

## **MEMORANDUM OF LAW: CERTIFICATION OF RECORDS BY IRS**

This memorandum of law documents the requirements for certifying records requested by the public from the Internal Revenue Service. It was prepared to clarify the rights and responsibilities of both the requesters of government information and the civil servants who are responding to such requests under both the Privacy Act and the Freedom of Information Act.

1. Certification of records is covered in Internal Revenue Manual section 11.3.6. This section may be viewed on the IRS website at:

<http://www.irs.gov/irm/part11/ch03s06.html>

2. IRM section 11.3.6.2 (12-31-2001) establishes that any member of the public may, under the Privacy Act or Freedom of Information Act, request certification of ANY record maintained by the Internal Revenue Service, whether it be submitted by the requester or generated by the “service” itself in the course of its normal operations:

*“Any member of the public may request certification of a document. Requests for certification should be sent to the office which has custody of the records, i.e., Headquarters, area, territory or campus.”*

3. IRS Form 2866, Certificate of Official Record, is used to certify a document that has been requested. Likewise, IRS Form 3050 is used to certify the nonexistence of the requested record.
4. There is no legal basis whatsoever to justify misguided statements by the “service” of the following kind, in response to requests for certification:

*“Please be advised that a Form 3050, Lack of Record, is applicable only to forms required to be filed by or on behalf of the taxpayer. Therefore, a Form 3050 is not appropriate for records generated by the Service.”*

We demand legal authorities from the responder justifying the view above if he/she intends to assert it. In accordance with IRM 4.10.7.2.9.8, any authorities cited can ONLY take the form of either a statute and an implementing regulation and the service may not cite cases below the Supreme Court as its authority for more than the “taxpayer” who litigated the specific case.

5. The purpose of certifying records is for their use as evidence in civil or criminal litigation. It is a violation of the code of Ethics for Federal Employees, Executive Order 12731 and 5 CFR 2635.101, for employees of the “service” to abuse their position to protect wrongdoers within their organization by resisting efforts to generate evidence that might document such violations in a court of law.
6. Refusal of the IRS to certify requested records makes it more difficult to get these requested records admitted into evidence in litigation against specific IRS employees who are involved in wrongdoing. Consequently, any effort by the service to refuse to certify documents:
  - 6.1. Amounts to misprison of felony in violation of 18 U.S.C. §4.
  - 6.2. Makes the responder at the IRS who refuses to certify the records requested into an “accessory after the fact” in violation of 18 U.S.C. §3
  - 6.3. Makes it more difficult for the requester to defend his Constitutional rights or to prosecute deprivations thereof by revenue officers employed by the IRS, in violation of 42 U.S.C. §1983.

7. Where agency actions affect the Constitutional rights of “individuals”, the IRS is obligated by law to follow its own internal procedures, which includes the Internal Revenue Manual (IRM). See *Morton v. Ruiz*, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974). Below is an excerpt from the West Law Publication entitled *Tax Procedure and Tax Fraud in a Nutshell*, Patricia T. Morgan, 1999, ISBN 0-314-06586-5, p. 24 confirming these conclusions:

*“While legislative and interpretive regulations are binding authority for both the Service and taxpayers, the Service will not always be bound by its procedural rules. The Internal Revenue Manual is a lengthy volume of procedures prescribed by the IRS as procedural regulations to be followed by IRS personnel. **Generally, procedural rules that affect individual’s rights will be binding on an agency, even if the rules are stricter than the law otherwise requires. Morton v. Ruiz (S.Ct.1974).**”*

Since IRM 11.3.6 requires you to certify the requested records, and since the ONLY reason for certifying them is for use in protecting my Constitutional rights as an individual during civil litigation against specific employees of the IRS, then you are bound to obey this internal procedure.

8. I quote from *Morton v. Ruiz*, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974) for emphasis on the points I am making here about your obligation to follow your own internal procedure in this case, emphasizing once again that not doing so adversely affects my rights by making me unable to defend them in a court of law due to lack of evidence:

*“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required. Service v. Dulles, [354 U.S. 363, 388](#) (1957); Vitarelli v. Seaton, [359 U.S. 535, 539](#) -540 (1959). The BIA, by its Manual, has declared that all directives that “inform the public of privileges and benefits available” and of “eligibility requirements” are among those to be published. The requirement that, in order to receive general assistance, an Indian must reside directly “on” a reservation is clearly an important substantive policy that fits within this class of directives. Before the BIA may extinguish the entitlement of these otherwise eligible beneficiaries, it must comply, at a minimum, with its own internal procedures.”*  
 [Morton v. Ruiz, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974)]

9. Under the Administrative Procedures Act, 5 U.S.C. §556(d), the IRS as the moving party asserting that it does not need to certify records, has the burden of demonstrating a statute, implementing regulations, and a section from its own Internal Procedures found in the Internal Revenue manual, authorizing it to take such an action that adversely affects my rights, or the protection of them within a court of law. If you disagree with the findings of this Memorandum of Law, please provide legal authorities from the U.S. Code and the corresponding implementing regulations published in the federal register which authorize you to take a contrary position. I have provided a table below to help you comply with the requirements of section 556(d) of the Administrative Procedures Act above:

<p><i>U.S. Code section that justifies your denial and corresponding undermining of the defense of my Constitutional Rights</i></p>	
<p><i>Implementing regulations from Code of Federal Regulations (CFR) that justify your position</i></p>	
<p><i>Internal Revenue Manual (IRM) section that justifies denial of certification</i></p>	

