

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

EMPLOYEE PLANS

Rev. Proc. 2006-4, page 132.

Rulings and information letters; issuance procedures. Revised procedures are provided for furnishing ruling letters, information letters, etc., on matters related to sections of the Code currently under the jurisdiction of the Office of the Division Commissioner, Tax Exempt and Government Entities. Rev. Proc. 2005-4 superseded.

Rev. Proc. 2006-5, page 174.

Technical advice. Revised procedures are provided for furnishing technical advice to area managers and appeals offices by the Office of the Division Commissioner, Tax Exempt and Government Entities, regarding issues in the employee plans area (including actuarial matters) and in the exempt organizations area. Rev. Proc. 2005-5 superseded.

Rev. Proc. 2006-6, page 204.

Employee plans determination letters. Revised procedures are provided for issuing determination letters on the qualified status of employee plans under sections 401(a), 403(a), 409, and 4975 of the Code. Rev. Proc. 2005-6 superseded.

Rev. Proc. 2006-8, page 245.

User fees for employee plans and exempt organizations. Up-to-date guidance for complying with the user fee program of the Service as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Office of the Division Commissioner, Tax Exempt and Government Entities, is provided. Rev. Proc. 2005-8 superseded.

EXEMPT ORGANIZATIONS

Rev. Proc. 2006-4, page 132.

Rulings and information letters; issuance procedures. Revised procedures are provided for furnishing ruling letters, information letters, etc., on matters related to sections of the Code currently under the jurisdiction of the Office of the Division Commissioner, Tax Exempt and Government Entities. Rev. Proc. 2005-4 superseded.

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Technical advice. Revised procedures are provided for furnishing technical advice to area managers and appeals offices by the Office of the Division Commissioner, Tax Exempt and Government Entities, regarding issues in the employee plans area (including actuarial matters) and in the exempt organizations area. Rev. Proc. 2005-5 superseded.

Rev. Proc. 2006-8, page 245.

User fees for employee plans and exempt organizations. Up-to-date guidance for complying with the user fee program of the Service as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Office of the Division Commissioner, Tax Exempt and Government Entities, is provided. Rev. Proc. 2005-8 superseded.

Announcement 2006-1, page 260.

This announcement is a cumulative listing of names of organizations that are challenging their revocations under section 7428 of the Code.

(Continued on the next page)

Cumulative List of Declaratory Judgment Proceedings Under Section 7428 for 2005 begins on page 260.
Finding Lists begin on page ii.



ADMINISTRATIVE

Rev. Proc. 2006–1, page 1.

Letter rulings, information letters and determination letters.

This procedure contains revised procedures for letter rulings and information letters issued by the Associate Chief Counsel (Corporate), Associate Chief Counsel (Financial Institutions and Products), Associate Chief Counsel (Income Tax and Accounting), Associate Chief Counsel (International), Associate Chief Counsel (Passthroughs and Special Industries), Associate Chief Counsel (Procedure and Administration), and Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). This procedure also contains revised procedures for determination letters issued by the Large and Mid-Size Business Division, Small Business/Self-Employed Division, Wage and Investment Division, and Tax Exempt and Government Entities Division. Rev. Procs. 2005–1 and 2005–68 superseded. Section 10 of Rev. Proc. 2005–12 modified and superseded.

Rev. Proc. 2006–2, page 89.

Technical advice and technical expedited advice.

This procedure explains when and how the Associate Chief Counsel (Corporate), Associate Chief Counsel (Financial Institutions and Products), Associate Chief Counsel (Income Tax and Accounting), Associate Chief Counsel (International), Associate Chief Counsel (Passthroughs and Special Industries), Associate Chief Counsel (Procedure and Administration), and Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) issue technical advice memoranda (TAMs) and technical expedited advice memoranda (TEAMs) to a director or an appeals area director. It also explains the rights a taxpayer has when a field office requests technical advice or technical expedited advice regarding a tax matter. Rev. Proc 2005–2 superseded.

Rev. Proc. 2006–3, page 122.

Areas in which rulings will not be issued (domestic areas).

This procedure provides a revised list of those provisions of the Code under the jurisdiction of the Associates Chief Counsel (Corporate, Financial Institutions and Products, Income Tax and Accounting, Passthroughs and Special Industries, and Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) relating to matters on which the Service will not issue rulings or determination letters. Rev. Procs. 2005–3, 2005–61, and 2005–68 superseded.

Rev. Proc. 2006–7, page 242.

Areas in which rulings will not be issued; Associate Chief Counsel (International).

This procedure revises the list of those provisions of the Code under the jurisdiction of the Associate Chief Counsel (International) relating to matters where the Service will not issue rulings or determination letters. Rev. Proc. 2005–7 superseded.

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applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2006-1

TABLE OF CONTENTS

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?	5
.01 Description of terms used in this revenue procedure.	5
.02 Updated annually.	6
SECTION 2. WHAT IS THE FORM IN WHICH THE SERVICE PROVIDES ADVICE TO TAXPAYERS?	6
.01 Letter ruling	6
.02 Closing agreement.	6
.03 Determination letter.	7
.04 Information letter.	7
.05 Oral Advice	8
(1) No oral rulings and no written rulings in response to oral requests.	8
(2) Discussion possible on substantive issues.	8
SECTION 3. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN ADVICE UNDER THIS PROCEDURE?	8
.01 Issues under the jurisdiction of the Associate Chief Counsel (Corporate)	8
.02 Issues under the jurisdiction of the Associate Chief Counsel (Financial Institutions and Products)	8
.03 Issues under the jurisdiction of the Associate Chief Counsel (Income Tax and Accounting)	9
.04 Issues under the jurisdiction of the Associate Chief Counsel (International)	9
.05 Issues under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries)	9
.06 Issues under the jurisdiction of the Associate Chief Counsel (Procedure and Administration)	9
.07 Issues under the jurisdiction of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)	9
SECTION 4. ON WHAT ISSUES MUST WRITTEN ADVICE BE REQUESTED UNDER DIFFERENT PROCEDURES?	9
.01 Alcohol, tobacco, and firearms taxes	9
.02 Employee plans and exempt organizations	9
SECTION 5. UNDER WHAT CIRCUMSTANCES DO THE ASSOCIATE OFFICES ISSUE LETTER RULINGS?	10
.01 In income and gift tax matters.	10
.02 Special relief for late S corporation and related elections	10
.03 A § 301.9100 request for extension of time for making an election or for other relief.	10
.04 Determinations under § 999(d) of the Internal Revenue Code	11
.05 In matters involving § 367	11
.06 In estate tax matters.	11
.07 In matters involving additional estate tax under § 2032A(c)	12
.08 In matters involving qualified domestic trusts under § 2056A	12
.09 In generation-skipping transfer tax matters.	12
.10 In employment and excise tax matters.	12
.11 In administrative provisions matters.	12
.12 In Indian tribal government matters	12
.13 On constructive sales price under § 4216(b) or § 4218(c)	13
.14 May be issued before the issuance of a regulation or other published guidance	13
SECTION 6. UNDER WHAT CIRCUMSTANCES DOES THE SERVICE NOT ISSUE LETTER RULINGS OR DETERMINATION LETTERS?	13
.01 Ordinarily not if the request involves an issue under examination, or consideration, or in litigation	13
.02 Ordinarily not in certain areas because of factual nature of the problem	14
.03 Ordinarily not on part of an integrated transaction	14
.04 Ordinarily not on which of two entities is a common law employer	14

.05 Generally not to business associations or groups	14
.06 Generally not where the request does not address the tax status, liability, or reporting obligations of the requester	14
.07 Generally not to foreign governments	14
.08 Ordinarily not on federal tax consequences of proposed legislation	14
.09 Not before issuance of a regulation or other published guidance	15
.10 Not on frivolous issues	15
.11 No “comfort” letter rulings	15
.12 Not on alternative plans or hypothetical situations	15
.13 Not on property conversion after return filed	16
.14 Circumstances under which determination letters are not issued by a Director	16

SECTION 7. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING LETTER RULINGS AND DETERMINATION LETTERS?

.01 Certain information required in all requests	16
(1) Complete statement of facts and other information	16
(2) Copies of all contracts, wills, deeds, agreements, instruments, other documents, and foreign laws	17
(3) Analysis of material facts	17
(4) Statement regarding whether same issue is in an earlier return	17
(5) Statement regarding whether same or similar issue was previously ruled on or requested, or is currently pending	18
(6) Statement regarding interpretation of a substantive provision of an income or estate tax treaty	18
(7) Letter from Bureau of Indian Affairs relating to Indian tribal government	18
(8) Statement of supporting authorities	19
(9) Statement of contrary authorities.	19
(10) Statement identifying pending legislation	19
(11) Statement identifying information to be deleted from copy of letter ruling or determination letter for public inspection	19
(12) Signature by taxpayer or authorized representative	20
(13) Authorized representatives	20
(14) Power of attorney and declaration of representative	21
(15) Penalties of perjury statement	21
(16) Number of copies of request to be submitted	22
(17) Sample format for a letter ruling request	22
(18) Checklist for letter ruling requests	22
.02 Additional procedural information required with request	23
(1) To request separate letter rulings for multiple issues in a single situation	23
(2) Power of attorney used to indicate recipient of a copy or copies of a letter ruling or a determination letter	23
(3) To request a particular conclusion on a proposed transaction	23
(4) To request expedited handling	24
(5) Taxpayer requests to receive any document related to the letter ruling request by facsimile transmission (fax)	25
(6) To request a conference	25
.03 Address to send the request	25
.04 Pending letter ruling requests	26
.05 When to attach letter ruling to return	27
.06 How to check on status of request	27
.07 Request may be withdrawn or Associate office may decline to issue letter ruling	27

SECTION 8. HOW DO THE ASSOCIATE OFFICES HANDLE LETTER RULING REQUESTS?

.01 Docket, Records, and User Fee Branch receives, initially controls and refers the request to the appropriate Associate office	27
.02 Branch representative of the Associate office contacts taxpayer within 21 days	28
.03 Determines if transaction can be modified to obtain favorable letter ruling	28
.04 Is not bound by informal opinion expressed	28
.05 Additional information	29
(1) Additional information must be submitted within 21 days	29

(2) Extension of reply period if justified and approved	29
(3) Letter ruling request closed if the taxpayer does not submit additional information	29
(4) Penalties of perjury statement	29
(5) Faxing request and additional information	29
(6) Address to send additional information	30
(7) Identifying information	30
(8) Number of copies	30
.06 Near the completion of the ruling process, advises the taxpayer of conclusions and, if the Associate office will rule adversely, offers the taxpayer the opportunity to withdraw the letter ruling request	30
.07 May request draft of proposed letter ruling near the completion of the ruling process.....	31
.08 Issues separate letter rulings for substantially identical letter rulings and generally issues a single letter ruling for related § 301.9100 letter	31
.09 Sends a copy of the letter ruling to appropriate Service official	31

SECTION 9. WHAT ARE THE SPECIFIC AND ADDITIONAL PROCEDURES FOR A REQUEST FOR A CHANGE IN ACCOUNTING METHOD FROM THE ASSOCIATE OFFICES? 31

.01 Automatic and advance consent change in accounting method requests.....	31
(1) Automatic change in accounting method	31
(2) Advance consent change in accounting method	32
.02 Ordinarily only one change in accounting method on a Form 3115 and a separate Form 3115 for each taxpayer and for each separate and distinct trade or business	32
.03 Information required with a Form 3115.....	32
(1) Facts and other information requested on Form 3115 and in applicable revenue procedures	32
(2) Statement of contrary authorities	33
(3) Copies of all contracts, agreements, and other documents	33
(4) Analysis of material facts	33
(5) Information regarding whether same issue is in an earlier return.....	33
(6) Statement regarding prior requests for a change in accounting method and other pending requests	33
(7) Statement identifying pending legislation	34
(8) Authorized representatives	34
(9) Power of attorney and declaration of representative	34
(10) Penalties of perjury statement	34
.04 Additional procedural information required in certain circumstances	35
(1) Recipients of original and copy of correspondence	35
(2) To request expedited handling	35
(3) To receive the change in accounting method letter ruling or any other correspondence related to a Form 3115 by facsimile transmission (fax)	35
(4) To request a conference	35
.05 Associate office address for Forms 3115.....	35
.06 A Form 3115 must not be submitted by fax	37
.07 Form 3115 controlled and referred to the appropriate Associate office.....	37
.08 Additional information	37
(1) Incomplete Form 3115	37
(2) Request for extension of reply period	37
(3) Penalties of perjury statement	38
(4) Identifying information	38
(5) Faxing information request and additional information.....	38
(6) Address to send additional information.....	38
(7) If taxpayer does not timely submit additional information	39
.09 Circumstances in which the taxpayer must notify the Associate office	39
.10 Determines if proposed accounting method can be modified to obtain favorable letter ruling	40
.11 Near the completion of processing the Form 3115, advises the taxpayer if the Associate office will rule adversely and offers the taxpayer the opportunity to withdraw Form 3115	40
.12 Advance consent Form 3115 may be withdrawn or Associate office may decline to issue a change in accounting method letter ruling.....	40
.13 How to check status of a pending Form 3115.....	40
.14 Is not bound by informal opinion expressed.....	40

.15 Single letter ruling issued to a taxpayer or consolidated group for qualifying identical change in accounting method.	41
.16 Letter ruling ordinarily not issued for one of two or more interrelated items or submethods	41
.17 Consent Agreement	41
.18 A copy of the change in accounting method letter ruling is sent to appropriate Service official	41
.19 Consent to change an accounting method may be relied on subject to limitations	41
.20 Change in accounting method letter ruling will not apply to another taxpayer	41
.21 Associate office discretion to permit requested change in accounting method	41
.22 List of automatic change in accounting method request procedures	42
.23 Other sections of this revenue procedure that are applicable to a Form 3115.	44
SECTION 10. HOW ARE CONFERENCES FOR LETTER RULINGS SCHEDULED?	46
.01 Schedules a conference if requested by taxpayer.	46
.02 Permits taxpayer one conference of right	46
.03 Disallows verbatim recording of conferences.	46
.04 Makes tentative recommendations on substantive issues	46
.05 May offer additional conferences	46
.06 Requires written confirmation of information presented at conference	47
.07 May schedule a pre-submission conference	47
.08 May schedule a conference to be held by telephone	48
SECTION 11. WHAT EFFECT WILL A LETTER RULING HAVE?	48
.01 May be relied on subject to limitations	48
.02 Will not apply to another taxpayer	48
.03 Will be used by a field office in examining the taxpayer's return	48
.04 May be revoked or modified if found to be in error or there has been a change in law	49
.05 Letter ruling revoked or modified based on material change in facts applied retroactively.	49
.06 Not otherwise generally revoked or modified retroactively.	50
.07 Retroactive effect of revocation or modification applied to a particular transaction.	50
.08 Retroactive effect of revocation or modification applied to a continuing action or series of actions.	50
.09 Generally not retroactively revoked or modified if related to sale or lease subject to excise tax	51
.10 May be retroactively revoked or modified when transaction is entered into before the issuance of the letter ruling	51
.11 Taxpayer may request that retroactivity be limited	51
(1) Request for relief under § 7805(b) must be made in required format	51
(2) Taxpayer may request a conference on application of § 7805(b)	51
SECTION 12. UNDER WHAT CIRCUMSTANCES DO DIRECTORS ISSUE DETERMINATION LETTERS?	52
.01 In income and gift tax matters	52
.02 In estate tax matters.	52
.03 In generation-skipping transfer tax matters.	52
.04 In employment and excise tax matters.	52
.05 Requests concerning income, estate, or gift tax returns	52
.06 Attach a copy of determination letter to taxpayer's return.	52
.07 Review of determination letters	52
.08 Addresses to send determination letter requests.	52
SECTION 13. WHAT EFFECT WILL A DETERMINATION LETTER HAVE?	53
.01 Has same effect as a letter ruling	53
.02 Taxpayer may request that retroactive effect of revocation or modification be limited	53
(1) Request for relief under § 7805(b) must be made in required format	53
(2) Taxpayer may request a conference on application of § 7805(b)	53
SECTION 14. UNDER WHAT CIRCUMSTANCES ARE MATTERS REFERRED BETWEEN A DIRECTOR AND AN ASSOCIATE OFFICE?	54
.01 Requests for determination letters	54
.02 No-rule areas	54
.03 Requests for letter rulings	54
.04 Letter ruling request mistakenly sent to a Director	54

SECTION 15. WHAT ARE THE USER FEE REQUIREMENTS FOR REQUESTS FOR LETTER RULINGS AND DETERMINATION LETTERS?	54
.01 Legislation authorizing user fees	54
.02 Requests to which a user fee applies	54
.03 Requests to which a user fee does not apply	55
.04 Exemptions from the user fee requirements	55
.05 Fee schedule	55
.06 Applicable user fee for a request involving multiple offices, fee categories, issues, transactions, or entities	55
.07 Applicable user fee for requests for substantially identical letter rulings or identical accounting method changes	56
.08 Method of payment	57
.09 Effect of nonpayment or payment of incorrect amount	58
.10 Refunds of user fee	58
.11 Request for reconsideration of user fee	59
SECTION 16. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2005-1?	61
SECTION 17. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?	61
SECTION 18. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?	61
SECTION 19. PAPERWORK REDUCTION ACT.	61
DRAFTING INFORMATION.	61
INDEX.	63
APPENDIX A—SCHEDULE OF USER FEES.	66
APPENDIX B—SAMPLE FORMAT FOR A LETTER RULING REQUEST.	72
APPENDIX C—CHECKLIST FOR A LETTER RULING REQUEST.	75
APPENDIX D—LIST OF SMALL BUSINESS/SELF-EMPLOYED OPERATING DIVISION (SB/SE) OFFICES FOR REQUESTING DETERMINATION LETTERS.	80
APPENDIX E—CHECKLISTS, GUIDELINE REVENUE PROCEDURES, NOTICES, SAFE HARBOR REVENUE PROCEDURES, AND AUTOMATIC CHANGE REVENUE PROCEDURES.	82
.01 Checklists, guideline revenue procedures, and notices	82
.02 Safe harbor revenue procedures	86
.03 Automatic change revenue procedures	88

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure explains how the Service provides advice to taxpayers on issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). It explains the forms of advice and the manner in which advice is requested by taxpayers and provided by the Service. A sample format of a request for a letter ruling is provided in Appendix B. See section 4 of this revenue procedure for issues outside the scope of this revenue procedure.

Description of terms used in this revenue procedure

.01 For purposes of this revenue procedure—

(1) the term “Service” includes the Internal Revenue Service, the four operating divisions of the Internal Revenue Service that are responsible for meeting the needs of the taxpayers they serve, and the Associate offices. The four operating divisions are:

(a) Large and Mid-Size Business Division (LMSB), which generally serves corporations, including S corporations, and partnerships, with assets in excess of \$10 million;

(b) Small Business/Self-Employed Division (SB/SE), which generally serves corporations, including S corporations, and partnerships, with assets less than or equal to \$10 million; estates and trusts; individuals filing an individual federal income tax return with accompanying Schedule C (*Profit or Loss From Business (Sole Proprietorship)*), Schedule E (*Supplemental Income and Loss*), Schedule F (*Profit or Loss From Farming*), Form 2106, *Employee Business Expenses*, or Form 2106-EZ, *Unreimbursed Employee Business Expenses*; and individuals with international tax returns;

(c) Wage and Investment Division (W&I), which generally serves individuals with wage and investment income only (and with no international tax returns) filing an individual federal income tax return without accompanying Schedule C, E, or F, or Form 2106 or Form 2106-EZ; and

(d) Tax Exempt and Government Entities Division (TE/GE), which serves three distinct taxpayer segments: employee plans, exempt organizations, and government entities.

(2) the term “Associate office” refers to the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions and Products), the Office of Associate Chief Counsel (Income Tax and Accounting), the Office of Associate Chief Counsel (International), the Office of Associate Chief Counsel (Passthroughs and Special Industries), the Office of Associate Chief Counsel (Procedure and Administration), or the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate.

(3) the term “Director” refers to the Director, Field Operations, LMSB; the Area Director, Field Examination, SB/SE; Chief, SB/SE International Field & Policy; Chief, Estate & Gift Tax Operations, SB/SE; Chief, Employment Tax Operations, SB/SE; Chief, Excise Tax Operations, SB/SE; or the Director, Compliance, W&I; the Director, International, LMSB; the Director, Employee Plans Examinations; the Director, Exempt Organizations Examinations; the Director, Federal, State & Local Governments; the Director, Tax Exempt Bonds; or the Director, Indian Tribal Governments, as appropriate.

(4) the term “field office” refers to the respective offices of the Directors, as appropriate.

(5) the term “taxpayer” includes all persons subject to any provision of the Internal Revenue Code (including issuers of § 103 obligations) and, when appropriate, their representatives.

Updated annually

.02 This revenue procedure is updated annually as the first revenue procedure of the year, but may be modified or amplified during the year.

SECTION 2. WHAT IS THE FORM IN WHICH THE SERVICE PROVIDES ADVICE TO TAXPAYERS?

The Service provides advice in the form of letter rulings, closing agreements, determination letters, information letters, and oral advice.

Letter ruling

.01 A “letter ruling” is a written determination issued to a taxpayer by an Associate office in response to a written inquiry from an individual or an organization about its status for tax purposes or the tax effects of its acts or transactions, prior to the filing of returns or reports that are required by the revenue laws. A letter ruling interprets and applies the tax laws to the taxpayer’s specific set of facts and is given when appropriate in the interest of sound tax administration. A letter ruling includes the written permission or denial of permission by an Associate office to a request for a change in a taxpayer’s accounting method or accounting period. Once issued, a letter ruling may be revoked or modified for any number of reasons, as explained in section 11 (section 9.19 for a change in accounting method letter ruling) of this revenue procedure, unless it is accompanied by a “closing agreement.”

Closing agreement

.02 A “closing agreement” is a final agreement between the Service and a taxpayer on a specific issue or liability. It is entered into under the authority in § 7121 and is final unless fraud, malfeasance, or misrepresentation of a material fact can be shown.

A taxpayer may request a closing agreement with the letter ruling, or in lieu of a letter ruling, with respect to a transaction that would be eligible for a letter ruling. In such situations, the Associate Chief Counsel with subject matter jurisdiction signs the closing agreement on behalf of the Service.

A closing agreement may be entered into when it is advantageous to have the matter permanently and conclusively closed or when a taxpayer can show that there are good reasons for an agreement and that making the agreement will not prejudice the interests of the Government. In appropriate cases, a taxpayer may be asked to enter into a closing agreement as a condition for the issuance of a letter ruling.

If, in a single case, a closing agreement is requested for each person or entity in a class of taxpayers, separate agreements are entered into only if the class consists of 25 or fewer taxpayers. If the issue and holding are identical for the class and there are more than 25 taxpayers in the class, a “mass closing agreement” will be entered into with the taxpayer who is authorized by the others to represent the class.

Determination letter

.03 A “determination letter” is a written determination issued by a Director that applies the principles and precedents previously announced by the Service to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in a statute, a tax treaty, the regulations, a conclusion in a revenue ruling, or an opinion or court decision that represents the position of the Service.

Information letter

.04 An “information letter” is a statement issued either by an Associate office or by a Director. It calls attention to a well-established interpretation or principle of tax law (including a tax treaty) without applying it to a specific set of facts. An information letter may be issued if the taxpayer’s inquiry indicates a need for general information or if the taxpayer’s request does not meet the requirements of this revenue procedure and the Service thinks that general information will help the taxpayer. An information letter is advisory only and has no binding effect on the Service. If the Associate office issues an information letter in response to a request for a letter ruling that does not meet the requirements of this revenue procedure, the information letter is not a substitute for a letter ruling. The taxpayer should provide a daytime telephone number with the taxpayer’s request for an information letter.

Information letters requests to Associate offices mailed on or after February 1, 2006, will be subject to a user fee. *See* Appendix A.

Information letters that are issued by the Associate offices to members of the public are made available to the public. Information letters that are issued by the field offices are not made available to the public.

Because information letters do not constitute written determinations as defined in § 6110, they are not subject to public inspection under § 6110. The Service makes the information letters available to the public under the Freedom of Information Act (“FOIA”). Before any information letter is made available to the public, an Associate office will delete any name, address, and other identifying information as appropriate under the FOIA (for example, FOIA personal privacy exemption of 5 U.S.C. § 552(b)(6) and tax details exempt pursuant to § 6103, as incorporated into FOIA by 5 U.S.C. § 552(b)(3)).

The following documents also will not be available for public inspection as part of this process:

- (1) transmittal letters in which the Service furnishes publications or other publicly available material to taxpayers, without any significant legal discussion;
- (2) responses to taxpayer or third party contacts that are inquiries with respect to a pending request for: a letter ruling, technical advice memorandum, or Chief Counsel Advice (which are subject to public inspection under § 6110 after their issuance); and

(3) responses to taxpayer or third party communications with respect to any investigation, audit, litigation, or other enforcement action.

Oral Advice

.05

(1) No oral rulings and no written rulings in response to oral requests.

The Service does not orally issue letter rulings or determination letters, nor does it issue letter rulings or determination letters in response to oral requests from taxpayers. Service employees ordinarily will discuss with taxpayers or their representatives inquiries regarding whether the Service will rule on particular issues and questions relating to procedural matters about submitting requests for letter rulings or determination letters for a particular case.

(2) Discussion possible on substantive issues.

At the discretion of the Service and as time permits, substantive issues also may be discussed. Such a discussion will not be binding on the Service in general or on the Office of Chief Counsel in particular and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Substantive tax issues involving the taxpayer that are under examination, in Appeals, or in litigation will not be discussed by Service employees not directly involved in the examination, appeal, or litigation of the issues unless the discussion is coordinated with those Service employees who are directly involved in the examination, appeal, or litigation of the issues. The taxpayer or the taxpayer's representative ordinarily will be asked whether the oral request for advice or information relates to a matter pending before another office of the Service or before a federal court.

If a tax issue is not under examination, in appeals, or in litigation, the tax issue may be discussed even though the issue is affected by a nontax issue pending in litigation.

A taxpayer may seek oral technical guidance from a taxpayer service representative in a field office or Service Center when preparing a return or report. Oral guidance is advisory only, and the Service is not bound to recognize it, for example, in the examination of the taxpayer's return.

The Service does not respond to letters seeking to confirm the substance of oral discussions and the absence of a response to such a letter is not a confirmation.

SECTION 3. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN ADVICE UNDER THIS PROCEDURE?

Taxpayers may request letter rulings, information letters, and closing agreements under this revenue procedure on issues within the jurisdiction of the Associate offices.

Taxpayers also may request determination letters from the Director in the appropriate operating division on subjects that relate to the Code sections under the jurisdiction of the respective Associate offices. *See* section 12.08 of this revenue procedure for information on where to send the requests for determination letters.

Issues under the jurisdiction of the Associate Chief Counsel (Corporate)

.01 Issues under the jurisdiction of the Associate Chief Counsel (Corporate) include those that involve consolidated returns, corporate acquisitions, reorganizations, liquidations, redemptions, spinoffs, transfers to controlled corporations, distributions to shareholders, corporate bankruptcies, the effect of certain ownership changes on net operating loss carryovers and other tax attributes, debt vs. equity determinations, allocation of income and deductions among taxpayers, acquisitions made to evade or avoid income tax, and certain earnings and profits questions.

Issues under the jurisdiction of the Associate Chief Counsel (Financial Institutions and Products)

.02 Issues under the jurisdiction of the Associate Chief Counsel (Financial Institutions and Products) include those that involve income taxes and accounting method changes of banks, savings and loan associations, real estate investment trusts (REITs), regulated investment companies (RICs), real estate mortgage investment conduits (REMICs), insurance companies and products, and financial products.

Issues under the jurisdiction of the Associate Chief Counsel (Income Tax and Accounting)

.03 Issues under the jurisdiction of the Associate Chief Counsel (Income Tax and Accounting) include those that involve recognition and timing of income and deductions of individuals and corporations, sales and exchanges, capital gains and losses, installment sales, equipment leasing, long-term contracts, inventories, the alternative minimum tax, net operating losses generally, including accounting method changes for these issues, and accounting periods.

Issues under the jurisdiction of the Associate Chief Counsel (International)

.04 Issues under the jurisdiction of the Associate Chief Counsel (International) include the tax treatment of nonresident aliens and foreign corporations, withholding of tax on nonresident aliens and foreign corporations, foreign tax credit, determination of sources of income, income from sources without the United States, subpart F questions, domestic international sales corporations (DISCs), foreign sales corporations (FSCs), exclusions under § 114 for extraterritorial income (ETI) pursuant to § 941(a)(5)(A), international boycott determinations, treatment of certain passive foreign investment companies, income affected by treaty, and other matters relating to the activities of non-U.S. persons within the United States or U.S.-related persons outside the United States, and accounting method changes.

For the procedures to obtain advance pricing agreements under § 482, *see* Rev. Proc. 2004-40, 2004-2 C.B. 50 (or successor).

For competent authority procedures related to bilateral and multilateral advance pricing agreements, *see* Rev. Proc. 2002-52, 2002-2 C.B. 242.

Issues under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries)

.05 Issues under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries) include those that involve income taxes of S corporations (except accounting periods and methods) and certain noncorporate taxpayers (including partnerships, common trust funds, and trusts), entity classification, estate, gift, generation-skipping transfer, and certain excise taxes, amortization, depreciation, depletion, and other engineering issues, accounting method changes for depreciation and amortization, cooperative housing corporations, farmers' cooperatives (under § 521), the low-income housing, disabled access, and qualified electric vehicle credits, research and experimental expenditures, shipowners' protection and indemnity associations (under § 526), and certain homeowners associations (under § 528).

Issues under the jurisdiction of the Associate Chief Counsel (Procedure and Administration)

.06 Issues under the jurisdiction of the Associate Chief Counsel (Procedure and Administration) include those that involve federal tax procedure and administration, disclosure and privacy law, reporting and paying taxes, assessing and collecting taxes (including interest and penalties), abating, crediting, or refunding overassessments or overpayments of tax, and filing information returns.

Issues under the jurisdiction of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)

.07 Issues under the jurisdiction of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) include those that involve income tax and other tax aspects of executive compensation and employee benefit programs, including accounting method changes for these issues (other than those within the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division), section 457 arrangements, employment taxes, taxes on self-employment income, tax-exempt obligations, mortgage credit certificates, qualified zone academy bonds (QZABS), and federal, state, local, and Indian tribal governments.

SECTION 4. ON WHAT ISSUES MUST WRITTEN ADVICE BE REQUESTED UNDER DIFFERENT PROCEDURES?

Alcohol, tobacco, and firearms taxes

.01 The procedures for obtaining letter rulings, etc., that apply to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

Employee plans and exempt organizations

.02 The procedures for obtaining letter rulings, determination letters, etc., on employee plans and exempt organizations are under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. *See* Rev. Proc. 2006-4, this Bulletin. *See also* Rev. Proc. 2006-6, this Bulletin, for the procedures for issuing determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans under

§§ 401, 403(a), 409, and 4975(e)(7), and the status for exemption of any related trusts or custodial accounts under § 501(a).

For the user fee requirements applicable to requests for letter rulings, determination letters, etc., under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, *see* Rev. Proc. 2006–8, this Bulletin.

SECTION 5. UNDER WHAT CIRCUMSTANCES DO THE ASSOCIATE OFFICES ISSUE LETTER RULINGS?

In income and gift tax matters

.01 In income and gift tax matters, an Associate office generally issues a letter ruling on a proposed transaction or on a completed transaction if the letter ruling request is submitted before the return is filed for the year in which the transaction is completed.

Special relief for late S corporation and related elections

.02 In lieu of requesting a letter ruling under this revenue procedure, a taxpayer may obtain relief for certain late S corporation and related elections by following the procedures in Rev. Proc. 2004–49, 2004–2 C.B. 210; Rev. Proc. 2004–48, 2004–2 C.B. 172; Rev. Proc. 2003–43, 2003–1 C.B. 998, or Rev. Proc. 97–48, 1997–2 C.B. 521. These procedures, which are in lieu of the letter ruling process, do not require payment of any user fee. *See* section 4.04 of Rev. Proc. 2004–49, section 3.01 of Rev. Proc. 2004–48, section 3.01 of Rev. Proc. 2003–43, section 3 of Rev. Proc. 97–48, and section 15.03(3) of this revenue procedure.

A § 301.9100 request for extension of time for making an election or for other relief

.03 An Associate office will consider a request for an extension of time for making an election or other application for relief under § 301.9100–3 of the Regulations on Procedure and Administration, even if submitted after the return covering the issue presented in the § 301.9100 request has been filed, an examination of the return has begun, or the issues in the return are being considered by Appeals or a federal court. A § 301.9100 request is a letter ruling request. Therefore, the § 301.9100 request should be submitted pursuant to this revenue procedure. An election made pursuant to § 301.9100–2 for an automatic extension of time is not a letter ruling request and does not require payment of any user fee. *See* § 301.9100–2(d) and section 15.03(1) of this revenue procedure.

(1) Format of request. A § 301.9100 request (other than an election made pursuant to § 301.9100–2) must be in the general form of, and meet the general requirements for, a letter ruling request. These requirements are given in section 7 of this revenue procedure. In addition, a § 301.9100 request must include the information required by § 301.9100–3(e).

(2) Period of limitations. The running of any applicable period of limitations is not suspended for the period during which a § 301.9100 request has been filed. *See* § 301.9100–3(d)(2). If the period of limitation on assessment under § 6501(a) for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made will expire before receipt of a § 301.9100 letter ruling, the Associate office ordinarily will not issue a § 301.9100 ruling. *See* § 301.9100–3(c)(1)(ii). If, however, the taxpayer secures consent to extend the period of limitations on assessment under § 6501(c)(4), the Associate office may issue the letter ruling. Note that the filing of a claim for refund under § 6511 does not extend the period of limitation on assessment. If § 301.9100 relief is granted, the Associate office may require the taxpayer to consent to an extension of the period of limitation on assessment. *See* § 301.9100–3(d)(2).

(3) Taxpayer must notify the Associate office if examination of its return begins while the request is pending. If the Service starts an examination of the taxpayer’s return for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made while a § 301.9100 request is pending, the taxpayer must notify the Associate office. This notification must include the name and telephone number of the examining agent. *See* § 301.9100–3(e)(4)(i) and section 7.04(1)(b) of this revenue procedure.

(4) Associate office will notify examination agents, appeals officer, or government counsel of a § 301.9100 request if the taxpayer's return is being examined by a field office or is being considered by Appeals or a federal court. If the taxpayer's return for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made is being examined by a field office or considered by Appeals or a federal court, the Associate office will notify the appropriate examining agent, appeals officer, or government counsel that a § 301.9100 request has been submitted to the Associate office. The examining officer, appeals officer, or government counsel is not authorized to deny consideration of a § 301.9100 request. The letter ruling will be mailed to the taxpayer and a copy will be sent to the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer's tax return, appeals officer, or government counsel.

(5) Relief for late initial classification election. In lieu of requesting a letter ruling under § 301.9100-1 through § 301.9100-3 and this revenue procedure, an entity newly formed under local law may apply for late classification election relief under Rev. Proc. 2002-59, 2002-2 C.B. 615. Requests for such relief are not subject to user fees. *See* section 3 of Rev. Proc. 2002-59 and section 15.03(2) of this revenue procedure.

Determinations under § 999(d) of the Internal Revenue Code

.04 As provided in Rev. Proc. 77-9, 1977-1 C.B. 542, the Associate Chief Counsel (International) issues determinations under § 999(d) that may deny certain benefits of the foreign tax credit, deferral of earnings of foreign subsidiaries and domestic international sales corporations (DISCs) to a person, if that person, is a member of a controlled group (within the meaning of § 993(a)(3)) that includes the person, or a foreign corporation of which a member of the controlled group is a United States shareholder, agrees to participate in, or cooperate with, an international boycott. The same principles shall apply with respect to exclusions under § 114 for extritorial income (ETI) pursuant to § 941(a)(5)(A). Requests for determinations under Rev. Proc. 77-9 are letter ruling requests and, therefore, should be submitted to the Associate office pursuant to this revenue procedure.

In matters involving § 367

.05 Unless the issue is covered by section 6 of this revenue procedure, the Associate Chief Counsel (International) may issue a letter ruling under § 367 even if the taxpayer does not request a letter ruling as to the characterization of the transaction under the reorganization provisions of the Code. The Associate office will determine the § 367 consequences of a transaction based on the taxpayer's characterization of the transaction but will indicate in the letter ruling that it expresses no opinion as to the characterization of the transaction under the reorganization. The Associate office may decline to issue a § 367 ruling in situations in which the taxpayer inappropriately characterizes the transaction under the reorganization provisions.

In estate tax matters

.06 In general, the Associate Chief Counsel (Passthroughs and Special Industries) issues letter rulings on transactions affecting the estate tax on the prospective estate of a living person. The Associate office will not issue letter rulings for prospective estates on computations of tax, actuarial factors, and factual matters. With respect to the transactions affecting the estate tax of the decedent's estate, generally, the Associate office issues letter rulings before the decedent's estate tax return is filed.

If the taxpayer is requesting a letter ruling regarding a decedent's estate tax and the estate tax return is due to be filed before the letter ruling is expected to be issued, the taxpayer should obtain an extension of time for filing the return and should notify the Associate office branch considering the letter ruling request that an extension has been obtained.

If the return is filed before the letter ruling is received from the Associate office, the taxpayer must disclose on the return that a letter ruling has been requested, attach a copy of the pending letter ruling request to the return, and notify the Associate office that the return has been filed. *See* section 7.04 of this revenue procedure. The Associate office will make every effort to issue the letter ruling within 3 months of the date the return was filed.

If the taxpayer requests a letter ruling after the return is filed, but before the return is examined, the taxpayer must notify the field office having jurisdiction over the return, that a letter ruling has been requested, attach a copy of the pending letter ruling request, and notify the

Associate office that a return has been filed. *See* section 7.04 of this revenue procedure. The Associate office will make every effort to issue the letter ruling within 3 months of the date the return has been filed.

If the letter ruling cannot be issued within that 3-month period, the Associate office will notify the field office having jurisdiction over the return, who may, by memorandum to the Associate office, grant an additional period for the issuance of the letter ruling.

In matters involving additional estate tax under § 2032A(c)

.07 In matters involving additional estate tax under § 2032A(c), the Associate Chief Counsel (Passthroughs and Special Industries) issues letter rulings on proposed transactions and on completed transactions that occurred before the return is filed.

In matters involving qualified domestic trusts under § 2056A

.08 In matters involving qualified domestic trusts under § 2056A, the Associate Chief Counsel (Passthroughs and Special Industries) issues letter rulings on proposed transactions and on completed transactions that occurred before the return is filed.

In generation-skipping transfer tax matters

.09 In general, the Associate Chief Counsel (Passthroughs and Special Industries) issues letter rulings on proposed transactions that affect the generation-skipping transfer tax and on completed transactions that occurred before the return is filed. In the case of a generation-skipping trust or trust equivalent, letter rulings are issued either before or after the trust or trust equivalent has been established.

In employment and excise tax matters

.10 In employment and excise tax matters, the Associate offices issue letter rulings on proposed transactions and on completed transactions either before or after the return is filed for those transactions.

Requests regarding employment status (employer/employee relationship) from federal agencies and instrumentalities should be submitted directly to the Associate Chief Counsel (Tax Exempt and Government Entities). Requests regarding employment status from other taxpayers must first be submitted to the appropriate Service office listed on the current Form SS-8 (Rev. June 2003). *See* section 12.04 of this revenue procedure. Generally, the employer is the taxpayer and requests the letter ruling. If the worker asks for the letter ruling, both the worker and the employer are considered to be the taxpayer and both are entitled to the letter ruling.

In administrative provisions matters

.11 The Associate Chief Counsel (Procedure and Administration) issues letter rulings on matters arising under the Code and related statutes and regulations that involve—

- (1) the time, place, manner, and procedures for reporting and paying taxes; or
- (2) the filing of information returns.

In Indian tribal government matters

.12 Pursuant to Rev. Proc. 84-37, 1984-1 C.B. 513, as modified by Rev. Proc. 86-17, 1986-1 C.B. 550, and Rev. Proc. 2006-1, this revenue procedure, the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) issues determinations recognizing a tribal entity as an Indian tribal government within the meaning of § 7701(a)(40) or as a political subdivision of an Indian tribal government under § 7871(d) if it determines, after consultation with the Secretary of the Interior, that the entity satisfies the statutory definition of an Indian tribal government or has been delegated governmental functions of an Indian tribal government. Requests for determinations under Rev. Proc. 84-37 are letter ruling requests, and, therefore, should be submitted to the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) pursuant to this revenue procedure.

(1) Definition of Indian tribal government. The term “Indian tribal government” is defined under § 7701(a)(40) to mean the governing body of any tribe, band, community, village or group of Indians, or (if applicable) Alaska Natives, that is determined by the Secretary of the Treasury, after consultation with the Secretary of the Interior, to exercise governmental functions. Section 7871(d) provides that, for purposes of § 7871, a subdivision of an Indian tribal government shall be treated as a political subdivision of a state if the Secretary of the Treasury determines, after consultation with the Secretary of the Interior, that the subdivision

has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government.

(2) Inclusion in list of tribal governments. Rev. Proc. 2002–64, 2002–2 C.B. 717, provides a list of Indian tribal governments that are treated similarly to states for certain federal tax purposes. Rev. Proc. 84–36, 1984–1 C.B. 510, as modified by Rev. Proc. 86–17, provides a list of political subdivisions of Indian tribal governments that are treated as political subdivisions of states for certain federal tax purposes. Under Rev. Proc. 84–37, tribal governments or subdivisions recognized under § 7701(a)(40) or § 7871(d) will be included in the list of recognized tribal government entities in revised versions of Rev. Proc. 2002–64 or Rev. Proc. 84–36.

On constructive sales price under § 4216(b) or § 4218(c)

.13 The Associate Chief Counsel (Passthroughs and Special Industries) will issue letter rulings in all cases on the determination of a constructive sales price under § 4216(b) or § 4218(c) and in all other cases on prospective transactions if the law or regulations require a determination of the effect of a proposed transaction for tax purposes.

May be issued before the issuance of a regulation or other published guidance

.14 Unless the issue is covered by section 6 of this revenue procedure, Rev. Proc. 2006–3, this Bulletin, or Rev. Proc. 2006–7, this Bulletin, a letter ruling may be issued before the issuance of a temporary or final regulation or other published guidance that interprets the provisions of any act.

In such situations, an Associate office may issue letter rulings under the following conditions:

(1) Answer is clear or is reasonably certain. If the letter ruling request presents an issue for which the answer seems clear by applying the statute to the facts or for which the answer seems reasonably certain but not entirely free from doubt.

(2) Answer is not reasonably certain. If the letter ruling request presents an issue for which the answer does not seem reasonably certain, the Associate office may issue the letter ruling, using its best efforts to arrive at a determination, if it is in the best interests of tax administration. *But see* section 6.09 of this revenue procedure.

SECTION 6. UNDER WHAT CIRCUMSTANCES DOES THE SERVICE NOT ISSUE LETTER RULINGS OR DETERMINATION LETTERS?

Ordinarily not if the request involves an issue under examination, or consideration, or in litigation

.01 The Service ordinarily does not issue a letter ruling or a determination letter if, at the time of the request the identical issue is involved in the taxpayer’s return for an earlier period and that issue—

- (1) is being examined by a field office;
- (2) is being considered by Appeals;
- (3) is pending in litigation in a case involving the taxpayer or a related taxpayer;

(4) has been examined by a field office or considered by Appeals and the statutory period of limitations on assessment or on filing a claim for refund or credit of tax has not expired; or

(5) has been examined by a field office or considered by Appeals and a closing agreement covering the issue or liability has not been entered into by a field office or by Appeals.

If a return dealing with an issue for a particular year is filed while a request for a letter ruling on that issue is pending, an Associate office will issue the letter ruling unless it is notified by the taxpayer or otherwise learns that an examination of that issue or the identical issue on an earlier year’s return has been started by a field office. *See* section 7.04 of this revenue procedure. In income and gift tax matters, even if an examination has begun, an Associate office ordinarily

will issue the letter ruling if the field office agrees, by memorandum, to the issuance of the letter ruling.

Ordinarily not in certain areas because of factual nature of the problem

.02 The Service ordinarily does not issue letter rulings or determination letters in certain areas because of the factual nature of the problem involved or because of other reasons. Rev. Proc. 2006-3, this Bulletin, and Rev. Proc. 2006-7, this Bulletin, provide a list of these areas. This list is not all-inclusive because the Service may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case.

Instead of issuing a letter ruling or determination letter, the Service may, when it is considered appropriate and in the best interests of the Service, issue an information letter calling attention to well-established principles of tax law.

Ordinarily not on part of an integrated transaction

.03 An Associate office ordinarily will not issue a letter ruling on only part of an integrated transaction. If a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Before preparing the letter ruling request, a taxpayer should call a branch having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether the Associate office will issue a letter ruling on part of the transaction.

Ordinarily not on which of two entities is a common law employer

.04 The Service does not ordinarily issue a letter ruling or a determination letter on which of two entities, under common law rules applicable in determining the employer-employee relationship, is the employer, when one entity is treating the worker as an employee.

Generally not to business associations or groups

.05 The Service does not issue letter rulings or determination letters to business, trade, or industrial associations or to similar groups concerning the application of the tax laws to members of the group. But groups and associations may submit suggestions of generic issues that could be appropriately addressed in revenue rulings. *See* Rev. Proc. 89-14, 1989-1 C.B. 814, which states the objectives of, and standards for, the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

The Service may issue letter rulings or determination letters to groups or associations on their own tax status or liability if the request meets the requirements of this revenue procedure.

Generally not where the request does not address the tax status, liability, or reporting obligations of the requester

.06 The Service generally does not issue letter rulings or determination letters regarding the tax consequences of a transaction for taxpayers who are not directly involved in the request if the requested letter ruling or determination letter would not address the tax status, liability, or reporting obligations of the requester. For example, a taxpayer may not request a letter ruling relating to the tax consequences of a transaction to a customer or client, if the tax status, liability or reporting obligations of the taxpayer would not be addressed in the ruling, because the customer or client is not directly involved in the letter ruling request. The tax liability of each shareholder is, however, directly involved in a letter ruling on the reorganization of a corporation. Accordingly a corporate taxpayer could request a letter ruling that solely addressed the tax consequences to its shareholders of a proposed reorganization.

Revenue Procedure 96-16, 1996-1 C.B. 630, sets forth rules for letter ruling requests involving state and local government obligations.

Generally not to foreign governments

.07 The Service does not issue letter rulings or determination letters to foreign governments or their political subdivisions about the U.S. tax effects of their laws. The Associate offices also do not issue letter rulings on the effect of a tax treaty on the tax laws of a treaty country for purposes of determining the tax of the treaty country. *See* section 13.02 of Rev. Proc. 2002-52, 2002-2 C.B. 242 at 252. Treaty partners can continue to address matters such as these under the provisions of the applicable tax treaty. In addition, the Associate offices may issue letter rulings to foreign governments or their political subdivisions on their own tax status or liability under U.S. law if the request meets the requirements of this revenue procedure.

Ordinarily not on federal tax consequences of proposed legislation

.08 The Associate offices ordinarily do not issue letter rulings on a matter involving the federal tax consequences of any proposed federal, state, local, municipal, or foreign legislation. The Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government

Entities) may issue letter rulings regarding the effect of proposed state, local, or municipal legislation upon an eligible deferred compensation plan under § 457(b) provided that the letter ruling request relating to the plan complies with the other requirements of this revenue procedure. The Associate offices also may provide general information in response to an inquiry.

Not before issuance of a regulation or other published guidance

.09 The Service will not issue a letter ruling or a determination letter if the request presents an issue that cannot be readily resolved before a regulation or any other published guidance is issued. When the Service has closed a regulation project or any other published guidance project that might have answered the issue or decides not to open a regulation project or any other published guidance project, the Associate offices may consider all letter ruling requests unless the issue is covered by section 6 of this revenue procedure, Rev. Proc. 2006–3, this Bulletin, or Rev. Proc. 2006–7, this Bulletin.

Not on frivolous issues

.10 The Service will not issue a letter ruling or a determination letter on frivolous issues. A “frivolous issue” is one without basis in fact or law, or that espouses a position which has been held by the courts to be frivolous or groundless. Examples of frivolous or groundless issues include, but are not limited to:

(1) frivolous “constitutional” claims, such as claims that the requirement to file tax returns and pay taxes constitutes an unreasonable search barred by the Fourth Amendment; violates Fifth and Fourteenth Amendment protections of due process; violates Thirteenth Amendment protections against involuntary servitude; or is unenforceable because the Sixteenth Amendment does not authorize nonapportioned direct taxes or because it was never ratified;

(2) claims that income taxes are voluntary, that the term “income” is not defined in the Internal Revenue Code, or that preparation and filing of income tax returns violates the Paperwork Reduction Act;

(3) claims that tax may be imposed only on coins minted under a gold or silver standard or that receipt of Federal Reserve Notes does not cause an accretion to wealth;

(4) claims that a person is not taxable on income because he or she falls within a class entitled to “reparation claims” or an extra-statutory class of individuals exempt from tax, *e.g.*, “free-born” individuals;

(5) claims that a taxpayer can refuse to pay taxes on the basis of opposition to certain governmental expenditures;

(6) claims that taxes apply only to federal employees; only to residents of Puerto Rico, Guam, the U.S. Virgin Islands, the District of Columbia, or “federal enclaves”; or that sections 861 through 865 or any other provision of the Internal Revenue Code imposes taxes on U.S. citizens and residents only on income derived from foreign based activities;

(7) claims that wages or personal service income are not “income,” are “nontaxable receipts,” or are a “nontaxable exchange for labor;”

(8) claims that income tax withholding by an employer on wages is optional; or

(9) other claims that the courts have characterized as frivolous or groundless.

No “comfort” letter rulings

.11 Except as otherwise provided in Rev. Proc. 2006–3, this Bulletin, (*e.g.*, under section 3.01(33), where the Associate office already is ruling on a significant issue in the same transaction), a letter ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decisions of a court, revenue rulings, revenue procedures, notices, or other authority published in the Internal Revenue Bulletin. The Associate office may in its discretion determine to issue a letter ruling on such an issue if the Associate office is otherwise issuing a ruling to the taxpayer on another issue arising in the same transaction.

Not on alternative plans or hypothetical situations

.12 The Service will not issue a letter ruling or a determination letter on alternative plans of proposed transactions or on hypothetical situations.

Not on property conversion after return filed

.13 An Associate office will not issue a letter ruling on the replacement of involuntarily converted property, whether or not the property has been replaced, if the taxpayer has already filed a return for the taxable year in which the property was converted. A Director may issue a determination letter in this case. *See* section 12.01 of this revenue procedure.

Circumstances under which determination letters are not issued by a Director

.14 A Director will not issue a determination letter if—

- (1) it appears that the taxpayer has directed a similar inquiry to an Associate office;
- (2) the same issue, involving the same taxpayer or a related taxpayer, is pending in a case in litigation or before Appeals;
- (3) the request involves an industry-wide problem;
- (4) the specific employment tax question at issue in the request has been, or is being, considered by the Central Office of the Social Security Administration or the Railroad Retirement Board for the same taxpayer or a related taxpayer; or
- (5) the request is for a determination of constructive sales price under § 4216(b) or § 4218(c), which deal with special provisions applicable to the manufacturers excise tax. The Associate Chief Counsel (Passthroughs and Special Industries) will, in certain circumstances, issue letter rulings in this area. *See* section 5.13 of this revenue procedure.

SECTION 7. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING LETTER RULINGS AND DETERMINATION LETTERS?

This section explains the general instructions for requesting letter rulings and determination letters. *See* section 9 of this revenue procedure for the specific and additional procedures for requesting a change in accounting method.

Requests for letter rulings, closing agreements, and determination letters require the payment of the applicable user fee listed in Appendix A of this revenue procedure. Certain changes in accounting methods under the automatic change request procedures (*see* section 9.01(1) of this revenue procedure) and certain changes in accounting periods made under automatic change request procedures do not require payment of a user fee (*see* Appendix E of this revenue procedure). For additional user fee requirements, *see* section 15 of this revenue procedure.

Specific and additional instructions also apply to requests for letter rulings and determination letters on certain matters. Those matters are listed in Appendix E of this revenue procedure followed by a reference (usually to another revenue procedure) where more information can be obtained.

Certain information required in all requests

.01

Facts

(1) Complete statement of facts and other information. Each request for a letter ruling or a determination letter must contain a complete statement of all facts relating to the transaction. These facts include—

- (a) names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties (the term “all interested parties” does not mean all shareholders of a widely held corporation requesting a letter ruling relating to a reorganization or all employees where a large number may be involved);
- (b) the annual accounting period, and the overall method of accounting (cash or accrual) for maintaining the accounting books and filing the federal income tax return, of all interested parties;
- (c) a description of the taxpayer’s business operations;
- (d) a complete statement of the business reasons for the transaction; and
- (e) a detailed description of the transaction.

Documents and foreign laws

(2) Copies of all contracts, wills, deeds, agreements, instruments, other documents, and foreign laws.

(a) Documents. True copies of all contracts, wills, deeds, agreements, instruments, trust documents, proposed disclaimers, and other documents pertinent to the transaction must be submitted with the request.

If the request concerns a corporate distribution, reorganization, or similar transaction, the corporate balance sheet and profit and loss statement should also be submitted. If the request relates to a prospective transaction, the most recent balance sheet and profit and loss statement should be submitted.

If any document, including any balance sheet and profit and loss statement, is in a language other than English, the taxpayer must also submit a certified English translation of the document, along with a true copy of the document. For guidelines on the acceptability of such documents, *see* paragraph (c) of this section 7.01(2).

Each document, other than the request, should be labeled and attached to the request in alphabetical sequence. Original documents, such as contracts, wills, etc., should not be submitted because they become part of the Service's file and will not be returned.

(b) Foreign laws. The taxpayer must submit with the request a copy of the relevant parts of all foreign laws, including statutes, regulations, administrative pronouncements, and any other relevant legal authority. The documents submitted must be in the official language of the country involved and must be copied from an official publication of the foreign government or another widely available, generally accepted publication. If English is not the official language of the country involved, the taxpayer must also submit a copy of an English language version of the relevant parts of all foreign laws. This translation must be: (i) from an official publication of the foreign government or another widely available, generally accepted publication; or (ii) a certified English translation submitted in accordance with paragraph (c) of this section 7.01(2).

The taxpayer must identify the title and date of publication, including updates, of any widely available, generally accepted publication that the taxpayer (or the taxpayer's qualified translator) uses as a source for the relevant parts of the foreign law.

(c) Standards for acceptability of submissions of documents in a language other than English and certified English translations of laws in a language other than English. The taxpayer must submit with the request an accurate and complete certified English translation of the relevant parts of all contracts, wills, deeds, agreements, instruments, trust documents, proposed disclaimers, or other documents, which are in a language other than English. If the taxpayer chooses to submit certified English translations of foreign laws, those translations must be based on an official publication of the foreign government or another widely available, generally accepted publication. In either case, the translation must be that of a qualified translator and must be attested to by the translator. The attestation must contain: (i) a statement that the translation submitted is a true and accurate translation of the foreign language document or law; (ii) a statement as to the attestant's qualifications as a translator and as to that attestant's qualifications and knowledge regarding tax matters or foreign law if the law is not a tax law; and (iii) the attestant's name and address.

Analysis of material facts

(3) Analysis of material facts. The request must be accompanied by an analysis of facts and their bearing on the issue or issues. If documents attached to a request contain material facts, they must be included in the taxpayer's analysis of facts in the request rather than merely incorporated by reference.

Same issue in an earlier return

(4) Statement regarding whether same issue is in an earlier return. The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, any return of the taxpayer (or any return of a related taxpayer within the meaning of § 267 or of a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) that would be affected by the requested letter ruling or determination letter is under examination, before Appeals, or before a federal court.

Same or similar issue previously submitted or currently pending

(5) Statement regarding whether same or similar issue was previously ruled on or requested, or is currently pending. The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives—

(a) the Service previously ruled on the same or a similar issue for the taxpayer (or a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504 (related taxpayer)) or a predecessor;

(b) the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted a request (including an application for change in accounting method) involving the same or a similar issue to the Service but no letter ruling or determination letter was issued;

(c) the taxpayer, a related taxpayer, or a predecessor previously submitted a request (including an application for change in accounting method) involving the same or a similar issue that is currently pending with the Service; or

(d) at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request (including an application for change in accounting method) involving the same or a similar issue to the Service.

If the statement is affirmative for (a), (b), (c), or (d) of this section 7.01(5), the statement must give the date the request was submitted, the date the request was withdrawn or ruled on, if applicable, and other details of the Service's consideration of the issue.

Interpretation of a substantive provision of an income or estate tax treaty

(6) Statement regarding interpretation of a substantive provision of an income or estate tax treaty. If the request involves the interpretation of a substantive provision of an income or estate tax treaty, the request must state whether—

(a) the tax authority of the treaty jurisdiction has issued a ruling on the same or similar issue for the taxpayer, a related taxpayer (within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504 (related taxpayer)), or any predecessor;

(b) the same or similar issue for the taxpayer, a related taxpayer, or any predecessor is being examined, or has been settled, by the tax authority of the treaty jurisdiction or is otherwise the subject of a closing agreement in that jurisdiction; and

(c) the same or similar issue for the taxpayer, a related taxpayer, or any predecessor is being considered by the competent authority of the treaty jurisdiction.

Letter from Bureau of Indian Affairs relating to Indian tribal government

(7) Letter from Bureau of Indian Affairs relating to a letter ruling request for recognition of Indian tribal government status or status as a political subdivision of an Indian tribal government. To facilitate prompt action on a letter ruling request for recognition of Indian tribal government status or status as a political subdivision of an Indian tribal government, the taxpayer must submit with the letter ruling request a letter from the Department of the Interior, Bureau of Indian Affairs ("BIA"), verifying that the tribe is recognized by BIA as an Indian tribe and that the tribal government exercises governmental functions or that the political subdivision of the Indian tribal government has been delegated substantial governmental functions. A letter ruling request that does not contain this letter from BIA cannot be resolved until the Service obtains a letter from BIA regarding the tribe's status.

The taxpayer should send a request to verify tribal status to the following address:

**Branch of Tribal Government & Alaska
Division of Indian Affairs
Office of the Solicitor, Room 6456
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240**

Statement of authorities supporting taxpayer's views

(8) Statement of supporting authorities. If the taxpayer advocates a particular conclusion, an explanation of the grounds for that conclusion and the relevant authorities to support it must be included. Even if not advocating a particular tax treatment of a proposed transaction, the taxpayer must still furnish views on the tax results of the proposed transaction and a statement of relevant authorities to support those views.

In all events, the request must include a statement of whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities.

Statement of authorities contrary to taxpayer's views

(9) Statement of contrary authorities. The taxpayer is also encouraged to inform the Service about, and discuss the implications of, any authority believed to be contrary to the position advanced, such as legislation, tax treaties, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements. If the taxpayer determines that there are no contrary authorities, a statement in the request to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Service in complex cases or those presenting difficult or novel issues may request submission of contrary authorities or a statement that none exists. Failure to comply with this request may result in the Service's refusal to issue a letter ruling or determination letter.

Identifying and discussing contrary authorities will generally enable Service personnel to understand the issue and relevant authorities more quickly. When Service personnel receive the request, they will have before them the taxpayer's thinking on the effect and applicability of contrary authorities. This information should make research easier and lead to earlier action by the Service. If the taxpayer does not disclose and distinguish significant contrary authorities, the Service may need to request additional information, which will delay action on the request.

Statement identifying pending legislation

(10) Statement identifying pending legislation. At the time of filing the request, the taxpayer must identify any pending legislation that may affect the proposed transaction. In addition, if legislation is introduced after the request is filed but before a letter ruling or determination letter is issued, the taxpayer must notify the Service.

Deletion statement required by § 6110

(11) Statement identifying information to be deleted from copy of letter ruling or determination letter for public inspection. The text of letter rulings and determination letters is open to public inspection under § 6110. The Service makes deletions from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), a request for a letter ruling or determination letter must be accompanied by a statement indicating the deletions desired ("deletion statement"). If the deletion statement is not submitted with the request, a Service representative will tell the taxpayer that the request will be closed if the Service does not receive the deletion statement within 21 calendar days. *See* section 8.05 of this revenue procedure.

(a) Format of deletion statement. A taxpayer who wants only names, addresses, and identifying numbers to be deleted should state this in the deletion statement. If the taxpayer wants more information deleted, the deletion statement must be accompanied by a copy of the request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletion statement must include the statutory basis under § 6110(c) for each proposed deletion.

If the taxpayer decides to ask for additional deletions before the letter ruling or determination letter is issued, additional deletion statements may be submitted.

(b) Location of deletion statement. The deletion statement must not appear in the request, but instead must be made in a separate document and placed on top of the request for a letter ruling or determination letter.

(c) Signature. The deletion statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or faxed signature is not permitted.

(d) Additional information. The taxpayer should follow the same procedures of this section 7.01(11) to propose deletions from any additional information submitted after the initial request. An additional deletion statement is not required with each submission of additional

information if the taxpayer's initial deletion statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information.

(e) Taxpayer may protest deletions not made. After receiving from the Service the notice under § 6110(f)(1) of intention to disclose the letter ruling or determination letter (including a copy of the version proposed to be open to public inspection and notation of third-party communications under § 6110(d)), the taxpayer may protest the disclosure of certain information in the letter ruling or determination letter. The taxpayer must send a written statement to the Service office indicated on the notice of intention to disclose, within 20 calendar days of the date the notice of intention to disclose is mailed to the taxpayer. The statement must identify those deletions that the Service has not made and that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the letter ruling or determination letter and bracket the deletions proposed that have not been made by the Service. Generally, the Service will not consider deleting any material that the taxpayer did not propose to be deleted before the letter ruling or determination letter was issued.

Within 20 calendar days after the Service receives the response to the notice under § 6110(f)(1), the Service will mail to the taxpayer its final administrative conclusion regarding the deletions to be made. The taxpayer does not have the right to a conference to resolve any disagreements concerning material to be deleted from the text of the letter ruling or determination letter. These matters may be taken up at any conference that is otherwise scheduled regarding the request.

(f) Taxpayer may request delay of public inspection. After receiving the notice under § 6110(f)(1) of intention to disclose, but within 60 calendar days after the date of notice, the taxpayer may send a written request for delay of public inspection under either § 6110(g)(3) or (4). The request for delay must be sent to the Service office indicated on the notice of intention to disclose. A request for delay under § 6110(g)(3) must contain the date on which it is expected that the underlying transaction will be completed. The request for delay under § 6110(g)(4) must contain a statement from which the Commissioner of Internal Revenue ("Commissioner") may determine whether there are good reasons for the delay.

Signature on request

(12) Signature by taxpayer or authorized representative. The request for a letter ruling or determination letter must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or faxed signature is not permitted.

Authorized representatives

(13) (a) Authorized representatives. To sign the request or to appear before the Service in connection with the request, the taxpayer's authorized representative (for rules on who may practice before the Service, *see* Treasury Department Circular No. 230, 31 C.F.R. part 10, July 26, 2002) must be:

Attorney

(1) An attorney who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an attorney and current authorization to represent the taxpayer;

Certified public accountant

(2) A certified public accountant who is duly qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as a certified public accountant and current authorization to represent the taxpayer;

Enrolled agent

(3) An enrolled agent who is a person, other than an attorney or certified public accountant, who is currently enrolled to practice before the Service and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current enrollment and authorization to represent the taxpayer. The enrollment number must be included in the declaration;

Enrolled actuary	(4) An enrolled actuary who is a person, other than an attorney or certified public accountant, who is currently enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. § 1242 and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an enrolled actuary and current authorization to represent the taxpayer. Practice before the Service as an enrolled actuary is limited to representation with respect to issues involving §§ 401, 403(a), 404, 412, 413, 414, 419, 419A, 420, 4971, 4972, 4976, 4980, 6057, 6058, 6059, 6652(e), 6652(f), 6692, and 7805(b); former § 405; and 29 U.S.C. § 1083; or
A person with a “Letter of Authorization”	(5) Any other person, including a foreign representative, who has received a “Letter of Authorization” from the Director of the Office of Professional Responsibility under section 10.7(d) of Treasury Department Circular No. 230. A person may make a written request for a “Letter of Authorization” to: Office of Professional Responsibility, SE:OPR, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224. Section 10.7(d) of Circular No. 230 authorizes the Commissioner to allow an individual who is not otherwise eligible to practice before the Service to represent another person in a particular matter.
Representative authorized based on relationship to taxpayer	(b) A regular full-time employee representing his or her employer; a general partner representing his or her partnership; a <i>bona fide</i> officer representing his or her corporation, association, or organized group; a regular full-time employee representing a trust, receivership, guardianship, or estate; or an individual representing an immediate family member may sign the request or appear before the Service in connection with the request.
Return preparer	(c) A return preparer who is not described in 13(a) and 13(b) of this section may not sign the request, or appear before the Service, or represent a taxpayer in connection with a letter ruling or a determination letter. <i>See</i> section 10.7(c) of Treasury Department Circular No. 230.
Foreign representative	(d) A foreign representative, other than a person referred to in 13(a) and 13(b) of this section, is not authorized to practice before the Service within the United States and, therefore, must withdraw from representing a taxpayer in a request for a letter ruling or a determination letter. In this situation, the nonresident alien or foreign entity must submit the request for a letter ruling or a determination letter on the individual’s or the entity’s own behalf or through a person referred to in (13)(a) and (b) of this section.
Power of attorney and declaration of representative	(14) Power of attorney and declaration of representative. It is preferred that Form 2848, <i>Power of Attorney and Declaration of Representative</i> , be used to provide the representative’s authority (Part I of Form 2848, <i>Power of Attorney</i>) and the representative’s qualification (Part II of Form 2848, <i>Declaration of Representative</i>). The name of the person signing Part I of Form 2848 should also be typed or printed on this form. A stamped signature is not permitted. An original, a copy, or a facsimile transmission (fax) of the power of attorney is acceptable so long as its authenticity is not reasonably disputed. For additional information regarding the power of attorney form, <i>see</i> section 7.02(2) of this revenue procedure. The taxpayer’s authorized representative, whether or not enrolled, must comply with Treasury Department Circular No. 230, which provides the rules for practice before the Service. In situations where the Service believes that the taxpayer’s representative is not in compliance with Circular 230, the Service will bring the matter to the attention of the Office of Professional Responsibility.
Penalties of perjury statement	(15) Penalties of perjury statement. (a) Format of penalties of perjury statement. A request for a letter ruling or determination letter and any change in the request submitted at a later time must be accompanied by the following declaration: “ Under penalties of perjury, I declare that I have examined [Insert, as appropriate: this request or this modification to the request], including accompanying documents, and, to the best of my knowledge and belief, [Insert, as appropriate: the request or the modification] contains all the relevant facts relating to the request, and such facts are true, correct, and complete. ”

See section 8.05(4) of this revenue procedure for the penalties of perjury statement applicable for submissions of additional information.

(b) Signature by taxpayer. The declaration must be signed and dated by the taxpayer, not the taxpayer's representative. A stamped signature or faxed signature is not permitted.

The person who signs for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts and whose duties are not limited to obtaining a letter ruling or determination letter from the Service. If the corporate taxpayer is a member of an affiliated group filing consolidated returns, a penalties of perjury statement must also be signed and submitted by an officer of the common parent of the group.

The person signing for a trust, a state law partnership, or a limited liability company must be, respectively, a trustee, general partner, or member-manager who has personal knowledge of the facts.

Number of copies of request to be submitted

(16) Number of copies of request to be submitted. Generally, a taxpayer needs to submit the original and one copy of the request for a letter ruling or determination letter. If more than one issue is presented in the letter ruling request, the taxpayer is encouraged to submit additional copies of the request.

Further, the original and two copies of the request for a letter ruling or determination letter are required if—

(a) the taxpayer is requesting separate letter rulings or determination letters on different issues as explained later under section 7.02(1) of this revenue procedure; or

(b) the taxpayer is requesting deletions other than names, addresses, and identifying numbers, as explained in section 7.01(11)(a) of this revenue procedure (one copy is the request for the letter ruling or determination letter and the second copy is the deleted version of such request); or

(c) a closing agreement (as defined in section 2.02 of this revenue procedure) is being requested on the issue presented.

Sample format for a letter ruling request

(17) Sample format for a letter ruling request. To assist a taxpayer or the taxpayer's representative in preparing a letter ruling request, a sample format for a letter ruling request is provided in Appendix B of this revenue procedure. This format is not required to be used by the taxpayer or the taxpayer's representative.

Checklist

(18) Checklist for letter ruling requests. An Associate office will be able to respond more quickly to a taxpayer's letter ruling request if the request is carefully prepared and complete. The checklist in Appendix C of this revenue procedure is designed to assist taxpayers in preparing a request by reminding them of the essential information and documents to be furnished with the request. The checklist in Appendix C must be completed to the extent required by the instructions in the checklist, signed and dated by the taxpayer or the taxpayer's representative, and placed on top of the letter ruling request. If the checklist in Appendix C is not received, a branch representative will ask the taxpayer or the taxpayer's representative to submit the checklist; this may delay action on the letter ruling request.

For letter ruling requests on certain matters, specific checklists supplement the checklist in Appendix C. These checklists are listed in section 1 of Appendix E of this revenue procedure and must also be completed and placed on top of the letter ruling request along with the checklist in Appendix C.

Copies of the checklist in Appendix C can be obtained by calling (202) 622-7560 (not a toll-free call) or a copy can be obtained from this revenue procedure in Internal Revenue Bulletin 2006-1 on the IRS web site at www.irs.gov by accessing the Newsroom link, and then the IRS Guidance link, to obtain Internal Revenue Bulletin 2006-1. A photocopy of this checklist may be used.

Additional procedural information required with request

.02

Multiple issues

(1) To request separate letter rulings for multiple issues in a single situation. If more than one issue is presented in a request for a letter ruling, the Associate office generally will issue a single letter ruling covering all the issues. If the taxpayer requests separate letter rulings on any of the issues (because, for example, one letter ruling is needed sooner than another), the Associate office usually will comply with the request unless it is not feasible or not in the best interests of the Associate office to do so. A taxpayer who wants separate letter rulings on multiple issues should make this clear in the request and submit the original and two copies of the request.

In issuing each letter ruling, the Associate office will state that it has issued separate letter rulings or that requests for other letter rulings are pending.

Power of attorney used to indicate recipient of a copy or copies of a letter ruling or a determination letter

(2) Power of attorney used to indicate recipient or recipients of a copy or copies of a letter ruling or a determination letter. Once the Service signs the letter ruling or determination letter, it will send the original to the taxpayer. The Service will not send the original letter ruling or determination letter to the taxpayer's representative. The Service may send copies of the letter ruling or determination to the taxpayer's representative, but in no case to more than two representatives.

Unless otherwise indicated by the taxpayer on the Form 2848, the Service will send a copy of the letter ruling or determination letter to the first representative listed on the Form 2848. If the taxpayer appoints more than one representative on the Form 2848 and checks the Box (a) on Line 7, an additional copy will be sent to the second representative listed on the Form 2848. The Service will not send a copy of the letter ruling or determination letter to any representative if the taxpayer checks the Box (b) on Line 7 on the Form 2848 indicating that notices or written communications from the Service should not be sent to the taxpayer's representative.

It is preferred that the taxpayers use the Form 2848, *Power of Attorney and Declaration of Representative*, to appoint representatives. If a taxpayer does not use Form 2848 to appoint a representative, a copy of the letter ruling or determination letter will be mailed to the first representative listed on the power of attorney, unless the taxpayer indicates that an additional copy of the letter ruling or determination letter should be mailed to a second representative, or that no copies of the letter ruling or determination letter should be mailed to the taxpayer's representative.

“Two-Part” letter ruling requests

(3) To request a particular conclusion on a proposed transaction. A taxpayer who is requesting a particular conclusion on a proposed transaction may make the request for a letter ruling in two parts. This type of request is referred to as a “two-part” letter ruling request. The first part must include the complete statement of facts and related documents described in section 7.01 of this revenue procedure. The second part must include a summary statement of the facts the taxpayer believes to be controlling in reaching the conclusion requested.

If the Associate office accepts the taxpayer's statement of controlling facts, it will base its letter ruling on these facts. Ordinarily, this statement will be incorporated into the letter ruling. The Associate office reserves the right to rule on the basis of a more complete statement of the facts and to seek more information in developing the facts and restating them.

A taxpayer who chooses this two-part procedure has all the rights and responsibilities provided in this revenue procedure.

Taxpayers may not use the two-part procedure if it is inconsistent with other procedures, such as those dealing with requests for permission to change accounting methods or periods, applications for recognition of exempt status under § 521, or rulings on employment tax status.

After the Associate office has resolved the issues presented by a letter ruling request, the Associate office representative may request that the taxpayer submit a proposed draft of the letter ruling to expedite the issuance of the ruling. See section 8.07 of this revenue procedure.

Expedited handling

(4) To request expedited handling. The Service ordinarily processes requests for letter rulings and determination letters in order of the date received. Expedited handling means that a request is processed ahead of the regular order. Expedited handling is granted only in rare and unusual cases, both out of fairness to other taxpayers and because the Service seeks to process all requests as expeditiously as possible and to give appropriate deference to normal business exigencies in all cases not involving expedited handling. Notwithstanding the previous sentence, expedited handling may be available for certain transactions intended to qualify as reorganizations described in § 368 or distributions described in § 355, as provided below.

A taxpayer who has a compelling need to have a request processed ahead of the regular order may request expedited handling. This request must explain in detail the need for expedited handling. The request must be made in writing, preferably in a separate letter with, or soon after filing, the request for the letter ruling or determination letter. If the request is not made in a separate letter, then the letter in which the letter ruling or determination letter request is made should say, at the top of the first page: **“Expedited Handling Is Requested. See page _____ of this letter.”**

A request for expedited handling will not be forwarded to a branch for action until the check for the user fee is received.

Whether a request for expedited handling will be granted is within the Service’s discretion. The Service may grant the request when a factor outside a taxpayer’s control creates a real business need to obtain a letter ruling or determination letter before a certain time in order to avoid serious business consequences. Examples include situations in which a court or governmental agency has imposed a specific deadline for the completion of a transaction, or a transaction must be completed expeditiously to avoid an imminent business emergency (such as the hostile takeover of a corporate taxpayer), provided that the taxpayer can demonstrate that the deadline or business emergency, and the need for expedited handling, resulted from circumstances that could not reasonably have been anticipated or controlled by the taxpayer. To qualify for expedited handling in such situations, the taxpayer must also demonstrate that the taxpayer submitted the request as promptly as possible after becoming aware of the deadline or emergency. The extent to which the letter ruling or determination letter complies with all of the applicable requirements of this revenue procedure, and fully and clearly presents the issues, is a factor in determining whether expedited treatment will be granted. When the Service agrees to process a request out of order, it cannot give assurance that any letter ruling or determination letter will be processed by the time requested.

The scheduling of a closing date for a transaction or a meeting of the board of directors or shareholders of a corporation, without regard for the time it may take to obtain a letter ruling or determination letter, will not be considered a sufficient reason to process a request ahead of its regular order. Also, the possible effect of fluctuation in the market price of stocks on a transaction will not be considered a sufficient reason to process a request out of order.

Because most requests for letter rulings and determination letters cannot be processed ahead of the regular order, the Service urges all taxpayers to submit their requests well in advance of the contemplated transaction. In addition, to facilitate prompt action on letter ruling requests, taxpayers are encouraged to ensure that their initial submissions comply with all of the requirements of this revenue procedure (including the requirements of other applicable guidelines set forth in Appendix E of this revenue procedure), to prepare “two-part” requests described in section 7.02(3) of this revenue procedure when possible, and to provide any additional information requested by the Service promptly.

EXPEDITED LETTER RULING PROCESS FOR REORGANIZATIONS AND FOR DISTRIBUTIONS UNDER SECTION 355: If a taxpayer requests a letter ruling on whether a transaction constitutes a reorganization under § 368 or a distribution under § 355 and asks for expedited handling pursuant to this provision, the Service will grant expedited handling. If expedited handling is granted, the Service will endeavor to complete and issue the letter ruling subject to Section 3.01(33) of Rev. Proc. 2006–3 within ten weeks after receiving the ruling request. If the transaction involves an issue or issues not entirely within the jurisdiction of the

Associate Chief Counsel (Corporate), the letter ruling request will be processed in the usual manner, unless each Associate Chief Counsel having jurisdiction over an issue in the transaction agrees to process the letter ruling request on an expedited basis.

To initiate this process, the taxpayer must (i) state at the top of the first page of the request letter: "Expedited Handling is Requested" and (ii) provide the Associate Chief Counsel (Corporate) with a copy of the request letter by facsimile transmission (fax), without attachments, when the formal request is submitted. The fax copy should be sent to (202) 622-7707, Attn: CC:CORP (Expedite). In due course, the taxpayer must also provide the Associate Chief Counsel (Corporate) with a draft ruling letter setting forth the relevant facts, applicable representations, and requested rulings in a manner consistent with the format used by the Associate Chief Counsel (Corporate) in similar cases. See section 7.02(3) of this revenue procedure. In addition, the taxpayer must ensure that the formal submission of its letter ruling request complies with all of the requirements of this revenue procedure (including the requirements of other applicable guidelines set forth in Appendix E of this revenue procedure). See section 8.05(1) of this revenue procedure for a modified requirement regarding the submission of additional information. If the taxpayer does not satisfy the requirements of this paragraph, the letter ruling request will not be processed on an expedited basis, but instead will be processed in the usual manner. **For further information regarding this EXPEDITED LETTER RULING PROCESS FOR REORGANIZATIONS AND FOR DISTRIBUTIONS UNDER SECTION 355, call the telephone number provided in section 10.07(1) of this revenue procedure for pre-submission conferences with the Office of Associate Chief Counsel (Corporate).**

Facsimile transmission (fax) to taxpayer or taxpayer's authorized representative of any document related to the letter ruling request

(5) Taxpayer requests to receive any document related to the letter ruling request by facsimile transmission (fax). If the taxpayer requests, the Associate office may fax a copy of any document related to the letter ruling request to the taxpayer or the taxpayer's authorized representative (for example, a request for additional information or the letter ruling).

A request to fax a copy of any document related to the letter ruling request to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original letter ruling request or prior to the mailing, or with respect to the letter ruling prior to the signing, of the document. The request must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the document is to be faxed.

A document other than the letter ruling will be faxed by a branch representative. The letter ruling may be faxed by either a branch representative or the Disclosure and Litigation Support Branch of the Legal Processing Division (CC:PA:LPD:DLS). For purposes of § 301.6110-2(h), a letter ruling is not issued until the ruling is mailed.

Requesting a conference

(6) To request a conference. A taxpayer who wants to have a conference on the issues involved should indicate this in writing when, or soon after, filing the request. *See also* sections 10.01, 10.02, and 11.11(2) of this revenue procedure.

Address to send the request

.03

Original letter ruling requests must be sent to the appropriate Associate office. The package should be marked: RULING REQUEST SUBMISSION.

(1) Requests for letter rulings should be sent to the following address:

**Internal Revenue Service
Attn: CC:PA:LPD:DRU
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044**

If a private delivery service is used, the address is:

**Internal Revenue Service
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224**

(2) Requests for letter rulings may also be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. to the courier's desk at the loading dock (behind the 12th Street security station) of 1111 Constitution Avenue, NW, Washington, DC. A receipt will be given at the courier's desk. The package should be addressed to:

**Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224**

(3) Requests for letter rulings must not be submitted by fax. (*But see* section 7.02(4), above, regarding submissions of an initial fax in certain situations where expedited handling is requested.)

Pending letter ruling requests

.04

(1) Circumstances under which the taxpayer must notify the Associate office. The taxpayer must notify the Associate office if, after the letter ruling request is filed but before a letter ruling is issued, the taxpayer knows that—

(a) an examination of the issue or the identical issue on an earlier year's return has been started by a field office;

(b) in the case of a § 301.9100 request, an examination of the return for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made, has been started by a field office. *See* § 301.9100–3(e)(4)(i) and section 5.03(3) of this revenue procedure;

(c) legislation that may affect the transaction has been introduced. *See* section 7.01(10) of this revenue procedure; or

(d) another letter ruling request (including an application for change in accounting method) has been submitted by the taxpayer (or a related party within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) involving the same or similar issue that is currently pending with the Service.

(2) Taxpayer must notify the Associate office if a return is filed and must attach the request to the return. If the taxpayer files a return before a letter ruling is received from the Associate office concerning an issue in the return, the taxpayer must notify the Associate office that the return has been filed. The taxpayer must also attach a copy of the letter ruling request to the return to alert the field office and thereby avoid premature field action on the issue. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date of the letter ruling request and control number of the letter ruling.

If, under the limited circumstances permitted in section 5 of this revenue procedure, the taxpayer requests a letter ruling after the return is filed, but before the return is examined, the taxpayer must notify the Associate office that the return has been filed. The taxpayer must also notify the field office having jurisdiction over the return and attach a copy of the letter ruling request to the notification to alert the field office and thereby avoid premature field action on the issue.

This section 7.04 also applies to pending requests for a closing agreement on a transaction for which a letter ruling is not requested or issued.

For purposes of this section 7.04, the term “return” includes the original return, amended return, and claim for refund.

When to attach letter ruling to return

.05 A taxpayer who receives a letter ruling before filing a return about any transaction that is relevant to the return being filed must attach a copy of the letter ruling to the return when it is filed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

For purposes of this section 7.05, the term “return” includes the original return, amended return, and claim for refund.

How to check on status of request

.06 The taxpayer or the taxpayer’s authorized representative may obtain information regarding the status of a request by calling the person whose name and telephone number are shown on the acknowledgment of receipt of the request or the appropriate branch representative who contacts the taxpayer as explained in section 8.02 of this revenue procedure.

Request may be withdrawn or Associate office may decline to issue letter ruling

.07

(1) In general. A taxpayer may withdraw a request for a letter ruling or determination letter at any time before the letter ruling or determination letter is signed by the Service. Correspondence and exhibits related to a request that is withdrawn or related to a letter ruling request for which an Associate office declines to issue a letter ruling will not be returned to the taxpayer. *See* section 7.01(2) of this revenue procedure. In appropriate cases, an Associate office may publish its conclusions in a revenue ruling or revenue procedure.

(2) Notification of appropriate Service official.

(a) Letter ruling requests. If a taxpayer withdraws a letter ruling request or if the Associate office declines to issue a letter ruling, the Associate office generally will notify, by memorandum, the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer’s tax return and may give its views on the issues in the request to the Service official to consider in any later examination of the return. This section 7.07(2)(a) generally does not apply if the taxpayer withdraws the letter ruling request and submits a written statement that the transaction has been, or is being, abandoned and if the Associate office has not already formed an adverse opinion. *See*, in appropriate cases, section 7.07(1) above.

(b) Notification of Service official may constitute Chief Counsel Advice. If the memorandum to the Service official referred to in paragraph (a) of this section 7.07(2) provides more than the fact that the request was withdrawn and the Associate office was tentatively adverse, or that the Associate office declines to issue a letter ruling, the memorandum may constitute Chief Counsel Advice, as defined in § 6110(i)(1), subject to disclosure under § 6110.

(3) Refund of user fee. Ordinarily, the user fee will not be returned for a letter ruling request that is withdrawn. If the Associate office declines to issue a letter ruling on all of the issues in the request, the user fee will be returned. If the Associate office issues a letter ruling on some, but not all, of the issues, the user fee will not be returned. *See* section 15.10 of this revenue procedure for additional information regarding the refunds of user fees.

SECTION 8. HOW DO THE ASSOCIATE OFFICES HANDLE LETTER RULING REQUESTS?

The Associate offices will issue letter rulings on the matters and under the circumstances explained in sections 3 and 5 of this revenue procedure and in the manner explained in this section and section 11 of this revenue procedure. *See* section 9 of this revenue procedure for procedures for change in accounting method requests.

Docket, Records, and User Fee Branch receives, initially controls and refers the request to the appropriate Associate office

.01 All requests for letter rulings will be received and initially controlled by the Docket, Records, and User Fee Branch of the Legal Processing Division of the Associate Chief Counsel (Procedure and Administration) (CC:PA:LPD:DRU). That office will process the incoming documents and the user fee, and will forward the file to the appropriate Associate office for assignment to a branch that has jurisdiction over the specific issue involved in the request.

Branch representative of the Associate office contacts taxpayer within 21 days

.02 Within 21 calendar days after a letter ruling request has been received in the branch of the Associate office that has jurisdiction over the issue, a representative of the branch will discuss the procedural issues in the letter ruling request with the taxpayer or, if the request includes a properly executed power of attorney, with the authorized representative unless the power of attorney provides otherwise. If the case is complex or a number of issues are involved, it may not be possible for the branch representative to discuss the substantive issues during this initial contact. When possible, for each issue within the branch's jurisdiction, the branch representative will tell the taxpayer—

(1) whether the branch representative will recommend that the Associate office rule as the taxpayer requested, rule adversely on the matter, or not rule;

(2) whether the taxpayer should submit additional information to enable the Associate office to rule on the matter;

(3) whether the letter ruling complies with all of the provisions of this revenue procedure, and if not, which requirements have not been met; or

(4) whether, because of the nature of the transaction or the issue presented, a tentative conclusion on the issue cannot be reached.

If the letter ruling request involves matters within the jurisdiction of more than one branch or Associate office, a representative of the branch that received the original request will tell the taxpayer within the initial 21 days—

(1) that the matters within the jurisdiction of another branch or Associate office have been referred to that branch or Associate office for consideration, and the date the referral was made, and

(2) that a representative of that branch or Associate office will contact the taxpayer within 21 calendar days after receiving the referral to discuss informally the procedural and, to the extent possible, the substantive issues in the request.

This section 8.02 applies to all matters except for cases involving a request for change in accounting method or accounting period and cases within the jurisdiction of the Associate Chief Counsel (Financial Institutions and Products) concerning insurance issues requiring actuarial computations.

Determines if transaction can be modified to obtain favorable letter ruling

.03 If less than a fully favorable letter ruling is indicated, the branch representative will tell the taxpayer whether minor changes in the transaction or adherence to certain published positions would bring about a favorable ruling. The branch representative may also tell the taxpayer the facts that must be furnished in a document to comply with Service requirements. The branch representative will not suggest precise changes that would materially alter the form of the proposed transaction or materially alter a taxpayer's proposed accounting period.

If, at the end of this discussion, the branch representative determines that a meeting in the Associate office would be more helpful to develop or exchange information, a meeting will be offered and an early meeting date arranged. When offered, this meeting is in addition to the taxpayer's conference of right that is described in section 10.02 of this revenue procedure.

Is not bound by informal opinion expressed

.04 The Service will not be bound by the informal opinion expressed by the branch representative or any other Service representative, and such an opinion cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Additional information

.05

Must be submitted within 21 calendar days

(1) Additional information must be submitted within 21 days. If the request lacks essential information, which may include additional information needed to satisfy the procedural requirements of this revenue procedure as well as substantive changes to transactions or documents needed from the taxpayer, the branch representative will tell the taxpayer during the initial contact, or subsequent contacts, that the request will be closed if the Associate office does not receive the information within 21 calendar days from the date of the request for additional information, unless an extension of time is granted. To facilitate prompt action on letter ruling requests, taxpayers are encouraged to request that the Associate office request additional information by fax. *See* section 7.02(5) of this revenue procedure.

Material facts furnished to the Associate office by telephone or fax, or orally at a conference, must be promptly confirmed by letter to the Associate office. This confirmation and any additional information requested by the Associate office that is not part of the information requested during the initial contact must be furnished within 21 calendar days from the date the Associate office makes the request.

The Service will not endeavor to process a ruling request on the expedited basis for requests regarding reorganizations under section 368 and distributions under section 355 provided by section 7.02(4) of this revenue procedure, unless the branch representative in Associate Chief Counsel (Corporate) receives all requested additional information within 10 calendar days from the date of the request for such additional information, unless an extension of time is granted. If the information is not provided within 10 calendar days (with any extension) but is provided within 21 calendar days (with any extension), the letter ruling request will cease to be processed on an expedited basis and instead will be processed in the usual manner.

Extension of reply period if justified and approved

(2) Extension of reply period. An extension of the 21-day period for providing additional information will be granted only if justified in writing by the taxpayer and approved by the branch reviewer. A request for extension should be submitted before the end of the 21-day period. If unusual circumstances close to the end of the 21-day period make a written request impractical, the taxpayer should notify the Associate office within the 21-day period that there is a problem and that the written request for extension will be coming soon. The taxpayer will be told promptly of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

Letter ruling request closed if the taxpayer does not submit additional information

(3) Letter ruling request closed if the taxpayer does not submit additional information. If the taxpayer does not submit the information requested during the initial contact, or subsequent contacts, within the time provided, the letter ruling request will be closed and the taxpayer will be notified in writing. **If the information is received after the request is closed, the request will be reopened and treated as a new request as of the date the information is received. The taxpayer must pay another user fee before the case can be reopened.**

Penalties of perjury statement for additional information

(4) Penalties of perjury statement. Additional information submitted to the Service must be accompanied by the following declaration: **“Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.”** This declaration must be signed in accordance with the requirements in section 7.01(15)(b) of this revenue procedure.

Faxing request and additional information

(5) Faxing request and additional information. To facilitate prompt action on letter ruling requests, taxpayers are encouraged to request that the Associate office request additional information by fax. *See* section 7.02(5) of this revenue procedure. Taxpayers also are encouraged to submit additional information by fax as soon as the information is available. The Associate office representative who requests additional information can provide a telephone number to which the information can be faxed. The original of the faxed material and a signed perjury statement must be mailed or delivered to the Associate office.

Address to send additional information

(6) Address to send additional information.

(a) If a private delivery service is not used, the additional information should be sent to:

**Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and
room number of the Associate office
representative who requested
the information]
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044**

For cases involving a request for change in accounting method or period under the jurisdiction of the Associate Chief Counsel (Income Tax and Accounting), or a § 301.9100 request for an extension of time on a request for change in accounting method or period, the additional information should be sent to:

**Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and
room number of the Associate office
representative who requested
the information]
P.O. Box 14095
Ben Franklin Station
Washington, DC 20044**

(b) If a private delivery service is used, the additional information for all cases should be sent to:

**Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and
room number of the Associate office
representative who requested
the information]
1111 Constitution Ave., NW
Washington, DC 20224**

Identifying information included in additional information

(7) Identifying information. For all cases, the additional information should include the name, office symbols, and room number of the Associate office representative who requested the information, and the taxpayer's name and the case control number, which the Associate office representative can provide.

Number of copies of additional information to be submitted

(8) Number of copies. Generally, a taxpayer needs only to submit one copy of the additional information, although in appropriate cases, the Associate office may request additional copies of the information.

Near the completion of the ruling process, advises the taxpayer of conclusions and, if the Associate office will rule adversely, offer the taxpayer the opportunity to withdraw the letter ruling request

.06 Generally, after the conference of right as discussed in section 10 of this revenue procedure is held but before the letter ruling is issued, the branch representative will orally inform the taxpayer or the taxpayer's representative of the Associate office's conclusions. If the Associate office is going to rule adversely, the taxpayer will be offered the opportunity to withdraw the letter ruling request. Unless an extension is granted, if the taxpayer or the taxpayer's representative does not notify the branch representative of a decision to withdraw the ruling request within 10 days of the notification, the adverse letter ruling will be issued. The user fee will

not be refunded for a letter ruling request that is withdrawn. *See* section 15.10(1)(a) of this revenue procedure.

May request draft of proposed letter ruling near the completion of the ruling process

.07 To accelerate the issuance of letter rulings, in appropriate cases near the completion of the ruling process, the Associate office representative may request that the taxpayer or the taxpayer's representative submit a proposed draft of the letter ruling on the basis of discussions of the issues. The taxpayer is not required to prepare a draft letter ruling to receive a letter ruling.

The format of the submission should be discussed with the Associate office representative who requests the draft letter ruling. The representative usually can provide a sample format of a letter ruling and will discuss the facts, analysis, and letter ruling language to be included.

Taxpayer may also submit draft on a computer disk

In addition to a typed draft, taxpayers are encouraged to submit this draft on a computer disk in Microsoft Word to the Associate office. The typed draft will become part of the permanent files of the Associate office, and the computer disk will not be returned. The proposed letter ruling (both typed draft and computer disk) should be sent to the same address as any additional information and contain in the transmittal the information that should be included with any additional information (for example, a penalties of perjury statement is required). *See* section 8.05(4) of this revenue procedure.

Issues separate letter rulings for substantially identical letter rulings and generally issues a single letter ruling for related § 301.9100 letter

.08

(1) Substantially identical letter rulings. For letter ruling requests qualifying for the user fee provided in paragraph (A)(5)(a) of Appendix A of this revenue procedure for substantially identical letter rulings, a separate letter ruling generally will be issued for each entity with a common member or sponsor, or for each member of a common entity.

(2) Related § 301.9100 letter rulings. For a § 301.9100 letter ruling request for an extension of time to file Form 3115 requesting an identical accounting method change for multiple separate and distinct trades or businesses (including a qualified subchapter S subsidiary or a single-member limited liability company of a taxpayer, multiple members of a consolidated group, or multiple eligible CFCs qualifying under section 15.07(4) for the user fee provided in paragraph (A)(5)(d) of Appendix A of this revenue procedure, the Associate office generally will issue a single letter on behalf of all separate and distinct trades or businesses of the taxpayer, all members of the consolidated group, or all eligible CFCs that are the subject of the request.

Sends a copy of the letter ruling to appropriate Service official

.09 The Associate office will send a copy of the letter ruling, whether favorable or adverse, to the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer's tax return.

SECTION 9. WHAT ARE THE SPECIFIC AND ADDITIONAL PROCEDURES FOR A REQUEST FOR A CHANGE IN ACCOUNTING METHOD FROM THE ASSOCIATE OFFICES?

This section provides the specific and additional procedures applicable to a request for a change in accounting method.

A request for a change in accounting method is a specialized type of request for a letter ruling. *See* section 2.01 of this revenue procedure.

Automatic and advance consent change in accounting method requests

.01

Automatic change in accounting method

(1) Procedures for requesting an automatic change in accounting method. Certain changes in accounting methods may be made under automatic change request procedures. A change in accounting method provided in an automatic change request procedure must be made using that automatic change request procedure if the taxpayer requesting the change is within the scope of the automatic change request procedure and the change is an automatic change for the requested year of the change. The Commissioner's consent to an otherwise qualifying

automatic change in accounting method is granted only if the taxpayer timely complies with the applicable automatic change request procedures. *But see* section 9.19 of this revenue procedure concerning review by an Associate office and a field office.

See section 9.22 of this revenue procedure for a list of automatic change request procedures. *See also* section 9.23 of this revenue procedure for a list of sections, in addition to this section 9, and Appendices of this revenue procedure that apply to a request for an accounting method change. No user fee is required for a change made under an automatic change request procedure.

Advance consent change in accounting method

(2) Advance consent letter ruling requests. If a change in accounting method may not be made under an automatic change request procedure, the taxpayer may request an advance consent letter ruling by filing a current Form 3115, *Application for Change in Accounting Method*, under Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432 (or successors); and this revenue procedure (*see* section 9.23 for a list of the sections and Appendices of this revenue procedure in addition to this section 9 that apply to a request for an accounting method change). A Form 3115 filed under Rev. Proc. 97-27 and this revenue procedure is hereinafter referred to as an “advance consent Form 3115.” A taxpayer filing an advance consent Form 3115 must submit the required user fee with the completed Form 3115. *See* section 15 and Appendix A of this revenue procedure for information about user fees.

Ordinarily only one change in accounting method on a Form 3115 and a separate Form 3115 for each taxpayer and for each separate and distinct trade or business

.02

Ordinarily, a taxpayer may request only one change in accounting method on a Form 3115. If the taxpayer wants to request a change in accounting method for more than one unrelated item or submethod of accounting, the taxpayer must submit a separate Form 3115 for each unrelated item or submethod, except in certain situations in which the Service specifically permits certain unrelated changes to be included on a single Form 3115 (for example, *see* section 5.05 in the Appendix of Rev. Proc. 2002-9, 2002-1 C.B. 327, or its successor).

Further, a separate Form 3115 (and, therefore, a separate user fee pursuant to section 15 and Appendix A of this revenue procedure) must be submitted for each taxpayer and each separate trade or business of a taxpayer, including a qualified S subsidiary (QSUB) or a single-member limited liability company (single member LLC), requesting a change in accounting method, except as specifically permitted or required in guidance published by the Service. *See*, for example, section 15.07(4) of this revenue procedure.

Information required with a Form 3115

.03

Facts and other information

(1) Facts and other information requested on Form 3115 and in applicable revenue procedures. In general, a taxpayer requesting a change in accounting method must file a Form 3115, unless the procedures applicable to the specific type of change in accounting method do not require a Form 3115 to be submitted.

To be eligible for approval of the requested accounting method change, the taxpayer must provide all information requested on the Form 3115 and in its instructions and in either Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432 (or successors), or the applicable automatic change request procedure. In addition, the taxpayer must provide all information requested in the applicable sections of this revenue procedure, including a detailed and complete description of the item being changed, the taxpayer’s present and proposed method for the item being changed, information regarding whether the taxpayer is under examination, or before Appeals or a federal court, and a summary of the computation of the § 481(a) adjustment and an explanation of the methodology used to determine the adjustment.

For an advance consent Form 3115, the taxpayer must also include a full explanation of the legal basis and relevant authorities supporting the proposed method, a detailed and com-

plete description of the facts and explanation of how the law applies to the taxpayer's situation, whether the law in connection with the request is uncertain or inadequately addresses the issue, statement of the applicant's reasons for the proposed change, and copies of all documents related to the proposed change.

The applicant must provide the requested information to be eligible for approval of the requested accounting method change. The taxpayer may be required to provide information specific to the requested accounting method change, such as an attached statement. The taxpayer must provide all information relevant to the requested accounting method change, even if not specifically requested by the Form 3115.

See also sections 7.01(1) and 7.01(8) of this revenue procedure.

Statement of authorities contrary to taxpayer's views

(2) Statement of contrary authorities. For an advance consent Form 3115, the taxpayer is encouraged to inform the Associate office about, and discuss the implications of, any authority believed to be contrary to the proposed change in accounting method, such as legislation, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements.

If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Associate office may request submission of contrary authorities or a statement that none exists. Failure to comply with this request may result in the Associate office's refusal to issue a change in accounting method letter ruling.

Documents

(3) Copies of all contracts, agreements, and other documents. True copies of all contracts, agreements, and other documents pertinent to the requested change in accounting method must be submitted with an advance consent Form 3115. Original documents should not be submitted because they become part of the Associate office's file and will not be returned.

Analysis of material facts

(4) Analysis of material facts. When submitting any document with a Form 3115 or in a supplemental letter, the taxpayer must explain and provide an analysis of all material facts in the document (rather than merely incorporating the document by reference). The analysis of the facts must include their bearing on the requested change in accounting method, specifying the provisions that apply.

Same issue in an earlier return

(5) Information regarding whether same issue is in an earlier return. A Form 3115 must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, any return of the taxpayer (or any return of a current or former consolidated group in which the taxpayer is or was a member) in which the taxpayer used the accounting method being changed is under examination, before Appeals, or before a federal court. *See* Rev. Proc. 97-27 and Rev. Proc. 2002-9, both as modified and amplified by Rev. Proc. 2002-19.

Issue previously submitted or currently pending

(6) Statement regarding prior requests for a change in accounting method and other pending requests.

(a) Other requests for a change in accounting method within the past five years. A Form 3115 must state, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, whether the taxpayer (or a related taxpayer within the meaning of § 267 or a member of a current or former affiliated group of which the taxpayer is or was a member within the meaning of § 1504) or a predecessor requested or made within the past five years (including the year of the requested change), or is currently filing, any request for a change in accounting method.

If the statement is affirmative, for each separate and distinct trade or business, give a description of each request and the year of change and whether consent was obtained. If any application was withdrawn, not perfected, or denied, or if a Consent Agreement was sent to the taxpayer but was not signed and returned to the Associate office, or if the change was not made in the requested year of change, give an explanation.

(b) Any other pending request(s). A Form 3115 must state, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, whether the taxpayer (or a related taxpayer within the meaning of § 267 or a member of a current or former affiliated group of which the taxpayer is or was a member within the meaning of § 1504) or a predecessor currently have pending (including any concurrently filed request) any request for a private letter ruling, a change in accounting method, or a technical advice.

If the statement is affirmative, for each request, give the name(s) of the taxpayer, identification number(s), the type of request (private letter ruling, request for change in accounting method, or request for technical advice), and the specific issues in the request.

Statement identifying pending legislation

(7) Statement identifying pending legislation. At the time the taxpayer files an advance consent Form 3115, the taxpayer must identify any pending legislation that may affect the proposed change in accounting method. In addition, if legislation is introduced after the request is filed but before a change in accounting method letter ruling is issued, the taxpayer must so notify the Associate office.

Authorized representatives

(8) Authorized representatives. To appear before the Service in connection with a request for a change in accounting method, the taxpayer's authorized representative must be an attorney, a certified public accountant, an enrolled agent, an enrolled actuary, a person with a "Letter of Authorization," an employee, general partner, *bona fide* officer, administrator, trustee, etc., as described in section 7.01(13) of this revenue procedure.

Power of attorney and declaration of representative

(9) Power of attorney and declaration of representative. Any authorized representative, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230, which provides the rules for practice before the Service, and the conference and practice requirements of the Statement of Procedural Rules, which provide the rules for representing a taxpayer before the Service. *See* section 7.01(14) of this revenue procedure. It is preferred that Form 2848, *Power of Attorney and Declaration of Representative*, be used to provide the representative's authority.

Penalties of perjury statement

(10) Penalties of perjury statement.

(a) Format of penalties of perjury statement. A Form 3115, and any change to a Form 3115 submitted at a later time, must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined this application, including accompanying schedules and statements, and to the best of my knowledge and belief, the application contains all the relevant facts relating to the application, and it is true, correct, and complete."**

See section 9.08(3) of this revenue procedure for the penalties of perjury statement required for submissions of additional information.

(b) Signature by taxpayer. A Form 3115 must be signed by, or on behalf of, the taxpayer requesting the change by an individual with authority to bind the taxpayer in such matters. For example, an officer must sign on behalf of a corporation, a general partner on behalf of a state law partnership, a member-manager on behalf of a limited liability company, a trustee on behalf of a trust, or an individual taxpayer on behalf of a sole proprietorship. If the taxpayer is a member of a consolidated group, a Form 3115 should be submitted on behalf of the taxpayer by the common parent and must be signed by a duly authorized officer of the common parent. Refer to the signature requirements set forth in the instructions for the current Form 3115 regarding those who are to sign. *See also* section 8.08 of Rev. Proc. 97-27 and section 6.02(5) of Rev. Proc. 2002-9. A stamped signature or faxed signature is not permitted.

(c) Signature by preparer. Declaration of preparer (other than the taxpayer) is based on all information of which the preparer has any knowledge.

Additional procedural information required in certain circumstances

.04

Recipients of original and copy of correspondence

(1) Recipients of original and copy of change in accounting method correspondence. The Service will send the signed original of the change in accounting method letter ruling and other related correspondence to the taxpayer, and copies to the taxpayer's representative, if instructed on Form 2848. *See* section 7.02(2) of this revenue procedure for how to designate alternative routing of the copies of the letter ruling and other correspondence.

Expedited handling

(2) To request expedited handling. The Associate offices ordinarily process advance consent Forms 3115 in order of the date received. A taxpayer who has a compelling need to have an advance consent Form 3115 processed on an expedited basis, may request expedited handling. *See* section 7.02(4) of this revenue procedure for procedures.

Facsimile transmission (fax) of any document to the taxpayer or taxpayer's authorized representative

(3) To receive the change in accounting method letter ruling or any other correspondence related to Form 3115 by facsimile transmission (fax). If the taxpayer wants a copy of the change in accounting method letter ruling or any other correspondence related to a Form 3115, such as a request for additional information, faxed to the taxpayer or the taxpayer's authorized representative, the taxpayer must submit a written request to fax the letter ruling or related correspondence, preferably as part of the Form 3115. The request may be submitted at a later date, but must be received prior to the mailing of correspondence other than the letter ruling and prior to the signing of the change in accounting method letter ruling.

The request to have correspondence relating to the Form 3115 faxed to the taxpayer must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the correspondence is to be faxed.

A document other than the change in accounting method letter ruling will be faxed by a branch representative. The change in accounting method letter ruling may be faxed by either a branch representative or the Disclosure and Litigation Support Branch of the Legal Processing Division of the Office of Associate Chief Counsel (Procedure and Administration) (CC:PA:LPD:DLS).

For purposes of § 301.6110-2(h), a change in accounting method letter ruling is not issued until the change in accounting method letter ruling is mailed.

Requesting a conference

(4) To request a conference. The taxpayer must complete the appropriate line on the Form 3115 to request a conference of right, or request a conference in a later written communication, if an adverse response is contemplated by the Associate office. *See* section 8.10 of Rev. Proc. 97-27, section 10.03 of Rev. Proc. 2002-9, and sections 10.01, 10.02 of this revenue procedure.

Associate office address for Forms 3115

.05 Associate office address to send Forms 3115. Submit the original Form 3115, in the case of an advance consent Form 3115, or the national office copy of the Form 3115, in the case of an automatic change request, as follows:

(a) Associate office mailing address if private delivery service is not used. If a private delivery service is not used, a taxpayer, other than an exempt organization, must send the original completed Form 3115 and the required user fee (in the case of an advance consent Form 3115) or the national office copy of the completed Form 3115 (in the case of an automatic change request) to:

Internal Revenue Service
Attn: [insert either “CC:PA:LPD:DRU”
for an advance consent Form 3115 or
“CC:ITA — Automatic Ruling Branch” for an
automatic change request]
P.O. Box 7604
Benjamin Franklin Station
Washington, DC 20044

An exempt organization must send the original completed Form 3115 and the required user fee (in the case of an advance consent Form 3115) or the national office copy of the completed Form 3115 (in the case of an automatic change Form 3115) to:

Internal Revenue Service
Tax Exempt & Government Entities
Attn: TEGE:EO
P.O. Box 27720
McPherson Station
Washington, DC 20038

See Rev. Proc. 2006–8, this Bulletin, for the applicable user fee for exempt organization Forms 3115.

(b) Mailing address if private delivery service is used. If a private delivery service is used, a taxpayer, other than an exempt organization, must send the original completed Form 3115 and the required user fee (in the case of an advance consent Form 3115) or the national office copy of the completed Form 3115 (in the case of an automatic change request) to:

Internal Revenue Service
Attn: [insert either “CC:PA:LPD:DRU for an
advance consent Form 3115 or
“CC:ITA—Automatic Rulings Branch” for an
automatic change request]
Room 5336
1111 Constitution Ave., NW
Washington, DC 20224

If a private delivery service is used, an exempt organization must send the original completed Form 3115 and the required user fee (in the case of an advance consent Form 3115) or the national office copy of the completed Form 3115 (in the case of an automatic change request) to:

Internal Revenue Service
Tax Exempt & Government Entities
Attn: TEGE:EO
1750 Pennsylvania Ave., NW
Washington, DC 20038

See Rev. Proc. 2006–8, this Bulletin, for the applicable user fee for exempt organization Forms 3115.

(c) Address if hand-delivered to the IRS Courier’s desk. For taxpayers other than an exempt organization, the original completed Form 3115 and the required user fee (in the case of an advance consent Form 3115) or the national office copy of the completed Form 3115 (in the case of an automatic change request), may be hand delivered between the hours of

8:00 a.m. and 4:00 p.m. to the courier's desk at the loading dock (located behind the 12th Street security station) of 1111 Constitution Ave., NW, Washington, DC. A receipt will be given at the courier's desk. The package should be addressed to:

**Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224**

A Form 3115 must not be submitted by fax

.06 A completed Form 3115 must not be submitted by fax.

Controls Form 3115 and refers it to the appropriate Associate office

.07 An advance consent Form 3115 is received and controlled by the Docket, Records, and User Fee Branch, Legal Processing Division of the Associate Chief Counsel (Procedure and Administration) (CC:PA:LPD:DRU) if the required user fee is submitted with the Form 3115. Once controlled, the Form 3115 is forwarded to the appropriate Associate office for assignment and processing.

Additional information

.08

Incomplete Form 3115

(1) Incomplete Form 3115.

(a) Advance consent Form 3115 – 21 day rule. In general, for an advance consent Form 3115, additional information requested by the Associate office and additional information furnished to the Associate office by telephone or fax must be furnished in writing within 21 calendar days from the date of the information request. The Associate office may impose a shorter reply period for a request for additional information made after an initial request. *See* section 10.06 of this revenue procedure for the 21-day rule for submitting information after any conference.

(b) Automatic change request – 30 day rule. In general, for an automatic change in accounting method request, additional information requested by the Associate office, and additional information furnished to the Associate office by telephone or fax, must be furnished in writing within 30 calendar days from the date of the information request. The Associate office may impose a shorter reply period for a request for additional information made after an initial request. *See* section 10.06 of this revenue procedure for the 21-day rule for submitting information after any conference with the Associate office.

Extension of reply period

(2) Request for extension of reply period.

(a) Advance consent Form 3115. For an advance consent Form 3115, an additional period, not to exceed 15 days, to furnish information may be granted to a taxpayer. Any request for an extension of time must be made in writing and submitted before the end of the original 21-day period. If unusual circumstances close to the end of the 21-day period make a written request impractical, the taxpayer should notify the Associate office within the 21-day period that there is a problem and that the written request for extension will be coming soon. An extension of the 21-day period will be granted only if approved by a branch reviewer. An extension of the 21-day period ordinarily will not be granted to furnish information requested on Form 3115. The taxpayer will be told promptly, and later in writing, of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

(b) Automatic change request. For an automatic change in accounting method request, an additional period, not to exceed 30 days, to furnish information may be granted to a taxpayer. Any request for an extension of time must be made in writing and submitted before the end of the original 30-day period. If unusual circumstances close to the end of the 30-day period make a written request impractical, the taxpayer should notify the Associate office within the 30-day period that there is a problem and that the written request for extension will be coming soon. An extension of the 30-day period will be granted only if approved by a branch reviewer. An

extension of the 30-day period ordinarily will not be granted to furnish information requested on Form 3115. The taxpayer will be told promptly, and later in writing, of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

Penalties of perjury statement for additional information

(3) Penalties of perjury statement. Additional information submitted to the Associate office must be accompanied by the following declaration: **“Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.”** This declaration must be signed in accordance with the requirements in section 9.03(10)(b) of this revenue procedure.

Identifying information included in additional information

(4) Identifying information. The additional information should also include the name, office symbols, and room number of the Associate office representative who requested the information, and the taxpayer’s name and the case control number, which the Associate office representative can provide.

Faxing information request and additional information

(5) Faxing information request and additional information. To facilitate prompt action on a change in accounting method ruling request, taxpayers are encouraged to request that the Associate office request additional information by fax. *See* section 9.04(3) of this revenue procedure.

Taxpayers also are encouraged to submit additional information by fax as soon as the information is available. The Associate office representative who requests additional information can provide a telephone number to which the information can be faxed. A copy of the requested information and an original signed penalties of perjury statement also must be mailed or delivered to the Associate office.

Address to send additional information

(6) Address to send additional information.

(a) Address if private delivery service not used. For a request for change in accounting method under the jurisdiction of the Associate Chief Counsel (Income Tax and Accounting), if a private delivery service is not used, the additional information should be sent to:

**Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and
room number of the Associate office
representative who requested
the information]
P.O. Box 14095
Ben Franklin Station
Washington, DC 20044**

For a request for change in accounting method for an exempt organization, if a private delivery service is not used, the additional information should be sent to:

**Internal Revenue Service
Tax Exempt & Government Entities
P.O. Box 27720
McPherson Station
Washington, DC 20038**

For any other request for change in accounting method, if a private delivery service is not used, the additional information should be sent to:

**Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and
room number of the Associate office
representative who requested
the information]
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044**

(b) Address if private delivery service is used.

For a request for a change in accounting method for other than an exempt organization, if a private delivery service is used, the additional information should be sent to:

**Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and
room number of the Associate office
representative who requested
the information]
1111 Constitution Ave., NW
Washington, DC 20224**

For a request for change in accounting method for an exempt organization, if a private delivery service is used the additional information should be sent to:

**Internal Revenue Service
Tax Exempt & Government Entities
1750 Pennsylvania Ave., NW
Washington, DC 20038**

**Failure to timely submit
additional information**

(7) If taxpayer does not timely submit additional information.

(a) Advance consent Form 3115. In the case of an advance consent Form 3115, if the required information is not furnished to the Associate office within the reply period, the Form 3115 will not be processed and the case will be closed. The taxpayer or authorized representative will be so notified in writing.

(b) Automatic change request. In the case of an automatic change in accounting method request, if the required information is not furnished to the Associate office within the reply period, the request does not qualify for the automatic consent procedure. In such a case, the Associate office will notify the taxpayer that consent to make the change in accounting method is not granted.

(c) Submitting the additional information at a later date. If the taxpayer wants to submit the additional information at a later date, the taxpayer must submit it with a new completed Form 3115 (and user fee, if applicable) for a year of change for which such new Form 3115 is timely filed under the applicable change in accounting method procedure.

**Circumstances in which the
taxpayer must notify the Associate
office**

.09

For an advance consent Form 3115, the taxpayer must promptly notify the Associate office if, after the Form 3115 is filed but before a change in accounting method letter ruling is issued, the taxpayer knows that —

(1) an examination of the present or proposed accounting method has been started by a field office;

(2) an examination of the proposed year of change has been started by a field office;

(3) legislation that may affect the change in accounting method has been introduced, *see* section 9.03(7) of this revenue procedure; or

(4) another letter ruling request (including another Form 3115) has been submitted by the taxpayer (or a related party within the meaning of § 267 or a member of an affiliated group of which the taxpayer is a member within the meaning of §1504).

Determines if proposed accounting method can be modified to obtain favorable letter ruling

.10 If a less than fully favorable change in accounting method letter ruling is indicated, the branch representative will tell the taxpayer whether minor changes in the proposed accounting method would bring about a favorable ruling. The branch representative will not suggest precise changes that materially alter a taxpayer's proposed accounting.

Near the completion of processing the Form 3115, advises the taxpayer if the Associate office will rule adversely and offers the taxpayer the opportunity to withdraw Form 3115

.11 Generally, after the conference of right is held (or offered, in the event no conference is held) and before issuing any change in accounting method letter ruling that is adverse to the requested change in accounting method, the taxpayer will be offered the opportunity to withdraw the Form 3115. *See* section 9.12 of this revenue procedure. Unless an extension is granted, if the taxpayer or the taxpayer's representative does not notify the branch representative of a decision to withdraw the Form 3115 within 10 days of the notification, the adverse change in accounting method letter ruling will be issued. Ordinarily, the user fee (in the case of an advance consent Form 3115) will not be refunded for a Form 3115 that is withdrawn.

Advance consent Form 3115 may be withdrawn or Associate office may decline to issue a change in accounting method letter ruling

.12

(1) In general. A taxpayer may withdraw an advance consent Form 3115 at any time before the change in accounting method letter ruling is signed by the Associate office. The Form 3115, correspondence, and any documents relating to the Form 3115 that is withdrawn or for which the Associate office declines to issue a letter ruling will not be returned to the taxpayer. *See* section 9.03(3) of this revenue procedure. In appropriate cases, the Service may publish its conclusions in a revenue ruling or revenue procedure.

(2) Notification of appropriate Service official. If a taxpayer withdraws or the Associate office declines to grant (for any reason) a request to change from or to an improper accounting method, the Associate office will notify, by memorandum, the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer's tax return and the Change in Method of Accounting Technical Advisor, and may give its views on the issues in the request to the Service official to consider in any later examination of the return.

If the memorandum to the Service official provides more than the fact that the request was withdrawn and the Associate office was tentatively adverse, or that the Associate office declines to grant a change in accounting method, the memorandum may constitute Chief Counsel Advice, as defined in § 6110(i)(1), subject to disclosure under § 6110.

(3) Refund of user fee. Ordinarily, the user fee will not be returned for an advance consent Form 3115 that is withdrawn. *See* section 15.10 of this revenue procedure for information regarding refunds of user fees.

How to check status of a pending Form 3115

.13 The taxpayer or the taxpayer's authorized representative may obtain information regarding the status of an advance consent Form 3115 by calling the person whose name and telephone number are shown on the acknowledgement of receipt of the Form 3115.

Is not bound by informal opinion expressed

.14 The Service will not be bound by any informal opinion expressed by the branch representative or any other Service representative, and such an opinion cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Single letter ruling issued to a taxpayer or consolidated group for qualifying identical change in accounting method

.15 For an advance consent Form 3115 qualifying under section 15.07(4) for the user fee provided in paragraph (A)(5)(b) of Appendix A of this revenue procedure for identical accounting method changes, the Associate office generally will issue a single letter ruling on behalf of all affected separate and distinct trades or businesses of a taxpayer, all affected members of the consolidated group, or all eligible and affected CFCs.

Letter ruling ordinarily not issued for one of two or more interrelated items or submethods

.16 If two or more items or submethods of accounting are interrelated, the Associate office ordinarily will not issue a letter ruling on a change in accounting method involving only one of the items or submethods.

Consent Agreement

.17 Ordinarily, for an advance consent Form 3115, the Commissioner's permission to change a taxpayer's accounting method is set forth in a letter ruling (original and a Consent Agreement copy). If the taxpayer agrees to the terms and conditions contained in the change in accounting method letter ruling, the taxpayer must sign and date the Consent Agreement copy of the letter ruling in the appropriate space. The Consent Agreement copy must not be signed by the taxpayer's representative. The signed copy of the letter ruling will constitute an agreement (Consent Agreement) within the meaning of § 1.481-4(b) of the regulations. The signed Consent Agreement copy of the letter ruling must be returned to the Associate office within 45 days. In addition, a photocopy of the signed Consent Agreement copy of the letter ruling must be attached to the taxpayer's income tax return for the year of change. *See* section 8.11 of Rev. Proc. 97-27. If the taxpayer has filed its income tax return for the year of change before the ruling has been received and the Consent Agreement has been signed and returned, the photocopy of the signed Consent Agreement copy of the letter ruling should be attached to the amended return for the year of change that the taxpayer files to implement the change in accounting method.

A taxpayer may not take an advance consent change in accounting method into account in any federal income tax return until the taxpayer receives the letter ruling from the Associate office granting permission to make the accounting method change and the taxpayer signs and returns the Consent Agreement copy of that letter ruling. Reg. section 1.446-1(e)(2)(i).

A copy of the change in accounting method letter ruling is sent to appropriate Service official

.18 The Associate office will send a copy of each change in accounting method letter ruling, whether favorable or adverse, to the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer's tax return.

Consent to change an accounting method may be relied on subject to limitations

.19 A taxpayer may rely on a change in accounting method letter ruling received from the Associate office, subject to certain conditions and limitations. *See* sections 9, 10, and 11 of Rev. Proc. 97-27, as modified and amplified by Rev. Proc. 2002-19.

A qualifying taxpayer complying timely with an automatic change request procedure may rely on the consent of the Commissioner as provided in the automatic change request procedure to change the taxpayer's accounting method, subject to certain conditions and limitations. *See*, in general, sections 6.01, 7 and 8 of Rev. Proc. 2002-9, as modified and amplified by Rev. Proc. 2002-19. An Associate office may review a Form 3115 filed under an automatic change request procedure and will notify the taxpayer if additional information is needed or if consent is not granted to the taxpayer for the requested change. *See* section 10 of Rev. Proc. 2002-9. Further, the field office that has jurisdiction over the taxpayer's return may review the Form 3115. *See* section 9 of Rev. Proc. 2002-9.

Change in accounting method letter ruling will not apply to another taxpayer

.20 A taxpayer may not rely on a change in accounting method letter ruling issued to another taxpayer. *See* § 6110(k)(3).

Associate office discretion to permit requested change in accounting method

.21 The Associate office reserves the right to decline to process any advance consent Form 3115 in situations in which it would not be in the best interest of sound tax administration to permit the requested change. In this regard, the Associate office will consider whether the change in method of accounting would clearly and directly frustrate compliance efforts of the Service in administering the income tax laws. *See* section 8.01 of Rev. Proc. 97-27.

List of automatic change in accounting method request procedures

.22 For procedures regarding requests for an automatic change in accounting method, refer to the following published automatic change request procedures. The Commissioner's consent to an otherwise qualifying automatic change in accounting method is granted only if the taxpayer complies timely with the applicable automatic change request procedure.

The automatic change request procedures for obtaining a change in accounting method include:

(1) Rev. Proc. 2002-9, 2002-1 C.B. 327, as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified, clarified and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and as modified by Rev. Proc. 2003-45, 2003-2 C.B. 11, which, for most (but not all) types of changes provided therein, requires a completed Form 3115. Rev. Proc. 2002-9 applies to the accounting method changes described in the Appendix of Rev. Proc. 2002-9 involving §§ 56, 61, 77, 162, 166, 167, 168, 171, 174, 197, 263, 263A, 267, 404, 446, 448, 451, 454, 455, 458, 460, 461, 471, 472, 475, 585, 832, 846, 861, 985, 1272, 1273, 1278, 1281, 1286, and former § 168.

(2) The following automatic change request procedures modify and amplify Rev. Proc. 2002-9 in that they add the following changes to the list of accounting method changes listed in the Appendix of Rev. Proc. 2002-9 or require certain automatic changes to be made using the provisions of Rev. Proc. 2002-9:

Rev. Rul. 2004-62, 2004-1 C.B. 1072 (section 162 — post-establishment fertilization of established timber stands);

Rev. Proc. 2002-27, 2002-1 C.B. 802 (section 168 — depreciation of original and replacement tires of certain vehicles);

Rev. Rul. 2003-54, 2003-1 C.B. 982 (section 168 — depreciation of gas pump canopies);

Rev. Rul. 2003-81, 2003-2 C.B. 126 (section 168 — depreciation of utility assets);

Rev. Proc. 2003-63, 2003-2 C.B. 304 (section 168 — depreciation of cable TV fiber optics);

Regs. § 1.168(i)-1(1)(2)(ii) (change in general asset account treatment due to a change in the use of MACRS property);

Regs. § 1.168(i)-4(g)(2) (change in method of accounting for depreciation due to a change in the use of MACRS property);

Regs. § 1.168(i)-6T(k)(2) (for a like-kind exchange or involuntary conversion of MACRS property for which the time of disposition, the time of replacement, or both, occurred on or before February 27, 2004, change in method of accounting for relinquished MACRS property and replacement MACRS property);

Rev. Proc. 2005-43, 2005-29 I.R.B.107 (sections 168 and 1400L(c) — election to not treat qualified New York Liberty Zone leasehold improvement property as 5-year property for purposes of § 168);

Rev. Proc. 2004-11, 2004-1 C.B. 311, (or its successor) (sections 56(a)(1), 56(g)(4)(A), 167, 168, 197, 1400I, and 1400L — revised sections 2.01 and 2.02 and 2B of the Appendix and added section 2.05 to the Appendix of Rev. Proc. 2002-9);

Rev. Proc. 2005-9, 2005-2 I.R.B. 303, as modified by Rev. Proc. 2005-17, 2005-13 I.R.B. 797 (section 263 — amounts paid or incurred to acquire or create intangibles or to facilitate an acquisition of a trade or business, change in the capital structure of a business entity, and certain other transactions, for a taxpayer's second taxable year ending on or after December 31, 2003);

Rev. Rul. 2002–9, 2002–1 C.B. 614 (section 263A — impact fees incurred in connection with construction of a new residential rental building);

Rev. Rul. 2004–18, 2004–1 C.B. 509 (section 263A — environmental remediation costs);

Rev. Rul. 2005–42, 2005–28 I.R.B. 67 (section 263A — allocation of environmental remediation costs to production);

Regs. § 1.263A–1T(k)(1) (section 263A — change in method of accounting for mixed service costs to comply with the temporary regulations);

Regs. § 1.263A–2T(e)(1) (section 263A — change in method of accounting for additional section 263A costs to comply with the temporary regulations);

Rev. Proc. 2004–11, 2004–1 C.B. 311, (or its successor) (sections 56(a)(1), 56(g)(4)(A), 167, 168, 197, 1400I, and 1400L, and former section 168 — replaced sections 2.01 and 2.02 and 2B of the Appendix of Rev. Proc. 2002–9 and added section 2.05 to the Appendix of Rev. Proc. 2002–9);

Regs. § 1.280F–6(f)(2)(iv) (for certain qualified nonpersonal use vehicles placed in service before July 7, 2003, exclusion from limits on depreciation applicable to passenger automobiles);

Rev. Rul. 2002–46, 2002–2 C.B. 117, as modified by Rev. Rul. 2002–73, 2002–2 C.B. 805 (section 404 — grace period contributions);

Rev. Proc. 2002–28, 2002–1 C.B. 815 (section 446 — certain small businesses who seek to change to the cash method and/or to a method of accounting for inventoriable items as materials and supplies that are not incidental);

Rev. Proc. 2004–30, 2004–1 C.B. 950 (section 446 — inducement fees received in connection with becoming holders of noneconomic residual interests in Real Estate Mortgage Investment Conduits);

Rev. Proc. 2004–32, 2004–1 C.B. 988 (section 446 — credit card annual fees);

Rev. Proc. 2004–36, 2004–1 C.B. 1063 (section 446 — safe harbor method of accounting for film producers' treatment of certain creative property costs);

Rev. Proc. 2002–36, 2002–1 C.B. 993 (section 451 — certain taxpayers who purchase vehicles subject to leases who seek to change to the capital cost reduction (CCR) method);

Rev. Rul. 2003–3, 2003–1 C.B. 252 (section 451 — accrual method taxpayer with state or local income or franchise tax refund);

Rev. Proc. 2004–34, 2004–1 C.B. 991 (section 451 — certain advance payments);

Rev. Proc. 2005–35, 2005–28 I.R.B. 76 (section 451 — up-front network upgrade payments made to utilities);

Rev. Proc. 2002–17, 2002–1 C.B. 676 (section 472 — certain automobile dealers seeking to change to the replacement cost method for vehicle parts inventory);

Rev. Proc. 2003–20, 2003–1 C.B. 445 (section 471 — valuation of remanufactured motor vehicle core parts);

Rev. Proc. 2002–46, 2002–2 C.B. 105 (section 832 — certain insurance companies seeking to change to safe harbor method for premium acquisition expenses);

Rev. Proc. 2004–41, 2004–2 C.B. 90 (section 832 — insurance companies' incentive payments to health care providers);

Rev. Proc. 2002–74, 2002–2 C.B. 980 (section 846 — insurance companies other than life insurance companies computing discounted unpaid losses);

Rev. Proc. 2004–33, 2004–1 C.B. 989 (section 1272 — credit card late fees);

Rev. Proc. 2005–47, 2005–32 I.R.B. 269 (section 1273 — credit card cash advance fees); and

Rev. Proc. 2005–43, 2005–29 I.R.B. 107 (section 1400L(c) — retroactive election to use the 5-year recovery period (or 9-year recovery period, if applicable) for qualified New York Liberty Zone leasehold improvement property placed in service after September 10, 2001, during the 2000, 2001, 2002, 2003, or 2004 taxable year).

(3) The following automatic change request procedures, which require a completed Form 3115, provide both the type of accounting method change that may be made automatically and the procedures under which such change must be made:

Regs. § 1.166–2(d)(3) (bank conformity for bad debts);

Regs. § 1.448–1 (to an overall accrual method for the taxpayer’s first taxable year it is subject to Code section 448);

Regs. § 1.448–2T and Notice 88–51 (nonaccrual experience method);

Regs. § 1.458–1 and –2 (exclusion for certain returned magazines, paperbacks, or records);

Rev. Proc. 97–43, 1997–2 C.B. 494 (section 475 — electing out of certain exemptions from securities dealer status); and

Rev. Proc. 91–51, 1991–2 C.B. 779 (section 1286 — certain taxpayers under examination that sell mortgages and retain rights to service the mortgages).

(4) The following automatic change request procedures, which do not require a completed Form 3115, provide the type of accounting method change that may be made automatically and also provide the procedures under which such change must be made:

Notice 96–30, 1996–1 C.B. 378 (section 446 — change to comply with Statement of Financial Accounting Standards No. 116);

Rev. Proc. 92–29, 1992–1 C.B. 748 (section 461 — change in real estate developer’s method for including costs of common improvements in the basis of property sold);

Rev. Proc. 98–58, 1998–2 C.B. 710 (certain taxpayers seeking to change to the installment method of accounting under § 453 for alternative minimum tax purposes for certain deferred payment sales contracts relating to property used or produced in the trade or business of farming);

Regs. § 1.472–2 (taxpayers changing to the last-in, first-out (LIFO) inventory method);

Code § 585(c) and Regs. §§ 1.585–6 and 1.585–7 (large bank changing from the reserve method of section 585); and

Rev. Proc. 92–67, 1992–2 C.B. 429 (election under § 1278(b) to include market discount in income currently or election under § 1276(b) to use constant interest rate to determine accrued market discount).

(5) See Appendix E for the list of revenue procedures for automatic changes in accounting period.

Other sections of this revenue procedure that are applicable to a Form 3115

.23 In addition to this section 9, the following sections of this revenue procedure are applicable to Forms 3115:

1 (purpose of Rev. Proc. 2006–1);

2.01 (definition of “letter ruling”);

2.02 (definition of “closing agreement”);

2.05 (oral guidance);

3.01 (issues under the jurisdiction of the Associate Chief Counsel (Corporate));

3.02 (issues under the jurisdiction of the Associate Chief Counsel (Financial Institutions and Products));

3.03 (issues under the jurisdiction of the Associate Chief Counsel (Income Tax and Accounting));

3.04 (issues under the jurisdiction of the Associate Chief Counsel (International));

3.05 (issues under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries));

3.07 (issues under the jurisdiction of the Associate Chief Counsel (Tax Exempt and Governmental Entities));

6.02 (letter rulings ordinarily not issued in certain areas because of the factual nature of the problem);

6.05 (letter rulings generally not issued to business associations or groups);

6.06 (letter rulings generally not issued where the request does not address the tax status, liability, or reporting obligations of the requester);

6.08 (letter rulings ordinarily not issued on federal tax consequences of proposed legislation);

6.10 (letter rulings not issued on frivolous issues);

6.12 (letter rulings not issued on alternative plans or hypothetical situation);

7.01(1) (statement of facts and other information);

7.01(8) (statement of supporting authorities);

7.01(13) (authorized representatives);

7.01(14) (power of attorney and declaration of representative);

7.02(2) (power of attorney used to indicate recipient of a copy or copies of a letter ruling or a determination letter);

7.02(4) (expedited handling);

7.04(2) (notify Associate office if a return, amended return, or claim for refund is filed while request is pending and attach request to the return);

7.05 (attach letter ruling to the return, amended return or claim for refund);

10 (scheduling conferences);

15 (user fees);

16 (significant changes to Rev. Proc. 2005–1);

17 (effect of Rev. Proc. 2006–1 on other documents);

18 (effective date of this revenue procedure);

Appendix A (schedule of user fees); and

Appendix E (revenue procedures and notices regarding letter ruling requests relating to specific Code sections and subject matters).

SECTION 10. HOW ARE CONFERENCES FOR LETTER RULINGS SCHEDULED?

Schedules a conference if requested by taxpayer

.01 A taxpayer may request a conference regarding a letter ruling request. Normally, a conference is scheduled only when the Associate office considers it to be helpful in deciding the case or when an adverse decision is indicated. If conferences are being arranged for more than one request for a letter ruling involving the same taxpayer, they will be scheduled so as to cause the least inconvenience to the taxpayer. As stated in sections 7.02(6) and 9.04(4) of this revenue procedure, a taxpayer who wants to have a conference on the issue or issues involved should indicate this in writing when, or soon after, filing the request.

If a conference has been requested, the taxpayer or the taxpayer's representative will be notified by telephone, if possible, of the time and place of the conference, which must then be held within 21 calendar days after this contact. Instructions for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Associate office's approval or denial of the request for extension are the same as those explained in section 8.05(2) (section 9.08(2)(a) for a change in accounting method request) of this revenue procedure regarding providing additional information.

Permits taxpayer one conference of right

.02 A taxpayer is entitled, as a matter of right, to only one conference in the Associate office, except as explained under section 10.05 of this revenue procedure. This conference is normally held at the branch level and is attended by a person who has the authority to sign the letter ruling in his or her own name or for the branch chief.

When more than one branch has taken an adverse position on an issue in a letter ruling request or when the position ultimately adopted by one branch will affect that adopted by another, a representative from each branch with the authority to sign in his or her own name or for the branch chief will attend the conference. If more than one subject is to be discussed at the conference, the discussion will constitute a conference on each subject.

To have a thorough and informed discussion of the issues, the conference usually will be held after the branch has had an opportunity to study the case. At the request of the taxpayer, the conference of right may be held earlier.

No taxpayer has a right to appeal the action of a branch to an Associate Chief Counsel or to any other official of the Service. *But see* section 10.05 of this revenue procedure for situations in which the Associate office may offer additional conferences.

In employment tax matters, only the party entitled to the letter ruling is entitled to a conference. *See* section 5.10 of this revenue procedure.

Disallows verbatim recording of conferences

.03 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Makes tentative recommendations on substantive issues

.04 The senior Associate office representative present at the conference ensures that the taxpayer has the opportunity to present views on all the issues in question. An Associate office representative explains the Associate office's tentative decision on the substantive issues and the reasons for that decision. If the taxpayer asks the Associate office to limit the retroactive effect of any letter ruling or limit the revocation or modification of a prior letter ruling, an Associate office representative will discuss the recommendation concerning this issue and the reasons for the recommendation. The Associate office representatives will not make a commitment regarding the conclusion that the Associate office will finally adopt.

May offer additional conferences

.05 The Associate office will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed, but on a new issue, or on the same issue but

on different grounds from those discussed at the first conference. There is no right to another conference when a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limit on the number of conferences to which a taxpayer is entitled does not prevent the Associate office from offering additional conferences, including conferences with an official higher than the branch level, if the Associate office decides they are needed. These conferences are not offered as a matter of course simply because the branch has reached an adverse decision. In general, conferences with higher level officials are offered only if the Associate office determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

Requires written confirmation of information presented at conference

.06 The taxpayer should furnish to the Associate office any additional data, reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but not previously or adequately presented in writing. The taxpayer must furnish the additional information within 21 calendar days from the date of the conference. If the additional information is not received within that time, a letter ruling will be issued on the basis of the information on hand or, if appropriate, no ruling will be issued. *See* section 8.05 of this revenue procedure for instructions on submission of additional information for a letter ruling request other than a change in accounting method request. *See* section 9.08 of this revenue procedure for instructions on submitting additional information for a change in accounting method request.

May schedule a pre-submission conference

.07 Sometimes it will be advantageous to both the Associate office and the taxpayer to hold a conference before the taxpayer submits the letter ruling request to discuss substantive or procedural issues relating to a proposed transaction. These conferences are held only if the identity of the taxpayer is provided to the Associate office, only if the taxpayer actually intends to make a request, only if the request involves a matter on which a letter ruling is ordinarily issued, and only at the discretion of the Associate office and as time permits. For example, a pre-submission conference will not be held on an income tax issue if, at the time the pre-submission conference is requested, the identical issue is involved in the taxpayer's return for an earlier period and that issue is being examined by a field office. *See* section 6.01(1) of this revenue procedure. A letter ruling request submitted following a pre-submission conference will not necessarily be assigned to the branch that held the pre-submission conference. Also, when a letter ruling request is not submitted following a pre-submission conference, the Associate office may notify, by memorandum, the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer's tax return and may give its views on the issues raised during the pre-submission conference. This memorandum may constitute Chief Counsel Advice, as defined in § 6110(i), subject to disclosure under § 6110.

(1) Taxpayer may request a pre-submission conference in writing or by telephone. A taxpayer or the taxpayer's representative may request a pre-submission conference in writing or by telephone. If the taxpayer's representative is requesting the pre-submission conference, a power of attorney is required. It is preferred that Form 2848, *Power of Attorney and Declaration of Representative*, be used to provide the representative's authority. If multiple taxpayers and/or their authorized representatives will attend or participate in the pre-submission conference, cross powers of attorney (or tax information authorizations) are required. If the taxpayer's representative is requesting the pre-submission conference by telephone, the Associate office's representative (see list of phone numbers below) will provide the fax number to send the power of attorney prior to scheduling the pre-submission conference.

The request should identify the taxpayer and include a brief explanation of the primary issue so that an assignment to the appropriate branch can be made. If submitted in writing, the request should also identify the Associate office expected to have jurisdiction over the request for a letter ruling. A written request for a pre-submission conference should be sent to the appropriate address listed in section 7.03 of this revenue procedure.

To request a pre-submission conference by telephone, call:

(a) (202) 622-7700 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Corporate);

(b) (202) 622-3900 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Financial Institutions and Products);

(c) (202) 622-4800 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Income Tax and Accounting);

(d) (202) 622-3800 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (International);

(e) (202) 622-3000 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Passthroughs and Special Industries);

(f) (202) 622-3400 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Procedure and Administration); or

(g) (202) 622-6000 (not a toll-free call) for matters under the jurisdiction of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

(2) Pre-submission conferences held in person or by telephone. Depending on the circumstances, pre-submission conferences may be held in person at the Associate office or may be conducted by telephone.

(3) Certain information required to be submitted to the Associate office prior to the pre-submission conference. Generally, the taxpayer will be asked to provide, at least three business days before the scheduled pre-submission conference, a statement of whether the issue is an issue on which a letter ruling is ordinarily issued, a draft of the letter ruling request or other detailed written statement of the proposed transaction, issue, and legal analysis. If the taxpayer's authorized representative will attend or participate in the pre-submission conference, a power of attorney is required.

(4) Discussion of substantive issues is not binding on the Service. Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service in general or on the Office of Chief Counsel in particular, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

May schedule a conference to be held by telephone

.08 Depending on the circumstances, conferences, including conferences of right and pre-submission conferences, may be held by telephone. This may occur, for example, when a taxpayer wants a conference of right but believes that the issue involved does not warrant incurring the expense of traveling to Washington, DC, or if it is believed that scheduling an in person conference of right will substantially delay the ruling process. If a taxpayer makes such a request, the branch reviewer will decide if it is appropriate in the particular case to hold a conference by telephone. If the request is approved, the taxpayer will be advised when to call the Associate office representatives (not a toll-free call).

SECTION 11. WHAT EFFECT WILL A LETTER RULING HAVE?

May be relied on subject to limitations

.01 A taxpayer ordinarily may rely on a letter ruling received from the Associate office subject to the conditions and limitations described in this section.

Will not apply to another taxpayer

.02 A taxpayer may not rely on a letter ruling issued to another taxpayer. *See* § 6110(k)(3).

Will be used by a field office in examining the taxpayer's return

.03 When determining a taxpayer's liability, the field office must ascertain whether—

(1) the conclusions stated in the letter ruling are properly reflected in the return;

(2) the representations upon which the letter ruling was based reflected an accurate statement of the controlling facts;

(3) the transaction was carried out substantially as proposed; and

(4) there has been any change in the law that applies to the period during which the transaction or continuing series of transactions were consummated.

If, when determining the liability, the field office finds that a letter ruling should be revoked or modified, the findings and recommendations of the field office will be forwarded through the appropriate Director to the Associate office for consideration before further action is taken by the field office. Such a referral to the Associate office will be treated as a request for technical expedited advice (TEAM) and the provisions of Rev. Proc. 2006-2, this Bulletin, relating to requests for technical expedited advice will be followed, except that no consensus among field office, taxpayer and Associate office will be required to make the request subject to TEAM procedures. Otherwise, the letter ruling is to be applied by the field office in the determination of the taxpayer's liability. Appropriate coordination with the Associate office must be undertaken if any field office having jurisdiction over a return or other matter proposes to reach a conclusion contrary to a letter ruling previously issued to the taxpayer.

May be revoked or modified if found to be in error or there has been a change in law

.04 Unless it was part of a closing agreement as described in section 2.02 of this revenue procedure, a letter ruling found to be in error or not in accord with the current views of the Service may be revoked or modified. If a letter ruling is revoked or modified, the revocation or modification applies to all years open under the period of limitations unless the Service uses its discretionary authority under § 7805(b) to limit the retroactive effect of the revocation or modification.

A letter ruling may be revoked or modified by —

(1) a letter giving notice of revocation or modification to the taxpayer to whom the letter ruling was issued;

(2) the enactment of legislation or ratification of a tax treaty;

(3) a decision of the United States Supreme Court;

(4) the issuance of temporary or final regulations; or

(5) the issuance of a revenue ruling, revenue procedure, notice, or other statement published in the Internal Revenue Bulletin.

Consistent with these provisions, if a letter ruling relates to a continuing action or a series of actions, it ordinarily will be applied until any one of the events described above occurs or until it is specifically withdrawn.

Publication of a notice of proposed rulemaking will not affect the application of any letter ruling issued under this revenue procedure.

Where a letter ruling is revoked or modified by a letter to the taxpayer, the letter will state whether the revocation or modification is retroactive. Where a letter ruling is revoked or modified by the issuance of final or temporary regulations or by the publication of a revenue ruling, revenue procedure, notice or other statement in the Internal Revenue Bulletin, the document may contain a statement as to its retroactive effect on letter rulings.

Letter ruling revoked or modified based on material change in facts applied retroactively

.05 An Associate office will revoke or modify a letter ruling and apply the revocation retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling if—

(1) there has been a misstatement or omission of controlling facts; or

(2) the facts at the time of the transaction are materially different from the controlling facts on which the letter ruling was based; or

(3) if the transaction involves a continuing action or series of actions, the controlling facts change during the course of the transaction.

Not otherwise generally revoked or modified retroactively

.06 Where the revocation or modification of a letter ruling is for reasons other than a change in facts as described in section 11.05 of this revenue procedure, it will generally not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling provided that—

(1) there has been no change in the applicable law;

(2) the letter ruling was originally issued for a proposed transaction; and

(3) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment. For example, the tax liability of each shareholder is directly involved in a letter ruling on the reorganization of a corporation. The shareholders' reliance on the letter ruling may, depending on all facts and circumstances, be in good faith. The tax liability of a member of an industry, however, is not directly involved in a letter ruling issued to another member of the same industry and, therefore, a nonretroactive revocation or modification of a letter ruling to one member of an industry will not extend to other members of the industry who have not received letter rulings. By the same reasoning, a tax practitioner may not extend to one client the non-retroactive application of a revocation or modification of a letter ruling previously issued to another client.

If a letter ruling is revoked or modified by a letter with retroactive effect, the letter will, except in fraud cases, state the grounds on which the letter ruling is being revoked or modified and explain the reasons why it is being revoked or modified retroactively.

Retroactive effect of revocation or modification applied to a particular transaction

.07 A letter ruling issued on a particular transaction represents a holding of the Service on that transaction only. It will not apply to a similar transaction in the same year or any other year. And, except in unusual circumstances, the application of that letter ruling to the transaction will not be affected by the later issuance of regulations (either temporary or final) if conditions (1) through (3) in section 11.06 of this revenue procedure are met.

If a letter ruling on a transaction is later found to be in error or no longer in accord with the position of the Service, it will not protect a similar transaction of the taxpayer in the same year or later year.

Retroactive effect of revocation or modification applied to a continuing action or series of actions

.08 If a letter ruling is issued covering a continuing action or series of actions and the letter ruling is later found to be in error or no longer in accord with the position of the Service, the appropriate Associate Chief Counsel or Division Counsel/Associate Chief Counsel ordinarily will limit the retroactive effect of the revocation or modification to a date that is not earlier than that on which the letter ruling is revoked or modified. For example, the retroactive effect of the revocation or modification of a letter ruling covering a continuing action or series of actions ordinarily would be limited in the following situations when the letter ruling is in error or no longer in accord with the position of the Service:

(1) A taxpayer received a letter ruling that certain payments are excludable from gross income for federal income tax purposes. The taxpayer ordinarily would be protected only for the payment received after the letter ruling was issued and before the revocation or modification of the letter ruling.

(2) A taxpayer rendered a service or provided a facility that is subject to the excise tax on services or facilities and, in relying on a letter ruling received, did not pass the tax on to the user of the service or the facility.

(3) An employer incurred liability under the Federal Insurance Contributions Act but, in relying on a letter ruling received, neither collected the employee tax nor paid the employee and employer taxes under the Federal Insurance Contributions Act. The retroactive effect would be limited for both the employer and employee tax. The limitation would be conditioned on the employer furnishing wage data, as may be required by § 31.6011(a)–1 of the Employment Tax Regulations.

Generally not retroactively revoked or modified if related to sale or lease subject to excise tax

.09 A letter ruling holding that the sale or lease of a particular article is subject to the manufacturer's excise tax or the retailer's excise tax may not retroactively revoke or modify an earlier letter ruling holding that the sale or lease of such an article was not taxable if the taxpayer to whom the letter ruling was issued, in relying on the earlier letter ruling, gave up possession or ownership of the article without passing the tax on to the customer. (Section 1108(b), Revenue Act of 1926.)

May be retroactively revoked or modified when transaction is entered into before the issuance of the letter ruling

.10 A taxpayer is not protected against retroactive revocation or modification of a letter ruling involving a transaction completed before the issuance of the letter ruling or involving a continuing action or series of actions occurring before the issuance of the letter ruling because the taxpayer did not enter into the transaction relying on a letter ruling.

Taxpayer may request that retroactivity be limited

.11 Under § 7805(b), the Service may prescribe any extent to which a revocation or modification of a letter ruling will be applied without retroactive effect.

A taxpayer to whom a letter ruling has been issued may request that the appropriate Associate Chief Counsel limit the retroactive effect of any revocation or modification of the letter ruling.

Format of request

(1) Request for relief under § 7805(b) must be made in required format.

A request to limit the retroactive effect of the revocation or modification of a letter ruling must be in the general form of, and meet the general requirements for, a letter ruling request. These requirements are given in section 7 of this revenue procedure. Specifically, the request must also—

(a) state that it is being made under § 7805(b);

(b) state the relief sought;

(c) explain the reasons and arguments in support of the relief requested (including a discussion of section 11.05 of this revenue procedure and the three items listed in section 11.06 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request.

A request that the Service limit the retroactive effect of a revocation or modification of a letter ruling may be made in the form of a separate request for a letter ruling when, for example, a revenue ruling has the effect of modifying or revoking a letter ruling previously issued to the taxpayer or when the Service notifies the taxpayer of a change in position that will have the effect of revoking or modifying the letter ruling.

When notice is given by the field office during an examination of the taxpayer's return or by Appeals, during consideration of the taxpayer's return before Appeals, a request to limit retroactive effect must be made in the form of a request for technical advice as explained in section 16.03 of Rev. Proc. 2006-2, this Bulletin.

When germane to a pending letter ruling request, a request to limit the retroactive effect of a revocation or modification of a letter ruling may be made as part of the request for the letter ruling, either initially or at any time before the letter ruling is issued. When a letter ruling that concerns a continuing transaction is revoked or modified by, for example, a subsequent revenue ruling, a request to limit retroactive effect must be made before the examination of the return that contains the transaction that is the subject of the letter ruling request.

Request for conference

(2) Taxpayer may request a conference on application of § 7805(b).

A taxpayer who requests the application of § 7805(b) in a separate letter ruling request has the right to a conference in the Associate office as explained in sections 10.02, 10.04, and 10.05 of this revenue procedure. If the request is made initially as part of a pending letter ruling request or is made before the conference of right is held on the substantive issues, the § 7805(b)

issue will be discussed at the taxpayer's one conference of right as explained in section 10.02 of this revenue procedure. If the request for the application of § 7805(b) relief is made as part of a pending letter ruling request after a conference has been held on the substantive issue and the Associate office determines that there is justification for having delayed the request, the taxpayer is entitled to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue only.

SECTION 12. UNDER WHAT CIRCUMSTANCES DO DIRECTORS ISSUE DETERMINATION LETTERS?

Directors issue determination letters only if the question presented is specifically answered by a statute, tax treaty, or regulations, a conclusion stated in a revenue ruling, or an opinion or court decision that represents the position of the Service.

Under no circumstances will a Director issue a determination letter unless it is clearly shown that the request concerns a return that has been filed or is required to be filed and over which the Director has, or will have, examination jurisdiction.

A determination letter does not include assistance provided by the U.S. competent authority pursuant to the mutual agreement procedure in tax treaties as set forth in Rev. Proc. 2002-52, 2002-2 C.B. 242.

In income and gift tax matters

.01 In income and gift tax matters, Directors issue determination letters in response to taxpayers' written requests on completed transactions that affect returns over which they have examination jurisdiction. A determination letter usually is not issued for a question concerning a return to be filed by the taxpayer if the same question is involved in a return already filed.

Normally, Directors do not issue determination letters on the tax consequences of proposed transactions. A Director may issue a determination letter on the replacement, even though not yet made, of involuntarily converted property under § 1033, if the taxpayer has filed an income tax return for the year in which the property was involuntarily converted.

In estate tax matters

.02 In estate tax matters, Directors issue determination letters in response to written requests affecting the estate tax returns over which they have examination jurisdiction. They do not issue determination letters on matters concerning the application of the estate tax to the prospective estate of a living person.

In generation-skipping transfer tax matters

.03 In generation-skipping transfer tax matters, Directors issue determination letters in response to written requests affecting the generation-skipping transfer tax returns over which they have examination jurisdiction. They do not issue determination letters on matters concerning the application of the generation-skipping transfer tax before the distribution or termination takes place.

In employment and excise tax matters

.04 In employment and excise tax matters, Directors issue determination letters in response to taxpayers' written requests on completed transactions over which they have examination jurisdiction. *See also* section 5.10 of this revenue procedure.

Requests concerning income, estate, or gift tax returns

.05 A request received by a Director on a question concerning an income, estate, or gift tax return already filed generally will be considered in connection with the examination of the return. If a response is made to the request before the return is examined, it will be considered a tentative finding in any later examination of that return.

Attach a copy of determination letter to taxpayer's return

.06 A taxpayer who, before filing a return, receives a determination letter about any transaction that has been consummated and that is relevant to the return being filed should attach a copy of the determination letter to the return when it is filed.

Review of determination letters

.07 Determination letters issued under sections 12.01 through 12.04 of this revenue procedure are not reviewed by the Associate offices before they are issued. If a taxpayer believes that a determination letter of this type is in error, the taxpayer may ask the Director to reconsider the matter or to request technical advice from an Associate office as explained in Rev. Proc. 2006-2, this Bulletin.

Addresses to send determination letter requests

.08 (a) For taxpayers under the jurisdiction of LMSB, send a request for a determination letter to the following address:

Internal Revenue Service
Attn: Manager, Office of Pre-Filing and Technical Services
Large and Mid-Size Business Division
SE:LM:PFT:PFTS
Mint Building, 3rd Floor
1111 Constitution Ave., NW
Washington, DC 20224

(b) SB/SE and W&I taxpayers should send requests for determination letters to the appropriate SB/SE office listed in Appendix D.

(c) For a determination letter under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, *see* Rev. Proc. 2006-4, this Bulletin.

(d) For fees required with determination letter requests, *see* section 15 and Appendix A of this revenue procedure.

SECTION 13. WHAT EFFECT WILL A DETERMINATION LETTER HAVE?

Has same effect as a letter ruling

.01 A determination letter issued by a Director has the same effect as a letter ruling issued to a taxpayer under section 11 of this revenue procedure.

If a field office proposes to reach a conclusion contrary to that expressed in a determination letter, that office need not refer the matter to the Associate office as is required for a letter ruling found to be in error. The field office must, however, refer the matter to the Associate office through the appropriate Director, if it desires to have the revocation or modification of the determination letter limited under § 7805(b).

Taxpayer may request that retroactive effect of revocation or modification be limited

.02 Under § 7805(b), the Service may prescribe the extent to which a revocation or modification of a determination letter will be applied without retroactive effect. A Director does not have authority under § 7805(b) to limit the revocation or modification of the determination letter. Therefore, if the field office proposes to revoke or modify a determination letter, the taxpayer may request limitation of the retroactive effect of the revocation or modification by asking the Director that issued the determination letter to seek technical advice from the Associate office. *See* section 16.03 of Rev. Proc. 2006-2, this Bulletin.

Format of request

(1) Request for relief under § 7805(b) must be made in required format.

A taxpayer's request to limit the retroactive effect of the revocation or modification of the determination letter must be in the form of, and meet the general requirements for, a technical advice request. *See* section 16.03 of Rev. Proc. 2006-2, this Bulletin. The request must also—

(a) state that it is being made under § 7805(b);

(b) state the relief sought;

(c) explain the reasons and arguments in support of the relief sought (including a discussion of section 11.05 of this revenue procedure and the three items listed in section 11.06 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request.

Request for conference

(2) Taxpayer may request a conference on application of § 7805(b).

When technical advice is requested regarding the application of § 7805(b), the taxpayer has the right to a conference with the Associate office to the same extent as does any taxpayer who is the subject of a technical advice request. *See* section 16.04 of Rev. Proc. 2006-2, this Bulletin.

SECTION 14. UNDER WHAT CIRCUMSTANCES ARE MATTERS REFERRED BETWEEN A DIRECTOR AND AN ASSOCIATE OFFICE?

Requests for determination letters

.01 Requests for determination letters received by a Director with respect to which it may not issue a determination letter, under the provisions of this revenue procedure, will be forwarded to an Associate office for reply. The field office will notify the taxpayer that the matter has been referred.

Directors will also refer to an Associate office any request for a determination letter that in their judgment should have the attention of the Associate office.

No-rule areas

.02 If the request involves an issue on which the Service will not issue a letter ruling or determination letter, the request will not be forwarded to an Associate office. The Director will notify the taxpayer that the Service will not issue a letter ruling or a determination letter on the issue. See section 6 of this revenue procedure for a description of no-rule areas.

Requests for letter rulings

.03 Requests for a letter ruling received by an Associate office that, under section 6 of this revenue procedure, may not be acted upon by the Associate office will be forwarded to the field office that has examination jurisdiction over the taxpayer's return. The taxpayer will be notified of this action. If the request is on an issue or in an area of the type discussed in section 6 of this revenue procedure and the Service decides not to issue a letter ruling or a determination letter, the Associate office will notify the taxpayer and will then forward the request to the appropriate field office for association with the related return.

Letter ruling request mistakenly sent to a Director

.04 A request for a letter ruling mistakenly sent to a Director will be returned by the Director to the taxpayer so that the taxpayer can send it to an Associate office.

SECTION 15. WHAT ARE THE USER FEE REQUIREMENTS FOR REQUESTS FOR LETTER RULINGS AND DETERMINATION LETTERS?

Legislation authorizing user fees

.01 Section 7528 of the Internal Revenue Code provides that the Secretary of the Treasury or delegate (the "Secretary") shall establish a program requiring the payment of user fees for requests to the Service for letter rulings, opinion letters, determination letters, and similar requests. The fees apply to requests made through September 30, 2014. The fees charged under the program are to: (1) vary according to categories or subcategories established by the Secretary; (2) be determined after taking into account the average time for, and difficulty of, complying with requests in each category and subcategory; and (3) be payable in advance. The Secretary is to provide for exemptions and reduced fees under the program as the Secretary determines to be appropriate, but the average fee applicable to each category must not be less than the amount specified in § 7528.

Requests to which a user fee applies

.02 In general, user fees apply to all requests for—

(1) letter rulings (including advance consent Forms 3115), determination letters, information letters and advance pricing agreements;

(2) closing agreements described in paragraph (A)(3)(d) of Appendix A of this revenue procedure and pre-filing agreements described in Rev. Proc. 2005-12, 2005-2 I.R.B. 311;

(3) renewal of advance pricing agreements; and

(4) reconsideration of letter rulings or determination letters.

Requests to which a user fee applies must be accompanied by the appropriate fee as determined from the fee schedule provided in Appendix A of this revenue procedure. The fee may be refunded as provided in section 15.10 of this revenue procedure.

Requests to which a user fee does not apply

.03 User fees do not apply to—

(1) elections made pursuant to § 301.9100-2, pertaining to automatic extensions of time (*see* section 5.03 of this revenue procedure);

(2) late initial classification elections made pursuant to Rev. Proc. 2002-59 (*see* section 5.03(5) of this revenue procedure);

(3) late S corporation and related elections made pursuant to Rev. Proc. 2004-49, Rev. Proc. 2004-48, Rev. Proc. 2003-43 or Rev. Proc. 97-48 (*see* section 5.02 of this revenue procedure); or

(4) requests for a change in accounting period or accounting method permitted to be made by a published automatic change revenue procedure (*see* section 9.01(1) of this revenue procedure).

Exemptions from the user fee requirements

.04 The user fee requirements do not apply to—

(1) departments, agencies, or instrumentalities of the United States if they certify that they are seeking a letter ruling or determination letter on behalf of a program or activity funded by federal appropriations. The fact that a user fee is not charged does not have any bearing on whether an applicant is treated as an agency or instrumentality of the United States for purposes of any provision of the Code; or

(2) requests as to whether a worker is an employee for federal employment taxes and income tax withholding purposes (Subtitle C of the Code) submitted on Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, or its equivalent.

Fee schedule

.05 The schedule of user fees is provided in Appendix A of this revenue procedure. For the user fee requirements applicable to—

(1) requests for advance pricing agreements or renewals of advance pricing agreements, *see* section 4.12 of Rev. Proc. 2004-40, 2004-2 C.B. 50; or 5.14 of Rev. Proc. 96-53, 1996-2 C.B. at 379; or

(2) requests for letter rulings, determination letters, etc., under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, *see* Rev. Proc. 2006-8, this Bulletin.

Applicable user fee for a request involving multiple offices, fee categories, issues, transactions, or entities

.06

(1) Requests involving several offices. If a request dealing with only one transaction involves more than one of the offices within the Service (for example, one issue is under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries) and another issue is under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division), only one fee applies, namely the highest fee that otherwise would apply to each of the offices involved. *See* Rev. Proc. 2006-8, this Bulletin for the user fees applicable to issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

(2) Requests involving several fee categories. If a request dealing with only one transaction involves more than one fee category, only one fee applies, namely the highest fee that otherwise would apply to each of the categories involved.

(3) Requests involving several issues. If a request dealing with only one transaction involves several issues, a request for a change in accounting method dealing with only one item or submethod of accounting involves several issues, or a request for a change in accounting

period dealing with only one item involves several issues, the request is treated as one request. Therefore, only one fee applies, namely the fee that applies to the particular category or subcategory involved. The addition of a new issue relating to the same transaction, item, or submethod will not result in an additional fee, unless the issue places the transaction, item, or submethod in a higher fee category.

(4) Requests involving several unrelated transactions. If a request involves several unrelated transactions, a request for a change in accounting method involves several unrelated items or submethods of accounting, or a request for a change in accounting period involves several unrelated items, each transaction or item is treated as a separate request. As a result, a separate fee will apply for each unrelated transaction, item, or submethod. An additional fee will apply if the request is changed by the addition of an unrelated transaction, item, or submethod not contained in the initial request. An example of a request involving unrelated transactions is a request involving relief under § 301.9100-3 and the underlying issue.

(5) Requests involving several entities. Each entity involved in a transaction (for example, a reorganization) that desires a separate letter ruling in its own name must pay a separate fee regardless of whether the transaction or transactions may be viewed as related. *But see* section 15.07 of this revenue procedure.

Applicable user fee for requests for substantially identical letter rulings or identical accounting method changes

.07

(1) In general. The user fees provided in paragraph (A)(5) of Appendix A of this revenue procedure apply to the situations described in sections 15.07(2) and 15.07(4) of this revenue procedure. To assist in the processing of these user fee requests, all letter ruling requests submitted under this section 15.07 should—

(a) Except for advance consent Forms 3115, type or print at the top of the letter ruling request: “REQUEST FOR USER FEE UNDER SECTION 15.07 OF REV. PROC. 2006-1”;

(b) List on the first page of the submission all taxpayers and entities, and separate and distinct trades or businesses, including qualified subchapter S subsidiaries (QSUBs) or single member limited liability companies (single member LLCs), requesting a letter ruling (including the taxpayer identification number, and the amount of user fee submitted, for each taxpayer, entity, or separate and distinct trade or business); and

(c) Submit one check to cover all user fees.

If the Service determines that the letter ruling requests do not qualify for the user fee provided in paragraph (A)(5) of Appendix A of this revenue procedure, the Service will request the proper fee. *See* section 15.09 of this revenue procedure.

(2) Substantially identical letter rulings. The user fee provided in paragraph (A)(5)(a) of Appendix A of this revenue procedure applies to a taxpayer that requests substantially identical letter rulings (including accounting period, accounting method, and earnings and profits requests other than those submitted on Forms 1128, 2553, 3115, and 5452) for either multiple entities with a common member or sponsor, or multiple members of a common entity. To qualify for this user fee, all information and underlying documents must be substantially identical and all letter ruling requests must be submitted at the same time. In addition, the letter ruling requests must—

(a) State that the letter ruling requests, and all information and underlying documents, are substantially identical; and

(b) Specifically identify the extent to which the letter ruling requests, information, and underlying documents are not identical.

(3) Substantially identical plans under section 25(c)(2)(B). The user fee provided in paragraph (A)(5)(b) of Appendix A of this revenue procedure shall apply to a taxpayer that submits substantially identical plans for administering the 95-percent requirement of section 143(d)(1) following the submission and approval of an initial plan for administering the requirement.

The request for subsequent approvals of substantially identical plans must: (1) state that a prior plan was submitted and approved and include a copy of the prior plan and approval; (2) state that the subsequent plan is substantially identical to the approved plan; and (3) describe any differences between the approved plans and the subsequent plan.

(4) Identical accounting method changes and related § 301.9100 letter rulings. The following situations are eligible for the user fees provided in paragraphs (A)(5)(b) and (d) of Appendix A of this revenue procedure:

(i) A taxpayer requests an identical accounting method change on a single Form 3115, or an extension of time to file Form 3115 under § 301.9100-3 for the identical accounting method change, for two or more separate and distinct trades or businesses (for purposes of § 1.446-1(d)) of that taxpayer, including QSUBs and single member LLCs;

(ii) A common parent requests the identical accounting method change on a single Form 3115, or an extension of time to file Form 3115 under § 301.9100-3 for the identical accounting method change, on behalf of two or more members of the consolidated group;

(iii) A common parent requests the identical accounting method change on a single Form 3115, or an extension of time to file Form 3115 under § 301.9100-3 for the identical accounting method change, on behalf of two or more controlled foreign corporations (CFCs) that do not engage in a trade or business within the United States where all controlling U.S. shareholders of the CFCs are members of the consolidated group; or

(iv) A taxpayer requests an identical accounting method change on a single Form 3115, or an extension of time to file Form 3115 under § 301.9100-3 for the identical accounting method change, on behalf of two or more CFCs that do not engage in a trade or business within the United States for which the taxpayer is the sole controlling U.S. shareholder of the CFCs.

To qualify as an identical accounting method change the multiple separate and distinct trades or businesses of a taxpayer, including QSUBs and single member LLCs, the multiple members of a consolidated group, or the multiple eligible CFCs must request to change from an identical present method of accounting to an identical proposed method of accounting. All aspects of the requested accounting method change, including the present and proposed methods, the underlying facts and the authority for the request, must be identical, except for the § 481(a) adjustments for the year of change. If the Associate office determines that the requested accounting method changes are not identical, additional user fees will be required before any letter ruling is issued.

The taxpayer or common parent must, for each separate and distinct trade or business (including a QSUB or single-member LLC) member of a consolidated group, or eligible CFC for which the accounting method change is being requested, attach to the Form 3115 a schedule providing the name, employer identification number (where applicable), and § 481(a) adjustment for the year of change. If the request is on behalf of eligible CFCs, the taxpayer or common parent must attach a statement that “[a]ll controlling U.S. shareholders (as defined in § 1.964-1(c)(5)) of all the CFCs to which the request relates are members of the common parent’s consolidated group” or that “[t]he taxpayer filing the request is the sole controlling U.S. shareholder (as defined in § 1.964-1(c)(5)) of the CFCs to which the request relates,” as applicable.

In the case of a § 301.9100 request for an extension of time to file a Form 3115 requesting an identical accounting method change for multiple separate and distinct trades or businesses of a taxpayer (including QSUBs or single-member LLCs) multiple members of the consolidated group or multiple eligible CFCs, the taxpayer or common parent must submit the information required in the preceding paragraph in addition to the information required by section 5.03 of this revenue procedure.

Method of payment

.08 Each request to the Service for a letter ruling, determination letter, information letter, advance pricing agreement, closing agreement described in paragraph (A)(3)(d) of Appendix A of this revenue procedure, or reconsideration of a letter ruling or determination letter must

be accompanied by a check or money order in U.S. dollars, payable to the Internal Revenue Service, in the appropriate amount. (The user fee check or money order should not be attached to the Form 2553, *Election by a Small Business Corporation*, when it is filed at the Service Center. If on the Form 2553 an electing S corporation requests a ruling to use a fiscal year under section 6.03 of Rev. Proc. 2002–39, 2002–1 C.B. 1046, the Service Center will forward the request to the Associate office. When the Associate office receives the Form 2553 from the Service Center, it will notify the taxpayer that the fee is due.) Taxpayers should not send cash.

Effect of nonpayment or payment of incorrect amount

.09 If a request is not accompanied by a properly completed check or money order or is accompanied by a check or money order for less than the correct amount, the respective office within the Service that is responsible for issuing the letter ruling, determination letter, information letter, advance pricing agreement, closing agreement, or reconsideration of a letter ruling or determination letter generally will exercise discretion in deciding whether to return immediately the request. If a request is not immediately returned, the taxpayer will be contacted and given a reasonable amount of time to submit the proper fee. If the proper fee is not received within a reasonable amount of time, the entire request will then be returned. The Service will usually defer substantive consideration of a request until proper payment has been received. The return of a request to the taxpayer may adversely affect substantive rights if the request is not perfected and resubmitted to the Service within 30 days of the date of the cover letter returning the request.

If a request is accompanied by a check or money order for more than the correct amount, the request will be accepted and the amount of the excess payment will be returned to the taxpayer.

Refunds of user fee

.10 In general, the user fee will not be refunded unless the Service declines to rule on all issues for which a ruling is requested.

(1) The following situations are examples of situations in which the user fee will not be refunded:

(a) The request for a letter ruling, determination letter, etc., is withdrawn at any time subsequent to its receipt by the Service, unless the only reason for withdrawal is that the Service has advised the taxpayer that a higher user fee than was sent with the request is applicable and the taxpayer is unwilling to pay the higher fee.

(b) The request is procedurally deficient, although accompanied by the proper fee or an overpayment, and is not timely perfected. When there is a failure to perfect timely the request, the case will be considered closed and the failure to perfect will be treated as a withdrawal for purposes of this revenue procedure. *See* section 8.05(3) of this revenue procedure.

(c) The Associate office notifies the taxpayer that the Associate office will not issue the letter ruling and has closed the case as a result of the taxpayer's failure to submit timely the additional information requested by the Associate office. The failure to submit the additional information will be treated as a withdrawal for purposes of this revenue procedure. *See* section 8.05(3) of this revenue procedure (section 9.08(7) for a request for a change in accounting method).

(d) A letter ruling, determination letter, etc., is revoked in whole or in part at the initiative of the Service. The fee paid at the time the original letter ruling, determination letter, etc., was requested will not be refunded.

(e) The request contains several issues, and the Service rules on some, but not all, of the issues. The highest fee applicable to the issues on which the Service rules will not be refunded.

(f) The taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or not responsive (other than an issue on which the Associate office has declined to rule) and requests reconsideration. The Associate office, upon reconsideration, does not agree that the letter ruling is erroneous or is not responsive. The fee accompanying the request for reconsideration will not be refunded.

(g) The situation is the same as described in paragraph (f) of this section 15.10(1) except that the letter ruling covered several unrelated transactions. The Associate office, upon reconsideration, does not agree with the taxpayer that the letter ruling is erroneous or is not responsive for all of the transactions, but does agree that it is erroneous as to one transaction. The fee accompanying the request for reconsideration will not be refunded except to the extent applicable to the transaction for which the Associate office agrees the letter ruling was in error.

(h) The request is for a supplemental letter ruling, determination letter, etc., concerning a change in facts (whether significant or not) relating to the transaction on which the Service ruled.

(i) The request is for reconsideration of an adverse or partially adverse letter ruling or a final adverse determination letter, and the taxpayer submits arguments and authorities not submitted before the original letter ruling or determination letter was issued.

(2) The following situations are examples of situations in which the user fee will be refunded:

(a) In a situation to which section 15.10(1)(i) of this revenue procedure does not apply, the taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or is not responsive (other than an issue on which the Associate office declined to rule) and requests reconsideration. The Associate office agrees, upon reconsideration, that the letter ruling is erroneous or is not responsive. The fee accompanying the taxpayer's request for reconsideration will be refunded.

(b) In a situation to which section 15.10(1)(i) of this revenue procedure does not apply, the taxpayer requests a supplemental letter ruling, determination letter, etc., to correct a mistake that the Service agrees it made in the original letter ruling, determination letter, etc., such as a mistake in the statement of facts or in the citation of a Code section. Once the Service agrees that it made a mistake, the fee accompanying the request for the supplemental letter ruling, determination letter, etc., will be refunded.

(c) The taxpayer requests and is granted relief under § 7805(b) in connection with the revocation in whole or in part, of a previously issued letter ruling, determination letter, etc. The fee accompanying the request for relief will be refunded.

(d) In a situation to which section 15.10(1)(e) of this revenue procedure applies, the taxpayer requests reconsideration of the Service's decision not to rule on an issue. Once the Service agrees to rule on the issue, the fee accompanying the request for reconsideration will be refunded.

(e) The letter ruling is not issued and taking into account all the facts and circumstances, including the Service's resources devoted to the request, the responsible Associate Chief Counsel in his or her sole discretion decides a refund is appropriate.

**Request for reconsideration
of user fee**

.11 A taxpayer that believes the user fee charged by the Service for its request for a letter ruling, determination letter, advance pricing agreement, or closing agreement is either inapplicable or incorrect and wishes to receive a refund of all or part of the amount paid (*see* section 15.10 of this revenue procedure) may request reconsideration and, if desired, the opportunity for an oral discussion by sending a letter to the Service at the appropriate address given in section 7.03 in this revenue procedure. Both the incoming envelope and the letter requesting such reconsideration should be prominently marked "USER FEE RECONSIDERATION REQUEST." No user fee is required for these requests. The request should be marked for the attention of:

If the matter involves primarily:

Mark for the attention of:

**Associate Chief Counsel (Corporate)
letter ruling requests**

Associate Chief Counsel (Corporate)

**Associate Chief Counsel (Financial
Institutions and Products) letter ruling
requests**

Associate Chief Counsel (Financial Institutions and Products)

**Associate Chief Counsel (Income Tax
and Accounting) letter ruling requests**

Associate Chief Counsel (Income Tax and Accounting)

**Associate Chief Counsel (International)
letter ruling and advance pricing
agreement requests**

Associate Chief Counsel (International)

**Associate Chief Counsel (Passthroughs
and Special Industries) letter ruling
requests**

Associate Chief Counsel (Passthroughs and Special Industries)

**Associate Chief Counsel (Procedure and
Administration) letter ruling requests**

Associate Chief Counsel (Procedure and Administration)

**Division Counsel/Associate Chief
Counsel (Tax Exempt and Government
Entities) letter ruling requests**

Assistant Chief Counsel ()
(Complete by using whichever of the following designations applies:
(Employee Benefits) or (Employment Tax/Exempt Organizations/Gov-
ernment Entities))

**Determination letter requests submitted
pursuant to this revenue procedure
by taxpayers under the jurisdiction of
LMSB**

Manager, Office of Pre-Filing and Technical Services

**Determination letter requests submitted
pursuant to this revenue procedure
by taxpayers under the jurisdiction of
SB/SE, W&I**

The appropriate SB/SE official listed in Appendix D

**Determination letter requests submitted
pursuant to this revenue procedure
by taxpayers under the jurisdiction of
TE/GE**

Director, Employee Plans Examinations
Director, Exempt Organizations Examinations
Director, Federal, State & Local Governments
Director, Tax Exempt Bonds
Director, Indian Tribal Governments

(Add name of field office handling the request)

SECTION 16. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2005-1?

.01 Section 7.02(4) was revised to provide for expedited handling of sections 355 and 368 requests under certain circumstances.

.02 Section 15 was revised to reflect the addition of user fees to information letters and to reflect changes in entities eligible for the reduced fees for substantially similar requests. This latter change was made to section 9 as well.

.03 Appendix A was revised to reflect the new user fees and to clarify the definition of “gross income” of state, local, and Indian tribal government entities.

.04 Appendix D was revised to reflect the reorganization of the SB/SE Division.

SECTION 17. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

Rev. Proc. 2005-1, 2005-1 C.B. 1 and Rev. Proc. 2005-68, 2005-41 I.R.B. 694, are superseded. Section 10 of Rev. Proc. 2005-12, 2005-2 I.R.B. 311, is modified and superseded with respect to the user fee charged for pre-filing agreements.

SECTION 18. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?

This revenue procedure is effective January 3, 2006, except that any increase in the user fee in Appendix A of this revenue procedure is effective only for requests postmarked or, if not mailed, received on or after February 1, 2006.

SECTION 19. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1522.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 5.06, 7.01, 7.02, 7.03, 7.04, 7.05, 7.07, 8.02, 8.05, 8.07, 10.01, 10.06, 10.07, 11.11, 12.06, 13.02, 15.02, 15.07, 15.08, 15.09, 15.11, paragraph (B)(1) of Appendix A, Appendix C, and Appendix E (subject matter—rate orders; regulatory agency; normalization). This information is required to evaluate and process the request for a letter ruling or determination letter. In addition, this information will be used to help the Service delete certain information from the text of the letter ruling or determination letter before it is made available for public inspection, as required by § 6110. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 305,140 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 to 200 hours, depending on individual circumstances, with an estimated average burden of 80.3 hours. The estimated number of respondents and/or recordkeepers is 3,800.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Allen Madison of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure for matters under the jurisdiction of—

(1) the Associate Chief Counsel (Corporate), contact Richard Todd at (202) 622-7700 (not a toll-free call),

(2) the Associate Chief Counsel (Financial Institutions and Products), contact Arturo Estrada at (202) 622-3900 (not a toll-free call),

(3) the Associate Chief Counsel (Income Tax and Accounting), contact Brenda Wilson at (202) 622-4800 (not a toll-free call),

(4) the Associate Chief Counsel (Passthroughs and Special Industries), contact Stephanie Bland at (202) 622-3110 (not a toll-free call),

(5) the Associate Chief Counsel (Procedure and Administration), contact George Bowden or Henry Schneiderman at (202) 622-3400 (not a toll-free call),

(6) the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), contact Sheila Eley at (202) 622-6000 (not a toll-free call), or

(7) the Associate Chief Counsel (International), contact Gerard Traficanti at (202) 622-3619 (not a toll-free call).

For further information regarding user fees, contact the Docket, Records, and User Fee Branch at (202) 622-7560 (not a toll-free call).

INDEX

References are to sections in Rev. Proc. 2006-1

Additional Information

— perjury statement required	8.05(4)
— proposed deletions under § 6110	7.01(11)
— information requested during initial and subsequent contacts	8.05
failure to submit	8.05(3)
subsequent information after conference	10.06
— where to send	8.05(6)

Changes in Accounting Method or Period

— applicable sections of Rev. Proc. 2006-1 for accounting method changes	9
— applicable sections of Rev. Proc. 2006-1 for accounting period	Appendix E
— automatic change revenue procedures	9.01, 9.22, Appendix E
— identical accounting method changes	9.15, 15.07, Appendix A
— user fees	Appendix A

Checklist Required	7.01(18), Appendix C
---------------------------	----------------------

Conferences

— offered	10.02
after conference of right	10.05
application of § 6110	7.01(11)(e)
— requesting a conference	7.02(6)
— scheduling	10.01, 10.02
application of § 7805(b)	11.11(2), 13.02(2)
pre-submission conferences	10.07
telephone conferences	10.08

Definitions

— Associate office	1.01(2)
— closing agreement	2.02
— determination letter	2.03
— Director	1.01(3)
— field office	1.01(4)
— information letter	2.04
— letter ruling	2.01
— Service	1.01(1)
— taxpayer	1.01(5)

Determinations Under § 999(d)	5.04
--------------------------------------	------

Discussions Not Binding on Service

— at pre-submission conference	10.07(4)
— informal opinion expressed	8.04
— oral advice to taxpayers	2.05(2)

Employee Plans and Exempt Organizations

— jurisdiction of Commissioner, Tax Exempt and Government Entities Division	4.02
— user fees	4.02

Estate Tax Matters

— issuance of determination letters	12.02, 12.05
— issuance of letter rulings	5.06
under § 2032A(c)	5.07

Expedited Handling of Letter Ruling and Determination Letter Requests	7.02(4)
--	---------

INDEX
References are to sections in Rev. Proc. 2006-1

Extension of Time	
— to schedule conference	10.01
— to submit additional information	8.05(2)
Fax Transmission	
— to receive letter ruling	7.02(5)
— to receive request for additional information	7.02(5)
— to submit additional information	8.05(5)
— letter ruling requests must not be submitted by fax	7.03(3)
Hand Delivery of Letter Ruling Requests	7.03(2)
No-Rule Areas	6
Oral Advice to Taxpayers	2.05
Penalties of Perjury Statement	
— form for letter ruling request	7.01(15)(a)
— form for submission of additional information	8.05(4)
— required with draft letter ruling	8.07
— signature requirements	7.01(15)(b)
Pending Letter Ruling Requests	
— when to attach a copy to return	7.04(2)
estate tax matters	5.06
— when to notify Associate office	7.04
estate tax matters	5.06
Power of Attorney	
— Form 2848	7.01(14) and 7.02(2)
original sent to the taxpayer	7.02(2)
copy sent to a representative	7.02(2)
copies sent to multiple representatives	7.02(2)
no copy sent to representatives	7.02(2)
— signature requirements	7.01(14)
Public Disclosure of Information Letters	2.04
Public Inspection Under § 6110	7.01(11)
— signature requirements	7.01(11)(c)
Representatives	
— compliance with Treasury Department Circular No. 230	7.01(13)
— power of attorney required	7.01(14)
— requirements	7.01(13)
authorized representatives	7.01(13)(a)
authorized based on relationship	7.01(13)(b)
return preparer	7.01(13)(c)
foreign representative	7.01(13)(d)
Retroactive Revocation or Modification	
— of determination letter	13
request to limit retroactive effect	13.02
— of letter ruling	11.05-11.10
request to limit retroactive effect	11.11
Revenue Rulings	
— effect on a letter ruling	11.04

INDEX

References are to sections in Rev. Proc. 2006-1

— request to limit retroactive effect 11.11

Sample of a Letter Ruling Request 7.01(17), Appendix B

Section 301.9100 Relief 5.03

Section 367 Rulings 5.05

Status of Letter Ruling and Determination Letter Requests 7.06

Substantially Identical Letter Rulings 15.07(2), Appendix A

Tax Exempt and Government Entities

— jurisdiction of Commissioner, Tax Exempt and Government Entities Division 4.02

— user fees 4.02

User Fees

— schedule of user fees Appendix A

— user fee requirements 15

 to reopen case 8.05(3)

Where to Send

— determination letter request 12.08

— letter ruling request 7.03, 9.05

 additional information 8.05(6), 9.08(6)

 hand delivery 7.03(2)

Withdrawal of Letter Ruling and Determination Letter Requests 7.07

APPENDIX A

SCHEDULE OF USER FEES

NOTE: Checks or money orders must be in U.S. dollars.

(A) *FEE SCHEDULE*

<i>CATEGORY</i>	<i>USER FEE FOR REQUESTS POSTMARKED BEFORE 2-1-2006</i>	<i>USER FEE FOR REQUESTS POSTMARKED ON OR AFTER 2-1-2006</i>
(1) User fee for a request for a determination letter from a Director. The user fee for each determination letter request governed by Rev. Proc. 2006-1 (this revenue procedure).	\$275	\$275
(2) User fee for a request for an advance pricing agreement or a renewal of an advance pricing agreement.	<i>See</i> section 4.12 of Rev. Proc. 2004-40, 2004-2 C.B. 50	<i>See</i> section 4.12 of Rev. Proc. 2006-9, 2006-2 I.R.B. 278
(3) User fee for a request for a letter ruling or closing agreement. Except for the user fees for advance pricing agreements and renewals, the reduced fees provided in paragraph (A)(4) of this appendix, the user fees provided in paragraph (A)(5) of this appendix, and the exemptions provided in section 15.04 of Rev. Proc. 2006-1, this revenue procedure, the user fee for each request for a letter ruling or closing agreement under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) is as follows:		
(a) Accounting periods		
(i) Form 1128 (except as provided in paragraph (A)(4)(a) or (b) of this appendix)	\$1,500	\$1,500
(ii) Requests made on Part II of Form 2553 to use a fiscal year based on a business purpose (except as provided in paragraph (A)(4)(a) or (b) of this appendix)	\$1,500	\$1,500
(iii) Letter ruling requests for extensions of time to file Form 1128, Form 8716, or Part II of Form 2553 under § 301.9100-3 (except as provided in paragraph (A)(4)(a) or (b) of this appendix)	\$1,500	\$1,500
(b) Changes in Accounting Methods		
(i) Form 3115 (except as provided in paragraph (A)(4)(a) or (b), or (5)(b) of this appendix)	\$1,500	\$2,500
(ii) Letter ruling requests for extensions of time to file Form 3115 under § 301.9100-3 (except as provided in paragraph (A)(4)(a) or (b), or (5)(c) of this appendix)	\$1,500	\$2,500

CATEGORY

NOTE: No user fee is required if the change in accounting period or accounting method is permitted to be made pursuant to a published automatic change request procedure. *See* section 9.22 and Appendix E of Rev. Proc. 2006-1, this revenue procedure, for the list of automatic change request procedures published and/or in effect as of December 31, 2005.

- | | | |
|--|---------|----------|
| (c) All other letter ruling requests (which includes accounting period and accounting method requests other than those properly submitted on Form 1128, Part II of Form 2553, or Form 3115) (except as provided in paragraph (A)(4)(a) or (b), or (5)(a) of this appendix) | \$7,000 | \$10,000 |
| (d) Requests for closing agreements on a proposed transaction or on a completed transaction before a return for the transaction has been filed in which a letter ruling on that transaction is not requested or issued (except as provided in paragraph (A)(4)(a) or (b) of this appendix) | \$7,000 | \$10,000 |

NOTE: A taxpayer that receives relief under § 301.9100-3 (for example, an extension of time to file Form 3115) will be charged a separate user fee for the letter ruling request on the underlying issue (for example, the accounting period or accounting method application).

(4) Reduced user fee for a request for a letter ruling or closing agreement. A reduced user fee is provided in the following situations if the person provides the certification described in paragraph (B)(1) of this appendix:

- | | | |
|---|-------|---------|
| (a) Request involves a personal or business tax issue from a person with gross income (as determined under paragraphs (B)(2) and (4) of this appendix) of less than \$ 250,000 | \$625 | \$625 |
| (b) Request involves a personal or business-related tax issue (for example, including home-office expenses, residential rental property issues) from a person with gross income (as determined under paragraphs (B)(3) and (4) of this appendix) of less than \$ 1 million and more than \$250,000. | \$625 | \$2,500 |

(5) User fee for substantially identical letter ruling requests, identical accounting method changes, or plans from issuing authorities under section 25(c)(2)(B). If the requirements of section 15.07 of Rev. Proc. 2006-1, this revenue procedure, are satisfied, the user fee for the following situations is as follows:

- | | | |
|---|-------|-------|
| (a) Substantially identical letter rulings requested

Situations in which a taxpayer requests substantially identical letter rulings for multiple entities with a common member or sponsor, or for multiple members of a common entity, or for two or more identical trusts or for multiple beneficiaries of a trust or a trust divided into identical subtrusts or for husband and wife making split gifts, for each additional letter ruling request after the \$7,000 fee or reduced fee, as applicable, has been paid for the first letter ruling request | \$300 | \$700 |
|---|-------|-------|

CATEGORY

NOTE: Each entity or member that is entitled to the user fee under paragraph (A)(5)(a) of this appendix, that receives relief under § 301.9100-3 (for example, an extension of time to file an election) will be charged a separate user fee for the letter ruling request on the underlying issue.

- (b) Identical accounting method change requested on a single Form 3115

Situations in which a common parent requests the identical accounting method change on a single Form 3115 on behalf of two or more members of a consolidated group or two or more eligible CFCs (*see* section 15.07(4)), or in which a taxpayer requests the identical accounting method change on a single Form 3115 for two or more eligible CFCs (*see* section 15.07(4)) or two or more separate and distinct trades or businesses, including qualified subchapter S subsidiaries (QSUBs) and single-member limited liability companies (single-member LLCs) (*see* § 1.446-1(d) for what constitutes a separate and distinct trade or business), for each additional member of the group, eligible CFC, or separate and distinct trade or business of the taxpayer seeking the identical accounting method change on the same Form 3115 after the \$1,500 fee or \$625 reduced fee, as applicable, has been paid for the first member of the group, eligible CFC, or separate and distinct trade or business.

\$50

\$150

- (c) Substantially identical plans under section 25(c)(2)(B)

Situations where an issuing authority under section 25 submits substantially identical plans for administering the 95-percent requirement of section 143(d)(1) following the submission of an initial plan that was approved.

not available

\$700

- (d) Extension of time requested to file Form 3115 for an identical accounting method change

Situations in which a common parent requests an extension of time under § 301.9100-3 to file a single Form 3115 for the identical accounting method change on behalf of two or more members of a consolidated group or two or more eligible CFCs (*see* section 15.07(4)), or in which a taxpayer requests an extension of time under § 301.9100-3 to file a single Form 3115 for the identical accounting method change for two or more eligible CFCs (*see* section 15.07(4)) or two or more separate and distinct trades or businesses, including QSUBs and single-member LLCs (*see* § 1.446-1(d) for what constitutes a separate and distinct trade or business), for each additional member of the group, eligible CFC or separate and distinct trade or business of the taxpayer seeking the identical accounting method change on the same Form 3115 after the \$ 1,500 fee or \$ 625 reduced fee as applicable, has been paid for the first member of the group, eligible CFC, or separate and distinct trade or business.

\$50

\$75

CATEGORY

USER FEE FOR
REQUESTS
POSTMARKED
BEFORE 2-1-2006

USER FEE FOR
REQUESTS
POSTMARKED ON
OR AFTER 2-1-2006

NOTE: When an extension of time to file Form 3115 is granted under § 301.9100-3 for multiple members of a consolidated group, eligible CFCs, or separate and distinct trades or businesses of a taxpayer, including QSUBs and single-member LLCs, a separate user fee will be charged for the accounting method change application, Form 3115.

(6) User fee for information letter requests.	\$0	\$2,000
(7) User fee for pre-filing agreements The increased fee applies to pre-filing agreements requested on or after February 1, 2006. Pre-filing agreement requests requested prior to February 1, 2006, but accepted by the Service on or after February 1, 2006 are subject to the Rev. Proc. 2005-12 fee schedule.	As reflected in Rev. Proc. 2005-12	\$50,000

(B) PROCEDURAL MATTERS

(1) Required certification. A person seeking a reduced user fee under paragraph (A)(4) of this appendix must provide the following certification in order to obtain the reduced user fee:

(a) If a person is seeking a reduced user fee under paragraph (A)(4)(a) of this appendix, the person must certify in the request that his, her, or its gross income, as defined under paragraphs (B)(2) and (4) of this appendix, is less than \$ 250,000 for the last full (12 months) taxable year ending before the date the request is filed.

(b) If a person is seeking a reduced user fee under paragraph (A)(4)(b) of this appendix, the person must certify in the request that his, her, or its gross income, as defined under paragraphs (B)(3) and (4) of this appendix, is less than \$1 million and more than \$250,000 for the last full (12 months) taxable year ending before the date the request is filed.

The certification must be attached as part of the ruling request.

(2) Gross income for a request involving a personal tax issue. For purposes of the reduced user fees provided in paragraphs (A)(4)(a) and (b) of this appendix of—

(a) **U.S. citizens and resident alien individuals, domestic trusts, and domestic estates,** “gross income” is equal to “total income” as reported on their last federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus any interest income not subject to tax under § 103 (interest on state and local bonds) for that period. “Total income” is a line item on federal tax returns. For example, if the 2004 Form 1040, *U.S. Individual Income Tax Return*, is the most recent 12-month taxable year return filed by a U.S. citizen, “total income” on the Form 1040 is the amount entered on line 22.

In the case of a request for a letter ruling or closing agreement from a domestic estate or trust that, at the time the request is filed, has not filed a federal income tax return for a full taxable year, the reduced user fee in paragraph (A)(4)(a) of this appendix will apply if the decedent’s or (in the case of an individual grantor) the grantor’s total income as reported on the last federal income tax return filed for a full taxable year ending before the date of death or the date of the transfer, taking into account any additions required to be made to total income described in this paragraph (B)(2)(a), is less than \$ 250,000. In this case, the executor or administrator of the decedent’s estate or the grantor must provide the certification required under paragraph (B)(1) of this appendix.

(b) Nonresident alien individuals, foreign trusts, and foreign estates, “gross income” is equal to “total effectively connected income” as reported on their last federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus any income for the period from United States or foreign sources that is not taxable by the United States, whether by reason of § 103, an income tax treaty, § 871(h) (regarding portfolio interest), or otherwise, plus the total amount of any fixed or determinable annual or periodical income from United States sources, the United States tax liability for which is satisfied by withholding at the source. “Total effectively connected income” is a line item on federal tax returns. For example, if the 2004 Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, is the most recent 12-month taxable year return filed by a nonresident alien individual, “total effectively connected income” on the Form 1040NR is the amount entered on line 23.

In the case of a request for a letter ruling or closing agreement from a foreign estate or trust that, at the time the request is filed, has not filed a federal income tax return for a full taxable year, the reduced user fee in paragraph (A)(4)(a) of this appendix will apply if the decedent’s or (in the case of an individual grantor) the grantor’s total income or total effectively connected income, as relevant, as reported on the last federal income tax return filed for a full taxable year ending before the date of death or the date of the transfer, taking into account any additions required to be made to total income or total effectively connected income described respectively in paragraph (B)(2)(a) of this appendix or in this paragraph (B)(2)(b), is less than \$ 250,000. In this case, the executor or administrator of the decedent’s estate or the grantor must provide the certification required under paragraph (B)(1) of this appendix.

(3) Gross income for a request involving a business-related tax issue. For purposes of the reduced user fee provided in paragraphs (A)(4)(a) and (b) of this appendix of—

(a) U.S. citizens and resident alien individuals, domestic trusts, and domestic estates, “gross income” is equal to gross income as defined under paragraph (B)(2)(a) of this appendix, plus “cost of goods sold” as reported on the same federal income tax return.

(b) Nonresident alien individuals, foreign trusts, and foreign estates, “gross income” is equal to gross income as defined under paragraph (B)(2)(b) of this appendix, plus “cost of goods sold” as reported on the same federal income tax return.

(c) Domestic partnerships and corporations, “gross income” is equal to “total income” as reported on their last federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus “cost of goods sold” as reported on the same federal income tax return, plus any interest income not subject to tax under § 103 (interest on state and local bonds) for that period. If a domestic partnership or corporation is not subject to tax, “total income” and “cost of goods sold” are the amounts that the domestic partnership or corporation would have reported on the federal income tax return if the domestic partnership or corporation were subject to tax.

“Cost of goods sold” and “total income” are line items on federal tax returns. For example, if the 2004 Form 1065, *U.S. Return of Partnership Income*, is the most recent 12-month taxable year return filed by a domestic partnership, “cost of goods sold” and “total income” on the Form 1065 are the amounts entered on lines 2 and 8, respectively, and if the 2004 Form 1120, *U.S. Corporation Income Tax Return*, is the most recent 12-month taxable year return filed by a domestic corporation, “cost of goods sold” and “total income” on the Form 1120 are the amounts entered on lines 2 and 11, respectively.

If, at the time the request is filed, a domestic partnership or corporation subject to tax has not filed a federal income tax return for a full taxable year, the reduced user fee in paragraph (A)(4)(b) of this appendix will apply if, in the aggregate, the partners’ or the shareholders’ gross income (as defined in paragraph (B)(3)(a), (b), (c), or (d) of this appendix, as applicable) is less than \$1 million for the last full (12 months) taxable year ending before the date the request is filed. In this case, the partners or the shareholders must provide the certification required under paragraph (B)(1) of this appendix.

(d) Organizations exempt from income tax under “Subchapter F-Exempt Organizations” of the Code, “gross income” is equal to the amount of gross receipts for the last full (12 months) taxable year ending before the date the request for a letter ruling or closing agreement is filed.

(e) Gross income of state, local, and Indian tribal government entities, “gross income” is equal to the annual operating revenue of the government requesting the ruling for its last fiscal year ending before the date of the ruling request. The annual operating revenue is to be determined at the government level and not at the level of the government entity or agency making the request.

(4) Special rules for determining gross income. For purposes of paragraphs (B)(2) and (3) of this appendix, the following rules apply for determining gross income.

(a) Gross income of individuals, trusts, and estates.

(1) In the case of a request from a married individual, the gross incomes (as defined in paragraph (B)(2) or (3) of this appendix, as applicable) of the applicant and the applicant's spouse must be combined. This rule does not apply to an individual who: (1) is legally separated from his or her spouse and (2) the spouse does not file a joint income tax return with his or her spouse; and

(2) If there are two or more applicants filing the request, the gross incomes (as defined in paragraph (B)(2) or (3) of this appendix, as applicable) of the applicants must be combined.

(b) Gross income of domestic partnerships and corporations.

(1) In the case of a request from a domestic corporation, the gross income (as defined in paragraph (B)(3) of this appendix) of (i) all members of the applicant's controlled group (as defined in § 1563(a)), and (ii) any related taxpayer that is involved in the transaction on which the letter ruling or closing agreement is requested, must be combined; and

(2) In the case of a request from a domestic partnership, the gross income (as defined in paragraph (B)(3) of this appendix) of (i) the partnership, and (ii) any partner who owns, directly or indirectly, 50 percent or more of the capital interest or profits interest in the partnership, must be combined.

(c) Gross income of exempt organizations. If there are two or more organizations exempt from income tax under Subchapter F filing the request, the gross receipts (as defined in paragraph (B)(3)(d) of this appendix) of the applicants must be combined.

APPENDIX B

SAMPLE FORMAT FOR A LETTER RULING REQUEST

INSTRUCTIONS

To assist you in preparing a letter ruling request, the Service is providing this sample format. You are not required to use this sample format. If your request is not identical or similar to the sample format, the different format will not defer consideration of your request.

(Insert the date of request)

Internal Revenue Service

Insert either: Associate Chief Counsel (Insert one of the following: Corporate, Financial Institutions and Products, Income Tax and Accounting, International, Passthroughs and Special Industries, or Procedure and Administration) or Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)

Attn: CC:PA:LPD:DRU

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

Dear Sir or Madam:

(Insert the name of the taxpayer) requests a ruling on the proper treatment of *(insert the subject matter of the letter ruling request)* under section *(insert the number)* of the Internal Revenue Code.

[If the taxpayer is requesting expedited handling, a statement to that effect must be attached to, or contained in, the letter ruling request. The statement must explain the need for expedited handling. At the top of the first page write in bold, “**Expedited Handling Requested.**” See section 7.02(4) of Rev. Proc. 2006–1, 2006–1 I.R.B. 1. Hereafter, all references are to Rev. Proc. 2006–1 unless otherwise noted.]

A. STATEMENT OF FACTS

1. Taxpayer Information

[Provide the statements required by sections 7.01(1)(a) and (b).]

2. Description of Taxpayer’s Business Operations

[Provide the statement required by section 7.01(1)(c).]

3. Facts Relating to Transaction

[The ruling request must contain a complete statement of the facts relating to the transaction that is the subject of the letter ruling request. This statement must include a detailed description of the transaction, including material facts in any accompanying documents, and the business reasons for the transaction. See sections 7.01(1)(d), 7.01(1)(e), and 7.01(2).]

B. RULING REQUESTED

[The ruling request should contain a concise statement of the ruling requested by the taxpayer. It is preferred that the language of the requested ruling be exactly the same as that the taxpayer wishes to receive.]

C. STATEMENT OF LAW

[The ruling request must contain a statement of the law in support of the taxpayer’s views or conclusion and identify any pending legislation that may affect the proposed transaction. The taxpayer also is encouraged to identify and discuss any authorities believed to be contrary to the position advanced in the ruling request. See sections 7.01(6), 7.01(8), 7.01(9), and 7.01(10).]

D. ANALYSIS

[The ruling request must contain a discussion of the facts and an analysis of the law. The taxpayer also is encouraged to identify and discuss any authorities believed to be contrary to the position advanced in the ruling request. *See* sections 7.01(3), 7.01(6), 7.01(8), 7.01(9), and 7.01(10).]

E. CONCLUSION

[The ruling request should contain a statement of the taxpayer's conclusion on the ruling requested.]

F. PROCEDURAL MATTERS

1. Revenue Procedure 2006-1 Statements

- a. [Provide the statement required by section 7.01(4) regarding whether the same issue in the letter ruling request is in an earlier return of the taxpayer or in a return for any year of a related taxpayer.]
- b. [Provide the statement required by section 7.01(5)(a) regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor. Please further note that if a reduced user fee is being submitted, a certification of eligibility for the reduced fee must be included with the ruling request.]
- c. [Provide the statement required by section 7.01(5)(b) regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted a request (including an application for change in accounting method) involving the same or similar issue but withdrew the request before a letter ruling or determination letter was issued.]
- d. [Provide the statement required by section 7.01(5)(c) regarding whether the taxpayer, a related taxpayer, or a predecessor previously submitted a request (including an application for change in accounting method) involving the same or a similar issue that is currently pending with the Service.]
- e. [Provide the statement required by section 7.01(5)(d) regarding whether, at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request (including an application for change in accounting method) involving the same or similar issue to the Service.]
- f. [If the letter ruling request involves the interpretation of a substantive provision of an income or estate tax treaty, provide the statement required by section 7.01(6) regarding whether the tax authority of the treaty jurisdiction has issued a ruling on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor; whether the same or similar issue is being examined, or has been settled, by the tax authority of the treaty jurisdiction or is otherwise the subject of a closing agreement in that jurisdiction; and whether the same or similar issue is being considered by the competent authority of the treaty jurisdiction.]
- g. [Provide the statement required by section 7.01(8) regarding whether the law in connection with the letter ruling request is uncertain and whether the issue is adequately addressed by relevant authorities.]
- h. [If the taxpayer determines that there are no contrary authorities, a statement to that effect would be helpful. *See* section 7.01(9).]
- i. [If the taxpayer wants to have a conference on the issues involved in the letter ruling request, the ruling request should contain a statement to that effect. *See* section 7.02(6).]
- j. [If the taxpayer is requesting a copy of any document related to the letter ruling request to be sent by facsimile (fax) transmission, the ruling request should contain a statement to that effect. *See* section 7.02(5).]
- k. [If the taxpayer is requesting separate letter rulings on multiple issues, the letter ruling request should contain a statement to that effect. *See* section 7.02(1).]
- l. [If the taxpayer is seeking to obtain the user fee provided in paragraph (A)(5)(a) of Appendix A for substantially identical letter rulings, the letter ruling request must contain the statements required by section 15.07.]

2. Administrative

- a. [The ruling request should state: “The deletion statement and checklist required by Rev. Proc. 2006–1 are enclosed.” See sections 7.01(11) and 7.01(18).]
- b. [The ruling request should state: “The required user fee of \$ *(Insert the amount of the fee)* is enclosed.” Please note that the check or money order must be in U.S. dollars and made payable to the Internal Revenue Service. See section 15 and Appendix A.]
- c. [If the taxpayer’s authorized representative is to sign the letter ruling request or is to appear before the Service in connection with the request, the ruling request should state: “A Power of Attorney is enclosed.” See sections 7.01(13), 7.01(14), and 7.02(2).]

Sincerely yours,

(Insert the name of the taxpayer or the taxpayer’s authorized representative)

By:

Signature Date

Typed or printed name of
person signing request

DECLARATION: [See section 7.01(15).]

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.

(Insert the name of the taxpayer)

By:

Signature

Title

Date

Typed or printed name of
person signing declaration

[If the taxpayer is a corporation that is a member of an affiliated group filing consolidated returns, the above declaration must also be signed and dated by an officer of the common parent of the group. See section 7.01(15).]

APPENDIX C

CHECKLIST
IS YOUR LETTER RULING REQUEST COMPLETE?

INSTRUCTIONS

The Service will be able to respond more quickly to your letter ruling request if it is carefully prepared and complete. To ensure that your request is in order, use this checklist. Complete the four items of information requested before the checklist. Answer each question by circling "Yes," "No," or "N/A." When a question contains a place for a page number, insert the page number (or numbers) of the request that gives the information called for by a yes answer to a question. **Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.**

If you are an authorized representative submitting a request for a taxpayer, you must include a completed checklist with the request, or the request will either be returned to you or substantive consideration of it will be deferred until a completed checklist is submitted. **If you are a taxpayer preparing your own request without professional assistance, an incomplete checklist will not either cause the return of your request or defer substantive consideration of your request.** You should still complete as much of the checklist as possible and submit it with your request.

TAXPAYER'S NAME _____

TAXPAYER'S I.D. NO. _____

ATTORNEY/P.O.A. _____

PRIMARY CODE SECTION _____

CIRCLE ONE

ITEM

Yes No 1. Does your request involve an issue under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)? *See* section 3 of Rev. Proc. 2006-1, 2006-1 I.R.B. 1. For issues under the jurisdiction of other offices, *see* section 4 of Rev. Proc. 2006-1. (Hereafter, all references are to Rev. Proc. 2006-1 unless otherwise noted.)

Yes No 2. Have you read Rev. Proc. 2006-3, 2006-1 I.R.B. 122, and Rev. Proc. 2006-7, 2006-1 I.R.B. 242, to see if part or all of the request involves a matter on which letter rulings are not issued or are ordinarily not issued?

Yes No N/A 3. If your request involves a matter on which letter rulings are not ordinarily issued, have you given compelling reasons to justify the issuance of a letter ruling? Before preparing your request, you may want to call the branch in the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions and Products), the Office of Associate Chief Counsel (Income Tax and Accounting), the Office of Associate Chief Counsel (International), the Office of Associate Chief Counsel (Passthroughs and Special Industries), the Office of Associate Chief Counsel (Procedure and Administration), or the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) responsible for substantive interpretations of the principal Internal Revenue Code section on which you are seeking a letter ruling to discuss the likelihood of an exception. For matters under the jurisdiction of—

(a) the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions and Products), the Office of Associate Chief Counsel (Income Tax and Accounting), the Office of Associate Chief Counsel (Passthroughs and Special Industries), or the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), the Office of the Associate Chief Counsel (Procedure and Administration), the appropriate branch to call may be obtained by calling (202) 622-7560 (not a toll-free call);

(b) the Office of the Associate Chief Counsel (International), the appropriate branch to call may be obtained by calling (202) 622-3800 (not a toll-free call).

Yes No N/A
Page _____

4. If the request deals with a completed transaction, have you filed the return for the year in which the transaction was completed? *See* section 5.01.

Yes No

5. Are you requesting the letter ruling on a hypothetical situation or question? *See* section 6.12.

Yes No

6. Are you requesting the letter ruling on alternative plans of a proposed transaction? *See* section 6.12.

Yes No

7. Are you requesting the letter ruling for only part of an integrated transaction? *See* section 6.03.

Yes No

8. Are you requesting the letter ruling for a business, trade, industrial association, or similar group concerning the application of tax law to its members? *See* section 6.05.

Yes No

9. Are you requesting the letter ruling for a foreign government or its political subdivision? *See* section 6.07.

Yes No
Pages _____

10. Have you included a complete statement of all the facts relevant to the transaction? *See* section 7.01(1).

Yes No N/A

11. Have you submitted with the request true copies of all wills, deeds, and other documents relevant to the transaction, and labeled and attached them in alphabetical sequence? *See* section 7.01(2).

Yes No N/A

12. Have you submitted with the request a copy of all applicable foreign laws, and certified English translations of documents that are in a language other than English or of foreign laws in cases where English is not the official language of the foreign country involved? *See* section 7.01(2).

Yes No
Page _____

13. Have you included an analysis of facts and their bearing on the issues? Have you included, rather than merely incorporated by reference, all material facts from the documents in the request? *See* section 7.01(3).

Yes No
Page _____

14. Have you included the required statement regarding whether the same issue in the letter ruling request is in an earlier return of the taxpayer or in a return for any year of a related taxpayer? *See* section 7.01(4).

Yes No
Page _____

15. Have you included the required statement regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor? *See* section 7.01(5)(a).

Yes No
Page _____

16. Have you included the required statement regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted a request (including an application for change in accounting method) involving the same or similar issue but withdrew the request before the letter ruling or determination letter was issued? *See* section 7.01(5)(b).

- Yes No
Page _____
17. Have you included the required statement regarding whether the taxpayer, a related taxpayer, or a predecessor previously submitted a request (including an application for change in accounting method) involving the same or similar issue that is currently pending with the Service? *See* section 7.01(5)(c).
- Yes No
Page _____
18. Have you included the required statement regarding whether, at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request (including an application for change in accounting method) involving the same or similar issue to the Service? *See* section 7.01(5)(d).
- Yes No N/A
Page _____
19. If your request involves the interpretation of a substantive provision of an income or estate tax treaty, have you included the required statement regarding whether the tax authority of the treaty jurisdiction has issued a ruling on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor; whether the same or similar issue is being examined, or has been settled, by the tax authority of the treaty jurisdiction or is otherwise the subject of a closing agreement in that jurisdiction; and whether the same or similar issue is being considered by the competent authority of the treaty jurisdiction? *See* section 7.01(6).
- Yes No N/A
Page _____
20. If your request is for recognition of Indian tribal government status or status as a political subdivision of an Indian tribal government, does your request contain a letter from the Bureau of Indian Affairs regarding the tribe's status? *See* section 7.01(7), which states that taxpayers are encouraged to submit this letter with the request and provides the address for the Bureau of Indian Affairs.
- Yes No
Pages _____
21. Have you included the required statement of relevant authorities in support of your views? *See* section 7.01(8).
- Yes No
Page _____
22. Have you included the required statement regarding whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities? *See* section 7.01(8).
- Yes No
Pages _____
23. Does your request discuss the implications of any legislation, tax treaties, court decisions, regulations, notices, revenue rulings, or revenue procedures that you determined to be contrary to the position advanced? *See* section 7.01(9), which states that taxpayers are encouraged to inform the Service of such authorities.
- Yes No N/A
Page _____
24. If you determined that there are no contrary authorities, have you included a statement to this effect in your request? *See* section 7.01(9).
- Yes No N/A
Page _____
25. Have you included in your request a statement identifying any pending legislation that may affect the proposed transaction? *See* section 7.01(10).
- Yes No
26. Is the request accompanied by the deletion statement required by § 6110? *See* section 7.01(11).
- Yes No
Page _____
27. Have you (or your authorized representative) signed and dated the request? *See* section 7.01(12).
- Yes No N/A
28. If the request is signed by your representative or if your representative will appear before the Service in connection with the request, is the request accompanied by a properly prepared and signed power of attorney with the signatory's name typed or printed? *See* section 7.01(14).
- Yes No
Page _____
29. Have you included, signed, and dated the penalties of perjury statement in the format required by section 7.01(15)?

- Yes No N/A 30. Are you submitting your request in duplicate if necessary? *See* section 7.01(16).
- Yes No N/A
Pages _____ 31. If you are requesting separate letter rulings on different issues involving one factual situation, have you included a statement to that effect in each request? *See* section 7.02(1).
- Yes No N/A 32. If you want copies of the letter ruling sent to a representative, does the power of attorney contain a statement to that effect? *See* section 7.02(2).
- Yes No N/A 33. If you do not want a copy of the letter ruling to be sent to any representative, does the power of attorney contain a statement to that effect? *See* section 7.02(2).
- Yes No N/A 34. If you are making a two-part letter ruling request, have you included a summary statement of the facts you believe to be controlling? *See* section 7.02(3).
- Yes No N/A
Page _____ 35. If you want your letter ruling request to be processed ahead of the regular order or by a specific date, have you requested expedited handling in the manner required by section 7.02(4) and stated a compelling need for such action in the request? But, a request dealing solely with a section 368 reorganization or a section 355 distribution may receive expedited treatment without stating a compelling need. Section 7.02(4) of this revenue procedure.
- Yes No N/A
Page _____ 36. If you are requesting a copy of any document related to the letter ruling request to be sent by facsimile (fax) transmission, have you included a statement to that effect? *See* section 7.02(5).
- Yes No N/A
Page _____ 37. If you want to have a conference on the issues involved in the request, have you included a request for conference in the letter ruling request? *See* section 7.02(6).
- Yes No 38. Have you included the correct user fee with the request and is your check or money order in U.S. dollars and payable to the Internal Revenue Service? *See* section 15 and Appendix A to determine the correct amount.
- Yes No N/A
Page _____ 39. If your request involves a personal tax issue and you qualify for the reduced user fee when gross income is less than \$250,000, have you included the required certification? *See* paragraphs (A)(4)(a) and (B)(1) of Appendix A.
- Yes No N/A
Page _____ 40. If your request involves a business-related tax issue and you qualify for the reduced user fee when gross income is less than \$1 million, have you included the required certification? *See* paragraphs (A)(4)(b) and (B)(1) of Appendix A.
- Yes No N/A
Page _____ 41. If you qualify for the user fee for substantially identical letter rulings, have you included the required information? *See* section 15.07(2) and paragraph (A)(5)(a) of Appendix A.
- Yes No N/A
Page _____ 42. If you qualify for the user fee for a § 301.9100 request to extend the time for filing an identical accounting method change on a single Form 3115, have you included the required information? *See* section 15.07(4) and paragraph (A)(5)(d) of Appendix A.
- Yes No N/A 43. If your request is covered by any of the checklists, guideline revenue procedures, notices, safe harbor revenue procedures, or other special requirements listed in Appendix E, have you complied with all of the requirements of the applicable revenue procedure or notice?

Rev. Proc. _____
List other applicable revenue procedures or notices, including checklists, used or relied upon in the preparation of this letter ruling request (Cumulative Bulletin or Internal Revenue Bulletin citation not required).

Yes No N/A
Page _____ 44. If you are requesting relief under § 7805(b) (regarding retroactive effect), have you complied with all of the requirements in section 11.11?

Yes No 45. Have you addressed your request to the attention of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate? The mailing address is:

**Internal Revenue Service
Attn: CC:PA:LPD:DRU
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044**

If a private delivery service is used, the address is:

**Internal Revenue Service
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224**

The package should be marked: RULING REQUEST SUBMISSION. Improperly addressed requests may be delayed (sometimes for over a week) in reaching CC:PA:LPD:DRU for initial processing.

Signature

Title or Authority

Date

Typed or printed name of
person signing checklist

APPENDIX D

**LIST OF SMALL BUSINESS/SELF-EMPLOYED
OPERATING DIVISION (SB/SE) OFFICES FOR REQUESTING DETERMINATION LETTERS**

Requests for determination letters under Rev. Proc. 2006-1, this revenue procedure, from SB/SE and W&I taxpayers, should be sent to the appropriate SB/SE office listed below based upon the type of tax involved. Both the request and the envelope in which it is sent should be marked "DETERMINATION LETTER REQUEST."

INCOME TAX

Requests for determination letters regarding income tax (including requests from international taxpayers) should be sent to:

**Office of the Director, Technical Services
Internal Revenue Service
Attn: SE:S:E:TS
Mail Stop 5000
24000 Avila Road
Laguna Niguel, CA 92677**

ESTATE AND GIFT TAXES

Requests for determination letters regarding estate and gift tax should be sent to:

**Chief, Estate & Gift Tax Operations
Internal Revenue Service
SE:S:SP:E&G
1222 Spruce Street
M/S 1022STL
St. Louis, MO 63103-2839**

EMPLOYMENT TAXES

Requests for determination letters regarding employment tax (except for requests for determination of worker status, which should be sent to the appropriate office listed in the instructions to Form SS-8) should be sent to:

**Chief, Employment Tax Operations
Internal Revenue Service
Attn: SE:S:SP:ETO
1111 Constitution Ave., NW
Room 2404
Washington, DC 20224**

EXCISE TAXES

Requests for determination letters regarding excise taxes should be sent to:

**Chief, Excise Tax Operations
Internal Revenue Service
Attn: SE:S:SP:EX
1111 Constitution Ave., NW
Room 2016
Washington, DC 20224**

APPENDIX E

CHECKLISTS, GUIDELINE REVENUE PROCEDURES,
NOTICES, SAFE HARBOR
REVENUE PROCEDURES, AND AUTOMATIC CHANGE REVENUE PROCEDURES

Specific revenue procedures and notices supplement the general instructions for requests explained in section 7 of this revenue procedure and apply to requests for letter rulings or determination letters regarding the Code sections and matters listed in this section.

Checklists, guideline revenue procedures, and notices

.01 For requests relating to the following Code sections and subject matters, refer to the following checklists, guideline revenue procedures, and notices.

*CODE OR
REGULATION
SECTION*

REVENUE PROCEDURE AND NOTICE

103, 141–150, 7478,
and 7871
Issuance of state or
local obligations

Rev. Proc. 96–16, 1996–1 C.B. 630 (for a reviewable ruling under § 7478 and a nonreviewable ruling); Rev. Proc. 88–31, 1988–1 C.B. 832 (for approval of areas of chronic economic distress); and Rev. Proc. 82–26, 1982–1 C.B. 476 (for “on behalf of” and similar issuers). For approval of areas of chronic economic distress, Rev. Proc. 88–31 explains how this request for approval must be submitted to the Assistant Secretary for Housing/Federal Housing Commissioner of the Department of Housing and Urban Development.

1.166–2(d)(3)
Uniform express
determination letter
for making election

Rev. Proc. 92–84, 1992–2 C.B. 489.

Subchapter
C—Corporate
Distributions and
Adjustments

Rev. Proc. 77–37, 1977–2 C.B. 568, as modified by Rev. Proc. 89–30, 1989–1 C.B. 895, and as amplified by Rev. Proc. 77–41, 1977–2 C.B. 574, Rev. Proc. 83–81, 1983–2 C.B. 598 (*see also* Rev. Proc. 2006–3, this Bulletin), Rev. Proc. 84–42, 1984–1 C.B. 521 (superseded as to no-rule areas by Rev. Proc. 2006–3, this Bulletin), Rev. Proc. 86–42, 1986–2 C.B. 722, and Rev. Proc. 89–50, 1989–2 C.B. 631. *But see* section 3.01 of Rev. Proc. 2006–3, this Bulletin, (corporate distributions, transfers, and reorganizations under §§ 332, 351, 368(a)(1)(A), 368(a)(1)(B), 368(a)(1)(C), 368(a)(1)(E), 368(a)(1)(F), and 1036), which describes certain corporate transactions where the Service will not issue letter rulings or determination letters.

301
Nonapplicability on
sales of stock of
employer to defined
contribution plan

Rev. Proc. 87–22, 1987–1 C.B. 718.

302, 311
Checklist questionnaire

Rev. Proc. 86–18, 1986–1 C.B. 551; and Rev. Proc. 77–41, 1977–2 C.B. 574.

302(b)(4)
Checklist questionnaire

Rev. Proc. 81–42, 1981–2 C.B. 611.

311
Checklist questionnaire

Rev. Proc. 86–16, 1986–1 C.B. 546.

332
Checklist questionnaire

Rev. Proc. 90–52, 1990–2 C.B. 626. *But see* section 3.01 of Rev. Proc. 2006–3, this Bulletin, which describes certain corporate transactions where the Service will not issue letter rulings or determination letters.

338
Extension of time to
make elections

Rev. Proc. 2003–33, 2003–1 C.B. 803, provides guidance as to how an automatic extension of time under § 301.9100–3 of the Regulations on Procedure and Administration may be obtained to file elections under § 338. This revenue procedure also informs taxpayers who do not qualify for the automatic extension, of the information necessary to obtain a letter ruling.

351 Checklist questionnaire	Rev. Proc. 83–59, 1983–2 C.B. 575. <i>But see</i> section 3.01 of Rev. Proc. 2006–3, this Bulletin, which describes certain transfers to controlled corporations where the Service will not issue letter rulings or determination letters.
355 Checklist questionnaire	Rev. Proc. 96–30, 1996–1 C.B. 696, as modified and amplified by Rev. Proc. 2003–48, 2003–2 C.B. 86.
368(a)(1)(E) Checklist questionnaire	Rev. Proc. 81–60, 1981–2 C.B. 680. <i>But see</i> section 3.01 of Rev. Proc. 2006–3, this Bulletin, which describes circumstances under which the Service will not issue letter rulings or determination letters as to whether a transaction constitutes a corporate recapitalization within the meaning of § 368(a)(1)(E) (or a transaction that also qualifies under § 1036).
461(h) Alternative method for the inclusion of common improvement costs in basis	Rev. Proc. 92–29, 1992–1 C.B. 748.
482 Advance pricing agreements	Rev. Proc. 96–53, 1996–2 C.B. 375, as modified by Notice 98–65, 1998–2 C.B. 803, and amplified by Rev. Proc. 2002–52, 2002–2 C.B. 242.
521 Appeal procedure with regard to adverse determination letters and revocation or modification of exemption letter rulings and determination letters	Rev. Proc. 90–27, 1990–1 C.B. 514.
1.817–5(a)(2) Issuer of a variable contract requesting relief	Rev. Proc. 92–25, 1992–1 C.B. 741.
877, 2107, and 2501(a)(3) Individuals who lose U.S. citizenship or cease to be taxed as long-term U.S. residents with a principal purpose to avoid U.S. taxes	Notice 97–19, 1997–1 C.B. 394, as modified by Notice 98–34, 1998–2 C.B. 29.
1362(b)(5) and 1362(f) Relief for late S corporation and related elections under certain circumstances	Rev. Proc. 2004–49, 2004–2 C.B. 210; Rev. Proc. 2003–43, 2003–1 C.B. 998; Rev. Proc. 97–48, 1997–2 C.B. 521.
1362(b)(5) and 301.7701–3 Automatic extensions of time for late S corporation election and late corporate entity classification	Rev. Proc. 2004–48, 2004–2 C.B. 172.

1.1502–13(e)(3) Consent to treat intercompany transactions on a separate entity basis and revocation of this consent	Rev. Proc. 97–49, 1997–2 C.B. 523.
1.1502–76(a)(1) Consent to file a consolidated return where member(s) of the affiliated group use a 52–53 week taxable year	Rev. Proc. 89–56, 1989–2 C.B. 643.
1504(a)(3)(A) and (B) Waiver of application of § 1504(a)(3)(A) for certain corporations	Rev. Proc. 2002–32, 2002–1 C.B. 959.
1552 Consent to elect or change method of allocating affiliated group’s consolidated federal income tax liability	Rev. Proc. 90–39, 1990–2 C.B. 365, as clarified by Rev. Proc. 90–39A, 1990–2 C.B. 367.
2642 Allocations of generation-skipping transfer tax exemption	Rev. Proc. 2004–46, 2004–2 C.B. 142, provides an alternative method for requesting relief to make a late allocation of the generation-skipping transfer tax exemption. This revenue procedure also informs taxpayers who are denied relief or who are outside the scope of the revenue procedure of the information necessary for obtaining a letter ruling.
2652(a)(3) Reverse qualified terminable interest property elections	Rev. Proc. 2004–47, 2004–2, C.B. 169, provides an alternative method for certain taxpayers to obtain an extension of time to make a late reverse qualified terminable interest property election under § 2652(a)(3). This revenue procedure also informs taxpayers who are denied relief or who are outside the scope of the revenue procedure of the information necessary to obtain a letter ruling.
4980B Failure to satisfy continuation coverage requirements of group health plans	Rev. Proc. 87–28, 1987–1 C.B. 770 (treating references to former § 162(k) as if they were references to § 4980B).
7701 Relief for a late initial classification election for a newly formed entity	Rev. Proc. 2002–59, 2002–2 C.B. 615.
7701(a)(40) and 7871(d) Indian tribal governments and subdivision of Indian tribal governments	Rev. Proc. 84–37, 1984–1 C.B. 513, as modified by Rev. Proc. 86–17, 1986–1 C.B. 550, and Rev. Proc. 2006–1, this revenue procedure, (provides guidelines for obtaining letter rulings recognizing Indian tribal government or tribal government subdivision status; also provides for inclusion in list of recognized tribal governments in revised versions of Rev. Proc. 2002–64, 2002–2 C.B. 717, or in list of recognized subdivisions of Indian tribal governments in revised versions of Rev. Proc. 84–36, 1984–1 C.B. 510, as modified and made permanent by Rev. Proc. 86–17).

301.7701-2(a) Classification of undivided fractional interests in rental real estate	Rev. Proc. 2002-22, 2002-1 C.B. 733 (specifies the conditions under which the Service will consider a letter ruling request that an undivided fractional interest in rental real property (other than a mineral property as defined in § 614) is not an interest in a business entity).
301.7701-3 Automatic extensions of time for late S corporation election and late corporate entity classification	Rev. Proc. 2004-48, 2004-2 C.B. 172.
301.9100-3 Extension of time to make entity classification election	Rev. Proc. 2002-59, 2002-2 C.B. 615.
7702 Closing agreement for failed life insurance contracts	Notice 99-48, 1999-2 C.B. 429; Rev. Rul. 91-17, 1991-1 C.B. 190.
7702A Relief for inadvertent non-egregious failure to comply with modified endowment contract rules	Rev. Proc. 2001-42, 2001-2 C.B. 212.
7704(g) Revocation of election	Notice 98-3, 1998-1 C.B. 333.

SUBJECT MATTERS

REVENUE PROCEDURE

Accounting periods; changes in period	Rev. Proc. 2002-39, 2002-1 C.B. 1046, as clarified and modified by Notice 2002-72, 2002-2 C.B. 843, and as modified by Rev. Proc. 2003-34, 2003-1 C.B. 856; and Rev. Proc. 2006-1, this revenue procedure, for which sections 1, 2.01, 2.02, 2.05, 3.03, 5.02, 6.03, 6.05, 6.07, 6.11, 7.01(1), 7.01(2), 7.01(3), 7.01(4), 7.01(5), 7.01(6), 7.01(8), 7.01(9), 7.01(10), 7.01(13), 7.01(14), 7.01(15), 7.02(2), 7.02(4), 7.02(5), 7.02(6), 7.03, 7.04, 7.05, 7.07, 8.01, 8.03, 8.04, 8.05, 8.06, 10, 11, 15, 17, 18, Appendix A, and Appendix E are applicable.
Classification of liquidating trusts	Rev. Proc. 82-58, 1982-2 C.B. 847, as modified and amplified by Rev. Proc. 94-45, 1994-2 C.B. 684, and as amplified by Rev. Proc. 91-15, 1991-1 C.B. 484 (checklist questionnaire), as modified and amplified by Rev. Proc. 94-45.
Earnings and profits determinations	Rev. Proc. 75-17, 1975-1 C.B. 677; Rev. Proc. 2006-1, this revenue procedure, sections 2.05, 3.03, 7, 8, and 10.05; and Rev. Proc. 2006-3, this Bulletin, section 3.01.
Estate, gift, and generation-skipping transfer tax issues	Rev. Proc. 91-14, 1991-1 C.B. 482 (checklist questionnaire).
Deferred intercompany transactions; election not to defer gain or loss	Rev. Proc. 97-49, 1997-2 C.B. 523.
Leveraged leasing	Rev. Proc. 2001-28, 2001-1 C.B. 1156, and Rev. Proc. 2001-29, 2001-1 C.B. 1160.

Rate orders; regulatory agency; normalization

A letter ruling request that involves a question of whether a rate order that is proposed or issued by a regulatory agency will meet the normalization requirements of § 168(f)(2) (pre-Tax Reform Act of 1986, § 168(e)(3)) and former §§ 46(f) and 167(l) ordinarily will not be considered unless the taxpayer states in the letter ruling request whether—

(1) the regulatory authority responsible for establishing or approving the taxpayer's rates has reviewed the request and believes that the request is adequate and complete; and

(2) the taxpayer will permit the regulatory authority to participate in any Associate office conference concerning the request.

If the taxpayer or the regulatory authority informs a consumer advocate of the request for a letter ruling and the advocate wishes to communicate with the Service regarding the request, any such communication should be sent to: Internal Revenue Service, Associate Chief Counsel (Procedure & Administration), Attn: CC:PA:LPD:DRU, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (or, if a private delivery service is used: Internal Revenue Service, Associate Chief Counsel (Procedure & Administration), Attn: CC:PA:LPD:DRU, Room 5336, 1111 Constitution Ave., NW, Washington, DC 20224). These communications will be treated as third party contacts for purposes of § 6110.

Unfunded deferred compensation

Rev. Proc. 71-19, 1971-1 C.B. 698, as amplified by Rev. Proc. 92-65, 1992-2 C.B. 428. See Rev. Proc. 92-64, 1992-2 C.B. 422, as modified by Notice 2000-56, 2000-2 C.B. 393, for the model trust for use in Rabbi Trust Arrangements.

Safe harbor revenue procedures

.02 For requests relating to the following Code sections and subject matters, refer to the following safe harbor revenue procedures.

*CODE OR
REGULATION
SECTION*

REVENUE PROCEDURE

103 and 141-150
Issuance of state or local obligations

Rev. Proc. 93-17, 1993-1 C.B. 507 (change of use of proceeds); Rev. Proc. 97-13, 1997-1 C.B. 632, as modified by Rev. Proc. 2001-39, 2001-2 C.B. 38 (management contracts); and Rev. Proc. 97-14, 1997-1 C.B. 634 (research agreements).

61
Utility Cost Recovery
Securitization
Transactions

Rev. Proc. 2005-62, 2005-37 I.R.B. 507.

162
Restaurant Small Wares
Costs

Rev. Proc. 2002-12, 2002-1 C.B. 374.

168
Depreciation of original
and replacement tires
for certain vehicles

Rev. Proc. 2002-27, 2002-1 C.B. 802.

168
Depreciation of fiber
optic node and trunk
line of a cable television
distribution system

Rev. Proc. 2003-63, 2003-2 C.B. 304.

280B
Certain structural
modifications to a
building not treated as a
demolition

Rev. Proc. 95-27, 1995-1 C.B. 704.

446 Film producer's treatment of certain creative property costs	Rev. Proc. 2004-36, 2004-1 C.B. 1063.
451 Up-front network upgrade payments made to utilities	Rev. Proc. 2005-35, 2005-28 I.R.B. 76.
471 Estimating inventory shrinkage	Rev. Proc. 98-29, 1998-1 C.B. 857.
471 Valuation of remanufactured cores	Rev. Proc. 2003-20, 2003-1 C.B. 445.
584(a) Qualification of a proposed common trust fund plan	Rev. Proc. 92-51, 1992-1 C.B. 988.
642(c)(5) Qualification of trusts as pooled income funds	Rev. Proc. 88-53, 1988-2 C.B. 712.
664 Charitable remainder trusts	Rev. Proc. 2005-24, 2005-16 I.R.B. 909.
664(d)(1) Qualification of trusts as charitable remainder annuity trusts	Rev. Proc. 2003-53, 2003-2 C.B. 230; Rev. Proc. 2003-54, 2003-2 C.B. 236; Rev. Proc. 2003-55, 2003-2 C.B. 242; Rev. Proc. 2003-56, 2003-2 C.B. 249; Rev. Proc. 2003-57, 2003-2 C.B. 257; Rev. Proc. 2003-58, 2003-2 C.B. 262; Rev. Proc. 2003-59, 2003-2 C.B. 268; Rev. Proc. 2003-60, 2003-2 C.B. 274.
664(d)(2) Qualification of trusts as charitable remainder unitrusts	Rev. Proc. 2005-52, 2005-34 I.R.B. 326; Rev. Proc. 2005-53, 2005-34 I.R.B. 339; Rev. Proc. 2005-54, 2005-34 I.R.B. 353; Rev. Proc. 2005-55, 2005-34 I.R.B. 367; Rev. Proc. 2005-56, 2005-34 I.R.B. 383; Rev. Proc. 2005-57, 2005-34 I.R.B. 392; Rev. Proc. 2005-58, 2005-34 I.R.B. 402; Rev. Proc. 2005-59, 2005-34 I.R.B. 412.
856(c) Certain loans treated as real estate assets	Rev. Proc. 2003-65, 2003-2 C.B. 336.
860H Transfers of ownership interests in Financial Asset Securitization Investment Trusts	Rev. Proc. 2001-12, 2001-1 C.B. 335.
1031(a) Qualification as a qualified exchange accommodation arrangement	Rev. Proc. 2000-37, 2000-2 C.B. 308.
1286 Determination of reasonable compensation under mortgage servicing contracts	Rev. Proc. 91-50, 1991-2 C.B. 778.

1362(f) Automatic inadvertent termination relief to certain corporations	Rev. Proc. 2003-43, 2003-1 C.B. 998.
2056A Qualified Domestic Trust	Rev. Proc. 96-54, 1996-2 C.B. 386.
2702(a)(3)(A) and 25.2702-5(c) Qualified Personal Residence Trust	Rev. Proc. 2003-42, 2003-1 C.B. 993.
4051(a)(2) Imposition of tax on heavy trucks and trailers sold at retail	Rev. Proc. 2005-19, 2005-14 I.R.B. 832.
1.7704-2(d) New business activity of existing partnership is closely related to pre-existing business	Rev. Proc. 92-101, 1992-2 C.B. 579.

SUBJECT MATTERS

Certain rent-to-own
contracts treated as
leases

REVENUE PROCEDURE

Rev. Proc. 95-38, 1995-2 C.B. 397.

**Automatic change in accounting
period revenue procedures**

.03 For requests for an automatic change in accounting period, refer to the following automatic change revenue procedures published and/or in effect as of December 31, 2004:

Rev. Proc. 2002-37, 2002-1 C.B. 1030, as clarified and modified by Notice 2002-72, 2002-2 C.B. 843, and as modified by Rev. Proc. 2003-34, 2003-1 C.B. 856 (certain corporations); Rev. Proc. 2002-38, 2002-2 C.B. 1037, as clarified and modified by Notice 2002-72, 2002-2 C.B. 843 (certain partnerships, S corporations, electing S corporations, or personal service corporations); and Rev. Proc. 2003-62, 2003-2 C.B. 299 (individual seeking a calendar year).

The Commissioner's consent to an otherwise qualifying automatic change in accounting period is granted only if the taxpayer timely complies with the applicable automatic change revenue procedure.

Rev. Proc. 2006-1, 2006-1 I.R.B. 1.

Rev. Proc. 2006-2

TABLE OF CONTENTS

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE? 91

.01 Operating divisions of the Internal Revenue Service 91

.02 When a TAM or a TEAM should be requested 92

.03 Taxpayer participation not required 92

.04 Delegation of authority 92

.05 Updated annually 92

SECTION 2. DEFINITIONS 92

SECTION 3. WHAT IS THE DIFFERENCE BETWEEN TECHNICAL ADVICE AND TECHNICAL EXPEDITED ADVICE? 93

SECTION 4. ON WHAT ISSUES MAY TAMs OR TEAMs BE REQUESTED UNDER THIS PROCEDURE? 94

SECTION 5. ON WHAT ISSUES MUST TAMs OR TEAMs BE REQUESTED UNDER DIFFERENT PROCEDURES? 94

.01 Alcohol, tobacco, and firearms taxes 94

.02 Tax exempt and government entities 94

.03 Farmers’ cooperatives 94

SECTION 6. WHEN SHOULD A TAM OR A TEAM NOT BE REQUESTED? 94

.01 § 301.9100 requests 94

.02 Frivolous issues 94

.03 A director may not request a TAM or a TEAM if Appeals is currently considering the identical issue for the same taxpayer 95

.04 Issues in docketed cases 95

.05 Collection issues 95

.06 Alternate forms of legal advice 95

SECTION 7. WHO IS RESPONSIBLE FOR REQUESTING THE ADVICE? 95

.01 Field office determines whether to request a TAM or a TEAM 95

.02 Taxpayer may ask that an issue be referred for a TAM or a TEAM; Territory manager or Appeals area director determines whether a TAM or a TEAM will be sought 96

.03 Territory manager’s or Appeals area director’s decision may be reviewed but not appealed 96

.04 Special review procedures applicable to frivolous issues 97

SECTION 8. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED? 97

.01 Pre-submission conferences are required for all requests for advice 97

.02 Purpose of a pre-submission conference 97

.03 Request for a pre-submission conference must be submitted in writing by the field office 98

.04 Certain information required to be submitted to the Associate office prior to the pre-submission conference 98

.05 Manner of transmitting pre-submission materials 99

.06 Associate office attorney will contact the field office and field counsel to arrange the pre-submission conference 99

.07 Pre-submission conferences for TAMs and TEAMs generally conducted by telephone 99

.08 Pre-submission conference may not be taped 99

.09 Discussion of substantive issues is not binding on the Service 99

SECTION 9. WHAT MUST BE INCLUDED IN THE REQUEST FOR A TAM OR A TEAM? 100

.01 Statement of issues, facts, law, and arguments; submission of relevant foreign laws and documents in a language other than English; and statement regarding interpretation of an income or estate tax treaty. 100

.02 Statement recommending information to be deleted from public inspection 102

.03 Transmittal Form 4463, <i>Request for Technical Advice or Technical Expedited Advice</i>	103
.04 Number of copies of request to be submitted	103
.05 Power of attorney	104
SECTION 10. HOW ARE REQUESTS FOR TAMs AND TEAMs HANDLED?	104
.01 Determines whether request has been properly made	104
.02 Field and field counsel notified	104
.03 Considers whether the issue(s) is appropriate for a TEAM	104
.04 Considers whether published general guidance is appropriate	105
.05 Taxpayer notified	105
.06 Conference offered	105
.07 If the TAM or the TEAM request does not include a submission from the taxpayer	105
.08 If the interpretation of a foreign law or foreign document is a material fact	105
.09 If the taxpayer has not submitted the required deletion statement	106
.10 Section 6104 of the Internal Revenue Code (Applications for exemption and letter rulings issued to certain exempt organizations open to public inspection)	106
.11 Civil fraud or criminal investigation cases	106
.12 Obtaining status of a TAM or a TEAM request	106
.13 Service not barred from issuing 30-day letter while a TAM or a TEAM request is pending	107
SECTION 11. HOW ARE CONFERENCES FOR TAMs AND TEAMs SCHEDULED?	107
.01 If requested, offered to the taxpayer when an adverse TAM or TEAM proposed	107
.02 Timeline	107
.03 Extensions	107
.04 Denial of extension cannot be appealed	107
.05 Entitled to one conference of right	108
.06 Conference may not be taped	108
.07 If requested and approved, conference will be delayed to address a request for relief under § 7805(b)	108
.08 Service makes only tentative recommendations	108
.09 When additional conferences may be offered	108
.10 Additional information submitted after the conference	109
.11 Normally conducted by telephone	109
SECTION 12. HOW DOES THE ASSOCIATE OFFICE PREPARE THE TAM OR THE TEAM?	109
.01 Contacts the field office to discuss issues	109
.02 Informs the field office if any matters in the request have been referred to another branch of the Associate office or another Associate office	110
.03 Informs the field office if additional information is needed	110
.04 Informs the field office of tentative conclusion	110
.05 If a tentative conclusion has not been reached, gives date estimated for tentative conclusion	110
.06 Advises the field office if tentative conclusion is changed	110
.07 Generally does not discuss tentative conclusion with the taxpayer	110
.08 Advises the field office of final conclusions	110
.09 If needed, requests additional information	111
.10 Requests taxpayer to send additional information to the Associate office and a copy to the director or Appeals area director	111
.11 Informs the taxpayer when requested deletions will not be made	111
.12 Prepares reply in two parts	112
.13 Routes reply to appropriate office	112
.14 Sends copy of reply to appropriate division counsel and field counsel	112
SECTION 13. HOW ARE REQUESTS FOR TAMs AND TEAMs WITHDRAWN?	113
.01 Taxpayer notified	113
.02 Associate office may decide not to issue a TAM or a TEAM	113
.03 Associate office may provide views	113
SECTION 14. HOW DOES A FIELD OFFICE USE THE TAM OR THE TEAM?	113
.01 Generally applies advice in processing the taxpayer's case	113
.02 Reconsideration	114

.03 Discussion with the taxpayer	114
.04 Provides copy to the taxpayer	114
.05 Taxpayer may protest deletions not made	115
.06 When no copy is given to the taxpayer	115
SECTION 15. WHAT IS THE EFFECT OF A TAM OR A TEAM?	115
.01 Applies only to the taxpayer for whom the TAM or the TEAM was requested	115
.02 Usually applies retroactively	115
.03 Generally applied retroactively to modify or revoke a prior TAM or TEAM	116
.04 Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked	116
.05 Applies to continuing action or series of actions until material facts change	116
.06 Does not apply retroactively under certain conditions	116
SECTION 16. HOW MAY RETROACTIVE EFFECT BE LIMITED?	117
.01 Taxpayer may request that retroactivity be limited	117
.02 Form of request to limit retroactivity — continuing transaction before examination of return	117
.03 Form of request to limit retroactivity — in all other cases	117
.04 Taxpayer's right to a conference	117
.05 Reconsideration of § 7805(b) relief	118
SECTION 17. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2005-2?	118
SECTION 18. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?	118
SECTION 19. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?	118
DRAFTING INFORMATION	118
INDEX	120

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure explains when and how the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) issue technical advice memoranda (TAMs) and technical expedited advice memoranda (TEAMs) to a director or an Appeals area director. It also explains the rights a taxpayer has when a field office requests a TAM or a TEAM.

Operating divisions of the Internal Revenue Service

.01 The Internal Revenue Service includes four operating divisions that are responsible for meeting the needs of taxpayers:

(1) Large and Mid-Size Business Division (LMSB), which generally serves corporations, including S corporations, and partnerships with assets in excess of \$10 million;

(2) Small Business/Self-Employed Division (SB/SE), which generally serves corporations, including S corporations, and partnerships with assets less than or equal to \$10 million; estates and trusts; individuals filing an individual federal income tax return with an accompanying Schedule C (*Profit or Loss From Business (Sole Proprietorship)*), Schedule E (*Supplemental Income and Loss*), or Schedule F (*Profit or Loss From Farming*), or Form 2106 (*Employee Business Expenses*) or Form 2106-EZ (*Unreimbursed Employee Business Expenses*); and individuals with international tax returns;

(3) Wage and Investment Division (W&I), which generally serves individuals with wage and investment income only and with no international tax returns; and individuals filing an individual federal income tax return without an accompanying Schedule C, E, or F, or Form 2106 or Form 2106-EZ; and

(4) Tax Exempt and Government Entities Division (TE/GE), which generally serves three distinct taxpayer segments: employee plans, exempt organizations, and government entities.

When a TAM or a TEAM should be requested

.02 A TAM or a TEAM should be requested when there is a lack of uniformity regarding the disposition of an issue or when an issue is unusual or complex enough to warrant consideration by an Associate office. This revenue procedure applies only to a case under the jurisdiction of a director or an Appeals area director. A TAM or a TEAM may also be requested on issues considered in a prior Appeals disposition, not based on mutual concessions for the same tax period of the same taxpayer, if the field office that had the case concurs with the request. Once an issue is identified, all requests for a TAM or a TEAM should be made at the earliest possible stage in any proceeding. The fact that the issue is raised late in the examination or appeals process should not influence the field office's decision to request a TAM or a TEAM.

Taxpayer participation not required

.03 Although taxpayer participation during all stages of the process is preferred, it is not required in order to request technical advice. In the event that multiple taxpayers will be affected by the advice (*e.g.*, subject matter of the request involves a transaction between multiple taxpayers), the Associate office can issue a single TAM or TEAM, but only if each taxpayer agrees to participate in the process. In the event that a taxpayer chooses not to participate in a request for a TEAM, the request will usually be treated as a request for a TAM. In general, all parties must agree that the TEAM procedures are appropriate, with the following two exceptions:

(1) Any request in which the Associate office considers whether a letter ruling should be revoked or modified because the field office has determined that there are material differences from the controlling facts on which the original ruling was based will be treated and processed as a request for a TEAM without the need for consensus among the field office, taxpayer, and Associate office. *See* section 11.03 of Rev. Proc. 2006-1. The taxpayer's views will be considered if submitted.

(2) Any request for a TEAM that involves, as described in § 6110(g)(5)(A), a matter that is the subject of, or is otherwise closely related to, a criminal or civil fraud investigation, or a jeopardy or termination assessment may be treated and processed as a TEAM without telling the taxpayer about the referral of issues, providing copies of the arguments submitted, or requesting the participation of the taxpayer.

Delegation of authority

.04 The provisions of this revenue procedure are applicable in situations in which the authority normally exercised by the director or the Appeals area director has been properly delegated to another official.

Updated annually

.05 This revenue procedure is updated annually as the second revenue procedure of the year, but may be modified or amplified during the year.

SECTION 2. DEFINITIONS

For purposes of this revenue procedure—

(1) any reference to “director” refers to the Director, Field Operations, LMSB for the taxpayer's industry; the Territory Manager, Field Compliance, SB/SE; or the Director, Compliance, W&I, as appropriate, or, when appropriate, the Director, International, LMSB; the Director, Employee Plans Examinations; the Director, Exempt Organizations Examinations; the Director, Federal, State & Local Governments; the Director, Tax Exempt Bonds; or the Director, Indian Tribal Governments;

(2) any reference to “Appeals area director” refers to an Appeals Area Director;

(3) any reference to “territory manager” refers to a territory manager, LMSB; a territory manager, examination, SB/SE; or the Director, Compliance, W&I, as appropriate, and, includes, when appropriate, the Employee Plans Examinations Area manager; the Exempt Organizations Examinations Area manager; the Employee Plans Determinations manager; the Exempt Organizations Determinations manager; the group manager, Federal, State & Local Governments; the manager, field operations, Tax Exempt Bonds; or the group manager, Indian Tribal Governments; the territory manager, Estate and Gift Tax Examination, SB/SE; the territory manager, Excise Tax Examination, SB/SE; the territory manager, Employment Tax Examination, SB/SE; or the territory manager, International Examination, SB/SE;

(4) any reference to “Appeals officer” includes, when appropriate, an Appeals team case leader;

(5) the term “taxpayer” includes any person subject to any provision of the Internal Revenue Code (including an issuer of § 103 obligations) and, when appropriate, their representatives;

(6) the term “Associate office” refers to the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions and Products), the Office of Associate Chief Counsel (Income Tax and Accounting), the Office of Associate Chief Counsel (International), the Office of Associate Chief Counsel (Passthroughs and Special Industries), the Office of Associate Chief Counsel (Procedure and Administration), or the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate;

(7) the term “field office” refers to examination or Appeals personnel;

(8) the term “Division Counsel Headquarters” refers to any attorney with the Headquarters of LMSB, SB/SE, W&I, or TE/GE; and

(9) the term “field counsel” refers to any attorney with LMSB, SB/SE, or TE/GE who is not a member of Division Counsel Headquarters.

SECTION 3. WHAT IS THE DIFFERENCE BETWEEN TECHNICAL ADVICE AND TECHNICAL EXPEDITED ADVICE?

“Technical advice” means advice in the form of a memorandum (hereinafter referred to as a TAM) furnished by an Associate office upon the request of a director or an Appeals area director, submitted in accordance with the provisions of this revenue procedure, in response to any technical or procedural question that develops during any proceeding on the interpretation and proper application of tax law, tax treaties, regulations, revenue rulings, notices, or other precedents published by the Associate office to a specific set of facts. Such proceedings include: (1) the examination of a taxpayer’s return; (2) the consideration of a taxpayer’s claim for credit or refund; (3) any matter under examination or in appeals pertaining to tax-exempt bonds, tax credit bonds, or mortgage credit certificates; and (4) any other matter involving a specific taxpayer under the jurisdiction of the territory manager or the Appeals area director. They also include processing and considering nondocketed cases in a field office but do not include docketed cases in which the issue involves the taxpayer (or a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) for any taxable year.

“Technical expedited advice” means technical advice issued in an expedited manner (hereinafter referred to as a TEAM). Subject to agreement among the taxpayer, field office, field counsel, and the Associate office, any issue eligible for a TAM can be submitted for TEAM treatment. A TEAM has several characteristics that are different from a TAM, including the following: taxpayer participation in the mandatory pre-submission conference (section 8.01), (except for the two situations in section 1.03 where taxpayer concurrence is not required for TEAM procedures); in the event of a tentatively adverse conclusion to the taxpayer or the field, a conference of right will be offered to the taxpayer and the field (section 11.02); and once the conference of right is held, no further conferences will be offered (section 11.05). The procedures associated with the issuance of a TEAM help expedite certain aspects of the TAM process and eliminate some of the requirements that may delay or frustrate the TAM process.

TAMs and TEAMS help Service personnel close cases and also help establish and maintain consistent technical positions throughout the Service. TAMs and TEAMS are issued only on closed transactions and do not address hypothetical situations. A director or an Appeals area director may raise an issue in any tax period, even though a TAM or a TEAM may have been requested and furnished for the same or similar issue for another tax period.

Neither TAMs nor TEAMS include oral or written legal advice furnished to the field office, other than advice furnished pursuant to this revenue procedure. In accordance with section 7.02 of this revenue procedure, a taxpayer’s request for referral of an issue to the Associate office for a TAM or a TEAM will not be denied merely because the Associate office has already provided legal advice, other than advice furnished pursuant to this revenue procedure, to the field office on the matter.

SECTION 4. ON WHAT ISSUES MAY TAMs OR TEAMs BE REQUESTED UNDER THIS PROCEDURE?

This revenue procedure applies to requests for TAMs or TEAMs on any issue under the jurisdiction of the Associate offices. *See* section 3 of Rev. Proc. 2006–1, this Bulletin, for a description of the principal subject matters of each office.

SECTION 5. ON WHAT ISSUES MUST TAMs OR TEAMs BE REQUESTED UNDER DIFFERENT PROCEDURES?

Alcohol, tobacco, and firearms taxes

.01 The procedures for obtaining a TAM or a TEAM specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are currently under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau of the Treasury Department.

Tax exempt and government entities

.02 The procedures for obtaining a TAM or a TEAM specifically on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, are found in Rev. Proc. 2006–5, this Bulletin. The procedures under Rev. Proc. 2006–2 (this revenue procedure) must be followed to obtain a TAM or a TEAM on issues pertaining to tax-exempt bonds, Indian tribal governments, federal, state, or local governments, mortgage credit certificates, and deferred compensation plans under § 457.

Farmers’ cooperatives

.03 Even though the Associate Chief Counsel (Passthroughs and Special Industries) has jurisdiction for issuing TAMs and TEAMs under § 521, the procedures under Rev. Proc. 2006–5, this Bulletin, and Rev. Proc. 90–27, 1990–1 C.B. 514, must be followed.

SECTION 6. WHEN SHOULD A TAM OR A TEAM NOT BE REQUESTED?

§ 301.9100 requests

.01 A request for an extension of time for making an election or other application for relief under § 301.9100–3 of the Procedure and Administration Regulations is not submitted as a request for a TAM or a TEAM; instead, the request is submitted as a letter ruling request even if the request is submitted after the examination of the taxpayer’s return has begun or after the issues in the return are being considered in Appeals or a federal court. Therefore, a § 301.9100 request should be submitted pursuant to Rev. Proc. 2006–1 (including the payment of the applicable user fee listed in Appendix A of Rev. Proc. 2006–1).

Frivolous issues

.02 For purposes of this revenue procedure, a “frivolous issue” is one without basis in fact or law, or that espouses a position that has been held by the courts to be frivolous or groundless. Examples of frivolous or groundless issues include, but are not limited to:

(1) frivolous “constitutional” claims, such as claims that the requirement to file tax returns and pay taxes constitutes an unreasonable search barred by the Fourth Amendment; violates Fifth and Fourteenth Amendment protections of due process; violates Thirteenth Amendment protections against involuntary servitude; or is unenforceable because the Sixteenth Amendment does not authorize nonapportioned direct taxes or was never ratified;

(2) claims that income taxes are voluntary, that the term “income” is not defined in the Internal Revenue Code, or that the preparation and filing of income tax returns violates the Paperwork Reduction Act;

(3) claims that tax may be imposed only on coins minted under a gold or silver standard or that receipt of Federal Reserve Notes does not cause an accretion to wealth;

(4) claims that a person is not taxable on income because he or she falls within a class entitled to “reparation claims” or an extra-statutory class of individuals exempt from tax (for example, “free-born” individuals);

(5) claims that a taxpayer can refuse to pay taxes on the basis of opposition to certain governmental expenditures;

(6) claims that taxes apply only to federal employees; only to residents of Puerto Rico, Guam, the U.S. Virgin Islands, the District of Columbia, or “federal enclaves” ; or that §§ 861 through 865 or any other provision of the Internal Revenue Code imposes taxes on U.S. citizens and residents only on income derived from foreign-based activities;

(7) claims that wages or personal service income are not “income,” are “nontaxable receipts,” or “are a nontaxable exchange for labor” ;

(8) claims that income tax withholding by an employer on wages is optional; or

(9) other claims the courts have characterized as frivolous or groundless.

A director may not request a TAM or a TEAM if Appeals is currently considering the identical issue for the same taxpayer

.03 A case remains under the jurisdiction of the director even though Appeals has the identical issue under consideration in the case of another taxpayer (not related within the meaning of § 267 or a member of an affiliated group of which the taxpayer is not also a member within the meaning of § 1504) in a different transaction. With respect to the same taxpayer or the same transaction, when the issue is under the jurisdiction of Appeals and the applicability of more than one kind of federal tax is dependent upon the resolution of that issue, a director may not request a TAM or a TEAM on the applicability of any of the taxes involved.

A field office may not request a TAM or a TEAM on an issue if the same issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) is in a docketed case for any taxable year. If a case is docketed for an estate tax issue of a taxpayer while a request for a TAM or a TEAM on the same issue of the same taxpayer is pending, the Associate office may issue the TAM or the TEAM only if the appropriate Appeals officer and field counsel agree, by memorandum, to the issuance of the TAM or the TEAM.

Issues in docketed cases

.04 A field office may not request a TAM or a TEAM on an issue if the same issue is involved in a docketed case for the same or related taxpayer for any taxable year.

Collection issues

.05 The Associate Chief Counsel (Procedure and Administration) does not issue TAMs or TEAMS on matters arising under the Internal Revenue Code and related statutes and regulations that involve the collection of taxes (including interest and penalties).

Alternate forms of legal advice

.06 The assigned Associate office attorney and reviewer should consider whether a TAM or a TEAM is the best format for the legal advice. In some cases, drafting a lengthy written analysis may delay delivery of the conclusion. In addition, in some cases, published general guidance may be appropriate. *See* section 10.04 of this revenue procedure.

SECTION 7. WHO IS RESPONSIBLE FOR REQUESTING THE ADVICE?

Field office determines whether to request a TAM or a TEAM

.01 The field office determines whether to request a TAM or a TEAM on an issue. Requests generally originate with the examining agent or Appeals officer assigned to the case, are submitted through the supervisory chain, and must be approved in writing by the director or equivalent official in the respective operating divisions or by the Appeals area director (or by someone with the delegated authority to approve on their behalf) before submission to the Associate office. Exam or Appeals personnel, however, should also request advice from field counsel on issues involved in cases under their jurisdiction prior to requesting a TAM or a TEAM. If, during the discussion of an issue with an examining agent or Appeals officer, field counsel believes that an issue warrants consideration as a TAM or a TEAM, field counsel may make a written or oral request to the examining agent or Appeals officer that the issue be referred to the Associate office for a TAM or a TEAM. If, after considering a request that an issue be submitted for a TAM or a TEAM, the examining agent or Appeals officer disagrees with the request, the field counsel may request reconsideration of the denial through the appropriate supervisory chain.

Prior to making a final determination regarding whether to request a TAM or a TEAM, and prior to the pre-submission conference, the field office must coordinate with, and request advice from, field counsel.

Before submission of a TAM or a TEAM request to the Associate office, and before the pre-submission conference, the field office should submit the TAM or the TEAM request to an Associate Area Counsel for the Associate Area Counsel to provide his or her views in order to help determine whether to submit the TAM or the TEAM request to the Associate office.

As discussed in section 1.03 of this revenue procedure, if a director or Appeals area director requests a TAM, taxpayer cooperation is not required. Accordingly, the taxpayer cannot appeal the decision to seek a TAM. In contrast, as discussed in section 8.02 of this revenue procedure, if a director or Appeals area director requests a TEAM, the field office, the taxpayer, and the Associate office must all agree that the TEAM procedures are appropriate, except for the two situations discussed above in section 1.03 of this revenue procedure. Thus, in general, if a taxpayer does not want an issue to be referred to the Associate office for a TEAM, the request for advice will be treated as a request for a TAM for which taxpayer agreement is not required.

Taxpayer may ask that an issue be referred for a TAM or a TEAM; Territory manager or Appeals area director determines whether a TAM or a TEAM will be sought

.02 While a case is under the jurisdiction of a director or Appeals area director, a taxpayer may request that an issue be referred to the Associate office for a TAM or a TEAM. The request may be oral or written and should be directed to the examining agent or Appeals officer.

If the examining agent or Appeals officer concludes that a taxpayer's request for referral of an issue to the Associate office for a TAM or a TEAM does not warrant referral, the examining agent or Appeals officer will notify the taxpayer. A taxpayer's request for such a referral will not be denied merely because the Associate office provided legal advice, other than advice furnished pursuant to this revenue procedure, to the field office on the matter. The taxpayer may appeal the decision of the examining agent or Appeals officer not to request a TAM or a TEAM. To do so, the taxpayer must submit to that officer, within ten calendar days after being notified of the decision, a written statement of the facts, law, and arguments on the issue and the reasons why the taxpayer believes the matter should be referred to the Associate office for a TAM or a TEAM. A taxpayer who needs more than ten calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the territory manager or the Appeals area director.

The examining agent or Appeals officer submits the taxpayer's statement through appropriate channels to the territory manager or the Appeals area director along with the examining agent's or Appeals officer's statement of why the issue should not be referred to the Associate office. The territory manager or the Appeals area director determines on the basis of the statements whether a TAM or a TEAM will be requested.

If the territory manager or the Appeals area director determines that a TAM or a TEAM is not warranted and proposes to deny the request, the taxpayer is told in writing about the determination. In the letter to the taxpayer, the territory manager or the Appeals area director states the reasons for the proposed denial (except in unusual situations when doing so would be prejudicial to the best interests of the Government). The taxpayer has ten calendar days after receiving the letter to notify the territory manager or the Appeals area director of agreement or disagreement with the proposed denial. If the taxpayer does not respond within ten calendar days after receiving the letter, the lack of response will be deemed as agreement with the proposed denial.

Territory manager's or Appeals area director's decision may be reviewed but not appealed

.03 The taxpayer may not appeal the decision of the territory manager or the Appeals area director not to request a TAM or a TEAM. If the taxpayer does not agree with the proposed denial, all data on the issue for which a TAM or a TEAM has been sought, including the taxpayer's written request and statements, will be submitted for review to the Industry Director, LMSB; the Examination Area Director, SB/SE; the Director, Compliance, W&I; the Director, International, LMSB; the Director, Federal, State & Local Governments; the Director, Tax Exempt Bonds; the Director, Indian Tribal Governments; or the Appeals Director, Technical Services, as appropriate.

Review of the proposed denial will be based solely on the written record; no conference will be held with the taxpayer or the taxpayer's representative. The party responsible for review may consult with the Associate office, if necessary, and will notify the field office within 45 calendar days of receiving all the data regarding the request for a TAM or a TEAM whether the proposed denial is approved or disapproved. The field office will then notify the taxpayer.

While the matter is being reviewed, the field office will suspend action on the issue (except when the delay would prejudice the Government's interests).

Special review procedures applicable to frivolous issues

.04 If the request for a TAM or a TEAM concerns a "frivolous issue," as described in section 6.02 of this revenue procedure, a TAM or a TEAM will not be given, and the examining agent or Appeals officer will deny the taxpayer's request for referral. The taxpayer may appeal the decision of the examining agent or Appeals officer. If the territory manager or the Appeals area director determines that no TAM or TEAM will be sought, an expedited review procedure will be followed. This expedited review procedure will consist of the following:

(1) the territory manager or the Appeals area director will inform the appropriate official (the Industry Director, LMSB; the Examination Area Director, SB/SE; the Director, Compliance, W&I; the Director, International, LMSB; the Director, Federal, State, and Local Governments; the Director, Tax Exempt Bonds; the Director, Indian Tribal Governments; the Appeals Director, Technical Services; the Chief, Employment Tax Examination, SB/SE; the Chief, Estate and Gift Tax Examination, SB/SE; the Chief, Excise Tax Examination, SB/SE; or the Chief, International Examination, SB/SE) of the request for review and the basis for the denial, but will not forward the taxpayer's written request and statements, unless requested to do so by the official;

(2) the field office will not suspend action on the issue;

(3) within 15 calendar days, the official will notify the territory manager or Appeals area director whether the proposed denial is approved or disapproved. The official may also determine that the expedited process is not warranted and request all of the information supplied by the taxpayer and allow suspension of action on the item while the denial is reviewed; and

(4) the field office will notify the taxpayer in writing of the result of the review of the denial.

SECTION 8. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED?

Pre-submission conferences are required for all requests for advice

.01 In an effort to promote expeditious processing of a request for a TAM or a TEAM, a pre-submission conference is mandatory. The Associate office must confer with the field office and field counsel (and in some cases the taxpayer) prior to the time a request for a TAM or a TEAM is submitted to the Associate office. If a request for a TAM or a TEAM is submitted without first holding a pre-submission conference, the request for advice will be returned to the requesting party. A request for a pre-submission conference should be made only after the field office determines that it likely will request a TAM or a TEAM. Before requesting a pre-submission conference, the field office must contact the taxpayer and afford the taxpayer an opportunity to participate in the process by permitting the taxpayer to prepare a statement in accordance with section 8.04 of this revenue procedure. Although taxpayer participation in the conference is not required for a TAM, it is required for a TEAM (except for the two situations described in section 1.03 of this revenue procedure where taxpayer agreement is not a prerequisite for a TEAM). If the request for a TAM or a TEAM will include issues requiring the involvement of more than one Associate office, representatives from each Associate office involved must participate in the pre-submission conference.

Purpose of a pre-submission conference

.02 A pre-submission conference is intended to facilitate agreement between the parties as to the appropriate scope of the request for a TAM or a TEAM, the factual information and documents to be included in the request, any collateral issues that either should or should not be included in the request, and any other substantive or procedural considerations that will allow the Associate office to provide the parties with a TAM or a TEAM as expeditiously as possible.

A pre-submission conference is not intended to create an alternative procedure for determining the merits of the substantive positions advocated by the field office or by the taxpayer.

During the pre-submission conference, the parties should determine whether the issue(s) is appropriate for a TEAM. The parties should discuss the framing of the issue(s), what background information and documents are required and when the request for TAM or TEAM will be submitted to the Associate office. Where more than one Associate office will be involved in responding to a proposed TEAM, each must agree that the request is suitable for TEAM procedures and that the necessary coordination can be provided within the TEAM time frames.

If the parties do not agree that the TEAM procedures are appropriate, then the request will be processed subject to the procedures in this revenue procedure for a TAM, except that taxpayer agreement is not required for the two situations described in section 1.03 of this revenue procedure.

Request for a pre-submission conference must be submitted in writing by the field office

.03 A request for a pre-submission conference for a TAM or a TEAM must be submitted in writing by the field office. The request should identify the Associate office expected to have jurisdiction over the request for a TAM or a TEAM. The request should include a brief explanation of the primary issue so that an assignment to the appropriate branch of an Associate office can be made. The field office is required to coordinate with field counsel regarding all pre-submission conferences, regardless of whether a TAM or a TEAM is being requested. If the request is submitted by Appeals, field counsel assignments will be subject to the *ex parte* rules set forth in section 1001(a)(4) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, and Rev. Proc. 2000–43, 2000–2 C.B. 404. If the request involves a designated issue, an issue under the office of the Director, ATAT Examination, SB/SE, an issue under the office of the Director, OTSA, LMSB, or an industry issue under the Office of Pre-Filing and Technical Guidance, LMSB, the field office and field counsel are strongly encouraged to coordinate with the technical advisor and field counsel contact. If the request is from Appeals and involves a coordinated issue or emerging issue under the Appeals Industry Specialization Program (ISP) or Appeals Coordinated Issue (ACI) Program, the Appeals officer must coordinate with the Appeals ISP/ACI Coordinator.

The field office requests pre-submission conferences for both TAMs and TEAMS by having their field counsel transmit the request by email to the TSS4510 email box. Counsel must send this request to take advantage of the firewall protection for interoffice email within Chief Counsel. The TSS4510 email box cannot accept encrypted mail. Alternatively, the request may be sent by fax to the Technical Services Support Branch at **202–622–4817**; the director or Appeals area director must also confirm the request in writing to the Technical Services Support Branch. Email or fax may be used to confirm the request. The Associate office will confirm receipt of the fax within one working day after receiving the fax.

Certain information required to be submitted to the Associate office prior to the pre-submission conference

.04 Prior to the scheduled pre-submission conference, the field office and the taxpayer must share proposed statements of the pertinent facts (including any facts in dispute); statements of the issues that the parties would like to discuss; and any legal analysis, authorities, or background documents that the parties believe would facilitate the Associate office’s understanding of the issues to be discussed at the conference. After drafting the statements of the issues and facts, and prior to the scheduled pre-submission conference, the field office and the taxpayer must submit to the Associate office the statements of the pertinent facts and the statements of the issues that the parties would like to discuss. The legal analysis provided for the pre-submission conference need not be as fully developed as the analysis that ultimately will accompany the request for a TAM or a TEAM, but it should allow the Associate office to become reasonably informed regarding the subject matter prior to the conference. The field office or the taxpayer should ensure that the Associate office receives a copy of any required power of attorney, preferably on Form 2848, *Power of Attorney and Declaration of Representative* (Rev. March 2004).

If the pre-submission conference pertains to a request for a TAM, the assigned branch of the Associate office must receive the pre-submission materials at least ten working days prior to the conference.

If the pre-submission conference pertains to a request for a TEAM, the assigned branch of the Associate office must receive the pre-submission materials at least five calendar days before the conference. Failure to timely submit pre-submission materials will result in the case being processed as a TAM rather than a TEAM.

Manner of transmitting pre-submission materials

.05 Regardless of whether the pre-submission conference pertains to a request for a TAM or a TEAM, in order to obtain the protection of taxpayer information offered by the Chief Counsel Intranet “firewall,” the pre-submission materials must be electronically transmitted by field counsel to TSS4510. Thus, the field office must work with field counsel to submit the required materials via email to TSS4510. TSS4510 will make sure the pre-submission materials get delivered to the Associate office assigned to the request for a pre-submission conference. Copies of the taxpayer statement of deletions, penalties of perjury statement and Form 2848, *Power of Attorney and Declaration of Representative* (Rev. March 2004), if not electronically available, should be transmitted by fax to the Associate office attorney assigned to the case.

The field office should send the original of the materials sent by fax, and any supporting materials that cannot reasonably be transmitted electronically, to the Associate office attorney assigned to the case by express mail or private delivery service in order to avoid any delays in regular mail.

Associate office attorney will contact the field office and field counsel to arrange the pre-submission conference

.06 If a TEAM is requested, the branch of the Associate office assigned responsibility for conducting the pre-submission conference will contact the field office and field counsel within two working days of receiving the request to schedule the conference. The conference will be held within 15 calendar days of the assigned branch’s call to the field. Because taxpayer participation in the pre-submission conference is required, the field office is responsible for coordinating with the taxpayer as well as any other Service personnel whose participation in the conference the field office believes would be appropriate.

If a TAM is requested, or if it is unclear whether the request is for a TAM or a TEAM, the branch of the Associate office assigned responsibility for conducting the pre-submission conference will contact the field office and field counsel within five working days after it receives the request to arrange a mutually convenient time for the parties to participate in the conference. The conference generally should be held within 30 calendar days after the field office is contacted.

Pre-submission conferences for TAMs and TEAMS generally conducted by telephone

.07 Generally, pre-submission conferences for TAMs and TEAMS will be held by telephone, unless the parties specifically request a meeting in person. In no event will a request for an in-person pre-submission conference on a TEAM be allowed to delay the conference beyond the 15-day period set forth above in section 8.06 of this revenue procedure.

Pre-submission conference may not be taped

.08 Because pre-submission conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Discussion of substantive issues is not binding on the Service

.09 Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service in general or on the Office of Chief Counsel in particular, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b). During the pre-submission conference, the Office of Chief Counsel may raise new issues or reach an answer without addressing any of the issues submitted by the agent and the taxpayer.

SECTION 9. WHAT MUST BE INCLUDED IN THE REQUEST FOR A TAM OR A TEAM?

Statement of issues, facts, law, and arguments; submission of relevant foreign laws and documents in a language other than English; and statement regarding interpretation of an income or estate tax treaty

.01 Whether initiated by the taxpayer or by a field office, a request for a TAM or a TEAM must include the facts and the issues for which advice is requested; a written statement clearly stating the applicable law and the arguments in support of both the Service's and the taxpayer's positions on the issue or issues; the information required in sections 9.01(4) and 9.01(5) of this revenue procedure, if applicable; and the written statement required in section 9.01(6) of this revenue procedure, if applicable.

Prior to submitting a request for the TAM or the TEAM, the party initiating the request, whether the field or the taxpayer, must prepare a statement of facts. The field and the taxpayer should have discussed the pertinent facts and issues, prior to preparing this factual statement, during the pre-submission conference.

If the field initiates the request, the examining agent or Appeals officer will prepare the factual statement with the assistance of field counsel. The taxpayer will have ten calendar days to respond to the field's statement by providing to that officer a written statement specifying any disagreement on the facts and issues. A taxpayer who needs more than ten calendar days must justify in writing the request for an extension of time, subject to the approval of the territory manager or the Appeals area director. If the taxpayer initiates the TAM or the TEAM request, the taxpayer prepares the factual statement and provides it to the appropriate field office. The Service will notify the taxpayer in writing of any areas of disagreement. The taxpayer has ten calendar days after receiving the written notice to reply. A taxpayer who needs more than ten calendar days must justify in writing the request for an extension of time, subject to the approval of the territory manager or the Appeals area director.

If the taxpayer and the field continue to disagree over the factual statement, the parties will have ten calendar days to attempt to resolve the disagreements. This 10-day period begins either when the field receives the taxpayer's written notification of disagreement with the field's factual statement (in the case of a field-initiated TAM or TEAM), or when the field receives the taxpayer's written reply to the field's written notification of disagreement with the taxpayer's factual statement (in the case of a taxpayer-initiated TAM or TEAM). Within five calendar days of the expiration of the 10-day period or the day that factual agreement is reached, whichever is earlier, the TAM or the TEAM request will be forwarded to the Associate office. If there is no agreement on the facts, the taxpayer must submit a statement of facts to the field office, and both sets of facts will be forwarded to the Associate office. The Associate office will, as discussed below in section 12.12 of this revenue procedure, issue a TAM or a TEAM on each set of facts. The field, with the assistance of field counsel, will prepare a memorandum for the Associate office highlighting the material factual differences, and provide a copy to the taxpayer. This memorandum will be forwarded with the initial request for a TAM or a TEAM.

If there is no agreement on the facts, the taxpayer's set of facts must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for technical advice (or technical expedited advice), and such facts are true, correct, and complete."** This declaration must be signed in accordance with the requirements in section 7.01(15)(b) of Rev. Proc. 2006-1. The taxpayer must submit this declaration to the field office so that the field office can include the declaration when submitting the TAM or the TEAM request to TSS4510.

To facilitate prompt action on TAM and TEAM requests, the taxpayer is encouraged to request that, if the Service requests additional information from the taxpayer, the Service do so by telephone or fax.

(1) If taxpayer initiates the request for a TAM or a TEAM, taxpayer must submit written statement, copy of relevant foreign laws, and certified English translations of docu-

ments in a language other than English. If the taxpayer initiates the request for a TAM or a TEAM, the taxpayer must submit to the examining agent or Appeals officer, at the time the taxpayer initiates the request:

- (a) a written statement—
 - (i) stating the facts and the issues;
 - (ii) explaining the taxpayer's position;
 - (iii) discussing any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, or any other authority supporting the taxpayer's position; and
 - (iv) stating the reasons for requesting technical advice or technical expedited advice;
- (b) the information required in sections 9.01(4) and 9.01(5) of this revenue procedure with respect to the submission of a copy of relevant foreign laws and certified English translations of documents in a language other than English, if applicable; and
- (c) the written statement required in section 9.01(6) of this revenue procedure with respect to the interpretation of a substantive provision of an income or estate tax treaty, if applicable.

If the examining agent or Appeals officer determines that a TAM or a TEAM will be requested, the taxpayer's statement, including the information required in sections 9.01(4), 9.01(5), and 9.01(6) of this revenue procedure, will be forwarded to the Associate office with the request for a TAM or a TEAM. As described in section 8.01 of this revenue procedure, the field office must first schedule a pre-submission conference prior to submitting the request for a TAM or a TEAM. When forwarding the taxpayer's statement to the Associate office, the examining agent or Appeals officer must also provide a copy to field counsel.

(2) If the Service initiates the request for a TAM or a TEAM, taxpayer is encouraged to submit written statement, copy of relevant foreign laws, and certified English translations of documents in a language other than English. If the request for a TAM is initiated by a field office, the taxpayer is encouraged to submit a written statement explaining the taxpayer's position and discussing relevant statutory provisions, court decisions, regulations, revenue rulings, revenue procedures, notices or any other authority supporting the taxpayer's position. If the taxpayer chooses to submit this statement and information, the taxpayer must submit this statement and information to the field office within 21 calendar days after the taxpayer receives a copy of the TAM request.

As set forth in section 10.07 of this revenue procedure, the taxpayer will be given an opportunity to submit a statement and information if a request for a TAM is submitted without taxpayer participation.

If the request for a TAM is prepared without the taxpayer's cooperation, the Associate office will nonetheless process the request, as neither factual agreement nor taxpayer participation are required. A request for a TEAM that falls into one of the two exceptions discussed in section 1.03 of this revenue procedure will be processed without a statement and information from the taxpayer. Any request for a TEAM that is not governed by those two exceptions will be treated as a request for a TAM and the taxpayer will be given an opportunity to submit a statement and information in accordance with section 10.07 of this revenue procedure.

(3) Statement of authorities contrary to taxpayer's position. Whether the request for a TAM or a TEAM is initiated by the taxpayer or by a field office, the taxpayer is also encouraged to comment on any legislation (or pending legislation), tax treaties, regulations, revenue rulings, revenue procedures, or court decisions contrary to the taxpayer's position. If the taxpayer determines that there are no contrary authorities, the taxpayer should include with the TAM or the TEAM submission a statement to this effect.

(4) Relevant parts of all foreign laws. Whether initiated by the taxpayer or by a field office, a request for a TAM or a TEAM, and other statements forwarded to the Associate office with the request, must include a copy of the relevant parts of all foreign laws, including statutes, regulations, administrative pronouncements, and any other relevant legal authority.

The documents submitted must be in the official language of the country involved and must be copied from an official publication of the foreign government or another widely available, generally accepted publication. If English is not the official language of the country involved, the submission must also include a copy of an English language version of the relevant parts of all foreign laws. The translation must be: (a) from an official publication of the foreign government or another widely available, generally accepted publication; or (b) a certified English translation submitted in accordance with section 9.01(5) of this revenue procedure.

The taxpayer or the field office must identify the title and date of publication, including updates, of any widely available, generally accepted publication that it (or its qualified translator) uses as a source for the relevant parts of the foreign law.

The taxpayer and the field office are encouraged to inform the Associate office of the implications of any authority believed to interpret the foreign law, such as pending legislation, treaties, court decisions, notices, or administrative decisions. But under section 10.08 of this revenue procedure, the Associate office may refuse to provide a TAM or a TEAM if the interpretation of a foreign law or foreign document is a material fact.

(5) Standards for acceptability of submissions of documents in a language other than English and certified English translations of laws in a language other than English. Whether initiated by the taxpayer or by a field office, a request for a TAM or a TEAM, and other statements forwarded to the Associate office with the request, must include an accurate and complete certified English translation of the relevant parts of all contracts, wills, deeds, agreements, instruments, trust documents, proposed disclaimers, or other documents in a language other than English. If the taxpayer or the field office chooses to submit certified English translations of foreign laws, those translations must be based on an official publication of the foreign government or another widely available, generally accepted publication. In either case, the translation must be that of a qualified translator and must be attested to by the translator. The attestation must contain: (a) a statement that the translation submitted is a true and accurate translation of the foreign language document or law; (b) a statement as to the attestant's qualifications as a translator and as to that attestant's qualifications and knowledge regarding tax matters or any foreign law translated if the law is not a tax law; and (c) the attestant's name and address.

(6) Statement regarding interpretation of a substantive provision of an income or estate tax treaty. Whether initiated by the taxpayer or by a field office, a request for a TAM or a TEAM involving the interpretation of a substantive provision of an income or estate tax treaty must include a written statement regarding whether:

(a) the tax authority of the treaty jurisdiction has issued a ruling on the same or similar issue for the taxpayer, a related taxpayer (within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504 (related taxpayer)), or any predecessor;

(b) the same or similar issue for the taxpayer, a related taxpayer, or any predecessor is being examined, or has been settled, by the tax authority of the treaty jurisdiction or is otherwise the subject of a closing agreement in that jurisdiction; and

(c) the same or similar issue for the taxpayer, a related taxpayer, or any predecessor is being considered by the competent authority of the treaty jurisdiction.

Statement recommending information to be deleted from public inspection

.02 The text of TAMs and TEAMS are open to public inspection under § 6110(a). The Service deletes certain information from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), the taxpayer must provide a statement indicating the deletions desired ("deletion statement"). If the taxpayer does not submit the deletion statement, the director or the Appeals area director will advise the taxpayer that the statement is required. In the case of a taxpayer-initiated TAM or TEAM, if the director or the Appeals area director does not receive the deletion statement within ten calendar days after asking the taxpayer for it, the director or the Appeals area director may decline to submit the request for a TAM or a TEAM.

A taxpayer who wants only names, addresses, and identifying numbers deleted should state this in the deletion statement. If the taxpayer wants more information deleted, the deletion statement must be accompanied by a copy of the TAM or the TEAM request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletion statement must indicate the statutory basis under § 6110(c) for each proposed deletion.

The taxpayer may submit additional deletion statements before the TAM or the TEAM is issued.

The deletion statement must not appear in the request for a TAM or a TEAM but, instead, must be made in a separate document.

The deletion statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or faxed signature is not permitted.

The taxpayer should follow the same procedures to propose deletions from any additional information submitted after the initial request for a TAM or a TEAM. An additional deletion statement is not required with each submission of additional information if the taxpayer's initial deletion statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information.

Transmittal Form 4463, Request for Technical Advice or Technical Expedited Advice

.03 The field counsel, with whom the TAM or the TEAM request was coordinated as described in section 8.03 of this revenue procedure, must use Form 4463, *Request for Technical Advice or Technical Expedited Advice*, for submitting a request for a TAM or a TEAM through TSS4510 to the Associate office. While the field office is responsible for preparing Form 4463, field counsel must submit the Form 4463 for a TAM or a TEAM request to the TSS4510 email address. To the extent feasible, the accompanying documents should also be submitted to the TSS4510 email address (followed by hard copy upon the request of the assigned branch of the Associate office).

Field counsel should send additional or supporting documents that are not available in electronic form by fax to TSS4510 at 202-622-4817 or by express mail or private delivery service to the following address to avoid any delays in regular mail:

Internal Revenue Service
Attn: CC:PA:LPD:TSS, Room 5329
1111 Constitution Avenue, NW
Washington, DC 20224

Whenever possible, all documents should contain the case number and name of the Associate office attorney assigned to the pre-submission conference for the TAM or the TEAM request. Documents that are being sent in hardcopy should be sent on or before the day that the request for a TAM or a TEAM is submitted via email, so as not to delay the process. It is anticipated that most, if not all, such documents will be identified during the pre-submission conference.

The field office must indicate on, or attach to, the Form 4463 the proper mailing address of the director or Appeals area director to whom the Associate office is required to mail a copy of its reply to the TAM or the TEAM request under section 12.13 of this revenue procedure. In addition, the field office must indicate the name of each Associate office attorney involved in the pre-submission conference.

The field and the taxpayer are encouraged to provide electronic versions of a proposed TAM or a TEAM containing the taxpayer's deletions and legends for the Associate office's use.

Number of copies of request to be submitted

.04 The field office must submit three copies of any hard copies of the request for a TAM or a TEAM to the address in section 9.03 of this revenue procedure with two copies being designated for the Associate office.

The field office must send one copy of the request for a TAM or a TEAM to the division counsel of the operating division that has jurisdiction of the taxpayer's tax return.

If the request is from an Appeals office, the field office must send one copy of the request for a TAM or a TEAM to the Appeals Director, Technical Services.

Power of attorney

.05 Any authorized representative, as described in section 7.01(13) of Rev. Proc. 2006-1, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230 (31 C.F.R. part 10 (2002)) and with the conference and practice requirements of the Statement of Procedural Rules (26 C.F.R. §§ 601.501-601.509 (2002)). It is preferred that Form 2848, *Power of Attorney and Declaration of Representative* (Rev. March 2004), be used with regard to a request for a TAM or a TEAM under this revenue procedure. An original, a copy, or a fax transmission of the power of attorney is acceptable so long as its authenticity is not reasonably disputed.

SECTION 10. HOW ARE REQUESTS FOR TAMs AND TEAMs HANDLED?

Determines whether request has been properly made

.01 A request for a TAM or a TEAM generally is given priority and processed expeditiously. As soon as the request for a TAM or a TEAM is assigned, the Associate office attorney analyzes the file to see whether it meets all requirements of sections 7, 8, and 9 of this revenue procedure. In addition, the Associate office attorney must analyze the issue(s) in the TAM or the TEAM request to ensure the request does not conflict with section 6 of this revenue procedure.

If the request does not comply with the requirements of section 9.02 of this revenue procedure relating to the deletion statement, the Service will follow the procedure in the last paragraph of section 10.09 of this revenue procedure.

Field and field counsel notified

.02 Within five calendar days after the assigned branch in the Associate office receives the TAM or the TEAM request, the assigned Associate office attorney will contact the field and the field counsel to confirm the receipt of the request for advice. Within this 5-day period, the assigned Associate office attorney will also contact the examining agent or Appeals officer, field counsel, and the taxpayer (if the taxpayer is participating in the TAM or the TEAM request), to discuss an estimated timetable setting forth how and when a TAM or a TEAM will be considered. The assigned Associate office attorney will prepare a work plan that sets forth this timetable and share the work plan with all parties, and all parties (except the taxpayer) must agree to the work plan within five business days after the assigned branch receives the TAM or the TEAM request. The assigned Associate office attorney will notify the examining agent or Appeals officer and the field counsel of any deficiencies in the request for a TAM or a TEAM and will work with the examining agent, Appeals officer, and the field counsel to resolve those deficiencies expeditiously.

If the examining agent, Appeals officer, and the field counsel are unable to resolve the deficiencies within 15 days, the request will be withdrawn and can be resubmitted only when the deficiencies have been corrected.

Considers whether the issue(s) is appropriate for a TEAM

.03 The assigned Associate office attorney and reviewer should also evaluate the issue(s) presented in any TEAM request to confirm that the issue(s) is appropriate for the TEAM procedures. If the attorney and reviewer have reservations about whether the TEAM procedures should apply, the attorney and reviewer should discuss those reservations with both the field and the taxpayer and, if necessary, the Associate Chief Counsel. If they agree that the TEAM procedures should not apply because the issue is too complex or cannot, for practical reasons, be resolved within 60 calendar days, the Associate Chief Counsel should prepare a memorandum to the Chief Counsel stating that the case has been excluded from the TEAM procedures and will be treated as a TAM. A memorandum to the Chief Counsel is not required if the parties agree during the pre-submission conference that the TEAM procedures are not appropriate or if the parties have not timely submitted all materials necessary to process a TEAM request.

Considers whether published general guidance is appropriate

.04 If the assigned reviewer in the Associate office thinks that general guidance should be published regarding the issue presented, the reviewer will immediately notify the Associate Chief Counsel. The reviewer should make this determination and recommendation as soon as possible, which may occur during the pre-submission conference. As criteria for this determination, the reviewer should consider whether the issue has a broad application to similarly situated taxpayers or an industry, or resolution of the issue is important to a clear understanding of the tax laws. If the Associate Chief Counsel, in consultation with Division Counsel Headquarters and Treasury, agrees that general guidance is desirable, an expedited guidance project will be initiated. The Associate Chief Counsel, in consultation with Division Counsel and the Operating Division, also will coordinate the appropriate resolution of the TAM or the TEAM request with the general guidance project. In general, except where policy issues and concerns regarding proper administration of the tax laws require otherwise, the TAM or the TEAM will be issued in advance of the published guidance.

Taxpayer notified

.05 Regardless of whether the taxpayer or the Service initiated the request for a TAM or a TEAM, the examining agent or Appeals officer in the field office will: (1) notify the taxpayer that a TAM or a TEAM request is being submitted; and (2) at or before the time the request is submitted to the Associate office, give to the taxpayer a copy of the request, including the statement of the pertinent facts, and the arguments being submitted to the Associate office. As discussed in section 10.07 of this revenue procedure, the taxpayer will be given an opportunity to submit a statement and information after the request for a TAM is forwarded to the Associate office.

This section 10.05 does not apply to a TAM or a TEAM described in section 10.11 of this revenue procedure (civil fraud or criminal investigation cases).

Conference offered

.06 When notifying the taxpayer that a TAM or a TEAM is being requested, the examining agent or Appeals officer will also tell the taxpayer about the right to a conference with the Associate office if an adverse decision is indicated, and will ask the taxpayer whether such a conference is desired.

If the TAM or the TEAM request does not include a submission from the taxpayer

.07 If the request for a TAM is prepared without participation on the part of the taxpayer, the Associate office will nonetheless process the request, as neither factual agreement nor participation by the taxpayer are required (except in the case of a TAM involving multiple taxpayers as discussed in section 1.03 of this revenue procedure). If a request for a TAM is forwarded to the Associate office without the taxpayer's statement and information, the field office must inform the taxpayer of the date on which the request for a TAM was forwarded to the Associate office. If the taxpayer chooses to submit a statement and information, the taxpayer must submit the statement and information to the Associate office within 21 calendar days after the request for a TAM has been forwarded. The taxpayer must also send a copy of the statement and information to the director or the Appeals area director. The procedures for requesting an extension of the 21-day period and receiving approval of such extension are the same as those in section 12.09 of this revenue procedure for responding to a request for additional information. If the Associate office does not receive the taxpayer's statement and information within the 21-day period, plus any extensions granted by the Associate office, the Associate office, at its discretion, may base its advice on the facts provided by the field office.

Because taxpayer agreement and cooperation is required for most TEAMs, a TEAM request should not generally be submitted without the taxpayer's statement and information. A TEAM request that requires, but does not include, the taxpayer's statement and information, generally will be processed as a TAM; however, a TEAM request may be submitted to and processed by the Associate office without the taxpayer's statement and information under the two exceptions set forth above in section 1.03 of this revenue procedure.

If the interpretation of a foreign law or foreign document is a material fact

.08 If the interpretation of a foreign law or foreign document is a material fact, the Associate office, at its discretion, may refuse to issue a TAM or a TEAM. This section applies whether or not the field office and the taxpayer dispute the interpretation of a foreign law or foreign document. The interpretation of a foreign law or foreign document means making a judgment about the import or effect of the foreign law or document that goes beyond its plain meaning.

If the taxpayer has not submitted the required deletion statement

.09 When the field office initiates the request for a TAM or a TEAM, the taxpayer has ten calendar days after receiving the statement of facts and issues to be submitted to the Associate office to provide the deletion statement required under § 6110(c). *See* section 9.02 of this revenue procedure for directives on making deletions.

Once a deletion statement is submitted, the taxpayer may submit additional deletion statements before the TAM or the TEAM is issued. The taxpayer should follow the same procedures to propose deletions from any additional information submitted after the initial request for a TAM or a TEAM. An additional deletion statement is not required with each submission of additional information if the taxpayer's initial deletion statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information.

If the taxpayer does not submit a deletion statement when a TAM or a TEAM is requested, the Associate office will make those deletions that the Commissioner of Internal Revenue determines are required by § 6110(c).

Section 6104 of the Internal Revenue Code (Applications for exemption and letter rulings issued to certain exempt organizations open to public inspection)

.10 The public inspection provisions of § 6110, including taxpayer notification and deletion processes, do not apply to any document to which § 6104 applies.

Civil fraud or criminal investigation cases

.11 The provisions of this section (about referring issues upon the taxpayer's request, telling the taxpayer about the referral of issues, giving the taxpayer a copy of the arguments submitted, submitting proposed deletions, and granting conferences in the Associate office) do not apply to a TAM or a TEAM described in § 6110(g)(5)(A) that involves any matter which is the subject of a civil fraud or criminal investigation or is otherwise closely related to a civil fraud or criminal investigation, or a jeopardy or termination assessment.

In these cases, a copy of the TAM or the TEAM is given to the taxpayer after all proceedings in the investigations or assessments are complete, but before the Commissioner mails the notice of intention to disclose the TAM or the TEAM under § 6110(f)(1). The taxpayer may then provide the statement of proposed deletions to the Associate office.

Obtaining status of a TAM or a TEAM request

.12 The taxpayer or the taxpayer's authorized representative may obtain information on the status of the request for a TAM or a TEAM by contacting the field office that requested the advice. *See* section 12.07 of this revenue procedure concerning discussing the tentative conclusion with the taxpayer or the taxpayer's representative. *See* section 14.03 of this revenue procedure regarding discussions of the contents of the TAM or the TEAM with the taxpayer or the taxpayer's representative.

The Associate office attorney or reviewer assigned to the TAM or the TEAM request will give status updates by telephone once a month to the examining agent or Appeals officer, and field counsel. If at the beginning of the month, the Associate office attorney or reviewer expects that the TAM request will be pending more than 120 days during that month, he or she must email the examining agent or Appeals officer within the first five calendar days of the month with a status update and estimated completion date. A copy of the email should be sent to TSS4510. In addition, a director or an Appeals area director may get current information on the status of the request for a TAM or a TEAM by calling the Associate office attorney or reviewer assigned to the request for a TAM or a TEAM.

See section 12.08 of this revenue procedure about discussing the final conclusions with the field office and field counsel. Further, the director or the Appeals area director will be notified by telephone at the time the TAM or the TEAM is mailed.

The Associate office will attempt to issue all TEAMS to the field within 60 calendar days of receipt, provided that the field and the taxpayer submit all required information in a timely manner. The Associate office will provide the field with the TEAM at the earliest possible date

(whether the proposed TEAM is favorable or adverse, in whole or in part, to the taxpayer). The Associate office will not advise the taxpayer of a proposed or final conclusion until the Associate office has considered a request for reconsideration under section 14.02 of this revenue procedure or, if no reconsideration is requested, after the expiration of the 30-day period to request reconsideration, whichever occurs later.

Service not barred from issuing 30-day letter while a TAM or a TEAM request is pending

.13 After prior consultation with Appeals, the Service may send the taxpayer a letter (Letter 950 (DO), also known as a 30-day letter) notifying the taxpayer of the right to appeal the proposed changes within 30 days, while a TAM or a TEAM request is pending.

SECTION 11. HOW ARE CONFERENCES FOR TAMs AND TEAMs SCHEDULED?

If requested, offered to the taxpayer when an adverse TAM or TEAM proposed

.01 If, after the TAM or the TEAM request is analyzed, it appears that a TAM or a TEAM adverse to the taxpayer will be given and if a conference has been requested, the taxpayer will be informed, by telephone if possible, of the time and place of the conference. As discussed below in section 11.11 of this revenue procedure, the conference will normally be conducted by telephone.

Timeline

.02 The conference for a TAM must be held within 21 calendar days after the taxpayer is informed that an adverse TAM is proposed. Within 20 calendar days of receipt of the TEAM request, the assigned branch in the Associate office will analyze the facts and offer the taxpayer and the field a conference of right, which will be scheduled for a date within ten calendar days of the date of the offer for the conference.

If conferences are being arranged for more than one request for a TAM or a TEAM for the same taxpayer, they will be scheduled to cause the least inconvenience to the taxpayer. The Associate office will notify the examining agent or Appeals officer and field counsel of the scheduled conference and will offer the examining agent or Appeals officer and field counsel the opportunity to participate in the conference. The director, territory manager, or Appeals area director with supervisory authority over the assigned examining agent or Appeals officer may designate other Service representatives to participate in the conference in lieu of, or in addition to, the examining agent or Appeals officer.

Extensions

.03 In the case of a TAM, only an Associate Chief Counsel may approve an extension of the 21-day period for holding a conference. The taxpayer (or an authorized representative) must direct a written request for the extension, with an appropriate justification, to the Associate Chief Counsel of the office to which the case is assigned. The taxpayer (or an authorized representative) must notify the examining agent or Appeals officer of the request for an extension. The examining agent or Appeals officer must then notify field counsel of the request for an extension. Except in rare and unusual circumstances, the Associate office will not agree to an extension of more than ten working days beyond the end of the 21-day period.

For a TAM, the taxpayer's request for extension must be submitted before the end of the 21-day period, and should be submitted sufficiently before the end of this period to allow the Associate Chief Counsel to consider, and either approve or deny, the request before the end of the 21-day period. If unusual circumstances near the end of the 21-day period make a timely written request impractical, the taxpayer (or an authorized representative) should orally inform the assigned Associate office attorney or reviewer before the end of the period about the problem and promptly submit the written request for extension. The Associate Chief Counsel or a delegate will promptly tell the taxpayer by telephone (with written confirmation) of the approval or denial of a requested extension.

No extension of the 10-day period for TEAMs will be allowed.

Denial of extension cannot be appealed

.04 There is no right to appeal the denial of a request for extension. If the taxpayer does not notify the Associate office of problems with meeting the 21-day period within the 21-day period or promptly confirm any oral request in writing, the case will be processed on the basis of the existing record.

Entitled to one conference of right .05 A taxpayer is entitled by right to only one conference with the Associate office, except as provided in section 11.09 of this revenue procedure. The conference is normally held at the branch level and a person who has authority to sign the transmittal memorandum (discussed in section 12.12 of this revenue procedure) in his or her own name or on behalf of the branch chief will participate.

When more than one branch of an Associate office has taken an adverse position on an issue in the request or when the position ultimately adopted by one branch will affect another branch's determination, a representative from each branch with authority to sign in his or her own name or for the branch chief will participate in the conference. If more than one subject is discussed at the conference, the discussion will constitute the taxpayer's conference of right for each subject.

To have a thorough and informed discussion of the issues, the conference usually will be held after the branch has had an opportunity to study the case. The taxpayer may request that the conference of right be held earlier in the consideration of the case than the Service would ordinarily designate. The taxpayer has no right to appeal the action of a branch to an Associate Chief Counsel, or to any other Service official.

Conference may not be taped .06 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

If requested and approved, conference will be delayed to address a request for relief under § 7805(b) .07 In the event of a tentatively adverse determination, the taxpayer may request, in writing, a delay of the conference so that the taxpayer can prepare and submit a brief requesting relief under § 7805(b) (regarding limitation of retroactive effect, discussed in section 15 of this revenue procedure). The Associate Chief Counsel of the office to which the case is assigned will determine whether to grant or deny the request for delaying the conference. If such request is granted, the Service will schedule a conference on the tentatively adverse decision and the § 7805(b) relief request within ten calendar days of receiving the taxpayer's § 7805(b) request. There is no right to appeal the denial of a request to delay the conference. *See* section 16.04 of this revenue procedure for the conference procedures if the § 7805(b) request is made after the conference on the substantive issues has been held.

Service makes only tentative recommendations .08 The senior Service representative at the conference ensures that the taxpayer has a full opportunity to present views on all the issues in question. The Service representatives explain the tentative decision on the substantive issues. If the taxpayer requests relief under § 7805(b), the Service representatives will discuss the tentative recommendation concerning the request for relief and the reason for the tentative recommendation.

No commitment will be made as to the conclusion that the Service will finally adopt regarding any issue, including the outcome of the § 7805(b) request for relief.

When additional conferences may be offered .09 In the case of a TAM, the Service will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed on a new issue or on the same issue but on grounds different from those discussed at the first conference. In the case of a TEAM, once the conference of right is held, no further conferences will be offered unless the case is first excluded from the TEAM procedures and treated as a TAM, as set forth in section 10.03.

When a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, the taxpayer has no right to another conference if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limitation on the number of conferences to which a taxpayer is entitled does not prevent the Associate office from inviting a taxpayer to participate in additional conferences, including conferences with an official higher than the branch level, if Associate office personnel think they are necessary. Such conferences are not offered routinely following an adverse decision. In general, conferences with higher level officials are offered only if the Service determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

Exam or Appeals personnel and field counsel will be offered the opportunity to participate in any additional taxpayer conference, including a conference with an official higher than the branch level. As provided in section 11.02 of this revenue procedure, other Service representatives are also permitted to participate in the conference.

Additional information submitted after the conference

.10 After the conference of right, the taxpayer must furnish to the Associate office any additional data, lines of reasoning, precedents, etc., that the taxpayer proposed and discussed at the conference, but did not previously or adequately present in writing. This additional information must be submitted to the appropriate Associate office branch by letter with a “penalties of perjury” statement in the form described in section 9.01 of this revenue procedure. In the case of a TAM, the additional information must be submitted within 21 calendar days after the conference. The Associate office will notify the field both when a taxpayer has requested an extension of the 21-day period and when the Associate office grants or denies the request. In the case of a TEAM, the additional information must be submitted within 15 calendar days after the conference.

For TAMs and TEAMS, the taxpayer must also send a copy of the additional information to the director or the Appeals area director for comment. The director or Appeals area director must provide a copy to the field counsel assigned to the TAM or the TEAM. Any comments by the director or the Appeals area director must be furnished promptly to the appropriate branch in the Associate office. If the director or the Appeals area director does not have any comments, he or she must notify the Associate office attorney promptly.

If the additional information has a significant impact on the facts in the request for a TAM or a TEAM, the Associate office will ask the director or the Appeals area director for comment on the facts contained in the additional information submitted. The director or the Appeals area director will respond within the agreed period of time.

In the case of a TAM, if the additional information is not received from the taxpayer within 21 calendar days plus any extensions granted by an Associate Chief Counsel, the TAM will be issued on the basis of the existing record. In the case of a TEAM, if the additional information is not received within 15 calendar days, the TEAM will be issued on the basis of the existing record.

An extension of the 21-day period for TAMs may be granted only if the taxpayer justifies it in writing and the Associate Chief Counsel of the office to which the case is assigned approves the extension. Such extension will not be routinely granted. The procedures for requesting an extension of the 21-day period and notifying the taxpayer of the Service’s decision are the same as those in section 11.03 of this revenue procedure. There is no extension of the 15-day period for TEAMS.

Normally conducted by telephone

.11 The conference will be conducted by telephone, unless the taxpayer or the field requests that the conference be held in-person. The taxpayer will be advised when to call the Service representatives (not a toll-free call). In no event will the conference be delayed to provide an in-person conference rather than a telephone conference.

In accordance with section 11.02 of this revenue procedure, the examining agent or Appeals officer, field counsel, and any other authorized service representative will be offered the opportunity to participate in any TAM or TEAM conference.

SECTION 12. HOW DOES THE ASSOCIATE OFFICE PREPARE THE TAM OR THE TEAM?

Contacts the field office to discuss issues

.01 Upon receipt of a request for a TAM or a TEAM, an attorney of the assigned branch of the Associate office should contact the field office and any assigned field attorney by telephone to acknowledge receipt of the TAM or the TEAM and to establish a point of contact. Then, within 21 calendar days for a TAM or within five calendar days for a TEAM, the assigned Associate office attorney should contact the field office to discuss the procedural and substantive issues in the request that come within the branch’s jurisdiction. The timeline for contacting the

field office to discuss issues should be included in the work plan, as described in section 10.02 of this revenue procedure.

Informs the field office if any matters in the request have been referred to another branch of the Associate office or another Associate office

.02 If the TAM request concerns matters within the jurisdiction of more than one branch or office, a representative of the branch that received the original TAM request should inform the field office within 21 calendar days of receiving the request that:

(1) matters within the jurisdiction of another branch or office have been referred to the other branch or office for consideration; and

(2) a representative of the other branch or office will contact the field office about the TAM request within 21 calendar days after receiving it in accordance with section 12.01 of this revenue procedure.

If a request for a TEAM involves more than one Associate office, all involved Associate offices should have had the opportunity to participate in the pre-submission conference. Within five calendar days of receipt, the Associate office attorney with primary responsibility over the TEAM will confirm that all involved Associate offices have received copies of the TEAM request and will advise the field office as to who is assigned to the TEAM in each Associate office. If, after receiving the TEAM request, the Associate office with jurisdiction over a TEAM determines that coordination with another Associate office is required, the assigned Associate office attorney will also notify the field office of the new coordination within five calendar days of the receipt of the TEAM.

Informs the field office if additional information is needed

.03 The Associate office attorney will inform the field office and field counsel that a TAM or a TEAM request is being returned if substantial additional information is required to resolve an issue. Cases should also be returned if major procedural problems cannot be resolved by telephone. The field office should promptly notify the taxpayer of the decision to return the case and the reason(s) for such decision.

If only minor procedural deficiencies exist, the Associate office attorney will request the additional information in the most expeditious manner without returning the case.

Informs the field office of tentative conclusion

.04 If all necessary information has been provided, the Associate office attorney will inform the field office within 21 calendar days after receiving the information requested for a TAM and within five calendar days for a TEAM of the tentative conclusion and the estimated date that the TAM or the TEAM will be mailed.

If a tentative conclusion has not been reached, gives date estimated for tentative conclusion

.05 If a tentative conclusion has not been reached because of the complexity of the issue, the Associate office attorney will inform the field office and field counsel of the estimated date the tentative conclusion will be made.

Advises the field office if tentative conclusion is changed

.06 Because the Associate office attorney's tentative conclusion may change during the preparation and review of the TAM or the TEAM, the tentative conclusion should not be considered final. If the tentative conclusion is changed, the Associate office attorney will inform the field office.

Generally does not discuss tentative conclusion with the taxpayer

.07 Neither the Associate office nor the field office should discuss with the taxpayer or the taxpayer's representative the tentative conclusion and the rationale for that conclusion during the initial consideration of the request for a TAM or a TEAM. To afford taxpayers an appropriate opportunity to prepare and present their position, however, the taxpayer or the taxpayer's representative should be told the tentative conclusion when scheduling the adverse conference, at the adverse conference, or in any discussion between the scheduling and commencement of the adverse conference. See section 14.03 of this revenue procedure regarding discussions of the contents of the issued TAM or TEAM with the taxpayer or the taxpayer's representative.

Advises the field office of final conclusions

.08 In all cases, the Associate office attorney will inform the field office of the Associate office's final conclusions. The field office will be offered the opportunity to discuss the issues and the Associate office's final conclusions before the TAM or the TEAM is issued.

If needed, requests additional information

.09 If, following the initial contact referenced in section 12.01 of this revenue procedure, it is determined, after discussion with the branch chief or other reviewer, that additional information is needed, an Associate office attorney will obtain the additional information from the taxpayer or from the director or the Appeals area director in the most expeditious manner possible. In the case of a TAM, any additional information requested from the taxpayer by the Associate office must be submitted by letter with a penalties of perjury statement that conforms with the penalties of perjury statement set forth in section 9.01 of this revenue procedure within 21 calendar days after the request for information is made. In the case of a TEAM, any additional information requested from the taxpayer by the Associate office must be submitted by letter with the penalties of perjury statement that conforms with the penalties of perjury statement set forth in section 9.01 of this revenue procedure within five calendar days after the request for information is made.

(1) Request to receive a request for additional information by fax or email. To facilitate prompt action on TAM and TEAM requests, the taxpayer is encouraged to request that the Service request any additional information from the taxpayer by fax or email.

A request to fax a copy of the request for additional information to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original TAM or TEAM request or prior to the mailing of the request for additional information. The request to fax must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the document is to be faxed.

(2) 21-day period for TAMs and 5-day period for TEAMS will be extended if justified and approved. A written request for an extension of time to submit additional information must be received by the Associate office within the 21-day period for TAMs (5-day period for TEAMS), giving compelling facts and circumstances to justify the proposed extension. Only the Associate Chief Counsel of the office to which the case is assigned may determine whether to grant or deny the request for an extension. Except in rare and unusual circumstances, the Associate office will not agree to an extension of more than ten working days beyond the end of the 21-day period in the case of a TAM or a 5-day period in the case of a TEAM. There is no right to appeal the denial of a request for an extension.

(3) If the taxpayer does not submit additional information. If the Associate office does not receive the additional information within the 21-day period for TAMs or within the 5-day period for TEAMS, plus any extensions granted by the Associate Chief Counsel, the Associate office will issue the TAM or the TEAM based on the existing record.

Requests taxpayer to send additional information to the Associate office and a copy to the director or Appeals area director

.10 Whether or not requested by the Service, any additional information submitted by the taxpayer should be sent to the attention of the assigned Associate office attorney. Generally, the taxpayer needs only to submit the original of the additional information to the Associate office. In appropriate cases, however, the Associate office may request additional copies of the information.

The taxpayer must also send a copy of the additional information to the director or the Appeals area director for comment. Any comments by the director or the Appeals area director must be furnished within an agreed period of time to the appropriate branch in the Associate office. If the director or the Appeals area director does not have any comments, he or she must notify the Associate office attorney promptly. When the director or the Appeals area director receives a copy of the additional information from the taxpayer, the director or the Appeals area director must provide field counsel with a copy.

Informs the taxpayer when requested deletions will not be made

.11 Generally, before replying to the request for a TAM or a TEAM, the Associate office informs the taxpayer orally or in writing of the material likely to appear in the TAM or the TEAM that the taxpayer proposed be deleted but that the Service has determined should not be deleted.

If so informed, the taxpayer may submit within ten calendar days any further information or arguments supporting the taxpayer's proposed deletions.

The Service attempts, if possible, to resolve all disagreements about proposed deletions before the Associate office replies to the request for a TAM or a TEAM. The taxpayer does not have the right to a conference to resolve any disagreements about material to be deleted from the text of the TAM or the TEAM. These matters may be considered at any conference otherwise scheduled for the request. *See* section 14.05 of this revenue procedure for the procedures to protest the disclosure of information in the TAM or the TEAM.

Prepares reply in two parts

.12 The Service prepares replies to TAM or TEAM requests in two parts. Each part identifies the taxpayer by name, address, identification number, and year or years involved.

The first part of the reply is a transmittal memorandum (Form M-6000). In unusual cases, it is a way of giving the field office strategic advice that need not be discussed with the taxpayer. If the transmittal memorandum provides more than the fact that the TAM or the TEAM is attached or the case is returned for further development, the transmittal memorandum may constitute Chief Counsel Advice, as defined in § 6110(i)(1), subject to public inspection under § 6110.

The second part is the TAM or the TEAM, which contains:

- (1) a statement of the issues;
- (2) the conclusions of the Associate office;
- (3) a statement of the facts pertinent to the issues;
- (4) a statement of the pertinent law, tax treaties, regulations, revenue rulings, and other precedents published in the Internal Revenue Bulletin, and court decisions; and
- (5) a discussion of the rationale supporting the conclusions reached by the Associate office.

The conclusions give direct answers, whenever possible, to the specific issues raised by the field office. The Associate office is not bound by the precise statement of the issues as submitted by the taxpayer or by the field office and may reframe the issues to be answered in a TAM or a TEAM. The discussion of the issues in a TAM or a TEAM will be in sufficient detail so that the field or Appeals officials will understand the reasoning underlying the conclusion.

If two sets of facts are provided to the Associate office (*i.e.*, the parties were unable to reach agreement on the facts), the following procedure will be used: If the Associate office would rule the same way on either set of facts, a TAM or a TEAM may be issued, which will note that the factual disagreement is immaterial. If the Associate office would rule differently based on which specific set of facts is considered, then a single TAM or a single TEAM may be issued describing the resolution of the issue based on each set of facts.

As discussed in section 14.01 of this revenue procedure, if a TAM or a TEAM provides alternate responses based on separate sets of facts, the field is required to process the case consistently with the legal analysis in the TAM or the TEAM as applied to the facts as they are ultimately determined by the field office.

Accompanying the TAM or the TEAM is a notice under § 6110(f)(1) of intention to disclose a TAM or a TEAM (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

Routes reply to appropriate office

.13 When field personnel requests a TAM or a TEAM under the signature authority of a director, replies to the request are addressed to the field personnel who requested the TAM or the TEAM. A copy of the reply to a request from LMSB should be mailed simultaneously to the director. Replies to requests from Appeals should be routed to the appropriate field office through the Appeals Director, Technical Services, C:AP.

Sends copy of reply to appropriate division counsel and field counsel

.14 The Associate office will send a copy of the reply to the request for a TAM or a TEAM to the division counsel of the operating division that has jurisdiction over the taxpayer's tax

return that is the subject of the TAM or the TEAM and to any field counsel involved in assisting the examining agent or Appeals officer in submitting the TAM or the TEAM request.

SECTION 13. HOW ARE REQUESTS FOR TAMs AND TEAMs WITHDRAWN?

Taxpayer notified

.01 Once a request for a TAM or a TEAM has been sent to the Associate office, only a director or an Appeals area director may withdraw the request. He or she may ask to withdraw a request at any time before the responding transmittal memorandum for the TAM or the TEAM is signed.

The director or the Appeals area director, as appropriate, must notify the taxpayer in writing of an intent to withdraw the request for a TAM or a TEAM except:

- (1) when the period of limitations on assessment is about to expire and the taxpayer has declined to sign a consent to extend the period; or
- (2) when the notification would be prejudicial to the best interests of the Government.

If the taxpayer does not agree that the request for a TAM or a TEAM should be withdrawn, the procedures in section 7.03 of this revenue procedure must be followed.

Associate office may decide not to issue a TAM or a TEAM

.02 If the Associate office, on the basis of sound tax administration, determines that a TAM or a TEAM should not be issued, it may, after consultation with field counsel and the requesting field office, return the TAM or the TEAM unanswered. The decision not to issue a TAM or a TEAM should be a rare case and must be approved by the Associate or Deputy Associate Chief Counsel. If field counsel disagrees with this decision, they may request reconsideration through existing reconciliation procedures.

In general, a TAM will only be returned if it appears that the Associate office will be unable to provide an answer to the incoming request within the foreseeable future. In order to minimize the need to return TAMs, every effort should be made to identify TAMs of this nature during the pre-submission conference.

Associate office may provide views

.03 When a request for a TAM or a TEAM is withdrawn or when an Associate office decides not to issue a TAM or a TEAM, the Associate office may send its views to the director or the Appeals area director and field counsel when acknowledging the withdrawal request. These memoranda may constitute Chief Counsel Advice, as defined in § 6110(i)(1), subject to public inspection under § 6110. In an Appeals case, acknowledgment of the withdrawal request should be sent to the appropriate Appeals office, through the Appeals Director, Technical Services, C:AP. In appropriate cases, the subject matter may be published as a revenue ruling or as a revenue procedure.

SECTION 14. HOW DOES A FIELD OFFICE USE THE TAM OR THE TEAM?

Generally applies advice in processing the taxpayer's case

.01 The director or the Appeals area director must process the taxpayer's case on the basis of the conclusions in the TAM or the TEAM unless:

- (1) the director or the Appeals area director decides that the conclusions reached by the Associate office in a TAM or a TEAM should be reconsidered and requests reconsideration. The reconsideration process may include a conference held by the field participants who requested a TAM or a TEAM and the Associate office participants who drafted the memorandum; or
- (2) in the case of a TAM or a TEAM unfavorable to the taxpayer, the Appeals area director decides to settle the issue under existing authority; or
- (3) in the case of a TAM or a TEAM unfavorable to a Coordinated Industry Case taxpayer on a coordinated issue within the Office of Pre-Filing and Technical Guidance, LMSB, on

which Appeals has approved settlement guidelines, the team manager decides to settle the issue under the settlement authority delegated in Delegation Order No. 4–25 (or its successor); or

(4) if a TAM or a TEAM provides alternate responses based on separate sets of facts, the field is required to process the case consistently with the legal analysis in the TAM or the TEAM as applied to the facts as they are ultimately determined by the field office.

Except as provided in paragraphs (1), (2), (3), or (4) of this section 14.01, the director or Appeals area director must treat conclusions in a TAM or a TEAM involving a § 103 obligation and the issuer of this obligation as applying to the issuer and any holder of the obligation, unless the holder also initiates a request for a TAM or a TEAM on the same issue addressed in the TAM or the TEAM involving the issuer, and the Associate office issues a TAM or a TEAM involving that issue and that holder.

Reconsideration

.02 The director or Appeals area director has 30 calendar days after receipt of a TAM or a TEAM to either formally request reconsideration or give the adopted TAM or TEAM to the taxpayer. If no request for reconsideration is made during the 30-day period after the receipt of a TAM or a TEAM, the TAM or the TEAM is deemed adopted.

Before formally requesting reconsideration, the director or Appeals area director must consult with field counsel. Requests for TAM or TEAM reconsideration must describe with specificity the errors in the TAM or the TEAM analysis and conclusions. Requests for reconsideration should not reargue points raised in the initial request, but should instead focus on points that the TAM or the TEAM overlooked or misconstrued in the field's arguments in support of their request. The Associate office will consider the field's request for reconsideration of a TEAM and rule on that request within 30 calendar days of receipt. The Associate office may request further submissions from the field or the taxpayer, but the parties should make no additional submissions in the absence of such a request. In the event that a request for reconsideration fails to follow the procedures set forth in this section of this revenue procedure, or the request fails to raise issues or arguments different from those asserted in the initial TAM or TEAM request, the Associate office may return the request for reconsideration to the requesting party without ruling on the request for reconsideration.

If the field does not request reconsideration of a TAM or a TEAM, the TAM or the TEAM, once adopted, will take effect when the field provides a copy of the adopted TAM or TEAM to the taxpayer, as described in section 14.04 of this revenue procedure.

If reconsideration is requested for a TAM or a TEAM, the TAM or the TEAM will be deemed adopted five calendar days after the reconsideration is ruled on. After the reconsideration is ruled on and the TAM or the TEAM is adopted, the TAM or the TEAM will take effect when the field provides a copy of the adopted TAM or TEAM to the taxpayer, as described in section 14.04 of this revenue procedure.

Discussion with the taxpayer

.03 The Associate office will not discuss the contents of the TAM or the TEAM with the taxpayer or the taxpayer's representative until the field office gives a copy of the TAM or the TEAM to the taxpayer. *See* section 12.07 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer or the taxpayer's representative.

If reconsideration is requested for a TAM or a TEAM, the Service is not required to inform the taxpayer or the taxpayer's representative that a request for reconsideration is being considered.

Provides copy to the taxpayer

.04 Upon adopting the TAM or the TEAM, the director or the Appeals area director gives the taxpayer:

(1) a copy of the TAM or the TEAM; and

(2) the notice under § 6110(f)(1) of intention to disclose the TAM or the TEAM (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

If a formal request for reconsideration is made and ruled upon, the director or the Appeals area director will provide the taxpayer with the reconsidered TAM or TEAM only. The TAM or the TEAM drafted prior to the ruling on the request for reconsideration must not be forwarded to the taxpayer. Additionally, if a formal request for reconsideration is made and ruled upon, only the reconsidered TAM or TEAM will be open to public inspection and notations of third party communications under § 6110(d).

In the event that a TAM or a TEAM request pertains to more than one taxpayer (*see* section 1.03 of this revenue procedure), the director or the Appeals area director will provide each pertinent taxpayer with a copy of the TAM or the TEAM, in accordance with this section of the revenue procedure.

The requirement to give a taxpayer a copy of the TAM or the TEAM does not apply to a TAM or a TEAM involving civil fraud or a criminal investigation, or a jeopardy or termination assessment, as described in section 10.11 of this revenue procedure.

The director or Appeals officer must notify the Associate office when the TAM or the TEAM is given to the taxpayer. This requirement does not apply to a TAM or a TEAM involving civil fraud or a criminal investigation, or a jeopardy or termination assessment, as described in section 10.11 of this revenue procedure.

In the event of a TAM or a TEAM adverse to the taxpayer, in whole or in part, the taxpayer may request § 7805(b) relief. Such a request will be treated as a separate request for a TAM or a TEAM.

Taxpayer may protest deletions not made

.05 After receiving the notice under § 6110(f)(1) of intention to disclose the TAM or the TEAM, the taxpayer may protest the disclosure of certain information in it. The taxpayer must submit a written statement within 20 calendar days identifying those deletions not made by the Service that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the TAM or the TEAM proposed to be open to public inspection with brackets around the deletions proposed by the taxpayer that have not been made by the Associate office.

Generally, the Associate office considers only the deletion of material that the taxpayer has proposed be deleted or other deletions as required under § 6110(c) before the Associate office reply is sent to the director or the Appeals area director. Within 20 calendar days after it receives the taxpayer's response to the notice under § 6110(f)(1), the Associate office must mail to the taxpayer its final administrative conclusion about the deletions to be made.

When no copy is given to the taxpayer

.06 If the Associate office tells the director or the Appeals area director that a copy of the TAM or the TEAM should not be given to the taxpayer and the taxpayer requests a copy, the director or the Appeals area director will tell the taxpayer that no copy will be given.

SECTION 15. WHAT IS THE EFFECT OF A TAM OR A TEAM?

Applies only to the taxpayer for whom the TAM or the TEAM was requested

.01 A taxpayer may not rely on a TAM or a TEAM issued by the Service for another taxpayer. *See* § 6110(k)(3).

Usually applies retroactively

.02 Except in rare or unusual circumstances, a holding in a TAM or a TEAM that is favorable to the taxpayer is applied retroactively.

Moreover, because a TAM or a TEAM, as described in section 3 of this revenue procedure, is issued only on a closed transaction, a holding that is adverse to the taxpayer is also applied retroactively, unless the Associate Chief Counsel with jurisdiction over the TAM or the TEAM, as appropriate, exercises the discretionary authority under § 7805(b) to limit the retroactive effect of the holding.

Generally applied retroactively to modify or revoke a prior TAM or TEAM

.03 A holding that modifies or revokes a holding in a prior TAM or TEAM is generally applied retroactively, unless the Associate Chief Counsel with jurisdiction over the TAM or the TEAM, as appropriate, exercises the discretionary authority under § 7805(b) to limit the retroactive effect of the holding. *See* sections 15.05 and 15.06 of this revenue procedure, however, for situations when the retroactive effect of the holding will not be limited.

Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked

.04 If a TAM or a TEAM relates to a continuing action or a series of actions, ordinarily it is applied until specifically withdrawn or until the conclusion is modified or revoked by the enactment of legislation, the ratification of a tax treaty, a decision of the United States Supreme Court, or the issuance of regulations (temporary or final), a revenue ruling, or other statement published in the Internal Revenue Bulletin. Publication of a notice of proposed rulemaking does not affect the application of a TAM or a TEAM.

Applies to continuing action or series of actions until material facts change

.05 If the new holding in a TAM or a TEAM is less favorable to the taxpayer than the holding in an earlier TAM or TEAM, it generally is not applied to the period when the taxpayer relied on the prior holding in situations involving a continuing action or a series of actions. A taxpayer is not protected, however, against retroactive modification or revocation of a TAM or a TEAM involving a continuing action or a series of actions for any actions occurring after the material facts on which the earlier TAM or TEAM was based have changed.

Does not apply retroactively under certain conditions

.06 In the case of a TAM or a TEAM revoking or modifying a letter ruling, TAM, or TEAM, the TAM or the TEAM will be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in a letter ruling, TAM, or TEAM if:

- (1) there has been a misstatement or omission of controlling facts; or
- (2) the facts at the time of the transaction are materially different from the controlling facts on which the letter ruling, TAM, or TEAM was based.

Generally, in all other circumstances, a TAM or a TEAM revoking or modifying a letter ruling or another TAM or a TEAM will not be applied retroactively to the taxpayer for whom the letter ruling, TAM, or TEAM was issued or to a taxpayer whose tax liability was directly involved in the letter ruling, TAM, or TEAM, provided that:

- (1) there has been no change in the applicable law;
- (2) in the case of a letter ruling, it was originally issued for a proposed transaction; and

(3) the taxpayer directly involved in the letter ruling, TAM, or TEAM acted in good faith in relying on the letter ruling, TAM, or TEAM and revoking or modifying it retroactively would be to the taxpayer's detriment. For example, the tax liability of each shareholder in a corporation is directly involved in a letter ruling on the reorganization of the corporation. The shareholders' reliance on the letter ruling may, depending on all facts and circumstances, be in good faith. The tax liability of a member of an industry, however, is not directly involved in a letter ruling, TAM, or TEAM issued to another member of the same industry and, therefore, a nonretroactive revocation or modification of a letter ruling, TAM, or TEAM to one member of an industry will not extend to other members of the industry who have not received letter rulings. By the same reasoning, a tax practitioner may not extend to one client the nonretroactive application of a revocation or modification of a letter ruling, TAM, or TEAM previously issued to another client.

When a letter ruling to a taxpayer or a TAM or a TEAM involving a taxpayer is modified or revoked with retroactive effect, the notice to the taxpayer, except in fraud cases, sets forth the grounds on which the modification or revocation is being made and the reason why the modification or revocation is being applied retroactively.

SECTION 16. HOW MAY RETROACTIVE EFFECT BE LIMITED?

Taxpayer may request that retroactivity be limited

.01 Under § 7805(b), an Associate Chief Counsel, as the Commissioner's delegate, may prescribe the extent, if any, to which a TAM or a TEAM will be applied without retroactive effect.

A taxpayer for whom a TAM or a TEAM was issued or for whom a TAM or a TEAM request is pending may request that the appropriate Associate Chief Counsel limit the retroactive effect of any holding in the TAM or the TEAM or of any subsequent modification or revocation of the TAM or the TEAM.

When germane to a pending TAM or TEAM request, a taxpayer should request to limit the retroactive effect of the holding of the TAM or the TEAM early during the consideration of the advice request by the Associate office. This § 7805(b) request should be made initially as part of that pending TAM or TEAM request. The Associate office will consider a § 7805(b) request to limit the retroactive effect of the holding if the request is made at a later time and the Service determines that there is justification for having delayed the request.

Form of request to limit retroactivity — continuing transaction before examination of return

.02 When a TAM or a TEAM that concerns a continuing transaction is modified or revoked by, for example, issuance of a subsequent revenue ruling or temporary or final regulations, a request to limit the retroactive effect of the modification or revocation of the TAM or the TEAM must be made in the form of a request for a letter ruling if the request is submitted before an examination of the return pertaining to the transaction that is the subject of the request for the letter ruling. The requirements for a letter ruling request are given in Rev. Proc. 2006-1 (this Bulletin).

Form of request to limit retroactivity — in all other cases

.03 In all other cases during the course of an examination of a taxpayer's return by the director or during consideration of the taxpayer's return by the Appeals area director (including when the taxpayer is informed that the director or the Appeals area director will recommend that a TAM, TEAM, letter ruling, or determination letter previously issued to, or with regard to, the taxpayer be modified or revoked), a taxpayer's request to limit retroactivity must be made in the form of a request for a TAM or a TEAM.

The request must meet the general requirements of a TAM or a TEAM request, which are given in sections 7 and 9 of this revenue procedure. The request must also:

- (1) state that it is being made under § 7805(b);
- (2) state the relief sought;
- (3) explain the reasons and arguments in support of the relief sought (including a discussion of the five items listed in section 15.06 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and
- (4) include any documents bearing on the request.

The taxpayer's request, including the statement that the request is being made under § 7805(b), must be submitted to the director or the Appeals area director who must then forward the request to the Associate office for consideration.

Taxpayer's right to a conference

.04 When a request for a TAM or a TEAM concerns only the application of § 7805(b), the taxpayer has the right to a conference with the Associate office in accordance with the provisions of section 11 of this revenue procedure. In accordance with section 11.02 of this revenue procedure, the examining agent or Appeals officer, field counsel, and other Service representatives will be offered the opportunity to participate in the conference on the § 7805(b) issue.

If the request for application of § 7805(b) is included in the request for a TAM or a TEAM on the substantive issues or is made before the conference of right on the substantive issues, the § 7805(b) issues will be discussed at the taxpayer's one conference of right.

If the request for the application of § 7805(b) is made as part of a pending TAM or TEAM request after a conference has been held on the substantive issues and the Service determines that there is justification for having delayed the request, then the taxpayer will have the right to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue only.

Reconsideration of § 7805(b) relief .05 When a TAM or a TEAM grants a taxpayer relief under § 7805(b), the director or Appeals area director may not request reconsideration of the §7805(b) issue unless the director or Appeals area director determines there has been a misstatement or omission of controlling facts by the taxpayer in its request for § 7805(b) relief.

SECTION 17. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2005-2?

The Associate Chief Counsel (Procedure and Administration) does not issue TAMs or TEAMS on matters involving the collection of taxes. (section 6.05)

Field counsel is responsible for transmitting the request for pre-submission conferences for both TAMs and TEAMS to TSS4510. (section 8.03)

During the pre-submission conference, the Office of Chief Counsel may raise new issues or reach an answer without addressing any of the issues submitted by the agent and the taxpayer. (section 8.09)

If the examining agent, Appeals officer, and the field counsel are unable to resolve any deficiencies in the request for a TAM or a TEAM within 15 days, the request will be withdrawn and can be resubmitted only when the deficiencies have been corrected. (section 10.02)

After prior consultation with Appeals, the Service may send the taxpayer a letter (Letter 950 (DO), also known as a 30-day letter) notifying the taxpayer of the right to appeal the proposed changes within 30 days, while a TAM or a TEAM request is pending. (section 10.13)

An Associate office may decide not to issue a TAM or a TEAM. (section 13.02)

In addition, editorial changes have been made in updating Rev. Proc. 2005-2.

SECTION 18. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

Rev. Proc. 2005-2, 2005-1 I.R.B. 86, is superseded.

SECTION 19. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?

This revenue procedure is effective January 3, 2006.

DRAFTING INFORMATION

The principal author of this revenue procedure is Richard L. Parker of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure for matters under the jurisdiction of:

(1) the Associate Chief Counsel (Corporate), contact Richard Todd at (202) 622-7700 (not a toll-free call);

(2) the Associate Chief Counsel (Financial Institutions and Products), contact Arturo Estrada at (202) 622-3900 (not a toll-free call);

(3) the Associate Chief Counsel (Income Tax and Accounting), contact Arlene Blume at (202) 622-4800 (not a toll-free call);

(4) the Associate Chief Counsel (Passthroughs and Special Industries), contact Stephanie Bland at (202) 622-7830 (not a toll-free call);

(5) the Associate Chief Counsel (Procedure and Administration), contact George Bowden or Henry Schneiderman at (202) 622-3400 (not a toll-free call);

(6) the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), contact Calder Robertson at (202) 622-6000 (not a toll-free call);

(7) the Associate Chief Counsel (International), contact Gerard Traficanti at (202) 622-3619 (not a toll-free call);

(8) the Commissioner (Large and Mid-Size Business Division), contact Shirley S. Lee at (202) 283-8417 (not a toll-free call);

(9) the Commissioner (Small Business/Self-Employed Division), contact Ronald E. Hartman at (856) 414-6447 (not a toll-free call);

(10) the Commissioner (Wage and Investment Division), contact Geoffrey Gerbore at (631) 447-4428 (not a toll-free call); or

(11) the Chief Appeals, contact Sandy Cohen at (202) 435-5617 (not a toll-free call).

INDEX

References are to sections in Rev. Proc. 2006-2

Additional Information

- after conference of right 11.10, 12.09
- proposed deletions under § 6110 12.11
- Service will request additional information from the taxpayer by fax or email 12.09(1)

Appeal of decision to seek or not seek TAM or TEAM 7

Civil fraud or criminal investigation cases 10.11, 14.04

Collection Issues 6.05

Conferences

- offered 10.06, 11.01
 - after conference of right 11.09
- scheduling 11.02
 - request to limit retroactivity 11.07
 - telephone conferences 11.11

Definitions

- Appeals officer 2
- Appeals area director 2
- Associate office 2
- director 2
- Division Counsel Headquarters 2
- field office 2
- field counsel 2
- frivolous issue 6.02
- taxpayer 2
- technical advice 3
- technical expedited advice 3
- territory manager 2

Discussions with Taxpayers

- contents of TAM or TEAM 14.03
- reconsideration 14.03
- substantive issues at pre-submission conference 8.09
- tentative conclusion in TAM or TEAM 12.07

Employee Plans and Exempt Organizations

- application of § 6104 10.10
- jurisdiction of Commissioner, Tax Exempt and Government Entities Division 5.02

Extension of Time

- to appeal decision not to request a TAM or a TEAM 7.02
- to disagree with statement of facts in technical advice request 9.01
- to schedule conference 11.03
- to submit additional information after conference 12.09(2)
- to submit taxpayer’s initial statement of facts and arguments after advice request forwarded to Associate office 10.07

Foreign laws and documents

- certified English translations 9.01
- effect if interpretation is a material fact 10.08
- when required 9.01

Issues Eligible for TAMs or TEAMS 4

Issues Not Eligible for TAMs or TEAMS 5, 6

INDEX

References are to sections in Rev. Proc. 2006-2

Penalties of Perjury Statement	
— form	9.01
— required when no factual agreement	9.01
— required with additional information	11.10, 12.09
— signature requirements	9.01
Power of Attorney	8.04, 9.05
Pre-submission Conferences	8
Public Inspection Under § 6110	
— deletion statement required	9.02
exception when § 6104 applies	10.10
failure to submit	10.09
— notice of intention to disclose	14.04
protesting deletions not made	14.05
Published Guidance	10.04
Reconsideration	14.02, 16.05
Responsibility for Requesting Advice	7
Retroactive Effect	
— in general	15.02
exception for revocation/modification of letter ruling, TAM, or TEAM	15.06
— request to limit retroactivity	16.01
format of request	16.02, 16.03
scheduling conference	16.04
Section 301.9100 Relief	6.01
Status of TAM or TEAM	10.12
Taxpayer Participation	1.03
What to Include in the Request for Advice	
— Statement of issues, facts, law, and arguments	9.01
— Statement recommending information to be deleted from public inspection	9.02
— Transmittal Form 4463	9.03
— Number of copies	9.04
— Power of attorney	9.05
Where to Send	
— information required prior to pre-submission conference	8.04
— request for a TAM or a TEAM	9.03
Withdrawal of TAM and TEAM Requests	13

Rev. Proc. 2006-3

SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 The purpose of this revenue procedure is to update Rev. Proc. 2005-3, 2005-1 C.B. 118, by providing a revised list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) relating to issues on which the Internal Revenue Service will not issue letter rulings or determination letters. For a list of areas under the jurisdiction of the Associate Chief Counsel (International) relating to international issues on which the Service will not issue letter rulings or determination letters, see Rev. Proc. 2006-7, this Bulletin. For a list of areas under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division relating to issues, plans or plan amendments on which the Service will not issue letter rulings and determination letters, see, respectively, section 8 of Rev. Proc. 2006-4 (this Bulletin) and section 3.02 of Rev. Proc. 2006-6 (this Bulletin).

.02 Changes.

(1) New section 3.01(3) (Sections 61, 451, and 1001.—Gross Income Defined...) has been added. *See* Rev. Proc. 2005-61, 2005-37 I.R.B. 507.

(2) Section 3.01(9) (Section 105(h).—Amount Paid to Highly Compensated Individuals Under Discriminatory Self-Insured Medical Expense Reimbursement Plan) has been modified to simplify the language.

(3) New section 3.01(11) (Section 107.—Rental Value of Parsonages) has been added.

(4) Section 3.01(33) (Sections 332, 351, 368(a)(1)(A), (B), (C), (E) and (F), and 1036.—Complete Liquidations of

Subsidiaries...) has been modified regarding the definition of “Significant Issue.” *See* Rev. Proc. 2005-68, 2005-41 I.R.B. 694.

(5) Section 4.01(30) (Section 441(i).—Taxable Year of Personal Service Corporations) has been modified to update the regulation citation.

(6) Section 4.01(37) (Section 664.—Charitable Remainder Trusts) has been modified to indicate that this no-rule area includes unitrust payments for a term of years.

(7) Section 4.01(44) (Section 2055.—Transfers for Public, Charitable, and Religious Uses) has been modified to include annuity or unitrust payments for a term of years.

(8) Section 4.01(48) (Section 2522.—Charitable and Similar Gifts) has been modified to include annuity or unitrust payments for a term of years.

(9) New section 5.02 (Sections 101 and 7702.—Certain Death Benefits; Life Insurance Contract Defined) has been added.

(10) Section 5.03 (Section 409A.—Inclusion in Gross Income of Deferred Compensation Under Nonqualified Deferred Compensation Plans) has been modified by including in this no-rule area the question of whether an arrangement is an arrangement described in § 409A.

SECTION 2. BACKGROUND AND SCOPE OF APPLICATION

.01 Background.

Whenever appropriate in the interest of sound tax administration, it is the policy of the Service to answer inquiries of individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions, prior to the filing of returns or reports that are required by the revenue laws.

There are, however, certain areas in which, because of the inherently factual nature of the problems involved, or for other reasons, the Service will not issue rulings or determination letters. These areas are set forth in four sections of this revenue procedure. Section 3 reflects those areas in which rulings and determinations will not be issued. Section 4 sets forth those areas in which they will not ordinarily be issued. “Not ordinarily” means that unique and compelling

reasons must be demonstrated to justify the issuance of a ruling or determination letter. Those sections reflect a number of specific questions and problems as well as general areas. Section 5 lists specific areas for which the Service is temporarily not issuing rulings and determinations because those matters are under study. Finally, section 6 of this revenue procedure lists specific areas where the Service will not ordinarily issue rulings because the Service has provided automatic approval procedures for these matters.

See Rev. Proc. 2006-1 (this Bulletin) particularly section 6 captioned “Under What Circumstances Does The Service Not Issue Letter Rulings Or Determination Letters?” for general instructions and other situations in which the Service will not or ordinarily will not issue letter rulings or determination letters.

With respect to the items listed, revenue rulings or revenue procedures may be published in the Internal Revenue Bulletin from time to time to provide general guidelines regarding the position of the Service.

Additions or deletions to this revenue procedure as well as restatements of items listed will be made by modification of this revenue procedure. Changes will be published as they occur throughout the year and will be incorporated annually in a new revenue procedure published as the third revenue procedure of the year. These lists should not be considered all-inclusive. Decisions not to rule on individual cases (as contrasted with those that present significant pattern issues) are not reported in this revenue procedure and will not be added to subsequent revisions.

.02 Scope of Application.

This revenue procedure does not preclude the submission of requests for technical advice to the National Office from other offices of the Service.

.03 No-Rule Issues Part of Larger Transactions.

If it is impossible for the Service to determine the tax consequences of a larger transaction without knowing the resolution of an issue on which the Service will not issue rulings and determinations under this revenue procedure involving a part of the transaction or a related transaction, the taxpayer must state in the request to the best of the taxpayer’s knowledge and belief the tax consequences of the no-rule issue. The Service’s ruling or determination

letter will state that the Service did not consider, and no opinion is expressed upon, that issue. In appropriate cases the Service may decline to issue rulings or determinations on such larger transactions due to the relevance of the no-rule issue, despite the taxpayer's representation.

SECTION 3. AREAS IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED

.01 Specific questions and problems.

(1) Section 61.—Gross Income Defined.—Whether amounts voluntarily transferred by a taxpayer under a deferred-compensation plan maintained by an organization described in § 501 (other than a plan maintained by an eligible employer pursuant to the provisions of § 457) are currently includible in the taxpayer's gross income.

(2) Section 61.—Gross Income Defined.—Whether a split-dollar life insurance arrangement is "materially modified" within the meaning of § 1.61-22(j)(2) of the Income Tax Regulations. (Also §§ 83, 301, 1401, 2501, 3121, 3231, 3306, 3401, and 7872.)

(3) Sections 61, 451, and 1001.—Gross Income Defined; General Rule for Taxable Year of Inclusion; Determination of Amount and Recognition of Gain or Loss.—Whether, under authorization by an appropriate State agency to recover certain costs pursuant to State specified cost recovery legislation, any investor-owned utility company realizes income upon: (i) the creation of an intangible property right; (ii) the transfer of that intangible property right; or (iii) the securitization of the intangible property right.

(4) Section 79.—Group-Term Life Insurance Purchased for Employees.—Whether a group insurance plan for 10 or more employees qualifies as group-term insurance, if the amount of insurance is not computed under a formula that would meet the requirements of § 1.79-1(c)(2)(ii) of the regulations if the group consisted of fewer than 10 employees.

(5) Section 83.—Property Transferred in Connection with Performance of Services.—Whether a restriction constitutes a substantial risk of forfeiture, if the employee is a controlling shareholder. Also,

whether a transfer has occurred, if the amount paid for the property involves a nonrecourse obligation.

(6) Section 83.—Property Transferred in Connection with Performance of Services.—Which corporation is entitled to the deduction under § 83(h) in cases where a corporation undergoes a corporate division if the facts are not similar to those described in Rev. Rul. 2002-1, 2002-1 C.B. 268.

(7) Section 101.—Certain Death Benefits.—Whether there has been a transfer for value for purposes of § 101(a) in situations involving a grantor and a trust when (i) substantially all of the trust corpus consists or will consist of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, and (iv) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

(8) Sections 101, 761, and 7701.—Definitions.—Whether, in connection with the transfer of a life insurance policy to an unincorporated organization, (i) the organization will be treated as a partnership under §§ 761 and 7701, or (ii) the transfer of the life insurance policy to the organization will be exempt from the transfer for value rules of § 101, when substantially all of the organization's assets consists or will consist of life insurance policies on the lives of the members.

(9) Section 105(h).—Amount Paid to Highly Compensated Individuals Under Discriminatory Self-Insured Medical Expense Reimbursement Plan.—Whether a self-insured medical reimbursement plan satisfies the requirements of § 105(h) for a plan year.

(10) Section 107.—Rental Value of Parsonages.—Whether amounts distributed to a retired minister from a pension or annuity plan should be excludible from the minister's gross income as a parsonage allowance under § 107.

(11) Section 107.—Rental Value of Parsonages.—Whether an individual is a "minister of the gospel" for federal tax purposes. (Also §§ 1402(a)(8), (c)(4), and (e), 3121(b)(8)(A), and 3401(a)(9).)

(12) Section 115.—Income of States, Municipalities, Etc.—The results of transactions pursuant to a plan or arrangement created by state statute a primary objective of which is to enable participants to pay for the costs of a post-secondary education for themselves or a designated beneficiary, including: (i) whether the plan or arrangement, itself, is an entity separate from a state and, if so, how the plan or arrangement is treated for federal tax purposes; and (ii) whether any contract under the plan or arrangement is a debt instrument and, if so, how interest or original issue discount attributable to the contract is treated for federal tax purposes. (Also §§ 61, 163, 1275, 2501, and 7701.)

(13) Section 115.—Income of States, Municipalities, Etc.—Whether the income of membership organizations established by states exclusively to reimburse members for losses arising from workmen's compensation claims is excluded from gross income under § 115.

(14) Section 117.—Qualified Scholarships.—Whether an employer-related scholarship or fellowship grant is excludible from the employee's gross income, if there is no intermediary private foundation distributing the grants, as there was in Rev. Proc. 76-47, 1976-2 C.B. 670.

(15) Section 119.—Meals or Lodging Furnished for the Convenience of the Employer.—Whether the value of meals or lodging is excludible from gross income by an employee who is a controlling shareholder of the employer.

(16) Section 121.—Exclusion of Gain from Sale of Principal Residence.—Whether property qualifies as the taxpayer's principal residence.

(17) Section 125.—Cafeteria Plans.—Whether amounts used to provide group-term life insurance under § 79, accident and health benefits under §§ 105 and 106, and dependent care assistance programs under § 129 are includible in the gross income of participants and considered "wages" for purposes of §§ 3401, 3121, and 3306

when the benefits are offered through a cafeteria plan.

(18) Section 162.—Trade or Business Expenses.—Whether compensation is reasonable in amount.

(19) Section 163.—Interest.—The income tax consequences of transactions involving “shared appreciation mortgage” (SAM) loans in which a taxpayer, borrowing money to purchase real property, pays a fixed rate of interest on the mortgage loan below the prevailing market rate and will also pay the lender a percentage of the appreciation in value of the real property upon termination of the mortgage. This applies to all SAM arrangements where the loan proceeds are used for commercial or business activities, or where used to finance a personal residence, if the facts are not similar to those described in Rev. Rul. 83-51, 1983-1 C.B. 48. (Also §§ 61, 451, 461, 856, 1001, and 7701.)

(20) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a taxpayer who advances funds to a charitable organization and receives therefor a promissory note may deduct as contributions, in one taxable year or in each of several years, amounts forgiven by the taxpayer in each of several years by endorsement on the note.

(21) Section 213.—Medical, Dental, Etc., Expenses.—Whether a capital expenditure for an item that is ordinarily used for personal, living, or family purposes, such as a swimming pool, has as its primary purpose the medical care of the taxpayer or the taxpayer’s spouse or dependent, or is related directly to such medical care.

(22) Section 264(b).—Certain Amounts Paid in Connection with Insurance Contracts.—Whether “substantially all” the premiums of a contract of insurance are paid within a period of 4 years from the date on which the contract is purchased. Also, whether an amount deposited is in payment of a “substantial number” of future premiums on such a contract.

(23) Section 264(c)(1).—Certain Amounts Paid in Connection with Insurance Contracts.—Whether § 264(c)(1) applies.

(24) Section 269.—Acquisitions Made to Evade or Avoid Income Tax.—Whether

an acquisition is within the meaning of § 269.

(25) Section 274.—Disallowance of Certain Entertainment, Etc., Expenses.—Whether a taxpayer who is traveling away from home on business may, in lieu of substantiating the actual cost of meals, deduct a fixed per-day amount for meal expenses that differs from the amount authorized by the revenue procedure providing optional rules for substantiating the amount of travel expenses for the period in which the expense was paid or incurred.

(26) Section 302.—Distributions in Redemption of Stock.—Whether § 302(b) applies when the consideration given in redemption by a corporation consists entirely or partly of its notes payable, and the shareholder’s stock is held in escrow or as security for payment of the notes with the possibility that the stock may or will be returned to the shareholder in the future, upon the happening of specific defaults by the corporation.

(27) Section 302.—Distributions in Redemption of Stock.—Whether § 302(b) applies when the consideration given in redemption by a corporation in exchange for a shareholder’s stock consists entirely or partly of the corporation’s promise to pay an amount based on, or contingent on, future earnings of the corporation, when the promise to pay is contingent on working capital being maintained at a certain level, or any other similar contingency.

(28) Section 302.—Distributions in Redemption of Stock.—Whether § 302(b) applies to a redemption of stock, if after the redemption the distributing corporation uses property that is owned by the shareholder from whom the stock is redeemed and the payments by the corporation for the use of the property are dependent upon the corporation’s future earnings or are subordinate to the claims of the corporation’s general creditors. Payments for the use of property will not be considered to be dependent upon future earnings merely because they are based on a fixed percentage of receipts or sales.

(29) Section 302.—Distributions in Redemption of Stock.—Whether the acquisition or disposition of stock described in § 302(c)(2)(B) has, or does not have, as one of its principal purposes the avoidance of federal income taxes within the meaning

of that section, unless the facts and circumstances are materially identical to those set forth in Rev. Rul. 85-19, 1985-1 C.B. 94; Rev. Rul. 79-67, 1979-1 C.B. 128; Rev. Rul. 77-293, 1977-2 C.B. 91; Rev. Rul. 57-387, 1957-2 C.B. 225; Rev. Rul. 56-584, 1956-2 C.B. 179; or Rev. Rul. 56-556, 1956-2 C.B. 177.

(30) Section 302(b)(4) and (e).—Redemption from Noncorporate Shareholder in Partial Liquidation; Partial Liquidation Defined.—The amount of working capital attributable to a business or portion of a business terminated that may be distributed in partial liquidation.

(31) Section 312.—Effect on Earnings and Profits.—The determination of the amount of earnings and profits of a corporation.

(32) Sections 331, 453, and 1239.—The Tax Effects of Installment Sales of Property Between Entities with Common Ownership.—The tax effects of a transaction in which there is a transfer of property by a corporation to a partnership or other noncorporate entity (or the transfer of stock to such entity followed by a liquidation of the corporation) when more than a nominal amount of the stock of such corporation and the capital or beneficial interests in the purchasing entity (that is, more than 20 percent in value) is owned by the same persons, and the consideration to be received by the selling corporation or the selling shareholders includes an installment obligation of the purchasing entity.

(33) Sections 332, 351, 368(a)(1)(A), (B), (C), (E) and (F), and 1036.—Complete Liquidations of Subsidiaries; Transfer to Corporation Controlled by Transferor; Definitions Relating to Corporate Reorganizations; and Stock for Stock of Same Corporation.—Whether a transaction qualifies under § 332, § 351 or § 1036 for nonrecognition treatment, or whether it constitutes a corporate reorganization within the meaning of § 368(a)(1)(A) (including a transaction that qualifies under § 368(a)(1)(A) by reason of § 368(a)(2)(D) or § 368(a)(2)(E)), § 368(a)(1)(B), § 368(a)(1)(C), § 368(a)(1)(E) or § 368(a)(1)(F), and whether various consequences (such as nonrecognition and basis) result from the application of that section, unless the Service determines that there is a significant issue that must be resolved in order to decide those mat-

ters. If the Service determines that there is a significant issue, and to the extent the transaction is not described in another no-rule section, the Service will rule on the entire transaction, and not just the significant issue. Notwithstanding the preceding paragraph, the Service will rule on the application of § 351 to a controlled corporation when the transaction is undertaken prior to the distribution of the stock of the controlled corporation in a transaction qualifying under § 355.

SIGNIFICANT ISSUE: A significant issue is an issue of law that meets the three following tests: (1) the issue is not clearly and adequately addressed by a statute, regulation, decision of a court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin; (2) the resolution of the issue is not essentially free from doubt; and (3) the issue is legally significant and germane to determining the major tax consequences of the transaction. An issue of law will be considered not clearly and adequately addressed by the authorities above, and its resolution will not be essentially free from doubt when, because of concern over a legal issue (as opposed to a factual issue), taxpayer's counsel is unable to render an unqualified opinion on what the tax consequences of the transaction will be.

OBTAINING A RULING: To obtain a ruling on a transaction involving a significant issue, the taxpayer must in its ruling request explain the significance of the issue, set forth the authorities most closely related to the issue, and explain why the issue is not resolved by these authorities.

(34) Section 351.—See section 3.01(33), above.

(35) Section 358.—Basis to Distributees.—The acceptability of an estimation procedure or the acceptability of a specific sampling procedure to determine the basis of stock acquired by an acquiring corporation in a reorganization described in § 368(a)(1)(B).

(36) Section 368.—See section 3.01(33), above.

(37) Section 424.—Substitution or Assumption of Incentive Stock Options.—Whether the substitution of a new Incentive Stock Option (“ISO”) for an old ISO, or the assumption of an old ISO, by an employer by reason of a corporate transaction constitutes a modification which

results in the issuance of a new option by reason of failing to satisfy the spread test requirement of § 424(a)(1) or the ratio test requirement of § 1.425-1(a)(4). The Service will continue to rule on the issue of whether the new ISO or the assumption of the old ISO gives the employee additional benefits not present under the old option within the meaning of § 424(a)(2).

(38) Section 451.—See section 3.01(3), above.

(39) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of a non-qualified unfunded deferred-compensation arrangement with respect to a controlling shareholder-employee eligible to participate in the arrangement.

(40) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of unfunded deferred-compensation arrangements where the arrangements fail to meet the requirements of Rev. Proc. 92-65, 1992-2 C.B. 428; and Rev. Proc. 71-19, 1971-1 C.B. 698.

(41) Sections 451 and 457.—General Rule for Taxable Year of Inclusion; Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.—The tax consequences to unidentified independent contractors in nonqualified unfunded deferred-compensation plans. This applies to plans established under § 451 by employers in the private sector and to plans of state and local governments and tax-exempt organizations under § 457. However, a ruling with respect to a specific independent contractor's participation in such a plan may be issued.

(42) Section 453.—See section 3.01(32), above.

(43) Section 457.—See section 3.01(41), above.

(44) Section 641.—Imposition of Tax.—Whether the period of administration or settlement of an estate or a trust (other than a trust described in § 664) is reasonable or unduly prolonged.

(45) Section 642(c).—Deduction for Amounts Paid or Permanently Set Aside for a Charitable Purpose.—Allowance of an unlimited deduction for amounts set aside by a trust or estate for charitable purposes when there is a possibility that

the corpus of the trust or estate may be invaded.

(46) Section 664.—Charitable Remainder Trusts.—Whether the settlement of a charitable remainder trust upon the termination of the noncharitable interest is made within a reasonable period of time.

(47) Section 671.—Trust Income, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners.—Whether the grantor will be considered the owner of any portion of a trust when (i) substantially all of the trust corpus consists or will consist of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, and (iv) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

(48) Section 704(e).—Family Partnerships.—Matters relating to the validity of a family partnership when capital is not a material income producing factor.

(49) Section 761.—See section 3.01(8), above.

(50) Section 856.—Definition of Real Estate Investment Trust.—Whether a corporation whose stock is “paired” with or “stapled” to stock of another corporation will qualify as a real estate investment trust under § 856, if the activities of the corporations are integrated.

(51) Section 1001.—See section 3.01(3), above.

(52) Section 1036.—See section 3.01(33), above.

(53) Section 1221.—Capital Asset Defined.—Whether specialty stock allocated to an investment account by a registered specialist on a national securities exchange is a capital asset.

(54) Section 1239.—See section 3.01(32), above.

(55) Section 1551.—Disallowance of the Benefits of the Graduated Corporate Rates and Accumulated Earnings

Credit.—Whether a transfer is within § 1551.

(56) Section 2031.—Definition of Gross Estate.—Actuarial factors for valuing interests in the prospective gross estate of a living person.

(57) Section 2512.—Valuation of Gifts.—Actuarial factors for valuing prospective or hypothetical gifts of a donor.

(58) Sections 3121, 3306, and 3401.—Definitions.—For purposes of determining prospective employment status, whether an individual will be an employee or an independent contractor. A ruling with regard to prior employment status may be issued.

(59) Sections 3121, 3306, and 3401.—Definitions; Employment Taxes.—Who is the employer of an “employee-owner” as defined in § 269A(b)(2).

(60) Sections 3121, 3306, and 3401.—Definitions.—For purposes of determining employment classification pursuant to the filing of Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, whether a worker is a *bona fide* partner and, therefore, not an employee of the business is at issue.

(61) Section 4980B.—Failure to Satisfy Continuation Coverage Requirements of Group Health Plans.—Whether an action is “gross misconduct” within the meaning of § 4980B(f)(3)(B). (See section 3.05 of Rev. Proc. 87-28, 1987-1 C.B. 770, 771.)

(62) Section 7701.—Definitions.—The classification of an instrument that has certain voting and liquidation rights in an issuing corporation but whose dividend rights are determined by reference to the earnings of a segregated portion of the issuing corporation’s assets, including assets held by a subsidiary.

(63) Section 7701.—See section 3.01(8), above.

.02 General Areas.

(1) The results of transactions that lack a *bona fide* business purpose or have as their principal purpose the reduction of federal taxes.

(2) A matter upon which a court decision adverse to the Government has been handed down and the question of follow-

ing the decision or litigating further has not yet been resolved.

(3) A matter involving alternate plans of proposed transactions or involving hypothetical situations.

(4) Whether under Subtitle F (Procedure and Administration) reasonable cause, due diligence, good faith, clear and convincing evidence, or other similar terms that require a factual determination exist.

(5) Whether a proposed transaction would subject the taxpayer to a criminal penalty.

(6) A request that does not comply with the provisions of Rev. Proc. 2006-1 (this Bulletin).

(7) Whether, under the common law rules applicable in determining the employer-employee relationship, a professional staffing corporation (loan-out corporation) or the subscriber is the employer of individuals, if:

(i) the loan-out corporation hires employees of the subscriber and assigns the employees back to the subscriber, or

(ii) the loan-out corporation assigns individuals to subscribers for more than a temporary period (1 year or longer).

(8) Questions that the Service determines, in its discretion, should not be answered in the general interests of tax administration.

(9) Any frivolous issue, as that term is defined in section 6.10 of Rev. Proc. 2006-1 (this Bulletin)

SECTION 4. AREAS IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT ORDINARILY BE ISSUED

.01 Specific questions and problems.

(1) Sections 38, 39, 46, and 48.—General Business Credit; Carryback and Carryforward of Unused Credits; Amount of Credit; Energy Credit; Reforestation Credit.—Application of these sections where the formal ownership of property is in a party other than the taxpayer, except when title is held merely as security.

(2) Section 61.—Gross Income Defined.—Determination as to who is the

true owner of property in cases involving the sale of securities, or participation interests therein, where the purchaser has the contractual right to cause the securities, or participation interests therein, to be purchased by either the seller or a third party.

(3) Sections 61 and 163.—Gross Income Defined; Interest.—Determinations as to who is the true owner of property or the true borrower of money in cases in which the formal ownership of the property, or the liability for the indebtedness, is in another party.

(4) Sections 83 and 451.—Property Transferred in Connection with Performance of Services; General Rule for Taxable Year of Inclusion.—When compensation is realized by a person who, in connection with the performance of services, is granted a nonstatutory option without a readily ascertainable fair market value to purchase stock at a price that is less than the fair market value of the stock on the date the option is granted.

(5) Section 103.—Interest on State and Local Bonds.—Whether the interest on state or local bonds will be excludible from gross income under § 103(a), if the proceeds of issues of bonds (other than advance refunding issues) are placed in escrow or otherwise not expended for a governmental purpose for an extended period of time even though the proceeds are invested at a yield that will not exceed the yield on the state or local bonds prior to their expenditure.

(6) Section 103.—Interest on State and Local Bonds.—Whether a state or local governmental obligation that does not meet the criteria of section 5 of Rev. Proc. 89-5, 1989-1 C.B. 774, is an “arbitrage bond” within the meaning of former § 103(c)(2) solely by reason of the investment of the bond proceeds in acquired non-purpose obligations at a materially higher yield more than 3 years after issuance of the bonds or 5 years after issuance of the bonds in the case of construction issues described in former § 1.103-13(a)(2)(ii)(E) or § 1.148-2(e)(2)(ii).

(7) Sections 104(a)(2) and 3121.—Compensation for Injuries or Sickness; Definitions.—Whether an allocation of the amount of a settlement award (including a lump sum award) between

back pay, compensatory damages, punitive damages, etc. is a proper allocation for federal tax purposes.

(8) Section 141.—Private Activity Bond; Qualified Bond.—Whether state or local bonds will meet the “private business use test” and the “private security or payment test” under § 141(b)(1) and (2) in situations in which the proceeds are used to finance certain output facilities and, pursuant to a contract to take, or take or pay for, a nongovernmental person purchases 30 percent or more of the actual output of the facility but 10 percent or less of the: (i) subparagraph (5) output of the facility as defined in § 1.103-7(b)(5)(ii)(b) (issued under former § 103(b)), or (ii) available output of the facility as defined in § 1.141-7(b)(1). In similar situations, the Service will not ordinarily issue rulings or determination letters concerning questions arising under paragraphs (3), (4), and (5) of § 141(b).

(9) Sections 142 and 144.—Exempt Facility Bond; Qualified Small Issue Bond.—Whether an issue of private activity bonds meets the requirements of § 142 or § 144(a), if the sum of—

(i) the portion of the proceeds used to finance a facility in which an owner (or related person) or a lessee (or a related person) is a user of the facility both after the bonds are issued and at any time before the bonds were issued, and

(ii) the portion used to pay issuance costs and non-qualified costs equals more than 5 percent of the net proceeds, as defined in § 150(a)(3).

(10) Section 148.—Arbitrage.—Whether amounts received as proceeds from the sale of municipal bond financed property and pledged to the payment of debt service or pledged as collateral for the municipal bond issue are sinking fund proceeds within the meaning of former § 1.103-13(g) (issued under former § 103(c)) or replaced proceeds described in § 148(a)(2) (or former § 103(c)(2)(B)).

(11) Sections 162 and 262.—Trade or Business Expenses; Personal, Living, and Family Expenses.—Whether expenses are nondeductible commuting expenses, except for situations governed by Rev. Rul. 99-7, 1999-1 C.B. 361.

(12) Section 163.—See section 4.01(3), above.

(13) Section 167.—Depreciation.

(i) Useful lives of assets.

(ii) Depreciation rates.

(iii) Salvage value of assets.

(14) Sections 167 and 168.—Depreciation; Accelerated Cost Recovery System.—Application of those sections where the formal ownership of property is in a party other than the taxpayer except when title is held merely as security.

(15) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable contribution deduction under § 170(f)(2)(A).

(16) Section 170(c).—Charitable, Etc., Contributions and Gifts.—Whether a taxpayer who transfers property to a charitable organization and thereafter leases back all or a portion of the transferred property may deduct the fair market value of the property transferred and leased back as a charitable contribution.

(17) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives qualifies for a charitable deduction under § 170(f)(2)(A).

(18) Section 216.—Deduction of Taxes, Interest, and Business Depreciation by Cooperative Housing Corporation Tenant-Stockholder.—If a cooperative housing corporation (CHC), as defined in § 216(b)(1), transfers an interest in real property to a corporation (not a CHC) in exchange for stock or securities of the transferee corporation, which engages in commercial activity with respect to the real property interest transferred, whether (i) the income of the transferee corporation derived from the commercial activity, and (ii) any cash or property (attributable to the real property interest transferred) distributed by the transferee corporation to the CHC will be considered as gross income of the CHC for the purpose of determining whether 80 percent or more of the gross income of the CHC is derived

from tenant-stockholders within the meaning of § 216(b)(1)(D).

(19) Section 262.—See section 4.01(11), above.

(20) Section 265(a)(2).—Expenses and Interest Relating to Tax-Exempt Income.—Whether indebtedness is incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by subtitle A.

(21) Section 302.—Distributions in Redemption of Stock.—The tax effect of the redemption of stock for notes, when the payments on the notes are to be made over a period in excess of 15 years from the date of issuance of such notes.

(22) Section 302(b)(4) and (e).—Redemption from Noncorporate Shareholder in Partial Liquidation; Partial Liquidation Defined.—Whether a distribution will qualify as a distribution in partial liquidation under § 302(b)(4) and (e)(1)(A), unless it results in a 20 percent or greater reduction in (i) gross revenue, (ii) net fair market value of assets, and (iii) employees. (Partial liquidations that qualify as § 302(e)(2) business terminations are not subject to this provision.)

(23) Sections 302(b)(4) and (e), 331, 332, and 346(a).—Effects on Recipients of Distributions in Corporate Liquidations.—The tax effect of the liquidation of a corporation preceded or followed by the transfer of all or a part of the business assets to another corporation (1) that is the alter ego of the liquidating corporation, and (2) which, directly or indirectly, is owned more than 20 percent in value by persons holding directly or indirectly more than 20 percent in value of the liquidating corporation's stock. For purposes of this section, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(24) Section 306.—Dispositions of Certain Stock.—Whether the distribution or disposition or redemption of “section 306 stock” in a closely held corporation is in pursuance of a plan having as one of its principal purposes the avoidance of federal income taxes within the meaning of § 306(b)(4).

(25) Sections 331 and 332.—See section 4.01(23), above.

(26) Sections 331 and 346(a).—Gain or Loss to Shareholders in Corporate Liquidations.—The tax effect of the liquidation of a corporation by a series of distributions, when the distributions in liquidation are to be made over a period in excess of 3 years from the adoption of the plan of liquidation.

(27) Section 346(a).—See sections 4.01(23) and (26), above.

(28) Section 351.—Transfer to Corporation Controlled by Transferor.—Whether § 351 applies to the transfer of an interest in real property by a cooperative housing corporation (as described in § 216(b)(1)) to a corporation in exchange for stock or securities of the transferee corporation, if the transferee engages in commercial activity with respect to the real property interest transferred.

(29) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether the active business requirement of § 355(b) is met when, within the 5-year period described in § 355(b)(2)(B), a distributing corporation acquired control of a controlled corporation as a result of the distributing corporation transferring cash or other liquid or inactive assets to the controlled corporation in a transaction in which gain or loss was not recognized as a result of the transfer meeting the requirements of § 351(a) or § 368(a)(1)(D).

(30) Section 441(i).—Taxable Year of Personal Service Corporations.—Whether the principal activity of the taxpayer during the testing period for the taxable year is the performance of personal services within the meaning of § 1.441-3(c)(1)(iii).

(31) Section 448(d)(2)(A).—Limitation on Use of Cash Method of Accounting; Qualified Personal Service Corporation.—Whether 95 percent or more of the time spent by employees of the corporation, serving in their capacity as such, is devoted to the performance of services within the meaning of § 1.448-1T(e)(4)(i).

(32) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of a nonqualified deferred compensation arrangement using a grantor trust where the trust fails to meet the requirements of Rev. Proc. 92-64, 1992-2 C.B. 422.

(33) Section 451.—See section 4.01(4), above.

(34) Section 451.—General Rule for Taxable Year of Inclusion.—The income tax consequences as a result of being a beneficiary of a trust that an Indian tribe (as defined in 25 U.S.C. § 2703(5)) establishes to receive and invest *per capita* payments for its members who are minors or legal incompetents under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721), if the trust meets the requirements of section 5.02 of Rev. Proc. 2003-14, 2003-1 C.B. 319.

(35) Section 584.—Common Trust Funds.—Whether a common trust fund plan meets the requirements of § 584. (For § 584 plan drafting guidance, see Rev. Proc. 92-51, 1992-1 C.B. 988.)

(36) Section 642.—Special Rules for Credits and Deductions; Pooled Income Fund.—Whether a pooled income fund satisfies the requirements described in § 642(c)(5).

(37) Section 664.—Charitable Remainder Trusts.—Whether a charitable remainder trust that provides for annuity or unitrust payments for one or two measuring lives or for annuity or unitrust payments for a term of years satisfies the requirements described in § 664.

(38) Section 664.—Charitable Remainder Trusts.—Whether a trust that will calculate the unitrust amount under § 664(d)(3) qualifies as a § 664 charitable remainder trust when a grantor, a trustee, a beneficiary, or a person related or subordinate to a grantor, a trustee, or a beneficiary can control the timing of the trust's receipt of trust income from a partnership or a deferred annuity contract to take advantage of the difference between trust income under § 643(b) and income for federal income tax purposes for the benefit of the unitrust recipient.

(39) Sections 671 to 679.—Grantors and Others Treated as Substantial Owners.—In a nonqualified, unfunded deferred compensation arrangement described in Rev. Proc. 92-64, the tax consequences of the use of a trust, other than the model trust described in that revenue procedure.

(40) Sections 671 to 679.—Grantors and Others Treated as Substantial Owners.—Whether an Indian tribe (as defined in 25 U.S.C. § 2703(5)) that establishes

a trust to receive and invest *per capita* payments for its members who are minors or legal incompetents under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721) is the grantor and owner of the trust, if the trust meets the requirements of section 5.02 of Rev. Proc. 2003-14, 2003-1 C.B. 319.

(41) Section 1362.—Election; Revocation; Termination.—All situations in which the Service has provided an automatic approval procedure or administrative procedure for an S corporation to obtain relief for late S corporation, qualified subchapter S subsidiary, qualified subchapter S trust, or electing small business trust elections. See Rev. Proc. 2003-43, 2003-1 C.B. 998; Rev. Proc. 2004-48, 2004-2 C.B. 172; and Rev. Proc. 2004-49, 2004-2 C.B. 210. (For instructions on how to seek this relief, see the preceding revenue procedures.)

(42) Section 1502.—Regulations.—Whether a parent cooperative housing corporation (as defined in § 216(b)(1)) will be permitted to file a consolidated income tax return with its transferee subsidiary, if the transferee engages in commercial activity with respect to the real property interest transferred to it by the parent.

(43) Section 2055.—Transfers for Public, Charitable, and Religious Uses.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable deduction under § 2055(e)(2)(A).

(44) Section 2055.—Transfers for Public, Charitable, and Religious Uses.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives or a term of years qualifies for a charitable deduction under § 2055(e)(2)(A).

(45) Section 2503.—Taxable Gifts.—Whether the transfer of property to a trust will be a gift of a present interest in property when (i) the trust corpus consists or will consist substantially of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's

spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, (iv) the trust beneficiaries have the power to withdraw, on demand, any additional transfers made to the trust, and (v) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

(46) Section 2514.—Powers of Appointment.—If the beneficiaries of a trust permit a power of withdrawal to lapse, whether § 2514(e) will be applicable to each beneficiary in regard to the power when (i) the trust corpus consists or will consist substantially of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, (iv) the trust beneficiaries have the power to withdraw, on demand, any additional transfers made to the trust, and (v) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

(47) Section 2522.—Charitable and Similar Gifts.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable deduction under § 2522(c)(2)(A).

(48) Section 2522.—Charitable and Similar Gifts.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives or a term of years qualifies for a charitable deduction under § 2522(c)(2)(A).

(49) Section 2601.—Tax Imposed.—Whether a trust that is excepted from the application of the generation-skipping transfer tax because it was irrevocable on September 25, 1985, will lose its excepted status if the situs of the trust is changed from the United States to a situs outside of the United States.

(50) Section 2702.—Special Valuation Rules in Case of Transfers of Interests

in Trusts.—Whether annuity interests are qualified annuity interests under § 2702 if the amount of the annuity payable annually is more than 50 percent of the initial net fair market value of the property transferred to the trust, or if the value of the remainder interest is less than 10 percent of the initial net fair market value of the property transferred to the trust. For purposes of the 10 percent test, the value of the remainder interest is the present value determined under § 7520 of the right to receive the trust corpus at the expiration of the term of the trust. The possibility that the grantor may die prior to the expiration of the specified term is not taken into account, nor is the value of any reversion retained by the grantor or the grantor's estate.

(51) Section 2702.—Special Valuation Rules in Case of Transfers of Interests in Trusts.—Whether a trust with one term holder satisfies the requirements of § 2702(a)(3)(A) and § 25.2702-5(c) to be a qualified personal residence trust.

(52) Section 3121.—Definitions.—Determinations as to which of two entities, under common law rules applicable in determining the employer-employee relationship, is the employer, when one entity is treating the worker as an employee.

(53) Section 3121.—See section 4.01(7), above.

.02 General areas.

(1) Any matter in which the determination requested is primarily one of fact, *e.g.*, market value of property, or whether an interest in a corporation is to be treated as stock or indebtedness.

(2) Situations where the requested ruling deals with only part of an integrated transaction. Generally, a letter ruling will not be issued on only part of an integrated transaction. If, however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Before preparing the letter ruling request, a taxpayer should call the Office of the Associate Chief Counsel having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether a letter ruling will be issued on part of the transaction. To determine which division has jurisdiction over a particular issue, *see* section 3 of Rev. Proc.

2006-1 (this Bulletin). For a list of telephone numbers for the different divisions, *see* section 10.07 of Rev. Proc. 2006-1.

(3) Situations where two or more items or sub-methods of accounting are interrelated. If two or more items or sub-methods of accounting are interrelated, ordinarily a letter ruling will not be issued on a change in accounting method involving only one of the items or sub-methods.

(4) The tax effect of any transaction to be consummated at some indefinite future time.

(5) Any matter dealing with the question of whether property is held primarily for sale to customers in the ordinary course of a trade or business.

(6) The tax effect of a transaction if any part of the transaction is involved in litigation among the parties affected by the transaction, except for transactions involving bankruptcy reorganizations.

(7)(a) Situations where the taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal tax investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(b) The provisions of subsection (a) above shall not apply if the taxpayer or affected related party (i) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination in order to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (ii) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

(8) A matter involving the federal tax consequences of any proposed federal,

state, local, municipal, or foreign legislation. The Service may provide general information in response to an inquiry. However, the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) may issue letter rulings regarding the effect of proposed state, local, or municipal legislation upon an eligible deferred compensation plan under § 457(b) provided that the letter ruling request relating to the plan complies with the other requirements of Rev. Proc. 2006-1.

(9) Except as otherwise provided in this revenue procedure (e.g., under section 3.01(33), where the Service already is ruling on a significant issue in the same transaction), a letter ruling will not ordinarily be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decisions of a court, revenue rulings, revenue procedures, notices, or other authority published in the Internal Revenue Bulletin. However, the Service may in its discretion determine to issue a ruling on such an issue if the Service otherwise is issuing a ruling on another issue arising in the same transaction.

SECTION 5. AREAS UNDER STUDY IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED UNTIL THE SERVICE RESOLVES THE ISSUE THROUGH PUBLICATION OF A REVENUE RULING, REVENUE PROCEDURE, REGULATIONS OR OTHERWISE

.01 Section 62(c).—Reimbursement Arrangements.—Whether amounts related to a salary reduction and paid under a purported reimbursement or other expense allowance arrangement will be treated as paid under an “accountable plan” in accordance with § 1.62-2(c)(2).

.02 Sections 101 and 7702.—Certain Death Benefits; Life Insurance Contract Defined.—Whether amounts received under an arrangement that is not regulated as an insurance company may be treated as received under a “life insurance contract” within the meaning of §§ 101(a) and 7702.

.03 Section 409A.—Inclusion in Gross Income of Deferred Compensation Under Nonqualified Deferred Compensation Plans.—Rulings on the tax consequences

of arrangements described in § 409A, including rulings as to whether an arrangement is an arrangement described in § 409A, will not be issued until this subsection of this revenue procedure is revised.

.04 Section 451.—General Rule for Taxable Year of Inclusion.—The income tax consequences as a result of being a beneficiary of a trust that an Indian tribe (as defined in 25 U.S.C. § 2703(5)) establishes to receive and invest *per capita* payments for its members (regardless of whether they are minors or legal incompetents) under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721) if the trust does not meet the requirements of section 5.02 of Rev. Proc. 2003-14, 2003-1 C.B. 319.

.05 Sections 671 to 679.—Grantors and Others Treated as Substantial Owners.—Whether an Indian tribe (as defined in 25 U.S.C. § 2703(5)) that establishes a trust to receive and invest *per capita* payments for its members (regardless of whether they are minors or legal incompetents) under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721) is the grantor and owner of the trust if the trust does not meet the requirements of section 5.02 of Rev. Proc. 2003-14, 2003-1 C.B. 319.

.06 Section 1361.—Definition of a Small Business Corporation.—Whether a state law limited partnership electing under § 301.7701-3 to be classified as an association taxable as a corporation has more than one class of stock for purposes of § 1361(b)(1)(D). The Service will treat any request for a ruling on whether a state law limited partnership is eligible to elect S corporation status as a request for a ruling on whether the partnership complies with § 1361(b)(1)(D).

.07 Section 2036.—Transfers with Retained Life Estate.—Whether the corpus of a trust will be included in a grantor’s estate when the trustee of the trust is a private trust company owned partially or entirely by members of the grantor’s family.

.08 Section 2038.—Revocable Transfers.—Whether the corpus of a trust will be included in a grantor’s estate when the trustee of the trust is a private trust company owned partially or entirely by members of the grantor’s family.

.09 Section 2041.—Powers of Appointment.—Whether the corpus of a trust will

be included in an individual’s estate when the trustee of the trust is a private trust company owned partially or entirely by members of the individual’s family.

.10 Sections 3121, 3306, and 3401.—Definitions; Employment Taxes.—Who is the employer of employees of an entity that is disregarded under § 1361(b)(3) or § 301.7701-2.

.11 Section 6050P.—Returns Relating to the Cancellation of Indebtedness by Certain Entities.—Whether amounts reduced pursuant to the terms of a debt instrument are reportable under § 6050P and the regulations.

.12 Section 7702.—See section 5.02, above.

SECTION 6. AREAS COVERED BY AUTOMATIC APPROVAL PROCEDURES IN WHICH RULINGS WILL NOT ORDINARILY BE ISSUED

.01 Section 338.—Certain Stock Purchases Treated as Asset Acquisitions.—All requests for an extension of time under § 301.9100-3 within which to make an election under § 338(g) or (h)(10) where the Service has provided an administrative procedure to seek an extension. *See* Rev. Proc. 2003-33, 2003-1 C.B. 803 (extension automatically granted to certain persons required to file Form 8023 to make a valid section 338 election that have not filed Form 8023 by its due date).

.02 Section 442.—Change of Annual Accounting Period.—All requests for change in annual accounting period where the Service has provided an automatic change procedure for obtaining a change in annual accounting period. *See* Rev. Proc. 2002-39, 2002-1 C.B. 1046 (general procedures for prior approval), as clarified and modified by Notice 2002-72, 2002-2 C.B. 843, and modified by Rev. Proc. 2003-34, 2003-1 C.B. 856, and Rev. Proc. 2003-79, 2003-2 C.B. 1036; Rev. Proc. 2002-37, 2002-1 C.B. 1030 (certain corporations), as clarified and modified by Notice 2002-72 and modified by Rev. Proc. 2003-34; Rev. Proc. 2002-38, 2002-1 C.B. 1037 (partnership, S corporation, or personal service corporation seeking a natural business year or an ownership taxable year), as clarified and modified by Notice 2002-72 and modified by Rev. Proc. 2003-79; and Rev. Proc.

2003–62, 2003–2 C.B. 299 (individual seeking a calendar year).

.03 Section 446.—General Rule for Methods of Accounting.—Except as otherwise specifically provided in applicable procedures published in the Internal Revenue Bulletin, all requests for change in method of accounting where the Service has provided an automatic change request procedure for obtaining a change in method of accounting. See the automatic change request procedures listed in section 9.22 of Rev. Proc. 2006–1 (this Bulletin).

.04 Section 461.—General Rule for Taxable Year of Deduction.—All requests for making or revoking an election under § 461 where the Service has provided an administrative procedure for making or revoking an election under § 461. See Rev. Proc. 92–29, 1992–1 C.B. 748 (dealing with the use of an alternative method for including in basis the estimated cost of certain common improvements in a real estate development).

.05 Section 704(c).—Contributed Property.—Requests from Qualified Master Feeder Structures, as described in section 4.02 of Rev. Proc. 2001–36, 2001–1 C.B. 1326, for permission to aggregate built-in gains and losses from contributed qualified financial assets for purposes of making § 704(c) and reverse § 704(c) allocations.

.06 Section 1362.—Election; Revocation; Termination.—All situations in which an S corporation qualifies for automatic late S corporation relief under Rev. Proc. 97–48, 1997–2 C.B. 521.

.07 Sections 1502, 1504, and 1552.—Regulations; Definitions; Earnings and Profits.—All requests for waivers or consents on consolidated return issues where the Service has provided an administrative procedure for obtaining waivers or consents on consolidated return issues. See Rev. Proc. 2002–32, 2002–1 C.B. 959 (certain corporations seeking reconsolidation within the 5-year period

specified in § 1504(a)(3)(A)); Rev. Proc. 90–39, 1990–2 C.B. 365, as clarified by Rev. Proc. 90–39A, 1990–2 C.B. 367 (certain affiliated groups of corporations seeking, for earnings and profits determinations, to make an election or a change in their method of allocating the group’s consolidated federal income tax liability); and Rev. Proc. 89–56, 1989–2 C.B. 643 (certain affiliated groups of corporations seeking to file a consolidated return where member(s) of the group use a 52–53 week taxable year).

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2005–3, 2005–1 C.B. 118, Rev. Proc. 2005–61, 2005–37 I.R.B. 507, and Rev. Proc. 2005–68, 2005–41 I.R.B. 694, are superseded.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective January 3, 2006.

SECTION 9. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1522.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 3.01(33), 3.02(1) and (3), and 4.02(1) and (7)(b).

This information is required to evaluate whether the request for a letter ruling or determination letter is not covered by the

provisions of this revenue procedure. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recording burden is 90 hours.

The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 3 hours, depending on individual circumstances, with an estimated average burden of 2 hours. The estimated number of respondents and/or recordkeepers is 45.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Michael Danbury of the Office of the Associate Chief Counsel (Corporate). For further information about this revenue procedure, please contact Mr. Danbury at (202) 622–7550 (not a toll-free call), or call the division contacts listed in section 10.07 of Rev. Proc. 2006–1 (this Bulletin). To determine which division has jurisdiction over a particular issue see section 3 of Rev. Proc. 2006–1.

Rev. Proc. 2006-4

TABLE OF CONTENTS

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE? 135

SECTION 2. WHAT CHANGES HAVE BEEN MADE TO REV. PROC. 2005-4? 135

SECTION 3. IN WHAT FORM IS GUIDANCE PROVIDED BY THE COMMISSIONER, TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION? 135

.01 In general 135

.02 Letter ruling 135

.03 Closing agreement 135

.04 Determination letter 136

.05 Opinion letter 136

.06 Information letter 136

.07 Revenue ruling 136

.08 Oral guidance 137

(1) No oral rulings and no written rulings in response to oral requests 137

(2) Discussion possible on substantive issues 137

.09 Nonbank trustee requests 137

.10 Compliance Statement 138

SECTION 4. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN GUIDANCE UNDER THIS PROCEDURE? 138

SECTION 5. ON WHAT ISSUES MUST WRITTEN GUIDANCE BE REQUESTED UNDER DIFFERENT PROCEDURES? 138

.01 Determination letters 138

.02 Master and prototype plans and volume submitter plans 138

.03 Closing agreement program for defined contribution plans that purchased GICs or GACs 138

.04 Employee Plans Compliance Resolution System 138

.05 Chief Counsel 138

.06 Alcohol, tobacco, and firearms taxes 139

SECTION 6. UNDER WHAT CIRCUMSTANCES DOES TE/GE ISSUE LETTER RULINGS? 139

.01 In exempt organizations matters 139

.02 In employee plans matters 139

.03 In qualifications matters 140

.04 Request for extension of time for making an election or for other relief under § 301.9100-1 of the Procedure and Administration Regulations 140

.05 Issuance of a letter ruling before the issuance of a regulation or other published guidance 140

.06 Issues in prior return 140

.07 Generally not to business associations or groups 141

.08 Generally not to foreign governments 141

.09 Generally not on federal tax consequences of proposed legislation 141

.10 Not on certain matters under § 53.4958-6 of the Foundation and Similar Excise Taxes Regulations 141

.11 Not on stock options 141

.12 Generally not on EO joint venture with a for-profit organization 141

.13 Not on qualification of state run programs under § 529 141

SECTION 7. UNDER WHAT CIRCUMSTANCES DOES EP OR EO DETERMINATIONS ISSUE DETERMINATION LETTERS? 141

.01 Circumstances under which determination letters are issued 141

.02 In general 142

.03 In employee plans matters 142

.04 In exempt organizations matters 142

.05 Circumstances under which determination letters are not issued 142

.06 Requests involving returns already filed	143
.07 Attach a copy of determination letter to taxpayer's return	143
.08 Review of determination letters	143
SECTION 8. UNDER WHAT CIRCUMSTANCES DOES THE SERVICE HAVE DISCRETION TO ISSUE LETTER RULINGS AND DETERMINATION LETTERS?	143
.01 Ordinarily not in certain areas because of factual nature of the problem	143
.02 No "comfort" letter rulings	143
.03 Not on alternative plans or hypothetical situations	143
.04 Ordinarily not on part of an integrated transaction	143
.05 Not on partial terminations of employee plans	144
.06 Law requires ruling letter	144
.07 Issues under consideration by PBGC or DOL	144
.08 Cafeteria plans	144
.09 Determination letters	144
.10 Domicile in a foreign jurisdiction	144
.11 Employee Stock Ownership Plans	144
.12 Indian Tribal Governments	144
SECTION 9. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING LETTER RULINGS AND DETERMINATION LETTERS?	144
.01 In general	144
.02 Certain information required in all requests	145
(1) Complete statement of facts and other information.	145
(2) Copies of all contracts, wills, deeds, agreements, instruments, plan documents, and other documents.	145
(3) Analysis of material facts.	145
(4) Statement regarding whether same issue is in an earlier return.	145
(5) Statement regarding whether same or similar issue was previously ruled on or requested, or is currently pending.	146
(6) Statement of supporting authorities.	146
(7) Statement of contrary authorities.	146
(8) Statement identifying pending legislation.	146
(9) Statement identifying information to be deleted from copy of letter ruling or determination letter for public inspection.	147
(10) Signature by taxpayer or authorized representative.	148
(11) Authorized representatives.	148
(12) Power of attorney and declaration of representative.	149
(13) Penalties of perjury statement.	149
(14) Applicable user fee.	150
(15) Number of copies of request to be submitted.	150
(16) Sample format for a letter ruling request.	150
(17) Checklist for letter ruling requests.	150
.03 Additional information required in certain circumstances	150
(1) To request separate letter rulings for multiple issues in a single situation.	151
(2) Recipient of original of letter ruling or determination letter.	151
(3) To request expedited handling.	151
(4) To receive a letter ruling or submit a request for a letter ruling by facsimile transmission (fax).	152
(5) To request a conference	152
.04 Address to send the request	152
(1) Requests for letter rulings	153
(2) Requests for information letters	153
(3) Requests for determination letters	153
.05 Pending letter ruling requests	153
.06 When to attach letter ruling to return	154
.07 How to check on status of request	154
.08 Request may be withdrawn or EP or EO Technical may decline to issue letter ruling	154
.09 Compliance with Treasury Department Circular No. 230	154

SECTION 10. WHAT SPECIFIC, ADDITIONAL PROCEDURES APPLY TO CERTAIN REQUESTS?	154
.01 In general	154
.02 Exempt Organizations	154
.03 Employee Plans	154
SECTION 11. HOW DOES EP OR EO TECHNICAL HANDLE LETTER RULING REQUESTS?	155
.01 In general	155
.02 Is not bound by informal opinion expressed	155
.03 Tells taxpayer if request lacks essential information during initial contact	155
.04 Requires prompt submission of additional information requested after initial contact	155
.05 Near the completion of the ruling process, advises taxpayer of conclusions and, if the Service will rule adversely, offers the taxpayer the opportunity to withdraw the letter ruling request	156
.06 May request draft of proposed letter ruling near the completion of the ruling process	156
SECTION 12. HOW ARE CONFERENCES SCHEDULED?	157
.01 Schedules a conference if requested by taxpayer	157
.02 Permits taxpayer one conference of right	157
.03 Disallows verbatim recording of conferences	157
.04 Makes tentative recommendations on substantive issues	157
.05 May offer additional conferences	157
.06 Requires written confirmation of information presented at conference	158
.07 May schedule a pre-submission conference	158
.08 Under limited circumstances, may schedule a conference to be held by telephone	158
SECTION 13. WHAT EFFECT WILL A LETTER RULING HAVE?	158
.01 May be relied on subject to limitations	158
.02 Will not apply to another taxpayer	159
.03 Will be used by the TE/GE in examining the taxpayer's return	159
.04 May be revoked or modified if found to be in error	159
.05 Not generally revoked or modified retroactively	159
.06 Retroactive effect of revocation or modification applied only to a particular transaction	160
.07 Retroactive effect of revocation or modification applied to a continuing action or series of actions	160
.08 May be retroactively revoked or modified when transaction is completed without reliance on the letter ruling	160
.09 Taxpayer may request that retroactivity be limited	160
(1) Request for relief under § 7805(b) must be made in required format	160
(2) Taxpayer may request a conference on application of § 7805(b)	161
SECTION 14. WHAT EFFECT WILL A DETERMINATION LETTER HAVE?	161
.01 Has same effect as a letter ruling	161
.02 Taxpayer may request that retroactive effect of revocation or modification be limited	161
(1) Request for relief under § 7805(b) must be made in required format	162
(2) Taxpayer may request a conference on application of § 7805(b)	162
(3) Taxpayer steps in exhausting administrative remedies	162
SECTION 15. UNDER WHAT CIRCUMSTANCES ARE MATTERS REFERRED BETWEEN DETERMINATIONS AND TECHNICAL?	162
.01 Requests for determination letters	162
.02 No-rule areas	162
.03 Requests for letter rulings	162
SECTION 16. WHAT ARE THE GENERAL PROCEDURES APPLICABLE TO INFORMATION LETTERS ISSUED BY THE HEADQUARTERS OFFICE?	163
.01 Will be made available to the public	163
.02 Deletions made under the Freedom of Information Act	163
.03 Effect of information letters	163
SECTION 17. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?	163
SECTION 18. EFFECTIVE DATE	163

SECTION 19. PAPERWORK REDUCTION ACT	163
DRAFTING INFORMATION	164
INDEX	165
APPENDIX A—SAMPLE FORMAT FOR A LETTER RULING REQUEST	166
APPENDIX B—CHECKLIST FOR A LETTER RULING REQUEST	168
APPENDIX C—ADDITIONAL CHECKLIST FOR ROTH IRA RECHARACTERIZATIONS	171
APPENDIX D—ADDITIONAL CHECKLIST FOR GOVERNMENT PICK-UP PLANS	172
APPENDIX E—ADDITIONAL CHECKLIST FOR CHURCH PLANS	173

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure explains how the Internal Revenue Service gives guidance to taxpayers on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. It explains the kinds of guidance and the manner in which guidance is requested by taxpayers and provided by the Service. A sample format of a request for a letter ruling is provided in Appendix A.

SECTION 2. WHAT CHANGES HAVE BEEN MADE TO REV. PROC. 2005-4?

.01 This revenue procedure is a general update of Rev. Proc. 2005-4, 2005-1 I.R.B. 128, which contains the Service’s general procedures for employee plans and exempt organizations letter ruling requests. Most of the changes to Rev. Proc. 2005-4 involve minor revisions, such as updating citations to other revenue procedures.

.02 Section 6.12 and section 6.13 are added to reflect two additional no rule areas for EO Technical, *i.e.*, generally not with respect to an EO joint venture with a for-profit organization and not on the status of state run programs under § 529 of the Code.

.03 Section 7.04 is expanded to include certain set-asides described in § 4942(g)(2) where EO Determinations issues a determination letter.

.04 Section 8 is revised to clarify that neither EP Technical nor EO Technical issues “comfort” letter rulings.

SECTION 3. IN WHAT FORM IS GUIDANCE PROVIDED BY THE COMMISSIONER, TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION?

In general

.01 The Service provides guidance in the form of letter rulings, closing agreements, compliance statements, determination letters, opinion letters, advisory letters, information letters, revenue rulings, and oral advice.

Letter ruling

.02 A “letter ruling” is a written statement issued to a taxpayer by the Service’s Employee Plans Technical office or Exempt Organizations Technical office that interprets and applies the tax laws or any nontax laws applicable to employee benefit plans and exempt organizations to the taxpayer’s specific set of facts. Once issued, a letter ruling may be revoked or modified for any number of reasons, as explained in section 13 of this revenue procedure, unless it is accompanied by a “closing agreement.”

Closing agreement

.03 A closing agreement is a final agreement between the Service and a taxpayer on a specific issue or liability. It is entered into under the authority in § 7121 and is final unless fraud, malfeasance, or misrepresentation of a material fact can be shown.

A closing agreement prepared in an office under the responsibility of the Commissioner, TE/GE, may be based on a ruling that has been signed by the Commissioner, TE/GE, or the Commissioner, TE/GE’s, delegate that says that a closing agreement will be entered into on the basis of the ruling letter.

A closing agreement may be entered into when it is advantageous to have the matter permanently and conclusively closed, or when a taxpayer can show that there are good reasons for an agreement and that making the agreement will not prejudice the interests of the Government. In appropriate cases, taxpayers may be asked to enter into a closing agreement as a condition to the issuance of a letter ruling.

If, in a single case, a closing agreement is requested for each person in a class of taxpayers, separate agreements are entered into only if the class consists of 25 or fewer taxpayers. However, if the issue and holding are identical for the class and there are more than 25 taxpayers in the class, a “mass closing agreement” will be entered into with the taxpayer who is authorized by the others to represent the class.

In appropriate cases, a closing agreement may be made with sponsors of master and prototype plans.

A closing agreement may also be entered into with respect to retirement plan failures corrected under the Audit Closing Agreement Program of the Employee Plans Compliance Resolution System (EPCRS), as set forth in Rev. Proc. 2003–44, 2003–1 C.B. 1051.

Determination letter

.04 A “determination letter” is a written statement issued by the Manager, EP Determinations, or the Manager, EO Determinations that applies the principles and precedents previously announced to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in the statute, a tax treaty, or the regulations, or based on a conclusion in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin that specifically answers the questions presented.

The Manager, EP Determinations, issues determination letters involving §§ 401, 403(a), 409, and 4975(e)(7) as provided in Rev. Proc. 2006–6, page 204, this Bulletin.

Opinion letter

.05 An “opinion letter” is a written statement issued by Employee Plans Rulings and Agreements to a sponsor as to the acceptability (for purposes of §§ 401 and 501(a)) of the form of a master or prototype plan and any related trust or custodial account under §§ 401, 403(a), and 501(a), or as to the conformance of a prototype trust, custodial account, or individual annuity with the requirements of § 408(a), (b), or (k), as applicable. *See* Rev. Proc. 2005–16, 2005–10 I.R.B. 674. *See also* Rev. Proc. 91–44, 1991–2 C.B. 733, and Rev. Proc. 92–38, 1992–1 C.B. 859.

Information letter

.06 An “information letter” is a statement issued either by the Director, Employee Plans Rulings and Agreements or the Director, Exempt Organizations Rulings and Agreements. It calls attention to a well-established interpretation or principle of tax law (including a tax treaty) without applying it to a specific set of facts. To the extent resources permit, an information letter may be issued if the taxpayer’s inquiry indicates a need for general information or if the taxpayer’s request does not meet the requirements of this revenue procedure and the Service thinks general information will help the taxpayer. The taxpayer should provide a daytime telephone number with the taxpayer’s request for an information letter. Requests for information letters should be sent to the address stated in section 9.04(2) of this revenue procedure. The requirements of section 9.02 of this revenue procedure are not applicable to information letters. An information letter is advisory only and has no binding effect on the Service.

Revenue ruling

.07 A “revenue ruling” is an interpretation by the Service that has been published in the Internal Revenue Bulletin. It is the conclusion of the Service on how the law is applied to a specific set of facts. Revenue rulings are published for the information and guidance of taxpayers, Service personnel, and other interested parties.

Because each revenue ruling represents the conclusion of the Service regarding the application of law to the entire statement of facts involved, taxpayers, Service personnel, and other concerned parties are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. They should consider the effect of subsequent legislation, regulations, court decisions, revenue rulings, notices, and announcements.

See Rev. Proc. 89–14, 1989–1 C.B. 814, which states the objectives of and standards for the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

Oral guidance

.08

(1) No oral rulings and no written rulings in response to oral requests.

The Service does not orally issue letter rulings or determination letters, nor does it issue letter rulings or determination letters in response to oral requests from taxpayers. However, Service employees ordinarily will discuss with taxpayers or their representatives inquiries regarding whether the Service will rule on particular issues and questions relating to procedural matters about submitting requests for letter rulings, determination letters, and requests for recognition of exempt status for a particular organization.

(2) Discussion possible on substantive issues.

At the discretion of the Service, and as time permits, substantive issues may also be discussed. However, such a discussion will not be binding on the Service, and cannot be relied on as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Substantive tax issues involving the taxpayer that are under examination, in appeals, or in litigation will not be discussed by Service employees not directly involved in the examination, appeal, or litigation of the issues unless the discussion is coordinated with those Service employees who are directly involved in the examination, appeal, or litigation of the issues. The taxpayer or the taxpayer's representative ordinarily will be asked whether the oral request for guidance or information relates to a matter pending before another office of the Service.

If a tax issue is not under examination, in appeals, or in litigation, the tax issue may be discussed even though the issue is affected by a nontax issue pending in litigation.

A taxpayer may seek oral technical guidance from a taxpayer service representative in TE/GE Customer Account Services when preparing a return or report. Oral guidance is advisory only, and the Service is not bound to recognize it, for example, in the examination of the taxpayer's return.

The Service does not respond to letters seeking to confirm the substance of oral discussions, and the absence of a response to such a letter is not confirmation of the substance of the letter.

Nonbank trustee requests

.09 In order to receive approval to act as a nonbank custodian of plans qualified under § 401(a) or accounts described in § 403(b)(7), and as a nonbank trustee or nonbank custodian for individual retirement arrangements (IRAs) established under § 408(a), (b), or (h), or for a Coverdell educational savings account established under § 530 or an Archer medical savings account established under § 220, or a Health Savings Account under § 223, a written application must be filed that demonstrates how the applicant complies with the requirements of § 1.408–2(e)(2) through (5) of the Income Tax Regulations.

The Service must have clear and convincing proof in its files that the requirements of the regulations are met. If there is a requirement that the applicant feels is not applicable, the application must provide clear and convincing proof that such requirement is not germane to the manner in which the applicant will administer any trust or custodial account. *See*, § 1.408–2(e)(6).

The completed application should be sent to:

Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, DC 20038

Section 6.01(6) of Rev. Proc. 2006–8, page 245, this Bulletin, imposes a user’s fee for anyone applying for approval to become a nonbank trustee or custodian.

Compliance Statement

.10 A compliance statement is a binding written agreement between the Service and a taxpayer with respect to certain retirement plan failures identified by a taxpayer in a voluntary submission under the Voluntary Correction Program of the EPCRS (see Rev. Proc. 2003–44). The compliance statement addresses the failures identified in the VCP submission, the terms of correction, including any revision of administrative procedures, and the time period within which proposed corrections must be implemented. A compliance statement is conditioned on (i) there being no misstatement or omission of material facts in connection with the submission, and (ii) the implementation of the specific corrections and satisfaction of any other conditions in the compliance statement.

SECTION 4. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN GUIDANCE UNDER THIS PROCEDURE?

Taxpayers may request letter rulings, information letters and closing agreements on issues within the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division under this revenue procedure. The Service issues letter rulings to answer written inquiries of individuals and organizations about their status for tax purposes and the tax effects of their acts or transactions when appropriate in the interest of sound tax administration.

Taxpayers also may request determination letters that relate to Code sections under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. *See* Rev. Proc. 2006–6, this Bulletin.

SECTION 5. ON WHAT ISSUES MUST WRITTEN GUIDANCE BE REQUESTED UNDER DIFFERENT PROCEDURES?

Determination letters

.01 The procedures for obtaining determination letters involving §§ 401, 403(a), 409, and 4975(e)(7), and the status for exemption of any related trusts or custodial accounts under § 501(a) are contained in Rev. Proc. 2006–6, this Bulletin.

Master and prototype plans and volume submitter plans

.02 The procedures for obtaining opinion letters for master and prototype plans and any related trusts or custodial accounts under §§ 401(a), 403(a) and 501(a) and advisory letters for volume submitter plans are contained in Rev. Proc. 2005–16. The procedures for obtaining opinion letters for prototype trusts, custodial accounts or annuities under § 408(a) or (b) are contained in Rev. Proc. 87–50, as modified by Rev. Proc. 92–38 and Rev. Proc. 2002–10, 2002–1 C.B. 401. The procedures for obtaining opinion letters for prototype trusts under § 408(k) are contained in Rev. Proc. 87–50, as modified by Rev. Proc. 91–44 (as modified by Rev. Proc. 2006–8) and Rev. Proc. 2002–10. The procedures for obtaining opinion letters for SIMPLE IRAs under § 408(p) are contained in Rev. Proc. 97–29, 1997–1 C.B. 698. The procedures for obtaining opinion letters for ROTH IRAs under § 408A are contained in Rev. Proc. 98–59, 1998–2 C.B. 727.

Closing agreement program for defined contribution plans that purchased GICs or GACs

.03 Rev. Proc. 95–52, 1995–1 C.B. 439, restates and extends for an indefinite period the closing agreement program for defined contribution plans that purchased guaranteed investment contracts (GICs) or group annuity contracts (GACs) from troubled life insurance companies.

Employee Plans Compliance Resolution System

.04 The procedures for obtaining compliance statements, etc., for certain failures of plans qualified under § 401(a), § 403(b) plans, SEPs and § 457 plans under the Employee Plans Compliance Resolution System (EPCRS) are contained in Rev. Proc. 2003–44, 2003–1 C.B. 1051.

Chief Counsel

.05 The procedures for obtaining rulings, closing agreements, and information letters on issues within the jurisdiction of the Chief Counsel are contained in Rev. Proc. 2006–1, page 1, this Bulletin, including tax issues involving interpreting or applying the federal tax laws and income tax treaties relating to international transactions.

Alcohol, tobacco, and firearms taxes

.06 The procedures for obtaining letter rulings, etc., that apply to federal alcohol, tobacco, and firearms taxes under subtitle E of the Internal Revenue Code are under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau within the Treasury Department.

SECTION 6. UNDER WHAT CIRCUMSTANCES DOES THE/GE ISSUE LETTER RULINGS?

In exempt organizations matters

.01 In exempt organizations matters, the Exempt Organizations Technical Office issues letter rulings on proposed transactions and on completed transactions if the request is submitted before the return is filed for the year in which the transaction that is the subject of the request was completed. Exempt Organizations Technical issues letter rulings involving:

- (1) Organizations exempt from tax under § 501, including private foundations;
- (2) Organizations described in § 170(b)(1)(A) (except clause (v));
- (3) Political organizations described in § 527;
- (4) Qualified tuition programs described in § 529 other than state run programs;
- (5) Trusts described in § 4947(a);
- (6) Welfare benefit plans described in § 4976; and

(7) Other matters including issues under §§ 501 through 514, 4911, 4912, 4940 through 4948, 4955, 4958, 6033, 6104, 6113, and 6115.

In employee plans matters

.02 In employee plans matters, the Employee Plans Technical Office issues letter rulings on proposed transactions and on completed transactions either before or after the return is filed. Employee Plans Technical issues letter rulings involving:

- (1) §§ 72, 101(d), 219, 381(c)(11), 402, 403(b), 404, 408, 408A, 412, 414(d), 414(e), 419, 419A, 511 through 514, 4971, 4972, 4973, 4974, 4978, 4979, and 4980;
- (2) Waiver of the minimum funding standard (*See* Rev. Proc. 2004–15, 2004–1 C.B. 490), and changes in funding methods and actuarial assumptions under § 412(c)(5);
- (3) Waiver of the liquidity shortfall (as that term is defined in § 412(m)(5)) excise tax under § 4971(f)(4);
- (4) Waiver under § 4980F(c)(4) of all or part of the excise tax imposed for failure to satisfy the notice requirements described in § 4980F(e);
- (5) Whether a plan amendment is reasonable and provides for only *de minimis* increases in plan liabilities in accordance with §§ 401(a)(33) and 412(f)(2)(A) of the Code (*See* Rev. Proc. 79–62, 1979–2 C.B. 576);
- (6) A change in the plan year of an employee retirement plan and the trust year of a tax-exempt employees' trust (*See* Rev. Proc. 87–27, 1987–1 C.B. 769);
- (7) The tax consequences of prohibited transactions under §§ 503 and 4975;
- (8) Whether individual retirement accounts established by employers or associations of employees meet the requirements of § 408(c). (*See* Rev. Proc. 87–50, as modified by Rev. Proc. 91–44 (as modified by Rev. Proc. 2006–8) and Rev. Proc. 92–38);
- (9) With respect to employee stock ownership plans and tax credit employee stock ownership plans, §§ 409(l), 409(m), and 4975(d)(3). Other subsections of §§ 409 and 4975(e)(7) involve qualification issues within the jurisdiction of EP Determinations.

(10) Where the Commissioner, Tax Exempt and Government Entities Division has authority to grant extensions of certain periods of time within which the taxpayer must perform certain transactions (for example, the 90-day period for reinvesting in employer securities under § 1.46-8(e)(10) of the regulations), the taxpayer's request for an extension of such time period must be postmarked (or received, if hand delivered to the headquarters office) no later than the expiration of the original time period. Thus, for example, a request for an extension of the 90-day period under § 1.46-8(e)(10) must be made before the expiration of this period. However, see section 6.04 below with respect to elections under § 301.9100-1 of the Procedure and Administration Regulations.

In qualifications matters

.03 The Employee Plans Technical office ordinarily will not issue letter rulings on matters involving a plan's qualified status under §§ 401 through 420 and § 4975(e)(7). These matters are generally handled by the Employee Plans Determinations program as provided in Rev. Proc. 2006-6, this Bulletin, Rev. Proc. 93-10 and Rev. Proc. 93-12. Although the Employee Plans Technical office will not ordinarily issue rulings on matters involving plan qualification, a ruling may be issued where, (1) the taxpayer has demonstrated to the Service's satisfaction that the qualification issue involved is unique and requires immediate guidance, (2) as a practical matter, it is not likely that such issue will be addressed through the determination letter process, and (3) the Service determines that it is in the interest of good tax administration to provide guidance to the taxpayer with respect to such qualification issue.

Request for extension of time for making an election or for other relief under § 301.9100-1 of the Procedure and Administration Regulations

.04 Employee Plans Technical or Exempt Organizations Technical will consider a request for an extension of time for making an election or other application for relief under § 301.9100-1 of the Procedure and Administration Regulations even if submitted after the return covering the issue presented in the § 301.9100-1 request has been filed and even if submitted after an examination of the return has begun or after the issues in the return are being considered by an appeals office or a federal court. In such a case, EP or EO Technical will notify the Director, EP or EO Examinations.

Except for those requests pertaining to applications for recognition of exemption, § 301.9100-1 requests, even those submitted after the examination of the taxpayer's return has begun, are letter ruling requests and therefore should be submitted pursuant to this revenue procedure, and require payment of the applicable user fee, referenced in section 9.02(14) of this revenue procedure. In addition, the taxpayer must include the information required by § 301.9100-3(e).

However, an election made pursuant to § 301.9100-2 is not a letter ruling and does not require payment of any user fee. *See* § 301.9100-2(d). Such an election pertains to an automatic extension of time under § 301.9100-1.

Issuance of a letter ruling before the issuance of a regulation or other published guidance

.05 Unless the issue is covered by section 8 of this procedure, a letter ruling may be issued before the issuance of a temporary or final regulation or other published guidance that interprets the provisions of any act under the following conditions:

(1) Answer is clear or is reasonably certain. If the letter ruling request presents an issue for which the answer seems clear by applying the statute to the facts or for which the answer seems reasonably certain but not entirely free from doubt, a letter ruling will be issued.

(2) Answer is not reasonably certain. The Service will consider all letter ruling requests and use its best efforts to issue a letter ruling even if the answer does not seem reasonably certain where the issuance of a letter ruling is in the best interest of tax administration.

(3) Issue cannot be readily resolved before a regulation or any other published guidance is issued. A letter ruling will not be issued if the letter ruling request presents an issue that cannot be readily resolved before a regulation or any other published guidance is issued.

Issues in prior return

.06 The Service ordinarily does not issue rulings if, at the time the ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period, and that issue—

(1) is being examined by the Director, EP or EO Examinations,

(2) is being considered by an appeals office,

(3) is pending in litigation in a case involving the taxpayer or related taxpayer, or

(4) has been examined by the Director, EP or EO Examinations or considered by an appeals office, and the statutory period of limitation has not expired for either assessment or filing a claim for a refund or a closing agreement covering the issue of liability has not been entered into by the Director, EP or EO Rulings and Agreements or by an appeals office.

If a return dealing with an issue for a particular year is filed while a request for a ruling on that issue is pending, EP or EO Technical will issue the ruling unless it is notified by the taxpayer that an examination of that issue or the identical issue on an earlier year's return has been started by the Director, EP or EO Examinations. *See* section 9.05. However, even if an examination has begun, EP or EO Technical ordinarily will issue the letter ruling if the Director, EP or EO Examinations agrees, by memorandum, to permit the ruling to be issued.

Generally not to business associations or groups

.07 EP or EO Technical does not issue letter rulings to business, trade, or industrial associations or to similar groups concerning the application of the tax laws to members of the group. But groups and associations may submit suggestions of generic issues that would be appropriately addressed in revenue rulings. *See* Rev. Proc. 89-14, which states objectives of, and standards for, the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

EP or EO Technical, however, may issue letter rulings to groups or associations on their own tax status or liability if the request meets the requirements of this revenue procedure.

Generally not to foreign governments

.08 EP or EO Technical does not issue letter rulings to foreign governments or their political subdivisions about the U.S. tax effects of their laws. However, EP or EO Technical may issue letter rulings to foreign governments or their political subdivisions on their own tax status or liability under U.S. law if the request meets the requirements of this revenue procedure.

Generally not on federal tax consequences of proposed legislation

.09 EP or EO Technical does not issue letter rulings on a matter involving the federal tax consequences of any proposed federal, state, local, municipal, or foreign legislation. EP or EO Technical, however, may provide general information in response to an inquiry.

Not on certain matters under § 53.4958-6 of the Foundation and Similar Excise Taxes Regulations

.10 EO Technical does not issue letter rulings as to whether a compensation or property transaction satisfies the rebuttable presumption that the transaction is not an excess benefit transaction as described in § 53.4958-6 of the Foundation and Similar Excise Taxes Regulations.

Not on stock options

.11 EP Technical does not issue letter rulings on the income tax (including unrelated business income tax) or excise tax consequences of the contribution of stock options to, or their subsequent exercise from, plans described in Part I of Subchapter D of Subtitle A of the Code.

Generally not on EO joint venture with a for-profit organization

.12 With the exception of when the issue is present in an initial application for recognition of exemption, EO Technical does not issue letter rulings as to whether a joint venture with a for-profit organization affects an organization's exempt status or results in unrelated business income.

Not on qualification of state run programs under § 529

.13 EO Technical will not issue letter rulings as to whether a state run tuition program qualifies under § 529.

SECTION 7. UNDER WHAT CIRCUMSTANCES DOES EP OR EO DETERMINATIONS ISSUE DETERMINATION LETTERS?

Circumstances under which determination letters are issued

.01 Employee Plans or Exempt Organizations Determinations issues determination letters only if the question presented is specifically answered by a statute, tax treaty, or regulation, or

by a conclusion stated in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin.

In general

.02 In employee plans and exempt organizations matters, the EP or EO Determinations office issues determination letters in response to taxpayers' written requests on completed transactions. However, see section 13.08 of this revenue procedure. A determination letter usually is not issued for a question concerning a return to be filed by the taxpayer if the same question is involved in a return under examination.

In situations involving continuing transactions, such as whether an ongoing activity is an unrelated trade or business, EP or EO Technical would issue a ruling covering future tax periods and periods for which a return had not yet been filed.

EP or EO Determinations does not issue determination letters on the tax consequences of proposed transactions, except as provided in sections 7.03 and 7.04 below.

Under no circumstances will EP or EO Determinations issue a determination letter unless it is clearly shown that the request concerns a return that has been filed or is required to be filed.

In employee plans matters

.03 In employee plans matters, the Employee Plans Determinations office issues determination letters on the qualified status of employee plans under §§ 401, 403(a), 409 and 4975(e)(7), and the exempt status of any related trust under § 501. See Rev. Proc. 2006-6, this Bulletin, Rev. Proc. 93-10 and Rev. Proc. 93-12.

In exempt organizations matters

.04 In exempt organizations matters, the Exempt Organizations Determinations office issues determination letters involving:

(1) Qualification for exempt status of organizations described in §§ 501 and 521 to the extent provided in Rev. Proc. 90-27, 1990-1 C.B. 514, as modified by Rev. Proc. 2006-8;

(2) Updated exempt status letter to reflect changes to an organization's name or address, or to replace a lost exempt status letter;

(3) Classification of private foundation status as provided in Rev. Proc. 76-34, 1976-2 C.B. 656;

(4) Reclassification of private foundation status, including update of private foundation status at the end of an organization's advance ruling period;

(5) Recognition of unusual grants to certain organizations under §§ 170(b)(1)(A)(vi) and 509(a)(2);

(6) Requests for relief under § 301.9100-1 of the Procedure and Administration Regulations in connection with applications for recognition of exemption;

(7) Whether certain organizations qualify as exempt operating foundations described in § 4940(d);

(8) Advance approval of certain set-asides described in § 4942(g)(2);

(9) Advance approval under § 4945 of organizations' grant making procedures;

(10) Advance approval of voter registration activities described in § 4945(f); and

(11) Whether an organization is exempt from filing annual information returns under § 6033 as provided in Rev. Procs. 83-23, 1983-1 C.B. 687, 95-48, 1995-2 C.B. 418, and 96-10, 1996-1 C.B. 577;

Circumstances under which determination letters are not issued

.05 EP or EO Determinations will not issue a determination letter in response to any request if—

(1) it appears that the taxpayer has directed a similar inquiry to EP or EO Technical;

(2) the same issue involving the same taxpayer or a related taxpayer is pending in a case in litigation or before an appeals office;

(3) the determination letter is requested by an industry, trade association, or similar group on behalf of individual taxpayers within the group (other than subordinate organizations covered by a group exemption letter); or

(4) the request involves an industry-wide problem.

Requests involving returns already filed

.06 A request received by the Service on a question concerning a return that is under examination, will be, in general, considered in connection with the examination of the return. If a response is made to the request before the return is examined, it will be considered a tentative finding in any later examination of that return.

Attach a copy of determination letter to taxpayer's return

.07 A taxpayer who, before filing a return, receives a determination letter about any transaction that has been consummated and that is relevant to the return being filed should attach a copy of the determination letter to the return when it is filed.

Review of determination letters

.08 Determination letters issued under sections 7.02 through 7.04 of this revenue procedure are not reviewed by EP or EO Technical before they are issued. If a taxpayer believes that a determination letter of this type is in error, the taxpayer may ask EP or EO Determinations to reconsider the matter or to request technical advice from EP or EO Technical as explained in Rev. Proc. 2006-5, page 174, this Bulletin.

(1) In employee plans matters, the procedures for review of determination letters relating to the qualification of employee plans involving §§ 401 and 403(a) are provided in Rev. Proc. 2006-6, Rev. Proc. 93-10 and Rev. Proc. 93-12.

(2) In exempt organizations matters, the procedures for the review of determination letters relating to the exemption from federal income tax of certain organizations under §§ 501 and 521 are provided in Rev. Proc. 90-27, as modified by Rev. Proc. 2006-8.

SECTION 8. UNDER WHAT CIRCUMSTANCES DOES THE SERVICE HAVE DISCRETION TO ISSUE LETTER RULINGS AND DETERMINATION LETTERS?

Ordinarily not in certain areas because of factual nature of the problem

.01 The Service ordinarily will not issue a letter ruling or determination letter in certain areas because of the factual nature of the problem involved or because of other reasons. The Service may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case.

No "comfort" letter rulings

.02 No letter ruling will be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decision of a court of appropriate jurisdiction, revenue ruling, revenue procedure, notice or other authority published in the Internal Revenue Bulletin. Instead of issuing a letter ruling, the Service may, when it is considered appropriate and in the best interests of the Service, issue an information letter calling attention to well-established principles of tax law.

Not on alternative plans or hypothetical situations

.03 A letter ruling or a determination letter will not be issued on alternative plans of proposed transactions or on hypothetical situations.

Ordinarily not on part of an integrated transaction

.04 The Service ordinarily will not issue a letter ruling on only part of an integrated transaction. If, however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Before preparing the letter ruling request, a taxpayer should call the office having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether the Service will issue a letter ruling on part of the transaction.

Not on partial terminations of employee plans

.05 The Service will not issue a letter ruling on the partial termination of an employee plan. Determination letters involving the partial termination of an employee plan may be issued.

Law requires ruling letter

.06 The Service will issue rulings on prospective or future transactions if the law or regulations require a determination of the effect of a proposed transaction for tax purposes.

Issues under consideration by PBGC or DOL

.07 A letter ruling or determination letter relating to an issue that is being considered by the Pension Benefit Guaranty Corporation (PBGC) or the Department of Labor (DOL), and involves the same taxpayer, shall be issued at the discretion of the Service.

Cafeteria plans

.08 The Service does not issue letter rulings or determination letters on whether a cafeteria plan satisfies the requirements of § 125. *See also* Rev. Proc. 2006–3, also in this Bulletin, for areas under the jurisdiction of the Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities) involving cafeteria plans in which advance rulings or determination letters will not be issued.

Determination letters

.09 *See* section 3.02 of Rev. Proc. 2006–6 for employee plans matters on which determination letters will not be issued.

Domicile in a foreign jurisdiction

.10

(1) The Service is ordinarily unwilling to rule in situations where a taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(2) The provisions of subsection 8.10(1) above shall not apply if the taxpayer or affected related party (a) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (b) waives all claims to protection of bank and commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

Employee Stock Ownership Plans

.11

(1) The Service does not issue a letter ruling on whether or not the renewal, extension or refinancing of an exempt loan satisfies the requirements of § 4975(d)(3) of the Internal Revenue Code.

(2) The Service does not issue a letter ruling on whether the pre-payment of ESOP loans satisfies the requirements of § 4975(d)(3) other than with respect to plan termination.

Indian Tribal Governments

.12 The Service does not issue letter rulings or determination letters on whether or not an Indian tribal government satisfies the requirements of § 414(d).

SECTION 9. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING LETTER RULINGS AND DETERMINATION LETTERS?

In general

.01 This section explains the general instructions for requesting letter rulings and determination letters on all matters. Requests for letter rulings and determination letters require the payment of the applicable user fee discussed in section 9.02(14) of this revenue procedure.

Specific and additional instructions also apply to requests for letter rulings and determination letters on certain matters. Those matters are listed in section 10 of this revenue procedure followed by a reference (usually to another revenue procedure) where more information can be obtained.

Certain information required in all requests

.02

Facts

(1) Complete statement of facts and other information. Each request for a letter ruling or a determination letter must contain a complete statement of all facts relating to the transaction. These facts include—

(a) names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties. (The term “all interested parties” does not mean all shareholders of a widely held corporation requesting a letter ruling relating to a reorganization, or all employees where a large number may be involved.);

(b) a complete statement of the business reasons for the transaction; and

(c) a detailed description of the transaction.

The Service will usually not rule on only one step of a larger integrated transaction. See section 8.04 of this revenue procedure. However, if such a letter ruling is requested, the facts, circumstances, true copies of relevant documents, etc., relating to the entire transaction must be submitted.

Documents

(2) Copies of all contracts, wills, deeds, agreements, instruments, plan documents, and other documents. True copies of all contracts, wills, deeds, agreements, instruments, plan documents, trust documents, proposed disclaimers, and other documents pertinent to the transaction must be submitted with the request.

Each document, other than the request, should be labelled alphabetically and attached to the request in alphabetical order. Original documents, such as contracts, wills, etc., should not be submitted because they become part of the Service’s file and will not be returned.

Analysis of material facts

(3) Analysis of material facts. All material facts in documents must be included rather than merely incorporated by reference, in the taxpayer’s initial request or in supplemental letters. These facts must be accompanied by an analysis of their bearing on the issue or issues, specifying the provisions that apply.

Same issue in an earlier return

(4) Statement regarding whether same issue is in an earlier return. The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer’s representatives, the same issue is in an earlier return of the taxpayer (or in a return for any year of a related taxpayer within the meaning of § 267, or of a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504).

If the statement is affirmative, it must specify whether the issue—

(a) is being examined by the Service;

(b) has been examined and if so, whether or not the statutory period of limitations has expired for either assessing tax or filing a claim for refund or credit of tax;

(c) has been examined and if so, whether or not a closing agreement covering the issue or liability has been entered into by the Service;

(d) is being considered by an appeals office in connection with a return from an earlier period;

(e) has been considered by an appeals office in connection with a return from an earlier period and if so, whether or not the statutory period of limitations has expired for either assessing tax or filing a claim for refund or credit of tax;

(f) has been considered by an appeals office in connection with a return from an earlier period and whether or not a closing agreement covering the issue or liability has been entered into by an appeals office;

(g) is pending in litigation in a case involving the taxpayer or a related taxpayer; or

(h) in employee plans matters, is being considered by the Pension Benefit Guaranty Corporation or the Department of Labor.

Same or similar issue previously submitted or currently pending

(5) Statement regarding whether same or similar issue was previously ruled on or requested, or is currently pending. The request must also state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives—

(a) the Service previously ruled on the same or similar issue for the taxpayer (or a related taxpayer within the meaning of § 267, or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) or a predecessor;

(b) the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted the same or similar issue to the Service but withdrew the request before a letter ruling or determination letter was issued;

(c) the taxpayer, a related taxpayer, or a predecessor previously submitted a request involving the same or a similar issue that is currently pending with the Service; or

(d) at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request involving the same or a similar issue to the Service.

If the statement is affirmative for (a), (b), (c), or (d) of this section 9.02(5), the statement must give the date the request was submitted, the date the request was withdrawn or ruled on, if applicable, and other details of the Service's consideration of the issue.

Statement of authorities supporting taxpayer's views

(6) Statement of supporting authorities. If the taxpayer advocates a particular conclusion, an explanation of the grounds for that conclusion and the relevant authorities to support it must also be included. Even if not advocating a particular tax treatment of a proposed transaction, the taxpayer must still furnish views on the tax results of the proposed transaction and a statement of relevant authorities to support those views.

In all events, the request must include a statement of whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities.

Statement of authorities contrary to taxpayer's view

(7) Statement of contrary authorities. The taxpayer is also encouraged to inform the Service about, and discuss the implications of, any authority believed to be contrary to the position advanced, such as legislation (or pending legislation), tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices or announcements. If the taxpayer determines that there are no contrary authorities, a statement in the request to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Service in complex cases or those presenting difficult or novel issues may request submission of contrary authorities or a statement that none exists. Failure to comply with this request may result in the Service's refusal to issue a letter ruling or determination letter.

Identifying and discussing contrary authorities will generally enable Service personnel to understand the issue and relevant authorities more quickly. When Service personnel receive the request, they will have before them the taxpayer's thinking on the effect and applicability of contrary authorities. This information should make research easier and lead to earlier action by the Service. If the taxpayer does not disclose and distinguish significant contrary authorities, the Service may need to request additional information, which will delay action on the request.

Statement identifying pending legislation

(8) Statement identifying pending legislation. At the time of filing the request, the taxpayer must identify any pending legislation that may affect the proposed transaction. In addition, if applicable legislation is introduced after the request is filed but before a letter ruling or determination letter is issued, the taxpayer must notify the Service.

**Deletions statement required
by § 6110**

(9) Statement identifying information to be deleted from copy of letter ruling or determination letter for public inspection. The text of certain letter rulings and determination letters is open to public inspection under § 6110. The Service makes deletions from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), a request for a letter ruling or determination letter must be accompanied by a statement indicating the deletions desired (“deletions statement”). If the deletions statement is not submitted with the request, a Service representative will tell the taxpayer that the request will be closed if the Service does not receive the deletions statement within 30 calendar days. *See* section 11.03 of this revenue procedure.

(a) Format of deletions statement. A taxpayer who wants only names, addresses, and identifying numbers to be deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletions statement must be accompanied by a copy of the request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletions statement must indicate the statutory basis under § 6110(c) for each proposed deletion.

If the taxpayer decides to ask for additional deletions before the letter ruling or determination letter is issued, additional deletions statements may be submitted.

(b) Location of deletions statement. The deletions statement must not appear in the request, but instead must be made in a separate document and placed on top of the request for a letter ruling or determination letter.

(c) Signature. The deletions statement must be signed and dated by the taxpayer or the taxpayer’s authorized representative. A stamped or faxed signature is not permitted.

(d) Additional information. The taxpayer should follow the same procedures above to propose deletions from any additional information submitted after the initial request. An additional deletions statement, however, is not required with each submission of additional information if the taxpayer’s initial deletions statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information.

(e) Taxpayer may protest deletions not made. After receiving from the Service the notice under § 6110(f)(1) of intention to disclose the letter ruling or determination letter (including a copy of the version proposed to be open to public inspection and notation of third-party communications under § 6110(d)), the taxpayer may protest the disclosure of certain information in the letter ruling or determination letter. The taxpayer must send a written statement within 20 calendar days to the Service office indicated on the notice of intention to disclose. The statement must identify those deletions that the Service has not made and that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the letter ruling or determination letter and bracket the deletions proposed that have not been made by the Service. Generally, the Service will not consider deleting any material that the taxpayer did not propose to be deleted before the letter ruling or determination letter was issued.

Within 20 calendar days after the Service receives the response to the notice under § 6110(f)(1), the Service will mail to the taxpayer its final administrative conclusion regarding the deletions to be made. The taxpayer does not have the right to a conference to resolve any disagreements concerning material to be deleted from the text of the letter ruling or determination letter. However, these matters may be taken up at any conference that is otherwise scheduled regarding the request.

(f) Taxpayer may request delay of public inspection. After receiving the notice under § 6110(f)(1) of intention to disclose, but within 60 calendar days after the date of notice, the taxpayer may send a request for delay of public inspection under either § 6110(g)(3) or (4). The request for delay must be sent to the Service office indicated on the notice of intention to disclose. A request for delay under § 6110(g)(3) must contain the date on which it is expected that the underlying transaction will be completed. The request for delay under § 6110(g)(4)

must contain a statement from which the Commissioner of Internal Revenue may determine that there are good reasons for the delay.

Section 6110(l)(1) states that § 6110 disclosure provisions do not apply to any matter to which § 6104 applies. Therefore, letter rulings, determination letters, technical advice memoranda, and related background file documents dealing with the following matters (covered by § 6104) are not subject to § 6110 disclosure provisions—

(i) An approved application for exemption under § 501(a) as an organization described in § 501(c) or (d), or notice of status as a political organization under § 527, together with any papers submitted in support of such application or notice;

(ii) An application for exemption under § 501(a) with respect to the qualification of a pension, profit-sharing or stock bonus plan, or an individual retirement account described in § 408 or § 408A, whether the plan or account has more than 25 or less than 26 participants, or any application for exemption under § 501(a) by an organization forming part of such a plan or an account;

(iii) Any document issued by the Internal Revenue Service in which the qualification or exempt status of a plan or account is granted, denied, or revoked or the portion of any document in which technical advice with respect thereto is given;

(iv) Any application filed and any document issued by the Internal Revenue Service with respect to the qualification or status of EP master and prototype plans; and

(v) The portion of any document issued by the Internal Revenue Service with respect to the qualification or exempt status of a plan or account of a proposed transaction by such plan, or account.

Signature on request

(10) Signature by taxpayer or authorized representative. The request for a letter ruling or determination letter must be signed and dated by the taxpayer or the taxpayer's authorized representative. Neither a stamped signature nor a faxed signature is permitted.

Authorized representatives

(11) Authorized representatives. To sign the request or to appear before the Service in connection with the request, the representative must be:

Attorney

(a) An attorney who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an attorney and current authorization to represent the taxpayer;

Certified public accountant

(b) A certified public accountant who is qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as a certified public accountant and current authorization to represent the taxpayer;

Enrolled agent

(c) An enrolled agent who is a person, other than an attorney or certified public accountant, that is currently enrolled to practice before the Service and is not currently under suspension or disbarment from practice before the Service, including a person enrolled to practice only for employee plans matters. He or she must file a written declaration with the Service showing current enrollment and authorization to represent the taxpayer. Either the enrollment number or the expiration date of the enrollment card must be included in the declaration. For the rules on who may practice before the Service, see Treasury Department Circular No. 230;

Enrolled actuary

(d) An enrolled actuary who is a person enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 and qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an enrolled actuary and current

authorization to represent the taxpayer. Practice as an enrolled actuary is limited to representation with respect to issues involving the following statutory provisions: §§ 401, 403(a), 404, 412, 413, 414, 4971, 6057, 6058, 6059, 6652(d), 6652(e), 6692, 7805(b), and 29 U.S.C. 1083;

A person with a “Letter of Authorization”

(e) Any other person, including a foreign representative who has received a “Letter of Authorization” from the Director, Office of Professional Responsibility under section 10.7(d) of Treasury Department Circular No. 230. A person may make a written request for a “Letter of Authorization” to: Office of Director, Office of Professional Responsibility, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224. Section 10.7(d) of Circular No. 230 authorizes the Commissioner to allow an individual who is not otherwise eligible to practice before the Service to represent another person in a particular matter. For additional information, see section 9.02(12) below.

Employee, general partner, bona fide officer, administrator, trustee, etc.

(f) The above requirements do not apply to a regular full-time employee representing his or her employer, to a general partner representing his or her partnership, to a *bona fide* officer representing his or her corporation, association, or organized group, to a trustee, receiver, guardian, personal representative, administrator, or executor representing a trust, receivership, guardianship, or estate, or to an individual representing his or her immediate family. A preparer of a return (other than a person referred to in paragraph (a), (b), (c), (d) or (e) of this section 9.02(11)) who is not a full-time employee, general partner, a *bona fide* officer, an administrator, trustee, etc., or an individual representing his or her immediate family may not represent a taxpayer in connection with a letter ruling, determination letter or a technical advice request. See section 10.7(c) of Treasury Department Circular No. 230.

Foreign representative

(g) A foreign representative (other than a person referred to in paragraph (a), (b), (c), (d) or (e) of this section 9.02(11)) is not authorized to practice before the Service and, therefore, must withdraw from representing a taxpayer in a request for a letter ruling or a determination letter. In this situation, the nonresident alien or foreign entity must submit the request for a letter ruling or a determination letter on the individual’s or entity’s own behalf or through a person referred to in paragraph (a), (b), (c), (d) or (e) of this section 9.02(11).

Power of attorney and declaration of representative

(12) Power of attorney and declaration of representative. Any authorized representative, whether or not enrolled to practice, must also comply with the conference and practice requirements of the Statement of Procedural Rules (26 C.F.R. § 601.501–601.509 (2005)), which provide the rules for representing a taxpayer before the Service. In addition, an unenrolled preparer must file a Form 8821 (Rev. April 2004), *Tax Information Authorization*, for certain limited employee plans matters.

Form 2848 (Rev. March 2004), *Power of Attorney and Declaration of Representative*, must be used to provide the representative’s authorization (Part I of Form 2848, *Power of Attorney*) and the representative’s qualification (Part II of Form 2848, *Declaration of Representative*). The name of the person signing Part I of Form 2848 should also be typed or printed on this form. A stamped signature is not permitted. An original, a copy, or a facsimile transmission (fax) of the power of attorney is acceptable so long as its authenticity is not reasonably disputed. For additional information regarding the power of attorney form, see section 9.03(2) of this revenue procedure.

For the requirement regarding compliance with Treasury Department Circular No. 230, see section 9.09 of this revenue procedure.

Penalties of perjury statement

(13) Penalties of perjury statement.

(a) Format of penalties of perjury statement. A request for a letter ruling or determination letter and any change in the request submitted at a later time must be accompanied by the following declaration: **“Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and, to the best of my knowledge and belief, the request or the modification contains all the relevant facts relating to the request, and such facts are true, correct, and complete.”** See section 11.04 of this revenue procedure for the penalties of perjury statement applicable for submissions of additional information.

(b) Signature by taxpayer. The declaration must be signed and dated by the taxpayer, not the taxpayer's representative. Neither a stamped signature nor a faxed signature is permitted.

The person who signs for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts, and whose duties are not limited to obtaining a letter ruling or determination letter from the Service. If the corporate taxpayer is a member of an affiliated group filing consolidated returns, a penalties of perjury statement must also be signed and submitted by an officer of the common parent of the group.

The person signing for a trust, a state law partnership, or a limited liability company must be, respectively, a trustee, general partner, or member-manager who has personal knowledge of the facts.

Applicable user fee

(14) Applicable user fee. Section 7528 of the Code, as added by section 202 of the Temporary Assistance for Needy Families Block Grant Program and extended by section 690 of the American Jobs Creation Act of 2004 requires taxpayers to pay user fees for requests for rulings, opinion letters, determination letters, and similar requests. Rev. Proc. 2006-8, page 245, this Bulletin, contains the schedule of fees for each type of request under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division and provides guidance for administering the user fee requirements. If two or more taxpayers are parties to a transaction and each requests a letter ruling, each taxpayer must satisfy the rules herein and additional user fees may apply.

Number of copies of request to be submitted

(15) Number of copies of request to be submitted. Generally a taxpayer needs only to submit one copy of the request for a letter ruling or determination letter. If, however, more than one issue is presented in the letter ruling request, the taxpayer is encouraged to submit additional copies of the request.

Further, two copies of the request for a letter ruling or determination letter are required if—

(a) the taxpayer is requesting separate letter rulings or determination letters on different issues as explained later under section 9.03(1) of this revenue procedure;

(b) the taxpayer is requesting deletions other than names, addresses, and identifying numbers, as explained in section 9.02(9) of this revenue procedure. (One copy is the request for the letter ruling or determination letter and the second copy is the deleted version of such request.); or

(c) a closing agreement (as defined in section 3.03 of this revenue procedure) is being requested on the issue presented.

Sample of a letter ruling request

(16) Sample format for a letter ruling request. To assist a taxpayer or the taxpayer's representative in preparing a letter ruling request, a sample format for a letter ruling request is provided in Appendix A. This format is not required to be used by the taxpayer or the taxpayer's representative. If the letter ruling request is not identical or similar to the format in Appendix A, the different format will neither defer consideration of the letter ruling request nor be cause for returning the request to the taxpayer or taxpayer's representative.

Checklist

(17) Checklist for letter ruling requests. The Service will be able to respond more quickly to a taxpayer's letter ruling request if it is carefully prepared and complete. The checklist in Appendix B of this revenue procedure is designed to assist taxpayers in preparing a request by reminding them of the essential information and documents to be furnished with the request. The checklist in Appendix B must be completed to the extent required by the instructions in the checklist, signed and dated by the taxpayer or the taxpayer's representative, and placed on top of the letter ruling request. If the checklist in Appendix B is not received, a group representative will ask the taxpayer or the taxpayer's representative to submit the checklist, which may delay action on the letter ruling request. A photocopy of this checklist may be used.

Additional information required in certain circumstances

.03

Multiple issues

(1) To request separate letter rulings for multiple issues in a single situation. If more than one issue is presented in a request for a letter ruling, the Service generally will issue a single ruling letter covering all the issues. However, if the taxpayer requests separate letter rulings on any of the issues (because, for example, one letter ruling is needed sooner than another), the Service will usually comply with the request unless it is not feasible or not in the best interests of the Service to do so. A taxpayer who wants separate letter rulings on multiple issues should make this clear in the request and submit two copies of the request. Additional checklists are solely for the specific issues designated.

In issuing each letter ruling, the Service will state that it has issued separate letter rulings or that requests for other letter rulings are pending.

Power of attorney

(2) Recipient of original of letter ruling or determination letter. The Service will send the original of the letter ruling or determination letter to the taxpayer and a copy of the letter ruling or determination letter to the taxpayer's representative. In this case, the letter ruling or determination letter is addressed to the taxpayer. A Form 2848, *Power of Attorney and Declaration of Representative* (Rev. March 2004), must be used to provide the representative's authorization except in certain employee plans matters. See section 9.02(12) of this revenue procedure.

Copies of letter ruling or determination letter sent to multiple representatives

(a) To have copies sent to multiple representatives. When a taxpayer has more than one representative, the Service will send the copy of the letter ruling or determination letter to the first representative named on the most recent power of attorney. If the taxpayer wants an additional copy of the letter ruling or determination letter sent to the second representative listed in the power of attorney, the taxpayer must check the appropriate box on Form 2848. If this form is not used, the taxpayer must state in the power of attorney that a copy of the letter ruling or determination letter is to be sent to the second representative listed in the power of attorney. Copies of the letter ruling or determination letter, however, will be sent to no more than two representatives.

Copy of letter ruling or determination letter sent to taxpayer's representative

(b) To have copy sent to taxpayer's representative.

A copy of the letter ruling or determination letter will be sent to the taxpayer's representative.

If the taxpayer wants a copy of the letter ruling or determination letter sent to the taxpayer's second representative, the taxpayer must check the appropriate box on Form 2848.

No copy of letter ruling or determination letter sent to taxpayer's representative

(c) To have no copy sent to taxpayer's representative. If a taxpayer does not want a copy of the letter ruling or determination letter sent to any representative, the taxpayer must check the appropriate box on Form 2848.

Expedited handling

(3) To request expedited handling. The Service ordinarily processes requests for letter rulings and determination letters in order of the date received. Expedited handling means that a request is processed ahead of the regular order. Expedited handling is granted only in rare and unusual cases, both out of fairness to other taxpayers and because the Service seeks to process all requests as expeditiously as possible and to give appropriate deference to normal business exigencies in all cases not involving expedited handling.

A taxpayer who has a compelling need to have a request processed ahead of the regular order may request expedited handling. This request must explain in detail the need for expedited handling. The request must be made in writing, preferably in a separate letter with, or soon after filing, the request for the letter ruling or determination letter. If the request is not made in a separate letter, then the letter in which the letter ruling or determination letter request is made should say, at the top of the first page: **"Expedited Handling Is Requested. See page _____ of this letter."**

A request for expedited handling will not be forwarded to the appropriate group for action until the check or money order for the user fee in the correct amount is received.

Whether the request will be granted is within the Service's discretion. The Service may grant a request when a factor outside a taxpayer's control creates a real business need to obtain a letter ruling or determination letter before a certain time in order to avoid serious business consequences. Examples include situations in which a court or governmental agency has imposed a specific deadline for the completion of a transaction, or a transaction must be completed expeditiously to avoid an imminent business emergency (such as the hostile takeover of a corporate taxpayer), provided that the taxpayer can demonstrate that the deadline or business emergency, and the need for expedited handling, resulted from circumstances that could not reasonably have been anticipated or controlled by the taxpayer. To qualify for expedited handling in such situations, the taxpayer must also demonstrate that the taxpayer submitted the request as promptly as possible after becoming aware of the deadline or emergency. The extent to which the letter ruling or determination letter complies with all of the applicable requirements of this revenue procedure, and fully and clearly presents the issues, is a factor in determining whether expedited treatment will be granted. When the Service agrees to process a request out of order, it cannot give assurance that any letter ruling or determination letter will be processed by the time requested. The scheduling of a closing date for a transaction or a meeting of the board of directors or shareholders of a corporation, without regard for the time it may take to obtain a letter ruling or determination letter, will not be considered a sufficient reason to process a request ahead of its regular order. Also, the possible effect of fluctuation in the market price of stocks on a transaction will not be considered a sufficient reason to process a request out of order.

Because most requests for letter rulings and determination letters cannot be processed ahead of their regular order, the Service urges all taxpayers to submit their requests well in advance of the contemplated transaction. In addition, in order to facilitate prompt action on letter ruling requests taxpayers are encouraged to ensure that their initial submissions comply with all of the requirements of this revenue procedure (including the requirements of other applicable guidelines set forth in section 10 of this revenue procedure), and to provide any additional information requested by the Service promptly.

Facsimile transmission (fax)

(4) To receive a letter ruling or submit a request for a letter ruling by facsimile transmission (fax).

(a) To receive a letter ruling by fax. A letter ruling ordinarily is not sent by fax. However, if the taxpayer requests, a copy of a letter ruling may be faxed to the taxpayer or the taxpayer's authorized representative. A letter ruling, however, is not issued until the ruling is mailed. *See* § 301.6110-2(h).

A request to fax a copy of the letter ruling to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original letter ruling request or prior to the approval of the letter ruling. The request must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the letter ruling is to be faxed.

In addition, because of the nature of a fax transmission, a statement containing a waiver of any disclosure violations resulting from the fax transmission must accompany the request. Nevertheless, the Service will take certain precautions to protect confidential information. For example, the Service will use a cover sheet that identifies the intended recipient of the fax and the number of pages transmitted. The cover sheet, if possible, will not identify the specific taxpayer by name, and it will be the first page covering the letter ruling being faxed.

(b) To submit a request for a letter ruling by fax. Original letter ruling requests sent by fax are discouraged because such requests must be treated in the same manner as requests by letter. For example, the faxed letter ruling request will not be forwarded to the applicable office for action until the check for the user fee is received.

Requesting a conference

(5) To request a conference. A taxpayer who wants to have a conference on the issues involved should indicate this in writing when, or soon after, filing the request. *See also* sections 12.01, 12.02, and 13.09(2) of this revenue procedure.

Address to send the request

.04

Requests for letter rulings

(1) Requests for letter rulings should be sent to the following offices (as appropriate):

Internal Revenue Service
Attention: EP Letter Rulings
P.O. Box 27063
McPherson Station
Washington, DC 20038

Internal Revenue Service
Attention: EO Letter Rulings
P.O. Box 27720
McPherson Station
Washington, DC 20038

Hand delivered requests must be marked RULING REQUEST SUBMISSION. The delivery should be made between the hours of 8:30 a.m. and 4:00 p.m.; where a receipt will be given:

Courier's Desk
Internal Revenue Service
Attention: SE:T:EP:RA or SE:T:EO:RA
1111 Constitution Avenue, NW – PE
Washington, DC 20224

Requests for information letters

(2) Requests for information letters on either employee plans matters or exempt organizations matters should be sent to Employee Plans or Exempt Organizations (as appropriate):

Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA or SE:T:EO:RA
1111 Constitution Avenue, NW – PE
Washington, DC 20224

Requests for determination letters

(3) Requests for determination letters should be sent to:

Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

For fees required with determination letter requests, see section 6 of Rev. Proc. 2006–8.

Pending letter ruling requests

.05

(1) Circumstances under which the taxpayer must notify EP or EO Technical. The taxpayer must notify EP or EO Technical if, after the letter ruling request is filed but before a letter ruling is issued, the taxpayer knows that—

(a) an examination of the issue or the identical issue on an earlier year's return has been started by an EP or EO Examinations office;

(b) in employee plans matters, the issue is being considered by the Pension Benefit Guaranty Corporation or the Department of Labor; or

(c) legislation that may affect the transaction has been introduced (*see* section 9.02(8) of this revenue procedure).

(2) Taxpayer must notify EP or EO Technical if return is filed and must attach request to return. If the taxpayer files a return before a letter ruling is received from EP or EO Technical concerning the issue, the taxpayer must notify EP or EO Technical that the return has been filed. The taxpayer must also attach a copy of the letter ruling request to the return to alert the EP or EO Examinations office and thereby avoid premature EP or EO Examinations office action on the issue.

When to attach letter ruling to return

.06 A taxpayer who receives a letter ruling before filing a return about any transaction that is relevant to the return being filed must attach a copy of the letter ruling to the return when it is filed.

How to check on status of request

.07 The taxpayer or the taxpayer's authorized representative may obtain information regarding the status of a request by calling the person whose name and telephone number are shown on the acknowledgement of receipt of the request.

Request may be withdrawn or EP or EO Technical may decline to issue letter ruling

.08

(1) In general. A taxpayer may withdraw a request for a letter ruling or determination letter at any time before the letter ruling or determination letter is signed by the Service. Correspondence and exhibits related to a request that is withdrawn or related to a letter ruling request for which the Service declines to issue a letter ruling will not be returned to the taxpayer. *See* section 9.02(2) of this revenue procedure. In appropriate cases, the Service may publish its conclusions in a revenue ruling or revenue procedure.

A request for a letter ruling will not be suspended in EP or EO Technical at the request of a taxpayer.

(2) Notification of Director, EP or EO Examinations. If a taxpayer withdraws a request for a letter ruling or if EP or EO Technical declines to issue a letter ruling, EP or EO Technical will notify the Director, EP or EO Examinations and may give its views on the issues in the request to the Director, EP or EO Examinations to consider in any later examination of the return.

(3) Refunds of user fee. The user fee will not be returned for a letter ruling request that is withdrawn. If the Service declines to issue a letter ruling on all of the issues in the request, the user fee will be returned. If the Service, however, issues a letter ruling on some, but not all, of the issues, the user fee will not be returned. *See* section 10 of Rev. Proc. 2006-8 for additional information regarding refunds of user fees.

Compliance with Treasury Department Circular No. 230

.09 The taxpayer's authorized representative, whether or not enrolled, must comply with Treasury Department Circular No. 230, which provides the rules for practice before the Service. In those situations when EP or EO Technical believes that the taxpayer's representative is not in compliance with Circular No. 230, EP or EO Technical will bring the matter to the attention of the Director, Office of Professional Responsibility.

For the requirement regarding compliance with the conference and practice requirements, see section 9.02(12) of this revenue procedure.

SECTION 10. WHAT SPECIFIC, ADDITIONAL PROCEDURES APPLY TO CERTAIN REQUESTS?

In general

.01 Specific revenue procedures supplement the general instructions for requests explained in section 9 of this revenue procedure and apply to requests for letter rulings or determination letters regarding the Code sections and matters listed in this section.

Exempt Organizations

.02 If the request is for the qualification of an organization for exemption from federal income tax under § 501 or 521, see Rev. Proc. 72-5, 1972-1 C.B. 709, regarding religious and apostolic organizations; Rev. Proc. 80-27, 1980-1 C.B. 677, concerning group exemptions; and Rev. Proc. 90-27, 1990-1 C.B. 514 (as modified by Rev. Proc. 2006-8), regarding applications for recognition of exemption.

Employee Plans

.03

(1) For requests to obtain approval for a retroactive amendment described in § 412(c)(8) of the Code and section 302(c)(8) of the Employee Retirement Income Security Act of 1974 (ERISA) that reduces accrued benefits, see Rev. Proc. 94-42, 1994-1 C.B. 717.

- (2) For requests for a waiver of the minimum funding standard, see Rev. Proc. 2004–15.
- (3) For requests for a waiver of the 100 percent tax imposed under § 4971(b) of the Code on a pension plan that fails to meet the minimum funding standards of § 412, see Rev. Proc. 81–44, 1981–2 C.B. 618.
- (4) For requests for a determination that a plan amendment is reasonable and provides for only *de minimis* increases in plan liabilities in accordance with §§ 401(a)(33) and 412(f)(2)(A), see Rev. Proc. 79–62, 1979–2 C.B. 576.
- (5) For requests to obtain approval for an extension of an amortization period of any unfunded liability in accordance with § 412(e), see Rev. Proc. 2004–44, 2004–2 C.B. 134.
- (6) For requests by administrators or sponsors of a defined benefit plan to obtain approval for a change in funding method, see Rev. Proc. 2000–41, 2000–2 C.B. 371.
- (7) For requests for the return to the employer of certain nondeductible contributions, see Rev. Proc. 90–49, 1990–2 C.B. 620 (as modified by Rev. Proc. 2006–8).
- (8) For requests for determination letters for plans under §§ 401, 403(a), 409, and 4975(e)(7), and for the exempt status of any related trust under § 501, see Rev. Proc. 2006–6, Rev. Proc. 93–10 and Rev. Proc. 93–12.

SECTION 11. HOW DOES EP OR EO TECHNICAL HANDLE LETTER RULING REQUESTS?

In general

.01 The Service will issue letter rulings on the matters and under the circumstances explained in sections 4 and 6 of this revenue procedure and in the manner explained in this section and section 13 of this revenue procedure.

Is not bound by informal opinion expressed

.02 The Service will not be bound by the informal opinion expressed by the group representative or any other authorized Service representative under this procedure, and such an opinion cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Tells taxpayer if request lacks essential information during initial contact

.03 If a request for a letter ruling or determination letter does not comply with all the provisions of this revenue procedure, the request will be acknowledged and the Service representative will tell the taxpayer during the initial contact which requirements have not been met.

Information must be submitted within 30 calendar days

If the request lacks essential information, which may include additional information needed to satisfy the procedural requirements of this revenue procedure, as well as substantive changes to transactions or documents needed from the taxpayer, the Service representative will tell the taxpayer during the initial contact that the request will be closed if the Service does not receive the information within 30 calendar days unless an extension of time is granted. See section 11.04 of this revenue procedure for information on extension of time and instructions on submissions of additional information.

Letter ruling request mistakenly sent to EP or EO Determinations Processing

A request for a letter ruling sent to EP/EO Determinations Processing that does not comply with the provisions of this revenue procedure will be returned by EP/EO Determinations Processing so that the taxpayer can make corrections before sending it to EP or EO Technical.

Requires prompt submission of additional information requested after initial contact

.04 Material facts furnished to the Service by telephone or fax, or orally at a conference, must be promptly confirmed by letter to the Service. This confirmation and any additional information requested by the Service that is not part of the information requested during the initial contact must be furnished within 21 calendar days to be considered part of the request.

Additional information submitted to the Service must be accompanied by the following declaration: **“Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information,**

and such facts are true, correct, and complete.” This declaration must be signed in accordance with the requirements in section 9.02(13)(b) of this revenue procedure. A taxpayer who submits additional factual information on several occasions may provide one declaration subsequent to all submissions that refers to all submissions.

Encourage use of fax

(1) To facilitate prompt action on letter ruling requests, taxpayers are encouraged to submit additional information by fax as soon as the information is available. The Service representative who requests additional information can provide a telephone number to which the information can be faxed. A copy of this information and a signed perjury statement, however, must be mailed or delivered to the Service.

Address to send additional information

(2) Additional information should be sent to the same address as the original letter ruling request. *See* section 9.04. However, the additional information should include the name, office symbols, and room number of the Service representative who requested the information and the taxpayer's name and the case control number (which the Service representative can provide).

Number of copies of additional information to be submitted

(3) Generally, a taxpayer needs only to submit one copy of the additional information. However, in appropriate cases, the Service may request additional copies of the information.

30-day or 21-day period may be extended if justified and approved

(4) An extension of the 30-day period under section 11.03 or the 21-day period under section 11.04, will be granted only if justified in writing by the taxpayer and approved by the manager of the group to which the case is assigned. A request for extension should be submitted before the end of the 30-day or 21-day period. If unusual circumstances close to the end of the 30-day or 21-day period make a written request impractical, the taxpayer should notify the Service within the 30-day or 21-day period that there is a problem and that the written request for extension will be coming soon. The taxpayer will be told promptly, and later in writing, of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

If taxpayer does not submit additional information

(5) If the taxpayer does not follow the instructions for submitting additional information or requesting an extension within the time provided, a letter ruling will be issued on the basis of the information on hand, or, if appropriate, no letter ruling will be issued. When the Service decides not to issue a letter ruling because essential information is lacking, the case will be closed and the taxpayer notified in writing. If the Service receives the information after the letter ruling request is closed, the request may be reopened and treated as a new request. However, the taxpayer must pay another user fee before the case can be reopened.

Near the completion of the ruling process, advises taxpayer of conclusions and, if the Service will rule adversely, offers the taxpayer the opportunity to withdraw the letter ruling request

.05 Generally, after the conference of right is held before the letter ruling is issued, the Service representative will inform the taxpayer or the taxpayer's authorized representative of the Service's final conclusions. If the Service is going to rule adversely, the taxpayer will be offered the opportunity to withdraw the letter ruling request. If the taxpayer or the taxpayer's representative does not promptly notify the Service representative of a decision to withdraw the ruling request, the adverse letter will be issued. The user fee will not be refunded for a letter ruling request that is withdrawn. *See* section 10 of Rev. Proc. 2006-8.

May request draft of proposed letter ruling near the completion of the ruling process

.06 To accelerate issuance of letter rulings, in appropriate cases near the completion of the ruling process, the Service representative may request that the taxpayer or the taxpayer's representative submit a proposed draft of the letter ruling on the basis of discussions of the issues. The taxpayer, however, is not required to prepare a draft letter ruling in order to receive a letter ruling.

The format of the submission should be discussed with the Service representative who requests the draft letter ruling. The representative usually can provide a sample format of a letter ruling and will discuss the facts, analysis, and letter ruling language to be included.

Taxpayer may also submit draft on a word processing disk

In addition to a typed draft, taxpayers are encouraged to submit this draft on a disk in Rich Text Format. The typed draft will become part of the permanent files of the Service, and the word processing disk will not be returned. If the Service representative requesting the draft letter ruling cannot answer specific questions about the format of the word processing disk,

the questions can be directed to Frances Sloan at (202) 283-9626 (Employee Plans), or Wayne Hardesty at (202) 283-8976 (Exempt Organizations) (not toll-free calls).

The proposed letter ruling (both typed draft and word processing disk) should be sent to the same address as any additional information and contain in the transmittal the information that should be included with any additional information (for example, a penalties of perjury statement is required). *See* section 11.04 of this revenue procedure.

SECTION 12. HOW ARE CONFERENCES SCHEDULED?

Schedules a conference if requested by taxpayer

.01 A taxpayer may request a conference regarding a letter ruling request. Normally, a conference is scheduled only when the Service considers it to be helpful in deciding the case or when an adverse decision is indicated. If conferences are being arranged for more than one request for a letter ruling involving the same taxpayer, they will be scheduled so as to cause the least inconvenience to the taxpayer. As stated in section 9.03(5) of this revenue procedure, a taxpayer who wants to have a conference on the issue or issues involved should indicate this in writing when, or soon after, filing the request.

If a conference has been requested, the taxpayer will be notified by telephone, if possible, of the time and place of the conference, which must then be held within 21 calendar days after this contact. Instructions for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Service's approval or denial of the request for extension are the same as those explained in section 11.04 of this revenue procedure regarding providing additional information.

Permits taxpayer one conference of right

.02 A taxpayer is entitled, as a matter of right, to only one conference, except as explained under section 12.05 of this revenue procedure. This conference normally will be held at the group level and will be attended by a person who, at the time of the conference, has the authority to sign the ruling letter in his or her own name or for the group manager.

When more than one group has taken an adverse position on an issue in a letter ruling request, or when the position ultimately adopted by one group will affect that adopted by another, a representative from each group with the authority to sign in his or her own name or for the group manager will attend the conference. If more than one subject is to be discussed at the conference, the discussion will constitute a conference on each subject.

To have a thorough and informed discussion of the issues, the conference usually will be held after the group has had an opportunity to study the case. However, at the request of the taxpayer, the conference of right may be held earlier.

No taxpayer has a right to appeal the action of a group to any other official of the Service. But see section 12.05 of this revenue procedure for situations in which the Service may offer additional conferences.

Disallows verbatim recording of conferences

.03 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Makes tentative recommendations on substantive issues

.04 The senior Service representative present at the conference ensures that the taxpayer has the opportunity to present views on all the issues in question. A Service representative explains the Service's tentative decision on the substantive issues and the reasons for that decision. If the taxpayer asks the Service to limit the retroactive effect of any letter ruling or limit the revocation or modification of a prior letter ruling, a Service representative will discuss the recommendation concerning this issue and the reasons for the recommendation. The Service representatives will not make a commitment regarding the conclusion that the Service will finally adopt.

May offer additional conferences

.05 The Service will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed, but on a new issue, or on the same issue but on different grounds from those discussed at the first conference. There is no right to another conference

when a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limit on the number of conferences to which a taxpayer is entitled does not prevent the Service from offering additional conferences, including conferences with an official higher than the group level, if the Service decides they are needed. Such conferences are not offered as a matter of course simply because the group has reached an adverse decision. In general, conferences with higher level officials are offered only if the Service determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

Requires written confirmation of information presented at conference

.06 The taxpayer should furnish to the Service any additional data, reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but not previously or adequately presented in writing. The taxpayer must furnish the additional information within 21 calendar days from the date of the conference. *See* section 11.04 of this revenue procedure for instructions on submission of additional information. If the additional information is not received within that time, a ruling will be issued on the basis of the information on hand or, if appropriate, no ruling will be issued.

Procedures for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Service's approval or denial of the requested extension are the same as those stated in section 11.04 of this revenue procedure regarding submitting additional information.

May schedule a pre-submission conference

.07 Sometimes it will be advantageous to both the Service and the taxpayer to hold a conference before the taxpayer submits the letter ruling request to discuss substantive or procedural issues relating to a proposed transaction. These conferences are held only if the identity of the taxpayer is provided to the Service, only if the taxpayer actually intends to make a request, only if the request involves a matter on which a letter ruling is ordinarily issued, and only on at the discretion of the Service and as time permits. For example, a pre-submission conference will not be held on an income tax issue if, at the time the pre-submission conference is requested, the identical issue is involved in the taxpayer's return for an earlier period and that issue is being examined. *See* section 6 of this revenue procedure. Generally, the taxpayer will be asked to provide before the pre-submission conference a statement of whether the issue is an issue on which a letter ruling is ordinarily issued and a draft of the letter ruling request or other detailed written statement of the proposed transaction, issue, and legal analysis. If the taxpayer's representative will attend the pre-submission conference, a power of attorney form is required. A Form 2848, *Power of Attorney and Declaration of Representative*, must be used to provide the representative's authorization.

Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b). A letter ruling request submitted following a pre-submission conference will not necessarily be assigned to the group that held the pre-submission conference.

Under limited circumstances, may schedule a conference to be held by telephone

.08 A taxpayer may request that their conference of right be held by telephone. This request may occur, for example, when a taxpayer wants a conference of right but believes that the issue involved does not warrant incurring the expense of traveling to Washington, DC. If a taxpayer makes such a request, the group manager will decide if it is appropriate in the particular case to hold the conference of right by telephone. If the request is approved by the group manager, the taxpayer will be advised when to call the Service representatives (not a toll-free call).

SECTION 13. WHAT EFFECT WILL A LETTER RULING HAVE?

May be relied on subject to limitations

.01 A taxpayer ordinarily may rely on a letter ruling received from the Service subject to the conditions and limitations described in this section.

Will not apply to another taxpayer .02 A taxpayer may not rely on a letter ruling issued to another taxpayer. *See* § 6110(k)(3).

Will be used by the Director, EP or EO Examinations in examining the taxpayer's return .03 When determining a taxpayer's liability, the Director, EP or EO Examinations must ascertain whether—

- (1) the conclusions stated in the letter ruling are properly reflected in the return;
- (2) the representations upon which the letter ruling was based reflected an accurate statement of the material facts;
- (3) the transaction was carried out substantially as proposed; and
- (4) there has been any change in the law that applies to the period during which the transaction or continuing series of transactions were consummated.

If, when determining the liability, the Director, EP Examinations finds that a letter ruling should be revoked or modified, unless a waiver is obtained from EP Technical, the findings and recommendations of the Director, EP Examinations will be forwarded to EP Technical for consideration before further action is taken by the Director, EP Examinations. Such a referral to EP Technical will be treated as a request for technical advice and the procedures of Rev. Proc. 2006–5 will be followed. Otherwise, the letter ruling is to be applied by the Director, EP Examinations in determining the taxpayer's liability. Appropriate coordination with EP Technical will be undertaken if any field official having jurisdiction over a return or other matter proposes to reach a conclusion contrary to a letter ruling previously issued to the taxpayer.

In exempt organizations cases, section 4.04 of Rev. Proc. 2006–5 provides that a request for a TAM is not mandatory.

May be revoked or modified if found to be in error .04 Unless it was part of a closing agreement as described in section 3.03 of this revenue procedure, a letter ruling found to be in error or not in accord with the current views of the Service may be revoked or modified. If a letter ruling is revoked or modified, the revocation or modification applies to all years open under the statute of limitations unless the Service uses its discretionary authority under § 7805(b) to limit the retroactive effect of the revocation or modification.

A letter ruling may be revoked or modified due to—

- (1) a notice to the taxpayer to whom the letter ruling was issued;
- (2) the enactment of legislation or ratification of a tax treaty;
- (3) a decision of the United States Supreme Court;
- (4) the issuance of temporary or final regulations; or
- (5) the issuance of a revenue ruling, revenue procedure, notice, or other statement published in the Internal Revenue Bulletin.

Consistent with these provisions, if a letter ruling relates to a continuing action or a series of actions, it ordinarily will be applied until any one of the events described above occurs or until it is specifically withdrawn.

Publication of a notice of proposed rulemaking will not affect the application of any letter ruling issued under this revenue procedure.

Not generally revoked or modified retroactively .05 Except in rare or unusual circumstances, the revocation or modification of a letter ruling will not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling provided that—

- (1) there has been no misstatement or omission of material facts;

(2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling was based;

(3) there has been no change in the applicable law;

(4) the letter ruling was originally issued for a proposed transaction; and

(5) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment. For example, the tax liability of each employee covered by a ruling relating to a qualified plan of an employer is directly involved in such ruling. However, the tax liability of a member of an industry is not directly involved in a letter ruling issued to another member and, therefore, the holding in a revocation or modification of a letter ruling to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not extend to one client the non-retroactive application of a revocation or modification of a letter ruling previously issued to another client.

If a letter ruling is revoked or modified by letter with retroactive effect, the letter will, except in fraud cases, state the grounds on which the letter ruling is being revoked or modified and explain the reasons why it is being revoked or modified retroactively.

Retroactive effect of revocation or modification applied only to a particular transaction

.06 A letter ruling issued on a particular transaction represents a holding of the Service on that transaction only. It will not apply to a similar transaction in the same year or any other year. And, except in unusual circumstances, the application of that letter ruling to the transaction will not be affected by the later issuance of regulations (either temporary or final), if conditions (1) through (5) in section 13.05 of this revenue procedure are met.

However, if a letter ruling on a transaction is later found to be in error or no longer in accord with the position of the Service, it will not protect a similar transaction of the taxpayer in the same year or later year.

Retroactive effect of revocation or modification applied to a continuing action or series of actions

.07 If a letter ruling is issued covering a continuing action or series of actions and the letter ruling is later found to be in error or no longer in accord with the position of the Service, the Commissioner, Tax Exempt and Government Entities Division, ordinarily will limit the retroactive effect of the revocation or modification to a date that is not earlier than that on which the letter ruling is revoked or modified.

May be retroactively revoked or modified when transaction is completed without reliance on the letter ruling

.08 A taxpayer is not protected against retroactive revocation or modification of a letter ruling involving a completed transaction other than those described in section 13.07 of this revenue procedure, because the taxpayer did not enter into the transaction relying on a letter ruling.

Taxpayer may request that retroactivity be limited

.09 Under § 7805(b), the Service may prescribe any extent to which a revocation or modification of a letter ruling or determination letter will be applied without retroactive effect.

A taxpayer to whom a letter ruling or determination letter has been issued may request that the Commissioner, Tax Exempt and Government Entities Division, limit the retroactive effect of any revocation or modification of the letter ruling or determination letter.

Format of request

(1) Request for relief under § 7805(b) must be made in required format.

A request to limit the retroactive effect of the revocation or modification of a letter ruling must be in the general form of, and meet the general requirements for, a letter ruling request. These requirements are given in section 9 of this revenue procedure. Specifically, the request must also—

(a) state that it is being made under § 7805(b);

(b) state the relief sought;

(c) explain the reasons and arguments in support of the relief requested (including a discussion of the five items listed in section 13.05 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request. A request that the Service limit the retroactive effect of a revocation or modification of a letter ruling may be made in the form of a separate request for a letter ruling when, for example, a revenue ruling has the effect of revoking or modifying a letter ruling previously issued to the taxpayer, or when the Service notifies the taxpayer of a change in position that will have the effect of revoking or modifying the letter ruling. However, when notice is given by the Director, EP or EO Examinations during an examination of the taxpayer's return or by the Appeals Area Director, Area 4, or the Appeals Area Director, LMSB, during consideration of the taxpayer's return before an appeals office, a request to limit retroactive effect must be made in the form of a request for technical advice as explained in section 19 of Rev. Proc. 2006-5.

When germane to a pending letter ruling request, a request to limit the retroactive effect of a revocation or modification of a letter ruling may be made as part of the request for the letter ruling, either initially or at any time before the letter ruling is issued. When a letter ruling that concerns a continuing transaction is revoked or modified by, for example, a subsequent revenue ruling, a request to limit retroactive effect must be made before the examination of the return that contains the transaction that is the subject of the letter ruling request.

Consideration of relief under § 7805(b) will be included as one of the taxpayer's steps in exhausting administrative remedies only if the taxpayer has requested such relief in the manner described in this revenue procedure. If the taxpayer does not complete the applicable steps, the taxpayer will not have exhausted the taxpayer's administrative remedies as required by § 7428(b)(2) and § 7476(b)(3) and will, thus, be precluded from seeking a declaratory judgment under § 7428 or § 7476. Where the taxpayer has requested § 7805(b) relief, the taxpayer's administrative remedies will not be considered exhausted until the Service has had a reasonable time to act upon the request.

Request for conference

(2) Taxpayer may request a conference on application of § 7805(b).

A taxpayer who requests the application of § 7805(b) in a separate letter ruling request has the right to a conference in EP or EO Technical as explained in sections 12.01, 12.02, 12.03, 12.04 and 12.05 of this revenue procedure. If the request is made initially as part of a pending letter ruling request or is made before the conference of right is held on the substantive issues, the § 7805(b) issue will be discussed at the taxpayer's one conference of right as explained in section 12.02 of this revenue procedure. If the request for the application of § 7805(b) relief is made as part of a pending letter ruling request after a conference has been held on the substantive issue and the Service determines that there is justification for having delayed the request, the taxpayer is entitled to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue only.

SECTION 14. WHAT EFFECT WILL A DETERMINATION LETTER HAVE?

Has same effect as a letter ruling

.01 A determination letter issued by EP or EO Determinations has the same effect as a letter ruling issued to a taxpayer under section 13 of this revenue procedure.

If the Director, EP or EO Examinations proposes to reach a conclusion contrary to that expressed in a determination letter, he or she need not refer the matter to EP or EO Technical. However, the Director, EP or EO Examinations must refer the matter to EP or EO Technical if the Director, EP or EO Examinations desires to have the revocation or modification of the determination letter limited under § 7805(b).

Taxpayer may request that retroactive effect of revocation or modification be limited

.02 The Director, EP or EO Examinations does not have authority under § 7805(b) to limit the revocation or modification of the determination letter. Therefore, if the Director, EP or EO Examinations proposes to revoke or modify a determination letter, the taxpayer may request

limitation of the retroactive effect of the revocation or modification by asking EP or EO Determinations to seek technical advice from EP or EO Technical. *See* section 19 of Rev. Proc. 2006-5.

Format of request

(1) Request for relief under § 7805(b) must be made in required format.

A taxpayer's request to limit the retroactive effect of the revocation or modification of the determination letter must be in the form of, and meet the general requirements for, a technical advice request. *See* section 18.06 of Rev. Proc. 2006-5. The request must also—

(a) state that it is being made under § 7805(b);

(b) state the relief sought;

(c) explain the reasons and arguments in support of the relief sought (including a discussion of the five items listed in section 13.05 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request.

Request for conference

(2) Taxpayer may request a conference on application of § 7805(b).

When technical advice is requested regarding the application of § 7805(b), the taxpayer has the right to a conference in EP or EO Technical to the same extent as does any taxpayer who is the subject of a technical advice request. *See* section 11 of Rev. Proc. 2006-5.

Exhaustion of administrative remedies

(3) Taxpayer steps in exhausting administrative remedies.

Consideration of relief under § 7805(b) will be included as one of the taxpayer's steps in exhausting administrative remedies only if the taxpayer has requested such relief in the manner described in this revenue procedure. If the taxpayer does not complete the applicable steps, the taxpayer will not have exhausted the taxpayer's administrative remedies as required by § 7428(b)(2) and § 7476(b)(3) and will, thus, be precluded from seeking a declaratory judgment under § 7428 or § 7476. Where the taxpayer has requested § 7805(b) relief, the taxpayer's administrative remedies will not be considered exhausted until the Service has had a reasonable time to act upon the request.

SECTION 15. UNDER WHAT CIRCUMSTANCES ARE MATTERS REFERRED BETWEEN DETERMINATIONS AND TECHNICAL?

Requests for determination letters

.01 Requests for determination letters received by EP or EO Determinations that, under the provisions of this revenue procedure, may not be issued by EP or EO Determinations, will be forwarded to EP or EO Technical for reply. EP or EO Determinations will notify the taxpayer that the matter has been referred.

EP or EO Determinations will also refer to EP or EO Technical any request for a determination letter that in its judgment should have the attention of EP or EO Technical.

No-rule areas

.02 If the request involves an issue on which the Service will not issue a letter ruling or determination letter, the request will not be forwarded to EP or EO Technical. EP or EO Determinations will notify the taxpayer that the Service will not issue a letter ruling or a determination letter on the issue. *See* section 8 of this revenue procedure for a description of no-rule areas.

Requests for letter rulings

.03 Requests for letter rulings received by EP or EO Technical that, under section 6 of this revenue procedure, may not be acted upon by EP or EO Technical will be forwarded to the Director, EP or EO Examinations. The taxpayer will be notified of this action. If the request is on an issue or in an area of the type discussed in section 8 of this revenue procedure, and the Service decides not to issue a letter ruling or an information letter, EP or EO Technical will

notify the taxpayer and will then forward the request to the Director, EP or EO Examinations for association with the related return.

SECTION 16. WHAT ARE THE GENERAL PROCEDURES APPLICABLE TO INFORMATION LETTERS ISSUED BY THE HEADQUARTERS OFFICE?

Will be made available to the public

.01 Information letters that are issued by the headquarters office to members of the public will be made available to the public. These documents provide general statements of well-defined law without applying them to a specific set of facts. See section 3.06 of this revenue procedure. Information letters that are issued by the field, however, will not be made available to the public.

The following documents also will not be available for public inspection as part of this process:

- (1) letters that merely transmit Service publications or other publicly available material, without significant legal discussion;
- (2) responses to taxpayer or third party contacts that are inquiries with respect to a pending request for a letter ruling, technical advice memorandum, or Chief Counsel Advice (whose public inspection is subject to § 6110); and
- (3) responses to taxpayer or third party communications with respect to any investigation, audit, litigation, or other enforcement action.

Deletions made under the Freedom of Information Act

.02 Before any information letter is made available to the public, the headquarters office will delete any name, address, and other identifying information as appropriate under the Freedom of Information Act (“FOIA”) (for example, FOIA personal privacy exemption of 5 U.S.C. § 552(b)(6) and tax details exempt pursuant to § 6103, as incorporated into FOIA by 5 U.S.C. § 552(b)(3)). Because information letters do not constitute written determinations (including Chief Counsel Advice) as defined in § 6110, these documents are not subject to public inspection under § 6110.

Effect of information letters

.03 Information letters are advisory only and have no binding effect on the Service. See section 3.06 of this revenue procedure. If the headquarters office issues an information letter in response to a request for a letter ruling that does not meet the requirements of this revenue procedure, the information letter is not a substitute for a letter ruling.

SECTION 17. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

Rev. Proc. 2005–4, 2005–1 C.B. 128, is superseded.

SECTION 18. EFFECTIVE DATE

This revenue procedure is effective January 3, 2006.

SECTION 19. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 7.07, 9.02, 9.03, 9.04, 9.05, 9.06, 10.02, 10.03, 11.03, 11.04(1)–(5), 11.06, 12.01, 12.06, 12.07, 13.09(1), 14.02(1), and in Appendices B, C, D and E. This information is required to evaluate and process the request for a letter ruling or determination letter. In addition, this information

will be used to help the Service delete certain information from the text of the letter ruling or determination letter before it is made available for public inspection, as required by § 6110. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 12,650 hours.

The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 16 hours, depending on individual circumstances and the type of request involved, with an estimated average burden of 6.01 hours. The estimated number of respondents and/or recordkeepers is 2,103.

The estimated annual frequency of responses is one request per applicant, except that a taxpayer requesting a letter ruling may also request a presubmission conference.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Ingrid Grinde of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding how this revenue procedure applies to employee plans matters, contact the Employee Plans Customer Assistance Service at 1-877-829-5500 (a toll-free call). Ms. Grinde's telephone number is (202) 283-9888 (not a toll-free call). For exempt organization matters, please contact Mr. Wayne Hardesty (202) 283-8976 (not a toll-free call).

INDEX

- additional information sec. 9.02(9), 9.03, 11.03, 11.04
- closing agreement sec. 3.03, 6.06(4), 9.02(4), 9.02(15), 13.04
- conference sec. 9.02(9), 9.03(5), 12.01-.08, 13.09(2), 14.02(2)
- disclose sec. 9.02(9)
- exempt organization sec. 6.01
- expeditious handling sec. 9.03(3)
- extension sec. 6.02, 6.04, 11.04, 12.01, 12.06
- fax sec. 9.03(4), 11.04
- fee sec. 9.02(14), 11.04(5)
- hand delivered 9.04(1)
- information letter sec. 3.07, 8.01, 15.03
- no rule sec. 8, 15.02
- perjury statement sec. 9.02(13), 11.04, 11.06
- power of attorney sec. 9.02(12), 9.03(2)
- reliance sec. 3.09, 11.02, 12.07, 13, 14
- representatives sec. 3.09, 9.02(10)-(11), 9.03(2)
- retroactive sec. 11.02, 12.04, 12.07, 13, 14
- revenue ruling sec. 3.07, 13.04, 13.09(1)
- section 6110 sec. 9.02(9), 13.02
- status sec. 9.07
- technical advice sec. 7.08, 13.03, 13.09(1), 14
- telephone sec. 9.02(1), 11.04, 12.01, 12.08
- where to send sec. 9.04
- withdraw sec. 9.08

APPENDIX A

SAMPLE FORMAT FOR A LETTER RULING REQUEST

(Insert the date of request)

Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, DC 20038

Dear Sir or Madam:

(Insert the name of the taxpayer) (the “Taxpayer”) requests a ruling on the proper treatment of *(insert the subject matter of the letter ruling request)* under § *(insert the number)* of the Internal Revenue Code.

[If the taxpayer is requesting expedited handling, the letter ruling request must contain a statement to that effect. This statement must explain the need for expeditious handling. See section 9.03(3).]

A. STATEMENT OF FACTS

1. Taxpayer Information

[Provide the statements required by sections 9.02(1)(a), (b), and (c) of Rev. Proc. 2006–4, 2006–1 I.R.B. 132. (Hereafter, all references are to Rev. Proc. 2006–4 unless otherwise noted.)]

For example, a taxpayer that maintains a qualified employee retirement plan and files an annual Form 5500 series of returns may include the following statement to satisfy sections 9.02(1)(a), (b), and (c)

The Taxpayer is a construction company with principal offices located at 100 Whatever Drive, Wherever, Maryland 12345, and its telephone number is (123) 456–7890. The Taxpayer’s federal employer identification number is 00–1234567. The Taxpayer uses the Form 5500 series of returns on a calendar year basis to report its qualified employee retirement plan and trust.

2. Detailed Description of the Transaction.

[The ruling request must contain a complete statement of the facts relating to the transaction that is the subject of the letter ruling request. This statement must include a detailed description of the transaction, including material facts in any accompanying documents, and the business reasons for the transaction. See sections 9.02(1)(b), 9.02(1)(c), and 9.02(2).]

B. RULING REQUESTED

[The ruling request should contain a concise statement of the ruling requested by the taxpayer.]

C. STATEMENT OF LAW

[The ruling request must contain a statement of the law in support of the taxpayer’s views or conclusion, including any authorities believed to be contrary to the position advanced in the ruling request. This statement must also identify any pending legislation that may affect the proposed transaction. See sections 9.02(6), 9.02(7), and 9.02(8).]

APPENDIX B
CHECKLIST
IS YOUR RULING REQUEST COMPLETE?

INSTRUCTIONS

The Service will be able to respond more quickly to your letter ruling request if it is carefully prepared and complete. To ensure that your request is in order, use this checklist. Complete the four items of information requested before the checklist. Answer each question by circling "Yes," "No," or "N/A." When a question contains a place for a page number, insert the page number (or numbers) of the request that gives the information called for by a yes answer to a question. **Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.**

If you are an authorized representative submitting a request for a taxpayer, you must include a completed checklist with the request, or the request will either be returned to you or substantive consideration of it will be deferred until a completed checklist is submitted. **If you are a taxpayer preparing your own request without professional assistance, an incomplete checklist will not be cause for returning your request or deferring substantive consideration of the request.** However, you should still complete as much of the checklist as possible and submit it with your request.

TAXPAYER'S NAME _____

TAXPAYER'S I.D. No. _____

ATTORNEY/P.O.A. _____

PRIMARY CODE SECTION _____

CIRCLE ONE

ITEM

Yes No N/A

1. Does your request involve an issue under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division? See section 5 of Rev. Proc. 2006-4, 2006-1 I.R.B. 132, for issues under the jurisdiction of other offices. (Hereafter, all references are to Rev. Proc. 2006-4 unless otherwise noted.)

Yes No N/A

2. If your request involves a matter on which letter rulings are not ordinarily issued, have you given compelling reasons to justify the issuance of a private letter ruling? Before preparing your request, you may want to call the office responsible for substantive interpretations of the principal Internal Revenue Code section on which you are seeking a letter ruling to discuss the likelihood of an exception. The appropriate office to call for this information may be obtained by calling (202) 283-9660 (Employee Plans matters), or (202) 283-2300 (Exempt Organizations matters) (not toll-free calls).

Yes No N/A

Page ____

3. If the request involves an employee plans qualification matter under § 401(a), § 409, or § 4975(e)(7), have you demonstrated that the request satisfies the three criteria in section 6.03 for a headquarters office ruling?

Yes No N/A

Page ____

4. If the request deals with a completed transaction, have you filed the return for the year in which the transaction was completed? See sections 6.01 and 6.02.

Yes No

5. Are you requesting a letter ruling on a hypothetical situation or question? See section 8.03.

Yes No

6. Are you requesting a letter ruling on alternative plans of a proposed transaction? See section 8.03.

Yes No

7. Are you requesting the letter ruling for only part of an integrated transaction? See section 8.04.

Yes No

8. Have you submitted another letter ruling request for the transaction covered by this request?

Yes No

9. Are you requesting the letter ruling for a business, trade, industrial association, or similar group concerning the application of tax law to its members? See section 6.07.

- Yes No
Pages ____
- Yes No N/A
- Yes No
Page ____
- Yes No N/A
Pages ____
- Yes No N/A
Page ____
- Yes No N/A
Page ____
- Yes No N/A
- Yes No N/A
Page ____
- Yes No N/A
- Yes No N/A
Page ____
- Yes No N/A
- Yes No N/A
Page ____
10. Have you included a complete statement of all the facts relevant to the transaction? See section 9.02(1).
11. Have you submitted with the request true copies of all wills, deeds, plan documents, and other documents relevant to the transaction, and labeled and attached them in alphabetical sequence? See section 9.02(2).
12. Have you included, rather than merely by reference, all material facts from the documents in the request? Are they accompanied by an analysis of their bearing on the issues that specifies the document provisions that apply? See section 9.02(3).
13. Have you included the required statement regarding whether the same issue in the letter ruling request is in an earlier return of the taxpayer or in a return for any year of a related taxpayer? See section 9.02(4).
14. Have you included the required statement regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor? See section 9.02(5).
15. Have you included the required statement regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted the same or similar issue but withdrew it before the letter ruling was issued? See section 9.02(5).
16. Have you included the required statement regarding whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities? See section 9.02(6).
17. Have you included the required statement of relevant authorities in support of your views? See section 9.02(6).
18. Does your request discuss the implications of any legislation, tax treaties, court decisions, regulations, notices, revenue rulings, or revenue procedures you determined to be contrary to the position advanced? See section 9.02(7), which states that taxpayers are encouraged to inform the Service of such authorities.
19. If you determined that there are no contrary authorities, have you included a statement to this effect in your request? See section 9.02(7).
20. Have you included in your request a statement identifying any pending legislation that may affect the proposed transaction? See section 9.02(8).
21. Is the request accompanied by the deletions statement required by § 6110? See section 9.02(9).
22. Have you (or your authorized representative) signed and dated the request? See section 9.02(10).
23. If the request is signed by your representative, or if your representative will appear before the Service in connection with the request, is the request accompanied by a properly prepared and signed power of attorney with the signatory's name typed or printed? See section 9.02(12).
24. Have you included, signed and dated, the penalties of perjury statement in the form required by section 9.02(13)?
25. Have you included the correct user fee with the request and made your check or money order payable to the United States Treasury? See section 9.02(14) and Rev. Proc. 2006-8, page 245, this Bulletin, for the correct amount and additional information on user fees.
26. Are you submitting your request in duplicate if necessary? See section 9.02(15).
27. If you are requesting separate letter rulings on different issues involving one factual situation, have you included a statement to that effect in each request? See section 9.03(1).
28. If you do not want a copy of the letter ruling to be sent to any representative, does the power of attorney contain a statement to that effect? See section 9.03(2).
29. If you have more than one representative, have you designated whether the second representative listed on the power of attorney is to receive a copy of the letter ruling? See section 9.03(2).

Yes No N/A
Page ____

30. If you want your letter ruling request to be processed ahead of the regular order or by a specific date, have you requested expedited handling in the form required by section 9.03(3) and stated a compelling need for such action in the request?

Yes No N/A
Page ____

31. If you are requesting that a copy of the letter ruling be issued by facsimile (fax) transmission, have you included a statement containing a waiver of any disclosure violations resulting from the fax transmission? See section 9.03(4).

Yes No N/A
Page ____

32. If you want to have a conference on the issues involved in the request, have you included a request for conference in the ruling request? See section 9.03(5).

Yes No N/A

33. If your request is covered by any of the guideline revenue procedures or other special requirements listed in section 10 of Rev. Proc. 2006-4, have you complied with all of the requirements of the applicable revenue procedure?

Yes No N/A
Page ____

34. If you are requesting relief under § 7805(b) (regarding retroactive effect), have you complied with all of the requirements in section 13.09?

Yes No N/A

35. Have you addressed your request to the appropriate office listed in section 9.04? Improperly addressed requests may be delayed (sometimes for over a week) in reaching the appropriate office for initial processing.

Signature

Title or authority

Date

Typed or printed name of
person signing checklist

APPENDIX C

Additional Checklist for Roth IRA Recharacterization Ruling Requests

In order to assist EP Technical in processing a ruling request involving a Roth IRA recharacterization, in addition to the items in Appendix B, please check the following list.

- Yes No N/A
Page ____
1. Did you include the name(s) of trustee and/or custodian of the traditional individual retirement account (IRA) (generally, a financial institution)?
- Yes No N/A
Page ____
2. Is each IRA identification number present?
- Yes No N/A
Page ____
3. If the ruling request involves Roth conversions both of a husband and wife, is the necessary information with respect to each IRA of each party present?
Note: as long as husband and wife file a joint federal Form 1040, the Service can issue one ruling covering both parties. Furthermore, if a joint federal income tax return has been filed for the year or years in question, the Service only requires one user fee even if both husband and wife had failed conversions.
- Yes No N/A
Page ____
4. If there was one or more attempted conversions, are the applicable dates on which the attempted IRA conversion(s) occurred included?
- Yes No N/A
Page ____
5. If the reason that a conversion failed is that the taxpayer or related taxpayers relied upon advice of a tax professional such as a CPA, an attorney, or an enrolled actuary, is the name and occupation of that adviser included?
- Yes No N/A
Page ____
6. Is certification that the taxpayer or taxpayers timely filed the relevant federal tax return(s) present?
- Yes No N/A
Page ____
7. Is there a short statement of facts with respect to the conversion? For example, if the ruling request involves a conversion attempted in 1998, there should be a statement of the facts that includes a representation of why the due date(s) found in Announcement 99-57 and Announcement 99-104 were not met.
- Yes No N/A
Page ____
8. If the taxpayer recharacterized his/her Roth IRA to a traditional IRA prior to submitting a request for § 9100 relief, are the date(s) of the recharacterization(s), name(s) of trustees and/or custodians, and the identification numbers of the traditional IRA(s) present?
- Yes No N/A
Page ____
9. Does the request include the type of contribution (*i.e.*, regular or conversion) and amount of the contribution being recharacterized?

APPENDIX D

Additional Checklist for Government Pick-Up Plan Ruling Requests

In order to assist EP Technical in processing a ruling request involving government pick-up plans, in addition to the items in Appendix B please check the following list.

Yes No N/A
Page ____

1. Is the plan qualified under § 401(a) of the Code? (Evidence of qualification or representation that the plan is qualified.)

Yes No N/A
Page ____

2. Is the organization that established the plan a State or political subdivision thereof, or any agency or instrumentality of the foregoing? An example of this would be a representation that the organization that has established the plan is a political subdivision or municipality of the State.

Yes No N/A
Page ____

3. Is there specific information regarding who are the eligible participants?

Yes No N/A
Page ____

4. Are the contributions that are the subject of the ruling request mandatory employee contributions? These contributions must be for a specified dollar amount or a specific percentage of the participant's compensation and the dollar amount or percentage of compensation cannot be subject to change.

Yes No N/A
Page ____

5. Does the plan provide that the participants do not have the election to opt in and/or out of the plan?

Yes No N/A
Page ____

6. Are copies of the enacting legislation providing that the contributions although designated as employee contributions are being paid by the employer in lieu of contributions by the employee included?

Yes No N/A
Page ____

7. Are copies of the specific enabling authorization that provides the employee must not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the plan included? For example, a resolution, ordinance, plan provision, or collective bargaining agreement could specify this information.

APPENDIX E

Additional Checklist for Church Plan Ruling Requests

In order to assist EP Technical in processing a church plan ruling request, in addition to the items in Appendix B, please check the following list.

Yes No N/A
Page ____

1. Is there specific information showing that the submission is on behalf of a plan established by a named church or convention or association of churches? The information must show how the sponsoring organization is controlled by, or associated with, the named church or convention or association of churches. For example, the sponsoring organization might be listed in the church's official directory of related organizations whose mission is to further the objectives of the church. In order to be considered associated with a church or convention or association of churches, the organization must share common religious bonds and convictions with that church or convention or association of churches.

Yes No N/A
Page ____

2. Is there specific information showing that the organization that has established the plan is a tax-exempt organization as described in § 501 of the Code?

Yes No N/A
Page ____

3. Is there representation that the plan for which the ruling is being requested is qualified under § 401(a) of the Code or meets the requirements of § 403(b) of the Code?

Yes No N/A
Page ____

4. Does the ruling clearly state who are the eligible participants and the name of the employer of these eligible participants?

Yes No N/A
Page ____

5. Is there a representation that none of the eligible participants are or can be considered employed in connection with one or more unrelated trades or businesses within the meaning of § 513 of the Code?

Yes No N/A
Page ____

6. Is there a representation that all of the eligible participants are or will be employed by the named church or convention or association of churches, and will not include employees of for-profit entities? An example of an eligible employee includes a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry.

Yes No N/A
Page ____

7. Is there specific information showing an existing plan committee whose principal purpose or function is the administration or funding of the plan. This committee must be controlled by or associated with the named church or convention or association of churches?

Yes No N/A
Page ____

8. Is the composition of the committee stated?

Rev. Proc. 2006-5

TABLE OF CONTENTS

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE? 176

SECTION 2. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2005-5? 177

SECTION 3. WHAT IS THE DIFFERENCE BETWEEN A TECHNICAL ADVICE MEMORANDUM AND A TECHNICAL EXPEDITED ADVICE MEMORANDUM? 177

SECTION 4. ON WHAT ISSUES MAY OR MUST TAMs AND TEAMs BE REQUESTED UNDER THIS PROCEDURE? 178

.01 Issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. 178

.02 Farmers’ cooperatives. 178

.03 Basis for requesting technical advice. 178

.04 Areas of mandatory technical advice 178

.05 Special procedures for certain conversions 179

SECTION 5. ON WHAT ISSUES MUST TAMs AND TEAMs BE REQUESTED UNDER DIFFERENT PROCEDURES? 179

.01 Matters (other than farmers’ cooperatives) under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), and the Associate Chief Counsel (Procedure & Administration) 179

.02 Alcohol, tobacco, and firearms taxes 179

.03 Excise taxes 179

SECTION 6. MAY A TAM OR A TEAM BE REQUESTED FOR A § 301.9100-1 REQUEST DURING THE COURSE OF AN EXAMINATION? 179

.01 A § 301.9100-1 request is a letter ruling request. 179

.02 Statute of limitations 179

.03 Address to send a § 301.9100-1 request 180

.04 If the return is being examined or considered by an appeals office or a federal court, the taxpayer must notify Employee Plans or Exempt Organizations Technical who will notify the Employee Plans Examinations Area manager or the Exempt Organizations Examinations Area manager, the appeals office or government counsel. 180

SECTION 7. WHO IS RESPONSIBLE FOR REQUESTING TAMs AND TEAMs? 181

.01 An Employee Plans Examinations Area manager, Exempt Organizations Examinations Area manager, Employee Plans Determinations manager, Exempt Organizations Determinations manager, Appeals Area Director, Area 4, or Appeals Area Director, LMSB determines whether to request a TAM or a TEAM 181

.02 Taxpayer may ask that issue be referred for a TAM or a TEAM 181

SECTION 8. WHEN SHOULD A TAM OR TEAM BE REQUESTED? 181

.01 Uniformity of position lacking 181

.02 When a TAM or a TEAM can be requested 181

.03 At the earliest possible stage 181

SECTION 9. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED? 182

.01 Pre-submission conference generally is permitted when a request for a TAM or a TEAM is likely and all parties agree to request the conference. 182

.02 Purpose of pre-submission conference 182

.03 Request for pre-submission conference must be submitted in writing by the EP or EO Examinations or the EP or EO Determinations or the appeals office. 182

.04 Group will contact the EP or EO Examinations or the EP or EO Determinations or the appeals office to arrange the pre-submission conference	182
.05 Pre-submission conference generally held by telephone	183
.06 Certain information required to be submitted to EP or EO Technical prior to the pre-submission conference	183
.07 Manner of submitting pre-submission materials	183
.08 Pre-submission conference may not be taped.	183
.09 Discussion of substantive issues is not binding on the Service.	183
SECTION 10. WHAT MUST BE INCLUDED IN THE REQUEST FOR A TAM OR A TEAM?	183
.01 Statement of issues, facts, law, and arguments.	183
.02 General provisions of §§ 6104 and 6110 of the Internal Revenue Code	184
.03 Application of § 6104.	184
.04 Statement identifying information to be deleted from public inspection.	184
.05 Transmittal Form 5565, Request for Technical Advice — EP/EO	185
.06 Power of attorney.	186
SECTION 11. HOW ARE REQUESTS HANDLED?	186
.01 Taxpayer notified.	186
.02 Consider whether the issue or issues is appropriate for a TEAM.	186
.03 Consider whether published guidance is appropriate	186
.04 Conference offered	186
.05 If the taxpayer disagrees with the Service’s statement of facts	187
.06 If the Service disagrees with the taxpayer’s statement of facts.	187
.07 If the taxpayer has not submitted the required deletions statement	187
.08 Criminal or civil fraud cases	188
SECTION 12. HOW DOES A TAXPAYER APPEAL AN EP OR EO MANAGER’S OR AN APPEALS AREA DIRECTOR’S DECISION NOT TO SEEK A TAM OR A TEAM	188
.01 Taxpayer notified of decision not to seek a TAM or a TEAM.	188
.02 Taxpayer may request review of decision not to seek a TAM or a TEAM	188
.03 EP or EO Examinations Area manager or EP or EO Determinations manager or the applicable Appeals office determines whether a TAM or a TEAM will be sought	188
.04 Manager or area director’s decision may be reviewed but not appealed.	189
SECTION 13. HOW ARE REQUESTS FOR TAMs and TEAMs WITHDRAWN?	189
.01 Taxpayer notified.	189
.02 EP or EO Technical may provide views	189
SECTION 14. HOW ARE CONFERENCES SCHEDULED?	190
.01 If requested, offered to the taxpayer when adverse TAM or TEAM proposed.	190
.02 Timeline	190
.03 21-day period may be extended if justified and approved	190
.04 Denial of extension cannot be appealed.	190
.05 Entitled to one conference of right	190
.06 Conference may not be taped	191
.07 Conference may be delayed to address a request for relief under § 7805(b)	191
.08 Service makes tentative recommendations	191
.09 Additional conferences may be offered.	191
.10 Additional information submitted after the conference	192
.11 Normally held by telephone.	192
SECTION 15. HOW IS STATUS OF REQUEST OBTAINED?	192
.01 Taxpayer or the taxpayer’s representative may request status from EP or EO Examinations or EP or EO Determinations or the appeals office.	192
.02 EP or EO Technical will give status updates to the EP or EO Examinations or EP or EO Determinations or the applicable Appeals Area Director	193
SECTION 16. HOW DOES EP OR EO TECHNICAL PREPARE THE TAM OR THE TEAM?	193
.01 Delegates authority to group managers	193

.02 Determines whether request has been properly made	193
.03 Contacts the EP or EO Examinations or the EP or EO Determinations or the appeals office to discuss issues	193
.04 Informs the EP or EO Examinations or the EP or EO Determinations or the appeals office if any matters in the request have been referred to another group or office	193
.05 Informs the EP or EO Examinations or the EP or EO Determinations or the appeals office if additional information is needed.	194
.06 Informs the EP or EO Examinations or the EP or EO Determinations or the appeals office of the tentative conclusion	194
.07 If a tentative conclusion has not been reached, gives date estimated for tentative conclusion	194
.08 Advises the EP or EO Examinations or the EP or EO Determinations or the appeals office that preliminary conclusion is not final	194
.09 Advises the EP or EO Examinations or EP or EO Determinations or appeals office of final conclusions	194
.10 If needed, requests additional information	194
.11 Requests taxpayer to send additional information to the EP or EO Technical and a copy to the EP or EO Examinations or the EP or EO Determinations or the appeals office	195
.12 Informs the taxpayer when requested deletions will not be made.	195
.13 Prepares reply in two parts.	195
.14 Routes replies to appropriate office	196
SECTION 17. HOW DOES AN EP OR EO EXAMINATIONS OR EP OR EO DETERMINATIONS OR AN APPEALS OFFICE USE THE TAMs AND TEAMs?	197
.01 Generally applies advice in processing the taxpayer’s case.	197
.02 Reconsideration	197
.03 Discussion with the taxpayer	197
.04 Gives copy to the taxpayer.	197
.05 Taxpayer may protest deletions not made	198
.06 When no copy is given to the taxpayer	198
SECTION 18. WHAT IS THE EFFECT OF A TAM OR A TEAM?	198
.01 Applies only to the taxpayer for whom TAM or TEAM was requested	198
.02 Usually applies retroactively	198
.03 Generally applied retroactively to modify or revoke prior TAM or TEAM	198
.04 Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked.	198
.05 Applies to continuing action or series of actions until material facts change	198
.06 Does not apply retroactively under certain conditions	198
SECTION 19. HOW MAY RETROACTIVE EFFECT BE LIMITED?	199
.01 Commissioner has discretionary authority under § 7805(b)	199
.02 Taxpayer may request Commissioner to exercise authority.	199
.03 Form of request to limit retroactivity—before an examination.	199
.04 Form of request to limit retroactivity—during course of an examination.	199
.05 Form of request to limit retroactivity—technical advice that does not modify or revoke prior memorandum	200
.06 Taxpayer’s right to a conference.	200
.07 Exhaustion of administrative remedies — employee plans determination letter requests	200
.08 Exhaustion of administrative remedies — exempt organization matters.	200
SECTION 20. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?	200
SECTION 21. EFFECTIVE DATE.	200
SECTION 22. PAPERWORK REDUCTION ACT.	200
INDEX	202

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE? .01 This revenue procedure explains when and how Employee Plans Technical or Exempt Organizations Technical issue technical advice memoranda (TAMs) and technical expedited advice memoranda (TEAMs) to an Employee Plans (EP) Examinations Area manager, an Ex-

empt Organizations (EO) Examinations Area manager, an Employee Plans (EP) Determinations manager, an Exempt Organizations (EO) Determinations manager, or an Appeals Area Director, Area 4, in the employee plans areas (including actuarial matters) and exempt organizations areas. It also explains the rights a taxpayer has when an EP or EO Examinations Area manager, an EP or EO Determinations manager, or the Appeals Area Director, Area 4, requests a TAM or a TEAM regarding a tax matter. Similarly, this revenue procedure may be used by another Operating Division of the Service involved in an examination where EP Technical does not have audit jurisdiction but has interpretive jurisdiction as enumerated in section 6.02 of Rev. Proc. 2006-4, page 132 of this Bulletin.

.02 Although taxpayer participation during all stages of the process is preferred, it is not required in order to request technical advice. In the event that a taxpayer chooses not to participate in a request for a TEAM, the request usually will be treated as a request for a TAM.

SECTION 2. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2005-5?

.01 This revenue procedure is a general update of Rev. Proc. 2005-5, 2005-1 I.R.B. 170, which contains the general procedures for technical advice requests for matters within the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

.02 Numerous sections are revised to reflect the change in the Appeals Area that has jurisdiction over TE/GE technical advice cases.

SECTION 3. WHAT IS THE DIFFERENCE BETWEEN TECHNICAL ADVICE AND TECHNICAL EXPEDITED ADVICE?

“Technical advice” means advice or guidance in the form of a memorandum furnished by the Employee Plans Technical or Exempt Organizations Technical office, (hereinafter referred to as “EP or EO Technical”), upon the request of an EP or EO Examinations Area manager, an EP or EO Determinations manager or the Appeals Area Director, Area 4, submitted in accordance with the provisions of this revenue procedure in response to any technical or procedural question that develops during any proceeding on the interpretation and proper application of tax law, tax treaties, regulations, revenue rulings, notices or other precedents published by the headquarters office to a specific set of facts. (The references in this revenue procedure to the Appeals Area Director, Area 4, or an appeals office include, when appropriate, an Appeals Area Director, LMSB, a Deputy Appeals Area Director, LMSB, a Deputy Appeals Area Director, Area 4, an Appeals Team Manager and include in employee plans matters another Operating Division of the Service described in the last sentence of section 1.01 above.) Such proceedings include (1) the examination of a taxpayer’s return, (2) consideration of a taxpayer’s claim for refund or credit, (3) a taxpayer’s request for a determination letter, (4) any other matter involving a specific taxpayer under the jurisdiction of EP or EO Examinations, EP or EO Determinations, or an appeals office or (5) processing and considering nondocketed cases of a taxpayer in an appeals office. However, they do not include cases in which the issue in the case is in a docketed case for any year.

“Technical expedited advice” means technical advice issued in an expedited manner (hereinafter referred to as a TEAM). Subject to an agreement among the taxpayer, the field office, and the headquarters office, any issue eligible for a TAM (other than those enumerated in section 4.04 of this procedure as mandatory technical advice cases) can be submitted for TEAM treatment. A TEAM has several characteristics that are different from a TAM, including the following: a mandatory pre-submission conference involving the taxpayer; in the event of a tentative adverse conclusion to the taxpayer or the field, a conference of right will be offered to the taxpayer and the field; and once the conference of right is held, no further conferences will be offered. The procedures associated with a TEAM help expedite certain aspects of the TAM process and eliminate some of the requirements that may delay or frustrate the TAM process. For purposes of TAMs and TEAMS, the term “taxpayer” includes all persons subject to any provision of the Internal Revenue Code (including tax-exempt entities such as governmental units which issue municipal bonds within the meaning of § 103), and when appropriate, their representatives. However, the instructions and the provisions of this revenue procedure do not apply to requests for TAMs or TEAMS involving any matter pertaining to tax-exempt bonds or to § 457 plans maintained by state or local governments or tax-exempt organizations or to mortgage credit certificates. Instead, in those instances the procedures under Rev. Proc. 2006-2, page 89, this Bulletin must be followed.

TAMS and TEAMs help Service personnel resolve complex issues and help establish and maintain consistent holdings throughout the Internal Revenue Service. An EP or EO Examinations, an EP or EO Determinations or an appeals office may raise an issue in any tax period, even though technical advice or technical expedited advice may have been requested and furnished for the same or similar issue for another tax period.

Neither technical advice nor technical expedited advice includes oral or written legal advice furnished to the EP or EO Examinations or the EP or EO Determinations or the appeals office, other than advice furnished pursuant to this revenue procedure. In accordance with section 12.01 of this revenue procedure, a taxpayer's request for referral of an issue to the headquarters office for technical advice or technical expedited advice will not be denied merely because EP or EO Technical has already provided legal advice, other than advice furnished pursuant to this revenue procedure, to the EP or EO Examinations or the EP or EO Determinations or the appeals office on the matter.

Although taxpayer participation during all stages of the process is preferred, generally, it is not required in order to request a TAM or a TEAM. In the event that a taxpayer chooses not to participate in a request for a TEAM, the request usually will be treated as a request for a TAM.

SECTION 4. ON WHAT ISSUES MAY OR MUST TAMs AND TEAMs BE REQUESTED UNDER THIS PROCEDURE?

Issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division

.01 Generally, the instructions of this revenue procedure apply to requests for TAMs and TEAMs on any issue under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

Farmers' cooperatives

.02 If an EP or EO Examinations, an EP or EO Determinations, an appeals office or a taxpayer requests technical advice on a determination letter under § 521 of the Code, the procedures under this revenue procedure, Rev. Proc. 90-27, 1990-1 C.B. 514, as well as § 601.201(n) of the Statement of Procedural Rules (26 CFR § 601.201(n) (2005)), must be followed.

Basis for requesting TAMs and TEAMs

.03 Requests for TAMs and TEAMs are encouraged on any technical or procedural questions arising in connection with any case of the type described in section 3 at any stage of the proceedings in an EP or EO Examinations, an EP or EO Determinations or an appeals office case that cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other published precedent.

Areas of mandatory technical advice

.04 Requests for § 7805(b) relief are mandatory TAMs with respect to all exempt organizations and employee plans matters.

Regarding exempt organizations matters, EO Examinations, EO Determinations and appeals offices are required to request a TAM on their exempt organization cases concerning qualification for exemption or foundation status for which there is no published precedent or for which there is reason to believe that non-uniformity exists. (Exemption application cases handled in EO Technical in accordance with Rev. Procs. 72-5, 80-27, or 90-27 are not covered by this provision.) A request for a TAM is not required if the Director, EO Examinations proposes to revoke or modify (1) a letter ruling found to be in error or not in accord with the current views of the Service, or (2) a letter recognizing tax-exempt status issued by the Headquarters office.

Regarding employee plans matters, a request for a TAM is required in cases concerning (1) proposed adverse or proposed revocation letters on collectively-bargained plans, (2) plans for which the Service is proposing to issue a revocation letter because of certain fiduciary actions that violate the exclusive benefit rule of § 401(a) of the Code and are subject to Part 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 1974-3 C.B. 1, 43, (3) amendments to defined contribution plans pursuant to Rev. Proc. 2004-15, 2004-1 C.B. 490, in connection with a waiver of the minimum funding

standard and a request for a determination letter (*see* section 15 of Rev. Proc. 2006–6, page 204, this Bulletin, and section 3.04 of Rev. Proc. 2004–15), or (4) any determination letter case or any examination case involving a plan amendment to convert an existing defined benefit formula to a cash balance type benefit formula that was not previously subject to a TAM on the conversion.

Special procedures for certain conversions

.05 In the instance of section 4.04(4) above, the requirements of the first sentence of section 10.01 below will be deemed met by the Service by the use of the following (or similar) statement: A TAM is requested on the effect on the plan’s qualified status of the conversion of an existing defined benefit plan formula to a cash balance type benefit formula.

SECTION 5. ON WHAT ISSUES MUST TAMs AND TEAMs BE REQUESTED UNDER DIFFERENT PROCEDURES?

Matters (other than farmers’ cooperatives) under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Division Counsel/Associate Chief Counsel (TE/GE), and the Associate Chief Counsel (Procedure & Administration)

.01 All procedures for obtaining TAMs and TEAMs on issues (other than farmers’ cooperatives) under the interpretive jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), or the Division Counsel/Associate Chief Counsel (TE/GE), and on certain issues under the jurisdiction of the Associate Chief Counsel (Procedure & Administration), including any matter pertaining to (1) tax-exempt bonds or mortgage credit certificates, (2) deferred compensation plans under § 457, (3) § 526 of the Code (shipowners’ protection and indemnity associations), (4) § 528 (certain homeowners’ associations), (5) Indian tribal governments, (6) federal, state or local governments, and (7) issues involving the interpretation or application of the federal income tax laws and income tax treaties relating to international transactions are contained in Rev. Proc. 2006–2.

Alcohol, tobacco, and firearms taxes

.02 The procedures for obtaining a TAM or a TEAM specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are currently under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau within the Treasury Department.

Excise taxes

.03 A TAM or a TEAM regarding excise taxes (other than excise taxes imposed under Chapters 41, 42 and 43 of the Code), and employment taxes that employee plans and exempt organizations are subject to, are set forth in Rev. Proc. 2006–2.

SECTION 6. MAY TAM OR TEAM UNDER § 301.9100–1 BE REQUESTED DURING THE COURSE OF AN EXAMINATION?

A § 301.9100–1 request is a letter ruling request

.01 Except with regard to exemption application matters involving §§ 505(c) and 508, a request for an extension of time for making an election or other application for relief under § 301.9100–1 of the Procedure and Administration Regulations is not a request for a TAM or a TEAM; instead, the request is submitted as a letter ruling request even if the request is submitted after the examination of the taxpayer’s return has begun or after the issues in the return are being considered by an appeals office or a federal court. Therefore, a § 301.9100–1 request should be submitted pursuant to Rev. Proc. 2006–4, page 132, this Bulletin (including the payment of the applicable user fee listed in section 6 of Rev. Proc. 2006–8).

Statute of limitations

.02 The running of any applicable period of limitations is not suspended for the period during which a § 301.9100–1 request has been filed. *See* § 301.9100–3(d)(2). If the period of limitations on an assessment under § 6501(a) for the taxable year in which an election should

have been made, or any taxable year that would have been affected by the election had it been timely made, will expire before receipt of a § 301.9100–1 letter ruling, the Service ordinarily will not issue a § 301.9100–1 ruling. *See* § 301.9100–3(c)(1)(ii). Therefore, the taxpayer must secure a consent under § 6501(c)(4) to extend the period of limitations on assessment. Note that the filing of a protective claim for refund under § 6511 does not extend the period of limitations on assessment. If § 301.9100–1 relief is granted, the Service may require the taxpayer to consent to an extension of the period of limitations for assessment. *See* § 301.9100–3(d)(2).

Address to send a § 301.9100–1 request

.03 Requests made under § 301.9100–1, pursuant to Rev. Proc. 2006–4, together with the appropriate user fee, must be submitted to the Internal Revenue Service by the taxpayer and addressed as follows:

Requests involving employee plans matters:

Internal Revenue Service
Commissioner, Tax Exempt and Government Entities
Attn: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, DC 20038

Requests involving exempt organization matters:

Internal Revenue Service
Commissioner, Tax Exempt and Government Entities
Attn: SE:T:EO:RA
P.O. Box 27720
McPherson Station
Washington, DC 20038

A § 301.9100–1 request may also be hand delivered between the hours of 8:30 a.m. and 4:00 p.m. where a receipt will be given at the Courier’s Desk. In each instance, the package should be marked RULING REQUEST SUBMISSION. *See* Rev. Proc. 2005–8 for the appropriate user fee. Deliver to:

Courier’s Desk
Internal Revenue Service
Attn: SE:T:EP:RA or SE:T:EO:RA
1111 Constitution Avenue, NW – PE
Washington, DC 20224

If return is being examined or considered by an appeals office or a federal court, the taxpayer must notify EP or EO Technical who will notify the EP or EO Examinations Area manager, Appeals Area Director, Area 4, or government counsel

.04 If the taxpayer’s return for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made is being examined by EP or EO Examinations or the issues in the return are being considered by an appeals office or a federal court, the taxpayer must notify EP or EO Technical. *See*, § 301.9100–3(e)(4)(i) and section 6.04 of Rev. Proc. 2006–4. EP or EO Technical will notify the appropriate EP or EO Examinations Area manager or Appeals Area Director, Area 4, or government counsel considering the return that a request for § 301.9100–1 relief has been submitted. The EP or EO specialist, appeals officer or government counsel is not authorized to deny consideration of a request for § 301.9100–1 relief. The letter ruling will be mailed to the taxpayer and a copy will be sent to the appropriate EP or EO Examinations Area manager, or Appeals Area Director, Area 4, or government counsel.

SECTION 7. WHO IS RESPONSIBLE FOR REQUESTING THE TAMs and TEAMs?

EP or EO Examinations Area manager or EP or EO Determinations manager or Appeals Area Director, Area 4, determines whether to request the advice

.01 The EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director, Area 4, determines whether to request a TAM or a TEAM on an issue. Each request must be submitted through proper channels and signed by a person who is authorized to sign for the EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director, Area 4. The mandatory technical advice described in section 4.04(3) of this revenue procedure, for cases concerning amendments to defined contribution plans in connection with a waiver of the minimum funding standard and a request for a determination letter, is treated as if it had been a request for technical advice submitted by the EP Determinations manager. *See* section 15 of Rev. Proc. 2006–6 and section 3.04 of Rev. Proc. 2004–15 for the procedural rules applicable to this particular mandatory technical advice.

Taxpayer may ask that issue be referred for TAM or TEAM

.02 While a case is under the jurisdiction of EP or EO Examinations, EP or EO Determinations, or the Appeals Area Director, Area 4, a taxpayer may request that an issue be referred to the EP or EO Technical office for a TAM or a TEAM.

SECTION 8. WHEN SHOULD A TAM OR TEAM BE REQUESTED?

Uniformity of position lacking

.01 A TAM or a TEAM should be requested when there is a lack of uniformity regarding the disposition of an issue or when an issue is unusual or complex enough to warrant consideration by EP or EO Technical.

When can a TAM or a TEAM be requested

.02 The provisions of this revenue procedure apply only to a case under the jurisdiction of EP or EO Examinations, EP or EO Determinations or the Appeals Area Director, Area 4. A TAM or a TEAM may also be requested on issues considered in a prior appeals disposition, not based on mutual concessions for the same tax period of the same taxpayer, if the appeals office that had the case concurs in the request.

(1) EP or EO Examinations or EP or EO Determinations may not request a TAM or TEAM on an issue if an appeals office is currently considering an identical issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or an affiliated group of which the taxpayer is also a member within the meaning of § 1504).

(2) A case remains under the jurisdiction of EP or EO Examinations or EP or EO Determinations even though an appeals office has the identical issue under consideration in the case of another taxpayer (not related within the meaning of § 267 or § 1504) in an entirely different transaction. With respect to the same taxpayer or the same transaction, when the issue is under the jurisdiction of an appeals office, and the applicability of more than one kind of federal tax is dependent upon the resolution of that issue, EP or EO Examinations or EP or EO Determinations may not request a TAM or TEAM on the applicability of any of the taxes involved.

(3) EP or EO Examinations or EP or EO Determinations or an Appeals Area Director, Area 4, also may not request a TAM or TEAM on an issue if the same issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) is in a docketed case for the same taxpayer (or for a related taxpayer or a member of an affiliated group of which the taxpayer is also a member) for any taxable year.

(4) A TEAM cannot be requested on those areas of mandatory technical advice set forth in section 4.04 of this procedure.

At the earliest possible stage

.03 Once an issue is identified, all requests for a TAM or a TEAM should be made at the earliest possible stage in the proceeding. The fact that the issue is raised late in the examination,

determination or appeals process should not influence, however, EP or EO Examinations', EP or EO Determinations' or the Appeals Area Director, Area 4's decision to request a TAM or a TEAM.

SECTION 9. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED?

Pre-submission conference generally is permitted when a request for TAM or TEAM is likely and all parties agree to request the conference

.01 In an effort to promote expeditious processing of requests for a TAM or a TEAM, EP or EO Technical generally will discuss the issue(s) with the EP or EO Examinations or the EP or EO Determinations or the appeals office and the taxpayer prior to the time any request for technical advice is formally submitted to EP or EO Technical. In all cases, other than mandatory TAMs which are described in section 4.04, a pre-submission conference is mandatory. Although taxpayer participation in the conference is not required for a TAM, it is required for a TEAM. A request for a pre-submission conference should be made, however, only after the EP or EO Examinations or the EP or EO Determinations or the appeals office determines that it will likely request a TAM or a TEAM. If the request for a TAM or TEAM will involve more than one function, representatives from each function involved must participate in the pre-submission conference.

Purpose of pre-submission conference

.02 A pre-submission conference is intended to facilitate agreement between the parties as to the appropriate scope of the request for a TAM or a TEAM any collateral issues that either should or should not be included in the request for a TAM or a TEAM, and any other substantive or procedural considerations that will allow EP or EO Technical to provide the parties with a TAM or a TEAM as expeditiously as possible.

A pre-submission conference is not intended to create an alternate procedure for determining the merits of the substantive positions advocated by the EP or EO Examinations or the EP or EO Determinations or the appeals office or by the taxpayer. Rather, the conference is intended only to facilitate the overall process.

During the pre-submission conference, the parties should determine whether the issue or issues is appropriate for a TEAM. The parties should discuss the framing of the issue(s), what background information and documents are required and when the request for a TAM or a TEAM will be submitted. Where more than one function will be involved in responding to a proposed TEAM, each must agree that the request is suitable for TEAM procedures and that the necessary coordination can be provided.

If the different functions do not agree that the TEAM procedures are appropriate, then the request will be processed subject to the procedures in this revenue procedure for a TAM.

Request for pre-submission conference must be submitted in writing by the EP or EO Examinations or the EP or EO Determinations or the appeals office

.03 A request for a pre-submission conference must be submitted in writing by the EP or EO Examinations or the EP or EO Determinations or the appeals office. The request should identify the office expected to have jurisdiction over the request for a TAM or a TEAM. The request should include a brief explanation of the primary issue so that an assignment to the appropriate group can be made.

Group will contact the EP or EO Examinations or the EP or EO Determinations or the appeals office to arrange the pre-submission conference

.04 Within 5 working days after it receives the request, the group assigned responsibility for conducting the pre-submission conference will contact the EP or EO Examinations or the EP or EO Determinations or the appeals office to arrange a mutually convenient time for the parties to meet (generally by telephone) in the EP or EO Technical office. The conference generally should be held within 30 calendar days after the EP or EO Examinations or the EP or EO Determinations or the appeals office is contacted. The EP or EO Examinations or the EP or EO Determinations or the appeals office will be responsible for coordinating with the taxpayer as well as with any other Service personnel whose attendance the EP or EO Examinations or the EP or EO Determinations or the appeals office believes would be appropriate.

If a TEAM is requested, the group assigned responsibility for conducting the pre-submission conference will, within two working days of receiving the request, schedule the conference. The conference will be held within 15 calendar days of the assigned group's call to the field.

Pre-submission conference generally held by telephone

.05 Generally, pre-submission conferences for TAMs and TEAMS are held by telephone with EP or EO Technical unless the parties specifically request that the conference be held in person. In no event will the request for an in person pre-submission conference on a TEAM be allowed to delay the conference beyond the 15-day period in section 9.04 of this revenue procedure.

Certain information required to be submitted to EP or EO Technical prior to the pre-submission conference

.06 At least 10 working days before the scheduled pre-submission conference, the EP or EO Examinations or the EP or EO Determinations or the appeals office and the taxpayer should submit to EP or EO Technical a statement of the pertinent facts (including any facts in dispute), a statement of the issues that the parties would like to discuss, and any legal analysis, authorities, or background documents that the parties believe would facilitate EP or EO Technical's understanding of the issues to be discussed at the conference. The legal analysis provided for the pre-submission conference need not be as fully developed as the analysis that ultimately will accompany the request for a TAM or a TEAM, but it should allow EP or EO Technical to become reasonably informed regarding the subject matter of the conference prior to the meeting. The EP or EO Examinations or the EP or EO Determinations or the appeals office or the taxpayer should ensure that the EP or EO Technical office receives a copy of any required power of attorney, on Form 2848, *Power of Attorney and Declaration of Representative*.

If the pre-submission conference pertains to a request for a TAM, the assigned group must receive the pre-submission materials at least 10 working days prior to the conference.

If the pre-submission conference pertains to a request for a TEAM, the assigned group must receive the pre-submission materials no later than five calendar days before the conference. Failure to timely submit the materials will result in the case being processed as a TAM rather than a TEAM.

Manner of submitting pre-submission materials

.07 Regardless whether the pre-submission conference pertains to a request for a TAM or a request for a TEAM, the pre-submission materials must be submitted electronically. In order to obtain the protection of taxpayer information offered by the Service's Intranet "firewall," the pre-submission materials must be electronically transmitted by the Service office assigned to the request.

To the extent that supporting materials cannot be submitted electronically, such materials should be sent by fax or by express mail or private delivery service to the tax law specialist or actuary in Headquarters assigned to the request. In such cases, the appropriate provisions of section 10.05 should be followed.

Pre-submission conference may not be taped

.08 Because pre-submission conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Discussion of substantive issues is not binding on the Service

.09 Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

SECTION 10. WHAT MUST BE INCLUDED IN THE REQUEST FOR A TAM OR A TEAM?

Statement of issues, facts, law, and arguments

.01 Whether initiated by the taxpayer or by an EP or EO Examinations or an EP or EO Determinations or an appeals office, a request for a TAM or a TEAM must include the facts and the issues for which the TAM or the TEAM is requested, and a written statement that clearly sets forth the applicable law and the arguments in support of both the Service's and the taxpayer's positions on the issue or issues.

Taxpayer must submit statement if the taxpayer initiates request for a TAM or a TEAM

(1) If the taxpayer initiates the request for a TAM or a TEAM, the taxpayer must submit to the EP or EO specialist or appeals office, at the time the taxpayer initiates the request, a written statement—

(a) stating the facts and the issues;

(b) explaining the taxpayer's position;

(c) discussing any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, or any other authority supporting the taxpayer's position; and

(d) stating the reasons for requesting technical advice.

If the EP or EO specialist or the appeals office determines that a TAM or TEAM will be requested, the taxpayer's statement will be forwarded to EP or EO Technical with the request for the TAM or TEAM.

Taxpayer is encouraged to submit statement if Service initiates request for a TAM or a TEAM

(2) If the request for a TAM or A TEAM is initiated by an EP or EO Examinations office or by an EP or EO Determinations office or by an appeals office, the taxpayer is encouraged to submit the written statement described in section 10.01(1) of this revenue procedure. If the taxpayer's statement is received after the request for the TAM or the TEAM has been forwarded to EP or EO Technical, the statement will be forwarded to EP or EO Technical for association with the TAM or the TEAM.

Statement of authorities contrary to taxpayer's position

(3) Whether the request for a TAM or a TEAM is initiated by the taxpayer or by an EP or EO Examinations office or by an EP or EO Determinations office or by an appeals office, the taxpayer is also encouraged to comment on any legislation, tax treaties, regulations, revenue rulings, revenue procedures, or court decisions contrary to the taxpayer's position. If the taxpayer determines that there are no contrary authorities, a statement to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Service, in complex cases or those presenting difficult or novel issues, may request submission of contrary authorities or a statement that none exists.

General provisions of §§ 6104 and 6110

.02 Generally, § 6104(a)(1)(B) provides that an application filed with respect to: (1) the qualification of a pension, profit-sharing, or stock bonus plan under § 401(a) or § 403(a) or an individual retirement arrangement under § 408(a) or § 408(b) will be open to public inspection pursuant to regulations as will (2) any application filed for an exemption from tax under § 501(a) of an organization forming part of a plan or account described above. Generally, § 6110(a) provides that except as provided otherwise, written determinations (defined in § 6110(b)(1) as rulings, determination letters, technical advice memorandums and Chief Counsel advice) and any related background file document will be open to public inspection pursuant to regulations.

Application of § 6104

.03 The requirements for submitting statements and other materials or proposed deletions in TAMs or TEAMS before public inspection is allowed do not apply to requests for any documents to the extent § 6104 applies.

Statement identifying information to be deleted from public inspection

.04 The text of a TAM or a TEAM subject to § 6110(a) may be open to public inspection. The Service deletes certain information from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), the taxpayer must provide a statement indicating the deletions desired ("deletions statement"). If the taxpayer does not submit the deletions statement, the Service will follow the procedures in section 11.07 of this revenue procedure.

A taxpayer who wants only names, addresses, and identifying numbers deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletions statement must be accompanied by a copy of the TAM or the TEAM request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletions statement must indicate the statutory basis, under § 6110(c) for each proposed deletion.

The taxpayer may submit additional deletions statements before the TAM or TEAM is issued.

The deletions statement must not appear in the request for a TAM or a TEAM but, instead, must be made in a separate document.

The deletions statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or a faxed signature is not permitted.

The taxpayer should follow these same procedures to propose deletions from any additional information submitted after the initial request for a TAM or a TEAM. An additional deletions statement, however, is not required with each submission of additional information if the taxpayer's initial deletions statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants the same information deleted from the additional information.

Transmittal Form 5565, Request for Technical Advice — EP/EO

.05 The EP or EO Examinations or the EP or EO Determinations or the appeals office (including another Operating Division of the Service involved in an examination where EP Technical does not have audit jurisdiction but has interpretive jurisdiction as enumerated in section 6.02 of Rev. Proc. 2006-4) should use Form 5565, *Request for Technical Advice — EP/EO*, for transmitting a request for technical advice to EP or EO Technical.

The appropriate office of the Service must submit electronically, the Form 5565 for a TAM or a TEAM request to *David.W.Welty@irs.gov* for EP matters and *Wayne.C.Hardesty@irs.gov* for EO matters. To the extent feasible, the accompanying documents should be submitted to the same e-mail address (followed by a hard copy if requested by the assigned group). See section 9.07 for additional information.

The applicable office should submit additional documents that are not available in electronic form by fax to 202-283-9654 for EP matters and 202-283-8858 for EO matters or by express mail or private delivery service to the address below.

Whenever possible, all documents should contain the case number and name of the tax law specialist or actuary assigned to the pre-submission conference for the TAM or TEAM request. Documents that are being sent in hardcopy should be sent on the business day before the day that the request for a TAM or a TEAM is submitted via e-mail, so as not to delay the process. It is anticipated that most, if not all, such documents will be identified during the pre-submission conference.

The field and the taxpayer are encouraged to provide electronic versions of a proposed TAM or TEAM containing the taxpayer's deletions and legends for EP Technical's or EO Technical's use.

Address to send requests from EP or EO Examinations or EP or EO Determinations offices or another Operating Division

Employee Plans

Internal Revenue Service
Attn: SE:T:EP:RA
1111 Constitution Ave., NW – PE
Washington, DC 20224

Exempt Organizations

Internal Revenue Service
Attn: SE:T:EO:RA
1111 Constitution Ave., NW – PE
Washington, DC 20224

**Address to send requests from
appeals offices**

Internal Revenue Service
Director, Technical Services
Attn: C:AP
Franklin Court Building
1099 14th Street, NW
Washington, DC 20005

Power of attorney

.06 Any authorized representative, as described in section 9.02 of Rev. Proc. 2006-4, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230, as revised, and with the conference and practice requirements of the Statement of Procedural Rules (26 CFR part 601). A Form 2848, *Power of Attorney and Declaration of Representative*, must be used with regard to requests for a TAM or a TEAM under this revenue procedure. An original, a copy or a fax transmission of the power of attorney is acceptable so long as its authenticity is not reasonably disputed.

**SECTION 11. HOW ARE
REQUESTS HANDLED?**

Taxpayer notified

.01 Regardless of whether the taxpayer or the Service initiates the request for a TAM or a TEAM, the EP or EO Examinations or the EP or EO Determinations or the appeals office: (1) will notify the taxpayer that the TAM or the TEAM is being requested; and (2) at or before the time the request is submitted to EP or EO Technical, will give to the taxpayer a copy of the arguments that are being provided to EP or EO Technical in support of its position.

If the EP or EO specialist or appeals office initiates the request for a TAM or a TEAM, he or she will give to the taxpayer a copy of the statement of the pertinent facts and the issues proposed for submission to EP or EO Technical.

This section 11.01 does not apply to a TAM or a TEAM described in section 11.08 of this revenue procedure.

**Consider whether the issue or
issues is appropriate for a TEAM**

.02 The tax law specialist or actuary assigned to the case and reviewer should evaluate the issue(s) presented in any TEAM request to confirm that the issue(s) is appropriate for TEAM procedures. If the tax law specialist or actuary and the reviewer have reservations as to whether TEAM procedures should apply, the reviewer should discuss those reservations with both the field and the taxpayer and, if necessary, the group manager. If they agree that the TEAM procedures should not apply because the issue is too complex or cannot for practical reasons be resolved within 60 days, the group manager should prepare a memo to the Manager, Technical asking that the case be excluded from the TEAM procedures and be treated as a TAM.

The office assigned the case will attempt to issue all TEAMS within 60 calendar days of receipt, provided that the field and the taxpayer submit all required information in a timely manner. The office will provide the field with the TEAM at the earliest possible date (whether the proposed TEAM is favorable or adverse, in whole or in part, to the taxpayer). The headquarters office will not advise the taxpayer of a proposed or final conclusion until the office assigned the case has considered a request for reconsideration under section 17 of this revenue procedure, or if no reconsideration is requested after the 30-day period to request reconsideration, whichever occurs later.

**Consider whether published
guidance is appropriate**

.03 Whenever the assigned reviewer suspects that general guidance should be published regarding the issue presented, the reviewer will notify the Manager, Technical who in turn will notify the Manager, Technical Guidance and Quality Assurance. The Manager, Technical Guidance and Quality Assurance will then determine if the issue meets publication standards. In general, except where policy issues and concerns regarding proper administration of the tax laws require otherwise, the TAM or the TEAM will be issued in advance of published guidance.

Conference offered

.04 When notifying the taxpayer that technical advice is being requested, the EP or EO specialist or appeals office will also tell the taxpayer about the right to a conference in EP or EO Technical if an adverse decision is indicated and will ask the taxpayer whether such a conference is desired.

If the taxpayer disagrees with the Service's statement of facts

.05 If the EP or EO specialist or appeals office initiates the request for a TAM or a TEAM, the taxpayer has 10 calendar days after receiving the statement of facts and specific issues to submit to that specialist or office a written statement specifying any disagreement on the facts and issues. A taxpayer who needs more than 10 calendar days must justify, in writing, the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 4. This section 11.05 does not apply to a TAM or a TEAM described in section 11.08.

After receiving the taxpayer's statement of the areas of disagreement, every effort should be made to reach agreement on the facts and the specific points at issue before the matter is referred to EP or EO Technical. If an agreement cannot be reached, the EP or EO Examinations or the EP or EO Determinations or the appeals office will notify the taxpayer in writing. Within 10 calendar days after receiving the written notice, the taxpayer may submit a statement of the taxpayer's understanding of the facts and the specific points at issue. A taxpayer who needs more than 10 calendar days to prepare the statement of understanding must justify, in writing, the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 4. Both the statements of the taxpayer and the EP or EO Examinations or EP or EO Determinations or appeals office will be forwarded to EP or EO Technical with the request for a TAM or a TEAM.

When EP or EO Examinations or EP or EO Determinations or the Appeals Area Director, Area 4, and the taxpayer cannot agree on the material facts and the request for a TAM or a TEAM does not involve the issue of whether a letter ruling or determination letter should be modified or revoked, EP or EO Technical, at its discretion, may refuse to provide technical advice. If EP or EO Technical chooses to issue the TAM or the TEAM, it will base its advice on the facts provided by the EP or EO Examinations or EP or EO Determinations or appeals office.

If a request for a TAM or a TEAM involves the issue of whether a letter ruling or determination letter should be modified or revoked, EP or EO Technical will issue the TAM or TEAM.

If the Service disagrees with the taxpayer's statement of facts

.06 If the taxpayer initiates the action to request a TAM or A TEAM, and the taxpayer's statement of the facts and issues is not wholly acceptable to the EP or EO Examinations or the EP or EO Determinations or the appeals office, the Service will notify the taxpayer in writing of the areas of disagreement. The taxpayer has 10 calendar days after receiving the written notice to reply to it. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager, or the EP or EO Determinations manager or the Appeals Area Director, Area 4.

If an agreement cannot be reached, both the statements of the taxpayer and the EP or EO Examinations or EP or EO Determinations or appeals office will be forwarded to EP or EO Technical with the request for a TAM or a TEAM. When the disagreement involves material facts essential to the preliminary assessment of the case, the EP or EO Examinations Area manager, EP or EO Determinations manager or the Appeals Area Director, Area 4, may refuse to refer a taxpayer initiated request for the TAM or the TEAM to EP or EO Technical.

If EP or EO Examinations or EP or EO Determinations or the Appeals Area Director, Area 4, submits a case involving a disagreement of material facts, EP or EO Technical, at its discretion, may refuse to provide the TAM or the TEAM. If EP or EO Technical chooses to issue the TAM or the TEAM, it will base its advice on the facts provided by the EP or EO Examinations or the EP or EO Determinations or the appeals office.

If the taxpayer has not submitted the required deletions statement

.07 When the EP or EO Examinations or the EP or EO Determinations or the appeals office initiates the request for a TAM or a TEAM, the taxpayer has 10 calendar days after receiving the statement of facts and issues to be submitted to EP or EO Technical to provide the deletions statement required under § 6110 if public inspection is permitted pursuant to § 6110 (*see* section

10.05 of this revenue procedure). In such a case, if the taxpayer does not submit the deletions statement, the EP or EO Examinations or the EP or EO Determinations or the appeals office, will tell the taxpayer that the statement is required.

When the taxpayer initiates the request for a TAM or a TEAM and does not submit with the request a deletions statement as required by § 6110, the EP or EO Examinations or the EP or EO Determinations or the Appeals Area Director, Area 4, will ask the taxpayer to submit the statement. If the EP or EO Examinations or the EP or EO Determinations or the Appeals Area Director, Area 4, does not receive the deletions statement within 10 calendar days after asking the taxpayer for it, the EP or EO Examinations or the EP or EO Determinations or the Appeals Area Director, Area 4, may decline to submit the request for the TAM or the TEAM.

However, if the EP or EO Examinations or the EP or EO Determinations or the Appeals Area Director, Area 4, decides to request a TAM or a TEAM, whether initiated by the EP or EO Examinations or the EP or EO Determinations or the appeals office or by the taxpayer, in a case in which the taxpayer has not submitted the deletions statement, EP or EO Technical will make those deletions that the Commissioner of Internal Revenue determines are required by § 6110(c).

Criminal or civil fraud cases

.08 The provisions of this section (about referring issues upon the taxpayer's request, obtaining the taxpayer's statement of the areas of disagreement, telling the taxpayer about the referral of issues, giving the taxpayer a copy of the arguments submitted, submitting proposed deletions, and granting conferences in EP or EO Technical) do not apply to a TAM or a TEAM described in § 6110(g)(5)(A) that involves a matter that is the subject of or is otherwise closely related to a criminal or civil fraud investigation, or a jeopardy or termination assessment.

In these cases, a copy of the TAM or the TEAM is given to the taxpayer after all proceedings in the investigations or assessments are complete, but before the Service mails the notice of intention to disclose the TAM or the TEAM under § 6110(f)(1). The taxpayer may then provide the statement of proposed deletions to EP or EO Technical.

SECTION 12. HOW DOES A TAXPAYER APPEAL AN EP OR EO MANAGER'S OR AN APPEALS AREA DIRECTOR'S DECISION NOT TO SEEK TECHNICAL ADVICE?

Taxpayer notified of decision not to seek a TAM or a TEAM

.01 If the EP or EO specialist's or the appeal's referral of an issue to EP or EO Technical for a TAM or a TEAM does not warrant referral, the EP or EO specialist or the appeals office will tell the taxpayer. A taxpayer's request for such a referral will not be denied merely because EP or EO Technical provided legal advice, other than advice furnished pursuant to this revenue procedure, to the EP or EO Examinations or EP or EO Determinations or appeals office on the matter.

Taxpayer may request review of decision not to seek a TAM or a TEAM

.02 The taxpayer may request review of the decision of the EP or EO specialist or the appeals office not to request a TAM or a TEAM in all instances. To do so, the taxpayer must submit to that specialist or office, within 10 calendar days after being told of the decision, a written statement of the facts, law, and arguments on the issue and the reasons why the taxpayer believes the matter should be referred to EP or EO Technical for a TAM or a TEAM. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager or EP or EO Determinations manager or the appropriate appeals office.

EP or EO Examinations Area manager or EP or EO Determinations manager or Appeals Area Director, Area 4, determines whether technical advice will be sought

.03 The EP or EO specialist or the appeals office submits the taxpayer's statement through proper channels to the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 4, along with the EP or EO specialist's or the appeals office's statement of why the issue should not be referred to EP or EO Technical. The manager or chief determines, on the basis of the statements, whether a TAM or a TEAM will be requested.

If the manager or chief determines that a TAM or a TEAM is not warranted and proposes to deny the request, the taxpayer is told in writing about the determination. In the letter to the taxpayer, the manager or chief states the reasons for the proposed denial (except in unusual situations when doing so would be prejudicial to the best interests of the Government). The taxpayer has 10 calendar days after receiving the letter to notify the manager or chief of agreement or disagreement with the proposed denial.

Manager or area director's decision may be reviewed but not appealed

.04 The taxpayer may not appeal the decision of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 4, not to request a TAM or a TEAM from EP or EO Technical. However, if the taxpayer does not agree with the proposed denial, all data on the issue for which the TAM or the TEAM has been sought, including the taxpayer's written request and statements, will be submitted to the Commissioner, Tax Exempt and Government Entities Division or the Director, Appeals, Technical Services as appropriate.

The Commissioner, Tax Exempt and Government Entities Operating Division through the Director, Employee Plans, or the Director, Exempt Organizations or, if appropriate, the Chief, Appeals will review the proposed denial solely on the basis of the written record, and no conference will be held with the taxpayer or the taxpayer's representative. The appropriate Director or Chief or his or her representative may consult with EP or EO Technical and the Office of Chief Counsel, if necessary, and will notify the EP or EO Examinations or the EP or EO Determinations or the appeals office within 45 calendar days of receiving all the data regarding the request for a TAM or a TEAM whether the proposed denial is approved or disapproved. The EP or EO Examinations or the EP or EO Determinations or appeals office will then notify the taxpayer.

While the matter is being reviewed, the EP or EO Examinations office or the EP or EO Determinations office or the appeals office suspends action on the issue (except when the delay would prejudice the Government's interest).

The provisions of this revenue procedure regarding review of the proposed denial of a request for a TAM or a TEAM continue to be applicable in those situations in which the authority normally exercised by the EP or EO Examinations Area manager, the EP or EO Determinations manager, or the Appeals Area Director, Area 4, has been delegated to another official.

SECTION 13. HOW ARE REQUESTS FOR TAMs and TEAMs WITHDRAWN?

Taxpayer notified

.01 Once a request for a TAM or a TEAM has been sent to EP or EO Technical, only an EP or EO Examinations Area manager, an EP or EO Determinations manager or an Appeals Area Director, Area 4, may withdraw that request for the TAM or the TEAM. He or she may ask to withdraw a request at any time before the responding transmittal memorandum transmitting the TAM or the TEAM is signed.

The EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director, Area 4, as appropriate, must notify the taxpayer in writing of an intent to withdraw the request for the TAM or the TEAM except—

(1) when the period of limitations on assessment is about to expire and the taxpayer has declined to sign a consent to extend the period, or

(2) when such notification would be prejudicial to the best interests of the Government.

If the taxpayer does not agree that the request for a TAM or a TEAM should be withdrawn, the procedures in section 12 of this revenue procedure must be followed.

EP or EO Technical may provide views

.02 When a request for a TAM or a TEAM is withdrawn, EP or EO Technical may send its views to the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, when acknowledging the withdrawal request. In an appeals

case, acknowledgment of the withdrawal request should be sent to the appropriate appeals office, through the Director, Technical Services, C:AP. In appropriate cases, the subject matter may be published as a revenue ruling or as a revenue procedure.

SECTION 14. HOW ARE CONFERENCES SCHEDULED?

If requested, offered to the taxpayer when adverse TAM or TEAM proposed

.01 If, after the TAM or the TEAM is analyzed, it appears that a TAM or a TEAM adverse to the taxpayer will be given, and if a conference has been requested, the taxpayer will be informed, by telephone if possible, of the time and place of the conference.

Timeline

.02 The conference for a TAM must be held within 21 calendar days after the taxpayer is contacted.

Within 20 calendar days of receipt of a TEAM request, the assigned group in EP Technical or in EO Technical will analyze the facts and offer the taxpayer a conference of right which will be scheduled within 10 calendar days of the date of the offer of the conference.

If conferences are being arranged for more than one request for a TAM or a TEAM for the same taxpayer, they will be scheduled to cause the least inconvenience to the taxpayer. If considered appropriate, EP or EO Technical will notify the EP or EO specialist or the appeals office of the scheduled conference and will offer the EP or EO specialist or the appeals officer the opportunity to attend the conference. The Commissioner, Tax Exempt and Government Entities Division, the Chief, Appeals, the EP or EO Examinations Area manager, the EP or EO Determinations manager, or the Appeals Area Director, Area 4, may designate other Service representatives to participate in the conference in lieu of, or in addition to, the EP or EO specialist or the appeals officer.

21-day period may be extended if justified and approved

.03 In the case of a TAM, an extension of the 21-day period will be granted only if the taxpayer justifies it in writing, and the group manager (or his or her delegate) of the office to which the case is assigned approves it. No extension will be granted without the approval of the group manager (or his or her delegate). The taxpayer (or an authorized representative must notify the EP Specialist or the EO Specialist or the appeals office of the request for an extension. Except in rare and unusual circumstances, EP or EO Technical will not agree to an extension of more than 10 working days beyond the end of the 21-day period. No extension of the ten day period for TEAMS is allowed.

The taxpayer's request for an extension must be submitted before the end of the 21-day period, and should be submitted sufficiently before the end of this period to allow EP or EO Technical to consider, and either approve or deny, the request before the end of the 21-day period. If unusual circumstances near the end of the period make a timely written request impractical, the taxpayer (or an authorized representative) should orally inform the assigned tax law specialist or actuary before the end of the period about the problem and about the forthcoming written request for an extension. The written request for an extension must be submitted to EP or EO Technical promptly after the oral request. The taxpayer will be told promptly (and later in writing) of the approval or denial of the requested extension.

Denial of extension cannot be appealed

.04 There is no right to appeal the denial of a request for an extension of a TAM. If EP or EO Technical is not advised of problems with meeting the 21-day period, or if the written request is not sent promptly after EP or EO Technical is notified of problems with meeting the 21-day period, the TAM will be processed on the basis of the existing record.

Entitled to one conference of right

.05 A taxpayer is entitled by right to only one conference in EP or EO Technical except as provided in section 14.09 of this revenue procedure. This conference is normally held at the group level in EP Technical or EO Technical, whichever is appropriate. It is attended by a person who has authority to sign the transmittal memorandum discussed in section 16.13 on behalf of the group manager.

When more than one group has taken an adverse position on an issue in the request, or when the position ultimately adopted by one group will affect another group's determination,

a representative from each group with authority to sign for the group manager will attend the conference. If more than one subject is discussed at the conference, the discussion constitutes the conference of right for each subject discussed.

To have a thorough and informed discussion of the issues, the conference usually is held after the group has had an opportunity to study the case. However, the taxpayer may request that the conference of right be held earlier in the consideration of the case than the Service would ordinarily designate.

The taxpayer has no right to appeal the action of a group to any other Service official. But see section 14.09 for situations in which the Service may offer additional conferences.

Conference may not be taped

.06 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Conference may be delayed to address a request for relief under § 7805(b)

.07 In the event of a tentative adverse determination, the taxpayer may request in writing a delay of the conference so that the taxpayer can prepare and submit a brief requesting relief under § 7805(b) (discussed in section 19 of this revenue procedure). The group manager (or his or her delegate) of the office to which the case is assigned will determine whether to grant or deny the request for delaying the conference. If such request is granted, the Service will schedule a conference on the tentatively adverse position and the § 7805(b) relief request within 10 days of receiving the taxpayer's § 7805(b) request. See section 19.06 of this revenue procedure for the conference procedures if the § 7805(b) request is made after the conference on the substantive issues has been held.

Service makes tentative recommendations

.08 The senior Service representative at the conference ensures that the taxpayer has full opportunity to present views on all the issues in question. The Service representatives explain the tentative decision on the substantive issues.

If, in the instance of a TAM, the taxpayer requests relief under § 7805(b) (regarding limitation of retroactive effect), the Service representatives will discuss the tentative recommendation concerning the request for relief and the reason for the tentative recommendation. Because a request for § 7805(b) relief is mandatory pursuant to section 4.04 of this revenue procedure, a TEAM cannot be requested.

No commitment will be made as to the conclusion that the Service will finally adopt regarding any issue, including the outcome of the § 7805(b) request for relief.

Additional conferences may be offered

.09 In the case of a TAM, the Service will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed on a new issue or on the same issue but on grounds different from those discussed at the first conference. In the case of a TEAM, once the conference of right is held, no further conferences will be offered unless the case is first excluded from the TEAM procedure and treated as a TAM as described in section 3 of this revenue procedure.

When a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, the taxpayer has no right to another conference if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limitation on the number of conferences to which a taxpayer is entitled does not prevent EP or EO Technical from inviting a taxpayer to attend additional conferences, including conferences with an official higher than the group level, if EP or EO Technical personnel think they are necessary. Such conferences are not offered as a matter of course simply because the group has reached an adverse decision. In general, conferences with higher level officials are offered only if the Service determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

In accordance with section 14.02 of this revenue procedure, the EP or EO specialist or the appeals office may be offered the opportunity to participate in any additional taxpayer's con-

ference, including a conference with an official higher than the group level. Section 14.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

Additional information submitted after the conference

.10 After the conference, the taxpayer must furnish to EP or EO Technical, whichever is applicable, any additional data, lines of reasoning, precedents, etc., that the taxpayer proposed and discussed at the conference but did not previously or adequately present in writing. This additional information must be submitted by letter with a penalties of perjury statement in the form described in section 16.10 of this revenue procedure.

For TAMs and TEAMS the taxpayer must also send a copy of the additional information to the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, for comment. Any comments on additional information by Service personnel must be furnished promptly to the appropriate group in EP or EO Technical. If the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, does not have any comments, he or she must notify the group representative promptly.

If the additional information has a significant impact on the facts in the request for a TAM or a TEAM, EP or EO Technical will ask EP or EO Examinations or EP or EO Determinations or the Appeals Area Director, Area 4, for comments on the facts contained in the additional information submitted. The EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, will give the additional information prompt attention.

In the case of a TAM, if the additional information is not received from the taxpayer within 21 calendar days, the TAM will be issued on the basis of the existing record. In the case of a TEAM, if the additional information is not received within 15 calendar days the TEAM will be issued based on the existing record.

An extension of the 21-day period for TAMs may be granted only if the taxpayer justifies it in writing, and the group manager (or his or her delegate) of the office to which the case is assigned approves the extension. Such extension will not be routinely granted. The procedures for requesting an extension of the 21-day period and notifying the taxpayer of the Service's decision are the same as those in sections 14.03 and 14.04 of this revenue procedure. There is no extension of the 15-day period for TEAMS.

Normally held by telephone

.11 The conference will be conducted by telephone, unless the taxpayer or the field requests that the conference be held in person. The taxpayer will be advised when to call the Service representatives (not a toll-free call). In no event will the conference be delayed to provide an in-person conference rather than a telephone conference.

In accordance with section 14.02 of this revenue procedure, the EP or EO specialist or appeals office will be offered the opportunity to participate in the telephone conference. Section 14.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

SECTION 15. HOW IS STATUS OF REQUEST OBTAINED?

Taxpayer or taxpayer's representative may request status from EP or EO Examinations or EP or EO Determinations or appeals office

.01 The taxpayer or the taxpayer's representative may obtain information on the status of the request for a TAM or a TEAM by contacting the EP or EO Examinations office or the EP or EO Determinations office or the appeals office that requested the TAM or the TEAM. *See* section 16.08 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer's representative. *See* section 17.03 of this revenue procedure regarding discussions of the contents of the TAM or the TEAM with the taxpayer or the taxpayer's representative.

EP or EO Technical will give status updates to the EP or EO Examinations or EP or EO Determinations or Appeals Area Director, Area 4

.02 The group representative or manager to whom the TAM or the TEAM request is assigned will give status updates on the request once a month to the EP or EO Examination Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 4. In addition, an EP or EO Examinations Area manager or an EP or EO Determinations manager or an Appeals Area Director, Area 4, may get current information on the status of the request for a TAM or a TEAM by calling the person whose name and telephone number are shown on acknowledgment of receipt of the request for the TAM or the TEAM.

See section 16.09 of this revenue procedure about discussing the final conclusions with the EP or EO Examinations office or the EP or EO Determinations office or the appeals office. Further, the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, will be notified at the time the TAM or the TEAM is mailed.

SECTION 16. HOW DOES EP OR EO TECHNICAL PREPARE THE TAM OR THE TEAM?

Delegates authority to group managers

.01 The authority to issue a TAM or a TEAM on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Operating Division has largely been delegated to the managers of the Employee Plans Rulings & Agreements Technical and Actuarial groups, and the Technical Guidance and Quality Assurance group (collectively referred to as “EP Technical”); and of the Exempt Organizations Rulings & Agreements Technical groups and the Technical Guidance and Quality Assurance group (collectively referred to as “EO Technical”)

Determines whether request has been properly made

.02 A request for a TAM or a TEAM generally is given priority and processed expeditiously. As soon as the request for a TAM or a TEAM is assigned, the technical employee analyzes the file to see whether it meets all of the requirements of sections 7, 8, and 10 of this revenue procedure.

However, if the request does not comply with the requirements of section 10.04 of this revenue procedure relating to the deletions statement, the Service will follow the procedure in the next to last paragraph of section 11.05 of this revenue procedure.

Contacts the EP or EO Examinations or EP or EO Determinations or appeals office to discuss issues

.03 Upon receipt of a request for a TAM or a TEAM, a representative of the group assigned the TAM or the TEAM will telephone the EP or EO Examinations office or the EP or EO Determinations office or the appeals office to acknowledge receipt of the TAM or the TEAM and to establish a point of contact. Within 21 calendar days from the receipt of a TAM or within five calendar days for a TEAM, the tax law specialist or actuary should contact the EP or EO specialist or appeals office to discuss the procedural and substantive issues in the request that come within the group’s jurisdiction.

Informs the EP or EO Examinations or EP or EO Determinations or appeals office if any matters in the request have been referred to another group or office

.04 If the technical advice request concerns matters within the jurisdiction of more than one group or office, a representative of the group that received the original technical advice request generally informs the EP or EO Examinations office or EP or EO Determinations office or the appeals office within 21 calendar days of receiving the request that—

(1) the matters within the jurisdiction of another group or office have been referred to the other group or office for consideration, and

(2) a representative of the other group or office will contact the EP or EO Examinations office or the EP or EO Determinations office or the appeals office about the referral of the technical advice request within 21 calendar days after receiving it in accordance with section 16.03 above.

If the request for a TEAM involves more than one office, all of the offices involved should have had the opportunity to participate in the pre-submission conference. Within five calendar days of receipt, the office with the primary responsibility over the TEAM will confirm that all of the offices have received copies of the TEAM request and will advise the submitting office as to who is assigned the TEAM among the various offices. If, after receiving the TEAM request, the office with jurisdiction over the TEAM determines that coordination with another

office is required, the tax law specialist or actuary will also notify the submitting office of the new coordination within five calendar days of the receipt of the TEAM.

**Informs the EP or EO
Examinations or EP or EO
Determinations or appeals office if
additional information is needed**

.05 The group representative will inform the EP or EO Examinations office or the EP or EO Determinations office or the appeals office that the case is being returned if substantial additional information is required to resolve an issue. Cases also should be returned for additional information when significant unresolved factual variances exist between the statement of facts submitted by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office and the taxpayer. They should also be returned if major procedural problems cannot be resolved by telephone. The EP or EO Examinations office or the EP or EO Determinations office or the appeals office should promptly notify the taxpayer of the decision to return the case for further factual development or other reasons.

If only minor procedural deficiencies exist, the group will request the additional information in the most expeditious manner without returning the case.

**Informs the EP or EO
Examinations or EP or EO
Determinations or appeals office
of the tentative conclusion**

.06 If all necessary information has been provided, the group representative informs the EP or EO Examinations office or the EP or EO Determinations office or the appeals office within 21-calendar days after receiving the information for a TAM and within five calendar days after receiving the information for a TEAM of his or her tentative conclusion.

**If a tentative conclusion has not
been reached, gives date estimated
for tentative conclusion**

.07 If a tentative conclusion has not been reached because of the complexity of the issue, the group representative informs the EP or EO Examinations office or the EP or EO Determinations office or the appeals office of the estimated date the tentative conclusion will be made.

**Advises the EP or EO
Examinations or EP or EO
Determinations or appeals office
that preliminary conclusion
not final**

.08 Because the group representative's tentative conclusion may change during the preparation and review of the TAM or the TEAM, the tentative conclusion should not be considered final. Therefore, neither the group representative nor the EP or EO Examinations office or the EP or EO Determinations or the appeals office should advise the taxpayer or the taxpayer's representative of the tentative conclusion before the scheduling of the adverse conference or between the scheduling and the commencement of the adverse conference.

**Advises the EP or EO
Examinations or EP or EO
Determinations or appeals office
of final conclusions**

.09 In all cases, the group representative should inform the EP or EO specialist or appeals office of EP or EO Technical's final conclusions. The EP or EO specialist or the appeals office should be offered the opportunity to discuss the issues and EP or EO Technical's final conclusions before the TAM or the TEAM is issued.

**If needed, requests additional
information**

.10 If, following the initial contact referenced in section 16.03 of this revenue procedure, it is determined, after discussion with the appropriate group manager or reviewer, that additional information is needed, a group representative will obtain the additional information from the taxpayer, the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, in the most expeditious manner possible. Any additional information requested from the taxpayer by EP or EO Technical must be submitted by letter, accompanied by a penalties of perjury statement, within 21 calendar days after the request for information is made. In the case of a TEAM, any additional information requested from the taxpayer by the Headquarter's office must be submitted by letter with a penalties of perjury statement within five calendar days after the request for information is made.

**Request for additional
information by fax**

(1) To facilitate prompt action on TAM and TEAM requests, the Service may request any additional information from the taxpayer by fax.

A request to fax a copy of additional information to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original TAM or TEAM request or prior to the mailing of the request for additional information. The request to fax additional information must contain the fax number of the taxpayer or the taxpayer's authorized representative to and from whom the document is to be faxed.

Because of the unsecured nature of a fax transmission, the Service will take certain precautions to protect confidential information. For example, the Service will use a cover sheet that identifies the intended recipient of the fax and the number of pages transmitted, that does not

identify the taxpayer by name or tax identifying number and that contains a statement prohibiting unauthorized disclosure of the document if a recipient of the faxed document is not the intended recipient of the fax. Also, for example, the cover sheet should be faxed in an order in which it will become the first page covering the faxed document.

Penalties of perjury statement

(2) Additional information submitted to EP or EO Technical must be accompanied by the following declaration: **“Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request, for the information and such facts are true, correct, and complete.”** This declaration must be signed and dated by the taxpayer, not the taxpayer’s representative. A stamped signature or a faxed signature is not permitted.

(3) A written request for an extension of time to submit additional information must be received by EP or EO Technical within the 21-day period for TAMs (5-day period for TEAMS), giving compelling facts and circumstances to justify the proposed extension. The group manager (or his or her delegate) of the office to which the case is assigned will determine whether to grant or deny the request for an extension. Except in rare and unusual circumstances, EP or EO Technical will not agree to an extension of more than 10 working days beyond the end of the 21-day period in the case of a TAM or a 5-day period in the case of a TEAM. There is no right to appeal the denial of a request for an extension.

(4) If EP or EO Technical does not receive the additional information within 21 calendar days, plus any extensions granted by the appropriate group manager (or his or her delegate), EP or EO Technical will process the TAM or the TEAM based on the existing record.

Requests taxpayer to send additional information to the EP or EO Technical and a copy to the EP or EO Examinations or EP or EO Determinations or Appeals Area Director, Area 4

.11 Whether or not requested by the Service, any additional information submitted by the taxpayer should be sent to the headquarters office. Generally, the taxpayer needs only to submit the original of the additional information to EP or EO Technical. However, in appropriate cases, EP or EO Technical may request additional copies of the information.

Also, the taxpayer must send a copy to either the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, for comment. Any comments must be furnished promptly to the appropriate group in EP or EO Technical. If the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, does not have any comments, he or she must notify the group representative promptly.

Informs the taxpayer when requested deletions will not be made

.12 Generally, before replying to the request for a TAM or a TEAM, EP or EO Technical informs the taxpayer orally or in writing of the material likely to appear in the TAM or the TEAM that the taxpayer proposed be deleted but that the Service has determined should not be deleted.

If so informed, the taxpayer may submit within 10 calendar days any further information or other arguments supporting the taxpayer’s proposed deletions.

The Service will attempt to resolve all disagreements about proposed deletions before EP or EO Technical replies to the request for a TAM or a TEAM. However, the taxpayer does not have the right to a conference to resolve any disagreements about material to be deleted from the text of the TAM or the TEAM. These matters, however, may be considered at any conference otherwise scheduled for the request.

Prepares reply in two parts

.13 EP or EO Technical’s replies to a TAM or a TEAM request is in two parts. Each part identifies the taxpayer by name, address, identification number, and year or years involved.

The first part of the reply is a transmittal memorandum. In unusual cases, it is a way of giving the EP or EO Examinations office or the EP or EO Determinations office or the appeals office administrative or other information that under the nondisclosure statutes or for other reasons may not be discussed with the taxpayer.

The second part is the TAM or the TEAM, which contains—

- (1) a statement of the issues;
- (2) a statement of the facts pertinent to the issues;
- (3) a statement of the pertinent law, tax treaties, regulations, revenue rulings, and other precedents published in the Internal Revenue Bulletin, and court decisions;
- (4) a discussion of the rationale underlying the conclusions reached by EP or EO Technical; and
- (5) the conclusions of EP or EO Technical.

The conclusions give direct answers, whenever possible, to the specific issues raised by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office. However, EP or EO Technical is not bound by the precise statement of the issues as submitted by the taxpayer or by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office and may reframe the issues to be answered in the TAM or the TEAM. The discussion in the TAM or the TEAM of the issues will be in sufficient detail so that the EP or EO Examinations or EP or EO Determinations or appeals officials will understand the reasoning underlying the conclusion.

Accompanying a TAM or a TEAM subject to § 6110, is a notice under § 6110(f)(1) of intention to disclose the TAM or the TEAM (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

Routes replies to appropriate office

.14 Replies to requests for TAMs and TEAMS from EO Examinations Area managers and EO Determinations managers are addressed to:

Internal Revenue Service
Attn: EO Mandatory Review
MC 4920 DAL
1100 Commerce Street
Dallas, TX 75242

The EO Mandatory Review Staff will ensure that copies are forwarded to the EO Examinations Area manager or the EO Determinations manager.

Replies to requests for TAMs and TEAMS (1) from EP Examinations Area managers and (2) TAMs from EP Determinations managers that were sent to Headquarters before November 1, 2000, as well as replies to all requests for TAMs and TEAMS from other Operating Divisions of the Service involved in an examination where EP Technical does not have audit jurisdiction but has interpretive jurisdiction as enumerated in section 6.02 of Rev. Proc. 2006-4, are addressed to:

Internal Revenue Service
Attn: EP Special Review — Room 1550
SE:T:EP:E:PR:SR:Technical Advice Coordinator
P.O. Box 13163
Baltimore, MD 21203

The EP Special Review Staff will ensure that copies are forwarded to the applicable manager.

Replies to requests for TAMs or TEAMS from EP Determinations managers sent to Headquarters after October 31, 2000, are addressed to:

Internal Revenue Service
Attn: EP Determinations Quality Assurance
P.O. Box 2508
Cincinnati, OH 45201

Replies to requests for TAMs and TEAMs from the Appeals Area Director, Area 4, are routed to the appropriate appeals office through Technical Services, C:AP.

SECTION 17. HOW DOES AN EP OR EO EXAMINATIONS OR EP OR EO DETERMINATIONS OR AN APPEALS OFFICE USE THE TAMs AND TEAMs?

Generally applies advice in processing the taxpayer's case

.01 The EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 4, must process the taxpayer's case on the basis of the conclusions in the TAM or the TEAM unless—

(1) the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 4, decides that the conclusions reached by EP or EO Technical in a TAM or a TEAM should be reconsidered (the reconsideration process may include a conference held with the EP or EO specialist or appeals office that requested the TAM or the TEAM and the tax law specialist or actuary who drafted the TAM or the TEAM), or

(2) the Appeals Area Director, Area 4, in the case of a TAM or a TEAM unfavorable to the taxpayer, decides to settle the issue in the usual manner under existing authority.

Subject to a request for reconsideration of the conclusions in a TAM or a TEAM, EP or EO Examinations or EP or EO Determinations must follow the conclusions in a TAM or a TEAM as to all issues and the Appeals Area Director, Area 4, must follow the conclusions in a TAM or a TEAM on issues of an organization's/plan's status or qualification. Thus, if the TAM or the TEAM received by EP or EO Examinations or EP or EO Determinations concerns an organization's/plan's status or qualification, the organization/plan has no appeal to the appeals office on those specific issues.

Reconsideration

.02 The EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, has 30 calendar days after receipt of a TAM or a TEAM to either formally request reconsideration or give the adopted TAM or TEAM to the taxpayer. Requests for TAM or TEAM reconsideration must describe with specificity the errors in the TAM or TEAM analysis and conclusions. Requests for reconsideration should not reargue points raised in the initial request, but should instead focus on points that the TAM or the TEAM overlooked or misconstrued in the arguments by the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, in support of their request. The Headquarters office will consider the request for reconsideration of a TEAM and will, if possible, rule on that request within 30 calendar days of receipt. The Headquarters office may request further submissions from the field or the taxpayer, but the parties should make no additional submissions in the absence of such a request.

If the field does not request reconsideration of a TAM or a TEAM, the TAM or TEAM will take effect when the field provides a copy of the adopted TAM or TEAM to the taxpayer, or at the end of the 30-day period following the issuance of the TAM or the TEAM to the field. If reconsideration is requested for a TEAM, the TEAM will take effect five calendar days after the TEAM is ruled on.

Discussion with the taxpayer

.03 EP or EO Technical will not discuss the contents of the TAM or the TEAM with the taxpayer or the taxpayer's representative until the taxpayer has been given a copy by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office.

Gives copy to the taxpayer

.04 The EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, only after adopting the TAM or the TEAM, gives the taxpayer (1) a copy of the TAM or the TEAM described in section 16.13, and (2) the notice under § 6110(f)(1) of intention to disclose the TAM or the TEAM (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

This requirement does not apply to a TAM or a TEAM involving a criminal or civil fraud investigation, or a jeopardy or termination assessment, as described in section 11.08 of this revenue procedure, or documents to which § 6104 (document open to public inspection) applies as described in section 10.03.

Taxpayer may protest deletions not made

.05 After receiving the notice under § 6110(f)(1) of intention to disclose the TAM or the TEAM, the taxpayer may protest the disclosure of certain information in it. The taxpayer must submit a written statement within 20 calendar days identifying those deletions not made by the Service that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the TAM or the TEAM proposed to be open to public inspection with brackets around deletions proposed by the taxpayer that have not been made by EP or EO Technical.

Generally, EP or EO Technical considers only the deletion of material that the taxpayer has proposed be deleted or other deletions as required under § 6110(c) before the EP or EO Technical reply is sent to the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4. Within 20 calendar days after it receives the taxpayer's response to the notice under § 6110(f)(1), EP or EO Technical must mail the taxpayer its final administrative conclusion about the deletions to be made.

When no copy is given to the taxpayer

.06 If EP or EO Technical tells the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, that a copy of the TAM or the TEAM should not be given to the taxpayer and the taxpayer requests a copy, the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 4, will tell the taxpayer that no copy will be given.

SECTION 18. WHAT IS THE EFFECT OF A TAM OR A TEAM?

Applies only to the taxpayer for whom a TAM or a TEAM was requested

.01 A taxpayer may not rely on a TAM or a TEAM issued by the Service for another taxpayer.

Usually applies retroactively

.02 Except when stated otherwise, a holding in a TAM is applied retroactively, unless the Commissioner, Tax Exempt and Government Entities Division exercises discretionary authority under § 7805(b) to limit the retroactive effect of the holding. Section 18.06 below lists the criteria necessary for granting § 7805(b) relief, and section 18 of this revenue procedure describes the effect of § 7805(b) relief. Because § 7805(b) relief is mandatory technical advice, it cannot be the subject of a TEAM.

Generally applied retroactively to modify or revoke prior TAM or TEAM

.03 A holding that modifies or revokes a holding in a prior TAM or TEAM is applied retroactively, with one exception. If the new holding is less favorable to the taxpayer than the earlier one, it generally is not applied to the period when the taxpayer relied on the prior holding in situations involving continuing transactions.

Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked

.04 If a TAM or a TEAM relates to a continuing action or a series of actions, ordinarily it is applied until specifically withdrawn or until the conclusion is modified or revoked by enactment of legislation, ratification of a tax treaty, a decision of the United States Supreme Court, or the issuance of regulations (temporary or final), a revenue ruling, or other statement published in the Internal Revenue Bulletin. Publication of a notice of proposed rulemaking does not affect the application of a TAM or a TEAM.

Applies to continuing action or series of actions until material facts change

.05 A taxpayer is not protected against retroactive modification or revocation of a TAM or a TEAM involving a continuing action or a series of actions occurring after the material facts on which the TAM or the TEAM is based have changed.

Does not apply retroactively under certain conditions

.06 Generally, a TAM that modifies or revokes a letter ruling or another TAM or TEAM or a determination letter is not applied retroactively either to the taxpayer to whom or for whom the letter ruling or TAM or TEAM or determination letter was originally issued, or to a taxpayer

whose tax liability was directly involved in such letter ruling or TAM or TEAM or determination letter if—

- (1) there has been no misstatement or omission of material facts;
- (2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling or TAM or TEAM or determination letter was based;
- (3) there has been no change in the applicable law;
- (4) in the case of a letter ruling, it was originally issued on a prospective or proposed transaction; and
- (5) the taxpayer directly involved in the letter ruling or TAM or TEAM or determination letter acted in good faith in relying on the letter ruling or TAM or TEAM or determination letter, and the retroactive modification or revocation would be to the taxpayer's detriment. For example, the tax liability of each employee covered by a letter ruling or TAM or TEAM or determination letter relating to a pension plan of an employer is directly involved in the letter ruling or TAM or TEAM or determination letter. However, the tax liability of members of an industry is not directly involved in a letter ruling or TAM or TEAM or determination letter issued to one of the members, and the holding in a modification or revocation of a letter ruling or TAM or TEAM or determination letter to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not obtain the nonretroactive application to one client of a modification or revocation of a letter ruling or TAM or determination letter previously issued to another client.

When a letter ruling or determination letter to a taxpayer or a TAM or a TEAM involving a taxpayer is modified or revoked with retroactive effect, the notice to the taxpayer, except in fraud cases, sets forth the grounds on which the modification or revocation is being made and the reason why the modification or revocation is being applied retroactively.

In order for a TAM that modifies or revokes a letter ruling or another TAM or TEAM or a determination letter not to be applied retroactively either to the taxpayer to whom or for whom the letter ruling, TAM or TEAM or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling, TAM or TEAM or determination letter, such taxpayer generally must request relief under § 7805(b) in the manner described in section 19 below.

SECTION 19. HOW MAY RETROACTIVE EFFECT BE LIMITED?

Commissioner has discretionary authority under § 7805(b)

.01 Under § 7805(b) the Commissioner or the Commissioner's delegate has the discretion to prescribe the extent, if any, to which a TAM will be applied without retroactive effect.

Taxpayer may request Commissioner to exercise authority

.02 A taxpayer who has received a TAM or a TEAM or for whom a TAM request is pending may request that the Commissioner, Tax Exempt and Government Entities Division, the Commissioner of Internal Revenue's delegate, exercise the discretionary authority under § 7805(b) to limit the retroactive effect of any holding stated in the TAM, which may still be pending, or the TEAM, which must have been issued, or to limit the retroactive effect of any subsequent modification or revocation of a TAM or a TEAM through a TAM.

Form of request to limit retroactivity—before an examination

.03 When a TAM or a TEAM that concerns a continuing transaction is modified or revoked by, for example, a subsequent revenue ruling or final regulations, a request to limit the retroactive effect of the modification or revocation of the TAM or the TEAM must be made in the form of a request for a letter ruling if submitted before examination of the return that contains the transaction that is the subject of the request for the letter ruling. *See* Rev. Proc. 2006-4.

Form of request to limit retroactivity—during course of an examination

.04 When, during the course of an examination of a taxpayer's return by EP or EO Examinations or consideration by the Appeals Area Director, Area 4, a taxpayer is informed that EP or EO Examinations or the Appeals Area Director, Area 4, recommends that a TAM or a TEAM

be modified or revoked, a request to limit the retroactive application of the modification or revocation of the TAM or the TEAM must itself be made in the form of a request for a TAM. *See* sections 7, 8 and 10 of this revenue procedure and sections 19.07 and 19.08 below.

The taxpayer must also submit a statement that the request is being made pursuant to § 7805(b). This statement must also indicate the relief requested and give the reasons and arguments in support of the relief requested. It must also be accompanied by any documents bearing on the request. The explanation should discuss the five items listed in section 18.06 of this revenue procedure as they relate to the taxpayer's situation.

The taxpayer's request, including the statement that the request is being made pursuant to § 7805(b), must be forwarded by EP or EO Examinations or the Appeals Area Director, Area 4, to EP or EO Technical for consideration.

Form of request to limit retroactivity—technical advice that does not modify or revoke prior memorandum

.05 A request to limit the retroactive effect of a holding in a TAM that does not modify or revoke a TAM may be made as part of that TAM request, either initially, or at any time before the TAM is issued by EP or EO Technical. In such a case, the taxpayer must also submit a statement in support of the application of § 7805(b), as described in section 19.04 above.

Taxpayer's right to a conference

.06 When a request for a TAM concerns only the application of § 7805(b), the taxpayer has the right to a conference in EP or EO Technical in accordance with the provisions of section 14 of this revenue procedure.

If the request for application of § 7805(b) is included in the request for a TAM on the substantive issues or is made before the conference of right on the substantive issues, the § 7805(b) issues will be discussed at the taxpayer's one conference of right.

If the request for the application of § 7805(b) is made as part of a pending TAM request after a conference has been held on the substantive issues, and the Service determines that there is justification for having delayed the request, then the taxpayer will have the right to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue.

Exhaustion of administrative remedies — employee plans determination letter requests

.07 Where the applicant has requested EP Determinations to seek a TAM on the applicability of § 7805(b) relief to a qualification issue under § 401(a) pursuant to a determination letter request, the applicant's administrative remedies will not be considered exhausted until EP Technical has a reasonable time to act on the request for a TAM. (*See* section 20 of Rev. Proc. 2006–6.)

Exhaustion of administrative remedies — exempt organization matters

.08 Where a TAM has been requested pursuant to an exempt organization's request for § 7805(b) relief from the retroactive application of an adverse determination within the meaning of § 7428(a)(1), the exempt organization's administrative remedies will not be considered exhausted, within the meaning of § 7428(b)(2), until EO Technical has a reasonable time to act on the request for a TAM.

SECTION 20. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

Rev. Proc. 2005–5 is superseded.

SECTION 21. EFFECTIVE DATE

This revenue procedure is effective January 3, 2006.

SECTION 22. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 6.03, 9, 10.01, 10.02, 11.03, 11.06, 11.07, 12.02, 12.03, 13.01, 14.03, 14.10, 16.10, 16.12, 17.05, 19.03, 19.04, and 19.05. This information is required to evaluate and process the request for a TAM or a TEAM. In addition, this information will be used to help the Service delete certain information from the text of the TAM or the TEAM before it is made available for public inspection, as required by § 6110. The collections of information are required to obtain a TAM or a TEAM. The likely respondents are businesses or other for-profit institutions and not-for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 1,950 hours.

The estimated annual burden per respondent/recordkeeper varies from 4 hours to 60 hours, depending on individual circumstances, with an estimated average of 19.5 hours. The estimated number of respondents and/or recordkeepers is 100.

The estimated annual frequency of responses is one request per applicant.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding how this revenue procedure applies to employee plans matters, please contact the Employee Plans Customer Assistance Service at 1-877-829-5500 (a toll-free number) or Mr. Rubin at (202) 283-9888 (not a toll-free number). For exempt organizations matters, please contact Mr. Wayne Hardesty at (202) 283-8976 (not a toll-free number).

INDEX

References are to sections in Rev. Proc. 2006–5

Additional Information

- procedure for submission sections 16.02, 16.05, 16.10
- after conference section 14.10
- proposed deletions under § 6110 section 10.04

Chief Counsel

- jurisdiction section 5.01

Conferences

- offered sections 11.04, 14.01, 14.09
- exceptions sections 11.06, 12.04, 16.12
- pre-submission section 9
- scheduling section 14
- request to limit retroactivity sections 14.07, 14.08, 19.06
- telephone conferences section 14.11

Definitions

- technical advice memorandum section 3
- technical expedited advice memorandum section 3

Extension of Time

- to appeal decision not to request section 12.02
- to disagree with statement of facts sections 11.05, 11.06
- to schedule conference sections 14.03, 14.05
- to submit additional information sections 14.10, 16.10

Farmers' Cooperatives sections 4.02, 5.01

Letter Ruling section 18.06

Mandatory Technical Advice sections 4.04, 7.01

Paperwork Reduction Act section 22

Perjury Statement sections 14.10, 16.10

Power of Attorney section 10.06

Public Disclosure under § 6110

- deletion statement required section 10.04
- exception when § 6104 applies section 10.03
- failure to submit section 11.07
- notice of intention to disclose section 17.04
- protesting deletions not made sections 16.12, 17.05

Representatives sections 14.08, 16.10

Retroactive Effect

- in general sections 18.02–.06
- on letter ruling section 18.06
- request to limit retroactivity section 19
- employee plans determination letters section 19.07
- exempt organization matters section 19.08
- format of request sections 19.03, 19.04
- scheduling conference sections 14.07, 14.09, 19.06

INDEX

References are to sections in Rev. Proc. 2006-5

Revenue Rulings

- effect on continuing transaction. sections 18.04, 18.05
- request to limit retroactivity sections 19.01–.05

Section 301.9100-1 Relief section 6

Status of TAM or TEAM

- to EP or EO Examinations Area or EP or EO Determinations or appeals office section 15.02
- to taxpayer section 15.01

Where to Send

- additional information section 16.10
- technical advice request from appeals office section 10.05
- technical advice request from EP or EO Examinations or EP or EO
 Determinations section 10.05

Withdrawal of TAM or TEAM section 13

Rev. Proc. 2006-6

TABLE OF CONTENTS

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE? 207

 .01 Purpose of revenue procedure 207

 .02 Organization of revenue procedure 207

SECTION 2. WHAT CHANGES HAVE BEEN MADE TO THIS PROCEDURE? 207

 .01 In general 207

 .02 Other changes 207

 .03 Other Guidance 208

PART I. PROCEDURES FOR DETERMINATION LETTER REQUESTS

SECTION 3. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN GUIDANCE UNDER THIS PROCEDURE? 209

 .01 Types of requests 209

 .02 Areas in which determination letters will not be issued 210

 .03 EGTRRA 210

SECTION 4. ON WHAT ISSUES MUST WRITTEN GUIDANCE BE REQUESTED UNDER DIFFERENT PROCEDURES? 211

 .01 Tax Exempt and Government Entities 211

 .02 Chief Counsel’s revenue procedure 211

SECTION 5. WHAT IS THE GENERAL SCOPE OF A DETERMINATION LETTER? 211

 .01 Scope of this section 211

 .02 Scope of determination letters 211

 .03 Nondiscrimination in amount requirement 212

 .04 Minimum coverage and § 401(a)(26) participation requirements 212

 .05 Nondiscriminatory current availability requirement 212

 .06 Other nondiscrimination requirements 212

 .07 Reliance conditioned on retention of information 212

 .08 Effective availability requirement 212

 .09 Other limits on scope of determination letter 212

 .10 Publication 794 212

SECTION 6. WHAT IS THE GENERAL PROCEDURE FOR REQUESTING DETERMINATION LETTERS? 213

 .01 Scope 213

 .02 Qualified trustee plans 213

 .03 Qualified nontrustee annuity plans 213

 .04 Complete information required 213

 .05 Complete copy of plan and trust instrument required 213

 .06 Section 9 of Rev. Proc. 2006-4 applies 213

 .07 Separate application for each single § 414(l) plan 213

 .08 Coverage and nondiscrimination requirements 213

 .09 Prior letters 214

 .10 User fees 214

 .11 Interested party notification and comment 214

 .12 Contrary authority must be distinguished 214

 .13 Employer/employee relationship 214

 .14 Incomplete applications returned 214

 .15 Effect of failure to disclose material fact 214

 .16 Data requirements 214

 .17 Where to file requests 215

 .18 Submission of related plans 215

.19 Submission of 30 or more applications by authorized representative	215
.20 Withdrawal of requests	215
.21 Right to status conference	216
.22 How to request status conference	216
SECTION 7. INITIAL QUALIFICATION, ETC.	216
.01 Scope	216
.02 Forms	216
.03 Application must include copy of plan and amendments	217
.04 Restatements may be required	217
.05 Controlled groups, etc.	217
SECTION 8. EMPLOYER RELIANCE ON M&P AND VOLUME SUBMITTER PLANS	218
.01 Scope	218
.02 Reliance equivalent to determination letter	218
SECTION 9. DETERMINATION LETTER FILING PROCEDURES FOR M&P AND VOLUME SUBMITTER PLANS	218
.01 Scope	218
.02 Determination letter for adoption of volume submitter plan	218
.03 Determination letter for adoption of M&P plan	219
.04 Required information	219
.05 Amended plan is treated as an individually-designed plan	219
.06 Requests made prior to the issuance of opinion letter	219
.07 EGTRRA	219
SECTION 10. MULTIPLE EMPLOYER PLANS	220
.01 Scope	220
.02 Option to file for the plan only or for both the plan and employers maintaining the plan	220
.03 Where to file	220
.04 Determination letter sent to each employer who files Form 5300	220
.05 Addition of employers	220
SECTION 11. MINOR AMENDMENT OF PREVIOUSLY APPROVED PLAN	221
.01 Scope	221
.02 Form 6406	221
.03 Additional information	221
.04 Minor amendment procedures may not be used for complex amendments or EGTRRA letter	221
.05 EP Determinations has discretion to determine whether use of minor amendment procedures is appropriate	221
SECTION 12. TERMINATION OR DISCONTINUANCE OF CONTRIBUTIONS; NOTICE OF MERGERS, CONSOLIDATIONS, ETC.	221
.01 Scope	221
.02 Forms	221
.03 Supplemental information	222
.04 Required demonstration of nondiscrimination requirements	222
.05 Compliance with Title IV of ERISA	222
.06 Termination prior to time for amending for change in law	222
SECTION 13. GROUP TRUSTS	223
.01 Scope	223
.02 Required information	223
SECTION 14. AFFILIATED SERVICE GROUPS; LEASED EMPLOYEES	223
.01 Scope	223
.02 Types of requests under § 414(m) and § 414(n)	223
.03 Employer must request the determination under § 414(m) or § 414(n)	223
.04 Forms	223
.05 Employer is responsible for determining status under § 414(m) and § 414(n)	223

.06 Omission of material fact	223
.07 Service will indicate whether § 414(m) or § 414(n) was considered	224
.08 M&P plans	224
.09 Required information for § 414(m) determination	224
.10 Required information for § 414(n) determination	225
SECTION 15. WAIVER OF MINIMUM FUNDING	225
.01 Scope	225
.02 Applicability of Rev. Proc. 2004-15	225
.03 Waiver request submitted to EP Technical	225
.04 Waiver and determination letter request submitted to EP Technical	226
.05 Handling of the request	226
.06 When waiver request should be submitted	227
SECTION 16. SECTION 401(h) AND § 420 DETERMINATION LETTERS	227
.01 Scope	227
.02 Required information for § 401(h) determination	227
.03 Required information for § 420 determination	227
PART II. INTERESTED PARTY NOTICE AND COMMENT	
SECTION 17. WHAT RIGHTS TO NOTICE AND COMMENT DO INTERESTED PARTIES HAVE?	228
.01 Rights of interested parties	228
.02 Comments by interested parties	229
.03 Requests for DOL to submit comments	229
.04 Right to comment if DOL declines to comment	230
.05 Confidentiality of comments	230
.06 Availability of comments	230
.07 When comments are deemed made	230
SECTION 18. WHAT ARE THE GENERAL RULES FOR NOTICE TO INTERESTED PARTIES?	231
.01 Notice to interested parties	231
.02 Time when notice must be given	231
.03 Content of notice	231
.04 Procedures for making information available to interested parties	232
.05 Information to be available to interested parties	232
.06 Special rules if there are less than 26 participants	232
.07 Information described in § 6104(a)(1)(D) should not be included	232
.08 Availability of additional information to interested parties	233
.09 Availability of notice to interested parties	233
PART III. PROCESSING DETERMINATION LETTER REQUESTS	
SECTION 19. HOW DOES THE SERVICE HANDLE DETERMINATION LETTER REQUESTS?	233
.01 Oral advice	233
.02 Conferences	233
.03 Determination letter based solely on administrative record	233
.04 Notice of final determination	234
.05 Issuance of the notice of final determination	234
SECTION 20. EXHAUSTION OF ADMINISTRATIVE REMEDIES	234
.01 In general	234
.02 Steps for exhausting administrative remedies	234
.03 Applicant's request for § 7805(b) relief	235
.04 Interested parties	235
.05 Deemed exhaustion of administrative remedies	235
.06 Service must act on appeal	235
.07 Service must act on § 7805(b) request	235
.08 Effect of technical advice request	235

SECTION 21. WHAT EFFECT WILL AN EMPLOYEE PLAN DETERMINATION LETTER HAVE?	235
.01 Scope of reliance on determination letter	235
.02 Effect of determination letter on minor plan amendment	236
.03 Sections 13 and 14 of Rev. Proc. 2006-4 applicable	236
.04 Effect of subsequent publication of revenue ruling, etc.	236
.05 Determination letter does not apply to taxability issues	236
SECTION 22. EFFECT ON OTHER REVENUE PROCEDURES	236
SECTION 23. EFFECTIVE DATE	236
SECTION 24. PAPERWORK REDUCTION ACT	236
DRAFTING INFORMATION	237
EXHIBIT	238
APPENDIX §§ 401(h) AND 420 DETERMINATION LETTERS	240

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

Purpose of revenue procedure

.01 This revenue procedure sets forth the procedures of the various offices of the Internal Revenue Service for issuing determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans (ESOPs) under §§ 401, 403(a), 409 and 4975(e)(7) of the Internal Revenue Code of 1986, and the status for exemption of any related trusts or custodial accounts under § 501(a). Also see Rev. Proc. 2005-66, 2005-37 I.R.B. 509, which contains a description of the determination letter program, including when to submit a request for a determination letter within the 5-year and 6-year staggered remedial amendment cycles, that apply to individually designed and pre-approved plans.

Organization of revenue procedure

.02 Part I of this revenue procedure contains instructions for requesting determination letters for various types of plans and transactions. Part II contains procedures for providing notice to interested parties and for interested parties to comment on determination letter requests. Part III contains procedures concerning the processing of determination letter requests and describes the effect of a determination letter.

SECTION 2. WHAT CHANGES HAVE BEEN MADE TO THIS PROCEDURE?

In general

.01 This revenue procedure is a general update of Rev. Proc. 2005-6, 2005-1 I.R.B. 200, which contains the Service's general procedures for employee plans determination letter requests.

Other changes

.02 In addition to minor revisions, such as updating references, the following changes have been made:

(1) Section 2.03 is revised to reference the revenue procedures describing rules for submitting "pre-approved" plans for opinion and advisory letters, individually designed plans for determination letters, and the new system on the remedial amendment cycles that apply to these plans.

(2) Section 3.03 is revised to provide that the Service will begin to accept applications as of February 1, 2006 for determination letters for some individually designed plans that take into account the qualification requirements of the Code as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and other items, and to reference the guidance that describes the new programs and submission periods.

(3) Section 6.05 is revised to specify that a determination letter application must include a copy of all signed and dated good faith EGTRRA amendments.

(4) Section 7.02 is revised to state that all determination letter applications must be submitted timely under the procedures in Rev. Proc. 2005-66.

(5) Section 7.03 is revised to clarify that a determination letter application must include any amendments that are adopted and/or proposed after the date of the determination letter application and before the Service issues the determination letter. It is also revised to specify that the Service will not consider amendments that predate a prior determination letter as part of the current application, unless such amendments are submitted under the current application. No reliance will be given for the period prior to the effective date of the new determination letter.

(6) Section 7.04 is revised to refer to EGTRRA instead of GUST.

(7) Section 7.05 is revised to refer to Rev. Proc. 2005-66 for a discussion of the five year remedial amendment cycle that applies in special circumstances, such as controlled groups and affiliated service groups.

(8) Section 8 is revised to delete the subsections describing employer reliance on favorable opinion or advisory letters issued to M&P and volume submitter plans because these rules are now set forth in section 19 of Rev. Proc. 2005-16.

(9) Section 9 is revised to delete the sections describing the volume submitter program and the procedures to submit requests for advisory letters because these rules are now set forth in Rev. Proc. 2005-16. Other subsections are revised to refer to Rev. Proc. 2005-16 and 2005-66. Section 9.07 is added to describe the new rules, including when an adopting employer of a pre-approved plan should submit a determination letter for reliance under EGTRRA, if necessary.

(10) Section 10.05 is revised to specify that the rules under Rev. Proc. 2005-66 will apply to multiple employer plans, including the off-cycle filing rules.

(11) Section 11.04 is revised to refer to EGTRRA instead of GUST.

(12) Section 11.05 is revised to state that the Service expects to discontinue Form 6406 on a date to be announced by the Service in the future.

(13) Section 21.04 is revised to clarify that all plans must be amended to comply with published guidance for subsequent years, in accordance with the rules set forth in Rev. Proc. 2005-66.

Other Guidance

.03 Other guidance affecting this revenue procedure:

Rev. Proc. 2005-16, 2005-10 I.R.B. 674, describes the procedures for the “pre-approval” of plans under the master and prototype (M&P) program and the volume submitter (VS) program. Rev. Proc. 2005-66, 2005-37 I.R.B. 509, describes a new system of remedial amendment cycles that applies to pre-approved plans and individually designed plans, and the deadlines to submit applications for opinion, advisory and determination letters. The Service publishes a Cumulative List every year identifying changes affecting plan qualification requirements to be used by plans whose remedial amendment cycle begins in the month of February following the publication of the Cumulative List. The 2004 Cumulative List is contained in Notice 2004-84, 2004-2 C.B. 1030, and the 2005 Cumulative List is contained in Notice 2005-101, 2005-52 I.R.B. 1219.

PART I. PROCEDURES FOR DETERMINATION LETTER REQUESTS

SECTION 3. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN GUIDANCE UNDER THIS PROCEDURE?

Types of requests

.01 Determination letters may be requested on completed and proposed transactions as set forth in the table below:

TYPE OF REQUEST	FORMS	REV. PROC. SECTION
1. Initial Qualification, etc.		
a. Individually-Designed Plans (including collectively bargained plans)	5300, Schedule Q (optional)	7
b. ESOPs	5300, 5309 Schedule Q (optional)	7
c. Adoptions of Master & Prototype Plans	5307, Schedule Q (optional)	9
d. Adoptions of Volume Submitter Plans	5307, Schedule Q (optional)	9
e. Multiple Employer Plans	5300, Schedule Q (optional)	10
f. Group Trusts	Cover letter	13
2. Minor Amendments	6406	11
3. Termination		
a. In general	5310, 6088 Schedule Q (optional)	12
b. Multiemployer plan covered by PBGC insurance	5300, 6088, Schedule Q (optional)	12
<p>Note: Form 5310-A, <i>Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities</i>; <i>Notice of Qualified Separate Lines of Business</i>, generally must be filed not less than 30 days before the merger, consolidation or transfer of assets and liabilities. The filing of Form 5310-A will not result in the issuance of a determination letter.</p>		
4. Special Procedures		
a. Affiliated Service Group Status (§ 414(m)), Leased Employees (§ 414(n))	5300, Schedule Q (optional)	14
b. Minimum Funding Waiver	5300, Schedule Q (optional)	15
c. Section 401(h) Determination Letters	5300, Schedule Q (optional)	16
d. Section 420 Determination Letters Including Other Matters Under § 401(a)	5300, Schedule Q (optional), Cover letter, Checklist	16
e. Section 420 Determination Letters Excluding Other Matters Under § 401(a)	Cover letter, Checklist	16

Areas in which determination letters will not be issued

.02 Determination letters issued in accordance with this revenue procedure do not include determinations on the following issues within the jurisdiction of the Commissioner, TE/GE:

(1) Issues involving §§ 72, 79, 105, 125, 127, 129, 402, 403 (other than 403(a)), 404, 409(l), 409(m), 412, 457, 511 through 515, and 4975 (other than 4975(e)(7)), unless these determination letters are authorized under section 7 of Rev. Proc. 2006-4, page 132, this Bulletin.

(2) Plans or plan amendments for which automatic approval is granted pursuant to section 19.01 of Rev. Proc. 2005-16.

(3) Plan amendments described below (these amendments will, to the extent provided, be deemed not to alter the qualified status of a plan under § 401(a)).

(a) An amendment solely to permit a trust forming part of a plan to participate in a pooled fund arrangement described in Rev. Rul. 81-100, 1981-1 C.B. 326, as clarified and modified by Rev. Rul. 2004-67, 2004-2 C.B. 28;

(b) An amendment that merely adjusts the maximum limitations under § 415 to reflect annual cost-of-living increases under § 415(d), other than an amendment that adds an automatic cost-of-living adjustment provision to the plan; and

(c) An amendment solely to include language pursuant to § 403(c)(2) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) concerning the reversion of employer contributions made as a result of mistake of fact.

(4) This section applies to determination letter requests with respect to plans that combine an ESOP (as defined in § 4975(e)(7) of the Code) with retiree medical benefit features described in § 401(h) (HSOPs).

(a) In general, determination letters will not be issued with respect to plans that combine an ESOP with an HSOP with respect to:

(i) whether the requirements of § 4975(e)(7) are satisfied;

(ii) whether the requirements of § 401(h) are satisfied; or

(iii) whether the combination of an ESOP with an HSOP in a plan adversely affects its qualification under § 401(a).

(b) A plan is considered to combine an ESOP with an HSOP if it contains ESOP provisions and § 401(h) provisions.

(c) However, an arrangement will not be considered covered by section 3.02(4) of this revenue procedure if, under the provisions of the plan, the following conditions are satisfied:

(i) No individual accounts are maintained in the § 401(h) account (except as required by § 401(h)(6));

(ii) No employer securities are held in the § 401(h) account;

(iii) The § 401(h) account does not contain the proceeds (directly or otherwise) of an exempt loan as defined in § 54.4975-7(b)(1)(iii) of the Pension Excise Tax Regulations; and

(iv) The amount of actual contributions to provide § 401(h) benefits (when added to actual contributions for life insurance protection under the plan) does not exceed 25 percent of the sum of: (1) the amount of cash contributions actually allocated to participants' accounts in the plan and (2) the amount of cash contributions used to repay principal with respect to the exempt loan, both determined on an aggregate basis since the inception of the § 401(h) arrangement.

EGTRRA

.03 On February 1, 2006, the Service will begin to accept applications for determination letters for some individually designed plans (depending on their cycle) that take into account the

qualification requirements of the Code as amended by EGTRRA, and other items identified on the 2005 Cumulative List in Notice 2005-101. This opening of the determination letter program for the initial remedial amendment cycle (*i.e.*, EGTRRA remedial amendment period) is for individually designed plans that fall within Cycle A, and the submission period for Cycle A plans ends on January 31, 2007. The cycles commence in different years for different plans within a staggered five-year period, so not all individually designed plans will have the same cycle or submission period. Further, the submission periods for pre-approved defined contribution and defined benefit plans are different than those that apply to individually designed plans. *See* Rev. Proc. 2005-16 and Rev. Proc. 2005-66 for details.

SECTION 4. ON WHAT ISSUES MUST WRITTEN GUIDANCE BE REQUESTED UNDER DIFFERENT PROCEDURES?

TE/GE

.01 Other procedures for obtaining rulings, determination letters, opinion letters, etc., on matters within the jurisdiction of the Commissioner, TE/GE are contained in the following revenue procedures:

(1) Employee Plans Technical (EP Technical) letter rulings, information letters, etc.: *See* Rev. Proc. 2006-4, page 132, this Bulletin.

(2) M&P and VS plans: *See* Notice 2001-42, 2001-2 C.B. 70, Notice 2001-57, 2001-2 C.B. 279, Rev. Proc. 2001-55, 2001-2 C.B. 552, Rev. Proc. 2002-29, 2002-1 C.B. 1176 (as modified by Rev. Proc. 2003-10, 2003-1 C.B. 259), Rev. Proc. 2002-73, 2002-2 C.B. 932, Rev. Proc. 2003-72, 2003-2 C.B. 578, Rev. Proc. 2004-25, 2004-1 C.B. 791, Notice 2004-84, 2004-2 C.B. 1030, Rev. Proc. 2005-16, and Rev. Proc. 2005-66.

(3) Technical advice requests: *See* Rev. Proc. 2006-5, page 174, this Bulletin.

Chief Counsel's revenue procedure

.02 For the procedures for obtaining letter rulings, determination letters, etc., on matters within the jurisdiction of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), or within the jurisdiction of other offices of Chief Counsel, see Rev. Proc. 2006-1, page 1, this Bulletin.

SECTION 5. WHAT IS THE GENERAL SCOPE OF A DETERMINATION LETTER?

Scope of this section

.01 This section delineates, generally, the scope of an employee plan determination letter. It identifies certain qualification requirements, relating to nondiscrimination, that are considered by the Service in its review of a plan only at the election of the applicant. This section also identifies certain qualification requirements that are not considered by the Service in its review of a plan and with respect to which determination letters do not provide reliance. This section applies to all determination letters other than letters issued in response to an application filed on Form 6406, *Short Form Application for Determination for Minor Amendment of Employee Benefit Plan*; letters relating to the qualified status of group trusts; and letters relating solely to the requirements of § 420, regarding the transfer of assets in a defined benefit plan to a health benefit account described in § 401(h). For additional information pertaining to the scope of reliance on a determination letter, see sections 8, 9 and 21 of this revenue procedure, and section 19 of Rev. Proc. 2005-16.

Scope of determination letters

.02 In general, employee plans are reviewed by the Service for compliance with the form requirements (that is, those plan provisions that are required as a condition of qualification under § 401(a)). In addition, as described below, certain nondiscrimination requirements are considered if the applicant specifically requests that they be considered. For terminating plans, the requirements are those that apply as of the date of termination. *See* Rev. Proc. 2005-66 for further details on the scope of the Service's review of determination letter applications.

Nondiscrimination in amount requirement

.03 Unless the applicant elects otherwise, a plan will not be reviewed for, and a determination letter may not be relied on with respect to, whether a plan satisfies one of the safe harbors or the general test for nondiscrimination in amount of contributions or benefits requirements under § 1.401(a)(4)–1(b)(2) of the Income Tax Regulations.

Minimum coverage and § 401(a)(26) participation requirements

.04 Unless the applicant elects otherwise, a plan will not be reviewed for, and a determination letter may not be relied on with respect to, the minimum coverage requirements of § 410(b). If the applicant demonstrates that the plan satisfies the coverage requirements of § 410(b), the determination letter may also be relied on with respect to the participation requirements of § 401(a)(26).

Nondiscriminatory current availability requirement

.05 If the applicant demonstrates that the plan satisfies the coverage requirements of § 410(b), the determination letter may also be relied on as to whether the plan satisfies the nondiscriminatory current availability requirements of § 1.401(a)(4)–4(b) with respect to those benefits, rights, and features that are currently available (within the meaning of § 1.401(a)(4)–4(b)(2)) to all employees in the plan's coverage group. The plan's coverage group consists of those employees who are treated as currently benefiting under the plan (within the meaning of § 1.410(b)–3(a)) for purposes of demonstrating that the plan satisfies the minimum coverage requirements of § 410(b). Applications will not be reviewed for, and determination letters may not be relied on with respect to, whether the plan satisfies the requirements of § 1.401(a)(4)–4(b) with respect to any benefit, right, or feature other than the ones described above, except those that are specified by the applicant and for which the applicant has provided information relevant to the determination.

Other nondiscrimination requirements

.06 An applicant may also ask that the review of its plan consider certain other nondiscrimination requirements which are described in Schedule Q (Form 5300), such as whether a definition of compensation satisfies § 414(s).

Reliance conditioned on retention of information

.07 A favorable determination letter may be relied on with respect to whether a plan satisfies a coverage or nondiscrimination requirement only if the application, demonstrations and other information submitted to the Service in support of a favorable determination is retained by the applicant.

Effective availability requirement

.08 In no event will any plan be reviewed to determine, and a determination letter may not be relied on with respect to, whether any benefit, right, or feature under the plan satisfies the effective availability requirement of § 1.401(a)(4)–4(c).

Other limits on scope of determination letter

.09 Determination letters may generally be relied on with respect to whether the timing of a plan amendment (or series of amendments) satisfies the nondiscrimination requirements of § 1.401(a)(4)–5(a) of the regulations, unless the plan amendment is part of a pattern of amendments that significantly discriminates in favor of highly compensated employees. A favorable determination letter does not provide reliance for purposes of § 404 and § 412 with respect to whether an interest rate (or any other actuarial assumption) is reasonable. Furthermore, a favorable determination letter will not constitute a determination with respect to the use of the substantiation guidelines contained in Rev. Proc. 93–42, 1993–2 C.B. 540, *e.g.*, a determination letter will not consider whether data submitted with an application is substantiation quality. Lastly, a favorable determination letter will not constitute a determination with respect to whether any requirements of § 414(r), relating to whether an employer is operating qualified separate lines of business, are satisfied. However, if an employer is relying on § 414(r) to satisfy the minimum coverage or § 401(a)(26) participation requirements, and the applicant so requests, a determination letter will take into account whether the plan satisfies the nondiscriminatory classification test of § 410(b)(5)(B). In this case, if the requirements of § 410(b) or § 401(a)(26) are to be applied on an employer-wide basis under the special rules for employer-wide plans, a determination letter will take into account whether the requirements of the applicable special rule set forth in § 1.414(r)–1(c)(2)(ii) or § 1.414(r)–1(c)(3)(ii) are met.

Publication 794

.10 Publication 794, *Favorable Determination Letter*, contains other information regarding the scope of a determination letter, including the requirement that all information submitted

with the application be retained as a condition of reliance. In addition, the specific terms of each letter may further define its scope and the extent to which it may be relied upon.

SECTION 6. WHAT IS THE GENERAL PROCEDURE FOR REQUESTING DETERMINATION LETTERS?

Scope

.01 This section contains procedures that are generally applicable to all determination letter requests. Additional procedures for specific requests are contained in sections 7 through 16.

Qualified trustee plans

.02 A trust created or organized in the United States and forming part of a pension, profit-sharing, stock bonus or annuity plan of an employer for the exclusive benefit of its employees or their beneficiaries that meets the requirements of § 401 is a qualified trust and is exempt from federal income tax under § 501(a) unless the exemption is denied under § 502, relating to feeder organizations, or § 503, relating to prohibited transactions, if, in the latter case, the plan is one described in § 503(a)(1)(B).

Qualified nontrustee annuity plans

.03 A nontrustee annuity plan that meets the applicable requirements of § 401 and other additional requirements as provided under § 403(a) and § 404(a)(2), (relating to deductions of employer contributions for the purchase of retirement annuities), qualifies for the special tax treatment under § 404(a)(2), and the other sections of the Code, if the additional provisions of such other sections are also met.

Complete information required

.04 An applicant requesting a determination letter must file the material required by this revenue procedure with the Employee Plans Determinations manager (EP Determinations) at the address in section 6.17. The filing of the application, when accompanied by all information and documents required by this revenue procedure, will generally serve to provide the Service with the information required to make the requested determination. However, in making the determination, the Service may require the submission of additional information. Information submitted to the Service in connection with an application for determination may be subject to public inspection to the extent provided by § 6104.

Complete copy of plan and trust instrument required

.05 Except in the case of applications involving master and prototype plans filed on Form 5307, minor amendments described in section 11, or determination letters for volume submitter plans under section 9.02(2)(d), a complete copy of the plan and trust instrument is required to be included with the determination letter application. The determination letter application must include a copy of the signed and dated timely good faith EGTRRA amendments and other plan amendments (even if these amendments are dated earlier than a previous determination letter issued with respect to the plan) to show that the conditions for eligibility for the EGTRRA remedial amendment period as set forth in Notice 2001-42 are satisfied. See sections 7.03 and 7.04 for what must be included with applications involving plan amendments that are not minor amendments.

Section 9 of Rev. Proc. 2006-4 applies

.06 Section 9 of Rev. Proc. 2006-4 is generally applicable to requests for determination letters under this revenue procedure.

Separate application for each single § 414(l) plan

.07 A separate application is required for each single plan within the meaning of § 414(l). This requirement does not pertain to applications regarding the qualified status of group trusts.

Coverage and nondiscrimination requirements

.08 An applicant may request that the plan be reviewed to determine that the ratio percentage test of § 410(b)(1) is satisfied or that the plan satisfies one of the design-based safe harbors under § 401(a)(4) by completing the appropriate elective lines on Form 5300 or Form 5307. Schedule Q (Form 5300) may be filed with the application, other than an application filed on Form 6406, to request consideration of the general test under § 401(a)(4), the average benefit test of § 410(b)(2), or any of the other requirements described on Schedule Q. The applicant must include with the application form the material and demonstrations called for in the instructions to Form 5300 or Form 5307, and, if applicable, Schedule Q.

Prior letters

.09 If the plan has received a favorable determination letter in the past, the application must include a copy of the latest determination letter, if available. If the letter is not available, an explanation must be included with the application, and the employer must include a copy of the prior plan or adoption agreement, including the opinion or advisory letter, if applicable.

User fees

.10 The appropriate user fee, if applicable, must be paid according to the procedures of Rev. Proc. 2006–8, page 245, this Bulletin. Form 8717, *User Fee for Employee Plan Determination Letter Request*, must accompany each determination letter request. If the criteria for the user fee exemption are met in accordance with Notice 2003–49, 2003–2 C.B. 294, the certification on Form 8717 must be signed. Stamped signatures are not acceptable.

Interested party notification and comment

.11 Before filing an application, the applicant requesting a determination letter must satisfy the requirements of section 3001(a) of ERISA, and § 7476(b)(2) of the Code and the regulations thereunder, which provide that an applicant requesting a determination letter on the qualified status of certain retirement plans must notify interested parties of such application. The general rules of the Service with respect to notifying interested parties of requests for determination letters relating to the qualification of plans involving §§ 401 and 403(a) are set out below in sections 17 and 18 of this revenue procedure.

Contrary authority must be distinguished

.12 If the application for determination involves an issue where contrary authorities exist, failure to disclose or distinguish such significant contrary authorities may result in requests for additional information, which will delay action on the application.

Employer/employee relationship

.13 The Service ordinarily does not make determinations regarding the existence of an employer-employee relationship as part of its determination on the qualification of a plan, but relies on the applicant's representations or assumptions, stated or implicit, regarding the existence of such a relationship. The Service will, however, make a determination regarding the existence of an employer-employee relationship when so requested by the applicant. In such cases, the application with respect to the qualification of the plan should be filed in accordance with the provisions of this revenue procedure, contain the information and documents in the instructions to the application, and be accompanied by a completed Form SS–8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, and any information and copies of documents the organization deems appropriate to establish its status. The Service may, in addition, require further information that it considers necessary to determine the employment status of the individuals involved or the qualification of the plan. After the employer-employee relationships have been determined, EP Determinations may issue a determination letter as to the qualification of the plan.

Incomplete applications returned

.14 If an applicant requesting a determination letter does not comply with all the required provisions of this revenue procedure, EP Determinations, in its discretion, may return the application and point out to the applicant those provisions which have not been met. The failure to provide information required by an application, including any supplemental information required by the instructions for the application, may result in the application being returned to the applicant as incomplete. The request may also be returned pursuant to Rev. Proc. 2006–8 if the correct user fee is not attached. If such a request is returned to the applicant, the 270-day period described in § 7476(b)(3) will not begin to run until such time as the provisions of this section have been satisfied.

Effect of failure to disclose material fact

.15 The Service may determine, based on the application form, the extent of review of the plan document. A failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance.

Data requirements

.16 The applicant is responsible for the accuracy of any factual representations and conclusions contained in the application. In some circumstances, applicants may not be able to use precise data in preparing demonstrations or schedules that may be required to be submitted

with the application. Therefore, the use of estimated data in these demonstrations and schedules is not prohibited. In addition, the data used may be for a prior plan year, provided the following conditions are satisfied: (1) the data is the most recent data available, (2) there is no misstatement or omission of material fact with respect to such prior year's data, (3) there has been no material change in the facts (including a change in the benefits provided under the plan and employee demographics) since such prior plan year, (4) the same data is used throughout the application, (5) the data is relevant to the operational effect of the plan provisions that are under review, and (6) the applicant clearly discloses that prior year's data is being submitted with the application. The use of estimated or prior year's data is not a misrepresentation of material fact. A determination letter that is based on estimated or prior year's data, however, may not be relied upon to the extent that such data does not satisfy the substantiation guidelines in Rev. Proc. 93-42. Regardless of whether the data is actual or estimated, or whether it is for the current or a prior year, data that is presented in a determination letter application must reflect any changes in the law that are considered by the Service in its determination of the plan's qualified status.

Where to file requests

.17 Requests for determination letters are to be addressed to EP Determinations at the following address:

Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

Requests shipped by Express Mail or a delivery service should be sent to:

Internal Revenue Service
201 West Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, KY 41011

Determination letter applications will not be accepted via fax.

Submission of related plans

.18 If applications for two or more plans of the same employer are submitted together, each application should include a cover letter that identifies the name of the employer and the plan numbers and employer identification numbers of all the related plans submitted together.

Submission of 30 or more applications by authorized representative

.19 An authorized representative who will be submitting determination letter applications for 30 or more plans at one time should pre-notify the Service of the submissions so that the Service can endeavor to ensure that the applications will be reviewed in one area. The pre-notification should be e-mailed to *Jennifer.L.Frederick@irs.gov* and should include the following information: the firm name, the names of the authorized representative(s) submitting the plans, the name and phone number of the contact person, the approximate number of submissions, and the expected date(s) of the submissions. Upon receipt of the e-mail, the representative will be contacted and assigned a number that must be entered in green ink at the upper left hand corner of the applications. For further discussion, see the Spring/Summer 2002 edition of the Employee Plans Newsletter available at *www.irs.gov/retirement*.

Withdrawal of requests

.20 The applicant's request for a determination letter may be withdrawn by a written request at any time prior to the issuance of a final adverse determination letter. If an appeal to a proposed adverse determination letter is filed, a request for a determination letter may be withdrawn at any time prior to the forwarding of the proposed adverse action to the Chief, appeals office. In the case of a withdrawal, the Service will not issue a determination of any type. A failure to issue a determination letter as a result of a withdrawal will not be considered a failure of the Secretary or his delegate to make a determination within the meaning of § 7476. However, the Service may consider the information submitted in connection with the withdrawn request in a subsequent examination. Generally, the user fee will not be refunded if the application is withdrawn.

Right to status conference

.21 An applicant for a determination letter has the right to have a conference with the EP Determinations Manager concerning the status of the application if the application has been pending at least 270 days. The status conference may be by phone or in person, as mutually agreed upon. During the conference, any issues relevant to the processing of the application may be addressed, but the conference will not involve substantive discussion of technical issues. No tape, stenographic, or other verbatim recording of a status conference may be made by any party. Subsequent status conferences may also be requested if at least 90 days have passed since the last preceding status conference.

How to request status conference

.22 A request for a status conference with the EP Determinations Manager is to be made in writing and is to be sent to the specialist assigned to review the application or, if the applicant does not know who is reviewing the application, to the EP Determinations Manager at the address in section 6.17. If, pursuant to section 15, the application for a determination letter has been submitted to Employee Plans Technical (EP Technical) together with a request for a waiver of minimum funding, the request for a status conference should be sent to the address in section 15.03. In this case, the right to a status conference will be with the EP Technical Manager or designee.

SECTION 7. INITIAL QUALIFICATION, ETC.

Scope

.01 This section contains the procedures for requesting determination letters for individually-designed defined contribution and defined benefit plans including employee stock ownership plans in the following circumstances:

(1) Initial qualification.

(2) Amendment (other than minor amendments described in section 11 below for which Form 6406 is appropriate).

(3) Restatement of plan.

(4) Qualification of a plan in the event of a partial termination.

(5) Change in scope of determination letter. This means that the applicant has previously received a favorable determination letter for the plan and now wishes to modify the scope of the letter, for example, by requesting the Service to review the plan for certain nondiscrimination requirements that were not within the scope of the earlier letter.

(6) Other circumstances (excluding plan termination) such as a change in the demographics of the employer or a change in the method of testing the plan that was used in a demonstration submitted in support of an earlier application.

Forms

.02 A determination letter request for the items listed in section 7.01 is made by filing the appropriate form according to the instructions to the form and any prevailing revenue procedures, notices, and announcements. In addition, all determination letter submissions must be submitted timely under the procedures set forth in Rev. Proc. 2005-66. The timing of the submission period for any particular individually designed plan within staggered remedial amendment cycles will depend on the plan's particular cycle. The first submission period for Cycle A individually designed plans will begin February 1, 2006 and will end on January 31, 2007. See Rev. Proc. 2005-66 for details.

(1) Form 5300, *Application for Determination for Employee Benefit Plan*, must be filed to request a determination letter for individually designed plans, including collectively bargained plans.

(2) Form 5309, *Application for Determination of Employee Stock Ownership Plan*, must be filed as an attachment with a Form 5300, in order to request a determination whether the plan is an ESOP under § 409 or § 4975(e)(7).

(3) Schedule Q, (Form 5300), *Elective Determination Requests*, may be filed as an attachment with Form 5300.

Application must include copy of plan and amendments

.03 Because a plan amendment, other than a minor amendment described in section 11, may affect other portions of a plan so as to cause plan disqualification, a determination letter issued on such an amendment to a plan will express an opinion on the entire plan, as amended. Therefore, the determination letter application must include a copy of the plan and trust instrument plus all plan amendments made to the date of the application. The application must also include a statement explaining how any amendments made since the last determination letter affect the plan or any other plan maintained by the employer. In addition, the applicant must send the Service any amendments that are adopted and/or proposed after the date of the determination letter application and before the Service issues the determination letter. The applicant must submit a cover letter that references the date that the pending application was submitted, the identity of the employer and the plan, and any other helpful identifying information. The amendments must be attached to the letter. Send the cover letter and the attachments to: Internal Revenue Service, TE/GE Adjustments Unit, P.O. Box 2508, Room 4024, Cincinnati, Ohio 45201. Although all such amendments must be provided to the Service, it is possible that the determination letter may not provide reliance for all of these amendments. *See* Rev. Proc. 2005-66 for the scope of the Service's review with respect to a particular determination letter application.

The Service will not consider amendments that predate a prior determination letter as part of a current determination letter application, unless such amendments are submitted under the current application. Amendments that predate a prior determination letter are amendments that were adopted and/or proposed prior to the date a previous favorable determination letter was issued but that were not submitted as a part of that earlier determination letter application. If that amended language is part of the current application, that language may be considered in the current determination letter application, provided that Rev. Proc. 2005-66 is met regarding the scope of the Service's review. In any event, the new determination letter will not provide reliance for the period prior to the effective date of that new letter.

Restatements may be required

.04 A restated plan is required to be submitted if four or more amendments (excluding amendments making only non-substantive changes) have been made since the last restated plan was submitted. In addition, the Service may require restatement of a plan or submission of a working copy of the plan in a restated format when considered necessary. Where a working copy is submitted with executed amendments integrated into the working copy, all such amendments must also be separately submitted. For example, restatement may be required when there have been major changes in law. A restated plan or a working copy of the plan in a restated format must be submitted for a plan that has not previously received a determination letter that takes into account all requirements of EGTRRA.

Controlled groups, etc.

.05 For a controlled group of corporations as defined in § 414(b), trades or businesses under common control as defined in § 414(c), an affiliated service group within the meaning of § 414(m), and entities utilizing the services of leased employees within the meaning of § 414(n), the coverage items on the application forms referred to in this revenue procedure must be completed as though the controlled group, commonly controlled trades or businesses, affiliated service group, etc., constitutes a single entity. Leased employees within the meaning of § 414(n) must be included as employees of the recipient entity (except in the case of a safe-harbor plan described in § 414(n)(5)). *See* sections 9 through 11 of Rev. Proc. 2005-66 for a discussion of the five-year remedial amendment cycle that applies in certain special circumstances, including the cycle that applies to plans maintained by multiple members of a controlled group and to plans maintained by employers that are members of an affiliated service group under section 414(m) of the Code.

**SECTION 8. EMPLOYER
RELIANCE ON M&P AND
VOLUME SUBMITTER PLANS**

Scope .01 The conditions under which, and the extent to which, adopting employers of M&P and volume submitter plans may rely on favorable opinion or advisory letters without having to request individual determination letters are set forth in section 19 of Rev. Proc. 2005–16. Rev. Proc. 2005–16 describes the requirements that apply to M&P and volume submitter plans and the procedures for requesting opinion letters and advisory letters on M&P and volume submitter plans. Section 9 of this revenue procedure describes the procedures for requesting determination letters on M&P and volume submitter plans for adopting employers who need to obtain a determination letter in order to have reliance or who otherwise wish to obtain a determination letter, for example to expand the scope of reliance.

Reliance equivalent to determination letter .02 If an employer can rely on a favorable opinion or advisory letter pursuant to section 19 of Rev. Proc. 2005–16, the opinion or advisory letter shall be equivalent to a favorable determination letter. For example, the favorable opinion or advisory letter shall be treated as a favorable determination letter for purposes of section 21 of this revenue procedure, regarding the effect of a determination letter, and section 5.01(4) of Rev. Proc. 2003–44, 2003–1 C.B. 1051, regarding the definition of “favorable letter” for purposes of the Employee Plans Compliance Resolution System.

**SECTION 9. DETERMINATION
LETTER FILING
PROCEDURES FOR M&P AND
VOLUME SUBMITTER PLANS**

Scope .01 This section contains procedures for requesting determination letters for adopting employers of volume submitter plans and M&P plans.

Determination letter for adoption of volume submitter plan .02 With respect to determination letters for adopting employers of volume submitter plans:

(1) A request for a determination letter for an employer’s adoption of an approved volume submitter plan must be sent to the address provided in section 6.17.

(2) The request for a determination letter must include the following:

(a) Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans* (Schedule Q is optional);

(b) Form 2848, *Power of Attorney and Declaration of Representative*, or other written authorization allowing the volume submitter practitioner to act as a representative of the employer with respect to the request for a determination letter;

(c) A copy of the advisory letter for the practitioner’s volume submitter specimen plan;

(d) A copy of the plan and trust instrument or, if the employer has made no changes to the specimen plan and trust other than completing options permitted under the adoption agreement, a copy of the completed adoption agreement;

(e) A written representation made by the volume submitter practitioner which:

(i) states whether the plan and trust instrument are word-for-word identical to the approved specimen plan;

(ii) if the plan and trust are not word-for-word identical to the approved specimen plan, explains how the plan and trust instrument differ from the approved specimen plan, describing the location, nature and effect of each deviation from the language of the approved specimen plan; and

(iii) if the latest advisory letter for the approved specimen plan does not consider all the changes made by GUST, states that the plan satisfies all requirements of GUST, including those first effective in plan years beginning after December 31, 1998, and identifies those deviations from the language of the approved specimen plan that are intended to satisfy specific GUST requirements;

(f) A copy of the plan's latest favorable determination letter, if applicable; and

(g) Any other information or material that may be required by the Service.

(3) Deviations from the language of the approved specimen plan will be evaluated based on the extent and complexities of the changes. If the changes are determined not to be compatible with the volume submitter program, the Service may require the applicant to file Form 5300 and pay the higher user fee.

(4) An employer will not be treated as having adopted a volume submitter plan if the employer has signed or otherwise adopted the plan prior to the date on the volume submitter specimen plan's advisory letter. In this case, the determination letter application for the employer's plan may not be filed on Form 5307 and will not be eligible for a reduced user fee. A determination letter application for a volume submitter plan must be based on the approved volume submitter specimen plan with any applicable modifications.

(5) In addition, the practitioner will be able to file determination letter requests on behalf of employers adopting substantially similar plans who need a determination letter to have reliance or who otherwise desire a determination letter.

Determination letter for adoption of M&P plan

.03 Form 5307 must be filed to request a determination letter for the adoption of an M&P plan by an adopting employer. Schedule Q may be filed as an attachment to Form 5307.

Required information

.04 The determination letter request must include the following:

(1) An adoption agreement showing which elections the employer is making with respect to the elective provisions contained in the plan;

(2) A copy of the plan's most recent opinion letter; and

(3) In the case of a determination letter request for an M&P plan that uses a separate trust or custodial account, a copy of the employer's trust or custodial account document.

Amended plan is treated as an individually-designed plan

.05 Except to the extent provided in section 5.02 and 19.03 of Rev. Proc. 2005-16, an employer that amends any provision of an M&P plan or its adoption agreement (other than to choose among the options offered by the sponsor if the plan permits or contemplates such options), or an employer that chooses to discontinue participation in such a plan as amended by its sponsor and does not substitute another approved plan referred to in this section is considered to have adopted an individually-designed plan. The requirements stated in this revenue procedure relating to the issuance of determination letters for individually-designed plans will then apply to such plan. Also see section 19.01 of Rev. Proc. 2005-66.

Requests made prior to the issuance of opinion letter

.06 An application submitted by an employer with respect to an M&P plan will be treated as an application for an individually-designed plan if it is executed prior to the time the M&P plan is approved. Also see sections 5.11 and 19.03 of Rev. Proc. 2005-16 regarding the requirement that adopting employers sign new adoption agreements when M&P plans are restated.

EGTRRA

.07 In accordance with Part IV of Rev. Proc. 2005-66, adopting employers of M&P plans and volume submitter plans have a six-year remedial amendment cycle. The Service's announced deadline for an adopting employer to adopt the approved M&P or volume submitter plan will be the end of the plan's remedial amendment cycle with respect to all disqualifying provisions for which the remedial amendment period would otherwise end during the cycle. An adopting employer of a M&P plan or a volume submitter plan who must obtain a determination letter for reliance under EGTRRA or who desires a determination letter for additional

reliance under EGTRRA must not submit such determination letter application until the Service's announced deadline for employers to adopt a pre-approved plan and, if necessary, file a determination letter application, as described in Part IV of Rev. Proc. 2005-66. See section 17 of Rev. Proc. 2005-66 for the eligibility requirements that must be satisfied in order to be considered an adopting employer of a M&P plan or a volume submitter plan and thus eligible for the six-year remedial amendment cycle.

SECTION 10. MULTIPLE EMPLOYER PLANS

Scope .01 This section contains procedures for applications filed with respect to plans described in § 413(c). A plan is not described in § 413(c) if all the employers maintaining the plan are members of the same controlled group or affiliated service group under § 414(b), (c) or (m).

Option to file for the plan only or for both the plan and employers maintaining the plan .02 A determination letter applicant for a multiple employer plan can request either (1) a letter for the plan in the name of the controlling member or (2) a letter for the plan and a letter for each employer maintaining the plan with respect to whom a separate Form 5300 is filed.

(1) An applicant requesting a letter for the plan submits one Form 5300 application for the plan in the name of the controlling member, omitting the optional minimum coverage questions and Schedule Q and either including or omitting the design-based safe harbor questions. The user fee for a single employer plan will apply. An employer maintaining a multiple employer plan can rely on a favorable determination letter issued for the plan without having to request its own determination letter except with respect to the requirements of §§ 401(a)(4), 401(a)(26), 401(l), 410(b) and 414(s), and, if the employer maintains or has ever maintained another plan, §§ 415 and 416.

(2) An applicant requesting a letter for the plan and an employer must submit the filing required in (1) above as well as a separate Form 5300 application, completed through line 8, and, if applicable, a completed adoption agreement, for each employer requesting a separate letter. Each employer may elect to respond to the Form 5300 questions regarding minimum coverage and design-based safe harbors and to file Schedule Q to request a determination on the average benefit test, the general test or any other nondiscrimination requirement addressed by the Schedule Q. The user fee for the application will be determined under the user fee schedules for multiple employer plans in section 6.07 of Rev. Proc. 2006-8, treating the entire application as a general test or average benefit test application if any employer requests a determination on either of these tests.

(3) Rules similar to the rules in section 19 of Rev. Proc. 2005-16 also apply in the case of an employer maintaining a multiple employer plan. See also Rev. Proc. 2005-66, including section 10.

Where to file .03 The complete application, including all Forms 5300 (and, if applicable, adoption agreements) for employers maintaining the plan who request separate letters must be filed as one package submission with EP Determinations. The application is to be sent to the address in section 6.17.

Determination letter sent to each employer who files Form 5300 .04 The Service will mail a determination letter to each employer maintaining the plan for whom a separate Form 5300 has been filed.

Addition of employers .05 An employer may continue to rely on a favorable determination letter after another employer commences participation in the plan, regardless of whether the first employer's reliance is based on its own letter or the letter issued for the plan and regardless of whether an application for a determination letter for the new employer is filed. An application for a determination letter that takes into account the addition of such other employer should include a completed Form 5300 for the plan in the name of the controlling member on the Form 5300 filed pursuant to section 10.02 above, and a supplemental Form 5300 and optional Schedule Q (and, if applicable, adoption agreement) for each new employer who desires a separate determination letter. The Service will send the determination letter only to the applicant and the new employers. However, a new employer that joins a multiple employer plan after the existing multiple

employer plan was timely submitted in Cycle B (the applicable cycle as described in section 10 of Rev. Proc. 2005–66), will be subject to the rules under Rev. Proc. 2005–66, including the off-cycle filing rules under section 14 of that revenue procedure.

SECTION 11. MINOR AMENDMENT OF PREVIOUSLY APPROVED PLAN

Scope

.01 This section contains procedures for requesting determination letters on the effect of a minor plan amendment.

Form 6406

.02 Form 6406, *Short Form Application for Determination for Minor Amendment of Employee Benefit Plan*, may be filed to request a determination letter on a minor plan amendment. This form may be used for minor amendments of individually-designed plans (including volume submitter plans, multiemployer plans and multiple employer plans) or permitted changes to adoption agreement elections in master or prototype plans, provided the changes constitute minor amendments. The Service may also designate other specific amendments that may be submitted using Form 6406.

Additional information

.03 All applications must be accompanied by a copy of the new amendments, a statement as to how the amendments affect or change the plan or any other plan maintained by the employer, and a copy of the latest determination letter. In the case of a master or prototype or volume submitter plan, a copy of the opinion or advisory letter should also be included. A copy of the plan or trust instrument should not be filed with the Form 6406.

Minor amendment procedures may not be used for complex amendments or EGTRRA letter

.04 Since determination letters issued on minor amendments express an opinion only as to whether the amendments, in and of themselves, affect the qualification of employee plans under § 401 or 403(a), the minor amendment procedures cannot be used for complex amendments that may affect other portions of the plan so as to cause plan disqualification. Thus, the minor amendment procedures may not be used for an amendment to add a § 401(k) or an ESOP provision to a plan, or to restate a plan. The minor amendment procedures also may not be used to obtain a determination letter on plan amendments involving plan mergers or consolidations, transfers of assets or liabilities, or plan terminations (including partial terminations). In addition, the minor amendment procedures may not be used for an amendment that involves a significant change to plan benefits or coverage. The minor amendment procedures may not be used to obtain a EGTRRA determination letter.

EP Determinations has discretion to determine whether use of minor amendment procedures is appropriate

.05 EP Determinations has discretion to determine whether a plan amendment may be submitted as a minor plan amendment and may request additional information, including the filing of a Form 5300 series application if it determines that the application and the attachments filed under the minor amendment procedures do not contain sufficient information, or that the Form 6406 is inappropriate. In addition, it is expected that this Form will be discontinued at a date to be announced by the Service in the future, due to its decreased utility under the new programs for pre-approved and individually designed plans, as described in Rev. Proc. 2005–16 and Rev. Proc. 2005–66.

SECTION 12. TERMINATION OR DISCONTINUANCE OF CONTRIBUTIONS; NOTICE OF MERGERS, CONSOLIDATIONS, ETC.

Scope

.01 This section contains procedures for requesting determination letters involving plan termination or discontinuance of contributions. This section also contains procedures regarding required notice of merger, consolidation, or transfer of assets or liabilities.

Forms

.02 Required Forms:

(1) Form 5310, *Application for Determination for Terminating Plan*, is filed by plans other than multiemployer plans covered by the insurance program of the Pension Benefit Guaranty Corporation (PBGC).

(2) Form 5300, *Application for Determination of Employee Benefit Plan*, is filed in the case of a multiemployer plan covered by PBGC insurance.

(3) Schedule Q, *Elective Determination Requests*, may be filed as an attachment to Form 5310 or Form 5300.

(4) Form 6088, *Distributable Benefits from Employee Pension Benefit Plans*, is also required of a sponsor or plan administrator of a defined benefit plan or an underfunded defined contribution plan who files only an application for a determination letter regarding plan termination. For collectively bargained plans, a Form 6088 is required only if the plan benefits employees who are not collectively bargained employees within the meaning of § 1.410(b)-6(d). A separate Form 6088 is required for each employer employing such employees.

(5) Form 5310-A, *Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business*, if required, generally must be filed not later than 30 days before merger, consolidation or transfer of assets and liabilities. The filing of Form 5310-A will not result in the issuance of a determination letter.

Supplemental information

.03 The application for a determination letter involving plan termination must also include any supplemental information or schedules required by the forms or form instructions. For example, the application must include copies of all records of actions taken to terminate the plan (such as a resolution of the board of directors) and a schedule providing certain information regarding employees who separated from vesting service with less than 100% vesting.

Required demonstration of nondiscrimination requirements

.04 An applicant requesting a determination letter upon termination may not decline to elect that the plan be reviewed for the minimum coverage requirements or the nondiscrimination in amount requirement, as otherwise permitted, unless the following conditions are satisfied:

(1) With respect to the coverage requirements, in the year of termination the plan must use the average benefit test and the plan must have received a prior favorable determination letter that considered whether the plan satisfied the requirements of the test;

(2) With respect to the nondiscrimination in amount requirement, in the year of termination the plan must use either a nondesign-based safe harbor or the general test for nondiscrimination in amount and the plan must have received a prior favorable determination letter that considered whether the plan satisfied the requirements of either a nondesign-based safe harbor or the general test;

(3) The favorable determination letter was issued during the immediately preceding three plan years; and

(4) There has been no material change in the facts (including benefits provided under the plan and employee demographics) or law upon which the determination was based.

If these conditions are satisfied, but the prior determination letter does not state that the average benefit test, general test or nondesign-based safe harbor (as applicable) was considered, the applicant must include a copy of the prior submission in order to decline to have the test or safe harbor considered in the review of the application for determination on plan termination.

Compliance with Title IV of ERISA

.05 In the case of plans subject to Title IV of ERISA, a favorable determination letter issued in connection with a plan's termination is conditioned on approval that the termination is a valid termination under Title IV of ERISA. Notification by PBGC that a plan may not be terminated will be treated as a material change of fact.

Termination prior to time for amending for change in law

.06 A plan that terminates after the effective date of a change in law, but prior to the date that amendments are otherwise required, must be amended to comply with the applicable provisions of law from the date on which such provisions become effective with respect to the

plan. Because such a terminated plan would no longer be in existence by the required amendment date and therefore could not be amended on that date, such plan must be amended in connection with the plan termination to comply with those provisions of law that become effective with respect to the plan on or before the date of plan termination. (Such amendments include any amendments made after the date of plan termination that were required in order to obtain a favorable determination letter.) In addition, annuity contracts distributed from such terminated plans also must meet all the applicable provisions of any change in law. See also section 8 of Rev. Proc. 2005-66.

SECTION 13. GROUP TRUSTS

Scope

.01 This section provides special procedures for requesting a determination letter on the qualified status of a group trust under Rev. Rul. 81-100, as clarified and modified by Rev. Rul 2004-67.

Required information

.02 A request for a determination letter on the status of a group trust as described in Rev. Rul. 81-100 is made by submitting a written request demonstrating how the group trust satisfies the five criteria listed in Rev. Rul. 81-100, together with the trust instrument and related documents. Rev. Rul. 2004-67 extends the ability to participate in group trusts to eligible governmental plans under § 457(b) and clarifies the ability of certain individual retirement accounts under § 408 to participate. The revenue ruling provides model language, one for group trusts that have received favorable determination letters and the other for trusts that have received letter rulings.

SECTION 14. AFFILIATED SERVICE GROUPS; LEASED EMPLOYEES

Scope

.01 This section provides procedures for determination letter requests on affiliated service group status under § 414(m), and the effect of leased employees on a plan's qualified status.

Types of requests under § 414(m) and § 414(n)

.02 In accordance with section 7.01, an employer that is subject to § 414(m) or (n) may request a determination letter under the following circumstances: (1) with respect to the initial qualification of its plan, (2) on a plan amendment, and (3) in certain circumstances, even though the plan has not been amended (for example, where there has been a change in membership in the affiliated service group or where the employer did not previously have reliance).

Employer must request the determination under § 414(m) or § 414(n)

.03 Generally, a determination letter will cover § 414(m) or § 414(n) only if the employer requests such determination, and submits with the determination letter application the information specified in section 14.09 or section 14.10 below.

Forms

.04 Form 5300 (with Schedule Q optional) is submitted for a request on affiliated service group status or leased employee status. Form 5307 cannot be used for this purpose.

Employer is responsible for determining status under § 414(m) and § 414(n)

.05 An employer is responsible for determining at any particular time whether it is a member of an affiliated service group and, if so, whether its plan(s) continues to meet the requirements of § 401(a) after the effective date of § 414(m), including § 414(m)(5). An employer or plan administrator is also responsible for taking action relative to the employer's qualified plan if that employer becomes, or ceases to be, a member of an affiliated service group. An employer that is the recipient of services of leased employees within the meaning of § 414(n) is also responsible for determining at any particular time whether a leased employee is deemed to be an employee of the recipient for qualified plan purposes.

Omission of material fact

.06 Failure to properly indicate that there is or may be an affiliated service group and to provide the information specified in section 14.09 of this revenue procedure, or failure to properly indicate that an employer is utilizing the services of leased employees and to provide the information specified in section 14.10, is an omission of a material fact. The failure of the employer to follow the procedures in this section will result in the employer being unable to rely on any favorable determination letter concerning the effect of § 414(m) or § 414(n) on the qualified status of the plan.

Service will indicate whether § 414(m) or § 414(n) was considered

.07 If the Service considers whether the plan of an employer satisfies the requirements of § 414(m) or § 414(n), the determination letter issued to the employer will state that questions arising under § 414(m) or § 414(n) have been considered, and that the plan satisfies qualification requirements relating to that section. Absent such a statement pertaining to § 414(m) or § 414(n), a determination letter does not apply to any qualification issue arising by reason of such provisions.

M&P plans

.08 An employer that has adopted an M&P plan (including a standardized plan) and wants a determination as to the effect of § 414(m) or § 414(n) on the qualified status of its plan must attach the information required by section 14.09 or section 14.10 of this revenue procedure to Form 5300 and submit the information, Form 5300, and any other materials necessary to make a determination.

Required information for § 414(m) determination

.09 A determination letter issued with respect to a plan's qualification under § 401(a), 403(a), or 4975(e)(7) will be a determination as to the effect of § 414(m) upon the plan's qualified status only if the application includes:

(1) A description of the nature of the business of the employer, specifically whether it is a service organization or an organization whose principal business is the performance of management functions for another organization, including the reasons therefor;

(2) The identification of other members (or possible members) of the affiliated service group;

(3) A description of the business of each member (or possible member) of the affiliated service group, describing the type of organization (corporation, partnership, etc.) and indicating whether the member is a service organization or an organization whose principal business is the performance of management functions for the other group member(s);

(4) The ownership interests between the employer and the members (or possible members) of the affiliated service group (including ownership interests as described in § 414(m)(2)(B)(ii) or § 414(m)(6)(B));

(5) A description of services performed for the employer by the members (or possible members) of the affiliated service group, or vice versa (including the percentage of each member's (or possible member's) gross receipts and service receipts provided by such services, if available, and data as to whether such services are a significant portion of the member's business) and whether, as of December 13, 1980, it was not unusual for the services to be performed by employees of organizations in that service field in the United States;

(6) A description of how the employer and the members (or possible members) of the affiliated service group associate in performing services for other parties;

(7) In the case of a management organization under § 414(m)(5):

(a) A description of the management functions, if any, performed by the employer for the member(s) (or possible member(s)) of the affiliated service group, or received by the employer from any other members (or possible members) of the group (including data explaining whether the management functions are performed on a regular and continuous basis) and whether or not it is unusual for such management functions to be performed by employees of organizations in the employer's business field in the United States;

(b) If management functions are performed by the employer for the member (or possible members) of the affiliated service group, a description of what part of the employer's business constitutes the performance of management functions for the member (or possible member) of the group (including the percentage of gross receipts derived from management activities as compared to the gross receipts from other activities);

(8) A brief description of any other plan(s) maintained by the members (or possible members) of the affiliated service group, if such other plan(s) is designated as a unit for qualification purposes with the plan for which a determination letter has been requested;

(9) A description of how the plan(s) satisfies the coverage requirements of § 410(b) if the members (or possible members) of the affiliated service group are considered part of an affiliated service group with the employer;

(10) A copy of any ruling issued by the headquarters office on whether the employer is an affiliated service group; a copy of any prior determination letter that considered the effect of § 414(m) on the qualified status of the employer's plan; and, if known, a copy of any such ruling or determination letter issued to any other member (or possible member) of the same affiliated service group, accompanied by a statement as to whether the facts upon which the ruling or determination letter was based have changed.

Required information for § 414(n) determination

.10 Unless the plan provides that all leased employees within the meaning of § 414(n)(2) are treated as common law employees for all purposes under the plan, a determination letter issued with respect to the plan's qualification under § 401(a), 403(a), or 4975(e)(7) will be a determination as to the effect of § 414(n) upon the plan's qualified status only if the application includes:

(1) A description of the nature of the business of the recipient organization;

(2) A copy of the relevant leasing agreement(s);

(3) A description of the function of all leased employees within the trade or business of the recipient organization (including data as to whether all leased employees are performing services on a substantially full-time basis);

(4) A description of facts and circumstances relevant to a determination of whether such leased employees' services are performed under primary direction or control by the recipient organization (including whether the leased employees are required to comply with instructions of the recipient about when, where, and how to perform the services, whether the services must be performed by particular persons, whether the leased employees are subject to the supervision of the recipient, and whether the leased employees must perform services in the order or sequence set by the recipient); and

(5) If the recipient organization is relying on any qualified plan(s) maintained by the employee leasing organization for purposes of qualification of the recipient organization's plan, a description of such plan(s) (including a description of the contributions or benefits provided for all leased employees which are attributable to services performed for the recipient organization, plan eligibility, and vesting).

SECTION 15. WAIVER OF MINIMUM FUNDING

Scope

.01 This section provides procedures with respect to defined contribution plans for requesting a waiver of the minimum funding standard account and requesting a determination letter on any plan amendment required for the waiver.

Applicability of Rev. Proc. 2004-15

.02 The procedures in Rev. Proc. 2004-15, 2004-1 C.B. 490, apply to the request for a waiver of the minimum funding requirement. Section 2 of that revenue procedure contains the procedures for obtaining waivers of the minimum funding standards in the instance of defined benefit plans. In order to provide maximum flexibility in requesting a waiver for a defined contribution pension plan, section 3 of the revenue procedure contains three alternative methods as described more fully in Rev. Proc. 2004-15.

Waiver request submitted to EP Technical

.03 The first two alternatives involve (1) a waiver ruling only, without submission of a plan amendment, and (2) a waiver ruling only, with submission of a plan amendment. Under these first two procedures, requests for waivers must be submitted to:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P. O. Box 27063
McPherson Station
Washington, DC 20038

In both cases, the applicant must satisfy the requirements of section 2 of Rev. Proc. 2004–15, other than the parts applicable only to defined benefit plans.

If a plan amendment is not submitted or is not already part of a plan, the Service will supply an amendment which will, if adopted, satisfy section 3 of Rev. Rul. 78–223, 1978–1 C.B. 125. The waiver will be conditioned upon the plan being amended by adoption of that amendment, within a reasonable period of time, and will contain a caveat stating that the ruling is not a ruling as to the effect the plan provision may have on the qualified status of the plan. The applicant may request reconsideration within 60 days of the date of the letter if the amendment is inappropriate, by submitting a letter to the above address.

If the request for the waiver is submitted along with a plan amendment, the plan provisions necessary to satisfy section 3 of Rev. Rul. 78–223 must be included. All waivers issued pursuant to this alternative will contain a caveat indicating that the ruling is not a ruling as to the effect any plan provision may have on the qualified status of the plan.

**Waiver and determination letter
request submitted to EP Technical**

.04 The third alternative is a request for a waiver ruling and a determination letter request. Both requests must be submitted by the applicant to EP Technical where it will be treated as if it had been submitted as a request for technical advice from the Determinations Manager. The request must:

- (1) satisfy all the procedural requirements of 3.03 of Rev. Proc. 2004–15;
- (2) include a completed Form 5300 and all necessary documents, plan amendments and information required by the Form 5300 and Rev. Proc. 2004–15 for approval;
- (3) indicate which Area Office has audit jurisdiction over the return; and
- (4) submit the user fee for both requests to EP Technical.

In addition, the procedures for notice and comment by interested parties, contained in sections 17, 18 and 19 of this revenue procedure, and the notice and comment procedures provided in section 2.02 of Rev. Proc. 2004–15 must be satisfied. Comments will be forwarded to the Determinations Office that is considering the determination letter request for the plan amendments.

Handling of the request

.05 The waiver request described in section 15.04 above will be handled by EP Technical as follows:

- (1) The waiver request and supporting documents will be forwarded to EP Technical, SE:T:EP:RA:T, which will treat the request as a technical advice on the qualification issue with respect to the plan provisions necessary to satisfy section 3 of Rev. Rul. 78–223.
- (2) The appropriate Determinations Office will be notified of the request. In order not to delay the processing of the request, all materials relating to the determination letter request will be forwarded by EP Technical to the Determinations Manager for consideration while the technical advice request is completed.
- (3) EP Technical will consider both issues. If a waiver is to be granted and if EP Technical believes that qualification of the plan is not adversely affected by the plan amendment, the mandatory technical advice memorandum will be issued to the Determinations Manager. The Determinations Manager must decide within 10 working days from the date of the technical

advice memorandum either to furnish the applicant with the technical advice memorandum and with a favorable advance determination letter, or to ask for reconsideration of the technical advice memorandum. This request must be in writing. An initial written notice of intent to make this request may be submitted within 10 working days of the date of the technical advice memorandum and followed by a written request within 30 working days from the date of such written notice. If the Determinations Manager does not ask for reconsideration of the technical advice memorandum within 10 working days, EP Technical will issue the waiver ruling. This ruling will not contain the caveat described in section 3.02 of Rev. Proc. 2004–15.

When waiver request should be submitted

.06 In the case of a plan other than a multiemployer plan, all waiver requests must be submitted to the Service no later than the 15th day of the third month following the close of the plan year for which the waiver is requested. The Service may not extend this statutory deadline. A request for a waiver with respect to a multiemployer plan generally must be submitted no later than the close of the plan year following the plan year for which the waiver is requested.

In seeking a waiver with respect to a plan year that has not yet ended, the applicant may have difficulty in furnishing sufficient current evidence in support of the request. For this reason it is generally advisable that such advance request be submitted no earlier than 180 days prior to the end of the plan year for which the waiver is requested.

**SECTION 16. SECTION 401(h)
AND § 420 DETERMINATION
LETTERS**

Scope

.01 This section provides procedures for requesting determination letters (i) with respect to whether the requirements of § 401(h) are satisfied in a plan with retiree medical benefit features and (ii) on plan language that permits, pursuant to § 420, the transfer of assets in a defined benefit plan to a health benefit account described in § 401(h).

**Required information for § 401(h)
determination**

.02 EP Determinations will issue a determination letter that considers whether the requirements of § 401(h) are satisfied in a plan with retiree medical benefit features only if the plan sponsor's application includes, in addition to the application forms and any other material required by this revenue procedure, a cover letter that requests consideration of § 401(h). The cover letter must specifically state that consideration is being requested with regard to § 401(h) in addition to other matters under § 401(a) and must specifically state the location of plan provisions that satisfy the requirements of § 401(h). Part I of the checklist in the Appendix of this revenue procedure may be used to identify the location of relevant plan provisions. Form 6406 may not be used to request a determination letter that considers § 401(h).

**Required information for § 420
determination**

.03 EP Determinations will consider the qualified status of plan language designed to comply with § 420 only if the plan sponsor requests such consideration in a cover letter. The cover letter must specifically state (i) whether consideration is being requested only with regard to § 420, or (ii) whether consideration is being requested with regard to § 420 in addition to other matters under § 401(a). (If consideration of other matters under § 401(a) is being requested, the application forms and other material required by this revenue procedure must also be submitted. Form 6406 may not be used for this purpose.) The cover letter must specifically state the location of plan provisions that satisfy each of the following requirements. Parts I and II of the checklist in the Appendix of this revenue procedure may be used to identify the location of relevant plan provisions.

(1) The plan must include a health benefits account as described in § 401(h).

(2) The plan must provide that transfers shall be limited to transfers of "excess assets" as defined in § 420(e)(2).

(3) The plan must provide that only one transfer may be made in a taxable year. However, for purposes of determining whether the rule in the preceding sentence is met, a plan may provide that a transfer will not be taken into account if it is a transfer that:

(a) Is made after the close of the taxable year preceding the employer's first taxable year beginning after December 31, 1990, and before the earlier of (i) the due date (including extensions) for the filing of the return of tax for such preceding year, or (ii) the date such return is filed; and

(b) Does not exceed the expenditures of the employer for qualified current retiree health liabilities for such preceding taxable year.

(4) The plan must provide that the amount transferred shall not exceed the amount which is reasonably estimated to be the amount the employer will pay out (whether directly or through reimbursement) of the health benefit account during the taxable year of the transfer for "qualified current retiree health liabilities," as defined in § 420(e)(1).

(5) The plan must provide that no transfer will be made after December 31, 2013.

(6) The plan must provide that any assets transferred, and any income allocable to such assets, shall be used only to pay qualified current retiree health liabilities for the taxable year of transfer.

(7) The plan must provide that any amounts transferred to a health benefits account (and income attributable to such amounts) which are not used to pay qualified current retiree health liabilities shall be transferred back to the defined benefit portion of the plan.

(8) The plan must provide that the amounts paid out of a health benefits account will be treated as paid first out of transferred assets and income attributable to those assets.

(9) The plan must provide that the accrued pension benefits for participants and beneficiaries must become nonforfeitable as if the plan had terminated immediately prior to the transfer (or in the case of a participant who separated during the 1-year period ending on the date of transfer immediately before such separation). In the case of a transfer described in § 420(b)(4) that relates to a prior year, the plan must provide that the accrued benefit of a participant who separated from service during the taxable year to which such transfer relates will be recomputed and treated as nonforfeitable immediately before such separation.

(10) The plan must provide that a transfer will be permitted only if each group health plan or arrangement under which health benefits are provided contains provisions satisfying § 420(c)(3). The plan must define "applicable employer cost", "cost maintenance period", and "benefit maintenance period", as applicable, consistent with § 420(c)(3), as amended. If applicable, the provisions of the plan must also reflect the transition rule in § 535(c)(2) of the Tax Relief Extension Act of 1999 (TREA '99). The plan may provide that § 420(c)(3) is satisfied separately with respect to individuals eligible for benefits under Title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible.

(11) The plan must provide that transferred assets cannot be used for key employees (as defined in § 416(i)(1)).

PART II. INTERESTED PARTY NOTICE AND COMMENT

SECTION 17. WHAT RIGHTS TO NOTICE AND COMMENT DO INTERESTED PARTIES HAVE?

Rights of interested parties

.01 Persons who qualify as interested parties under § 1.7476-1(b), have the following rights:

(1) To receive notice, in accordance with section 18 below, that an application for an advance determination will be filed regarding the qualification of plans described in §§ 401, 403(a), 409 and/or 4975(e)(7);

(2) To submit written comments with respect to the qualification of such plans to the Service;

(3) To request the Department of Labor to submit a comment to the Service on behalf of the interested parties; and

(4) To submit written comments to the Service on matters with respect to which the Department of Labor was requested to comment but declined.

Comments by interested parties

.02 Comments submitted by interested parties must be received by EP Determinations by the 45th day after the day on which the application for determination is received by EP Determinations. (However, see sections 17.03 and 17.04 for filing deadlines where the Department of Labor has been requested to comment.) Such comments must be in writing, signed by the interested parties or by an authorized representative of such parties (as provided in section 9.02(11) of Rev. Proc. 2006-4), addressed to EP Determinations at the address in section 6.17, and contain the following information:

(1) The names of the interested parties making the comments;

(2) The name and taxpayer identification number of the applicant for a determination;

(3) The name of the plan, the plan identification number, and the name of the plan administrator;

(4) Whether the parties submitting the comment are:

(a) Employees eligible to participate under the plan,

(b) Employees with accrued benefits under the plan, or former employees with vested benefits under the plan,

(c) Beneficiaries of deceased former employees who are eligible to receive or are currently receiving benefits under the plan,

(d) Employees not eligible to participate under the plan.

(5) The specific matters raised by the interested parties on the question of whether the plan meets the requirements for qualification involving §§ 401 and 403(a), and how such matters relate to the interests of the parties making the comment; and

(6) The address of the interested party submitting the comment (or if a comment is submitted jointly by more than one party, the name and address of a designated representative) to which all correspondence, including a notice of the Service's final determination with respect to qualification, should be sent. (The address designated for notice by the Service will also be used by the Department of Labor in communicating with the parties submitting a request for comment.) The designated representative may be one of the interested parties submitting the comment or an authorized representative. If two or more interested parties submit a single comment and one person is not designated in the comment as the representative for receipt of correspondence, a notice of determination mailed to any interested party who submitted the comment shall be notice to all the interested parties who submitted the comment for purposes of § 7476(b)(5) of the Code.

Requests for DOL to submit comments

.03 A request to the Department of Labor to submit to EP Determinations a comment pursuant to section 3001(b)(2) of ERISA must be made in accordance with the following procedures.

(1) The request must be received by the Department of Labor by the 25th day after the day the application for determination is received by EP Determinations. However, if the parties requesting the Department to submit a comment wish to preserve the right to comment to EP Determinations in the event the Department declines to comment, the request must be received by the Department by the 15th day after the day the application for determination is received by EP Determinations.

(2) The request to the Department of Labor to submit a comment to EP Determinations must:

(a) Be in writing;

(b) Be signed as provided in section 17.02 above;

(c) Contain the names of the interested parties requesting the Department to comment and the address of the interested party or designated representative to whom all correspondence with respect to the request should be sent. See also section 17.02(6) above;

(d) Contain the information prescribed in section 17.02(2), (3), (4), (5) and (6) above;

(e) Indicate that the application was or will be submitted to EP Determinations at the address in section 6.17;

(f) Contain a statement of the specific matters upon which the Department's comment is sought, as well as how such matters relate to the interested parties making the request; and

(g) Be addressed as follows:

Deputy Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW,
Washington, DC 20210
Attention: 3001 Comment Request

Right to comment if DOL declines to comment

.04 If a request described in 17.03 is made and the Department of Labor notifies the interested parties making the request that it declines to comment on a matter concerning qualification of the plan which was raised in the request, the parties submitting the request may still submit a comment to EP Determinations on such matter. The comment must be received by the later of the 45th day after the day the application for determination is received by EP Determinations or the 15th day after the day on which notification is given by the Department that it declines to submit a comment on such matter. (See section 17.07 for the date of notification.) In no event may the comment be received later than the 60th day after the day the application for determination was received. Such a comment must comply with the requirements of section 17.02 and include a statement that the comment is being submitted on matters raised in a request to the Department upon which the Department declined to comment.

Confidentiality of comments

.05 For rules regarding the confidentiality of contents of written comments submitted by interested parties to the Service pursuant to section 17.02 or 17.04, see § 601.201(o)(5) of the Statement of Procedural Rules.

Availability of comments

.06 For rules regarding the availability to the applicant of copies of all comments on the application submitted pursuant to section 17.01(1), (2), (3) and (4) of this revenue procedure, see § 601.201(o)(5) of the Statement of Procedural Rules.

When comments are deemed made

.07 An application for an advance determination, a comment to EP Determinations, or a request to the Department of Labor shall be deemed made when it is received by EP Determinations, or the Department. Notification by the Department that it declines to comment shall be deemed given when it is received by the interested party or designated representative. The notice described in section 18.01 below shall be deemed given when it is posted or sent to the person in the manner described in § 1.7476-2. In the case of an application, comment, request, notification, or notice that is sent by mail or a private delivery service that has been designated under § 7502(f), the date as of which it shall be deemed received will be determined under § 7502. However, if such an application, comment, request, notification, or notice is not received within a reasonable period from the date determined under § 7502, the immediately preceding sentence shall not apply.

SECTION 18. WHAT ARE THE GENERAL RULES FOR NOTICE TO INTERESTED PARTIES?

Notice to interested parties

.01 Notice that an application for an advance determination regarding the qualification of a plan that is described in §§ 401, 403(a), 409 and 4975(e)(7) and that is subject to § 410 is to be made must be given to all interested parties in the manner prescribed in § 1.7476-2(c) and in accordance with the requirements of this section. A notice to interested parties is deemed to be provided in a manner that satisfies § 1.7476-2(c) if the notice is delivered using an electronic medium under a system that satisfies the requirements of § 1.402(f)-1 Q&A-5.

Time when notice must be given

.02 Notice must be given not less than 10 days nor more than 24 days prior to the day the application for a determination is made. If, however, an application is returned to the applicant for failure to adequately satisfy the notification requirements with respect to a particular group or class of interested parties, the applicant need not cause notice to be given to those groups or classes of interested parties with respect to which the notice requirement was already satisfied merely because, as a result of the resubmission of the application, the time limitations of this subsection would not be met.

Content of notice

.03 The notice referred to in section 18.01 shall contain the following information:

(1) A brief description identifying the class or classes of interested parties to whom the notice is addressed (*e.g.*, all present employees of the employer, all present employees eligible to participate);

(2) The name of the plan, the plan identification number, and the name of the plan administrator;

(3) The name and taxpayer identification number of the applicant for a determination;

(4) That an application for a determination as to the qualified status of the plan is to be made to the Service at the address in section 6.17, and stating whether the application relates to an initial qualification, a plan amendment, termination, or a partial termination;

(5) A description of the class of employees eligible to participate under the plan;

(6) Whether or not the Service has issued a previous determination as to the qualified status of the plan;

(7) A statement that any person to whom the notice is addressed is entitled to submit, or request the Department of Labor to submit, to EP Determinations, a comment on the question of whether the plan meets the requirements of § 401 or 403(a); that two or more such persons may join in a single comment or request; and that if such persons request the Department of Labor to submit a comment and the Department of Labor declines to do so with respect to one or more matters raised in the request, the persons may still submit a comment to EP Determinations with respect to the matters on which the Department declines to comment. The Pension Benefit Guaranty Corporation (PBGC) may also submit comments. In every instance where there is either a final adverse termination or a distress termination, the Service formally notifies the PBGC for comments;

(8) The specific dates by which a comment to EP Determinations or a request to the Department of Labor must be received in order to preserve the right of comment (see section 17 above);

(9) The number of interested parties needed in order for the Department of Labor to comment; and

(10) Except to the extent that the additional informational material required to be made available by sections 18.05 through 18.09 are included in the notice, a description of a reasonable procedure whereby such additional informational material will be available to interested

parties (see section 18.04). (Examples of notices setting forth the above information, in a case in which the additional information required by sections 18.05 through 18.09 will be made available at places accessible to the interested parties, are set forth in the Exhibit attached to this revenue procedure.)

Procedures for making information available to interested parties

.04 The procedure referred to in section 18.03(10), whereby the additional informational material required by sections 18.05 through 18.09 will (to the extent not included in the notice) be made available to interested parties, may consist of making such material available for inspection and copying by interested parties at a place or places reasonably accessible to such parties, or supplying such material by using a method of delivery or a combination thereof that is reasonably calculated to ensure that all interested parties will have access to the materials, provided such procedure is immediately available to all interested parties, is designed to supply them with such additional informational material in time for them to pursue their rights within the time period prescribed, and is available until the earlier of: 1) the filing of a pleading commencing a declaratory judgment action under § 7476 with respect to the qualification of the plan; or 2) the 92nd day after the day the notice of final determination is mailed to the applicant. Reasonable charges to interested parties for copying and/or mailing such additional informational material are permissible.

Information to be available to interested parties

.05 Unless provided in the notice, or unless section 18.06 applies, there shall be made available to interested parties under a procedure described in section 18.04:

- (1) An updated copy of the plan and the related trust agreement (if any); and
- (2) The application for determination.

Special rules if there are less than 26 participants

.06 If there would be less than 26 participants in the plan, as described in the application (including, as participants, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving benefits under the plan, and employees who would be eligible to participate upon making mandatory employee contributions, if any), then in lieu of making the materials described in section 18.05 available to interested parties who are not participants (as described above), there may be made available to such interested parties a document containing the following information:

- (1) A description of the plan's requirements respecting eligibility for participation and benefits and the plan's benefit formula;
- (2) A description of the provisions providing for nonforfeitable benefits;
- (3) A description of the circumstances which may result in ineligibility, or denial or loss of benefits;
- (4) A description of the source of financing of the plan and the identity of any organization through which benefits are provided;
- (5) A description of any optional forms of benefits described in § 411(d)(6) which have been reduced or eliminated by plan amendment; and
- (6) Any coverage schedule or other demonstration submitted with the application to show that the plan meets the requirements of §§ 401(a)(4) and 410(b).

However, once an interested party or designated representative receives a notice of final determination, the applicant must, upon request, make available to such interested party (whether or not the plan has less than 26 participants) an updated copy of the plan and related trust agreement (if any) and the application for determination.

Information described in § 6104(a)(1)(D) should not be included

.07 Information of the type described in § 6104(a)(1)(D) should not be included in the application, plan, or related trust agreement submitted to the Service. Accordingly, such information should not be included in any of the material required by section 18.05 or 18.06 to be available to interested parties.

Availability of additional information to interested parties

.08 Unless provided in the notice, there shall be made available to interested parties under a procedure described in section 18.04, any additional document dealing with the application which is submitted by or for the applicant to the Service, or furnished by the Service to the applicant; provided, however, if there would be less than 26 participants in the plan as described in the application (including, as participants, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving benefits under the plan, and employees who would be eligible to participate upon making mandatory employee contributions, if any), such additional documents need not be made available to interested parties who are not participants (as described above) until they, or their designated representative, receive a notice of final determination. The applicant may also withhold from such inspection and copying information described in § 6104(a)(1)(C) and (D) which may be contained in such additional documents.

Availability of notice to interested parties

.09 Unless provided in the notice, there shall be made available to all interested parties under a procedure described in section 18.04 the material described in sections 17.02 through 17.07 above.

PART III. PROCESSING DETERMINATION LETTER REQUESTS

SECTION 19. HOW DOES THE SERVICE HANDLE DETERMINATION LETTER REQUESTS?

Oral advice

.01 Oral advice.

(1) The Service does not issue determination letters on oral requests. However, personnel in EP Determinations ordinarily will discuss with taxpayers or their representatives inquiries regarding: substantive tax issues; whether the Service will issue a determination letter on particular issues; and questions relating to procedural matters about submitting determination letter requests. Any discussion of substantive issues will be at the discretion of the Service on a time available basis, will not be binding on the Service, and cannot be relied upon as a basis of obtaining retroactive relief under the provisions of § 7805(b). A taxpayer may seek oral technical assistance from a taxpayer service representative when preparing a return or report, under established procedures. Oral advice is advisory only, and the Service is not bound to recognize it in the examination of the taxpayer's return.

(2) The advice or assistance furnished, whether requested by personal appearance, telephone, or correspondence will be limited to general procedures, or will direct the inquirer to source material, such as pertinent Code provisions, regulations, revenue procedures, and revenue rulings that may aid the inquirer in resolving the question or problem.

Conferences

.02 EP Determinations may grant a conference upon written request from a taxpayer or his representative, provided the request shows that a substantive plan, amendment, etc., has been developed for submission to the Service, but that special problems or issues are involved, and EP Determinations concludes that a conference would be warranted in the interest of facilitating review and determination when the plan, etc., is formally submitted. See section 6.21 and 6.22 regarding the right to a status conference on applications pending for at least 270 days.

Determination letter based solely on administrative record

.03 Administrative Record:

(1) In the case of a request for a determination letter, the determination of EP Determinations or the appeals office on the qualification or non-qualification of the retirement plan shall be based solely upon the facts contained in the administrative record. The administrative record shall consist of the following:

(a) The request for determination, the retirement plan and any related trust instruments, and any written modifications or amendments made by the applicant during the proceedings within the Service;

(b) All other documents submitted to the Service by, or on behalf of, the applicant with respect to the request for determination;

(c) All written correspondence between the Service and the applicant with respect to the request for determination and any other documents issued to the applicant from the Service;

(d) All written comments submitted to the Service pursuant to sections 17.01(2), (3), and (4) above, and all correspondence relating to comments submitted between the Service and persons (including PBGC and the Department of Labor) submitting comments pursuant to sections 17.01(2), (3), and (4) above; and

(e) In any case in which the Service makes an investigation regarding the facts as represented or alleged by the applicant in the request for determination or in comments submitted pursuant to sections 17.01(2), (3), and (4) above, a copy of the official report of such investigation.

(2) The administrative record shall be closed upon the earlier of the following events:

(a) The date of mailing of a notice of final determination by the Service with respect to the application for determination; or

(b) The filing of a petition with the United States Tax Court seeking a declaratory judgment with respect to the retirement plan.

(3) Any oral representation or modification of the facts as represented or alleged in the application for determination or in a comment filed by an interested party, which is not reduced to writing shall not become a part of the administrative record and shall not be taken into account in the determination of the qualified status of the retirement plan by EP Determinations or the appeals office.

Notice of final determination

.04 In the case of final determination, the notice of final determination:

(1) Shall be the letter issued by EP Determinations or the appeals office which states that the applicant's plan satisfies the qualification requirements of the Code. The favorable determination letter will be sent by certified or registered mail where either an interested party, the Department of Labor, or the PBGC has commented on the application for determination.

(2) Shall be the letter issued, by certified or registered mail, by EP Determinations or the appeals office subsequent to a letter of proposed determination, stating that the applicant's plan fails to satisfy the qualification requirements of the Code.

Issuance of the notice of final determination

.05 EP Determinations or the appeals office will send the notice of final determination to the applicant, to the interested parties who have previously submitted comments on the application to the Service (or to the persons designated by them to receive such notice), to the Department of Labor in the case of a comment submitted by the Department, and to PBGC if it has filed a comment.

SECTION 20. EXHAUSTION OF ADMINISTRATIVE REMEDIES

In general

.01 For purposes of § 7476(b)(3), a petitioner shall be deemed to have exhausted the administrative remedies available within the Service upon the completion of the steps described in sections 20.02, 20.03, 20.04, or 20.05 subject, however, to sections 20.06 and 20.07. If applicants, interested parties, or the PBGC do not complete the applicable steps described below, they will not have exhausted their respective available administrative remedies as required by § 7476(b)(3) and will, thus, be precluded from seeking declaratory judgment under § 7476 except to the extent that section 20.05 or 20.08 applies.

Steps for exhausting administrative remedies

.02 In the case of an applicant, with respect to any matter relating to the qualification of a plan, the steps referred to in section 20.01 are:

(1) Filing a completed application with EP Determinations pursuant to this revenue procedure;

(2) Complying with the requirements pertaining to notice to interested parties as set forth in this revenue procedure and § 1.7476-2 of the regulations; and,

(3) Appealing to the appropriate appeals office pursuant to paragraph 601.201(o)(6) of the Statement of Procedural Rules, in the event a notice of proposed adverse determination is issued by EP Determinations.

Applicant's request for § 7805(b) relief

.03 Consideration of relief under § 7805(b) will be included as one of the applicant's steps in exhausting administrative remedies only if the applicant requests EP Determinations to seek technical advice from EP Technical on the applicability of such relief. The applicant's request must be made in writing according to the procedures for requesting technical advice (*see* section 19 of Rev. Proc. 2006-5).

Interested parties

.04 In the case of an interested party or the PBGC, the steps referred to in section 20.01 are, with respect to any matter relating to the qualification of the plan, submitting to EP Determinations a comment raising such matter in accordance with section 17.01(2) above, or requesting the Department of Labor to submit to EP Determinations a comment with respect to such matter in accordance with section 17.01(3) and, if the Department of Labor declines to comment, submitting the comment in accordance with section 17.01(4) above, so that it may be considered by the Service through the administrative process.

Deemed exhaustion of administrative remedies

.05 An applicant, an interested party, or the PBGC shall in no event be deemed to have exhausted administrative remedies prior to the earlier of:

(1) The completion of those steps applicable to each as set forth in sections 20.01, 20.02, 20.03 or 20.04, which constitute their administrative remedies; or,

(2) The expiration of the 270-day period described in § 7476(b)(3), which period shall be extended in a case where there has not been a completion of all the steps referred to in section 20.02 and the Service has proceeded with due diligence in processing the application for determination.

Service must act on appeal

.06 The step described in section 20.02(3) will not be considered completed until the Service has had a reasonable time to act upon the appeal.

Service must act on § 7805(b) request

.07 Where the applicant has requested EP Determinations to seek technical advice on the applicability of § 7805(b) relief, the applicant's administrative remedies will not be considered exhausted until EP Technical has had a reasonable time to act upon the request for technical advice.

Effect of technical advice request

.08 The step described in section 20.02(3) will not be available or necessary with respect to any issue on which technical advice has been obtained from EP Technical.

SECTION 21. WHAT EFFECT WILL AN EMPLOYEE PLAN DETERMINATION LETTER HAVE?

Scope of reliance on determination letter

.01 A determination letter issued pursuant to this revenue procedure contains only the opinion of the Service as to the qualification of the particular plan involving the provisions of §§ 401 and 403(a) and the status of a related trust, if any, under § 501(a). Such a determination letter is based on the facts and demonstrations presented to the Service in connection with the application for the determination letter and may not be relied upon after a change in material fact or the effective date of a change in law, except as provided. The Service may determine, based on the application form, the extent of review of the plan document. Failure to disclose a material fact or misrepresentation of a material fact may adversely affect the reliance that would otherwise be obtained through the issuance by the Service of a favorable determination letter. Similarly, failure to accurately provide any of the information called for on any form

required by this revenue procedure may result in no reliance. Applicants are advised to retain copies of all demonstrations and supporting data submitted with their applications. Failure to do so may limit the scope of reliance.

Effect of determination letter on minor plan amendment

.02 Determination letters issued on minor amendments to plans and trusts under this revenue procedure will merely express an opinion whether the amendment, in and of itself, affects the existing status of the plan's qualification and the exempt status of the related trust. In no event should such a determination letter be construed as an opinion on the qualification of the plan as a whole and the exempt status of the related trust as a whole.

Sections 13 and 14 of Rev. Proc. 2006-4 applicable

.03 Except as otherwise provided in this section, determination letters referred to in sections 21.01 and 21.02 are governed, generally, by the provisions of sections 13 and 14 of Rev. Proc. 2006-4.

Effect of subsequent publication of revenue ruling, etc.

.04 The prior qualification of a plan as adopted by an employer will not be considered to be adversely affected by the publication of a revenue ruling, a revenue procedure, or an administrative pronouncement within the meaning of § 1.6661-3(b)(2) of the regulations where:

- (1) The plan was the subject of a favorable determination letter and the request for that letter contained no misstatement or omission of material facts;
- (2) The facts subsequently developed are not materially different from the facts on which the determination letter was based;
- (3) There has been no change in the applicable law; and
- (4) The employer that established the plan acted in good faith in reliance on the determination letter.

However, all such plans must be amended to comply with the published guidance for subsequent years, in accordance with the rules set forth in Rev. Proc. 2005-66. See, in particular, Part II of that revenue procedure.

Determination letter does not apply to taxability issues

.05 While a favorable determination letter may serve as a basis for determining deductions for employer contributions thereunder, it is not to be taken as an indication that contributions are necessarily deductible as made. This latter determination can be made only upon an examination of the employer's tax return, in accordance with the limitations, and subject to the conditions of, § 404.

SECTION 22. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2005-6 is superseded.

SECTION 23. EFFECTIVE DATE

This revenue procedure is effective January 3, 2006.

SECTION 24. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 6.16, 6.18, 6.19, 6.20, 7.04, 13, 14, 15, 16, 19.02, and 21.04. This information is required to determine plan qualification. This information will be used to determine whether a plan is entitled to favorable tax treatment. The collections of information are mandatory. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 163,186 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 hour to 40 hours, depending on individual circumstances, with an estimated average of 2.02 hours. The estimated number of respondents and/or recordkeepers is 80,763.

The estimated annual frequency of responses (used for reporting requirements only) is once every three years.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Ingrid Grinde of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday. Ms. Grinde may be reached at 1-202-283-9888 (not a toll-free number).

**EXHIBIT: SAMPLE NOTICE
TO INTERESTED PARTIES**

The Exhibit set forth below, may be used to satisfy the requirements of section 18 of this revenue procedure.

EXHIBIT: SAMPLE NOTICE TO INTERESTED PARTIES

1. Notice To: _____ [describe class or classes of interested parties]

An application is to be made to the Internal Revenue Service for an advance determination on the qualification of the following employee pension benefit plan:

2. _____
(name of plan)

3. _____
(plan number)

4. _____
(name and address of applicant)

5. _____
(applicant EIN)

6. _____
(name and address of plan administrator)

7. The application will be filed on _____ for an advance determination as to whether the plan meets the qualification requirements of § 401 or 403(a) of the Internal Revenue Code of 1986, with respect to the plan's _____ [initial qualification, amendment, termination, or partial termination].

The application will be filed with:

EP Determinations
Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

8. The employees eligible to participate under the plan are:

9. The Internal Revenue Service _____ [has/has not] previously issued a determination letter with respect to the qualification of this plan.

RIGHTS OF INTERESTED PARTIES

10. You have the right to submit to EP Determinations, at the above address, either individually or jointly with other interested parties, your comments as to whether this plan meets the qualification requirements of the Internal Revenue Code.

You may instead, individually or jointly with other interested parties, request the Department of Labor to submit, on your behalf, comments to EP Determinations regarding qualification of the plan. If the Department declines to comment on all or some of the matters you raise, you may, individually, or jointly if your request was made to the Department jointly, submit your comments on these matters directly to EP Determinations.

REQUESTS FOR COMMENTS BY THE DEPARTMENT OF LABOR

11. The Department of Labor may not comment on behalf of interested parties unless requested to do so by the lesser of 10 employees or 10 percent of the employees who qualify as interested parties. The number of persons needed for the Department to comment with respect to this plan is _____. If you request the Department to comment, your request must be in writing and must specify the matters upon which comments are requested, and must also include:
- (1) the information contained in items 2 through 5 of this Notice; and
 - (2) the number of persons needed for the Department to comment.

A request to the Department to comment should be addressed as follows:

Deputy Assistant Secretary
Employee Benefits Security Administration
ATTN: 3001 Comment Request
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

COMMENTS TO THE INTERNAL REVENUE SERVICE

12. Comments submitted by you to EP Determinations must be in writing and received by it by _____. However, if there are matters that you request the Department of Labor to comment upon on your behalf, and the Department declines, you may submit comments on these matters to EP Determinations to be received by it within 15 days from the time the Department notifies you that it will not comment on a particular matter, or by _____, whichever is later, but not after _____. A request to the Department to comment on your behalf must be received by it by _____ if you wish to preserve your right to comment on a matter upon which the Department declines to comment, or by _____ if you wish to waive that right.

ADDITIONAL INFORMATION

13. Detailed instructions regarding the requirements for notification of interested parties may be found in sections 17 and 18 of Rev. Proc. 2006-6. Additional information concerning this application (including, where applicable, an updated copy of the plan and related trust; the application for determination; any additional documents dealing with the application that have submitted to the Service; and copies of section 17 of Rev. Proc. 2006-6 are available at _____ during the hours of _____ for inspection and copying. (There is a nominal charge for copying and/or mailing.)

APPENDIX

Checklist As part of a § 401(h) or § 420 determination letter request described in section 16 of this revenue procedure the following checklist may be completed and attached to the determination letter request. If the request relates to § 401(h) but not to § 420, complete Part I only. If the request relates to § 420, complete Parts I and II.

PART I

	<i>CIRCLE</i>	<i>SECTION</i>
1. Does the Plan contain a medical benefits account within the meaning of § 401(h) of the Code? If the medical benefits account is a new provision, items “a” through “h” should be completed.	Yes No	
a. Does the medical benefits account specify the medical benefits that will be available and contain provisions for determining the amount that will be paid?	Yes No	_____
b. Does the medical benefits account specify who will benefit?	Yes No	_____
c. Does the medical benefits account indicate that such benefits, when added to any life insurance protection in the Plan, will be subordinate to retirement benefits? (This requirement will not be satisfied unless the amount of actual contributions to provide § 401(h) benefits (when added to actual contributions for life insurance protection under the Plan) does not exceed 25 percent of the total actual contributions to the Plan (other than contributions to fund past service credits), determined on an aggregate basis since the inception of the § 401(h) arrangement.)	Yes No	_____
d. Does the medical benefits account maintain separate accounts with respect to contributions to key employees (as defined in § 416(i)(1) of the Code) to fund such benefits?	Yes No	_____
e. Does the medical benefits account state that amounts contributed must be reasonable and ascertainable?	Yes No	_____
f. Does the medical benefits account provide for the impossibility of diversion prior to satisfaction of liabilities (other than item “7” below)?	Yes No	_____
g. Does the medical benefits account provide for reversion upon satisfaction of all liabilities (other than item “7” below)?	Yes No	_____
h. Does the medical benefits account provide that forfeitures must be applied as soon as possible to reduce employer contributions to fund the medical benefits?	Yes No	_____

PART II

2. Does the Plan limit transfers to “Excess Assets” as defined in § 420(e)(2) of the Code?	Yes No	_____
--	--------	-------

- | | | | |
|-----|---|--------|-------|
| 3. | Does the Plan provide that only one transfer may be made in a taxable year (except with regard to transfers relating to prior years pursuant to § 420(b)(4) of the Code)? | Yes No | _____ |
| 4. | Does the Plan provide that the amount transferred shall not exceed the amount reasonably estimated to be paid for qualified current retiree health liabilities? | Yes No | _____ |
| 5. | Does the Plan provide that no transfer will be made after December 31, 2013? | Yes No | _____ |
| 6. | Does the Plan provide that transferred assets and income attributable to such assets shall be used only to pay qualified current retiree health liabilities for the taxable year of transfer? | Yes No | _____ |
| 7. | Does the Plan provide that any amounts transferred (plus income) that are not used to pay qualified current retiree health liabilities shall be transferred back to the defined benefit portion of the Plan? | Yes No | _____ |
| 8. | Does the Plan provide that amounts paid out of a health benefits account will be treated as paid first out of transferred assets and income attributable to those assets? | Yes No | _____ |
| 9. | Does the Plan provide that participants' accrued benefits become nonforfeitable on a termination basis (i) immediately prior to transfer, or (ii) in the case of a participant who separated within 1 year before the transfer, immediately before such separation? | Yes No | _____ |
| 10. | In the case of transfers described in § 420(b)(4) of the Code relating to 1990, does the Plan provide that benefits will be recomputed and become nonforfeitable for participants who separated from service in such prior year as described in § 420(c)(2)? | Yes No | _____ |
| 11. | Does the Plan provide that transfers will be permitted only if each group health plan or arrangement contains provisions satisfying § 420(c)(3) of the Code, as amended? | Yes No | _____ |
| 12. | Does the Plan define "applicable employer cost", "cost maintenance period" and "benefit maintenance period", as needed, consistently with § 420(c)(3) of the Code, as amended? | Yes No | _____ |
| 13. | Do the Plan's provisions reflect the transition rule in section 535(c)(2) of TREA '99, if applicable? | Yes No | _____ |
| 14. | Does the Plan provide that transferred assets cannot be used for key employees? | Yes No | _____ |

Rev. Proc. 2006-7

SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 This revenue procedure updates Rev. Proc. 2005-7, 2005-1 C.B. 240, by providing a current list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (International) relating to matters on which the Internal Revenue Service will not issue letter rulings or determination letters.

.02 Changes

(1) Section 4.01(6) dealing with the income of foreign governments and international organizations has been clarified to provide that the areas under section 892 of the Code to which the IRS will not ordinarily issue letter rulings applies to any underlying issue related to the determination of whether income derived by a foreign government or international organization from sources within the United States is excluded from gross income and exempt from taxation.

(2) Section 4.01(7) dealing with the compensation of employees of foreign governments and international organizations has been clarified to provide that the areas under section 893 of the Code to which the IRS will not ordinarily issue letter rulings applies to any underlying issue related to the determination of whether wages, fees, or salary of an employee of a foreign government or international organization is excluded from gross income and exempt from taxation.

SECTION 2. BACKGROUND AND SCOPE OF APPLICATION

.01 Background

In the interest of sound tax administration, the Service answers inquiries from individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions before the filing of returns or reports that are required by the Internal Revenue Code. There are, however, areas where the Service will not issue letter rulings or determination letters, either because the issues are inherently factual or for other reasons. These

areas are set forth in sections 3 and 4 of this revenue procedure.

Section 3 lists areas in which letter rulings and determination letters will not be issued under any circumstances.

Section 4 lists areas in which they will not ordinarily be issued; in these areas, unique and compelling reasons may justify issuing a letter ruling or determination letter. A taxpayer who plans to request a letter ruling or determination letter in an area described in Section 4 should contact (by telephone or in writing) the Office of Associate Chief Counsel (International) (hereinafter "the Office") prior to making such request and discuss with the Office the unique and compelling reasons that the taxpayer believes justify issuing such letter ruling or determination letter. While not required, a written submission is encouraged since it will enable Office personnel to arrive more quickly at an understanding of the unique facts of each case. A taxpayer who contacts the Office by telephone may be requested to provide a written submission. The Service may provide a general information letter in response to inquiries in areas on either list.

These lists are not all-inclusive. Future revenue procedures may add or delete items. The Service may also decline to rule on an individual case for reasons peculiar to that case, and such decision will not be announced in the Internal Revenue Bulletin.

.02 Scope of Application

This revenue procedure does not preclude the submission of requests for technical advice to the Office from other offices of the Service.

SECTION 3. AREAS IN WHICH RULING OR DETERMINATION LETTERS WILL NOT BE ISSUED

.01 Specific Questions and Problems

(1) Section 861.— Income from Sources Within the United States.—A method for determining the source of a pension payment to a nonresident alien individual from a trust under a defined benefit plan that is qualified under § 401(a) if the proposed method is inconsistent with §§ 4.01, 4.02, and 4.03 of Rev. Proc. 2004-37, 2004-1 C.B. 1099.

(2) Section 862.— Income from Sources Without the United States. — A method for determining the source

of a pension payment to a nonresident alien individual from a trust under a defined benefit plan that is qualified under § 401(a) if the proposed method is inconsistent with §§ 4.01, 4.02, and 4.03 of Rev. Proc. 2004-37, 2004-1 C.B. 1099.

(3) Section 871(g).— Special Rules for Original Issue Discount. — Whether a debt instrument having original issue discount within the meaning of § 1273 is not an original issue discount obligation within the meaning of § 871(g)(1)(B)(i) when the instrument is payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

(4) Section 894.— Income Affected by Treaty.— Whether a person that is a resident of a foreign country and derives income from the United States is entitled to benefits under the United States income tax treaty with that foreign country pursuant to the limitation on benefits article. However, the Service may rule regarding the legal interpretation of a particular provision within the relevant limitation on benefits article.

(5) Section 954.— Foreign Base Company Income.— The effective rate of tax that a foreign country will impose on income.

(6) Section 1503(d).— Dual Consolidated Loss.— Whether the conditions under the regulations for excepting a net operating loss of a dual resident corporation from the definition of a dual consolidated loss, or for rebutting the presumption that an event constitutes a triggering event for purposes of § 1.1503-2(g)(2)(iii)(B), are satisfied.

(7) Section 7701(b).— Definition of Resident Alien and Nonresident Alien.— Whether an alien individual is a nonresident of the United States, including whether the individual has met the requirements of the substantial presence test or exceptions to the substantial presence test. However, the Service may rule regarding the legal interpretation of a particular provision of § 7701(b) or the regulations thereunder.

.02 General Areas.

(1) The prospective application of the estate tax to the property or the estate of a living person, except that rulings may be issued on any international issues in a ruling request accepted pursuant to § 5.06 of Rev. Proc. 2006-1.

(2) Whether reasonable cause exists under Subtitle F (Procedure and Administration) of the Code.

(3) Whether a proposed transaction would subject a taxpayer to criminal penalties.

(4) Any area where the ruling request does not comply with the requirements of Rev. Proc. 2006-1.

(5) Any area where the same issue is the subject of the taxpayer's pending request for competent authority assistance under a United States tax treaty.

(6) A "comfort" ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decisions of a court, tax treaties, revenue rulings, or revenue procedures absent extraordinary circumstances (*e.g.*, a request for a ruling required by a governmental regulatory authority in order to effectuate the transaction.)

(7) Any frivolous issue, as that term is defined in § 6.10 of Rev. Proc. 2006-1.

SECTION 4. AREAS IN WHICH RULING OR DETERMINATION LETTERS WILL NOT ORDINARILY BE ISSUED

.01 Specific Questions and Problems

(1) Section 367(a).— Transfers of Property from the United States.— Whether an oil or gas working interest is transferred from the United States for use in the active conduct of a trade or business for purposes of § 367(a)(3); and whether any other property is so transferred, where the determination requires extensive factual inquiry.

(2) Section 367(b).— Other Transfers.— Whether a foreign corporation is considered a corporation for purposes of any nonrecognition provision listed in § 367(b), and related issues, unless the ruling request presents a significant legal issue or subchapter C rulings are requested in the context of reorganizations or liquidations involving foreign corporations.

(3) Section 864.— Definitions and Special Rules.— Whether a taxpayer is engaged in a trade or business within the United States, and whether income is effectively connected with the conduct of a trade or business within the United States; whether an instrument is a security as defined in § 1.864-2(c)(2); whether a taxpayer effects transactions in

the United States in stocks or securities under § 1.864-2(c)(2); whether an instrument or item is a commodity as defined in § 1.864-2(d)(3); and for purposes of § 1.864-2(d)(1) and (2), whether a commodity is of a kind customarily dealt in on an organized commodity exchange, and whether a transaction is of a kind customarily consummated at such place.

(4) Section 871.— Tax on Nonresident Alien Individuals.— Whether the income earned on contracts that do not qualify as annuities or life insurance contracts because of the limitations imposed by § 72(s) and § 7702(a) is portfolio interest as defined in § 871(h).

(5) Section 881.— Tax on Income of Foreign Corporations Not Connected with United States Business.— Whether the income earned on contracts that do not qualify as annuities or life insurance contracts because of the limitations imposed by § 72(s) and § 7702(a) is portfolio interest as defined in § 881(c).

(6) Section 892.— Income of Foreign Governments and of International Organizations.— Whether income derived by foreign governments and international organizations from sources within the United States is excluded from gross income and exempt from taxation and any underlying issue related to that determination.

(7) Section 893.— Compensation of Employees of Foreign Governments and International Organizations.— Whether wages, fees, or salary of an employee of a foreign government or of an international organization received as compensation for official services to such government or international organization is excluded from gross income and exempt from taxation and any underlying issue related to that determination.

(8) Section 894.— Income Affected by Treaty.— Whether the income received by an individual in respect of services rendered to a foreign government or a political subdivision or a local authority thereof is exempt from federal income tax or withholding under any of the United States income tax treaties which contain provisions applicable to such individuals.

(9) Section 894.— Income Affected by Treaty.— Whether a taxpayer has a permanent establishment in the United States for purposes of any United States income tax treaty and whether income is attributable

to a permanent establishment in the United States.

(10) Section 894.— Income Affected by Treaty.— Whether certain persons will be considered liable to tax under the laws of a foreign country for purposes of determining if such persons are residents within the meaning of any United States income tax treaty. But see Rev. Rul. 2000-59, 2000-2 C.B. 593.

(11) Section 894.— Income Affected by Treaty.— Whether the income received by a nonresident alien student or trainee for services performed for a university or other educational institution is exempt from federal income tax or withholding under any of the United States income tax treaties which contain provisions applicable to such nonresident alien students or trainees.

(12) Section 894.— Income Affected by Treaty.— Whether the income received by a nonresident alien performing research or teaching as personal services for a university, hospital or other research institution is exempt from federal income tax or withholding under any of the United States income tax treaties which contain provisions applicable to such nonresident alien teachers or researchers.

(13) Section 894.— Income Affected by Treaty.— Whether a foreign recipient of payments made by a United States person is ineligible to receive the benefits of a United States tax treaty under the principles of Rev. Rul. 89-110, 1989-2 C.B. 275.

(14) Section 894.— Income Affected by Treaty.— Whether a recipient of payments is or has been a resident of a country for purposes of any United States tax treaty. Pursuant to § 1.884-5(f), however, the Service may rule whether a corporation representing that it is a resident of a country is a qualified resident thereof for purposes of § 884.

(15) Section 894.— Income Affected by Treaty.— Whether an entity is treated as fiscally transparent by a foreign jurisdiction for purposes of § 894(c) and the regulations thereunder.

(16) Section 901.— Taxes of Foreign Countries and of Possessions of United States.— Whether a foreign levy meets the requirements of a creditable tax under § 901.

(17) Section 901.— Taxes of Foreign Countries and of Possessions of United

States.— Whether a person claiming a credit has established, based on all of the relevant facts and circumstances, the amount (if any) paid by a dual capacity taxpayer under a qualifying levy that is not paid in exchange for a specific economic benefit. See § 1.901–2A(c)(2).

(18) Section 903.— Credit for Taxes in Lieu of Income, Etc., Taxes.— Whether a foreign levy meets the requirements of a creditable tax under § 903.

(19) Sections 927(a)(Repealed), 936(h)(5), 943(a), 954(d), 993(c).— Manufactured Product.— Whether a product is manufactured or produced for purposes of § 927(a), § 936(h)(5), § 943(a), § 954(d), and § 993(c).

(20) Section 936.— Puerto Rico and Possession Tax Credit.— What constitutes a substantial line of business.

(21) Section 956.— Investment of Earnings in United States Property.— Whether a pledge of the stock of a controlled foreign corporation is an indirect pledge of the assets of that corporation. See § 1.956–2(c)(2).

(22) Section 985.— Functional Currency.— Whether a currency is the functional currency of a qualified business unit.

(23) Section 989(a).— Qualified Business Unit.— Whether a unit of the taxpayer's trade or business is a qualified business unit.

(24) Section 1058.— Transfers of Securities under Certain Agreements.— Whether the amount of any payment described in § 1058(b)(2) or the amount of any other payment made in connection with a transfer of securities described in § 1058 is from sources within or without the United States; the character of such amounts; and whether the amounts constitute a particular kind of income for purposes of any United States income tax treaty.

(25) Section 1503(d).— Dual Consolidated Loss.— Whether an event presumptively constitutes a triggering event for purposes of § 1.1503–2(g)(2)(iii)(A)(1)–(7), apart from possible rebuttal of the presumption under § 1.1503–2(g)(2)(iii)(B). See § 3.01(6), Rev. Proc. 2006–7.

(26) Section 2501.— Imposition of Tax.— Whether a partnership interest

is intangible property for purposes of § 2501(a)(2) (dealing with transfers of intangible property by a nonresident not a citizen of the United States).

(27) Section 7701.— Definitions.— Whether an estate or trust is a foreign estate or trust for federal income tax purposes.

(28) Section 7701.— Definitions.— Whether an intermediate entity is a conduit entity under § 1.881–3(a)(4); whether a transaction is a financing transaction under § 1.881–3(a)(ii); whether the participation of an intermediate entity in a financing arrangement is pursuant to a tax avoidance plan under § 1.881–3(b); whether an intermediate entity performs significant financing activities under § 1.881–3(b)(3)(ii); whether an unrelated intermediate entity would not have participated in a financing arrangement on substantially the same terms under § 1.881–3(c).

.02 General Areas

(1) Whether a taxpayer has a business purpose for a transaction or arrangement.

(2) Whether a taxpayer uses a correct North American Industry Classification System (NAICS) code or Standard Industrial Classification (SIC) code.

(3) Any transaction or series of transactions that is designed to achieve a different tax consequence or classification under U.S. tax law (including tax treaties) and the tax law of a foreign country, where the results of that different tax consequence or classification are inconsistent with the purposes of U.S. tax law (including tax treaties).

(4)(a) Situations where a taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal tax investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(b) The provisions of subsection 4.02(4)(a) above shall not apply if the taxpayer or affected related party (i) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination to verify the

accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (ii) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

(5) The federal tax consequences of proposed federal, state, local, municipal, or foreign legislation.

(6)(a) Situations involving the interpretation of foreign law or foreign documents. The interpretation of a foreign law or foreign document means making a judgment about the import or effect of the foreign law or document that goes beyond its plain meaning.

(b) The Service, at its discretion, may consider rulings that involve the interpretation of foreign laws or foreign documents. In these cases, the Service may request information in addition to that listed in §§ 7.01(2)(b) and (c) of Rev. Proc. 2006–1, including a discussion of the implications of any authority believed to interpret the foreign law or foreign document, such as pending legislation, treaties, court decisions, notices or administrative decisions.

SECTION 5. EFFECT ON OTHER REVENUE PROCEDURE

Rev. Proc. 2005–7 is superseded.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective January 3, 2006.

SECTION 7. DRAFTING INFORMATION

This revenue procedure was compiled by Gerard Traficanti of the Office of Associate Chief Counsel (International). For further information about this revenue procedure, please contact Mr. Traficanti at (202) 622–3619 (not a toll-free number).

Rev. Proc. 2006-8

TABLE OF CONTENTS

SECTION 1. PURPOSE 246

SECTION 2. CHANGES 246

 .01 In general. 246

 .02 Changes to fee schedules 246

SECTION 3. BACKGROUND 246

 .01 Legislation authorizing user fees 246

 .02 Related revenue procedures 246

SECTION 4. SCOPE 246

 .01 Requests to which user fees apply 246

 .02 Requests and other actions that do not require the payment of a user fee 246

 .03 Exemptions from the user fee requirements 246

SECTION 5. DEFINITIONS 247

SECTION 6. FEE SCHEDULE 248

EMPLOYEE PLANS USER FEES 248

 .01 Letter ruling requests. 248

 .02 Requests for certain administrative exemptions. 249

 .03 Administrative scrutiny determinations with respect to separate lines of business. 249

 .04 Opinion letters on prototype individual retirement accounts and/or annuities, simplified employee pensions, SIMPLE IRAs, SIMPLE IRA Plans, and Roth IRAs. 249

 .05 Opinion letters on master and prototype plans. 250

 .06 Advisory letters on volume submitter plans. 251

 .07 Determination letters. 251

EXEMPT ORGANIZATIONS USER FEES. 252

 .08 Letter rulings. 252

 .09 Determination letters and requests for group exemption letters 253

 .10 Summary of Exempt Organization fees. 254

SECTION 7. MAILING ADDRESS FOR REQUESTING LETTER RULINGS, DETERMINATION LETTERS, ETC. 255

 .01 Matters handled by EP or EO Technical 255

 .02 Matters handled by EP or EO Determinations 255

SECTION 8. REQUESTS INVOLVING MULTIPLE OFFICES, FEE CATEGORIES, ISSUES, TRANSACTIONS, OR ENTITIES 256

 .01 Requests involving several offices 256

 .02 Requests involving several fee categories. 256

 .03 Requests involving several issues. 256

 .04 Requests involving several unrelated transactions. 256

 .05 Requests for separate letter rulings for several entities. 256

SECTION 9. PAYMENT OF FEE 256

 .01 Method of payment 256

 .02 Transmittal forms. 256

 .03 Effect of nonpayment or payment of incorrect amount. 256

SECTION 10. REFUNDS 257

 .01 General rule 257

 .02 Examples. 257

SECTION 11. REQUEST FOR RECONSIDERATION OF USER FEE	257
SECTION 12. EFFECT ON OTHER DOCUMENTS	258
SECTION 13. EFFECTIVE DATE	258
SECTION 14. PAPERWORK REDUCTION ACT	258
APPENDIX	258

SECTION 1. PURPOSE

This revenue procedure provides guidance for complying with the user fee program of the Internal Revenue Service as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division; and requests for administrative scrutiny determinations under Rev. Proc. 93-41, 1993-2 C.B. 536.

SECTION 2. CHANGES

.01 *In general.* This revenue procedure is a general update of Rev. Proc. 2005-8, 2005-1 I.R.B. 243 (including revisions to section 7 and the Appendix to reflect revenue procedures published by Employee Plans during 2005).

.02 The dollar amounts for various user fees have been increased to more accurately reflect actual costs to the Service. To assist taxpayers and practitioners, the effective date of these user fee increases is delayed until February 1, 2006 or July 1, 2006, and the data reflecting user fees have been adjusted to reflect different effective dates.

SECTION 3. BACKGROUND

.01 *Legislation authorizing user fees.* Section 7528 was added to the Code by section 202 of the Temporary Assistance for Needy Families Block Grant Program, Pub. L. No. 108-89, and was extended to September 30, 2014, by section 690 of the American Jobs Creation Act of 2004, Pub. L. No. 108-357. Section 7528 of the Code directs the Secretary of the Treasury or delegate (the "Secretary") to establish a program requiring the payment of user fees for requests to the Service for letter rulings, opinion letters, determination letters, and similar requests. The fees charged under the program (1) are to vary according to categories or subcategories established by the Secretary; (2) are to be determined

after taking into account the average time for, and difficulty of, complying with requests in each category and subcategory; and (3) are payable in advance. Section 7528(b)(3) directs the Secretary to provide for exemptions and reduced fees under the program as the Secretary determines to be appropriate, but the average fee applicable to each category may not be less than the amount specified in § 7528.

.02 *Related revenue procedures.* The various revenue procedures that require payment of a user fee, or an administrative scrutiny determination user fee are described in the appendix to this revenue procedure.

SECTION 4. SCOPE

.01 *Requests to which user fees apply.* In general, user fees apply to all requests for letter rulings, opinion letters, determination letters, and advisory letters submitted by or on behalf of taxpayers, sponsoring organizations or other entities as described in this revenue procedure. Further, administrative scrutiny determination user fees, described in Rev. Proc. 93-41, are collected through the user fee program described in this revenue procedure. Requests to which a user fee or an administrative scrutiny determination user fee is applicable must be accompanied by the appropriate fee as determined from the fee schedule set forth in section 6 of this revenue procedure. The fee may be refunded in limited circumstances as set forth in section 10.

.02 *Requests and other actions that do not require the payment of a user fee.*

Actions which do not require the payment of a user fee include the following:

- (1) Requests for information letters as defined in Rev. Proc. 2006-4, page 132, this Bulletin.
- (2) Elections pertaining to automatic extensions of time under § 301.9100-1 of the Procedure and Administration regulations.

(3) Use of forms which are not to be filed with the Service. For example, no user fee is required in connection with the use of Form 5305, *Traditional Individual Retirement Trust Account*, or Form 5305-A, *Traditional Individual Retirement Custodial Account*, in order to adopt an individual retirement account under § 408(a).

(4) In general, plan amendments whereby sponsors amend their plans by adopting, word-for-word, the model language contained in a revenue procedure which states that the amendment should not be submitted to the Service and that the Service will not issue new opinion, advisory, ruling or determination letters for plans that are amended solely to add the model language.

(5) Change in accounting period or accounting method permitted by a published revenue procedure that permits an automatic change without prior approval of the Commissioner.

(6) *Compliance and Correction Fees.* Compliance fees and compliance correction fees under the Employee Plans Compliance Resolution System are not described in this procedure because they are compliance fees or compliance correction fees and not user fees. For further guidance, please see Rev. Proc. 2003-44, 2003-1 C.B. 1051.

.03 *Exemptions from the user fee requirements.* The following exemptions apply to the user fee requirements. These are the only exemptions that apply:

(1) Departments, agencies, or instrumentalities of the United States that certify that they are seeking a letter ruling, determination letter, opinion letter or similar letter on behalf of a program or activity funded by federal appropriations. The fact that a user fee is not charged has no bearing on whether an applicant is treated as an agency or instrumentality of the United States for purposes of any provision of the Code except for § 7528.

(2) Requests as to whether a worker is an employee for federal employment taxes and federal income tax withholding purposes (chapters 21, 22, 23, and 24 of subtitle C of the Code) submitted on Form SS-8, *Determination of Worker Status for Purposes of Federal Employment*

Taxes and Income Tax Withholding, or its equivalent. Such a request may be submitted in connection with an application for a determination on the qualification of a plan when it is necessary to determine whether an employer-employee relationship exists. See section 6.14 of Rev. Proc. 2006-6,

page 204, this Bulletin. In that case, although no user fee applies to the request submitted on Form SS-8, the applicable user fee must be paid in connection with the application for determination on the plan's qualification.

SECTION 5. DEFINITIONS

The following terms used in this revenue procedure are defined in the pertinent revenue procedures referred to below, which are described in the appendix:

Administrative scrutiny determination	Rev. Proc. 93-41
Adoption agreement	Rev. Proc. 2005-16
Advisory letter	Rev. Procs. 2005-16, 2006-6
Basic plan document	Rev. Proc. 2005-16
Determination letter	Rev. Procs. 90-27, 2006-4
Dual-purpose IRA	Rev. Proc. 98-59
Group exemption letter	Rev. Proc. 80-27
Information letter	Rev. Proc. 2006-4
Letter ruling	Rev. Proc. 2006-4
Mass submitter	Rev. Proc. 87-50, Rev. Proc. 2005-16
Mass submitter plan	Rev. Proc. 2005-16
Master plan	Rev. Proc. 2005-16
Minor modification	Rev. Procs. 87-50, 2005-16
Opinion letter	Rev. Procs. 2005-16, 2006-4
Prototype plan	Rev. Proc. 2005-16
Roth IRA	Rev. Proc. 98-59
SIMPLE IRA	Rev. Proc. 97-29
SIMPLE IRA Plan	Rev. Proc. 97-29
Plan Sponsor	Rev. Proc. 2005-16
Sponsoring organization	Rev. Procs. 87-50, Rev. Proc. 2005-16
Staggered Remedial Amendment Period	Rev. Proc. 2005-66
Volume submitter lead specimen plan	Rev. Proc. 2005-16
Volume submitter plan	Rev. Proc. 2005-16
Volume submitter specimen plan	Rev. Proc. 2005-16
Word-for-word identical adoption	Rev. Procs. 87-50, 2005-16

SECTION 6. FEE SCHEDULE

The amount of the user fee payable with respect to each category or subcategory of submission is as set forth in the following schedule.

CATEGORY

EMPLOYEE PLANS USER FEES

.01 Letter ruling requests.

	User fees for requests postmarked before 2/1/2006	User fee for requests postmarked on or after 2/1/2006
(1) Computation of exclusion for annuitant under § 72	\$95	\$380
(2) Change in plan year (Form 5308)	\$145	\$380
(3) Certain waivers of 60-day rollover period	\$95	not available
(a) Rollover less than \$50,000	not applicable	\$500
(b) Rollover equal to or greater than \$50,000 and less than \$100,000	not applicable	\$1,500
(c) Rollover equal to or greater than \$100,000	not applicable	\$3,000

Note: No user fee is required if the requested change is permitted to be made pursuant to the procedure for automatic approval set forth in Rev. Proc. 87-27, 1987-1 C.B. 769. In such a case, Form 5308 should not be submitted to the Service.

(4) Change in funding method	\$560	\$2,800
(5) Letter ruling under Rev. Proc. 90-49, 1990-2 C.B. 620	\$340	\$2,800
(6) Approval to become a nonbank trustee (see § 1.408-2(e) of the Income Tax Regulations)	\$3,665	\$14,500
(7) Letter ruling involving the determination of the account limit under § 419A(c)	\$2,570	\$14,500
(8) Waiver of minimum funding standard or excise tax (§ 412(d), 4971(b) or 4971(f)):		
(a) Waiver of \$1,000,000 or more	\$5,415	\$13,000
(b) Waiver of less than \$1,000,000	\$2,290	\$6,100
(9) Individually designed simplified employee pension (SEP)	\$2,570	\$9,000
(10) All other letter rulings	\$2,570	\$9,000
Reduced fees, or augmented fee, applicable to all other letter rulings (which will not be available after 1/31/2006):		
(a) Letter ruling requests by or on behalf of eligible retirement plans (within the meaning of § 402(c)(8)(B)) with assets of less than \$250,000	\$625	not available

(b) Letter ruling requests from U.S. citizens and resident alien individuals, domestic trusts, and domestic estates whose “total income” as reported on their federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus any interest income not subject to tax under § 103 (interest on state and local bonds) for that period, is less than \$250,000	\$625	not available
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Note: The reduced fee applies to a married individual if the combined gross income of the applicant and the applicant’s spouse is less than \$250,000. The gross incomes of the applicant and the applicant’s spouse are not combined, however, if the applicant is legally separated from his or her spouse and the spouses do not file a joint income tax return with each other. In the case of a letter ruling request from a domestic estate or trust that, at the time the request is filed, has not filed an income tax return for a full taxable year, the reduced fee will be applicable if the decedent’s or (in the case of an individual grantor) the grantor’s total income as reported on the last return filed for a full taxable year ending before the date of death or the date of the transfer, taking into account any additions required to be made to total income described in this subparagraph, is less than \$250,000.

(c) Letter ruling requests from organizations exempt from income tax under “Subchapter F-Exempt Organizations” with gross receipts of less than \$250,000	\$625	not available
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Note: An organization exempt from income tax under Subchapter F must certify in its request for a letter ruling that its gross receipts for the last full taxable year before the request was filed were less than \$250,000.

(d) In situations in which a taxpayer requests substantially identical letter rulings for multiple entities with a common member or sponsor, or for multiple members of a common entity, each additional letter ruling request after the \$2,570 fee or the \$625 reduced fee, as applicable, has been paid for the first letter ruling request.	\$210	not available
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(e) In situations in which a taxpayer requests a single letter ruling involving substantially identical issues of fact and law with respect to multiple members of a common entity, for each additional entity after the \$2,570 fee or \$625 reduced fee, as applicable, has been paid for the first entity.	\$210	not available
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.02 Requests for certain administrative exemptions.

Requests for administrative exemptions for participant-directed transactions that are in compliance with the regulations under § 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA) but may result in prohibited transactions under § 4975	\$2,570	\$2,570
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.03 Administrative scrutiny determinations with respect to separate lines of business.

(1) For the first separate line of business for which a determination is requested	\$4,915	\$4,915
(2) For each additional separate line of business for which a determination is requested	\$1,580	\$1,580

.04 Opinion letters on prototype individual retirement accounts and/or annuities, simplified employee pensions, SIMPLE IRAs, SIMPLE IRA Plans, and Roth IRAs.

(1) Mass submission of a prototype IRA, SEP, SIMPLE IRA, SIMPLE IRA Plan, or Roth IRA, per plan document, new or amended	\$1,300	\$3,000
(2) Sponsoring organization's nonmass submission of prototype IRA, SEP, SIMPLE IRA, SIMPLE IRA Plan, or Roth IRA, per plan document	\$480	\$3,000
(3) Sponsoring organization's word-for-word identical adoption of mass submitter's prototype IRA, SEP, SIMPLE IRA, SIMPLE IRA Plan, or Roth IRA, per plan document or an amendment thereof	\$125	\$200

Note: If a mass submitter submits, in any 12-month period ending January 31, more than 300 applications on behalf of word-for-word adopters of prototype IRAs with respect to a particular plan document, only the first 300 such applications will be subject to the fee; no fee will apply to those in excess of the first 300 such applications submitted within the 12-month period.

(4) Sponsoring organization's word-for-word identical adoption of mass submitter's prototype dual-purpose IRA, per plan document or an amendment thereof	\$125	\$200
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Note: If a mass submitter submits, in any 12-month period ending January 31, more than 300 applications on behalf of word-for-word adopters of prototype dual-purpose IRAs with respect to a particular plan document, only the first 300 such applications will be subject to the fee; no fee will apply to those in excess of the first 300 such applications submitted within the 12-month period.

(5) Sponsoring organization's minor modification of mass submitter's prototype IRA, SEP, SIMPLE IRA, SIMPLE IRA Plan, or Roth IRA, per plan document	\$335	\$750
(6) Sponsoring organization's minor modification of mass submitter's prototype dual-purpose IRA, per plan document	\$675	\$750
(7) Opinion letters on dual-purpose (combined traditional and Roth) IRAs:		
(a) Mass submission of a prototype dual-purpose IRA, per plan document, new or amended	\$2,570	\$4,500
(b) Sponsoring organization's nonmass submission of prototype dual-purpose IRA, per plan document	\$990	\$4,500

.05 Opinion letters on master and prototype plans.

User fee for applications postmarked before 7/1/2006	User fee for applications postmarked on or after 7/1/2006
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(1) Mass submitter M & P plan, per basic plan document, new or amended, with one adoption agreement	\$3,665	\$9,000
(2) Nonmass submission (new or amended) by M & P sponsor, per adoption agreement	\$2,195	\$9,000
(3) Mass submitter M & P plan, per each additional adoption agreement	\$480	\$650
(4) Sponsor's minor modification of M & P mass submitter's plan document, per adoption agreement	\$280	\$650
(5) M & P mass submitter's request for an advisory letter with respect to the addition of optional provisions following issuance of a favorable opinion letter (see section 12.031(c) of Rev. Proc. 2005-16), per basic plan document (regardless of the number of adoption agreements)	\$595	\$650

(6) M & P mass submitter's addition of new adoption agreements after the basic plan document and associated adoption agreements have been approved, per adoption agreement	\$480	\$650
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Note 1: Mass submitters that are sponsors in their own right are liable for this fee.

Note 2: If a mass submitter submits, in any 12-month period ending January 31, more than 300 applications on behalf of word-for-word adopters with respect to a particular adoption agreement, only the first 300 such applications will be subject to the fee; no fee will apply to those in excess of the first 300 such applications submitted within the 12-month period.

(7) Sponsor's word-for-word identical adoption of M & P mass submitter's basic plan document (or an amendment thereof), per adoption agreement	\$125	\$200
(8) Assumption of sponsorship of an approved M & P plan, without any amendment to the plan document, by a new entity, as evidenced by a change of employer identification number	\$280	\$200
(9) Mass submitter or sponsor per trust document in excess of 10	not applicable	\$650

.06 Advisory letters on volume submitter plans.

(1) Volume submitter specimen plans	\$1,500	\$9,000
(2) Volume Submitter lead specimen plan	\$3,000	\$9,000
(3) Volume submitter specimen plan that is word-for-word identical to a lead specimen plan	\$100	\$200

.07 Determination letters

(1) If the plan is intended to satisfy a design-based or nondesign-based safe harbor, or if the applicant is not electing to receive a determination with respect to any of the general tests, and the applicant is not electing to receive a determination with respect to the average benefit test:

(a) Form 5300 (<i>Application for Determination for Employee Benefit Plan</i>)	\$700	\$1,000
(b) Form 5310 (<i>Application for Determination for Terminating Plan</i>)	\$225	\$1,000
(c) Form 5307 (<i>Application for Determination for Adopters of Master of Prototype or Volume Submitter Plans</i>)	\$125	\$300
(d) Form 6406 (<i>Short Form Application for Determination for Minor Amendment of Employee Benefit Plan</i>)	\$125	\$300
(e) Multiple employer plans (Form 5300):		
(i) 2 to 10 Forms 5300	\$700	\$1,500
(ii) 11 to 99 Forms 5300	\$1,400	\$1,500
(iii) 100 to 499 Forms 5300	\$2,800	\$10,000
(iv) Over 499 Forms 5300	\$5,600	\$10,000

Note: In the case of a multiple employer plan that is adopted by other employers after the initial submission, the fee would be the same as in paragraph (1) above. If only one employer adopts the plan in any subsequent year, the fee would be \$700 on January 1, 2006, and \$1,000 on or after July 1, 2006.

(f) Multiple employer plans (Form 5310):

(i) 2 to 10 employers	\$225	\$1,500
(ii) 11 to 99 employers	\$450	\$1,500
(iii) 100 to 499 employers	\$900	\$10,000
(iv) Over 499 employers	\$1,800	\$10,000

(2) If the applicant is electing to receive a determination with respect to the average benefit test and/or any of the general tests:

(a) Form 5300 (<i>Application for Determination for Employee Benefit Plan</i>)	\$1,250	\$1,800
(b) Form 5310 (<i>Application for Determination for Terminating Plan</i>)	\$375	\$1,800
(c) Form 5307 (<i>Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans</i>)	\$1,000	\$1,000
(d) Multiple employer plans (Form 5300):		
(i) 2 to 10 Forms 5300	\$1,250	\$2,300
(ii) 11 to 99 Forms 5300	\$2,000	\$2,300
(iii) 100 to 499 Forms 5300	\$3,500	\$15,000
(iv) Over 499 Forms 5300	\$6,500	\$15,000

Note: In the case of a multiple employer plan that is adopted by other employers after the initial submission, the fee would be the same as in paragraph (2) above. If only one employer adopts the plan in any subsequent year, the fee would be \$1,250 on or before June 30, 2006, and \$1,800 on or after July 1, 2006.

(e) Multiple employer plans (Form 5310):

(i) 2 to 10 employers	\$375	\$2,300
(ii) 11 to 99 employers	\$600	\$2,300
(iii) 100 to 499 employers	\$1,000	\$15,000
(iv) Over 499 employers	\$2,000	\$15,000

(3) Group trusts contemplated by Rev. Rul. 81-100, 1981-1 C.B. 326, and Rev. Rul. 2004-67, 2004-2 C.B. 28. \$750 \$750

EXEMPT ORGANIZATIONS USER FEES

.08 Letter rulings.

User fee in effect for requests postmarked before 2/1/2006 User fee in effect for requests postmarked on or after 2/1/2006

(1) Applications with respect to change in accounting period (Form 1128) \$155 \$350

Note: No user fee is charged if the procedure described in Rev. Proc. 85-58, 1985-2 C.B. 740, is used by timely filing the appropriate information return, or if the procedure described in Rev. Proc. 76-10, 1976-1 C.B. 548, for organizations with group exemptions is followed.

(2) Applications with respect to change in accounting method (Form 3115)	\$155	\$275
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Note: No user fee is charged if the method described in Rev. Proc. 2002-9, 2002-1 C.B. 327, is used. Taxpayers complying timely with Rev. Proc. 2002-9 will be deemed to have obtained the consent of the Commissioner of Internal Revenue to change their method of accounting.

(3) Request for approval of a qualified subsidiary related to a § 501(c)(25) organization.	\$620	\$900
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(4) All other letter rulings	\$2,570	\$8,700
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Reduced fees applicable to all other letter rulings thru 1/31/2006:

(a) Organizations with gross receipts less than \$250,000	\$625	not available
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Note: An exempt organization seeking a reduced fee (which will not be available after 1/31/2006) must certify in the letter ruling request that its gross receipts for the last taxable year before the request is filed were less than \$250,000.

(b) Letter ruling requests from U.S. citizens and resident alien individuals, domestic trusts, and domestic estates whose "total income" as reported on their federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus any interest income not subject to tax under § 103 (interest on state and local bonds) for that period, is less than \$250,000	\$625	not available
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Note: The reduced fee applies to a married individual if the combined gross income of the applicant and the applicant's spouse is less than \$250,000. The gross incomes of the applicant and the applicant's spouse are not combined, however, if the applicant is legally separated from his or her spouse and the spouses do not file a joint income tax return with each other. In the case of a letter ruling request from a domestic estate or trust that, at the time the request is filed, has not filed an income tax return for a full taxable year, the reduced fee will be applicable if the decedent's or (in the case of an individual grantor) the grantor's total income as reported on the last return filed for a full taxable year ending before the date of death or the date of the transfer, taking into account any additions required to be made to total income described in this subparagraph, is less than \$250,000.

(c) Letter ruling requests in which a taxpayer requests substantially identical letter rulings for multiple entities with a common member or activity, or multiple members of a common entity, each additional letter ruling request after the \$2,570 fee or the \$625 reduced fee, as applicable, has been paid for the first letter ruling request	\$210	not available
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.09 Determination letters and requests for group exemption letters

User fee in effect for applications postmarked before 7/1/2006	User fee in effect for applications postmarked on or after 7/1/2006
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(1) Initial application for exemption under § 501 or § 521 from organizations (other than pension, profit-sharing, and stock bonus plans described in § 401) that have had annual gross receipts averaging not more than \$10,000 during the preceding four years, or new organizations that anticipate gross receipts averaging not more than \$10,000 during their first four years	\$150	\$300
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Note: Organizations seeking this reduced fee must sign a certification with their application that the receipts are or will be not more than the indicated amounts.

(2) Initial application for exempt status from organizations otherwise described in paragraph (1) of this section 6.09 whose actual or anticipated gross receipts exceed the \$10,000 average annually	\$500	\$750
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Note: If an organization that is already recognized as exempt under § 501(c) seeks reclassification under another subparagraph of § 501(c), a new user fee will be charged whether or not a new application is required. An additional fee applies to organizations that seek recognition of exemption under § 501(c)(4) (unless requested at the time of the § 501(c)(3) application) for a period for which they do not qualify for exemption under § 501(c)(3) because their application was filed late and they do not qualify for relief under § 301.9100-1.

(3) Group exemption letters	\$500	\$900
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Note: An additional fee under (1) or (2) above is required when a central organization submits an initial application for exemption with its request for a group exemption letter.

(4) Canadian registered charities	none	none
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In accordance with the income tax treaty between the United States and Canada, Canadian registered charities are automatically recognized as exempt under § 501(c)(3) without filing an application for exemption. For details, see Notice 99-47, 1999-2 C.B. 391. Therefore, no user fee is required when a Canadian registered charity submits all or part of a Form 1023 or other written request to be listed in Publication 78, or for a determination on its private foundation status.

.10 Summary of Exempt Organization fees

This table summarizes the various types of exempt organization issues, indicates the office of jurisdiction for each type, and lists the applicable user fee. Reduced fees may be applicable in certain instances.

ISSUE	TECHNICAL OFFICE	USER FEE	
		User fee in effect for requests postmarked before 2/1/2006	User fee in effect for requests postmarked on or after 2/1/2006
Accounting method changes		\$155	\$275
Accounting period changes		\$155	\$350
Qualified subsidiaries of § 501(c)(25) organizations		\$620	\$900
Section 507 terminations - advance ruling under § 507(b)(1) or (2)		\$2,570	\$8,700
Section 514(b)(3) Neighborhood Land Use Rule		None	None
Section 4943(c)(7) extensions of disposal period		\$2,570	\$8,700

ISSUE	DETERMINATIONS OFFICE	USER FEE	
		User fee for applications postmarked before 7/1/2006	User fee for applications postmarked on or after 7/1/2006
Application for recognition of exemption		\$500	\$750
Reduced fee described in section 6.09(1)		\$150	\$300
Advance ruling period inquiries			None
Confirmation of exemption (to replace lost exempt status letter, and to reflect name and address changes)			None
Reclassification of private foundation status			None
Regulations § 301.9100 relief in connection with applications for recognition of exemption			None
Section 507 terminations — notice under § 507(b)(1) or (2)			None
Section 4940(d) exempt operating foundation status			None
Section 4942(g)(2) set asides — advance approval			None
Section 4945 advance approval of organization's grant making procedures			None
Section 4945(f) advance approval of voter registration activities			None
Section 6033 annual information return filing requirements			None
Unusual grants to certain organizations under §§ 170(b)(1)(A)(vi) and 509(a)(2)			None

SECTION 7. MAILING ADDRESS FOR REQUESTING LETTER RULINGS, DETERMINATION LETTERS, ETC.

.01 *Matters handled by EP or EO Technical.* Requests should be mailed to the appropriate address set forth in this section 7.01.

(1) *Employee plans letter rulings under Rev. Procs. 79–62, 87–50, 90–49, 94–42, 2000–41, 2004–15, 2004–44 or 2006–4:*

Internal Revenue Service
Attention: EP Letter Rulings
P.O. Box 27063
McPherson Station
Washington, DC 20038

(2) *Employee plans opinion letters under Rev. Procs. 87–50, 97–29, and 98–59:*

Internal Revenue Service
Attention: EP Opinion Letter
P.O. Box 27063
McPherson Station
Washington, DC 20038

(3) *Employee plans administrative scrutiny determinations under Rev. Proc. 93–41:*

Internal Revenue Service
Attention: Administrative Scrutiny
P.O. Box 27063
McPherson Station
Washington, DC 20038

(4) *Exempt organizations letter rulings:*

Internal Revenue Service
Attention: EO Letter Rulings
P.O. Box 27720
McPherson Station
Washington, DC 20038

Note: Hand delivered requests must be marked RULING REQUEST SUBMISSION. The delivery should be made:

To the following address between the hours of 8:30 a.m. and 4:00 p.m.; where a receipt will be given:

Courier's Desk
Internal Revenue Service
Attention: SE:T:EP [or SE:T:EO]
1111 Constitution Avenue, NW – PE
Washington, DC 20224

.02 *Matters handled by EP or EO Determinations.* The following types of requests and applications are handled by the EP or EO Determinations Office and should be sent to the Internal Revenue Service Center in Covington, Kentucky, at the address shown below: requests for determination letters, opinion letters, and volume submitter advisory letters on the qualified status or form of employee plans

under §§ 401, 403(a), or 409, and the exempt status of any related trust under § 501; applications for recognition of tax exemption on Form 1023, Form 1024 and Form 1028; and other applications for recognition of qualification or exemption. The address is:

Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

Applications shipped by Express Mail or a delivery service should be sent to:

Internal Revenue Service
201 West Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, KY 41011

SECTION 8. REQUESTS INVOLVING MULTIPLE OFFICES, FEE CATEGORIES, ISSUES, TRANSACTIONS, OR ENTITIES

.01 Requests involving several offices. If a request dealing with only one transaction involves more than one of the offices within Headquarters (for example, one issue is under the jurisdiction of the Associate Chief Counsel (Income Tax & Accounting) and another issue is under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division), only one fee applies, namely the highest fee that otherwise would apply to each of the offices involved. See Rev. Proc. 2006-1, this Bulletin, for the user fees applicable to issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), the Associate Chief Counsel (International) or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

.02 Requests involving several fee categories. If a request dealing with only one transaction involves more than one fee category, only one fee applies, namely the highest fee that otherwise would apply to each of the categories involved.

.03 Requests involving several issues. If a request dealing with only one transaction involves several issues, or a request for a

change in accounting method dealing with only one item or sub-method of accounting involves several issues, or a request for a change in accounting period dealing with only one item involves several issues, the request is treated as one request. Therefore, only one fee applies, namely the fee that applies to the particular category or subcategory involved. The addition of a new issue relating to the same transaction will not result in an additional fee, unless the issue places the transaction in a higher fee category.

.04 Requests involving several unrelated transactions. If a request involves several unrelated transactions, or a request for a change in accounting method involves several unrelated items or sub-methods of accounting, or a request for a change in accounting period involves several unrelated items, each transaction or item is treated as a separate request. As a result, a separate fee will apply for each unrelated transaction or item. An additional fee will apply if the request is changed by the addition of an unrelated transaction or item not contained in the initial submission.

.05 Requests for separate letter rulings for several entities. Each entity involved in a transaction (for example, an exempt hospital reorganization) that desires a separate letter ruling in its own name must pay a separate fee regardless of whether the transaction or transactions may be viewed as related. In certain situations, however, a reduced fee may be charged. See sections 6.01(10) and 6.08(4) of this revenue procedure.

SECTION 9. PAYMENT OF FEE

.01 Method of payment. Each request to the Service for a letter ruling, determination letter, opinion letter, etc., must be accompanied by a check or money order, payable to the United States Treasury, in the appropriate amount. Taxpayers should not send cash.

.02 Transmittal forms. Form 8717, *User Fee for Employee Plan Determination Letter Request*, and Form 8718, *User Fee for Exempt Organization Determination Letter Request*, are intended to be used as attachments to certain determination letter, opinion letter and advisory letter applications. Space is reserved for the attachment of the applicable user fee

check or money order. No similar form has been designed to be used in connection with requests for letter rulings or administrative scrutiny determinations.

.03 Effect of nonpayment or payment of incorrect amount. It will be the general practice of the Service that:

(1) The respective offices within the Service that are responsible for issuing letter rulings, determination letters, etc., will exercise discretion in deciding whether to immediately return submissions that are not accompanied by a properly completed check or money order or that are accompanied by a check or money order for less than the correct amount. In those instances where the submission is not immediately returned, the requester will be contacted and given a reasonable amount of time to submit the proper fee. If the proper fee is not received within a reasonable amount of time, the entire submission will then be returned. However, the respective offices of the Service, in their discretion, may defer substantive consideration of a submission until proper payment has been received.

(2) An application for a determination letter will not be returned merely because Form 8717 or Form 8718 was not attached.

(3) The return of a submission to the requester may adversely affect substantive rights if the submission is not perfected and resubmitted to the Service within 30 days of the date of the cover letter returning the submission. Examples of this are: (a) where an application for a determination letter is submitted prior to the expiration of the remedial amendment period under § 401(b) and is returned because no user fee was attached, the submission will be timely if it is resubmitted by the expiration of the remedial amendment period or, if later, within 30 days after the application was returned; and (b) where an application for exemption under § 501(c)(3) is submitted before expiration of the period provided by § 1.508-1(a)(2) and is returned because no user fee was attached, the submission will be timely if it is resubmitted before expiration of the period provided by § 1.508-1(a)(2) or within 30 days, whichever is later.

(4) If a check or money order is for more than the correct amount, the submission will be accepted and the amount of the excess payment will be returned to the requester.

SECTION 10. REFUNDS

.01 *General rule.* In general, the fee will not be refunded unless the Service declines to rule on all issues for which a ruling is requested. In the case of a request for a letter ruling, if the case has been closed by the Service because essential information has not been submitted timely, the request may be reopened and treated as a new request, but the taxpayer must pay another user fee before the case can be reopened. See section 11.04(5) of Rev. Proc. 2006-4, page 132, this Bulletin.

.02 *Examples.*

(1) The following are examples of situations in which the fee will not be refunded:

(a) The request for a letter ruling, determination letter, etc., is withdrawn at any time subsequent to its receipt by the Service, unless the only reason for withdrawal is that the Service has advised the requester that a higher user fee than was sent with the request is applicable and the requester is unwilling to pay the higher fee. For example, no fee will be refunded where the taxpayer has been advised that a proposed adverse ruling is contemplated and subsequently withdraws its submission.

(b) The request is procedurally deficient, although accompanied by the proper fee and is not timely perfected by the requester. When there is a failure to timely perfect the request, the case will be considered closed and the failure to perfect will be treated as a withdrawal for purposes of this revenue procedure.

(c) A letter ruling, determination letter, etc., is revoked in whole or in part at the initiative of the Service. The fee paid at the time the original letter ruling, determination letter, etc., was requested will not be refunded.

(d) The request contains several issues and the Service rules on some, but not all, of the issues. The highest fee applicable to the issues on which the Service rules will not be refunded.

(e) The taxpayer asserts that a letter ruling the taxpayer received covering a

single issue is erroneous or not responsive (other than an issue on which the Service has declined to rule) and requests reconsideration. The Service, upon reconsideration, does not agree that the letter ruling is erroneous or is not responsive. The fee accompanying the request for reconsideration will not be refunded.

(f) The situation is the same as described in subparagraph (e) of this section 10.02(1) except that the letter ruling covered several unrelated transactions. The Service, upon reconsideration, does not agree with the taxpayer that the letter ruling is erroneous or is not responsive for all of the transactions, but does agree that it is erroneous as to one transaction. The fee accompanying the request for reconsideration will not be refunded except to the extent applicable to the transaction for which the Service agrees the letter ruling was in error.

(g) The request is for a supplemental letter ruling, determination letter, etc., concerning a change in facts (whether significant or not) relating to the transaction ruled on.

(h) The request is for reconsideration of an adverse or partially adverse letter ruling or a final adverse determination letter, and the taxpayer submits arguments and authorities not submitted before the original letter ruling or determination letter was issued.

(2) The following are examples of situations in which the fee will be refunded:

(a) In a situation to which section 10.02(1)(h) of this revenue procedure does not apply, the taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or is not responsive (other than an issue on which the Service declined to rule) and requests reconsideration. The Service agrees, upon reconsideration, that the letter ruling is erroneous or is not responsive. The fee accompanying the taxpayer's request for reconsideration will be refunded.

(b) In a situation to which section 10.02(1)(h) of this revenue procedure

does not apply, the requester requests a supplemental letter ruling, determination letter, etc., to correct a mistake that the Service agrees it made in the original letter ruling, determination letter, etc., such as a mistake in the statement of facts or in the citation of a Code section. Once the Service agrees that it made a mistake, the fee accompanying the request for the supplemental letter ruling, determination letter, etc., will be refunded.

(c) The taxpayer requests and is granted relief under § 7805(b) in connection with the revocation in whole or in part, of a previously issued letter ruling, determination letter, etc. The fee accompanying the request for relief will be refunded.

(d) In a situation to which section 10.02(1)(d) of this revenue procedure applied, the taxpayer requests reconsideration of the Service's decision not to rule on an issue. Once the Service agrees to rule on the issue, the fee accompanying the request for reconsideration will be refunded.

SECTION 11. REQUEST FOR RECONSIDERATION OF USER FEE

A taxpayer that believes the user fee charged by the Service for its request for a letter ruling, determination letter, etc., is either not applicable or incorrect and wishes to receive a refund of all or part of the amount paid (see section 10 of this revenue procedure) may request reconsideration and, if desired, the opportunity for an oral discussion by sending a letter to the Internal Revenue Service at the applicable Post Office Box or other address given in section 7. Both the incoming envelope and the letter requesting such reconsideration should be prominently marked "USER FEE RECONSIDERATION REQUEST." No user fee is required for these requests. The request should be marked for the attention of:

If the matter involves primarily:

Employee plans letter ruling requests and all other employee plans matters handled by EP Technical

Exempt organizations letter ruling requests

Employee plans determination letter requests and opinion letter and advisory letter requests pursuant to Rev. Proc. 2005-16

Exempt organizations determination letter requests

Mark for the attention of:

Employee Plans Technical

Exempt Organizations Technical

Manager, EP Determinations Quality Assurance

Manager, EO Determinations Quality Assurance

SECTION 12. EFFECT ON OTHER DOCUMENTS

.01 Rev. Proc. 2005-8, 2005-1 I.R.B. 243, is superseded.

SECTION 13. EFFECTIVE DATE

Except for sections 6.05, 6.06, 6.07, 6.09, and part of the summary in section 6.10, this revenue procedure is effective for requests postmarked or, if not mailed, received on or after February 1, 2006. Sections 6.05, 6.06, 6.07, 6.09, and part of the summary in section 6.10 of this revenue procedure are effective for applications postmarked or, if not mailed, received on or after July 1, 2006.

SECTION 14. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 6.01(10), 6.08(4)(a) and 6.09. This information is required to substantiate that a taxpayer or an exempt organization seeking to pay a reduced user fee with respect to a request for a letter ruling is entitled to pay the reduced fee; to identify the user fee category and corresponding fee required to be paid with respect to determination letter requests; to request reconsideration of the user fee charged by the Service and, in connection with such a request, to indicate whether an oral discussion is desired.

This information will be used to enable the Service to determine whether the taxpayer or exempt organization is entitled to pay a reduced user fee, to ascertain whether reconsideration of the user fee is being requested and, if it is being requested, whether an oral discussion is requested. The collections of information are voluntary, to obtain a benefit. The likely respondents are individuals, businesses or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The estimated total annual reporting and/or recordkeeping burden is 300 hours.

The estimated annual burden per respondent/recordkeeper varies from one hour to ten hours, depending on individual circumstances, with an estimated average of three hours. The estimated number of respondents and/or recordkeepers is 90 (requests for reduced fees) and 10 (requests for reconsideration of fee).

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding employee plans matters in this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m., Eastern time, Monday through Friday. Mr. Rubin may be reached at (202) 283-9888

(not a toll-free number). For exempt organization matters, please contact Mr. Wayne Hardesty at (202) 283-8976 (not a toll-free number).

APPENDIX

Following is a list of revenue procedures requiring payment of a user fee or an administrative scrutiny determination user fee.

A. Procedures applicable to both Employee Plans and Exempt Organizations

Rev. Proc. 2006-4, this Bulletin, provides procedures for issuing letter rulings, information letters, etc., on matters relating to matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

B. Procedures applicable to Employee Plans matters other than actuarial matters

Rev. Proc. 75-26, 1975-1 C.B. 722, sets forth the general procedures of the Internal Revenue Service for the processing of applications for exemption under § 4975(c)(2) of the Code.

Rev. Proc. 87-50, 1987-2 C.B. 647, as modified by Rev. Proc. 91-44, Rev. Proc. 92-38, and Rev. Proc. 2002-10, 2002-1 C.B. 401, sets forth the procedures of the Service relating to the issuance of rulings and opinion letters with respect to the establishment of individual retirement accounts and annuities (IRAs) under § 408, the entitlement to exemption of related trusts or custodial accounts under § 408(e), and the acceptability of the form of prototype simplified employee pension (SEP) agreements under §§ 408(k) and 415.

Rev. Proc. 92-24, 1992-1 C.B. 739, provides procedures for requesting determination letters on the effect on a plan's

qualified status under § 401(a) of the Code of plan language that permits, pursuant to § 420, the transfer of assets in a defined benefit plan to a health benefits account described in § 401(h).

Rev. Proc. 92-38, 1992-1 C.B. 859, provides notice that individual retirement arrangement trusts, custodial account agreements, and annuity contracts must be amended to provide for the required distribution rules in § 408(a)(6) or (b)(3). In addition, Rev. Proc. 92-38 modifies the guidance in Rev. Proc. 87-50 with regard to opinion letters issued to sponsoring organizations, including mass submitters and sponsors of prototype IRAs.

Rev. Proc. 93-41, 1993-2 C.B. 536, sets forth the procedures of the Service relating to the issuance of an administrative scrutiny determination as to whether a separate line of business satisfies the requirement of administrative scrutiny within the meaning of § 1.414(r)-6.

Rev. Proc. 97-29, 1997-1 C.B. 698, describes model amendments for SIMPLE IRAs; guidance to drafters of prototype SIMPLE IRAs on obtaining opinion letters; permissive amendments to sponsors of nonSIMPLE IRAs; the opening of a prototype program for SIMPLE IRA Plans; and transitional relief for users of SIMPLE IRAs and SIMPLE IRA Plans that have not been approved by the Service.

Rev. Proc. 98-59, 1998-2 C.B. 727, provides guidance on obtaining opinion letters to drafters of prototype Roth IRAs, and provides transitional relief for users of Roth IRAs that have not been approved by the Internal Revenue Service.

Rev. Proc. 2003-16, 2003-1 C.B. 359, sets forth guidelines for the implementation of the provision for a waiver of the 60-day rollover period described in section 644 of EGTRRA.

Rev. Proc. 2005-16, 2005-10 I.R.B. 674, revises and combines the Service's master and prototype (M&P) and volume submitter program into a unified

program for the pre-approval of pension, profit-sharing and annuity plans.

Rev. Proc. 2005-66, 2005-37 I.R.B. 509, describes the Service's procedure for issuing determination letters pursuant to § 401(a) of the Code under a staggered remedial amendment system.

Rev. Proc. 2006-6, this Bulletin, provides procedures for issuing determination letters on the qualified status of employee plans under §§ 401(a), 403(a), 409, and 4975(e)(7).

C. Procedures applicable to Employee Plans actuarial matters

Rev. Proc. 79-62, 1979-2 C.B. 576, outlines the procedure by which a plan sponsor or administrator may request a determination that a plan amendment is reasonable and provides for only *de minimis* increases in plan liabilities in accordance with § 412(f)(2)(A) of the Code and § 304(b)(2)(A) of ERISA.

Rev. Proc. 90-49, 1990-2 C.B. 620, modifies and replaces Rev. Proc. 89-35, 1989-1 C.B. 917, in order to extend the effective date to contributions made for plan years beginning after December 31, 1989, to change the deadline for requesting rulings under the revenue procedure, to revise the information requirements for a ruling request made under the revenue procedure, to furnish a worksheet for actuarial computations, and to provide a special rule under which certain *de minimis* nondeductible employer contributions to a qualified defined benefit plan may be returned to the taxpayer without a formal ruling or disallowance from the Service.

Rev. Proc. 94-42, 1994-1 C.B. 717, sets forth a procedure for obtaining approval of an amendment to a qualified plan that, under § 412(c)(8), reduces the accrued benefits of plan participants.

Rev. Proc. 2000-41, 2000-2 C.B. 371, sets forth the procedure by which a plan administrator or plan sponsor may obtain

approval of the Secretary of the Treasury for a change in funding method as provided by § 412(c)(5) of the Code and section 302(c)(5) of ERISA.

Rev. Proc. 2004-15, 2004-1 C.B. 490, sets forth procedures for requesting waivers of the minimum funding standard described in § 412(d) and the issuance of such waivers by the office of the Director, Employee Plans, Tax Exempt and Government Entities Division.

Rev. Proc. 2004-44, 2004-2 C.B. 134, outlines the procedure by which a plan administrator or plan sponsor may request and obtain approval for an extension of an amortization period in accordance with § 412(e) of the Code and section 304(a) of ERISA.

D. Procedures applicable to Exempt Organizations matters only

Rev. Proc. 80-27, 1980-1 C.B. 677, as modified by Rev. Proc. 96-40, 1996-2 C.B. 301, provides procedures under which recognition of exemption from federal income tax under § 501(c) may be obtained on a group basis for subordinate organizations affiliated with and under the general supervision or control of a central organization. This procedure relieves each of the subordinates covered by a group exemption letter from filing its own application for recognition of exemption.

Rev. Proc. 90-27, 1990-1 C.B. 514, sets forth revised procedures with regard to applications for recognition of exemption from federal income tax under §§ 501 and 521.

Part IV. Items of General Interest

Cumulative List of Announcements Relating to Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings from January 1, 2005 through December 31, 2005

Announcement 2006-1

The following is a cumulative listing of names of organizations that are presently challenging, under section 7428 of the Internal Revenue Code, the revocation of their status as organizations entitled to receive deductible contributions in declaratory judgment suits in the Tax Court, the

United States District Court for the District of Columbia, or the United States Court of Federal Claims. The purpose of this announcement is to inform potential donors to these organizations of the protection under 7428(c) for certain contributions made during the litigation period.

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1). In the case of individual contributors, the maximum amount of contributions protected during this period is limited to \$1,000.00, with a husband and wife being treated as one contributor. This protection is not extended to any

individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for the revocation. This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevails in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

I. The organizations listed below continue to be involved in pending declaratory judgment suits under section 7428 of the Code, challenging revocation of their status as eligible donees under section 170(c)(2). Protection under section 7428(c) begins on the date indicated.

Michael and Laura Gallop Family Foundation
(June 28, 2004)

Agoura Hills, CA

South Community Association
(September 1, 2003)

Middletown, OH

II. The organization listed below has timely filed a declaratory judgment suit under section 7428 of the Code during 2005. Protection under section 7428(c) begins on the date indicated.

Rameses School of San Antonio, Texas
(January 24, 2005)

San Antonio, TX

III. The organization listed below is no longer described in section 170(c)(2) and is not recognized as exempt under section 501(c)(3) of the Code.

South Park Remedial Association

Dayton, OH

IV. The organization listed below continues to be described in section 170(c)(2) and is recognized as exempt under section 501(c)(3) of the Code.

Clinica Materna Infantil 30-30, Inc.

Hollywood, FL

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List¹

Bulletin 2006–1

Announcements:

2006-1, 2006-1 I.R.B. 260

Revenue Procedures:

2006-1, 2006-1 I.R.B. 1

2006-2, 2006-1 I.R.B. 89

2006-3, 2006-1 I.R.B. 122

2006-4, 2006-1 I.R.B. 132

2006-5, 2006-1 I.R.B. 174

2006-6, 2006-1 I.R.B. 204

2006-7, 2006-1 I.R.B. 242

2006-8, 2006-1 I.R.B. 245

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2005–27 through 2005–52 is in Internal Revenue Bulletin 2005–52, dated December 27, 2005.

Finding List of Current Actions on Previously Published Items¹

Bulletin 2006-1

Revenue Procedures:

2005-1

Superseded by

Rev. Proc. 2006-1, 2006-1 I.R.B. *1*

2005-2

Superseded by

Rev. Proc. 2006-2, 2006-1 I.R.B. *89*

2005-3

Superseded by

Rev. Proc. 2006-3, 2006-1 I.R.B. *122*

2005-4

Superseded by

Rev. Proc. 2006-4, 2006-1 I.R.B. *132*

2005-5

Superseded by

Rev. Proc. 2006-5, 2006-1 I.R.B. *174*

2005-6

Superseded by

Rev. Proc. 2006-6, 2006-1 I.R.B. *204*

2005-7

Superseded by

Rev. Proc. 2006-7, 2006-1 I.R.B. *242*

2005-8

Superseded by

Rev. Proc. 2006-8, 2006-1 I.R.B. *245*

2005-12

Section 10 modified and superseded by

Rev. Proc. 2006-1, 2006-1 I.R.B. *1*

2005-61

Superseded by

Rev. Proc. 2006-3, 2006-1 I.R.B. *122*

2005-68

Superseded by

Rev. Proc. 2006-1, 2006-1 I.R.B. *1*

Rev. Proc. 2006-3, 2006-1 I.R.B. *122*

¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2005-27 through 2005-52 is in Internal Revenue Bulletin 2005-52, dated December 27, 2005.