

# If You Follow The IRS's Instructions You're Good, Right?

By Robert W. Wood

If the Internal Revenue Service gives you instructions on how to fill out a tax form, isn't it reasonable to think you can rely on them? It seems hard to argue otherwise. And yet the IRS makes a point of saying that these instructions *aren't* actually part of the tax law.

Like IRS publications, IRS instructions are meant to be helpful, but in the event of conflict, you can forget them. There are legions of tax cases in which well-meaning taxpayers claim that their tax position is justified by language in the form instructions or publications. Too bad, says the IRS.

A cynic might call it the ultimate Catch-22. Whenever someone claims to rely on instructions to IRS forms, the taxpayer is likely to lose. The IRS trots out a long line of cases saying that the only authoritative sources of tax law are official statutes, regulations and judicial decisions. Usually, courts reject any attempt to rely on IRS instructions, including these:

- Joe claimed a settlement payment was not subject to Social Security taxes because an IRS publication said settlement proceeds should be reported as "Other Income" on line 21 of Form 1040. That wasn't enough for Joe to win.
- Sally claimed her housekeeper was an independent contractor because an IRS publication said "individuals who furnish personal attendance, companionship, or household care services to children," and who are not employees of a placement service, "are generally treated as self-employed for all federal tax purposes." Sally lost.
- Jose said that an IRS publication — and even a revenue ruling — supported his position that a deduction for educational expenses did not have to be reduced by the amount of benefits paid by the VA. The IRS won.
- Ellen claimed her contributions to an individual retirement account were not subject to a penalty excise tax based on language in an IRS publication. It said you can contribute to an IRA if you are not an active participant "during any part of the tax year." The penalty applied anyway.
- Victor claimed he was a foreign resident despite living in the United States, citing a Treasury Department tax guide for U.S. citizens abroad. That publication suggested all he needed was a clear intention to return to his country of origin. Too bad, Victor, you're taxable.
- David argued that an IRS handbook on domestic international sales corporation rules, published after the statute had gone into effect but before the regulations had been issued, was controlling. Nope, that argument failed.
- Frankie claimed that a court order regarding custody entitled her to take a dependency exemption. The IRS instructions to Forms 501 and 504 were "less than clear and may even be misleading," but the statute required the custodial parent to sign a release. Frankie lost.

In short, taxpayers generally lose these fencing matches with the IRS about how IRS instructions should be read. This is true even if they have a credible reading of the IRS's instructions. Nevertheless, it is worth asking whether this impressive weight of authority means that taxpayers can *never* cite form instructions, as the IRS seems to claim?

As is so common with blanket statements in our Byzantine tax system, it is not true in every case. You can win, and that is important

if you are a confused but well-meaning taxpayer. In fact, a few courts have held the IRS to what it says in its publications and in the instructions it issues to its own tax forms.

This is particularly true if the IRS instructions clearly contradict the IRS's litigating position on the tax issue in question. It is hard to dispute the plain wisdom of the notion that simple words in IRS form instructions *must* be part of IRS tax law. After all, could a toy manufacturer escape liability by arguing that its instructions how to assemble a toy are not relevant and not part of the product?

The key taxpayer victory is *Wilkes v. United States*, 50 F. Supp. 2d 1281, 1287 (M.D. Fla. 1999). The case is over 15 years old, but it has apparently never actually been cited by another court on this point. And with each successive repetition, the IRS's "established principle" that tax form instructions are irrelevant appears more solid, overwhelming and uncontroverted.

Yet the reality is less one-sided, and taxpayers need to occasionally stand up for themselves. In *Wilkes*, the IRS sought to hold an estate's executor liable for unpaid estate taxes. The executor had sold the estate's shares to an Employee Stock Ownership Plan (ESOP), and believed that doing so had discharged him from liability.

The executor pointed to the instructions to IRS Form 706 as support. The form instructions stated that "if you properly make this election, part or all of the estate's tax liability ... will be assumed by an employee stock ownership plan." The IRS, however, claimed that the executor was still liable even after transferring funds to an ESOP.

The court said the IRS's position was inconsistent with the statute, the legislative history and the form instructions. They all indicated that making the ESOP election would relieve the executor of liability. The court acknowledged that the form instructions were not dispositive, but the court didn't like the IRS just saying its form instructions were irrelevant.

The court stated that "general principles of equity dictate that the IRS should not be allowed to issue instructions for completing its forms and later disavow those instructions." The court also questioned the government's cite to *Zimmerman v. Commissioner*, 71 T.C. 367 (1978). That case held that informal publications of the IRS are not authoritative. The court noted that other cases have given form instructions "more weight than Defendant's reading of *Zimmerman* would allow."

The *Wilkes* decision shows that the IRS's own instructions to its forms can be cited to support a taxpayer's position. Especially where the law is not clear, the IRS's form instructions could be particularly instructive. Of course, *Wilkes* does not mean that the IRS is bound by any statement in an informal publication.

It all depends on the facts of a particular case. But it *should* be possible to hold the IRS to its own forms and its own publications where one is reading them reasonably. After all, shouldn't the IRS be required to write reasonable instructions, just like a toy manufacturer?



**Robert W. Wood** is a tax lawyer with [www.WoodLLP.com](http://www.WoodLLP.com), and the author of "Taxation of Damage Awards & Settlement Payments" ([www.TaxInstitute.com](http://www.TaxInstitute.com)). This is not legal advice.

ROBERT WOOD  
Wood LLP