



Robert W. Wood

THE TAX LAWYER

Jul. 10 2012 — 12:15 am

Can You Rely On FAQs From The IRS?

Oral advice from the IRS is not worth the paper it's not printed on. If an IRS employee tells you how to handle a tax issue or grants you an extension to submit required documents, make a written record. If you can't get the IRS to write you, write them a confirming letter.

In fact, writing a confirming letter is a good policy no matter what. Whenever you can, document your position. And if the advice is not about **you** in particular, it should at least be specific to your **situation**.

Usually that means tax regulations or IRS Revenue Rulings. Increasingly, though, the IRS gives less formal—and often more user-friendly—guidance in the form of Frequently Asked Questions. These FAQs are far easier for the IRS to issue compared with Regulations or even Revenue Rulings.

They can also be more informal and exemplary. That makes FAQs more useful in many ways than some of the more laboriously produced advice the IRS releases. All-in-all, FAQs are downright efficient.



Frequently Asked Questions About Time Travel (Photo credit: Wikipedia)

They can even facilitate ready updating. Unlike more formal IRS guidance that is tough to get out and tough to change, FAQs can be updated easily. Changing or updating them can be as simple as updating a website.

But can you **rely** on IRS FAQs? There are debates among academics and practitioners over the precise legal effect of FAQs. For example, if you are examining other tax authorities, how do FAQs stand up?

If you don't have any other guidance but you have an IRS FAQ that is directly on point, is that enough? As a practical matter, most advisers would probably say yes, that's enough. What if you have an FAQ pointing one direction but cases, rulings or other published authority going another? How do you resolve the conflict?

This is the kind of situation that calls for professional advice. In contrast, if you have no conflicting guidance and the IRS FAQ resolves your issue, I wouldn't hesitate to rely on it. For foreign account disclosures, the IRS has a helpful set of FAQs [here](#). These were updated in late June in key respects. See [FBAR Penalties: When Will IRS Let You Off With A Warning?](#)

If you are relying on an FAQ, make sure you keep a printed copy. You wouldn't want the FAQ to change and not to have proof of the version you were reviewing.

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*