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## What's in a Name?

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by Mike McIntyre

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I recently argued in this space that the Internal Revenue Service should publish the advance determination rulings (ADRs) that it intends to enter into with multinational companies to establish the legal framework for setting transfer prices. (See 2 TAX NOTES INT'L 1127 (November 1990).) I contended, *inter alia*, that publication of the rulings was good policy and was also required under the Freedom of Information (FOI) rules. Court decisions have made crystal clear that “rulings,” including private letter rulings, must be made available to the public.

In a draft of my column, I had made the tongue-in-cheek suggestion that the Service might want to take the word “ruling” out of the name of its proposed system. Some judge, I wrote in my draft, might be foolish enough to give legal significance to the name change. I edited out the name-change crack, concluding that the joke was weak and might give needless offense.

Imagine my surprise to learn that the Service's office of NewSpeak has actually adopted the name-change ploy. What it was calling an ADR just a few weeks ago is now being calling an “advance pricing agreement” (APA). (See p. 15 of this issue of TNI.) I suppose something can be said for matching the name with the legal theory — the Service claims that the renamed APAs are not subject to disclosure because they are part of a “closing agreement” between the taxpayer and the Service. The courts have held that genuine closing agreements are part of a taxpayer's tax return and are thus exempt from disclosure under the FOI rules.

I would doubt that the name change is going to be effective. It may even be counter-productive — I am told that most judges do not appreciate being taken for fools. In any event, the new name has its own problems. What prevents the rulings from being genuine closing agreements is that they determine the legal [\*30] framework for deciding how transfer prices are to be set in future years. To conform the name with the Service's legal theory, the word “advance” also must go. Anyone for current pricing agreements (CPAs)?

Abraham Lincoln is reported to have asked: "How many legs does a cow have if you call a tail a leg?" The Service apparently would answer "five." Lincoln's answer was "four," on the theory that calling a tail a leg doesn't make it a leg. When the Service ends up in court defending its secret "ruling" system, it must hope that it gets a judge who disagrees with Honest Abe's theory of language.