earlier allowed payors to delay back up withholding (BWH) and sending the notice to the payee when the payor reasonably believed that the payee was a taxpayer affected by Hurricane Katrina or Rita. Thus, the notice does not apply to this case. The notice does not require a payor to delay BWH for a payee, but merely allows the payor extra time to do so when the payor believed the payee to be an affected tp (perhaps the payee cannot be easily located, may not have a mailing address, etc.). The issue in this case is not with the payor, but with the payee, so the notice does not apply.



# Processing Email CCA With Attachment

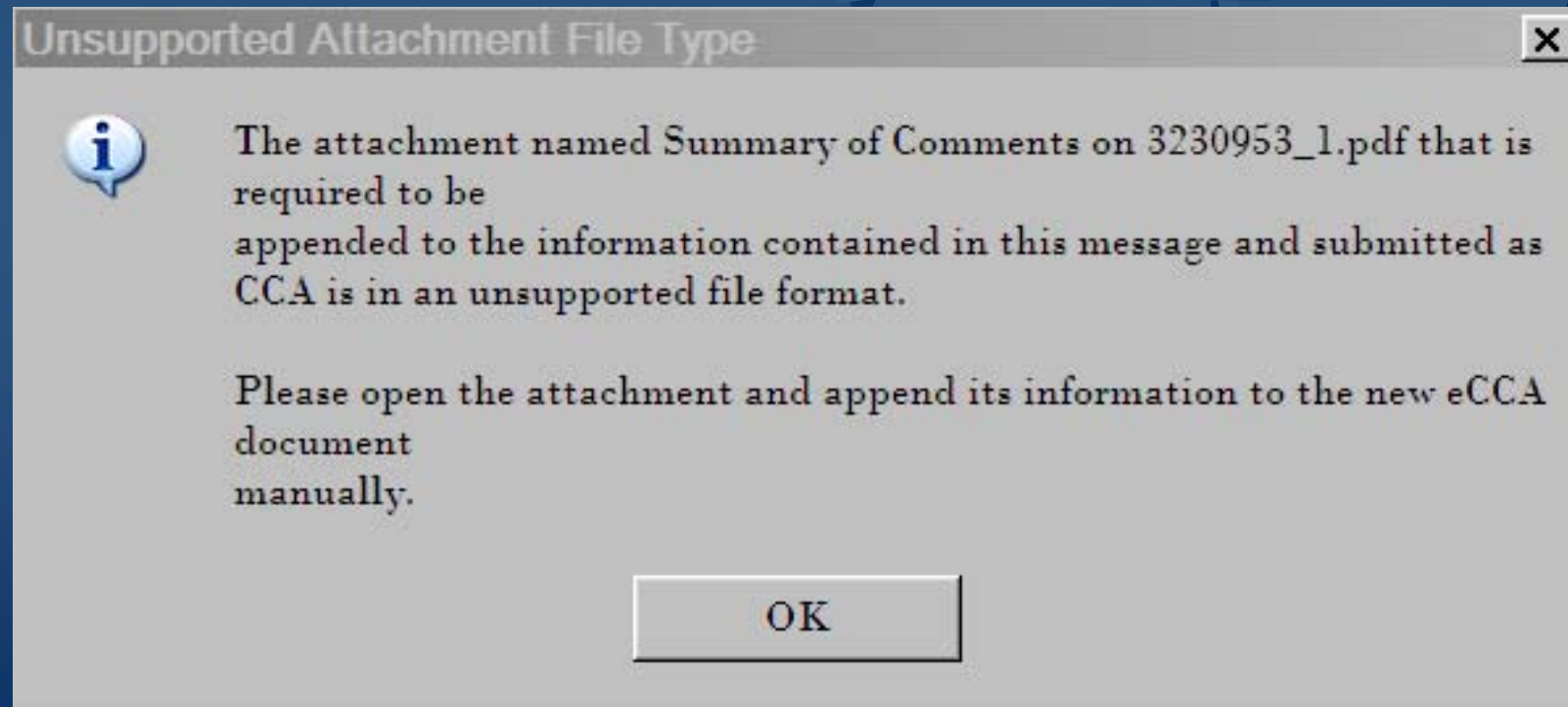
- If email attaches a document, a dialog box will ask whether document is publicly available.



- If attachment is not publicly available, it will be embedded in the eWord document and can be processed using the eWord toolbar.

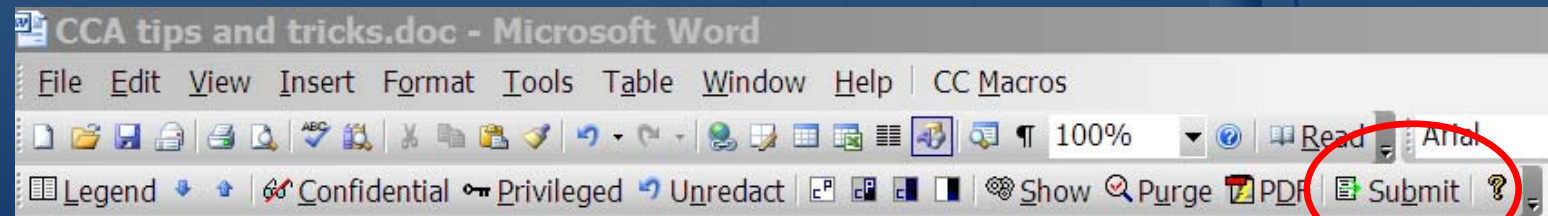
# Processing email CCA with attachment

- .PDF attachments



# Processing the Email CCA

- Click on "Submit" to send the eWord document to Documentum (the password is the same password you use to log on to Windows; you can insert any number from 0-99 for the WLI).



# Check Sheet

- Consider the email nontaxpayer-specific for purposes of CCA Check *only*, if your email response (irrespective of the incoming) does not contain the factual details concerning a specific taxpayer or group of specific taxpayers.
  - If only the taxpayer's name or tax years are included in your email response, redact them, but still consider the email to be nontaxpayer-specific.
  - Do not check the box. You will not need to include the name and mailing address of the taxpayer.

# Processing an Email When You Don't Have an eWord Document

- If you didn't save the eWord document generated when email was sent or CCACheck was not working, you will need to create an eWord document
  - Use the eCCA.dot template, not the memo macro
  - Cut and paste the names and dates from the email and delete any brackets in the form
- CCA Contacts in each Associate or Division Counsel office can assist in this process

# eCCA.dot

The screenshot displays the Microsoft Word interface. The 'View' menu item in the top ribbon is circled in red. A 'New Document' task pane is visible on the right side, with the 'On my computer...' option circled in red. The 'Templates' dialog box is open in the center, showing a grid of template icons. The 'eCCA.dot' icon is circled in red. The dialog box includes tabs for 'General', 'Legal Pleadings', 'Letters & Faxes', 'Mail Merge', 'Memos', and 'Other Documents'. The 'eWord' sub-tab is active, showing templates like 'Announcement.dot', 'CCNotice.dot', 'CCOrder.dot', 'DialogBox.XML', 'Doctypes.xml', and 'eCCA.dot'. The 'Create New' section at the bottom of the dialog has 'Document' selected. The 'Recently used templates' list on the right of the dialog includes 'eCCA.dot', 'CCNotice.dot', '2009 calendar (Basic design)', and 'FSA\_Preprinted.dot'. The page number '30' is located in the bottom right corner of the slide.

# CCACheck Problems

- Call the Hotline (622-8878) if
  - You don't get the dialog box when you send an email to a field Counsel recipient or any IRS recipient
  - You don't get an eWord document for CCA that you have categorized to be released in full or in part
    - Minimize all of your open windows first to see if the document is underneath
  - You get an error message when you enter your password into the Documentum dialog box
  - You do not get an email acknowledging submission to Documentum