

INDIANA DEPARTMENT OF REVENUE GUIDE FOR REQUESTING A POLICY DETERMINATION

Introduction

A taxpayer who wants written guidance from the Indiana Department of Revenue (DOR) in the form of an Advisory Letter or a Revenue Ruling may submit a request for a policy determination with the Tax Policy Division. This guide provides information and guidance on the policy determination process.

Table of Contents

I. Types of Policy Determinations	2
II. Information to Consult Before Submitting a Request	2
III. Where to Submit a Request for a Policy Determination	3
IV. Filing a Request for a Policy Determination – What to Include?	3
V. Your Request Was Received – What’s Next?	4
VI. Post-Determination	5

I. Types of Policy Determinations

Advisory Letters are nonbinding determinations based upon general inquiries and correspondence. These letters are advisory in nature only and merely provide technical assistance for the taxpayer who made the request. They are not considered rulings by the DOR and are not published in the Indiana Register. As such, other taxpayers, even with substantially similar factual situations, may not rely on another taxpayer's Advisory Letter. Requests for Advisory Letters may be made anonymously.

Revenue Rulings are binding determinations issued to individual taxpayers at the taxpayer's request and are based upon specific factual situations provided by the taxpayer. They are published in the Indiana Register. Because Revenue Rulings are based on a particular fact situation, which may affect the tax liability of an individual taxpayer, only the taxpayer to whom the Ruling was issued is entitled to rely on it. However, other taxpayers may rely on published Revenue Rulings for informational purposes if they have substantially similar factual situations. In other words, if a taxpayer relies on a published Revenue Ruling issued to another entity, the taxpayer is not protected should the DOR discover upon examination that the taxpayer's fact situation is different in any material respect from that situation on which the original Revenue Ruling was issued. Unlike a request for an Advisory Letter, requests for Revenue Rulings must identify the taxpayer. They may not be made anonymously.

Other types of informal advice made by the Tax Policy Division (or any other employee of the DOR), such as oral advice or advice given via e-mail, are not binding determinations. The DOR may issue an Advisory Letter via e-mail if the request was made via e-mail or the taxpayer requests the Advisory Letter be issued via e-mail.

II. Information to Consult Before Submitting a Request

Before submitting a request for a policy determination, it is important to consult the relevant statutes, regulations, and policy documents. In many cases, the issue for which you are requesting a determination is addressed in these resources. The DOR also requires you to list the relevant statutes, regulations, etc. when submitting your request.

1. Indiana's tax statutes are found in Title 6 of the Indiana Code. They can be found on the Indiana General Assembly's website at iga.in.gov/legislative/laws/2014/ic/titles/006/.
2. The DOR's regulations in the Indiana Administrative Code are found in Title 45. They can be found on the Indiana General Assembly's website at www.in.gov/legislative/iac/iac_title?iact=45.
3. The DOR's guidance in the form of Information Bulletins, Commissioner's Directives, and other policy documents that provide nontechnical assistance to the general public can be found on the "Tax Library" page of the DOR's website at www.in.gov/dor/3330.htm. For your reference:
 - a. Information Bulletins are agency statements that interpret, supplement, or implement a statute or rule and are divided between sales and income taxes.

- b. Commissioner's Directives are agency statements that interpret, supplement, or implement a statute or rule and can cover taxes other than sales and income taxes, or cover multiple tax types. They also can address administrative issues, such as filing and claims for refunds.
 - c. Departmental Notices are not considered an agency statement, as they do not express interpretations of law. These are intended to notify the public about tax enactments, tax rate changes, and other DOR information.
- 4. Most of the DOR's published Rulings and Letters of Findings can be found in the Indiana Register at www.in.gov/legislative/iac/showIRArchive.
 - 5. Indiana Tax Court decisions can be found on the Judicial Branch's website at www.in.gov/judiciary/2730.htm.

III. Where to Submit a Request for a Policy Determination

The mailing address for a request for a policy determination is:

Indiana Department of Revenue
Attn: Policy Division, MS 102
100 N. Senate Avenue, Room N248
Indianapolis, IN 46204

Alternatively, a request may be sent to taxpolicy@dor.in.gov.

IV. Filing a Request for a Policy Determination – What to Include?

A request for a policy determination must be in writing. The request must include a detailed explanation of the facts to support your specific request for a policy determination and to ensure the overall circumstances are understood. It is up to you to include the relevant facts in the request for a policy determination.

When requesting an **Advisory Letter**, an individual or entity must provide the following information in a Word document, PDF document, or email:

- 1. An affirmative statement that the individual or entity requesting the Advisory Letter “is neither under audit, nor in a protest period following an audit, nor involved in litigation before the Indiana Tax Court with regards to the substance of the matters being presented herein.” Advisory Letters are not issued if the requesting entity or individual is involved in any of the aforementioned proceedings.
- 2. A statement of all relevant and material facts. The more information DOR receives in the Advisory Letter request, the more complete and informed DOR's response will be. Additionally, failure to disclose or present all relevant and material facts may impact your degree of reliance on the guidance and conclusions contained in DOR's response and compromise the taxpayer's ability to rely on the Advisory Letter for future tax purposes.

3. Clearly pose the question(s) that you wish to have answered. In doing so, please be as specific as possible. The Tax Policy Division will not attempt to guess what a vague question is intended to ask.
4. A list of any and all statutes, regulations, case law, Letters of Findings, Revenue Rulings, and informational publications of which you are aware that are relevant to the legal question(s) posed and how such law impacts your request.

When requesting a **Revenue Ruling**, an individual or entity must provide the same information as outlined above for an Advisory Letter. In addition, the request must include the name and tax identification number of the individual or entity that the request concerns. DOR will not issue Revenue Rulings if the identity and tax identification number of the entity or individual are not disclosed. Any request made for an anonymous Revenue Ruling will be treated as a request for an Advisory Letter.

Further, should the individual or entity requesting a Revenue Ruling misrepresent, conceal, or withhold a relevant and/or material fact, that individual or entity may not rely on the Revenue Ruling to the extent that the relevant and/or material fact in question would have changed the findings or holdings of the Revenue Ruling.

The Tax Policy Division ultimately will determine whether a request will be docketed as an Advisory Letter or a Revenue Ruling. For instance, a request for a Revenue Ruling that simply asks for a list of statutes would not be docketed as such if there is no factual scenario upon which the DOR could issue a ruling. Further, if the steps outlined above are not followed, the DOR may not docket the request and may issue a less formal letter. If the request is not one of policy determination and interpretation and could be better handled by another division within the DOR, the Tax Policy Division may send the request to another division for that division's informal response, which would not be binding.

If you are an attorney, accountant, or other representative requesting a policy determination on behalf of a client, you also must submit a POA-1 form in order to authorize the DOR to speak with you on behalf of your client as its power of attorney. The POA-1 form is available on the DOR website at www.in.gov/dor/3802.htm.

V. Your Request Was Received - What's Next?

Once a request for a policy determination is received, a receipt confirmation will be sent back to the requester. Your request also will be assigned a docket number, which will be included in the confirmation letter. Please make reference to this docket number when you make further contact with the DOR regarding your request.

Your request for a policy determination will be assigned to one of the attorneys or statisticians in the Tax Policy Division. The attorney or statistician will provide a determination based on the order in which requests are received. The time in which a written determination will be issued is dependent on various factors, such as the complexity of the request and the level of review required. The attorney or statistician may contact you for additional information, but you may receive the policy determination without any further contact from the DOR after the initial confirmation letter.

VI. Post-Determination

Once an Advisory Letter or Revenue Ruling is issued, the determination is generally final. If you disagree with the findings in an Advisory Letter, you may submit a new request and clearly explain the issue. However, the DOR is not obliged to issue a new Advisory Letter if the DOR determines that the original Advisory Letter accurately states the DOR's position. If a new Advisory Letter is issued, it will supersede the prior advice. As stated above, Advisory Letters are nonbinding.

In the case of a Revenue Ruling, the DOR may modify a Revenue Ruling. However, as a general rule, the modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued. That is also the case with regards to a taxpayer whose tax liability was directly involved in the Revenue Ruling. The DOR may exercise its discretion to retroactively modify rulings in the following circumstances, which are not all inclusive:

- A. There was a misstatement or omission of material facts.
- B. The facts, as developed after the ruling, were materially different from the facts on which the DOR based its ruling.
- C. There was a change in the applicable statute, case law or regulation.
- D. The taxpayer directly involved in the ruling did not act in good faith.