

Process, regarding withdrawal after Appeals has taken jurisdiction over an early referral issue.

**.04 Early referral file sent to Appeals.** Once the taxpayer has responded to the Form 5701, Examination will send the early referral file to Appeals. Appeals will then take jurisdiction over the issues accepted for early referral. All other issues in the case remain in Examination's jurisdiction. The early referral file should include copies of:

- (1) applicable portions of tax returns and workpapers;
- (2) the approved early referral request;
- (3) the Form 5701;
- (4) the taxpayer's written response to the Form 5701;
- (5) Examination's response to the taxpayer's position, if any; and
- (6) an estimate of the potential tax effect of the proposed adjustment.

#### **SECTION 6. RESOLVING THE EARLY REFERRAL ISSUE**

**.01 In general.** The taxpayer's written response to the Form 5701 generally serves the same purpose as an Appeals protest. Established Appeals procedures, including those governing submissions and taxpayer conferences, apply to early referral issues. See § 601.106 *et seq.* of the Statement of Procedural Rules.

#### **.02 Agreement reached.**

(1) If an agreement is reached with respect to an early referral issue, a specific matters closing agreement (Form 906) will be prepared. See § 7121 and also Rev. Proc. 68-16, 1968-1 C.B. 770, which describes the preparation of closing agreements. The closing agreement will be used to compute the corrected tax as a partial agreement prior to or concurrently with the resolution of any other issues in the case.

(2) If an early referral issue results in a refund or credit requiring a report described in § 6405 that must be submitted to the Joint Committee on Taxation, the report must include a copy of the proposed closing agreement signed by or for the taxpayer, but not signed by or on behalf of the Commissioner. The Service will not sign the proposed agreement until after review by the Joint Committee.

**.03 Agreement not reached.** If an agreement is not reached with respect to an early referral issue:

(1) Appeals will close the early referral file and return jurisdiction over the issue to Examination. Appeals will send a copy of the Appeals Case Memorandum for the issue to the CEP case manager.

(2) Appeals will not reconsider an unagreed early referral issue if the entire case is later protested to Appeals, unless there has been a substantial change in the circumstances regarding the early referral issue.

#### **SECTION 7. EFFECT OF CONCLUSION OF EXAMINATION**

If Examination issues a preliminary notice of deficiency ("30-day letter") with respect to any issue that is not accepted for early referral, all unagreed issues, including any early referral issues that have not yet been settled by Appeals, will be combined in the 30-day letter. Likewise, if no issues in the case remain unagreed except for the early referral issues that are pending in Appeals, a 30-day letter will be issued solely with respect to the early referral issues. The issuance of the 30-day letter generally will constitute the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review for purposes of the increased underpayment rate for large corporate underpayments under § 6621(c).

Except as provided in section 6.03(2), once Appeals assumes jurisdiction over the case, all issues, including all early referral issues that have not yet been settled by Appeals, will be considered under established Appeals procedures.

If no issues in the case remain unagreed except for an early referral issue that could not be settled by Appeals and has been returned to Examination, no 30-day letter will be issued. Rather, a statutory notice of deficiency ("90-day letter") will be issued, which will start the period for the increased underpayment rate for large corporate underpayments under § 6621(c).

#### **SECTION 8. WITHDRAWAL FROM THE EARLY REFERRAL PROCESS**

If the taxpayer withdraws its early referral request with respect to one or more of the early referral issues after Appeals has taken jurisdiction over the issues, such withdrawal will be treated

in the same manner as if no agreement of those early referral issues was reached. See section 6.03, Agreement not reached. The withdrawal request must be communicated in writing to the ARDA. See section 5.03, Taxpayer response to Form 5701, regarding a withdrawal without prejudice prior to Appeals taking jurisdiction over the issue(s).

#### **SECTION 9. NO USER FEE**

There is no user fee for an early referral request.

#### **SECTION 10. EFFECT ON OTHER DOCUMENTS**

Announcement 94-41, 1994-12 I.R.B. 7, is superseded.

#### **SECTION 11. EFFECTIVE DATE, FUTURE ACTION**

This revenue procedure is effective for requests for early referral filed after January 8, 1996, the date this revenue procedure is published in the Internal Revenue Bulletin. Additional guidance may be issued to supplement or modify the procedures set forth in this revenue procedure in order to extend the early referral program.

#### **DRAFTING INFORMATION**

The principal author of this revenue procedure is Thomas C. Louthan, Director, Office of International, TEFRA, and Dispute Resolution Programs, National Office Appeals. For further information regarding this revenue procedure, please contact Mr. Louthan at (202) 401-4098 (not a toll-free number).

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26 CFR 601.602: Forms and instructions.  
(Also Part 1, Section 6033; 1.6033-2)

#### **Rev. Proc. 96-10**

#### **SECTION 1. PURPOSE**

The purpose of this revenue procedure is to list a class of organizations, affiliated with a church or convention or association of churches and exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, that is not required to file an annual information return on Form 990,

Return of Organizations Exempt from Income Tax. This revenue procedure supplements Rev. Proc. 83-23, 1983-1 C.B. 687, and obsoletes Rev. Proc. 86-23, 1986-1 C.B. 564.

## SEC. 2. BACKGROUND

.01 Section 6033(a)(1) of the Code generally requires all tax-exempt organizations to file an annual information return on Form 990.

.02 Section 6033(a)(2)(A) of the Code provides certain mandatory exceptions to this filing requirement, specifically for churches, their integrated auxiliaries, and conventions or associations of churches.

.03 Section 6033(a)(2)(B) of the Code provides discretionary exceptions from filing such returns where the Secretary "determines such filing is not necessary to the efficient administration of the internal revenue laws." Section 1.6033-2(g)(6) of the Income Tax Regulations delegates authority to the Commissioner to excuse organizations from the filing requirement. It provides that "the Commissioner may relieve any organization or class of organizations from filing, in whole or in part, the annual information return required by section 6033 where he determines that such returns are not necessary for the efficient administration of the internal revenue laws."

.04 Section 1.6033-2(g)(1) of the regulations provides a partial list of organizations that are not required to file annual returns either because they are excepted by statute or because the Commissioner has exercised the authority referred to above in Sec. 2.03. A more complete list is contained in Rev. Proc. 83-23, 1983-1 C.B. 687.

.05 A return filing exception for certain church-affiliated organizations engaged exclusively in managing funds or maintaining retirement programs was announced originally in Notice 84-2, 1984-1 C.B. 331. That exemption was carried over into Rev. Proc. 86-23, which superseded Notice 84-2. Rev. Proc. 86-23 also defined what is an integrated auxiliary of a church for purposes of the filing exception provided in section 6033(a)(2)(A). Treas. Reg. § 1.6033-2(h) now has incorporated the definition of integrated auxiliary of a church, making Rev. Proc. 86-23 partially obsolete. Accordingly, this revenue procedure replaces Rev. Proc. 86-23, preserving the filing

exemption that remains in effect for certain church-affiliated organizations that manage funds and retirement programs and deleting those portions of Rev. Proc. 86-23 that are now part of the regulations. Some organizations exempted from filing by this revenue procedure may also qualify as integrated auxiliaries exempt from filing under section 6033(a)(2)(A).

## SEC. 3. ORGANIZATIONS EXCUSED FROM FILING

.01 The following organizations will not be required to file Form 990:

(1) An organization described in section 501(c)(3) that is operated, supervised, or controlled by one or more churches, integrated auxiliaries, or conventions or associations of churches, and

(a) is engaged exclusively in financing, funding the activities of, or managing the funds of

(i) a church, integrated auxiliary, or convention or association of churches, or

(ii) a group of organizations substantially all of which are described in (1)(a)(i), if substantially all of its assets are provided by, or held for the benefit of, organizations described in (1)(a)(i); or

(b) maintains retirement insurance programs primarily for organizations described in (1)(a)(i), and

(i) more than 50 percent of the individuals covered by the programs are directly employed by those organizations, or

(ii) more than 50 percent of the assets are contributed by, or held for the benefit of, employees of those organizations.

(2) An organization described in section 501(c)(3) that is operated, supervised or controlled by one or more religious orders and is engaged in financing, funding, or managing assets used for exclusively religious activities.

.02 For purposes of this revenue procedure, an integrated auxiliary is an organization that meets the definition contained in Treas. Reg. § 1.6033-2(h).

## SEC. 4. EFFECTIVE DATE

This revenue procedure is effective for tax years beginning after December 20, 1995, the date of publication of final Treas. Reg. § 1.6033-2(h) in the Federal Register.

## SEC. 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 83-23 is supplemented. Rev. Proc. 86-23 is rendered obsolete as of the effective date set forth above in Sec. 4.

## DRAFTING INFORMATION

The principal author of this revenue procedure is John Francis Reilly of the Exempt Organizations Division. For further information regarding this revenue procedure contact Mr. Reilly on (202) 622-7352 (not a toll-free call).

26 CFR 601.602: Tax forms and instructions.

## Rev. Proc. 96-11

NOTE: This revenue procedure may be used to prepare Tax Year 1995 Form 1042-S for submission to Internal Revenue Service (IRS) using any of the following:

Magnetic Tape

Tape Cartridge

5¼-inch Diskette

3½-inch Diskette

Electronic Filing

\*(Bisynchronous)

\*(Asynchronous)

Please read this publication carefully. Persons required to file may be subject to penalties for failure to file or failure to include correct information if they do not follow the instructions in this revenue procedure.

## PLEASE NOTE:

ALL CHANGES IN THE PUBLICATION, FORMAT AND EDITORIAL, HAVE BEEN HIGHLIGHTED BY THE USE OF ITALICS AND DOUBLE UNDERLINES.

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