



# Private letter rulings

Federation of Tax Administrators

June 25, 2019



# Notice

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**The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.**

# Agenda

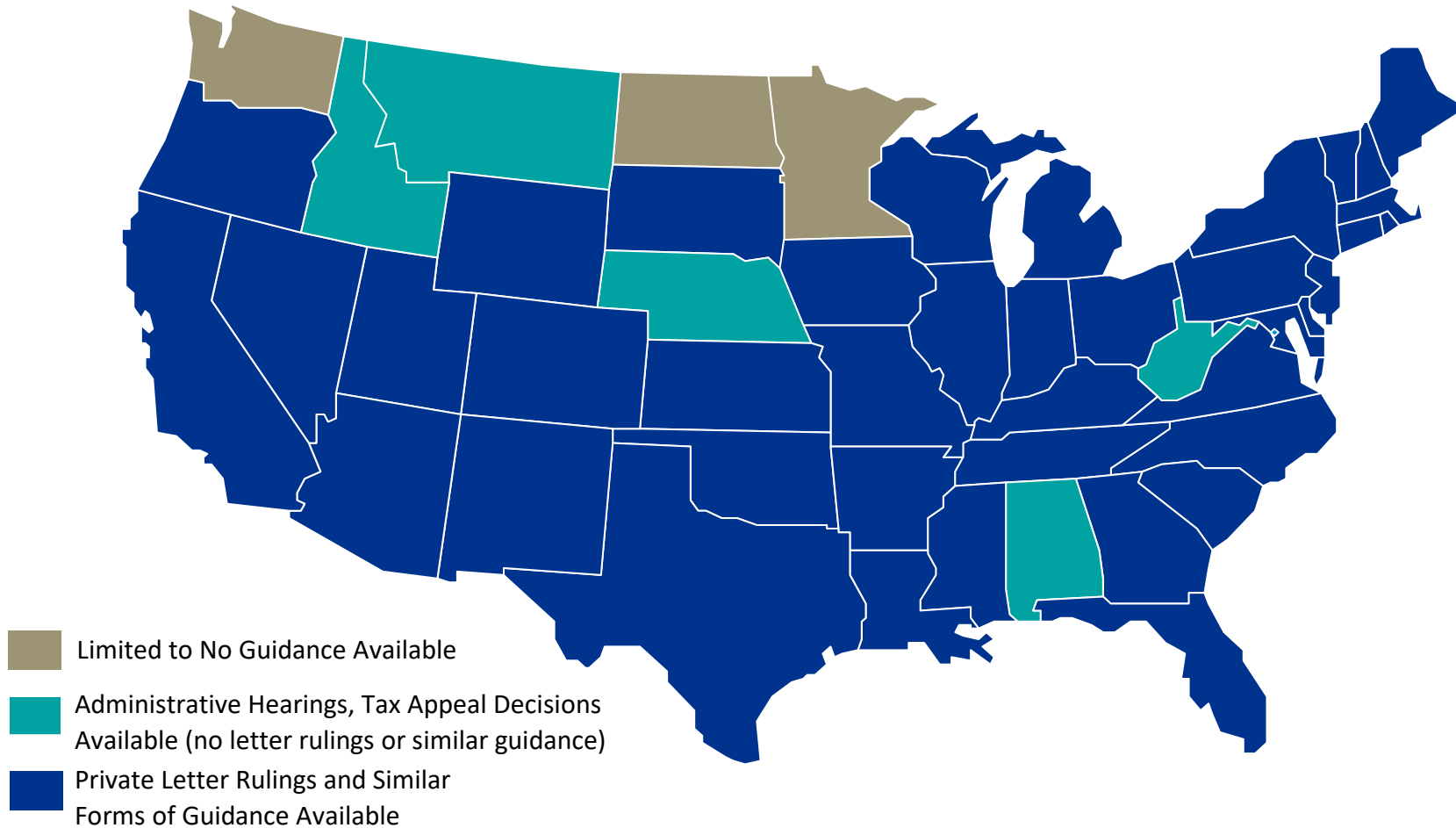
- Who issues PLRs?
- Public v. Private
- Fees
- Binding or no?
- Other guidance
- Accessibility

# Private letter rulings

**Private letter rulings, as well as other types of state guidance, are often referred to as “secret tax law”**

- Issues
  - Information given to one taxpayer may not be readily available to all taxpayers
  - May or may not be binding
  - The process to request a ruling is not always published on a state webpage and is sometimes codified in a statute or provided in a regulation or other department issued guidance
  - Names of types of guidance are different among the states which can cause confusion as to the authority of the guidance
    - Examples: Letter Ruling, Legal Opinion, Revenue Ruling, Tax Commissioner Opinion, Declaratory Ruling, Advisory Opinion, General Information Letter, Revenue Procedures, Formal Rulings, Letter of Findings
  - States may not publish or may take a long time to publish
    - New York: by law the Department is required to issue its Advisory Opinions within 90 days of the request, however, in practice it often takes much longer
    - Delays are often the result of a lack of resources with a Department of Revenue

# State guidance



Source: *COST Scorecard (December 2016)*

# Rulings private or public?

**Some states make all private letter rulings available online while others do not publish their decisions at all**

- Variances
  - Louisiana has not published a letter ruling since 2010.
  - Connecticut only published 2 rulings in 2018.
  - Massachusetts only published 3 rulings in 2018.
  - Rulings can sometimes be obtained through a freedom of information request (e.g., Maine).
  - Colorado issues a proposed “public” version of the letter ruling to the taxpayer. The taxpayer has 60 days to file an objection to any of the information being published but the Department of Revenue makes the final determination on publication.
  - Some states do not publish any letter rulings. Examples include: Delaware, the District of Columbia, Kentucky, Maine, Mississippi, South Dakota, and Wyoming.

**Generally, states will publish private letter rulings with taxpayer identifying information redacted.**

- Connecticut publishes a generalized version of the private letter ruling.

# Fees

**Generally, most states do not charge a fee when requesting a private letter ruling.**

- Colorado – statutory based fee structure (Colo. Rev. Stat. § 24-35-103.5(6))
  - First tier ruling, initial fee and base evaluation - \$500
  - Second tier ruling - \$2,500
  - Third tier ruling - \$5,000
  - Fourth tier ruling - \$7,500
  - Fifth tier ruling – highest complexity – if the department estimates the fee will exceed \$10,000, then the fee is based on the number of estimated hours times the applicable rate of \$60.00/hour
- Tennessee – the Commissioner is authorized to set a reasonable fee
  - Revenue and letter ruling fees do not exceed \$500 unless an expedited ruling is requested, in which case the fee shall not exceed \$10,000 (Tenn. Code Ann. § 67-1-109(f))

# Rulings binding?

## Is the private letter ruling binding on the state?

- Generally, a private letter ruling is only binding with regard to the taxpayer that requests the letter ruling and cannot be relied on for precedential value.
- Variances
  - Arkansas: legal opinions are only binding if the person or entity requesting the opinion is identified
  - Connecticut: letter rulings have precedential value and may be relied on by all persons for subsequent like transactions
  - District of Columbia: rulings sunset 10 years from the date of the ruling
  - Kentucky: private letter rulings are not a final ruling and cannot be appealed
  - Maine: advisory rulings are non-binding
  - Pennsylvania: letter ruling is only valid for 5 years



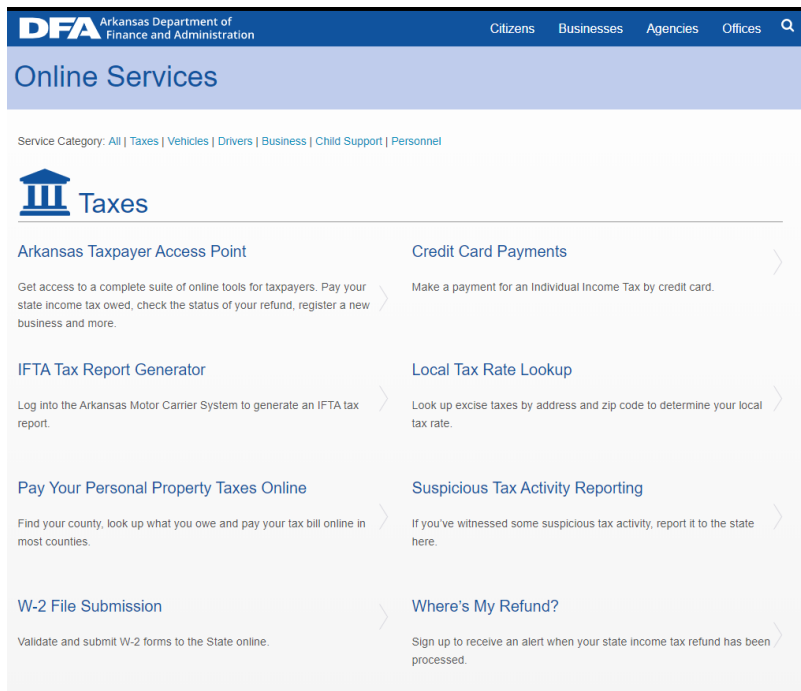
# Other state guidance/publications

1. Administrative Hearing Decisions
2. Chief Counsel Rulings
3. Declaratory Rulings
4. General Information Letters
5. Informational Notices
6. Legislative Bulletins
7. Policy Bulletins
8. Revenue Notices
9. Revenue Rulings
10. Tax Appeals Decisions
11. Technical Advice Memoranda

# Online accessibility

**Each state varies on how easy it is to locate private letter rulings, or other forms of guidance, on their websites.**

- Common problem - navigating the webpage
  - For example, the Arkansas Department of Finance's tax homepage contains no link to the Legal Opinions that it publishes online.



# Online accessibility

- Searching the term “Legal Opinion” on the Department of Finance’s website also produces no results. In order to locate the Legal Opinions, a third-party search is required.

The screenshot shows a Google search interface. The search bar contains the text "arkansas private letter ruling". Below the search bar, the results show "About 11,800,000 results (0.59 seconds)". The first result is titled "Search Revenue Legal Counsel Opinions :: Arkansas Department of ..." with a URL "https://www.ark.org/dfa-act896/index.php/search/opinion/". Below the URL, it says "Please note that Revenue Legal Counsel Opinions are subject to the provisions of Arkansas Gross Receipts Tax Rule GR-75, which provides as follows: ...". To the right of the search results, there is a blue header for the "DFA Arkansas Department of Finance and Administration". Below the header, there are two buttons: "Legal Opinions" and "Hearing Decisions & Revisions". Below these buttons, there is a link "Revenue Legal Counsel Opinions Search".

- Once you access the correct webpage, the state does allow a user to search by opinion number, by keyword, and by recently released opinions.

## Retrieve Revenue Legal Counsel Opinions

By Opinion Number

Date Released

Search

## Full Text Search

Enter Keywords

apportionment

Search

- Capitalization DOES NOT matter when searching.
- Use and/or operators in your searches (ex. taxes and taxation).
- Use the minus sign (-) in your searches to exclude a term or phrase (ex. taxes -lottery).
- Using quotes will search for the entire phrase instead of each word in the phrase. (ex. "2002-002" or "question of fact")

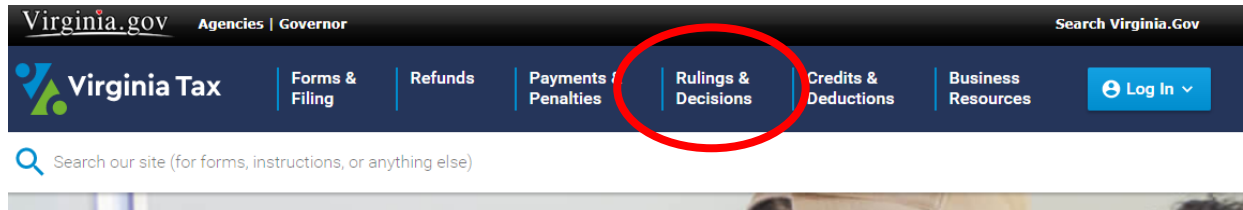
# Online accessibility

- The Kansas Department of Revenue website is easier to navigate, though finding the private letter rulings does require a little bit of effort. Once the policy library is located, the user will find a very comprehensive and easy to search database.



# Online accessibility

- The Virginia Tax homepage points users directly to its rulings where the library can be easily searched.

A screenshot of the search filters section. It contains several input fields and dropdown menus. At the top, there are four labels: "With ALL of the words", "With ANY of the words", "Date Issued After", and "Date Issued Before". Below each label is an empty text input field. Below these are three dropdown menus labeled "Document Type", "Tax Type", and "Topic". Each dropdown menu currently shows "- Any -" with a downward arrow. At the bottom left of the filter section is a blue "Search" button.

# Maryland

Although the Maryland legislature passed a law in 2016 requiring a private letter ruling process, the Comptroller has been denied funding to implement the system, until this year.

- Maryland House Bill 100 was enacted into Chapter 565 of the Acts of 2019 on May 13, 2019 to provide the Comptroller with the funding necessary to implement a private letter ruling system.

32	HOUSE BILL 100		
1	General Fund Appropriation .....	5,757,968	
2			
3	BUREAU OF REVENUE ESTIMATES		
4	E00A03.01 Estimating of Revenues		
5	General Fund Appropriation .....	1,417,361	
6			
7	REVENUE ADMINISTRATION DIVISION		
8	E00A04.01 Revenue Administration		
9	General Fund Appropriation, provided that		
10	<u>\$255,946 of this appropriation made for the</u>		
11	<u>purpose of administration may not be</u>		
12	<u>expended for that purpose but instead may</u>		
13	<u>be used only for the purpose of</u>		
14	<u>implementing a private letter ruling</u>		
15	<u>process. Funds not expended for this</u>		
16	<u>restricted purpose may not be transferred</u>		
17	<u>by budget amendment or otherwise to any</u>		
18	<u>other purpose and shall revert to the</u>		
19	<u>General Fund</u> .....	30,313,715	
20	Special Fund Appropriation .....	5,088,469	35,402,184
21			

# Minnesota

## The Minnesota Department of Revenue opposes a private letter ruling program.

- Arguments against
  - Would take away from the Department's broad-based services and education programs
  - Letter rulings provide a narrow application of the law because they are only binding on one particular, sophisticated taxpayer
  - Costly to the taxpayer and the Department
- Survey – The Minnesota Center for Fiscal Excellence reported results in December 2016 from a survey it conducted on the condition of Minnesota's state tax administration. These are the three main areas of concern:
  - **Lack of Rulemaking** – taxpayers have to rely on revenue notices which aren't published frequently and aren't binding
  - **Knowledge Base/Consistency within the Department** – auditors often do not understand statutory language, misapply that language, and often misinterpret the Department's own guidance
  - **General Taxpayer Communication** – staff often are unwilling to go beyond recitation of "fact sheets"

# Minnesota

- Recent Legislation
  - 2015-2016: House File 2876/Senate File 2906 – never made it out of committee
  - 2017-2018: House File 1694/Senate File 1503 – never made it out of committee
  - 2019-2020: House File 1663/Senate File 1537 – in committee since 2/25/2019

*Sources: Practitioners Corner: Taxpayers Dancing in the Dark, Minnesota Center for Fiscal Excellence, Chris Martin and Emily Miller  
Practitioner Perspectives on the State of Minnesota's Tax Administration, Minnesota Center for Fiscal Excellence, Issue Brief  
No. 0015, December 2016*



# Benefits of private letter rulings

Private letter ruling programs can provide taxpayers and tax advisors with many benefits:

- May help to avert tax litigation
- Assists low to lower-income taxpayers with guidance outside of hiring a tax professional
- Provides clarity with respect to statutes/regulations in place



# Questions ?



# Thank you



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