

## 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. 2002-4, page 127.**

**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 Commissioner, Tax Exempt and Government Entities Division. Rev. Proc. 2001-4 superseded.

**Rev. Proc. 2002-5, page 173.**

**Technical advice.** Revised procedures are provided for furnishing technical advice to area managers and appeals offices by the Office of the Commissioner, Tax Exempt and Government Entities Division, regarding issues in the employee plans area (including actuarial matters) and in the exempt organizations area. Rev. Proc. 2001-5 superseded.

**Rev. Proc. 2002-6, page 203.**

**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 Proc. 2001-6 superseded. Rev. Proc. 2000-20 modified.

**Rev. Proc. 2002-8, page 252.**

**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 Commissioner, Tax Exempt and Government Entities Division, is provided. Rev. Proc. 2001-8 superseded.

### EXEMPT ORGANIZATIONS

**Rev. Proc. 2002-4, page 127.**

**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 Commissioner, Tax Exempt and Government Entities Division. Rev. Proc. 2001-4 superseded.

**Rev. Proc. 2002-5, page 173.**

**Technical advice.** Revised procedures are provided for furnishing technical advice to area managers and appeals offices by the Office of the Commissioner, Tax Exempt and Government Entities Division, regarding issues in the employee plans area (including actuarial matters) and in the exempt organizations area. Rev. Proc. 2001-5 superseded.

**Rev. Proc. 2002-8, page 252.**

**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 Commissioner, Tax Exempt and Government Entities Division, is provided. Rev. Proc. 2001-8 superseded.

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Cumulative List of Declaratory Judgment Proceedings Under Section 7428 for 2001 begins on page 266.

Finding List of Previously Published Items published in the Bulletin from July through December 2001 begins on page iv.

Index of items published in the Bulletin from July through December 2001 begins on page vi.

Numerical Finding List of Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in the Bulletin from July through December 2001 begins on page ii.



## ADMINISTRATIVE

**Rev. Proc. 2002-1, page 1.**

**Letter rulings, determination letters, and information letters issued by the Associate Chief Counsel (Corporate), Associate Chief Counsel (Financial Institutions & Products), Associate Chief Counsel (Income Tax & Accounting), Associate Chief Counsel (International), Associate Chief Counsel (Passthroughs & Special Industries), Associate Chief Counsel (Procedure and Administration), and Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).** Revised procedures are provided for issuing letter rulings, determination letters, and information letters on specific issues under the jurisdiction of the Associate Chief Counsel (Corporate), Associate Chief Counsel (Financial Institutions & Products), Associate Chief Counsel (Income Tax & Accounting), Associate Chief Counsel (International), Associate Chief Counsel (Passthroughs & Special Industries), Associate Chief Counsel (Procedure and Administration), and Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). Rev. Proc. 2001-1 superseded. Rev. Procs. 84-37 and 96-13 modified. Notice 97-19 modified.

**Rev. Proc. 2002-2, page 82.**

**Technical advice furnished by the Associate Chief Counsel (Corporate), Associate Chief Counsel (Financial Institutions & Products), Associate Chief Counsel (Income Tax & Accounting), Associate Chief Counsel (International), Associate Chief Counsel (Passthroughs & Special Industries), Associate Chief Counsel (Procedure and Administration), and Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).** Revised procedures are provided for furnishing technical advice to the directors and area directors, appeals, in areas under the jurisdiction of the Associate Chief Counsel (Corporate), Associate Chief Counsel (Financial Institutions & Products), Associate Chief Counsel (Income Tax & Accounting), Associate Chief Counsel (International), Associate Chief Counsel (Passthroughs & Special Industries), Associate Chief Counsel (Procedure and Administration), and Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). Taxpayers' rights, when technical advice has been requested, are also provided. Rev. Procs. 2001-2 and 2001-41 superseded.

**Rev. Proc. 2002-3, page 117.**

**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 Associate Chief Counsel and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) relating to matters where the Service will not issue rulings or determination letters. Rev. Procs. 2001-3, 2001-30, 2001-36, and 2001-51 superseded.

**Rev. Proc. 2002-7, page 249.**

**Areas in which advance 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 advance rulings or determination letters. Rev. Proc. 2001-7 superseded.

# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

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 consolidated 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 first 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 first Bulletin of the succeeding semiannual period, respectively.

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# Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.

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

This revenue procedure explains how the Service gives guidance to taxpayers on 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 (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). 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 B.

**Operating divisions of the Service**

The Service includes four operating divisions that are responsible for meeting the needs of the taxpayers they serve. These operating divisions are:

- (1) Large and Mid-Size Business Division (LMSB), which generally serves corporations, S corporations, and partnerships with assets in excess of \$10 million;
- (2) Small Business/Self-Employed Division (SB/SE), which generally serves corporations, 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;

(3) 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

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

**Description of terms used in this revenue procedure**

For purposes of this revenue procedure—

(1) any reference to director or field office refers to the Director, Field Operations, LMSB, the Area Director, Field Compliance, SB/SE, or the Director, Compliance, W&I, as appropriate, and their respective offices 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, and their respective offices;

(2) any reference to area office refers to Appeals LMSB Area Office or Appeals SB/SE-TE/GE Area Office, as appropriate;

(3) 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; and

(4) the term “national office” refers to the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions & Products), the Office of Associate Chief Counsel (Income Tax & Accounting), the Office of Associate Chief Counsel (International), the Office of Associate Chief Counsel (Passthroughs & 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.

**Updated annually**

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

**SECTION 2. IN WHAT FORM IS GUIDANCE PROVIDED BY THE OFFICES OF ASSOCIATE CHIEF COUNSEL (CORPORATE), ASSOCIATE CHIEF COUNSEL (FINANCIAL INSTITUTIONS & PRODUCTS), ASSOCIATE CHIEF COUNSEL (INCOME TAX & ACCOUNTING), ASSOCIATE CHIEF COUNSEL (INTERNATIONAL), ASSOCIATE CHIEF COUNSEL (PASSTHROUGHS & SPECIAL INDUSTRIES), ASSOCIATE CHIEF COUNSEL (PROCEDURE AND ADMINISTRATION), AND DIVISION COUNSEL/ASSOCIATE CHIEF COUNSEL (TAX EXEMPT AND GOVERNMENT ENTITIES)?**

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

## **Letter ruling**

**.01** A “letter ruling” is a written statement issued to a taxpayer by the national office that interprets and applies the tax laws to the taxpayer’s specific set of facts. A letter ruling includes the written permission or denial of permission by the national 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 12 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 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 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.

## **Determination letter**

**.03** A “determination letter” is a written statement issued by a director that applies the principles and precedents previously announced by the national office 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.

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. 96–13, 1996–1 C.B. 616.

## **Information letter**

**.04** An “information letter” is a statement issued either by the national 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 general information will help the taxpayer. The taxpayer should provide a daytime telephone number with the taxpayer’s request for an information letter. An information letter is advisory only and has no binding effect on the Service.

## **Revenue ruling**

**.05** 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 issued only by the national office and 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

### .06

#### (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 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. However, 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 guidance 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 confirmation of the substance of the letter.

## SECTION 3. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN GUIDANCE 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 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 Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). The national office 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 within the jurisdiction of the appropriate director offices that relate to the Code sections 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 Associate Chief Counsel (Procedure and Administration), or the Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities).

**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 & Products)**

.02 Issues under the jurisdiction of the Associate Chief Counsel (Financial Institutions & 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 & Accounting)**

.03 Issues under the jurisdiction of the Associate Chief Counsel (Income Tax & 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, accounting method changes for these and other miscellaneous 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), 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 activities of U.S. or U.S.-related persons outside the United States.

For the procedures to obtain advance pricing agreements under § 482, *see* Rev. Proc. 96-53, 1996-2 C.B. 375, as modified by Notice 98-65, 1998-2 C.B. 803.

For the procedures concerning competent authority relief arising under the application and interpretation of tax treaties between the United States and other countries, *see* Rev. Proc. 96-13. However, competent authority consideration for an advance pricing agreement should be requested under Rev. Proc. 96-53.

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

.05 Issues under the jurisdiction of the Associate Chief Counsel (Passthroughs & 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 only 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 (other than those within the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division), employment taxes, taxes on self-employment income, tax-exempt obligations, mortgage credit certificates, Qualified Zone Academy Bonds (QZADS), and federal, state, local, and Indian tribal governments.

**SECTION 4. ON WHAT ISSUES MUST WRITTEN GUIDANCE 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 Bureau of Alcohol, Tobacco and Firearms.

**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. 2002-4, this Bulletin. *See also* Rev. Proc. 2002-6, 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. 2002-8, this Bulletin.

**SECTION 5. UNDER WHAT CIRCUMSTANCES DOES THE NATIONAL OFFICE ISSUE LETTER RULINGS?**

**In income and gift tax matters**

.01 In income and gift tax matters, the national office generally issues a letter ruling on a proposed transaction and on a completed transaction if the letter ruling request is submitted before the return is filed for the year in which the transaction that is the subject of the request was completed.

(1) **Circumstances under which a letter ruling is not ordinarily issued.** The national office ordinarily does not issue a letter ruling if, at the time the letter ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period and that issue—

- (a) is being examined by a director;
- (b) is being considered by an area office;
- (c) is pending in litigation in a case involving the taxpayer or a related taxpayer;

(d) has been examined by a director or considered by an area office and the statutory period of limitations on assessment or on filing a claim for refund or credit of tax has not expired; or

(e) has been examined by a director or considered by an area office and a closing agreement covering the issue or liability has not been entered into by a director or by an area office.

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, the national 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 director. *See* section 8.04 of this revenue procedure. However, even if an examination has begun, the national office ordinarily will issue the letter ruling if the director agrees, by memorandum, to the issuance of the letter ruling.

**(2) No letter ruling on a property conversion after return filed.** The national office does 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. However, the director may issue a determination letter in this case. *See* section 6.01 of this revenue procedure.

**(3) Certain late S corporation and related elections.** 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. 98-55, 1998-2 C.B. 643, or Rev. Proc. 97-48, 1997-2 C.B. 521. A request made pursuant to Rev. Proc. 98-55 or Rev. Proc. 97-48 does not require payment of any user fee. *See* section 3.05 of Rev. Proc. 98-55, section 3 of Rev. Proc. 97-48, and section 15.03(2) of this revenue procedure.

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

**.02** The national 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 Procedure and Administration Regulations. Even if submitted after the return covering the issue presented in the § 301.9100 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 area office 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.

However, an election made pursuant to § 301.9100-2 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. Such an election pertains to an automatic extension of time.

**(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 8 of this revenue procedure. In addition, the § 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 Service ordinarily will not issue a § 301.9100 ruling. *See* § 301.9100-3(c)(1)(ii). Therefore, the taxpayer must secure a consent under § 6501(c)(4) to extend the period of limitation on assessment. 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 Service 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 national office if examination of return begins while 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 national office. *See* § 301.9100-3(e)(4)(i) and section 8.04(1)(b) of this revenue procedure.

**(4) National office will notify the director, appeals officer, or government counsel of a § 301.9100 request if return is being examined by a field office or is being considered by an area office 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 an area office or a federal court, the national office will notify the appropriate director, appeals officer, or government counsel that a § 301.9100 request has been submitted to the national 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.

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

**.03** Under Rev. Proc. 77-9, 1977-1 C.B. 542, the Office of 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), and tax exemption for foreign trade income of a foreign sales corporation or a small foreign sales corporation (FSC or small FSC) to a person, if that person, 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. Requests for determinations under Rev. Proc. 77-9 are letter ruling requests and, therefore, should be submitted to the Associate Chief Counsel (International) pursuant to this revenue procedure.

#### **In matters involving § 367**

**.04** Unless the issue is covered by section 7 of this revenue procedure, the Office of 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 Office of Associate Chief Counsel (International) 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. However, the Office of Associate Chief Counsel (International) 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**

**.05** In general, the national office issues prospective letter rulings on transactions affecting the estate tax on the prospective estate of a living person and affecting the estate tax on the estate of a decedent before the decedent's estate tax return is filed. The national office will not issue letter rulings for prospective estates on computations of tax, actuarial factors, and factual matters.

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 national office branch considering the letter ruling request that an extension has been obtained.

In limited circumstances, the national office will consider a request for an estate tax letter ruling after the return is filed but before the return is examined. In such a case, 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 national office that the return has been filed. *See* section 8.04 of this revenue procedure. The national office will make every effort to issue the letter ruling within 3 months of the date the return was filed.

In limited circumstances, the taxpayer requests a letter ruling after the return is filed but before the return is examined. In such a case, the taxpayer must state in the letter ruling request that the return has been filed but has not been examined, and must also notify the director having jurisdiction over this return that a letter ruling has been requested and provide a copy of the letter ruling request to the director. If the director agrees to the consideration of the letter ruling request by the national office, the national office will make every effort to issue the letter ruling within 3 months of the date the letter ruling request was filed.

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

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

**.06** In matters involving additional estate tax under § 2032A(c), the national office 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**

**.07** In matters involving qualified domestic trusts under § 2056A, the national office issues letter rulings on proposed transactions and on completed transactions that occurred before the return is filed.

**In generation-skipping transfer tax matters**

**.08** In general, the national office 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. The national office will issue letter rulings on the application of the effective date rules for generation-skipping transfer tax (§ 1433 of the Tax Reform Act of 1986, 1986-3 (Vol. 1) C.B. 1, 648) to wills, trusts, and trust equivalents in existence on October 22, 1986, and to generation-skipping transfers taking place on or before October 22, 1986.

**In employment and excise tax matters**

**.09** In employment and excise tax matters, the national office issues 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 national office. Requests regarding employment status from other taxpayers must first be submitted to the appropriate Service office listed on the current Form SS-8 (Rev. January 2001). *See* section 6.04 of this revenue procedure. Generally, the employer is the taxpayer and requests the letter ruling. However, 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.

The national office usually will not issue a letter ruling if, at the time the letter 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 a director;
- (2) is being considered by an area office;

(3) is pending in litigation in a case involving the taxpayer or a related taxpayer;

(4) has been examined by a director or considered by an area office 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 director or considered by an area office and a closing agreement covering the issue or liability has not been entered into by a director or by an area office.

If a return involving an issue for a particular year is filed while a request for a letter ruling on that issue is pending, the national office will issue the letter ruling unless it is notified by the taxpayer or otherwise learns that an examination of that issue or an examination of the identical issue on an earlier year's return has been started by a director. *See* section 8.04 of this revenue procedure. However, even if an examination has begun, the national office ordinarily will issue the letter ruling if the director agrees, by memorandum, to the issuance of the letter ruling.

## In administrative provisions matters

### .10

(1) **In general.** The national office issues letter rulings on matters arising under the Code and related statutes and regulations that involve—

- (a) the time, place, manner, and procedures for reporting and paying taxes;
- (b) the assessment and collection of taxes (including interest and penalties);
- (c) the abatement, credit, or refund of an overassessment or overpayment of tax; or
- (d) the filing of information returns.

(2) **Circumstances under which a letter ruling is not ordinarily issued.** The national office ordinarily does not issue a letter ruling if, at the time the letter ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period and that issue—

- (a) is being examined by a director;
- (b) is being considered by an area office;
- (c) is pending in litigation in a case involving the taxpayer or a related taxpayer;
- (d) has been examined by a director or considered by an area office and the statutory period of limitations on assessment or on filing a claim for refund or credit of tax has not expired; or
- (e) has been examined by a director or considered by an area office and a closing agreement covering the issue or liability has not been entered into by a director or area office.

If a return involving an issue for a particular year is filed while a request for a letter ruling on that issue is pending, the national office will issue the letter ruling unless it is notified by the taxpayer or otherwise learns that an examination of that issue or an examination of the identical issue on an earlier year's return has been started by a director. *See* section 8.04 of this revenue procedure. But, even if an examination has begun, the national office ordinarily will issue the letter ruling if the director agrees, by memorandum, to the issuance of the letter ruling.

**In Indian tribal government matters**

.11 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. 2002-1 (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. 2001-15, 2001-5 I.R.B. 465, 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 on the list of recognized tribal government entities in revised versions of Rev. Proc. 2001-15 or Rev. Proc. 84-36.

**Generally not to business associations or groups**

.12 The national office 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 the objectives of, and standards for, the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

The national office, 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**

.13 The national office does not issue letter rulings to foreign governments or their political subdivisions about the U.S. tax effects of their laws. The national office also does 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. 96-13, 1996-1 C.B. at 626. However, treaty partners can continue to address matters such as these under the provisions of the applicable tax treaty. In addition, the national office 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**

.14 The national office ordinarily does not issue letter rulings on a matter involving the federal tax consequences of any proposed federal, state, local, municipal, or foreign legislation. 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 this revenue procedure. The national office also may provide general information in response to an inquiry.

**Issuance of a letter ruling before the issuance of a regulation or other published guidance**

**.15** Unless the issue is covered by section 7 of this revenue procedure, Rev. Proc. 2002-3, this Bulletin, or Rev. Proc. 2002-7, 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 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 interests 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. However, 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 appropriate branch will consider all letter ruling requests unless the issue is covered by section 7 of this revenue procedure, Rev. Proc. 2002-3, or Rev. Proc. 2002-7.

**SECTION 6. 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 regulation, or by a conclusion stated in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin.

**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. However, 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 the directors 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 the directors 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 written requests from taxpayers on completed transactions over which they have examination jurisdiction.

Requests for a determination of employment status (Form SS-8) from taxpayers (other than federal agencies and instrumentalities) must be submitted to the appropriate Service office listed on the current Form SS-8 (Rev. January 2001) and not directly to the national office. *See also* section 5.09 of this revenue procedure.

**Circumstances under which determination letters are not issued by a director**

**.05** A director will not issue a determination letter in response to any request if—

- (1) it appears that the taxpayer has directed a similar inquiry to the national office;
- (2) the same issue involving the same taxpayer or a related taxpayer is pending in a case in litigation or before an area office;
- (3) the determination letter is requested by an industry, trade association, or similar group;
- (4) the request involves an industry-wide problem.

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 director will not issue a determination letter on an employment tax question if the specific question for the same taxpayer or a related taxpayer has been, or is being, considered by the Central Office of the Social Security Administration or the Railroad Retirement Board.

A director also will not issue a determination letter on determining constructive sales price under § 4216(b) or § 4218(c), which deal with special provisions applicable to the manufacturers excise tax. The national office, however, will issue letter rulings in this area. *See* section 7.05 of this revenue procedure.

**Requests concerning income, estate, or gift tax returns**

**.06** 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**

**.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 6.01 through 6.04 of this revenue procedure are not reviewed by the national office 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 the national office as explained in Rev. Proc. 2002-2, this Bulletin.

**SECTION 7. 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 letter rulings or determination letters in certain areas because of the factual nature of the problem involved or because of other reasons. Rev. Proc. 2002–3 and Rev. Proc. 2002–7 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 national office or a director 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**

**.02** 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**

**.03** The national office 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 branch having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether the national office will issue a letter ruling on part of the transaction.

If two or more items or sub-methods of accounting are interrelated, the national office ordinarily will not issue a letter ruling on a change in accounting method involving only one of the items or sub-methods.

**Not on frivolous issues**

**.04** A letter ruling or a determination letter will not be issued 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 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 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;” or

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

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

**.05** The national office 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.

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

**.06** A letter ruling or determination letter ordinarily will not be issued 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.

**SECTION 8. 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 on all matters. Requests for letter rulings and determination letters require the payment of the applicable user fee listed in Appendix A 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 section 9 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**

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**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.

The Service will usually not rule on only one step of a larger integrated transaction. *See* section 7.03 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 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 8.01(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 8.01(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 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 income tax matters; and (iii) the attestant's name and address.

## 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 a director;
- (b) has been examined, but the statutory period of limitation on assessment or on filing a claim for refund or credit of tax has not expired;
- (c) has been examined, but a closing agreement covering the issue or liability has not been entered into by a director;
- (d) is being considered by an area office in connection with a return from an earlier period;
- (e) has been considered by an area office in connection with a return from an earlier period, but the statutory period of limitation on assessment or on filing a claim for refund or credit of tax has not expired;
- (f) has been considered by an area office in connection with a return from an earlier period, but a closing agreement covering the issue or liability has not been entered into by an area office; or
- (g) is pending in litigation in a case involving the taxpayer or a related taxpayer.

**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 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) 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 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 (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 8.01(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 also 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), 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 is encouraged to 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 wishing to expedite the letter ruling process may send a request to verify tribal status to the following address at BIA:

Branch of Tribal Government & Alaska  
Division of Indian Affairs  
Office of the Solicitor, Mail Stop 6456  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 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 (or pending 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.

### **Deletions 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 ("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 21 calendar days. *See* section 10.06 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 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.

#### **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 is not permitted.

#### **Authorized representatives**

**(13) Authorized representatives.** To sign the request or to appear before the Service in connection with the request, the taxpayer's authorized 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 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**

(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. 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 (31 C.F.R. part 10 (2001));

#### **Enrolled actuary**

(d) An enrolled actuary who is a person, other than an attorney or certified public accountant, that 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, 4971, 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”**

(e) Any other person, including a foreign representative, who has received a “Letter of Authorization” from the Director of Practice 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 of Practice, SC:DOP, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 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.

**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.

**Preparer of a return**

(g) A preparer of a return (other than a person referred to in paragraph (a), (b), (c), (d), or (e) of this section 8.01(13)) who is not a full-time employee, general partner, *bona fide* officer, an administrator, a trustee, etc., or an individual representing his or her immediate family may not represent a taxpayer in connection with a letter ruling or a determination letter. *See* section 10.7(c) of Treasury Department Circular No. 230.

**Foreign representative**

(h) A foreign representative (other than a person referred to in paragraph (a), (b), (c), (d), or (e) of this section 8.01(13)) 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 the entity’s own behalf or through a person referred to in paragraph (a), (b), (c), (d), or (e) of this section 8.01(13).

**Power of attorney and declaration of representative**

**(14) 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 (2001)), which provide the rules for representing a taxpayer before the Service. It is preferred that Form 2848, *Power of Attorney and Declaration of Representative*, 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 8.02(2) of this revenue procedure.

For the requirement regarding compliance with Treasury Department Circular No. 230, *see* section 8.08 of this revenue procedure.

**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 10.07(1) 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 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 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 8.02(1) of this revenue procedure;

(b) the taxpayer is requesting deletions other than names, addresses, and identifying numbers, as explained in section 8.01(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 of 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. 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 B, the different format will not defer consideration of the letter ruling request.

#### Checklist

**(18) Checklist for letter ruling requests.** The Service 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, which 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 9.01 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 2002-1 on the IRS web site at [http://www.irs.ustreas.gov/prod/bus\\_info/bullet.html](http://www.irs.ustreas.gov/prod/bus_info/bullet.html). A photocopy of this checklist may be used.

## **Additional information required in certain circumstances**

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### **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 letter ruling 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.

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) To designate recipient of original or copy of letter ruling or determination letter.** Unless the power of attorney provides otherwise, 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. It is preferred that Form 2848, *Power of Attorney and Declaration of Representative*, be used to provide the representative's authorization. See section 8.01(14) 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.

### **Original of letter ruling or determination letter sent to taxpayer's representative**

**(b) To have original sent to taxpayer's representative.** A taxpayer may request that the original of the letter ruling or determination letter be sent to the taxpayer's representative. In this case, a copy of the letter ruling or determination letter will be sent to the taxpayer. The letter ruling or determination letter is addressed to the taxpayer's representative to whom the original is sent.

If the taxpayer wants the original of the letter ruling or determination letter sent to the taxpayer's representative, 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 the original of the letter ruling or determination letter is to be sent to the taxpayer's representative. When a taxpayer has more than one representative, the Service will send the original of the letter ruling or determination letter to the first representative named in the most recent power of attorney.

**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. 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 not to be sent to any 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 8.01 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 Service 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. However, the Service 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 Service has resolved the issues presented by a letter ruling request, the Service representative may request that the taxpayer submit a proposed draft of the letter ruling to expedite the issuance of the ruling. *See* section 10.09 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.

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 rulings 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 section 9 of this revenue procedure), to prepare “two-part” requests described in section 8.02(3) of this revenue procedure when possible, and to provide any additional information requested by the Service promptly.

**Facsimile transmission (fax) of any document related to the letter ruling request**

**(5) To receive any document related to the letter ruling request by facsimile transmission (fax).** If the taxpayer requests, a copy of any document related to the letter ruling request may be faxed to the taxpayer or the taxpayer’s authorized representative (for example, a request for additional information or the letter ruling). A letter ruling, however, is not issued until the ruling is mailed. *See* § 301.6110–2(h).

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.

Because of the unsecured nature of a fax transmission, the national office will take certain precautions to protect confidential information. For example, the national office 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 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.

Except for the letter ruling, the document will be faxed by a branch representative. The letter ruling will be faxed by either a representative of the branch issuing the letter ruling or the Communications, Records and User Fee Unit of the Technical Services staff (CC:PA:T:CRU).

**Fax of a letter ruling request**

**(6) To submit a request for a letter ruling by fax.** Original letter ruling requests 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 rulings branch for action until the check for the user fee is received.

Requests for a change in accounting method or a change in accounting period must not be submitted by fax.

**Requesting a conference**

(7) **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 11.01, 11.02, and 12.11(2) of this revenue procedure.

**Substantially identical letter rulings or identical accounting method changes**

(8) **To obtain the applicable user fee for substantially identical letter rulings or identical accounting method changes.** A taxpayer seeking the user fee provided in paragraph (A)(5) of Appendix A of this revenue procedure for substantially identical letter rulings or identical accounting method changes must provide the information required in section 15.07 of this revenue procedure.

**Address to send the request**

**.03**

**Requests for letter rulings**

(1) **Requests for letter rulings.** Requests for letter rulings should be sent to 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 Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate. The package should be marked: RULING REQUEST SUBMISSION.

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

**Internal Revenue Service  
Attn: CC:PA:T  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044**

However, if a private delivery service is used, the address is:

**Internal Revenue Service  
Attn: CC:PA:T, Room 6561  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224**

(b) 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 entrance of 1111 Constitution Avenue, N.W., Washington, D.C. 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:T, Room 6561  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224**

**Requests for determination letters**

(2) **Requests for determination letters.**

(a) If LMSB has or will have examination jurisdiction over the taxpayer's tax return, the taxpayer should send a request for a determination letter to the following address:

**Internal Revenue Service  
Attn: Manager, Office of Pre-Filing Services**

**Large and Mid-Size Business Division**  
**C:LM:PFT:PF**  
**Mint Building, 3rd Floor**  
**1111 Constitution Avenue, N.W.**  
**Washington, D.C. 20224**

(b) W&I taxpayers seeking a determination letter should send a request to their local SB/SE office. *See* Appendix D for the appropriate SB/SE office.

(c) Other taxpayers should send a request for a determination letter to the appropriate director whose office has or will have examination jurisdiction over the taxpayer's return. The appropriate director for a taxpayer under the jurisdiction of SB/SE is listed in Appendix D.

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

**Pending letter ruling requests**

**.04**

**(1) Circumstances under which the taxpayer must notify the national office.** The taxpayer must notify the national 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 director;

(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 director. *See* § 301.9100-3(e)(4)(i) and section 5.02(3) of this revenue procedure;

(c) legislation that may affect the transaction has been introduced. *See* section 8.01(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 national 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 national office concerning the issue, the taxpayer must notify the national 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.

This section 8.04 also applies to pending requests for a closing agreement on a transaction for which a letter ruling is not requested or issued, and for an advance pricing agreement.

**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.

**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 10.02 of this revenue procedure.

**.07**

**Request may be withdrawn or national office may decline to issue letter ruling**

(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 national office declines to issue a letter ruling will not be returned to the taxpayer. *See* section 8.01(2) 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.**

(a) **Request to change an accounting method.** If a taxpayer withdraws or the national office declines to grant (for any reason) a request to change from or to adopt an improper method of accounting, the national 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.

(b) **All other letter ruling requests.** If a taxpayer withdraws a letter ruling request (other than a request to change from or to adopt an improper method of accounting) or if the national office declines to issue a letter ruling (other than a letter ruling pertaining to a request to change from or to adopt an improper method of accounting), the national 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 8.07(2)(b) 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 national office has not formed an adverse opinion.

(c) **Notification of Service official may constitute Chief Counsel Advice.** If the memorandum to the Service official referred to in paragraphs (a) and (b) of this section 8.07(2) provides more than the fact that the request was withdrawn and the national office was tentatively adverse, or that the national office declines to grant a change in method of accounting or issue a letter ruling, the memorandum would constitute Chief Counsel Advice, as defined in § 6110(i)(1), subject to public inspection under § 6110. For example, if the memorandum explains the national office's reasoning for its tentatively adverse position on the issues in the request, the memorandum would constitute Chief Counsel Advice.

(3) **Refunds of user fee.** The user fee will not be returned for a letter ruling request that is withdrawn. If the national office declines to issue a letter ruling on all of the issues in the request, the user fee will be returned. If the national office, however, 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.

**.08** 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 the national office believes that the taxpayer's representative is not in compliance with Circular No. 230, the national office will bring the matter to the attention of the Director of Practice.

**Compliance with Treasury Department Circular No. 230**

For the requirement regarding compliance with the conference and practice requirements, *see* section 8.01(14) of this revenue procedure.

**SECTION 9. WHAT OTHER CHECKLISTS, GUIDELINE REVENUE PROCEDURES, NOTICES, SAFE HARBOR REVENUE PROCEDURES, AND AUTOMATIC CHANGE REVENUE PROCEDURES APPLY TO CERTAIN REQUESTS?**

Specific revenue procedures and notices supplement the general instructions for requests explained in section 8 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, see 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 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. 2002–3), Rev. Proc. 84–42, 1984–1 C.B. 521 (superseded as to no-rule areas by Rev. Proc. 85–22, 1985–1 C.B. 550), 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. 2002–3 (corporate distributions, transfers, and reorganizations under §§ 332, 351, 368(a)(1)(A), 368(a)(1)(B), 368(a)(1)(C), 368(a)(1)(E), and 368(a)(1)(F)), which describes certain corporate reorganizations where the Service will not issue advance 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.

331 Checklist questionnaire	Rev. Proc. 86–16, 1986–1 C.B. 546.
332 Checklist questionnaire	Rev. Proc. 90–52, 1990–2 C.B. 626.
351 Checklist questionnaire	Rev. Proc. 83–59, 1983–2 C.B. 575. <i>But See</i> section 3.01 of Rev. Proc. 2002–3, which describes certain transfers to controlled corporations where the Service will not issue advance letter rulings or determination letters.
355 Checklist questionnaire	Rev. Proc. 96–30, 1996–1 C.B. 696.
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. 2002–3, which describes circumstances under which the Service will not issue advance 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.
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. 98–55, 1998–2 C.B. 643; Rev. Proc. 97–48, 1997–2 C.B. 521.

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. 91-71, 1991-2 C.B. 900.
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.
4980B	Rev. Proc. 87-28, 1987-1 C.B. 770 (treating references to former § 162(k) as if they were references to § 4980B).
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. 2002-1 (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. 2001-15, 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).
7702 Closing agreement for failed life insurance contracts	Notice 99-48, 1999-38 I.R.B. 429.
7702A Relief for inadvertent non-egregious failure to comply with modified endowment contract rules	Rev. Proc. 2001-42, 2001-36 I.R.B. 212.
7704(g) Revocation of election	Notice 98-3, 1998-1 C.B. 333.

*SUBJECT MATTERS*

*REVENUE PROCEDURE*

Accounting methods; obtaining consent to changes in method

Rev. Proc. 97–27, 1997–1 C.B. 680; and Rev. Proc. 2002–1 (this revenue procedure) for which sections 1, 2.01, 2.02, 2.06, 3.01, 3.02, 3.03, 3.05, 5.02, 5.12, 5.14, 7.01, 7.02, 7.03, 8.01(1), 8.01(2), 8.01(3), 8.01(4), 8.01(5), 8.01(6), 8.01(8), 8.01(9), 8.01(10), 8.01(13), 8.01(14), 8.01(15), 8.02(2), 8.02(4), 8.02(5), 8.02(7), 8.02(8), 8.03(1), 8.04, 8.05, 8.06, 8.07, 8.08, 9, 10.01, 10.04, 10.05, 10.07, 10.08, 10.10(2), 10.11, 11, 12.01, 12.02, 12.06–12.11, 15, and Appendix A are applicable.

Accounting periods; adopt, retain or change for partnership, S corporation, and personal service corporation

Rev. Proc. 87–32, 1987–2 C.B. 396, as modified by T.D. 8680, 1996–2 C.B. 194; and Rev. Proc. 2002–1 (this revenue procedure) for which sections 1, 2.01, 2.02, 2.06, 3.03, 5.02, 5.12, 5.14, 7.01, 7.02, 7.03, 8.01(1), 8.01(2), 8.01(3), 8.01(4), 8.01(5), 8.01(6), 8.01(8), 8.01(9), 8.01(10), 8.01(13), 8.01(14), 8.01(15), 8.02(2), 8.02(4), 8.02(5), 8.02(7), 8.03(1) (only for Forms 1128 filed under section 6.01 of Rev. Proc. 87–32), 8.04, 8.05, 8.06, 8.07, 8.08, 9, 10.01, 10.04, 10.05, 10.07, 10.08, 11, 12, 15, and Appendix A are applicable.

Accounting periods; changes in period

Rev. Proc. 2000–11, 2000–3 I.R.B. 309; and Rev. Proc. 2002–1 (this revenue procedure) for which sections 1, 2.01, 2.02, 2.06, 3.03, 5.02, 5.12, 5.14, 7.01, 7.02, 7.03, 8.01(1), 8.01(2), 8.01(3), 8.01(4), 8.01(5), 8.01(6), 8.01(8), 8.01(9), 8.01(10), 8.01(13), 8.01(14), 8.01(15), 8.02(2), 8.02(4), 8.02(5), 8.02(7), 8.03(1), 8.04, 8.05, 8.06, 8.07, 8.08, 9, 10.01, 10.04, 10.05, 10.07, 10.08, 11, 12, 15, and Appendix A 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; and Rev. Proc. 2002–1 (this revenue procedure) for which sections 2.06, 3.03, 8, 10.04, 10.06, and 11.05 are applicable.

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. 82–36, 1982–1 C.B. 490.

Leveraged leasing

Rev. Proc. 2001–28, 2001–19 I.R.B. 1156, and Rev. Proc. 2001–29, 2001–19 I.R.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 national 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, Attention: Associate Chief Counsel (Passthroughs & Special Industries), CC:PSI, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044 (or, if a private delivery service is used: Internal Revenue Service, Attention: Associate Chief Counsel (Passthroughs & Special Industries), CC:PSI, Room 5300, 1111 Constitution Avenue, N.W., Washington, D.C. 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, *see* the following safe harbor revenue procedures.

<i>CODE OR REGULATION SECTION</i>	<i>REVENUE PROCEDURE</i>
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, 2001–28 I.R.B. 38 (management contracts); and Rev. Proc. 97–14, 1997–1 C.B. 634 (research agreements).
263A	Rev. Proc. 2001–46, 2001–37 I.R.B. 263 (railroad track structure expenditures).
280B Certain structural modifications to a building not treated as a demolition	Rev. Proc. 95–27, 1995–1 C.B. 704.
355(a)(1)(B) Transaction not violating the device test	Section 4.05(1)(b) of Rev. Proc. 96–30, 1996–1 C.B. 696, 705.
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(d)(1) Qualification of trusts as charitable remainder annuity trusts	Rev. Proc. 89–21, 1989–1 C.B. 842, as amplified by Rev. Proc. 90–32, 1990–1 C.B. 546.
664(d)(2) Qualification of trusts as charitable remainder unitrusts	Rev. Proc. 89–20, 1989–1 C.B. 841, as amplified by Rev. Proc. 90–30, 1990–1 C.B. 534.
664(d)(2) and (3) Qualification of trusts as charitable remainder unitrusts	Rev. Proc. 90–31, 1990–1 C.B. 539.
1031(a) Qualification as a qualified exchange accommodation arrangement	Rev. Proc. 2000–37, 2000–40 I.R.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. 98–55, 1998–2 C.B. 643.
1.860E–1(c) Establishment of lack of improper knowledge for transfers of noneconomic residual interests of REMICs and ownership interests in FASITs	Rev. Proc. 2001–12, 2001–3 I.R.B. 335.
20.2056A–2(d)(1)(i) and (d)(1)(ii) Sample trust language	Rev. Proc. 96–54, 1996–2 C.B. 386.
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*

*REVENUE PROCEDURE*

Certain rent-to-own contracts treated as leases	Rev. Proc. 95–38, 1995–2 C.B. 397.
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**Automatic change revenue procedures**

**.03** For requests to change an accounting period or accounting method, see the following automatic change revenue procedures published and/or in effect as of December 31, 2001. A taxpayer complying timely with an automatic change revenue procedure will be deemed to have obtained the consent of the Commissioner to change the taxpayer’s accounting period or accounting method, as applicable.

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Changes in accounting periods

The automatic change revenue procedures for obtaining a change in annual accounting period include: Rev. Proc. 2000-11, 2000-3 I.R.B. 309 (certain corporations that have not changed their accounting period within the prior 6 calendar years or other specified time); Rev. Proc. 87-32, 1987-2 C.B. 396, as modified by § 301.9100-3 (partnership, S corporation, or personal service corporation seeking a natural business year or an ownership taxable year); Rev. Proc. 68-41, 1968-2 C.B. 943, as modified by Rev. Proc. 81-40, 1981-2 C.B. 605 (trusts held by certain fiduciaries needing a workload spread); and Rev. Proc. 66-50, 1966-2 C.B. 1260, as modified by Rev. Proc. 81-40 (individual seeking a calendar year).

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Changes in accounting methods

The automatic change revenue procedures for obtaining a change in method of accounting include: Rev. Proc. 99-49, 1999-52 I.R.B. 725 (applies to the changes in methods of accounting that are described in the Appendix of Rev. Proc. 99-49 involving §§ 56, 162, 167, 168, 171, 174, 197, 263, 263A, 404, 446, 451, 454, 455, 461, 467, 471, 472, 475, 585, 1272, 1273, 1278, and 1281, and former § 168), as modified and amplified by Rev. Rul. 2001-60, 2001-51 I.R.B. 587, (certain taxpayers seeking to change their method of accounting for depreciation of modern golf course greens), Rev. Proc. 2001-46, 2001-37 I.R.B. 263 (certain taxpayers seeking to change to the track maintenance allowance method for track structure expenditures paid or incurred by certain railroads), Rev. Proc. 2001-25, 2001-12 I.R.B. 913 (banks that use the cash receipts and disbursements method of accounting seeking to change their method of accounting for stated interest on short-term loans made in the ordinary course of business), Rev. Proc. 2001-24, 2001-10 I.R.B. 788 (insurance company seeking to change its method of accounting for cash advances on commissions paid to its agents), Rev. Proc. 2001-23, 2001-10 I.R.B. 784 (certain taxpayers that sell used automobiles or used light-duty trucks seeking to change to an optional LIFO inventory computation method prescribed in Rev. Proc. 2001-23), Rev. Rul. 2001-8, 2001-9 I.R.B. 726 (certain taxpayers seeking to change their method of accounting for payments made or received with respect to floor stocks to conform with the holding in Rev. Rul. 2001-8), Rev. Rul. 2001-4, 2001-3 I.R.B. 295, as modified by Notice 2001-23, 2001-12 I.R.B. 911 (certain taxpayers seeking to change their method of accounting for aircraft maintenance costs to conform with the holding in Rev. Rul. 2001-4; this automatic method change is effective for the taxpayer's first or second taxable year ending after December 21, 2000), Rev. Proc. 2001-10, 2001-2 I.R.B. 272 (qualifying taxpayers with average annual gross receipts of \$1 million or less seeking to change from an accrual method to the cash method or from an inventory method to a method complying with § 1.162-3; this revenue procedure is effective for taxable years ending on or after December 17, 1999), Rev. Proc. 2000-50, 2000-52 I.R.B. 601 (taxpayers seeking to change their treatment of certain computer software costs), Rev. Proc. 2000-38, 2000-40 I.R.B. 310 (certain taxpayers seeking to change to any of the three permissible methods of accounting for distributor commissions prescribed in Rev. Proc. 2000-38), Rev. Rul. 2000-7, 2000-9 I.R.B. 712 (certain taxpayers seeking to change their method of accounting for removal costs to conform with the holding in Rev. Rul. 2000-7), Rev. Rul. 2000-4, 2000-4 I.R.B. 331 (certain taxpayers seeking to change their method of accounting for ISO 9000 certification costs to conform with the holding in Rev. Rul. 2000-4), and Notice 2000-4, 2000-3 I.R.B. 313 (certain taxpayers seeking to change their method of accounting for depreciation of MACRS property acquired in a transaction to which § 1031 or § 1033 applies); 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); Rev. Proc. 97-43, 1997-2 C.B. 494 (certain taxpayers required to change their method of accounting as a result of making elections out of certain exemptions from dealer status for purposes of § 475); Rev. Proc.

92–67, 1992–2 C.B. 429 (certain taxpayers with one or more market discount bonds seeking to make a § 1278(b) election or a constant interest rate election); Rev. Proc. 92–29, 1992–1 C.B. 748 (certain taxpayers seeking to use an alternative method under § 461(h) for including common improvement costs in basis); and Rev. Proc. 91–51, 1991–2 C.B. 779 (certain taxpayers under examination that sell mortgages and retain rights to service the mortgages).

## **SECTION 10. HOW DOES THE NATIONAL OFFICE HANDLE LETTER RULING REQUESTS?**

The national office 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.

### **Controls request and refers it to appropriate Associate Chief Counsel’s office or Assistant Chief Counsel’s office**

**.01** All requests for letter rulings will be controlled by the Technical Services staff of the Associate Chief Counsel (Procedure and Administration) (CC:PA:T). That office will examine the incoming documents for completeness, process the user fee, and forward the file to the appropriate Associate Chief Counsel’s office or, for letter ruling requests under the jurisdiction of the Associate Chief Counsel (Procedure and Administration) or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), to the appropriate Assistant Chief Counsel. The Associate Chief Counsel’s office or the Assistant Chief Counsel’s office, as appropriate, will assign the letter ruling request to one of its branches.

### **Branch representative contacts taxpayer within 21 days**

**.02** Within 21 calendar days after a letter ruling request has been received in the branch having jurisdiction, 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. However, 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 Service rule as the taxpayer requested, rule adversely on the matter, or not rule;
- (2) whether the taxpayer should submit additional information to enable the Service to rule on the matter; or
- (3) whether, because of the nature of the transaction or the issue presented, a tentative conclusion on the issue cannot be reached.

**Except for cases involving a request for change in accounting method or accounting period, the 21 calendar day procedure applies to: all matters within the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities); and all matters within the jurisdiction of the Associate Chief Counsel (Financial Institutions & Products), except cases concerning insurance issues requiring actuarial computations.**

### **Notifies taxpayer if any issues have been referred to another branch or office**

**.03** If the letter ruling request involves matters within the jurisdiction of more than one branch or 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 office have been referred to that branch or office for consideration; and

(2) that a representative of that branch or 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.

**Determines if transaction can be modified to obtain favorable letter ruling**

**.04** If a less than 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. However, 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 method or accounting period.

If, at the end of this discussion, the branch representative determines that a meeting in the national 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 11.02 of this revenue procedure.

**Is not bound by informal opinion expressed**

**.05** The Service will not be bound by the informal opinion expressed by the branch representative or any other authorized Service representative, 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**

**.06** If a request for a letter ruling does not comply with all the provisions of this revenue procedure, the branch representative will tell the taxpayer during the initial contact which requirements have not been met.

**Information must be submitted within 21 calendar days**

(1) 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 that the request will be closed if the Service does not receive the information within 21 calendar days unless an extension of time is granted. *See* sections 10.07(1), (2), and (3) of this revenue procedure for instructions on submissions of additional information. To facilitate prompt action on letter ruling requests, taxpayers are encouraged to request that the Service request additional information by fax. *See* section 8.02(5) of this revenue procedure.

**21-day period will be extended if justified and approved**

(2) An extension of the 21-day period will be granted only if justified in writing by the taxpayer and approved by the branch chief, senior technician reviewer (or senior technical reviewer), or assistant to the branch chief (or assistant branch chief) of the branch to which the case is assigned. 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 national 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, 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.

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

(3) If the taxpayer does not submit the information requested during the initial contact 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. However, the taxpayer must pay another user fee before the case can be reopened.**

**Letter ruling request mistakenly sent to a director**

(4) A request for a letter ruling sent to a director will be returned by the director so that the taxpayer can send it to the national office.

**Requires prompt submission of additional information requested after initial contact**

**.07**

(1) 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 8.01(15)(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.

To facilitate prompt action on letter ruling requests, taxpayers are encouraged to request that the Service request additional information by fax. *See* section 8.02(5) of this revenue procedure. Taxpayers also 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)(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 Service  
representative who requested  
the information]  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044**

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

**Internal Revenue Service  
ADDITIONAL INFORMATION  
Attn: [Name, office symbols, and  
room number of the Service  
representative who requested  
the information]**

**P.O. Box 14095  
Ben Franklin Station  
Washington, D.C. 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 Service  
representative who requested  
the information]  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224**

(c) For all cases, 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 national office may request additional copies of the information.

**21-day period will be extended if justified and approved**

(4) An extension of the 21-day period will be granted only if justified in writing by the taxpayer and approved by the branch chief, senior technician reviewer (or senior technical reviewer), or assistant to the branch chief (or assistant branch chief) of the branch to which the case is assigned. 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 national 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, 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 additional information was not timely submitted, 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 the taxpayer of conclusions and, if the Service will rule adversely, offers the taxpayer the opportunity to withdraw the letter ruling request**

**.08** Generally, after the conference of right is held but before the letter ruling is issued, the branch representative will inform the taxpayer or the taxpayer's representative of the Service's 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 branch representative of a decision to withdraw the ruling request, the adverse letter ruling will be issued. The user fee will not be refunded for a letter ruling request that is withdrawn. *See* section 8.07 of this revenue procedure.

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

**.09** To accelerate the 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 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 computer disk in a word processing format**

In addition to a typed draft, taxpayers are encouraged to submit this draft on a computer disk in a word processing format acceptable to the Service. The typed draft will become part of the permanent files of the national office, and the computer disk will not be returned. If the Service representative requesting the draft letter ruling cannot answer specific questions about the word processing format, the questions can be directed to the Chief, Technical Services Staff, at 202-622-7560 (not a toll-free call).

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 10.07 of this revenue procedure.

**Issues separate letter rulings for substantially identical letter rulings and generally issues a single letter ruling for identical accounting method changes**

**.10**

**(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 will be issued for each entity with a common member or sponsor, or for each member of a common entity.

**(2) Identical accounting method changes and related § 301.9100 letter rulings.** For letter ruling requests qualifying for the user fee provided in paragraphs (A)(5)(b) and (c) of Appendix A of this revenue procedure for identical accounting method changes and related § 301.9100 letter rulings, a single letter ruling generally will be issued on behalf of all members of a consolidated group that file a Form 3115, *Application for Change in Accounting Method*, or that file a § 301.9100 request for an extension of time to file a Form 3115. However, the branch to which the case is assigned may, at its discretion, issue separate letter rulings for certain members or groups of members within a consolidated group. For example, separate letter rulings may be issued if different terms and conditions are required. Each letter ruling will include an attachment listing the § 481(a) adjustment for each member to which the letter ruling applies.

**Sends a copy of the letter ruling to appropriate Service official**

**.11** The national 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 11. 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 national 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 section 8.02(7) 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 10.07(4) 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 national office, except as explained under section 11.05 of this revenue procedure. This conference is normally held at the branch level and is attended by a person who, at the time of the conference, 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. 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 branch to an associate or assistant chief counsel or to any other official of the Service. But *see* section 11.05 of this revenue procedure for situations in which the Service may offer additional conferences.

In employment tax matters, only the party entitled to the letter ruling is entitled to a conference. *See* section 5.09 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 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 branch level, if the Service decides they are needed. Such 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 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 national 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. *See* section 10.07 of this revenue procedure for instructions on submission of additional information. 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.

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 10.07(4) 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. Such 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 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 by a director. *See* section 5.01(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 national 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 may request a pre-submission conference in writing or by telephone. 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 or assistant chief counsel 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 8.03(1) 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 & Products);

(c) (202) 622-4800 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Income Tax & 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 & 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 generally held in person.** Pre-submission conferences generally will be held in person at the national office. However, if the taxpayer is unable to attend the conference, the conference may be conducted by telephone.

**(3) Certain information required to be submitted to the national 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, and, if the taxpayer’s authorized representative will attend 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 authorization. If multiple taxpayers and/or their authorized representatives will attend the pre-submission conference, cross powers of attorney (or tax information authorizations) are required. As stated in section 11.07(1) of this revenue procedure, the identity of the taxpayer must be provided to the Service when the pre-submission conference is requested.

**(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).

**Under limited circumstances, may schedule a conference to be held by telephone**

**.08** Infrequently, taxpayers 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, D.C. If a taxpayer makes such a request, the branch chief, senior technician reviewer (or senior technical reviewer), or assistant to the branch chief (or assistant branch chief) of the branch to which the case is assigned will decide if it is appropriate in the particular case to hold the conference of right by telephone. If the request is approved, the taxpayer will be advised when to call the Service representatives (not a toll-free call).

## **SECTION 12. 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 a director in examining the taxpayer’s return**

**.03** When determining a taxpayer’s liability, the director 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 finds that a letter ruling should be revoked or modified, the findings and recommendations of the director will be forwarded to the national office for consideration before further action is taken by the director. Such a referral to the national office will be treated as a request for technical advice and the provisions of Rev. Proc. 2002-2 will be followed. Otherwise, the letter ruling is to be applied by the director in the determination of the taxpayer's liability. Appropriate coordination with the national office 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.

**May be revoked or modified if found to be in error**

**.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 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 shareholder is directly involved in a letter ruling on the reorganization of a corporation. 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 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 12.05 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 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 Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate, 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. However, 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. However, 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**

**.08** 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**

**.09** 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.

**May be retroactively revoked or modified when transaction is entered into after a change in material facts**

**.10** If a letter ruling is issued covering a particular transaction and the material facts on which the letter ruling is based are later changed, a taxpayer is not protected against retroactive revocation or modification of the letter ruling when the transaction is completed after the change in the material facts. Similarly, a taxpayer is not protected against retroactive revocation or modification of a letter ruling involving a continuing action or a series of actions occurring after the material facts on which the letter ruling is based have changed.

**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 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 Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate, 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 8 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 12.05 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 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.

However, when notice is given by the director during an examination of the taxpayer's return or by the Area Director, Appeals LMSB, or Area Director, Appeals SB/SE-TE/GE, as appropriate, during consideration of the taxpayer's return before an area office, a

request to limit retroactive effect must be made in the form of a request for technical advice as explained in section 18.03 of Rev. Proc. 2002-2.

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 national office as explained in sections 11.02, 11.04, and 11.05 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 11.02 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 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 12 of this revenue procedure.

If a director proposes to reach a conclusion contrary to that expressed in a determination letter, he or she need not refer the matter to the national office as is required for a letter ruling found to be in error. However, the director must refer the matter to the national office if the director 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 any extent to which a revocation or modification of a determination letter will be applied without retroactive effect. However, a director does not have authority under § 7805(b) to limit the revocation or modification of the determination letter. Therefore, if a director 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 who issued the determination letter to seek technical advice from the national office. *See* section 18.03 of Rev. Proc. 2002-2.

#### **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 18.03 of Rev. Proc. 2002-2. 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 12.05 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 the national office to the same extent as does any taxpayer who is the subject of a technical advice request. *See* sections 13 and 18.04 of Rev. Proc. 2002-2.

### **SECTION 14. UNDER WHAT CIRCUMSTANCES ARE MATTERS REFERRED BETWEEN A FIELD OFFICE AND THE NATIONAL OFFICE?**

#### **Requests for determination letters**

**.01** Requests for determination letters received by directors that, under the provisions of this revenue procedure, may not be issued by a field office, will be forwarded to the national office for reply. The field office will notify the taxpayer that the matter has been referred.

Directors will also refer to the national office any request for a determination letter that in their judgment should have the attention of the national 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 the national office. The field office will notify the taxpayer that the Service will not issue a letter ruling or a determination letter on the issue. *See* section 7 of this revenue procedure for a description of no-rule areas.

#### **Requests for letter rulings**

**.03** Requests for letter rulings received by the national office that, under section 5 of this revenue procedure, may not be acted upon by the national 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 7 of this revenue procedure and the Service decides not to issue a letter ruling or an information letter, the national office will notify the taxpayer and will then forward the request to the appropriate field office for association with the related return.

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

#### **Legislation authorizing user fees**

**.01** Section 10511 of the Revenue Act of 1987, 1987-3 C.B. 1, 166, enacted December 22, 1987, as amended by § 11319 of the Omnibus Budget Reconciliation Act of 1990, 1991-2 C.B. 481, 511, enacted November 5, 1990, by § 743 of the Uruguay Round Agreements Act, 1995-1 C.B. 230, 239, enacted December 8, 1994, and by § 2 of the Tax Benefits for Individuals Performing Services in Certain Hazardous Duty Areas, 1996-3 C.B. 1, enacted March 20, 1996 (hereafter the four laws are referred to together as the "Act"), 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 on or after February 1, 1988, and before October 1, 2003. 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 the Act.

**Requests to which a user fee applies**

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

- (1) letter rulings, determination letters, and advance pricing agreements;
- (2) closing agreements described in paragraph (A)(3)(d) of Appendix A of this revenue procedure;
- (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 5.02 of this revenue procedure);
- (2) late S corporation and related elections made pursuant to Rev. Proc. 98–55 or Rev. Proc. 97–48 (*see* section 5.01(3) of this revenue procedure);
- (3) requests for information letters; 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 9.03 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 that 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 (chapters 21, 22, 23, and 24 of subtitle C of the Code) submitted on Form SS–8, *Information for Use in Determining Whether a Worker Is an Employee for 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 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. 2002–8.

**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 & 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. 2002–8 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 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 or item will not result in an additional fee, unless the issue places the transaction or item 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 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 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 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(3) 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) Type or print at the top of the letter ruling request: “REQUEST FOR USER FEE UNDER SECTION 15.07 OF REV. PROC. 2002–1”;

(b) List on the first page of the submission all taxpayers and entities requesting a letter ruling (including the taxpayer identification number, and the amount of user fee submitted, for each taxpayer or entity); 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) Identical accounting method changes and related § 301.9100 letter rulings.** The user fees provided in paragraphs (A)(5)(b) and (c) of Appendix A of this revenue procedure apply to a parent corporation that requests either the identical accounting method change on a single Form 3115 on behalf of more than one member of a consolidated group or an extension of time to file Form 3115 under § 301.9100–3 for the identical accounting method change on behalf of more than one member of a consolidated group. To qualify for this user fee, the taxpayers in the consolidated group must be members of the same affiliated group under § 1504(a) that join in the filing of a consolidated tax return and must be requesting to change from the identical present method of accounting to the 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) adjustment for the year of change.

In addition, a parent corporation must file a single Form 3115. Besides including all the information required on the Form 3115, the parent corporation must, for each member of a consolidated group for which the accounting method change is being requested, attach to the Form 3115 a schedule providing its name, employer identification number, and § 481(a) adjustment for the year of change. The Form 3115 must be signed by a duly authorized officer of the parent corporation.

In the case of a § 301.9100 request for an extension of time to file Form 3115, a parent corporation must submit the information required in the above paragraph in addition to the information required by section 5.02 of this revenue procedure.

## **Method of payment**

**.08** Each request to the Service for a letter ruling, determination 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. (However, 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 the corporation requests a ruling that it be permitted to use a fiscal year under section 6.03 of Rev. Proc. 87–32, the Service Center will forward the request to the national office. When the national 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, 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. However, 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 by the requester. 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 10.06(3) of this revenue procedure.

(c) The Service notifies the taxpayer that the Service 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 Service. The failure to submit the additional information will be treated as a withdrawal for purposes of this revenue procedure. *See* section 10.07(5) of this revenue procedure.

(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 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.

(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 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.

(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 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 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 associate or assistant chief counsel, as appropriate, 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 8.03 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 & Products) letter ruling  
requests

Associate Chief Counsel (Financial Institutions & Products)

Associate Chief Counsel (Income Tax  
& Accounting) letter ruling requests

Associate Chief Counsel (Income Tax & Accounting)

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

Associate Chief Counsel (International)

Associate Chief Counsel  
(Passthroughs & Special Industries)  
letter ruling requests

Associate Chief Counsel (Passthroughs & 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)  
(Employment Tax/Exempt Organizations/Government Entities)

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

Manager, Office of Pre-Filing Services

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

Complete by using whichever of the following designations applies.

Area Director, Field Compliance, SB/SE  
Director, Compliance, W&I  
Director, Employee Plans Examinations  
Director, Exempt Organizations Examinations  
Director, Federal, State & Local Governments  
Director, Tax Exempt Bonds  
Director, Indian Tribal Governments

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(Add name of field office handling the request.)

**SECTION 16. WHAT ARE THE  
GENERAL PROCEDURES  
APPLICABLE TO  
INFORMATION LETTERS  
ISSUED BY THE NATIONAL  
OFFICE?**

**Will be made available to the  
public**

**.01** Information letters that are issued by the national 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 2.04 of this revenue procedure. Information letters that are issued by the field or a director, 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 national 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 2.04 of this revenue procedure. If the national 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  
SIGNIFICANT CHANGES HAVE  
BEEN MADE TO REV. PROC.  
2001-1?**

**.01** Section 1 is amended to reflect the current descriptions of the LMSB and SB/SE divisions.

**.02** Section 5.05 has been amended to provide that, in limited circumstances, the national office will consider a request for an estate tax letter ruling after the return has been filed but before it has been examined.

**.03** Section 7.04 has been amended to provide that the Service will not rule on frivolous issues.

**.04** Section 8.03(1)(b) is amended to reflect the current operating hours of the courier’s desk.

**.05** Section 8.03(2)(b) is amended to reflect the change in procedure for W&I taxpayers requesting determination letters.

**.06** Section 9 is updated to reflect the revenue procedures and notices effective on December 31, 2001.

.07 Section 11.07 is amended to clarify that a pre-submission conference is held only if the identity of the taxpayer is provided to the national office at the time the conference is requested.

#### **SECTION 18. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?**

.01 Rev. Proc. 2001-1, 2001-1 I.R.B. 1, is superseded.

.02 Notice 97-19, 1997-1 C.B. 394, is modified by deleting all references to Rev. Proc. 97-1 and replacing them with references to this revenue procedure.

.03 Rev. Proc. 96-13, 1996-1 C.B. 616, is modified by deleting all references to Rev. Proc. 96-1 and replacing them with references to this revenue procedure.

.04 Rev. Proc. 84-37, 1984-1 C.B. 513, is modified by deleting all references to Rev. Proc. 84-1 and replacing them with references to this revenue procedure. Section 3.04 is modified by deleting the address contained therein and replacing it with the addresses in section 8.03(1) of this revenue procedure.

#### **SECTION 19. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?**

This revenue procedure is effective January 7, 2002.

#### **SECTION 20. 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 5.05, 6.07, 8.01, 8.02, 8.03, 8.04, 8.05, 8.07, 9.01 (subject matter—rate orders; regulatory agency; normalization), 10.06, 10.07, 10.09, 11.01, 11.06, 11.07, 12.11, 13.02, 15.02, 15.07, 15.08, 15.09, and 15.11, paragraph (B)(1) of Appendix A, and Appendix C. 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 Lydia Taylor 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), 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), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), contact George Bowden or Henry Schneiderman at (202) 622–3400 (not a toll-free call); or

(2) 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 Chief, Technical Services Staff, at (202) 622–7560 (not a toll-free call).

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**APPENDIX A**

**SCHEDULE OF USER FEES**

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

(A) *FEE SCHEDULE*

<i>CATEGORY</i>	<i>FEE</i>
<p><b>(1) User fee for a request for a determination letter from a director.</b> The user fee for each determination letter request governed by Rev. Proc. 2002-1 (this revenue procedure).</p>	<p>\$275</p>
<p><b>(2) User fee for a request for an advance pricing agreement or a renewal of an advance pricing agreement.</b></p>	<p>See Rev. Proc. 96-53</p>
<p><b>(3) User fee for a request for a letter ruling or closing agreement.</b> 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. 2002-1 (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 &amp; Products), the Associate Chief Counsel (Income Tax &amp; Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs &amp; Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) is as follows:</p>	
<p style="padding-left: 20px;">(a) Accounting periods</p>	
<p style="padding-left: 40px;">(i) Form 1128 (except as provided in paragraph (A)(4)(a) or (b) of this appendix)</p>	<p>\$600</p>
<p style="padding-left: 40px;">(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)</p>	<p>\$600</p>
<p style="padding-left: 40px;">(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)</p>	<p>\$1,200</p>
<p style="padding-left: 20px;">(b) Changes in Accounting Methods</p>	
<p style="padding-left: 40px;">(i) Form 3115 (except as provided in paragraph (A)(4)(a) or (b), or (5)(b) of this appendix)</p>	<p>\$1,200</p>
<p style="padding-left: 40px;">(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)</p>	<p>\$1,200</p>

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 revenue procedure. See section 9.03 of Rev. Proc. 2002-1 (this revenue procedure) for the list of automatic change revenue procedures published and/or in effect as of December 31, 2001.

- |  |         |
|--|---------|
| (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)                 | \$6,000 |
| (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) | \$6,000 |

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 tax issue from a person with gross income (as determined under paragraphs (B)(2) and (4) of this appendix) of less than \$250,000   | \$500 |
| (b) Request involves a 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 | \$500 |

**(5) User fee for substantially identical letter ruling requests or identical accounting method changes.** If the requirements of section 15.07 of Rev. Proc. 2002-1 (this revenue procedure) are satisfied, the user fee for the following situations is as follows:

- |  |       |
|--|-------|
| (a) Substantially identical letter rulings requested | \$200 |
|--|-------|

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, for each additional letter ruling request after the \$6,000 fee or \$500 reduced fee, as applicable, has been paid for the first letter ruling request

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 \$45

Situations in which a parent corporation requests the identical accounting method change on a single Form 3115 on behalf of more than one member of a consolidated group, for each additional member of the group seeking the identical accounting method change on the same Form 3115 after the \$1,200 fee or \$500 reduced fee, as applicable, has been paid for the first member of the group

- (c) Extension of time requested to file Form 3115 for an identical accounting method change \$50

Situations in which a parent corporation requests an extension of time to file Form 3115 under § 301.9100-3 for the identical accounting method change on behalf of more than one member of a consolidated group, for each additional member of the group seeking the identical accounting method change on the same application after the \$1,200 fee or \$500 reduced fee, as applicable, has been paid for the first member of the group

NOTE: A parent corporation and each member of a consolidated group that is entitled to the user fee under paragraph (A)(5)(b) of this appendix, that receives an extension of time to file Form 3115 under § 301.9100-3 will be charged a separate user fee for the accounting method application.

*(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 for the last full (12 months) taxable year ending before the date the request is filed.

**(2) Gross income for a request involving a personal tax issue.** For purposes of the reduced user fee provided in paragraph (A)(4)(a) 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 2001 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 2000 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 paragraph (A)(4)(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 2000 Form 1065, *U.S. Partnership Return of 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 2000 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 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.

**(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 is legally separated from his or her spouse if the spouses do not file a joint income tax return with each other; 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 & Products, Income Tax & Accounting, International, Passthroughs & Special Industries, or Procedure and Administration), *or* Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities)

Attn: CC:PA:T

P.O. Box 7604

Ben Franklin Station

Washington, D.C. 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. *See* section 8.02(4) of Rev. Proc. 2002-1, 2002-1 I.R.B. 1. Hereafter, all references are to Rev. Proc. 2002-1 unless otherwise noted.]

#### A. STATEMENT OF FACTS

##### 1. Taxpayer Information

[Provide the statements required by sections 8.01(1)(a) and (b).]

##### 2. Description of Taxpayer's Business Operations

[Provide the statement required by section 8.01(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 8.01(1)(d), 8.01(1)(e), and 8.01(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 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 8.01(6), 8.01(8), 8.01(9), and 8.01(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 8.01(3), 8.01(6), 8.01(8), 8.01(9), and 8.01(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 2002-1 Statements

- a. [Provide the statement required by section 8.01(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 8.01(5)(a) regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor.]
- c. [Provide the statement required by section 8.01(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 8.01(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 8.01(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 8.01(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 8.01(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 8.01(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 8.02(7).]
- 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 8.02(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 8.02(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.]



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 five 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. 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

1. Does your request involve an issue 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 Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)? See section 3 of Rev. Proc. 2002-1, 2002-1 I.R.B. 1. For issues under the jurisdiction of other offices, See section 4 of Rev. Proc. 2002-1. (Hereafter, all references are to Rev. Proc. 2002-1 unless otherwise noted.)

Yes No

2. Have you read Rev. Proc. 2002-3, 2002-1 I.R.B. 117, and Rev. Proc. 2002-7, 2002-1 I.R.B. 249, 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 & Products), the Office of Associate Chief Counsel (Income Tax & Accounting), the Office of Associate Chief Counsel (International), the Office of Associate Chief Counsel (Passthroughs & 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 & Products), the Office of Associate Chief Counsel (Income Tax & Accounting), the Office of Associate Chief Counsel (Passthroughs & 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); or

Yes No N/A  
Pages \_\_\_

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 5.01, 5.05, 5.06, 5.07, 5.08, and 5.09.

Yes No

5. Are you requesting a letter ruling on a hypothetical situation or question? *See* section 7.02.

Yes No

6. Are you requesting a letter ruling on alternative plans of a proposed transaction? *See* section 7.02.

Yes No

7. Are you requesting the letter ruling for only part of an integrated transaction? *See* sections 7.03 and 8.01(1).

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 5.12.

Yes No

9. Are you requesting the letter ruling for a foreign government or its political subdivision? *See* section 5.13.

Yes No  
Pages \_\_\_

10. Have you included a complete statement of all the facts relevant to the transaction? *See* section 8.01(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 8.01(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 8.01(2).

Yes No  
Pages \_\_\_

13. Have you included, rather than merely incorporated 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 8.01(3).

Yes No  
Pages \_\_\_

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 8.01(4).

Yes No  
Pages \_\_\_

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 8.01(5)(a).

- Yes No  
Pages \_\_\_
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 8.01(5)(b).
- Yes No  
Pages \_\_\_
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 8.01(5)(c).
- Yes No  
Pages \_\_\_
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 8.01(5)(d).
- Yes No N/A  
Pages \_\_\_
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 8.01(6).
- Yes No N/A  
Pages \_\_\_
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 8.01(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 8.01(8).
- Yes No  
Pages \_\_\_
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 8.01(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 8.01(9), which states that taxpayers are encouraged to inform the Service of such authorities.
- Yes No N/A  
Pages \_\_\_
24. If you determined that there are no contrary authorities, have you included a statement to this effect in your request? *See* section 8.01(9).
- Yes No N/A  
Pages \_\_\_
25. Have you included in your request a statement identifying any pending legislation that may affect the proposed transaction? *See* section 8.01(10).
- Yes No
26. Is the request accompanied by the deletions statement required by § 6110? *See* section 8.01(11).
- Yes No  
Pages \_\_\_
27. Have you (or your authorized representative) signed and dated the request? *See* section 8.01(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 8.01(14).
- Yes No  
Pages \_\_\_
29. Have you included, signed, and dated the penalties of perjury statement in the format required by section 8.01(15)?
- Yes No N/A
30. Are you submitting your request in duplicate if necessary? *See* section 8.01(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 8.02(1).
- Yes No N/A
32. If you want copies of the letter ruling sent to more than one representative, does the power of attorney contain a statement to that effect? *See* section 8.02(2)(a).
- Yes No N/A
33. If you want the original of the letter ruling to be sent to a representative, does the power of attorney contain a statement to that effect? *See* section 8.02(2)(b).
- Yes No N/A
34. 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 8.02(2)(c).
- Yes No N/A
35. 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 8.02(3).
- Yes No N/A  
Pages \_\_\_
36. 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 8.02(4) and stated a compelling need for such action in the request?
- Yes No N/A  
Pages \_\_\_
37. 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 8.02(5).
- Yes No N/A  
Pages \_\_\_
38. 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 8.02(7).
- Yes No
39. 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  
Pages \_\_\_
40. 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  
Pages \_\_\_
41. 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  
Pages \_\_\_
42. 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  
Pages \_\_\_
43. 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(3) and paragraph (A)(5)(c) of Appendix A.

Yes No N/A

44. If your request is covered by any of the checklists, guideline revenue procedures, notices, safe harbor revenue procedures, or other special requirements listed in section 9, have you complied with all of the requirements of the applicable revenue procedure or notice?

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Pages \_\_\_\_

45. If you are requesting relief under § 7805(b) (regarding retroactive effect), have you complied with all of the requirements in section 12.11?

Yes No

46. Have you addressed your request to the attention 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 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:T  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044**

However, if a private delivery service is used, the address is:

**Internal Revenue Service  
Attn: CC:PA:T, Room 6561  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224**

The package should be marked: RULING REQUEST SUBMISSION. Improperly addressed requests may be delayed (sometimes for over a week) in reaching CC:PA:T for initial processing.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title or Authority

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or printed name of  
person signing checklist

**APPENDIX D**  
**LIST OF SMALL BUSINESS/SELF-EMPLOYED DIVISION (SB/SE)**  
**COMPLIANCE AREA DIRECTORS FOR REQUESTING**  
**DETERMINATION LETTERS**

Requests for determination letters under Rev. Proc. 2002-1 from taxpayers under the jurisdiction of SB/SE should be sent to the appropriate address listed below. Taxpayers under the jurisdiction of W&I should also send their requests for determination letters to the appropriate address listed below.

- **Area 1, Area Director, Boston**  
**P.O. Box 9112, Stop 11300, Boston, MA 02203**  
SB/SE and W&I taxpayers located in Maine, New Hampshire, Connecticut, Rhode Island, Massachusetts, Vermont
  
- **Area 2, Area Director, New York City**  
**290 Broadway, New York, NY 10007**  
SB/SE and W&I taxpayers located in New York
  
- **Area 3, Area Director, Philadelphia**  
**600 Arch Street, Room 7400, Philadelphia, PA 19106**  
SB/SE and W&I taxpayers located in Pennsylvania, New Jersey
  
- **Area 4, Area Director, Baltimore**  
**31 Hopkins Plaza, Baltimore, MD 21202**  
SB/SE and W&I taxpayers located in Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina
  
- **Area 5, Area Director, Jacksonville**  
**400 Bay Street, Jacksonville, FL 32202**  
SB/SE and W&I taxpayers located in Florida
  
- **Area 6, Area Director, Detroit**  
**477 Michigan Avenue, Detroit, MI 48180**  
SB/SE and W&I taxpayers located in Michigan, Kentucky, Ohio, West Virginia
  
- **Area 7, Area Director, Chicago**  
**230 S. Dearborne Street, 100CHI, Chicago, IL 60604**  
SB/SE and W&I taxpayers located in Wisconsin, Illinois, Indiana
  
- **Area 8, Area Director, Nashville**  
**801 Broadway, MDP1, Nashville, TN 37203**  
SB/SE and W&I taxpayers located in Georgia, Tennessee, Alabama, Mississippi, Louisiana, Arkansas
  
- **Area 9, Area Director, St. Paul**  
**316 North Robert Street, Stop 1000, St. Paul, MN 55101**  
SB/SE and W&I taxpayers located in North Dakota, South Dakota, Missouri, Nebraska, Minnesota, Iowa, Kansas
  
- **Area 10, Area Director, Dallas**  
**4050 Alpha Road, 1000 MSRO, Dallas, TX 75244**  
SB/SE and W&I taxpayers located in Texas, Oklahoma

- **Area 11, Area Director, Denver**  
**600 17th Street, Denver, CO 80202-2490**  
SB/SE and W&I taxpayers located in Colorado, Montana, Wyoming, New Mexico, Arizona, Nevada, Utah
  
- **Area 12, Area Director, Seattle**  
**915 Second Avenue, Seattle, WA 98174**  
SB/SE and W&I taxpayers located in Washington, Oregon, Alaska, Hawaii, Idaho
  
- **Area 13, Area Director, Oakland**  
**1301 Clay Street, Suite 1600-S, Oakland, CA 94612**  
SB/SE and W&I taxpayers located in Northern and Central California
  
- **Area 14, Area Director, Laguna Niguel**  
**24000 Avila Road, Laguna Niguel, CA 92677**  
SB/SE and W&I taxpayers located in Southern California except for taxpayers located in Oakland, Los Angeles, El Segundo, El Monte, and Glendale which are Area 16 taxpayers
  
- **Area 15, Area Director, International**  
**950 L'Enfant Plaza, SW, Washington, DC 20024**  
International SB/SE and W&I taxpayers
  
- **Area 16, Area Director, Los Angeles**  
**300 N. Los Angeles Street, Los Angeles, CA 90012**  
SB/SE and W&I taxpayers located in Oakland, Los Angeles, El Segundo, El Monte, Glendale

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- .03 At the earliest possible stage

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- .08 Discussion of substantive issues is not binding on the Service

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- .04 If the Service disagrees with the taxpayer's statement of facts

- .05 If the interpretation of a foreign law or foreign document is a material fact
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- .04 Territory manager's or area director, appeals', decision may be reviewed but not appealed
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- .01 If requested, offered to the taxpayer when adverse technical advice proposed
- .02 Normally held within 21 days of contact with the taxpayer
- .03 21-day period will be extended if justified and approved
- .04 Denial of extension cannot be appealed
- .05 Entitled to one conference of right
- .06 Conference may not be taped
- .07 If requested and approved, conference will be delayed to address a request for relief under § 7805(b)
- .08 Service makes tentative recommendations
- .09 Additional conferences may be offered
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- .11 Under limited circumstances, may schedule a conference to be held by telephone

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- .01 Taxpayer or the taxpayer's representative may request status from the field or area office
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- .01 Delegates authority to branch chiefs
- .02 Determines whether request has been properly made
- .03 Contacts the field or area office to discuss issues
- .04 Informs the field or area office if any matters in the request have been referred to another branch or office
- .05 Informs the field or area office if additional information is needed
- .06 Informs the field or area office of the tentative conclusion
- .07 If a tentative conclusion has not been reached, gives date estimated for tentative conclusion
- .08 Advises the field or area office if tentative conclusion is changed
- .09 Generally does not discuss the tentative conclusion with the taxpayer
- .10 Advises the field or area office of final conclusions
- .11 If needed, requests additional information
- .12 Requests taxpayer to send additional information to the national office and a copy to the director or area director, appeals
- .13 Informs the taxpayer when requested deletions will not be made
- .14 Prepares reply in two parts
- .15 Routes replies to appropriate office
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- .01 Applies only to the taxpayer for whom technical advice was requested
- .02 Usually applies retroactively
- .03 Generally applied retroactively to modify or revoke prior technical advice
- .04 Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked
- .05 Applies to continuing action or series of actions until material facts change
- .06 Does not apply retroactively under certain conditions

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**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 & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) give technical advice to a director or an area director, appeals. It also explains the rights a taxpayer has when a director or an area director, appeals, requests technical advice regarding a tax matter.

## **Operating divisions of the Internal Revenue Service**

The Internal Revenue Service includes four operating divisions that are responsible for meeting the needs of the taxpayers they serve. These operating divisions are:

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

(2) Small Business/Self-Employed Division (SB/SE), which generally serves corporations, 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), 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, filing an individual federal income tax return without accompanying Schedule C, E, or F, or Form 2106 or Form 2106-EZ; and

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

## **Description of terms used in this revenue procedure**

For purposes of this revenue procedure—

(1) any reference to director or field office refers to the Director, Field Operations, LMSB, the Area Director, Field Compliance, SB/SE, or the Director, Compliance, W&I, as appropriate, and their respective offices 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, and their respective offices;

(2) any reference to area director, appeals, refers to the Area Director, Appeals LMSB, or the Area Director, Appeals SB/SE-TE/GE, as appropriate;

(3) any reference to territory manager refers to a territory manager, LMSB, a territory manager, compliance, 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;

(4) any reference to area office refers to Appeals LMSB Area Office or Appeals SB/SE-TE/GE Area Office, as appropriate;

(5) any reference to appeals officer includes, when appropriate, the appeals team case leader;

(6) 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; and

(7) the term “national office” refers to the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions & Products), the Office of Associate Chief Counsel (Income Tax & Accounting), the Office of Associate Chief Counsel (International), the Office of Associate Chief Counsel (Passthroughs & 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.

**Updated annually**

The revenue procedure is updated annually as the second revenue procedure of the year, but may be modified or amplified during the year.

## **SECTION 2. WHAT IS TECHNICAL ADVICE?**

“Technical advice” means advice or guidance in the form of a memorandum furnished by the national office upon the request of a director or an area director, appeals, 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 national 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 refund or credit; (3) any matter under examination or in appeals pertaining to tax-exempt bonds or mortgage credit certificates; and (4) any other matter involving a specific taxpayer under the jurisdiction of the territory manager or the area director, appeals. They also include processing and considering nondocketed cases in an area office but do not include cases in which the issue in the case is in a docketed case for any taxable year. If, however, a case is docketed for an estate tax issue of a taxpayer while a request for technical advice on the same issue of the same taxpayer is pending, the national office may issue the technical advice memorandum if the appropriate appeals officer and government counsel agree, by memorandum, to the issuance of the technical advice memorandum.

Technical advice helps Service personnel close cases and also helps establish and maintain consistent holdings throughout the Service. A director or an area director, appeals, may raise an issue in any tax period, even though technical advice may have been asked and furnished for the same or similar issue for another tax period.

Technical advice does not include legal advice furnished to the field or area office in writing or orally, 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 national office for technical advice will not be denied merely because the national office has provided legal advice, other than advice furnished pursuant to this revenue procedure, to the field or area office on the matter.

## **SECTION 3. ON WHAT ISSUES MAY TECHNICAL ADVICE BE REQUESTED UNDER THIS PROCEDURE?**

**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 (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)**

**.01** The instructions of this revenue procedure apply to requests for technical advice on any issue 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), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), and on certain issues under the jurisdiction of the Associate Chief Counsel (Procedure and Administration). See section 3 of Rev. Proc. 2002–1, this Bulletin, for a description of the principal subject matters of jurisdiction.

**Issues involving shipowners' protection and indemnity associations and certain homeowners associations**

**.02** The jurisdiction of the Associate Chief Counsel (Passthroughs & Special Industries) extends to issuing technical advice under § 526 (shipowners' protection and indemnity associations) and § 528 (certain homeowners associations).

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

**Alcohol, tobacco, and firearms taxes**

**.01** The procedures for obtaining technical advice specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are under the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms.

**Tax exempt and government entities**

**.02** The procedures for obtaining technical advice specifically on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, are found in Rev. Proc. 2002-5, this Bulletin. However, the procedures under Rev. Proc. 2002-2 (this revenue procedure) must be followed for obtaining technical advice 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 & Special Industries) has jurisdiction for issuing technical advice under § 521, the procedures under Rev. Proc. 2002-5 and Rev. Proc. 90-27, 1990-1 C.B. 514, as well as § 601.201(n) of the Statement of Procedural Rules (26 C.F.R. § 601.201(n) (2001)), must be followed.

**SECTION 5. MAY TECHNICAL ADVICE BE REQUESTED UNDER § 301.9100 DURING THE COURSE OF AN EXAMINATION?**

**A § 301.9100 request is a letter ruling request**

**.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 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 area office or a federal court. Therefore, a § 301.9100 request should be submitted pursuant to Rev. Proc. 2002-1 (including the payment of the applicable user fee listed in Appendix A of Rev. Proc. 2002-1). *See* section 5.02 of Rev. Proc. 2002-1.

**Period of limitation**

**.02** The running of any applicable period of limitation 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 Service ordinarily will not issue a § 301.9100 ruling. *See* § 301.9100-3(c)(1)(ii). Therefore, the taxpayer must secure a consent under § 6501(c)(4) to extend the period of limitation on assessment. 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 Service may require the taxpayer to consent to an extension of the period of limitation on assessment. *See* § 301.9100-3(d)(2).

**Address to send a § 301.9100 request**

**.03** Pursuant to section 8.03(1) of Rev. Proc. 2002-1, a § 301.9100 request, together with the appropriate user fee, must be submitted by the taxpayer to 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 Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate. The package should be marked: RULING REQUEST SUBMISSION. See Appendix A of Rev. Proc. 2002-1 for the appropriate user fee.

- (1) A § 301.9100 request should be sent to the following address:

**Internal Revenue Service  
Attn: CC:PA:T  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044**

However, if a private delivery service is used, the address is:

**Internal Revenue Service  
Attn: CC:PA:T, Room 6561  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224**

- (2) A § 301.9100 request 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 entrance of 1111 Constitution Avenue, N.W., Washington, D.C. 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:T, Room 6561  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224**

**If the return is being examined by a field office or considered by an area office or a federal court, the taxpayer must notify the national office and the national office will notify the director, appeals officer, 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 a field office or considered by an area office or a federal court, the taxpayer must notify the national office. *See* § 301.9100-3(e)(4)(i) and section 5.02(3) of Rev. Proc. 2002-1. The national office will notify the appropriate director, appeals officer, or government counsel that a § 301.9100 request has been submitted to the national 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, the appeals officer, or the government counsel.

## **SECTION 6. WHO IS RESPONSIBLE FOR REQUESTING TECHNICAL ADVICE?**

**Director or area director, appeals, determines whether to request technical advice**

**.01** The director or area director, appeals, determines whether to request technical advice on an issue being considered. Each request must be submitted through channels and signed by a person who is authorized to sign for the director or area director, appeals.

**Taxpayer may ask that issue be referred for technical advice**

**.02** While a case is under the jurisdiction of a director or area director, appeals, a taxpayer may request in writing or orally to the examining officer or appeals officer that an issue be referred to the national office for technical advice.

## **SECTION 7. WHEN SHOULD TECHNICAL ADVICE BE REQUESTED?**

### **Uniformity of position lacking or unusual or complex issue**

**.01** Technical advice 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 the national office.

### **When technical advice can be requested**

**.02** The provisions of this revenue procedure apply only to a case under the jurisdiction of a director or an area director, appeals. Technical advice 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 area office that had the case concurs in the request.

### **At the earliest possible stage**

**.03** Once an issue is identified, all requests for technical advice 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, however, the field or area office's decision to request technical advice.

## **SECTION 8. WHEN SHOULD TECHNICAL ADVICE NOT BE REQUESTED?**

### **Technical advice will not be issued on frivolous issues**

**.01 Technical advice will not be issued on frivolous issues.** A referral of technical advice on frivolous issues should not be forwarded to the national office. For purposes of this revenue procedure, 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 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, 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 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;" or

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

**A director may not request technical advice on an identical issue of the same taxpayer that an area office is considering**

**.02** A director may not request technical advice on an issue if an area office is currently considering an identical 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). A case remains under the jurisdiction of the director even though an area 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 area office and the applicability of more than one kind of federal tax is dependent upon the resolution of that issue, a director may not request technical advice on the applicability of any of the taxes involved.

A director or an area director, appeals, also may not request technical advice 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. If, however, a case is docketed for an estate tax issue of a taxpayer while a request for technical advice on the same issue of the same taxpayer is pending, the national office may issue the technical advice memorandum if the appropriate appeals officer and government counsel agree, by memorandum, to the issuance of the technical advice memorandum.

**SECTION 9. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED?**

**Pre-submission conference generally is permitted when the field or area office likely will request technical advice and all parties agree to request the conference**

**.01** In an effort to promote expeditious processing of requests for technical advice, the national office generally will meet with the field or area office and the taxpayer prior to the time a request for technical advice is submitted to the national office. In cases involving very complex issues, the field or area office and the taxpayer are encouraged to request a pre-submission conference. A request for a pre-submission conference should be made, however, only after the field or area office determines that it likely will request technical advice and only after the field or area office and the taxpayer agree that a pre-submission conference should be requested.

**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 technical advice, the factual information to be included in the request for technical advice, any collateral issues that either should or should not be included in the request for technical advice, and any other substantive or procedural considerations that will allow the national office to provide the parties with technical advice 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 or area office or by the taxpayer. The conference is intended only to facilitate the overall technical advice process.

**Request for a pre-submission conference must be submitted in writing by the field or area office**

**.03** A request for a pre-submission conference must be submitted in writing by the field or area office. The request should identify the associate or assistant chief counsel office, as appropriate, expected to have jurisdiction over the request for technical advice. The request should include a brief explanation of the primary issue so that an assignment to the appropriate branch can be made. Coordination with division counsel is strongly encouraged or, if the issue is under the jurisdiction of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), coordination with that office's

local counsel is strongly encouraged. If the request involves a designated issue or industry under the Office of Pre-Filing and Technical Guidance, LMSB, coordination with the technical advisor is also strongly encouraged.

An original and one copy of the request should be submitted to the appropriate address listed in section 10.03 of this revenue procedure.

**Branch will contact the field or area office to arrange the pre-submission conference**

**.04** Within 5 working days after it receives the request, the branch assigned responsibility for conducting the pre-submission conference will contact the field or area office to arrange a mutually convenient time for the parties to meet in the national office. The conference generally should be held within 30 calendar days after the field or area office is contacted. The field or area office will be responsible for coordinating with the taxpayer as well as with any other Service personnel whose attendance the field or area office believes would be appropriate.

**Pre-submission conference generally held in person**

**.05** Pre-submission conferences generally will be held in person in the national office. However, if the field or area office personnel or the taxpayer is unable to attend the conference, the conference may be conducted by telephone.

**Certain information required to be submitted to the national office prior to the pre-submission conference**

**.06** At least 10 working days before the scheduled pre-submission conference, the field or area office and the taxpayer should submit to the national office 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 the national office'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 technical advice, but it should allow the national office to become reasonably informed regarding the subject matter of the conference prior to the meeting. The field or area office or the taxpayer should ensure that the national office receives a copy of any required power of attorney, preferably on Form 2848, Power of Attorney and Declaration of Representative.

**Pre-submission conference may not be taped**

**.07** 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**

**.08** 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).

**SECTION 10. WHAT MUST BE INCLUDED IN THE REQUEST FOR TECHNICAL ADVICE?**

**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 or area office, a request for technical advice must include the facts and the issues for which technical 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 10.01(4) and 10.01(5) of this revenue procedure with respect to the submission of relevant foreign laws and documents in a language other than English, if applicable; and the written statement required in section 10.01(6) of this revenue procedure with respect to the interpretation of a substantive provision of an income or estate tax treaty, if applicable.

To facilitate prompt action on technical advice requests, the taxpayer is encouraged to request that if the Service requests additional information from the taxpayer, the Service does so by fax. The procedures for requesting such document to be faxed are the same as those in section 16.11(1) of this revenue procedure.

**(1) If taxpayer initiates request for technical advice, taxpayer must submit written statement, copy of relevant foreign laws, and certified English translations of documents in a language other than English.** If the taxpayer initiates the request for technical advice, the taxpayer must submit to the examining officer 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;
- (b) the information required in sections 10.01(4) and 10.01(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 10.01(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 officer or appeals officer determines that technical advice will be requested, the taxpayer's statement, including the information required in sections 10.01(4), 10.01(5), and 10.01(6) of this revenue procedure, will be forwarded to the national office with the request for technical advice.

**(2) If the Service initiates request for technical advice, 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 technical advice is initiated by a field or area 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 and the field or area office should determine a mutually agreed date for the submission of the taxpayer's statement and information so that it will be forwarded to the national office with the request for technical advice. Section 11.03 applies with respect to any disagreements with the Service's statement of facts and issues.

If the request for technical advice is forwarded to the national office without the taxpayer's statement and information and if the taxpayer chooses to submit the statement and information, the taxpayer must submit the statement and information to the national office within 21 calendar days after the request for technical advice has been forwarded. The taxpayer must also send a copy of the statement and information to the director or the area director, appeals. The procedures for requesting an extension of the 21-day period and receiving approval of such extension are the same as those in section 16.11(3) of this revenue procedure. If the national office does not receive the taxpayer's statement and information within the 21-day period, plus extensions granted by the associate or assistant

chief counsel, as appropriate, the national office, at its discretion, may base its advice on the facts provided by the field or area office.

**(3) Statement of authorities contrary to taxpayer's position.** Whether the request for technical advice is initiated by the taxpayer or by a field or area 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, 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.

**(4) Relevant parts of all foreign laws.** Whether initiated by the taxpayer or by a field or area office, a request for technical advice, and other statements forwarded to the national 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. This 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 10.01(5) of this revenue procedure.

The taxpayer or the field or area 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 or area office are encouraged to inform the national office about and discuss the implications of any authority believed to interpret the foreign law, such as pending legislation, treaties, court decisions, notices, or administrative decisions. But see section 11.05 of this revenue procedure, stating that the national office may refuse to provide technical advice 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 or area office, a request for technical advice, and other statements forwarded to the national 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 or area 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 income tax matters; 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 or area office, a request for technical advice 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), 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 identifying information to be deleted from public inspection**

.02 The text of a technical advice memorandum is 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 (“deletions statement”). If the taxpayer does not submit the deletions statement, the Service will follow the procedures in section 11.06 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 technical advice 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 technical advice memorandum is issued, additional deletions statements may be submitted.

The deletions statement must not appear in the request for technical advice 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 is not permitted.

The taxpayer should follow these same procedures to propose deletions from any additional information submitted after the initial request for technical advice. 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.

**Transmittal Form 4463, Request for Technical Advice**

.03 The field or area office should use Form 4463, Request for Technical Advice, for transmitting a request for technical advice to the national office using the addresses listed below.

**Address to send requests from field offices**

The field office should send the request to:

**Internal Revenue Service  
Attn: CC:PA:T  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044**

**Address to send requests from area offices**

The area office may send the request to either:

**Office of LMSB Operations C:AP:LMSB  
Office of the National Chief Appeals C:AP  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224; or**

**Office of LMSB Operations C:AP:LMSB  
Office of the National Chief Appeals C:AP  
Internal Revenue Service  
Franklin Court Building—East Court  
1099 14th Street, N.W.—4th Floor  
Washington, D.C. 20005**

**Number of copies of request to be submitted**

**.04** The field or area office must submit three copies of the request for technical advice to the address in section 10.03 of this revenue procedure with two copies being designated for the national office.

Also, the field or area office must send: (1) one copy of the request for technical advice to the technical advisor if the request involves a designated issue or industry under the Office of Pre-Filing and Technical Guidance, LMSB; and (2) one copy of the request for technical advice to the division counsel of the operating division that has jurisdiction of the taxpayer's tax return.

**Power of attorney**

**.05** Any authorized representative, as described in section 8.01(13) of Rev. Proc. 2002-1, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230 (31 C.F.R. part 10 (2001)) and with the conference and practice requirements of the Statement of Procedural Rules (26 C.F.R. § 601.501-601.509 (2001)). It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used with regard to requests for technical advice 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 technical advice, the field or area office: (1) will notify the taxpayer that technical advice is being requested; and (2) at or before the time the request is submitted to the national office, will give to the taxpayer a copy of the arguments that are being provided to the national office in support of the Service's position.

If the examining officer or appeals officer initiates the request for technical advice, he or she will give to the taxpayer a copy of the statement of the pertinent facts and the issues proposed for submission to the national office.

This section 11.01 does not apply to a technical advice memorandum described in section 11.08 of this revenue procedure.

**Conference offered**

**.02** When notifying the taxpayer that technical advice is being requested, the examining officer or appeals officer will also tell the taxpayer about the right to a conference in the national office 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**

.03 If the examining officer or appeals officer initiates the request for technical advice, the taxpayer has 10 calendar days after receiving the statement of facts and specific issues to submit to that officer 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 territory manager or the area director, appeals.

After receiving the taxpayer's statement of the areas of disagreement, every effort should be made to reach an agreement on the facts and the specific points at issue before the matter is referred to the national office. If an agreement cannot be reached, the field or area 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 territory manager or the area director, appeals. Both the statements of the taxpayer and the field or area office will be forwarded to the national office with the request for technical advice.

When the director or the area director, appeals, and the taxpayer cannot agree on the material facts and the request for technical advice does not involve the issue of whether a letter ruling should be modified or revoked, the national office, at its discretion, may refuse to provide technical advice. If the national office chooses to issue technical advice, the national office will base its advice on the facts provided by the field or area office.

If a request for technical advice involves the issue of whether a letter ruling should be modified or revoked, the national office will issue technical advice.

**If the Service disagrees with the taxpayer's statement of facts**

.04 If the taxpayer initiates the request for technical advice and the taxpayer's statement of the facts and issues is not wholly acceptable to the field or area 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 territory manager or the area director, appeals.

If an agreement cannot be reached, both the statements of the taxpayer and the field or area office will be forwarded to the national office with the request for technical advice. When the disagreement involves material facts essential to the preliminary assessment of the case, the director or the area director, appeals, may refuse to refer a taxpayer initiated request for technical advice to the national office.

If the director or the area director, appeals, submits a case involving a disagreement of the material facts, the national office, at its discretion, may refuse to provide technical advice. If the national office chooses to issue technical advice, the national office will base its advice on the facts provided by the field or area office.

**If the interpretation of a foreign law or foreign document is a material fact**

.05 If the interpretation of a foreign law or foreign document is a material fact, the national office, at its discretion, may refuse to provide technical advice. This section 11.05 applies whether or not the field or area 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 deletions statement**

.06 When the field or area office initiates the request for technical advice, the taxpayer has 10 calendar days after receiving the statement of facts and issues to be submitted to the national office to provide the deletions statement required under § 6110(c). *See*

section 10.02 of this revenue procedure. If the taxpayer does not submit the deletions statement, the director or the area director, appeals, will tell the taxpayer that the statement is required.

When the taxpayer initiates the request for technical advice and does not submit a deletions statement with the request, the director or the area director, appeals, will ask the taxpayer to submit the statement. If the director or the area director, appeals, does not receive the deletions statement within 10 calendar days after asking the taxpayer for it, the director or the area director, appeals, may decline to submit the request for technical advice.

However, if the director or the area director, appeals, decides to request technical advice, whether initiated by the field or area office or by the taxpayer, in a case in which the taxpayer has not submitted the deletions statement, the national 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)**

**.07** The requirements for submitting statements and other materials or proposed deletions in technical advice memorandums before public inspection is allowed do not apply to requests for any documents to the extent that § 6104 applies.

**Criminal or civil fraud cases**

**.08** 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 national office) do not apply to a technical advice memorandum 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 technical advice memorandum 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 technical advice memorandum under § 6110(f)(1). The taxpayer may then provide the statement of proposed deletions to the national office.

**SECTION 12. HOW DOES A TAXPAYER APPEAL A DIRECTOR'S OR AREA DIRECTOR, APPEALS', DECISION NOT TO SEEK TECHNICAL ADVICE?**

**Taxpayer notified of decision not to seek technical advice**

**.01** If the examining officer or appeals officer concludes that a taxpayer's request for referral of an issue to the national office for technical advice does not warrant referral, the examining officer or appeals officer will tell the taxpayer. A taxpayer's request for such a referral will not be denied merely because the national office provided legal advice, other than advice furnished pursuant to this revenue procedure, to the field or area office on the matter.

**Taxpayer may appeal decision not to seek technical advice**

**.02** The taxpayer may appeal the decision of the examining officer or appeals officer not to request technical advice. To do so, the taxpayer must submit to that officer, 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 the national office for technical advice. 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 territory manager or the area director, appeals.

**Territory manager or area director, appeals, determines whether technical advice will be sought**

**.03** The examining officer or appeals officer submits the taxpayer's statement through channels to the territory manager or the area director, appeals, along with the examining officer's or appeals officer's statement of why the issue should not be referred to the national office. The territory manager or the area director, appeals, determines on the basis of the statements whether technical advice will be requested.

If the territory manager or the area director, appeals, determines that technical advice 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 area director, appeals, 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 territory manager or the area director, appeals, of agreement or disagreement with the proposed denial.

**Territory manager's or area director, appeals', decision may be reviewed but not appealed**

**.04** The taxpayer may not appeal the decision of the territory manager or the area director, appeals, not to request technical advice from the national office. However, if the taxpayer does not agree with the proposed denial, all data on the issue for which technical advice has been sought, including the taxpayer's written request and statements, will be submitted to the Industry Director, LMSB; the 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; the Director, Appeals LMSB Operating Unit or the Director, Appeals SBSE Operating Unit, as appropriate.

The Industry Director, LMSB; the 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; the Director, Appeals LMSB Operating Unit or the Director, Appeals SBSE Operating Unit, as appropriate, 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 Industry Director, LMSB; the 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; the Director, Appeals LMSB Operating Unit or the Director, Appeals SBSE Operating Unit, as appropriate, may consult with the national office, if necessary, and will notify the field office or area office within 45 calendar days of receiving all the data regarding the request for technical advice whether the proposed denial is approved or disapproved. The field office or area office will then notify the taxpayer.

While the matter is being reviewed, the field office or area office suspends action on the issue (except when the delay would prejudice the Government's interest).

The provisions of this revenue procedure in regard to review of the proposed denial of a request for technical advice continue to be applicable in those situations in which the authority normally exercised by the director or the area director, appeals, has been delegated to another official.

**Special procedures applicable to appeals regarding frivolous issues**

**.05** If the request for technical advice concerns a “frivolous issue,” as described in section 8.01 of this revenue procedure, technical advice will not be given, and the examining officer or appeals officer will deny the taxpayer’s request for referral. The taxpayer may appeal the decision of the examining officer or appeals officer; however, if the territory manager or the area director, appeals, determines that no technical advice 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 area director, appeals, will inform the appropriate official described in section 12.04 of this revenue procedure (the Industry Director, LMSB; the 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 Director, Appeals LMSB Operating Unit or the Director, Appeals SBSE Operating Unit) 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 or area office will not suspend action on the issue;

(3) within 15 days, the official will notify the territory manager or area director, appeals, 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 or area office will then notify the taxpayer of the result of the review of the denial.

**SECTION 13. HOW ARE REQUESTS FOR TECHNICAL ADVICE WITHDRAWN?**

**Taxpayer notified**

**.01** Once a request for technical advice has been sent to the national office, only a director or an area director, appeals, may withdraw a request for technical advice. He or she may ask to withdraw a request at any time before the responding transmittal memorandum for the technical advice is signed.

The director or the area director, appeals, as appropriate, must notify the taxpayer in writing of an intent to withdraw the request for technical advice except—

(1) when the period of limitation 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 technical advice should be withdrawn, the procedures in section 12 of this revenue procedure must be followed.

**National office may provide views**

**.02** When a request for technical advice is withdrawn, the national office may send its views to the director or the area director, appeals, when acknowledging the withdrawal request. This memorandum may constitute Chief Counsel Advice, as defined in § 6110(i), subject to disclosure under § 6110. In an appeals case, acknowledgment of the withdrawal request should be sent to the appropriate area office, through the Chief, Appeals, C:AP:LMSB. 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 technical advice proposed**

**.01** If, after the technical advice request is analyzed, it appears that technical advice 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.

### **Normally held within 21 days of contact with the taxpayer**

**.02** The conference must be held within 21 calendar days after the taxpayer is contacted. If conferences are being arranged for more than one request for technical advice for the same taxpayer, they will be scheduled to cause the least inconvenience to the taxpayer. The national office will notify the examining officer or appeals officer of the scheduled conference and will offer the examining officer or appeals officer the opportunity to attend the conference. The Industry Director, LMSB; the Director of Compliance, Field Operations, 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; the Chief, Appeals; the director; or the area director, appeals, may designate other Service representatives to attend the conference in lieu of, or in addition to, the examining officer or appeals officer.

### **21-day period will be extended if justified and approved**

**.03** An extension of the 21-day period will be granted only if the taxpayer justifies it in writing and the associate or assistant chief counsel, as appropriate, of the office to which the case is assigned approves the request. No extension will be granted without the approval of the associate or assistant chief counsel, as appropriate. Except in rare and unusual circumstances, the national office will not agree to an extension of more than 10 working days beyond the end of the 21-day period.

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 national office 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 national office should be told orally before the end of the period about the problem. The written request for extension must be submitted to the national office promptly after the oral request. The taxpayer will be told promptly (and later in writing) of the approval or denial of a requested extension.

### **Denial of extension cannot be appealed**

**.04** There is no right to appeal the denial of a request for extension. If the national office is not advised of problems with meeting the 21-day period or if the written request is not sent promptly after the national office is notified of problems with meeting the 21-day period, 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 in the national office unless one of the circumstances discussed in section 14.09 of this revenue procedure exists. This conference is normally held at the branch level and is attended by a person who has authority to sign the transmittal memorandum (discussed in section 16.14 of this revenue procedure) in his or her own name or on behalf of the branch chief.

When more than one branch 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 attend the conference. If more than one subject is discussed at the conference, the discussion constitutes a conference for each subject.

To have a thorough and informed discussion of the issues, the conference usually is held after the branch 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 branch to an associate or assistant chief counsel, as appropriate, or to any other Service official. But see section 14.09 of this revenue procedure 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.

**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 19 of this revenue procedure). The associate or assistant chief counsel, as appropriate, 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 10 days of receiving the taxpayer's § 7805(b) request. There is no right to appeal the denial of a request for delaying the conference. See section 19.04 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 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 and the reasons for it.

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 the outcome of the § 7805(b) issue or on any other issue discussed.

**Additional conferences may be offered**

**.09** 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.

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 national office from inviting a taxpayer to attend additional conferences, including conferences with an official higher than the branch level, if national office personnel think they are necessary. Such 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 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 examining officer or appeals officer will be offered the opportunity to participate in any additional taxpayer's conference, including a conference with an official higher than the branch 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** Within 21 calendar days after the conference, the taxpayer must furnish to the national 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 by letter with a penalties of perjury statement in the form described in section 16.11(2) of this revenue procedure.

The taxpayer must also send a copy of the additional information to the director or the area director, appeals, for comment. Any comments by the director or the area director, appeals, must be furnished promptly to the appropriate branch in the national office. If the director or the area director, appeals, does not have any comments, he or she must notify the branch representative promptly.

If the additional information has a significant impact on the facts in the request for technical advice, the national office will ask the director or the area director, appeals, for comment on the facts contained in the additional information submitted. The director or the area director, appeals, will give the additional information prompt attention.

If the additional information is not received within 21 calendar days, the technical advice memorandum will be issued on the basis of the existing record.

An extension of the 21-day period may be granted only if the taxpayer justifies it in writing and the associate or assistant chief counsel, as appropriate, 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.

**Under limited circumstances, may schedule a conference to be held by telephone**

**.11** Infrequently, taxpayers 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, D.C. If a taxpayer makes such a request, the branch chief, senior technician reviewer (or senior technical reviewer), or assistant to the branch chief (or assistant branch chief) of the branch to which the case is assigned will decide if it is appropriate in the particular case to hold the conference of right by telephone. If the request is approved, the taxpayer will be advised when to call the Service representatives (not a toll-free call).

In accordance with section 14.02 of this revenue procedure, the examining officer or appeals officer 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 the taxpayer's representative may request status from the field or area office**

**.01** The taxpayer or the taxpayer's representative may obtain information on the status of the request for technical advice by contacting the field or area office that requested the technical advice. See section 16.09 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer or the taxpayer's representative. See section 17.02 of this revenue procedure regarding discussions of the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative.

**National office will give status updates to the director or area director, appeals**

**.02** The branch representative or branch chief assigned to the technical advice request will give status updates on the request once a month to the director or the area director, appeals. In addition, a director or an area director, appeals, may get current information on the status of the request for technical advice by calling the person whose name and telephone number are shown on the acknowledgment of receipt of the request for technical advice.

See section 16.10 of this revenue procedure about discussing the final conclusions with the field or area office. Further, the director or the area director, appeals, will be notified at the time the technical advice memorandum is mailed.

## **SECTION 16. HOW DOES THE NATIONAL OFFICE PREPARE THE TECHNICAL ADVICE MEMORANDUM?**

### **Delegates authority to branch chiefs**

**.01** The branch chiefs in the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions & Products), the Office of Associate Chief Counsel (Income Tax & Accounting), the Office of Associate Chief Counsel (International), the Office of Associate Chief Counsel (Passthroughs & Special Industries), the Office of Associate Chief Counsel (Procedure and Administration), and the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) have largely been delegated the authority to issue technical advice on issues under their jurisdiction.

### **Determines whether request has been properly made**

**.02** A request for technical advice generally is given priority and processed expeditiously. As soon as the request for technical advice is assigned, the branch representative analyzes the file to see whether it meets all requirements of sections 6, 7, and 10 of this revenue procedure.

However, if the request does not comply with the requirements of section 10.02 of this revenue procedure relating to the deletions statement, the Service will follow the procedure in the last paragraph of section 11.06 of this revenue procedure.

### **Contacts the field or area office to discuss issues**

**.03** Usually, within 21 calendar days after the branch receives the request for technical advice, a representative of the branch telephones the field or area office to discuss the procedural and substantive issues in the request that come within the branch's jurisdiction.

### **Informs the field or area office if any matters in the request have been referred to another branch or office**

**.04** If the technical advice request concerns matters within the jurisdiction of more than one branch or office, a representative of the branch that received the original technical advice request informs the field or area office within 21 calendar days of receiving the request that—

(1) the 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 or area office about the technical advice request within 21 calendar days after receiving it in accordance with section 16.03 of this revenue procedure.

### **Informs the field or area office if additional information is needed**

**.05** The branch representative will inform the field or area office that the case is being returned if substantial additional information is required to resolve an issue. Cases should be returned for additional information when significant unresolved factual variances exist between the statement of facts submitted by the field or area office and the taxpayer. Cases should also be returned if major procedural problems cannot be resolved by telephone. The field or area 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 branch representative will request the additional information in the most expeditious manner without returning the case. Within 21 calendar days after receiving the information requested, the branch representative will

notify the field or area office of the tentative conclusion and an estimated date by which the technical advice memorandum will be mailed, or an estimated date when a tentative conclusion will be made.

**Informs the field or area office of the tentative conclusion**

**.06** If all necessary information has been provided, the branch representative informs the field or area office of the tentative conclusion and the estimated date that the technical advice memorandum will be mailed.

**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 branch representative informs the field or area office of the estimated date the tentative conclusion will be made.

**Advises the field or area office if tentative conclusion is changed**

**.08** Because the branch representative's tentative conclusion may change during the preparation and review of the technical advice memorandum, the tentative conclusion should not be considered final. If the tentative conclusion is changed, the branch representative will inform the field or area office.

**Generally does not discuss the tentative conclusion with the taxpayer**

**.09** Neither the national office nor the field or area office should advise the taxpayer or the taxpayer's representative of the tentative conclusion during consideration of the request for technical advice. However, in order to afford taxpayers an appropriate opportunity to prepare and present their position, 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 17.02 of this revenue procedure regarding discussions of the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative.

**Advises the field or area office of final conclusions**

**.10** In all cases, the branch representative will inform the examining officer or appeals officer of the national office's final conclusions. The examining officer or appeals officer will be offered the opportunity to discuss the issues and the national office's final conclusions before the technical advice memorandum is issued.

**If needed, requests additional information**

**.11** If, following the initial contact referenced in section 16.03 of this revenue procedure, it is determined, after discussion with the branch chief or reviewer, that additional information is needed, a branch representative will obtain the additional information from the taxpayer or from the director or the area director, appeals, in the most expeditious manner possible. Any additional information requested from the taxpayer by the national office must be submitted by letter with a penalties of perjury statement within 21 calendar days after the request for information is made.

**(1) Request to receive a request for additional information by fax.** To facilitate prompt action on technical advice requests, the taxpayer is encouraged to request that if the Service requests additional information from the taxpayer, the Service does so by fax.

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 technical advice 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.

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 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.

(2) **Penalties of perjury statement.** Additional information submitted to the national 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 and dated by the taxpayer, not the taxpayer’s representative. A stamped signature is not permitted.

(3) **21-day period will be extended if justified and approved.** A written request for an extension of time to submit additional information must be received by the national office within the 21-day period, giving compelling facts and circumstances to justify the proposed extension. The associate or assistant chief counsel, as appropriate, of the office to which the case is assigned will determine whether to grant or deny the request for an extension of the 21-day period. No extension will be granted without the approval of the associate or assistant chief counsel, as appropriate. Except in rare and unusual circumstances, the national office will not agree to an extension of more than 10 working days beyond the end of the 21-day period. There is no right to appeal the denial of a request for extension.

(4) **If the taxpayer does not submit additional information.** If the national office does not receive the additional information within the 21-day period, plus any extensions granted by the associate or assistant chief counsel, as appropriate, the national office will issue the technical advice memorandum based on the existing record.

**Requests taxpayer to send additional information to the national office and a copy to the director or area director, appeals**

.12 Whether or not requested by the Service, any additional information submitted by the taxpayer should be sent to the national office. Generally, the taxpayer needs only to submit the original of the additional information to the national office. However, in appropriate cases, the national office may request additional copies of the information.

Also, the taxpayer must send a copy of the additional information to the director or the area director, appeals, for comment. Any comments by the director or the area director, appeals, must be furnished promptly to the appropriate branch in the national office. If the director or the area director, appeals, does not have any comments, he or she must notify the branch representative promptly.

**Informs the taxpayer when requested deletions will not be made**

.13 Generally, before replying to the request for technical advice, the national office informs the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum 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 arguments supporting the taxpayer’s proposed deletions.

The Service attempts, if possible, to resolve all disagreements about proposed deletions before the national office replies to the request for technical advice. 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 technical advice memorandum. These matters, however, may be considered at any conference otherwise scheduled for the request. See section 17.04 of this revenue procedure for the procedures to protest the disclosure of information in the technical advice memorandum.

## **Prepares reply in two parts**

**.14** The replies to technical advice requests are 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 or area office strategic advice that need not be discussed with the taxpayer. If the transmittal memorandum provides more than the fact that the technical advice memorandum 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 disclosure under § 6110.

The second part is the technical advice memorandum, which contains—

- (1) a statement of the issues;
- (2) the conclusions of the national 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 national office.

The conclusions give direct answers, whenever possible, to the specific issues raised by the field or area office. However, the national office is not bound by the precise statement of the issues as submitted by the taxpayer or by the field or area office and may reframe the issues to be answered in the technical advice memorandum. The discussion of the issues will be in sufficient detail so that the field or appeals officials will understand the reasoning underlying the conclusion.

Accompanying the technical advice memorandum is a notice under § 6110(f)(1) of intention to disclose a technical advice memorandum (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**

**.15** Replies to requests for technical advice are addressed to the director (see paragraph 1 of description of terms used in section 1 of this revenue procedure) or the area director, appeals. A copy of the reply to a request from LMSB should be mailed simultaneously to the field personnel who requested it under the signature authority of the director. Replies to requests from appeals should be routed to the appropriate area office through the Chief, Appeals, C:AP:LMSB.

## **Sends a copy of reply to appropriate division counsel**

**.16** The national office will send a copy of the reply to the request for technical advice to the division counsel of the operating division that has jurisdiction of the taxpayer's tax return.

## **SECTION 17. HOW DOES A FIELD OR AREA OFFICE USE THE TECHNICAL ADVICE?**

### **Generally applies advice in processing the taxpayer's case**

**.01** The director or the area director, appeals, must process the taxpayer's case on the basis of the conclusions in the technical advice memorandum unless—

- (1) the director or the area director, appeals, decides that the conclusions reached by the national office in a technical advice memorandum should be reconsidered and requests

a reconsideration. The reconsideration process may include a meeting held by the field participants who requested technical advice and the national office participants who prepared the memorandum;

(2) in the case of technical advice unfavorable to the taxpayer, the area director, appeals, decides to settle the issue under existing authority; or

(3) in the case of technical advice unfavorable to a Coordinated Industry Case (formerly Coordinated Examination Program) taxpayer on a coordinated issue within the Office of Pre-Filing and Technical Guidance, LMSB, on which appeals has coordinated issue papers containing settlement guidelines or positions, the team manager decides to settle the issue under the settlement authority delegated in Delegation Order No. 247, 1996–1 C.B. 356.

Except as provided in paragraph (1), (2), or (3) of this section 17.01, the conclusions in a technical advice memorandum involving a § 103 obligation and the issuer of this obligation must be treated by the director or the area director, appeals, as applying to the issuer and any holder of the obligation, unless the holder initiates a request for technical advice on the same issue addressed in the technical advice memorandum involving the issuer, and the national office issues a technical advice memorandum involving that issue and that holder.

#### **Discussion with the taxpayer**

**.02** The national office will not discuss the contents of the technical advice memorandum with the taxpayer or the taxpayer’s representative until the taxpayer has been given a copy of the technical advice memorandum by the field or area office. See section 16.09 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer or the taxpayer’s representative.

#### **Gives copy to the taxpayer**

**.03** The director or the area director, appeals, only after adopting the technical advice, gives the taxpayer—

(1) a copy of the technical advice memorandum described in section 16.14 of this revenue procedure; and

(2) the notice under § 6110(f)(1) of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

The director or appeals officer has 30 calendar days after receipt of a technical advice memorandum to either formally request reconsideration or give the adopted technical advice memorandum to the taxpayer. The director or appeals officer must notify the national office when the technical advice memorandum is given to the taxpayer.

These requirements do not apply to a technical advice memorandum involving a criminal or civil fraud investigation, or a jeopardy or termination assessment, as described in section 11.08 of this revenue procedure.

#### **Taxpayer may protest deletions not made**

**.04** After receiving the notice under § 6110(f)(1) of intention to disclose the technical advice memorandum, 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 technical advice memorandum proposed to be open to public inspection with brackets around the deletions proposed by the taxpayer that have not been made by the national office.

Generally, the national office considers only the deletion of material that the taxpayer has proposed be deleted or other deletions as required under § 6110(c) before the national

office reply is sent to the director or the area director, appeals. Within 20 calendar days after it receives the taxpayer's response to the notice under § 6110(f)(1), the national office must mail to the taxpayer its final administrative conclusion about the deletions to be made.

**.05** If the national office tells the director or the area director, appeals, that a copy of the technical advice memorandum should not be given to the taxpayer and the taxpayer requests a copy, the director or the area director, appeals, will tell the taxpayer that no copy will be given.

**When no copy is given to the taxpayer**

## **SECTION 18. WHAT IS THE EFFECT OF TECHNICAL ADVICE?**

**Applies only to the taxpayer for whom technical advice was requested**

**.01** A taxpayer may not rely on a technical advice memorandum 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 technical advice memorandum that is favorable to the taxpayer is applied retroactively.

Moreover, because technical advice, as described in section 2 of this revenue procedure, is issued only on closed transactions, a holding that is adverse to the taxpayer is also applied retroactively, unless 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 Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate, exercises the discretionary authority under § 7805(b) to limit the retroactive effect of the holding.

**Generally applied retroactively to modify or revoke prior technical advice**

**.03** A holding that modifies or revokes a holding in a prior technical advice memorandum 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 technical advice memorandum 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 technical advice memorandum.

**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 technical advice memorandum involving a continuing action or a series of actions occurring after the material facts on which the technical advice memorandum is based have changed.

**Does not apply retroactively under certain conditions**

**.06** Generally, a technical advice memorandum that modifies or revokes a letter ruling or another technical advice memorandum is not applied retroactively either to the taxpayer to whom or for whom the letter ruling or technical advice memorandum was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling or technical advice memorandum 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 technical advice memorandum 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 technical advice memorandum acted in good faith in relying on the letter ruling or technical advice memorandum, and the retroactive modification or revocation would be to the taxpayer's detriment. For example, the tax liability of each shareholder is directly involved in a letter ruling or technical advice memorandum on the reorganization of a corporation. However, the tax liability of a member of an industry is not directly involved in a letter ruling or technical advice memorandum issued to another member and, therefore, the holding in a modification or revocation of a letter ruling or technical advice memorandum 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 technical advice memorandum previously issued to another client.

When a letter ruling to a taxpayer or a technical advice memorandum 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 19. HOW MAY RETROACTIVE EFFECT BE LIMITED?**

### **Taxpayer may request that retroactivity be limited**

**.01** Under § 7805(b), 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 Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as the Commissioner's delegate, may prescribe the extent, if any, to which a technical advice memorandum will be applied without retroactive effect.

A taxpayer for whom a technical advice memorandum was issued or for whom a technical advice request is pending may request that 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 Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate, limit the retroactive effect of any holding in the technical advice memorandum or of any subsequent modification or revocation of the technical advice memorandum.

When germane to a pending technical advice request, a taxpayer should request to limit the retroactive effect of the holding of the technical advice memorandum early during the consideration of the technical advice request by the national office. This § 7805(b) request should be made initially as part of that pending technical advice request. The national office, however, will consider a § 7805(b) request to limit the retroactive effect of the holding if the request is made at a later time.

**Form of request to limit retroactivity—continuing transaction before examination of return**

**.02** When a technical advice memorandum 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 technical advice memorandum 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 sections 8 and 12.11 of Rev. Proc. 2002–1.

**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 area director, appeals (including when the taxpayer is informed that the director or the area director, appeals, will recommend that a technical advice memorandum, 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 technical advice.

The request must meet the general requirements of a technical advice request, which are given in sections 6, 7, and 10 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 18.06 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 area director, appeals, who must then forward the request to the national office for consideration.

**Taxpayer's right to a conference**

**.04** When a request for technical advice concerns only the application of § 7805(b), the taxpayer has the right to a conference in the national office in accordance with the provisions of section 14 of this revenue procedure. In accordance with section 14.02 of this revenue procedure, the examining officer or appeals officer will be offered the opportunity to attend the conference on the § 7805(b) issue. Section 14.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

If the request for application of § 7805(b) is included in the request for technical advice 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 technical advice 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.

**SECTION 20. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2001–2?**

**.01** Section 1 is amended to reflect the current descriptions of the LMSB and SB/SE divisions.

**.02** Section 5.03(2) is amended to reflect the current operating hours of the courier's desk.

**.03** Section 8 is added to state when technical advice should not be issued, including on frivolous issues, and all the subsequent sections are renumbered.

**.04** Section 10.04 is amended to require the field or area office to submit three copies of the request for technical advice.

**.05** Section 12.05 is added to set forth special procedures applicable to appeals regarding frivolous issues.

**.06** Section 16.15 is amended to provide that with respect to a request for technical advice from LMSB, a copy of the reply to this request should be mailed, at the same time the reply is mailed to the director, to the field personnel who requested the request under the signature authority of the director.

**.07** Section 17.01(1) is amended to reflect the Service's existing practice regarding the reconsideration process.

**.08** Section 17.03 is amended to provide that (1) the director or appeals officer has 30 calendar days after receipt of a technical advice memorandum to either formally request reconsideration or give the adopted technical advice memorandum to the taxpayer; and (2) the director or appeals office must notify the national office when the technical advice memorandum is given to the taxpayer. However, these requirements do not apply to a technical advice memorandum involving a criminal or civil fraud investigation, or a jeopardy or termination assessment.

**SECTION 21. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?**

Rev. Proc. 2001-2, 2001-1 I.R.B. 79, as modified by Rev. Proc. 2001-41, 2001-33 I.R.B. 173, is superseded.

**SECTION 22. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?**

This revenue procedure is effective January 7, 2002.

**DRAFTING INFORMATION**

The principal author of this revenue procedure is Joseph Dewald 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), 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), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), contact George Bowden or Henry Schneiderman at (202) 622-3400 (not a toll-free call);

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

(3) the Commissioner (Large and Mid-Size Business Division), contact Nicholas Donadio at (202) 283-8408 (not a toll-free call);

(4) the Commissioner (Small Business and Self-Employed Division), contact John Brueggeman at (336) 378-2821 (not a toll-free call);

(5) the Commissioner (Wage and Investment Division), contact Hugh Barrett at (404) 338-9903; or

(6) the Chief, Appeals, contact Thomas R. Roley at (202) 694-1822 (not a toll-free call).

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## Rev. Proc. 2002-3

### SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 The purpose of this revenue procedure is to update Rev. Proc. 2001-3, 2001-1 I.R.B. 111, as amplified and modified by subsequent revenue procedures, 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 & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (Passthroughs & 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. 2002-7, 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. 2002-4, this Bulletin, and section 3.02 of Rev. Proc. 2002-6, this Bulletin.

.02 Changes.

(1) Section 3.01(9) has been revised to reflect the changes made by Ann. 2001-25, 2001-11 I.R.B. 895.

(2) New section 3.01(10), which concerns § 115 and income of states, municipalities, etc., has been moved from old section 3.01(9).

(3) Section 3.01(30) has been revised to reflect changes made by Ann. 2001-25, 2001-11 I.R.B. 895.

(4) New section 3.01(55) has been added, which concerns §§ 3121, 3306 and 3401, and determination of worker status for purposes of federal employment taxes and income tax withholding and Form SS-8.

(5) New section 3.02(9), which describes frivolous issues on which the Service generally will not rule, has been moved from old section 4.02(8) and amended to cross reference section 7.04 of Rev. Proc. 2002-1.

(6) Section 4.01(8) has been revised to reflect updated procedures contained in Rev. Proc. 96-16, 1996-1 C.B. 630.

(7) Section 4.01(11) has been revised to reflect that Rev. Rul. 2001-31, 2001-26 I.R.B. 1348, superseded Rev. Rul. 77-316 and modified Rev. Rul. 78-338.

(8) New section 5.01 has been added, reflecting that Rev. Proc. 2001-30, 2001-19 I.R.B. 1163, deleted old section 5.01.

(9) New section 5.06 has been added, reflecting that Rev. Proc. 2001-51, 2001-43 I.R.B. 369, deleted old section 5.06.

(10) Section 6.02 has been revised to reflect that recent publications modified and amplified Rev. Proc. 99-49, 1999-2 C.B. 725.

(11) New section 6.06 has been added, which concerns requests from Qualified Master-Feeder Structures, as described in section 4.02 of Rev. Proc. 2001-36, 2001-23 I.R.B. 1326, for permission to aggregate built-in gains and losses from contributed qualified financial assets.

### 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 extensive 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. 2002-1, this Bulletin, particularly section 7 captioned "Under What Circumstances Does the Service Have Discretion to Issue Letter Rulings and 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 deferred 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 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 Income Tax Regulations if the group consisted of fewer than 10 employees.

(3) 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.

(4) 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.

(5) 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.

(6) Section 105.—Amounts Received Under Accident and Health Plans.—Whether a medical reimbursement plan, funded by employer contributions, containing a provision allowing unused amounts to be carried over and accumulated in an employee's account qualifies as an accident and health plan under § 105.

(7) Section 105(h).—Amount Paid to Highly Compensated Individuals Under Discriminatory Self-Insured Medical Expense Reimbursement Plan.—Whether, following a determination that a self-insured medical expense reimbursement plan is discriminatory, that plan had previously made reasonable efforts to comply with tax anti-discrimination rules.

(8) 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.

(9) Section 115.—Income of states, municipalities, etc.—Whether 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.)

(10) 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.

(11) 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.

(12) 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.

(13) Section 121 and former § 1034.—Exclusion of Gain from Sale of Principal Residence; Rollover of Gain on Sale of Principal Residence.—Whether property qualifies as the taxpayer's principal residence.

(14) 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.

(15) Section 162.—Trade or Business Expenses.—Whether compensation is reasonable in amount.

(16) 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.)

(17) 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.

(18) 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.

(19) 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.

(20) Section 264(c)(1).—Certain Amounts Paid in Connection with Insurance Contracts.—Whether § 264(c)(1) applies.

(21) Section 269.—Acquisitions Made to Evade or Avoid Income Tax.—Whether an acquisition is within the meaning of § 269.

(22) 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 prescribed in the revenue procedure providing optional rules for substantiating the amount of travel expenses for the period in which the expense was paid or incurred, such as Rev. Proc. 97-59, 1997-2 C.B. 594, or its successor, Rev. Proc. 98-64, 1998-2 C.B. 825.

(23) 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.

(24) 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.

(25) 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.

(26) 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.

(27) 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.

(28) Section 312.—Effect on Earnings and Profits.—The determination of the amount of earnings and profits of a corporation.

(29) 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.

(30) 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 matters. Notwithstanding the foregoing, and to the extent the transaction is not described in another no-rule section: (1) the Service will rule on the entire transaction, and not just the significant issue; and (2) 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.

**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.

As a pilot program to better serve taxpayers the No-Rule for §§ 368(a)(1)(A), (B), (C), (E) and (F), and §§ 332, 351, and 1036 were combined, simplified and expanded. Our objective is to encourage taxpayers to seek rulings on transactions involving these provisions where there are significant issues that are not essentially free from doubt, and to prevent expending limited Service resources on the tax consequences of transactions that are clear under controlling authorities. In addition, the Service will now rule on an entire transaction if there is a significant issue, and the Service eliminated the overlap provision which prohibited the Service from issuing rulings under any Code section if the transaction qualifies under both one of the sections listed in this revenue procedure and under a section not listed in this revenue procedure.

(31) Section 351.—See section 3.01(30) above.

(32) Section 368.—See section 3.01(30) above.

(33) Section 368(a)(1)(B).—Definitions Relating to Corporate Reorganizations.—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).

(34) Section 425.—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 modifica-

tion which results in the issuance of a new option by reason of failing to satisfy the spread test requirement of § 425(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 § 425(a)(2).

(35) 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.

(36) 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.

(37) 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.

(38) Section 453.—See section 3.01(29), above.

(39) Section 457.—Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.—The tax effect of provisions under the Small Business Job Protection Act affecting plans described in § 457(b), if such provisions do not comply with section 4 of Rev. Proc. 98-40, 1998-2 C.B. 134.

(40) 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.

(41) 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.

(42) 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.

(43) 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.

(44) Section 704(e).—Family Partnerships.—Matters relating to the validity of a family partnership when capital is not a material income producing factor.

(45) Section 761.—See section 3.01(5), above.

(46) 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.

(47) Section 1034 (prior to TRA 1997).—See section 3.01(13), above.

(48) 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.

(49) Section 1239.—See section 3.01(29), above.

(50) Section 1551.—Disallowance of the Benefits of the Graduated Corporate

Rates and Accumulated Earnings Credit.—Whether a transfer is within § 1551.

(51) Section 2031.—Definition of Gross Estate.—Actuarial factors for valuing interests in the prospective gross estate of a living person.

(52) Section 2512.—Valuation of Gifts.—Actuarial factors for valuing prospective or hypothetical gifts of a donor.

(53) 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.

(54) Sections 3121, 3306, and 3401.—Definitions; Employment Taxes.—Who is the employer of an “employee-owner” as defined in § 269A(b)(2).

(55) Sections 3121, 3306, 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.

(56) 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.)

(57) 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.

(58) Section 7701.—See section 3.01(5), 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 following 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. 2002-1.

(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 7.04 of Rev. Proc. 2002-1, 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.—Determina-

tions 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 nonpurpose 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).

(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.—With respect to requests made pursuant to Rev. Proc. 96-16, 1996-1 C.B. 630, 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 subparagraph (5) output of the facility as defined in § 1.103-7(b)(5)(ii)(b) (issued under former § 103(b)). 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) Section 162.—Trade or Business Expenses.—Whether the requisite risk shifting and risk distribution necessary to constitute insurance are present for purposes of determining the deductibility under § 162 of amounts paid (premiums) by a taxpayer for insurance.

(12) 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.

(13) Section 163.—See section 4.01(3), above.

(14) Section 167.—Depreciation.

- (i) Useful lives of assets.

(ii) Depreciation rates.

(iii) Salvage value of assets.

(15) 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.

(16) 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).

(17) 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.

(18) 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).

(19) 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).

(20) Section 262.—See section 4.01(12), above.

(21) 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.

(22) 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.

(23) 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.)

(24) 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).

(25) Section 306.—Dispositions of Certain Stock.—Whether the distribution, 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).

(26) Sections 331 and 332.—See section 4.01(24), above.

(27) 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.

(28) Section 346(a).—See sections 4.01(24) and (27) above.

(29) 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.

(30) 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).

(31) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether the active business requirement of § 355(b) is met when the gross assets of the trades or businesses relied on to satisfy that requirement will have a fair market value that is less than 5 percent of the total fair market value of the gross assets of the corporation directly conducting the trades or businesses. The Service may rule that the trades or businesses satisfy the active trade or business requirement of § 355(b) if it can be established that, based upon all relevant facts and circumstances, the trades or businesses are not *de minimis* compared with the other assets or activities of the corporation and its subsidiaries.

(32) 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 § 1.441-4T(d)(1) (ii).

(33) 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).

(34) 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.

(35) Section 451.—See section 4.01(4), above.

(36) 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.)

(37) Section 642.—Special Rules for Credits and Deductions; Pooled Income Fund.—Whether a pooled income fund satisfies the requirements described in § 642(c)(5).

(38) Section 664.—Charitable Remainder Trusts.—Whether a charitable remainder trust that provides for annuity or unitrust payments for one or two measuring lives satisfies the requirements described in § 664.

(39) 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.

(40) 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.

(41) Section 816.—Life Insurance Company Defined.—Whether the requisite risk shifting and risk distribution necessary to constitute insurance are present for purposes of determining if a company is an "insurance company" under § 1.801-3(a), unless the facts of the

transaction are within the scope of Rev. Rul. 78-338, 1978-2 C.B. 107, or Rev. Rul. 77-316, 1977-2 C.B. 53.

(42) Section 1362.—Election; Revocation; Termination.—All situations in which an S corporation is eligible to obtain relief for late S corporation, qualified subchapter S subsidiary, qualified subchapter S trust, or electing small business trust elections under sections 4 and 5 of Rev. Proc. 98-55, 1998-2 C.B. 645. (For instructions on how to seek this relief, see Rev. Proc. 98-55.)

(43) 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.

(44) 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).

(45) 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 qualifies for a charitable deduction under § 2055(e)(2)(A).

(46) 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.

(47) 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.

(48) 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).

(49) 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 qualifies for a charitable deduction under § 2522(c)(2)(A).

(50) 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.

(51) 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.

(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.

(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. 2002-1.

**SECTION 5. AREAS UNDER EXTENSIVE 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 Section 457.—Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.—The tax treatment of any § 457 plan that provides that a loan may be made from assets held by such plan to any participants or beneficiaries under the plan.

.03 Section 1031.—Exceptions.—Whether an undivided fractional interest in real property is an interest in an entity that is not eligible for tax-free exchange under § 1031(a)(1).

.04 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).

.05 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.

.06 Section 7701.—Definitions.—Whether arrangements where taxpayers acquire undivided fractional interests in real property constitute separate entities for federal tax purposes.

**SECTION 6. AREAS COVERED BY AUTOMATIC APPROVAL PROCEDURES IN WHICH RULINGS WILL NOT ORDINARILY BE ISSUED**

.01 Section 442.—Change of Annual Accounting Period.—All requests for change in annual accounting period where the Service has provided an administrative procedure for obtaining a change in annual accounting period. *See* Rev. Procs. 2000–11, 2000–1 C.B. 309 (certain corporations); 87–32, 1987–2 C.B. 396, as modified by § 301.9100–3 (partnership, S corporation, or personal service corporation seeking a natural business year or an ownership taxable year); 68–41, 1968–2 C.B. 943, as modified by Rev. Proc. 81–40, 1981–2 C.B. 604 (trusts held by certain fiduciaries needing a workload spread); and 66–50, 1966–2 C.B. 1260, as modified by Rev. Proc. 81–40 (individual seeking a calendar year).

.02 Section 446.—General Rule for Methods of Accounting.—Except as otherwise provided in the listed revenue procedures, all requests for change in method of accounting where the Service has provided an administrative procedure for obtaining a change in method of accounting. *See* Rev. Proc. 99–49, 1999–2 C.B. 725 (accounting method changes described in the Appendix to Rev. Proc. 99–49 involving §§ 56, 162, 167, 168, 171, 174, 197, 263, 263A, 404, 446, 451, 454, 455, 461, 467, 471, 472, 475, 585, 1272, 1273, 1278, and 1281, and former § 168), as modified and amplified by Rev. Proc. 2001–46, 2001–37 I.R.B. 263 (certain taxpayers seeking to change their method of accounting for railroad track structure expenditures to the track maintenance allowance method provided in Rev. Proc. 2001–46), Rev. Proc. 2001–25, 2001–12 I.R.B. 913 (certain taxpayers seeking to change their method of accounting for stated interest on short-term loans made in the ordinary course of business), Rev. Proc. 2001–24, 2001–10 I.R.B. 788 (certain taxpayers seeking to change their method of accounting for cash advances on commissions paid to their agents), Rev. Proc. 2001–23, 2001–10 I.R.B. 784 (certain taxpayers seeking to change their method of accounting to the Used Vehicle Alternative LIFO Method provided in Rev. Proc. 2001–23), Rev. Proc. 2001–10, 2001–2 I.R.B. 272 (qualifying taxpayers with average annual gross receipts of \$1 million or less seeking to change from an accrual method to the cash method or

from an inventory method to a method complying with § 1.162–3, this revenue procedure is effective for taxable years ending on or after December 17, 1999, and was released to the public on December 6, 2000), Rev. Rul. 2001–60, 2001–51 I.R.B. 1 (certain taxpayers seeking to change their method of accounting for depreciation of modern golf course greens), Rev. Rul. 2001–8, 2001–9 I.R.B. 726 (certain taxpayers seeking to change their method of accounting for payments made or received with respect to floor stocks taxes to conform with the holding of Rev. Rul. 2001–8), Rev. Rul. 2001–4, 2001–3 I.R.B. 295 (certain taxpayers seeking to change their method of accounting for costs incurred to perform work on aircraft airframes as part of a heavy maintenance visit to conform to the holding of Rev. Rul. 2001–4), and Notice 2001–23, 2001–12 I.R.B. 911 (modifying Rev. Rul. 2001–4 by extending the application of the automatic consent for change in method of accounting for certain taxpayers); Rev. Proc. 2000–50, 2000–2 C.B. 601 (taxpayers seeking to change their treatment of certain computer software costs), Rev. Proc. 2000–38, 2000–2 C.B. 310 (certain taxpayers seeking to change to any of the three permissible methods of accounting for distributor commissions prescribed in Rev. Proc. 2000–38), Rev. Rul. 2000–7, 2000–1 C.B. 712 (certain taxpayers seeking to change their method of accounting for removal costs to conform with the holding in Rev. Rul. 2000–7), Rev. Rul. 2000–4, 2000–1 C.B. 331 (certain taxpayers seeking to change their method of accounting for ISO 9000 certification costs to conform with the holding in Rev. Rul. 2000–4), and Notice 2000–4, 2000–1 C.B. 313 (certain taxpayers seeking to change their method of accounting for depreciation of MACRS property acquired in a transaction to which § 1031 or § 1033 applies); 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); Rev. Proc. 97–43, 1997–2 C.B. 494 (certain taxpayers required to change their method of accounting as a result of making elections

out of certain exemptions from dealer status for purposes of § 475); Rev. Proc. 92-67, 1992-2 C.B. 429 (certain taxpayers with one or more market discount bonds seeking to make a § 1278(b) election or a constant interest rate election); Rev. Proc. 92-29, 1992-1 C.B. 748 (certain taxpayers seeking to use an alternative method under § 461(h) for including common improvement costs in basis); and Rev. Proc. 91-51, 1991-2 C.B. 779 (certain taxpayers under examination that sell mortgages and retain rights to service the mortgages).

.03 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).

.04 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, or for automatic inadvertent termination or inadvertent invalid election relief under section 6 of Rev. Proc. 98-55, 1998-2 C.B. 643.

.05 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. Procs. 91-71, 1991-2 C.B. 900 (certain corporations seeking reconsolidation within the 5-year period specified in § 1504(a)(3)(A)); 90-39, 1990-2 C.B. 365 (certain affiliated groups of corpora-

tions 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 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).

.06 Section 704(c).—Contributed Property—Requests from Qualified Master-Feeder Structures, as described in section 4.02 of Rev. Proc. 2001-36, 2001-23 I.R.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.

## **SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES**

Rev. Procs. 2001-3, 2001-1 I.R.B. 111, 2001-30, 2001-19 I.R.B. 1163, 2001-36, 2001-23 I.R.B. 1326, and 2001-51, 2001-43 I.R.B. 369, are superseded.

## **SECTION 8. EFFECTIVE DATE**

This revenue procedure is effective January 7, 2002.

## **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(30), 3.02(1) and (3), 4.01(31), 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 Graham L. Barron of the Office of Associate Chief Counsel (Corporate). For further information about this revenue procedure, please contact Mr. Barron at (202) 622-7790 (not a toll-free call).

## Rev. Proc. 2002-4

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<b>APPENDIX B—CHECKLIST FOR A LETTER RULING REQUEST</b>	<b>p. 169</b>
<b>SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?</b>	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.
<b>SECTION 2. WHAT CHANGES HAVE BEEN MADE TO REV. PROC. 2001–4?</b>	.01 This revenue procedure is a general update of Rev. Proc. 2001–4, 2001–1 I.R.B. 121, which contains the Service’s general procedures for employee plans and exempt organizations letter ruling requests. Most of the changes to Rev. Proc. 2002–4 involve minor revisions, such as updating citations to other revenue procedures.  .02 Section 6.02 is expanded to include §4980F(c)(4) of the Code as added by section 659 of the Economic Growth and Tax Relief Reconciliation Act of 2001.  .03 Section 9.04(3) is revised to reflect the current hours of operation of the Courier’s desk.  .04 The Exempt Organizations user fees described in section 9.04(4) have been moved and are consolidated in Rev. Proc. 2002–8, page 252, this Bulletin.
<b>SECTION 3. IN WHAT FORM IS GUIDANCE PROVIDED BY THE COMMISSIONER, TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION?</b>	
<b>In general</b>	.01 The Service provides guidance in the form of letter rulings, closing agreements, determination letters, opinion letters, information letters, revenue rulings, and oral advice.
<b>Letter ruling</b>	.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.”
<b>Closing agreement</b>	.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 and sponsors of regional prototype plans.

Rev. Proc. 2001–17, 2001–7 I.R.B. 589, establishes a voluntary closing agreement program for employee plans matters. The revenue procedure contains a formula for determining monetary sanctions and limits the sanction for employers who voluntarily enter the program.

### **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. 2002–6, page 203, this Bulletin.

### **Opinion letter**

.05 An “opinion letter” is a written statement issued by the Director, 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. 2000–20, 2000–1 C.B. 553 as modified by Rev. Proc. 2000–27, 2000–1 C.B. 1272. *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 IRA established under § 530 or an Archer medical savings account established under § 220, 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. *See* § 1.408-2(e)(6).

The completed application should be sent to:

Internal Revenue Service  
Commissioner, TE/GE  
Attention: T:EP:RA  
P.O. Box 27063  
McPherson Station  
Washington, DC 20038

Section 6.01(4) of Rev. Proc. 2002–8, page 252, this Bulletin, imposes a user’s fee for anyone applying for approval to become a nonbank trustee or custodian.

**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. 2002–6, 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. 2002–6, this Bulletin.

**Master and prototype 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) are contained in Rev. Proc. 2000–20, as modified by Rev. Proc. 2000–27. 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. 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. 2002–8). 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 corrections of Qualification or § 403(b) Failures under the Employee Plans Compliance Resolution System (EPCRS) are contained in Rev. Proc. 2001–17.

**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. 2002–1,

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 Bureau of Alcohol, Tobacco and Firearms.

## **SECTION 6. UNDER WHAT CIRCUMSTANCES DOES TE/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 state tuition programs described in § 529;
- (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. 94-41, 1994-1 C.B. 711), 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) as added by section 659 of EGTRRA;
- (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. 2002–8) 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. 2002–6, 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.

**SECTION 7. UNDER WHAT CIRCUMSTANCES DOES THE 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.

**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. 2002-6, 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. 2002-8;

(2) Classification of private foundation status as provided in Rev. Proc. 76-34, 1976-2 C.B. 656;

(3) Recognition of unusual grants to certain organizations under §§ 170(b)(1)(A)(vi) and 509(a)(2);

(4) Requests for relief under § 301.9100-1 of the Procedure and Administration Regulations in connection with applications for recognition of exemption;

(5) Advance approval under § 4945 of organizations' grant making procedures whose determination letter requests or applications disclose (or who have otherwise properly disclosed) a grant program or plans to conduct such a program. If questions arise regarding grant-making procedures that cannot be resolved on the basis of law, regulations, a clearly applicable revenue ruling, or other published precedent, EO Determinations will forward the matter to EO Technical for technical advice;

(6) Whether certain organizations are exempt from filing annual information returns under § 6033 as provided in Rev. Procs. 83-23, 1983-1 C.B. 687, 86-23, 1986-1 C.B. 564, and 95-48, 1995-2 C.B. 418;

(7) Whether certain organizations qualify as exempt operating foundations described in § 4940(d); and

(8) Advance approval of voter registration activities described in § 4945(f).

**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.

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.

**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. 2002-5, page 173, 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. 2002-6, 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. 2002-8.

**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.

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.

**Not on alternative plans or hypothetical situations**

.02 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**

.03 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**

.04 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**

.05 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**

.06 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**

.07 The Service does not issue letter rulings or determination letters on whether a cafeteria plan satisfies the requirements of § 125. *See also* Rev. Proc. 2002–3, 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**

.08 *See* section 3.02 of Rev. Proc. 2002–6 for employee plans matters on which determination letters will not be issued.

**Domicile in a foreign jurisdiction**

.09

(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 8.09(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

.10 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.

## 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 8.03 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 views**

**(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 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 application for exemption under § 501(a) as an organization described in § 501(c) or (d), or any application filed with respect to the qualification of a pension, profit-sharing or stock bonus plan, or an individual retirement account, 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 account;

(ii) Any document issued by the Internal Revenue Service in which the qualification or exempt status of an organization, plan, or account is granted, denied, or revoked or the portion of any document in which technical advice with respect thereto is given;

(iii) Any application filed and any document issued by the Internal Revenue Service with respect to the qualification or status of EP Technical master and prototype plans;

(iv) The portion of any document issued by the Internal Revenue Service with respect to the qualification or exempt status of an organization, plan, or account, of a proposed transaction by such organizations, plan, or account; and

(v) Any document issued by the Internal Revenue Service in which is discussed the status of an organization under § 509(a) or § 4942(j)(3), other than one issued to a non-exempt charitable trust described in § 4947(a)(1). This includes documents discussing the termination of private foundation status under § 507.

**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. A stamped signature is not 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(e), 6652(f), 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 of Practice 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 of Practice, 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.

**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 (2000)), which provide the rules for representing a taxpayer before the Service.

It is preferred that Form 2848, *Power of Attorney and Declaration of Representative*, 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. A stamped 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.

### Applicable user fee

**(14) Applicable user fee.** Section 10511 of the Revenue Act of 1987, Pub. L. No. 100–203, 101 Stat. 1330–382, 1330–446, enacted December 22, 1987, as amended by § 11319 of the Omnibus Budget Reconciliation Act of 1990, 1991–2 C.B. 481, 511,

enacted November 5, 1990, by § 743 of the Uruguay Round Agreements Act, 1995–1 C.B. 230, 239, enacted December 8, 1994, and by § 2 of the Tax Relief to Operation Joint Endeavor Participants Act, Pub. L. No. 104–117, 110 STAT. 827, 828, enacted March 20, 1996, requires taxpayers to pay user fees for requests for rulings, opinion letters, determination letters, and similar requests. Rev. Proc. 2002–8, page 252, 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.

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) To designate recipient of original or copy of letter ruling or determination letter.** Unless the power of attorney provides otherwise, 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. It is preferred that Form 2848, *Power of Attorney and Declaration of Representative*, be used to provide the representative's authorization. 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.

#### **Original of letter ruling or determination letter sent to taxpayer's representative**

**(b) To have original sent to taxpayer's representative.** A taxpayer may request that the original of the letter ruling or determination letter be sent to the taxpayer's representative. In this case, a copy of the letter ruling or determination letter will be sent to the taxpayer. The letter ruling or determination letter is addressed to the taxpayer's representative to whom the original is sent.

If the taxpayer wants the original of the letter ruling or determination letter sent to the taxpayer's representative, 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 the original of the letter ruling or determination letter is to be sent to the taxpayer's representative. When a taxpayer has more than one representative, the Service will send the original of the letter ruling or determination letter to the first representative named in the most recent power of attorney.

#### **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. 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 not to be sent to any representative.

#### **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):

Employee Plans  
Internal Revenue Service  
Commissioner, TE/GE  
Attention: T:EP:RA  
P.O. Box 27063  
McPherson Station  
Washington, D.C. 20038

Exempt Organizations  
Internal Revenue Service  
Commissioner, TE/GE  
Attention: T:EO:RA  
P.O. Box 27720  
McPherson Station  
Washington, D.C. 20038

Hand delivered requests must be marked RULING REQUEST SUBMISSION. The delivery should be made between the hours of 8:00 a.m. and 4:00 p.m.; where a receipt will be given:

Courier's Desk  
Internal Revenue Service  
Attention: T:EP or T:EO  
1111 Constitution Avenue, N.W.  
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: T:EP or T:EO  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

**Requests for determination letters**

(3) Requests for determination letters should be sent to:

Internal Revenue Service  
EP/EO Determinations Processing  
P.O. Box 192  
Covington, KY 41012-0192

For fees required with determination letter requests, see section 6 of Rev. Proc. 2002-8.

## 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 Examination office and thereby avoid premature EP or EO Examination 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. 2002-8 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 of Practice.

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. 2002-8), 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 § 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. 94-41, 1994-1 C.B. 711.

(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. 79-61, 1979-2 C.B. 575.

(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, 2000-42 I.R.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. 2002-8).

(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. 2002-6, 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. 2002-8.

**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 Alan Pipkin at (202) 283-9647 (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 is 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. Such 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 a time-available basis. 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. It is preferred that a Form 2848, *Power of Attorney and Declaration of Representative*, 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 or EO Examinations finds that a letter ruling should be revoked or modified, unless a waiver is obtained from EP or EO Technical, the findings and recommendations of the Director, EP or EO Examinations will be forwarded to EP or EO Technical for consideration before further action is taken by the Director, EP or EO Examinations. Such a referral to EP or EO Technical will be treated as a request for technical advice and the procedures of Rev. Proc. 2002-5 will be followed. Otherwise, the letter ruling is to be applied by the Director, EP or EO Examinations in determining the taxpayer's liability. Appropriate coordination with EP or EO 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.

#### **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, SB/SE-TE/GE 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. 2002-5.

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 as is required for a letter ruling found to be in error. 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. 2002-5.

### **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. 2002-5. 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. 2002-5.

### **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 the 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 judgement 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. 2001–4, 2001–1 I.R.B. 121, is superseded.

**SECTION 18. EFFECTIVE DATE**

This revenue procedure is effective January 7, 2002.

**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 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 Appendix B. 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 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 Luis O. Ortiz 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). Mr. Ortiz' telephone number is (202) 283-9652 (not a toll-free call). For exempt organization matters, please contact Mr. Wayne Hardesty (202) 283-8976 (not a toll-free call).

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## APPENDIX A

### SAMPLE FORMAT FOR A LETTER RULING REQUEST

*(Insert the date of request)*

Internal Revenue Service  
Commissioner, TE/GE  
Attention: 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), (c), and (d) of Rev. Proc. 2002–4, 2002–1 I.R.B. 127. (Hereafter, all references are to Rev. Proc. 2002–4 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), (c), and (d):

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)(c), 9.02(1)(d), 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).]

*D. ANALYSIS*

[The ruling request must contain a discussion of the facts and an analysis of the law. See sections 9.02(3), 9.02(6), 9.02(7), and 9.02(8).]

*E. CONCLUSION*

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

*F. PROCEDURAL MATTERS*

1. Rev. Proc. 2002-4 statements

- a. [The statement required by section 9.02(4).]
- b. [The statement required by section 9.02(5).]
- c. [The statement required by section 9.02(6) regarding whether the law in connection with the letter ruling request is uncertain and whether the issue is adequately addressed by relevant authorities.]
- d. [The statement required by section 9.02(7) when the taxpayer determines that there are no contrary authorities.]
- e. [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 9.03(5).]
- f. [If the taxpayer is requesting the letter ruling to be issued by fax, the ruling request should contain a statement to that effect. This statement must also contain a waiver of any disclosure violations resulting from the fax transmission. See section 9.03(4).]
- g. [If the taxpayer is requesting separate letter rulings on multiple issues, the letter ruling request should contain a statement to that effect. See section 9.03(1).]

2. Administrative

- a. A Power of Attorney is enclosed. [See sections 9.02(12) and 9.03(2).]
- b. The deletions statement and checklist required by Rev. Proc. 2002-4 are enclosed. [See sections 9.02(9) and 9.02(17).]
- c. The required user fee is enclosed. [See section 9.02(14).]

Very truly 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 9.02(13).]

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

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 five 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. 2002-4, 2002-1 I.R.B. 127, for issues under the jurisdiction of other offices. (Hereafter, all references are to Rev. Proc. 2002-4 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 8.02.

- Yes No 6. Are you requesting a letter ruling on alternative plans of a proposed transaction? See section 8.02.
- Yes No 7. Are you requesting the letter ruling for only part of an integrated transaction? See section 8.03.
- 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 \_\_\_\_\_ 10. Have you included a complete statement of all the facts relevant to the transaction? See section 9.02(1).
- Yes No N/A 11. Have you submitted with the request true copies of all wills, deeds, plan documents, and other documents relevant to the transaction, and labelled and attached them in alphabetical sequence? See section 9.02(2).
- Yes No  
Page \_\_\_\_\_ 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).
- Yes No  
Page \_\_\_\_\_ 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).
- Yes No  
Page \_\_\_\_\_ 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).
- Yes No  
Page \_\_\_\_\_ 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).
- Yes No  
Page \_\_\_\_\_ 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).
- Yes No  
Pages \_\_\_\_\_ 17. Have you included the required statement of relevant authorities in support of your views? See section 9.02(6).
- Yes No N/A  
Pages \_\_\_\_\_ 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.
- Yes No N/A  
Page \_\_\_\_\_ 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).

- Yes No N/A  
Page \_\_\_\_\_
20. Have you included in your request a statement identifying any pending legislation that may affect the proposed transaction? See section 9.02(8).
- Yes No
21. Is the request accompanied by the deletions statement required by § 6110? See section 9.02(9).
- Yes No N/A  
Page \_\_\_\_\_
22. Have you (or your authorized representative) signed and dated the request? See section 9.02(10).
- Yes No N/A
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).
- Yes No N/A  
Page \_\_\_\_\_
24. Have you included, signed and dated, the penalties of perjury statement in the form required by section 9.02(13)?
- Yes No N/A
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. 2002-8, page 252 , this Bulletin, for the correct amount and additional information on user fees.
- Yes No N/A
26. Are you submitting your request in duplicate if necessary? See section 9.02(15).
- Yes No N/A  
Pages \_\_\_\_\_
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).
- Yes No N/A
28. If you want the original of the ruling to be sent to a representative, does the power of attorney contain a statement to that effect? See section 9.03(2).
- Yes No N/A
29. 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).
- Yes No N/A  
Page \_\_\_\_\_
30. 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
31. 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 \_\_\_\_\_
32. 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 \_\_\_\_\_
33. 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

34. If your request is covered by any of the guideline revenue procedures or other special requirements listed in section 10 of Rev. Proc. 2002-4, have you complied with all of the requirements of the applicable revenue procedure?

Yes No N/A  
Page \_\_\_\_\_

35. 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

36. 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

\_\_\_\_\_

## Rev. Proc. 2002-5

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**SECTION 7. WHO IS RESPONSIBLE FOR REQUESTING TECHNICAL ADVICE?**

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- .01 An Employee Plans Examinations Area manager, Exempt Organizations Examinations Area manager, Employee Plans Determinations manager, Exempt Organizations Determinations manager, Appeals Area Director, SB/SE-TE/GE or Appeals Area Director, LMSB determines whether to request technical advice
- .02 Taxpayer may ask that issue be referred for technical advice

**SECTION 8. WHEN SHOULD TECHNICAL ADVICE BE REQUESTED?**

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- .01 Uniformity of position lacking
- .02 When technical advice can be requested
- .03 At the earliest possible stage

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**SECTION 10. WHAT MUST BE INCLUDED IN THE REQUEST FOR TECHNICAL ADVICE?**

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- .02 Statement pertaining to statute of limitations
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**SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?** This revenue procedure explains when and how Employee Plans Technical or Exempt Organizations Technical gives technical advice to an Employee Plans (EP) Examinations Area manager, an Exempt Organizations (EO) Examinations Area manager, an Employee Plans (EP) Determinations manager, an Exempt Organizations (EO) Determinations manager, or an Appeals Area Director, SB/SE-TE/GE 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 an Appeals Area Director, SB/SE-TE/GE requests technical advice regarding a tax matter.

**SECTION 2. WHAT CHANGES HAVE BEEN MADE TO REV. PROC. 2001–5?** .01 This revenue procedure is a general update of Rev. Proc. 2001–5, 2001–1 I.R.B. 164, which contains the general procedures for technical advice requests for matters within the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

.02 Section 9.01 is amended to clarify that any technical advice case is eligible for a pre-submission conference.

.03 Section 16.14 is revised to reflect the current structure for routing EP technical advice memoranda.

**SECTION 3. WHAT IS TECHNICAL ADVICE?** “Technical advice” means advice or guidance in the form of a memorandum furnished by the Employee Plans Technical or Exempt Organizations Technical offices, (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 an Appeals Area Director, SB/SE-TE/GE, 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 an Appeals Area Director, SB/SE-TE/GE include, when appropriate, an Appeals Area Director, LMSB, a Deputy Appeals Area Director,

LMSB, a Deputy Appeals Area Director, SB/SE-TE/GE or an Appeals Team Manager.) 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.

For purposes of technical advice, 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 technical advice 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. 2002-2, page 82, this Bulletin must be followed.

Technical advice resolves complex issues and helps 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 may have been asked and furnished for the same or similar issue for another tax period.

Technical advice does not include legal advice furnished to the EP or EO Examinations or the EP or EO Determinations or the appeals office in writing or orally, 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 for technical advice will not be denied merely because EP or EO Technical has 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.

#### **SECTION 4. ON WHAT ISSUES MAY OR MUST TECHNICAL ADVICE 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 technical advice 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 modified by Rev. Proc. 2002-8, page 252, as well as § 601.201(n) of the Statement of Procedural Rules, must be followed.

##### **Basis for requesting technical advice**

.03 Requests for technical advice 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 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 technical advice with respect to all exempt organizations and employee plans matters.

Except for those exemption application cases handled in EO Technical in accordance with section 6.02 of Rev. Proc. 90-27, EO Examinations, EO Determinations and appeals offices are required to request technical advice 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.

Regarding employee plans matters, a request for technical advice 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. 93-406, 1974-3 C.B. 1, 43, (3) amendments to defined contribution plans pursuant to Rev. Proc. 94-41, 1994-1 C.B. 711, in connection with a waiver of the minimum funding standard and a request for a determination letter (see section 15 of Rev. Proc. 2002-6, page 203, this Bulletin, and section 3.04 of Rev. Proc. 94-41), (4) termination/reestablishment and spinoff-termination cases in which EP Examinations or EP Determinations proposes that the Implementation Guidelines are not applicable, (5) a situation in which the employer has had a prior termination/reestablishment or spinoff-termination within 15 years of the time of the transaction or (6) 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 technical advice on the conversion.

**Special procedures for certain conversions**

.05 In the instance of section 4.04(6) 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: Technical advice 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 TECHNICAL ADVICE 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 Associate Chief Counsel (Procedure & Administration), and the Division Counsel/Associate Chief Counsel (TE/GE)**

.01 All procedures for obtaining technical advice on issues (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 Associate Chief Counsel (Procedure & Administration), and the Division Counsel/Associate Chief Counsel (TE/GE) including any matter pertaining to tax-exempt bonds or mortgage credit certificates, § 457 plans, § 526 of the Code (shipowners' protection and indemnity associations), § 528 (certain homeowners' associations) and 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. 2002-2.

**Alcohol, tobacco, and firearms taxes**

.02 Procedures for obtaining technical advice specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are under the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms.

**Excise taxes**

.03 Technical advice procedures 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. 2002-2.

**SECTION 6. MAY TECHNICAL ADVICE BE REQUESTED FOR A § 301.9100-1 REQUEST 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, requests for an extension of time for making an election or other application for relief under § 301.9100-1 of the Procedure and Administration Regulations made after the examination of the taxpayer's return has begun or made after the issues in the return are being considered by an appeals office or a federal court are letter ruling requests. Therefore, § 301.9100-1 requests should be submitted pursuant to Rev. Proc. 2002-4, page 127, this Bulletin, and require payment of the applicable user fee listed in section 6 of Rev. Proc. 2002-8.

**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. 2002-4, 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: 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: 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 8:00 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. 2002-8 for the appropriate user fee. Deliver to:

Courier's Desk  
Internal Revenue Service  
Attn: T:EP or T:EO  
1111 Constitution Avenue, N.W.  
Washington, D.C. 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, SB/SE-TE/GE 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. 2002-4. EP or EO Technical will notify the appropriate EP or EO Examinations Area manager or Appeals Area Director, SB/SE-TE/GE, 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, SB/SE-TE/GE, or government counsel.

## **SECTION 7. WHO IS RESPONSIBLE FOR REQUESTING TECHNICAL ADVICE?**

**EP or EO Examinations Area manager or EP or EO Determinations manager or Appeals Area Director, SB/SE-TE/GE determines whether to request technical advice**

.01 The EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director, SB/SE-TE/GE, determines whether to request technical advice on any issue being considered. 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, SB/SE-TE/GE. 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. 2002-6 and section 3.04 of Rev. Proc. 94-41 for the procedural rules applicable to this particular mandatory technical advice.  
**Taxpayer may ask that issue be referred for technical advice.**

.02 While a case is under the jurisdiction of EP or EO Examinations, EP or EO Determinations, or an Appeals Area Director, SB/SE-TE/GE, a taxpayer may request that an issue be referred to the EP or EO Technical office for technical advice.

## **SECTION 8. WHEN SHOULD TECHNICAL ADVICE BE REQUESTED?**

**Uniformity of position lacking**

.01 Technical advice 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 technical advice can 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 an Appeals Area Director, SB/SE-TE/GE. Technical advice 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.

EP or EO Examinations or EP or EO Determinations may not request technical advice 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 a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504). 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 technical advice on the applicability of any of the taxes involved.

EP or EO Examinations or EP or EO Determinations or an Appeals Area Director, SB/SE-TE/GE, also may not request technical advice 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.

**At the earliest possible stage**

.03 Once an issue is identified, all requests for technical advice should be made at the earliest possible stage in any 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 an Appeals Area Director, SB/SE-TE/GE's decision to request technical advice.

**SECTION 9. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED?**

**Pre-submission conference generally is permitted when a request for technical advice is likely and all parties agree to request the conference**

.01 In an effort to promote expeditious processing of requests for technical advice, EP or EO Technical generally will meet 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, including mandatory technical advice, is submitted to EP or EO Technical. In cases involving very complex issues, the EP or EO Examinations or the EP or EO Determinations or the appeals office and the taxpayer are encouraged to request a pre-submission conference. 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 technical advice and only after all parties agree that a pre-submission conference should be requested.

**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 technical advice, the factual information to be included in the request for technical advice, any collateral issues that either should or should not be included in the request for technical advice, and any other substantive or procedural considerations that will allow EP or EO Technical to provide the parties with technical advice 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. The conference is intended only to facilitate the overall technical advice process.

**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 technical advice. The request should include a brief explanation of the primary issue so that an assignment to the appropriate group can be made.

An original and one copy of the request should be submitted to the appropriate address listed in section 10.06 of this revenue procedure.

**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 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.

**Pre-submission conference generally held in person**

.05 Pre-submission conferences generally will be held in person in EP or EO Technical. However, if the EP or EO Examinations or the EP or EO Determinations or the appeals office personnel are unable to attend the conference, the conference may be conducted by telephone.

**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 technical advice, 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, preferably on Form 2848, Power of Attorney and Declaration of Representative.

**Pre-submission conference may not be taped**

.07 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**

.08 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 TECHNICAL ADVICE?**

**Statement of issues, facts, law, and arguments**

.01 Whether initiated by the taxpayer or by an EP or EO Examinations office or an EP or EO Determinations office or an appeals office, a request for technical advice must include the facts and the issues for which technical advice is requested, and 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.

**Taxpayer must submit statement if the taxpayer initiates request for technical advice**

(1) If the taxpayer initiates the request for technical advice, the taxpayer must submit to the EP or EO specialist or appeals officer, 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 officer determines that technical advice will be requested, the taxpayer's statement will be forwarded to EP or EO Technical with the request for technical advice.

**Taxpayer is encouraged to submit statement if Service initiates request for technical advice**

(2) If the request for technical advice 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 technical advice has been forwarded to EP or EO Technical, the statement will be forwarded to EP or EO Technical for association with the technical advice request.

**Statement of authorities contrary to taxpayer's position**

(3) Whether the request for technical advice 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.

**Statement pertaining to statute of limitations**

.02 As part of the request, the EP or EO Examinations or the EP or EO Determinations or the appeals office must submit a statement, in addition to the criteria on Form 5565 referred to below, that (1) the applicable statute of limitations has at least 180 calendar days to run before its expiration or (2) the applicable statute of limitations will run prior to 180 calendar days from the date a request is transferred to EP or EO Technical and the case should be processed on an expedited basis. If the EP or EO Examinations or the EP or EO Determinations or the appeals office obtains an extension of the statute of limitations while the request is being processed in EP or EO Technical, the office obtaining the extension must also submit a revised statement to EP or EO Technical advising it of the new expiration date.

If there are less than 61 calendar days remaining before the expiration of the statute of limitations with respect to a case being processed on an expedited basis, the case will be returned to the office responsible for statute control of the file unless a decision is made pursuant to IRM Multifunctional Handbook section 121.2, Statute of Limitations Handbook that the case can be timely processed. EP or EO Technical will telephone (or fax notice of) its decision to the requesting EP or EO Examinations or the EP or EO Determinations or the appeals office and will place a memorandum in the file to reflect whatever procedural steps have been taken.

**General provisions of §§ 6104 and 6110**

.03 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**

.04 The requirements for submitting statements and other materials or proposed deletions in technical advice memorandums 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**

.05 The text of a technical advice memorandum subject to § 6110 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 11.05 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 technical advice 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 technical advice memorandum is issued, additional deletions statements may be submitted.

The deletions statement must not appear in the request for technical advice but, instead, must be made in a separate document attached to the request.

The deletions statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature is not permitted.

The taxpayer should follow these same procedures to propose deletions from any additional information submitted after the initial request for technical advice. 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**

.06 The EP or EO Examinations or the EP or EO Determinations or the appeals office should use Form 5565, Request for Technical Advice — EP/EO, for transmitting a request for technical advice to EP or EO Technical using the addresses listed below.

**Address to send requests from EP or EO Examinations or EP or EO Determinations offices**

*Employee Plans*  
Internal Revenue Service  
Attn: T:EP:RA  
1111 Constitution Ave., NW  
Washington, DC 20224

*Exempt Organizations*  
Internal Revenue Service  
Attn: T:EO:RA  
1111 Constitution Ave., NW  
Washington, DC 20224

**Address to send requests from appeals offices**

Internal Revenue Service  
Director, Appeals LMSB Operations  
Attn: C:AP:LMSB  
Franklin Court Building  
1099 14<sup>th</sup> Street, NW  
Washington, DC 20005

**Number of copies of request to be submitted**

.07 The EP or EO Examinations or the EP or EO Determinations or the appeals office must submit (3) three copies of the request for technical advice to EP or EO Technical.

**Power of attorney**

.08 Any authorized representative, as described in section 9.02 of Rev. Proc. 2002-4, 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). It is preferred that Form 2848, *Power of Attorney and Declaration of Representative*, be used with regard to requests for technical advice under this revenue procedure.

## Case files

.09 The EP or EO Examinations or the EP or EO Determinations or the appeals office will submit copies of the original documents (the administrative file) to EP or EO Technical accompanying the applicable Form 5565. The EP or EO Examinations or the EP or EO Determinations or the appeals office will maintain the original documents (including any power of attorney).

## SECTION 11. HOW ARE REQUESTS HANDLED?

### Taxpayer notified

.01 Regardless of whether the taxpayer or the Service initiates the request for technical advice, the EP or EO Examinations or the EP or EO Determinations or the appeals office: (1) will notify the taxpayer that technical advice 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 officer initiates the request for technical advice, 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 technical advice memorandum described in section 11.06 of this revenue procedure.

### Conference offered

.02 When notifying the taxpayer that technical advice is being requested, the EP or EO specialist or appeals officer 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

.03 If the EP or EO specialist or appeals officer initiates the request for technical advice, the taxpayer has 10 calendar days after receiving the statement of facts and specific issues to submit to that specialist or officer 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, SB/SE-TE/GE.

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, SB/SE-TE/GE. 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 technical advice.

When EP or EO Examinations or EP or EO Determinations or the Appeals Area Director, SB/SE-TE/GE, and the taxpayer cannot agree on the material facts and the request for technical advice 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 technical advice, 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 technical advice involves the issue of whether a letter ruling or determination letter should be modified or revoked, EP or EO Technical will issue the technical advice.

**If the Service disagrees with the taxpayer's statement of facts**

.04 If the taxpayer initiates the action to request technical advice, 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, SB/SE-TE/GE.

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 technical advice. 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, SB/SE-TE/GE, may refuse to refer a taxpayer initiated request for technical advice to EP or EO Technical.

If the EP or EO Examinations or the EP or EO Determinations or the Appeals Area Director, SB/SE-TE/GE, submits a case involving a disagreement of material facts, EP or EO Technical, at its discretion, may refuse to provide technical advice. If EP or EO Technical chooses to issue technical advice, 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**

.05 When the EP or EO Examinations or the EP or EO Determinations or the appeals office initiates the request for technical advice, 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 technical advice 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, SB/SE-TE/GE, 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, SB/SE-TE/GE, 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, SB/SE-TE/GE, may decline to submit the request for technical advice.

However, if the EP or EO Examinations or the EP or EO Determinations or the Appeals Area Director, SB/SE-TE/GE, decides to request technical advice, 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**

.06 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 technical advice memorandum 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 technical advice memorandum 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 technical advice memorandum 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 technical advice**

.01 If the EP or EO specialist's or the appeal's referral of an issue to EP or EO Technical for technical advice does not warrant referral, the EP or EO specialist or the appeals officer 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 appeal decision not to seek technical advice**

.02 The taxpayer may appeal the decision of the EP or EO specialist or the appeals officer not to request technical advice. To do so, the taxpayer must submit to that specialist or officer, 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 technical advice. 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 Appeals Area Director, SB/SE-TE/GE.

### **EP or EO Examinations Area manager or EP or EO Determinations manager or Appeals Area Director, SB/SE-TE/GE, determines whether technical advice will be sought**

.03 The EP or EO specialist or the appeals officer 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, SB/SE-TE/GE, along with the EP or EO specialist's or the appeals officer's statement of why the issue should not be referred to EP or EO Technical. The manager or director determines, on the basis of the statements, whether technical advice will be requested.

If the manager or director determines that technical advice 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 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 10 calendar days after receiving the letter to notify the manager or director 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, SB/SE-TE/GE, not to request technical advice from EP or EO Technical. However, if the taxpayer does not agree with the proposed denial, all data on the issue for which technical advice 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 SB/SE-TE/GE Operating Unit as appropriate.

The Commissioner, Tax Exempt and Government Entities 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 area appeals office within 45 calendar days of receiving all the data regarding the request for technical advice whether the proposed

denial is approved or disapproved. The EP or EO Examinations or the EP or EO Determinations or area 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 area 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 technical advice 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, SB/SE-TE/GE, has been delegated to another official.

### **SECTION 13. HOW ARE REQUESTS FOR TECHNICAL ADVICE WITHDRAWN?**

#### **Taxpayer notified**

.01 Once a request for technical advice 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, SB/SE-TE/GE may withdraw that request for technical advice. He or she may ask to withdraw a request at any time before the responding transmittal memorandum transmitting the technical advice is signed.

The EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director, SB/SE-TE/GE, as appropriate, must notify the taxpayer in writing of an intent to withdraw the request for technical advice 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 technical advice 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 technical advice 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, SB/SE-TE/GE, 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, Appeals LMSB Operations, C:AP:LMSB. 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 technical advice proposed**

.01 If, after the technical advice request is analyzed, it appears that technical advice 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.

#### **Normally held within 21 days of contact with the taxpayer**

.02 The conference must be held within 21 calendar days after the taxpayer is contacted. If conferences are being arranged for more than one request for technical advice 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 officer 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, SB/SE-TE/GE may designate other Service representatives to attend 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 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). 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.

The 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, EP or EO Technical should be told orally 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. 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 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 in EP or EO Technical unless one of the circumstances discussed in section 14.09 of this revenue procedure exists. 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 and the reasons for it.

If 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.

No commitment will be made as to the conclusion that the Service will finally adopt regarding the outcome of the § 7805(b) issue or on any other issue discussed.

**Additional conferences may be offered**

.09 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.

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 officer may be offered the opportunity to participate in any additional taxpayer's conference, 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 Within 21 calendar days 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.

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, SB/SE-TE/GE, 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, SB/SE-TE/GE, does not have any comments, he or she must notify the group representative promptly.

If the additional information would have a significant impact on the facts in the request for technical advice, EP or EO Technical will ask EP or EO Examinations or EP or EO Determinations or the Appeals Area Director, SB/SE-TE/GE, 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, SB/SE-TE/GE, will give the additional information prompt attention.

If the additional information is not received from the taxpayer within 21 calendar days, the technical advice memorandum will be issued on the basis of the existing record.

An extension of the 21-day period 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 Services's decision are the same as those in sections 14.03 and 14.04 of this revenue procedure.

**Under limited circumstances, may schedule a conference to be held by telephone**

.11 Infrequently, taxpayers 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 does not warrant the expense of traveling to Washington, DC. If a taxpayer makes such a request, the group manager, or his or her delegate of the group to which the case is assigned, will decide if it is appropriate in the particular case to hold the conference of right by telephone. If the request is approved, the taxpayer will be advised when to call the Service representatives (not a toll-free call).

In accordance with section 14.02 of this revenue procedure, the EP or EO specialist or appeals officer 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 technical advice by contacting the EP or EO Examinations office or the EP or EO Determinations office or the appeals office that requested the technical advice. *See* section 16.08 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer's representative. *See* section 17.02 of this revenue procedure regarding discussions of the contents of the technical advice memorandum 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, SB/SE-TE/GE**

.02 The group representative or manager to whom the technical advice 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, SB/SE-TE/GE. In addition, an EP or EO Examinations Area manager or an EP or EO Determinations manager or an Appeals Area Director, SB/SE-TE/GE may get current information on the status of the request for technical advice by calling the person whose name and telephone number are shown on acknowledgment of receipt of the request for technical advice.

*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, SB/SE-TE/GE will be notified at the time the technical advice memorandum is mailed.

## **SECTION 16. HOW DOES EP OR EO TECHNICAL PREPARE THE TECHNICAL ADVICE MEMORANDUM?**

**Delegates authority to group managers**

.01 The authority to issue technical advice on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities 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 technical advice generally is given priority and processed expeditiously. As soon as the request for technical advice 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 10.05 of this revenue procedure relating to the deletions statement, the Service will follow the procedure in the 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 Usually, within 21 calendar days after the group receives the request for technical advice, a representative of the group telephones the EP or EO Examinations office or the EP or EO Determinations office or the 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.

**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 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 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 discusses with the EP or EO Examinations office or the EP or EO Determinations office or the appeals office 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 technical advice memorandum, 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 office or the appeals office should advise the taxpayer or the taxpayer's representative of the tentative conclusion before the scheduling 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 officer of EP or EO Technical's final conclusions. The EP or EO specialist or the appeals officer should be offered the opportunity to discuss the issues and EP or EO Technical's final conclusions before the technical advice memorandum 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, SB/SE-TE/GE, in the most expeditious manner possible. Any additional information requested from the taxpayer by EP or EO Technical must be submitted by letter with a penalties of perjury statement within 21 calendar days after the request for information is made.

**Penalties of perjury statement**

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 is not permitted.

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, 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 of the 21-day period. No extension will be granted without the approval of the appropriate group manager (or his or her delegate). 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. There is no right to appeal the denial of a request for an extension.

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 technical advice memorandum 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, SB/SE-TE/GE**

.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, SB/SE-TE/GE, 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, SB/SE-TE/GE, 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 technical advice, EP or EO Technical informs the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum 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 technical advice. 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 technical advice memorandum. 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 reply to a technical advice 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 technical advice memorandum, 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 technical advice memorandum. The discussion 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 technical advice memorandum subject to § 6110, is a notice under § 6110(f)(1) of intention to disclose the technical advice memorandum (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 technical advice 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 technical advice (1) from EP Examinations Area managers and (2) from EP Determinations managers that were sent to Headquarters before Nov. 1, 2000, are addressed to:

Internal Revenue Service  
Attn: EP Special Review — Room 1550  
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 EP manager.

Replies to requests for technical advice 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 technical advice from an Appeals Area Director, SB/SE-TE/GE are routed to the appropriate appeals office through the Director, Appeals LMSB Operations, C:AP:LMSB.

## **SECTION 17. HOW DOES AN EP OR EO EXAMINATIONS or EP OR EO DETERMINATIONS OR AN APPEALS OFFICE USE THE TECHNICAL ADVICE?**

### **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, SB/SE-TE/GE, must process the taxpayer's case on the basis of the conclusions in the technical advice memorandum unless—

(1) the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, SB/SE-TE/GE, decides that the conclusions reached by EP or EO Technical in a technical advice memorandum should be reconsidered, or

(2) the Appeals Area Director, SB/SE-TE/GE, in the case of technical advice 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 technical advice memorandum, EP or EO Examinations or EP or EO Determinations must follow the conclusions in a technical advice memorandum as to all issues and the Appeals Area Director, SB/SE-TE/GE, must follow the conclusions in a technical advice memorandum on issues of an organization's/plan's status or qualification. Thus, if the technical advice memorandum 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.

### **Discussion with the taxpayer**

.02 EP or EO Technical will not discuss the contents of the technical advice memorandum 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**

.03 The EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, SB/SE-TE/GE, only after adopting the technical advice, gives the taxpayer (1) a copy of the technical advice memorandum described in section 16.13, and (2) the notice under § 6110(f)(1) of intention to disclose the technical advice memorandum (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 technical advice memorandum involving a criminal or civil fraud investigation, or a jeopardy or termination assessment, as described in section 11.06 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**

.04 After receiving the notice under § 6110(f)(1) of intention to disclose the technical advice memorandum, 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 technical advice memorandum 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, SB/SE-TE/GE. 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**

.05 If EP or EO Technical tells the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, SB/SE-TE/GE, that a copy of the technical advice memorandum 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, SB/SE-TE/GE, will tell the taxpayer that no copy will be given.

## **SECTION 18. WHAT IS THE EFFECT OF TECHNICAL ADVICE?**

**Applies only to the taxpayer for whom technical advice was requested**

.01 A taxpayer may not rely on a technical advice memorandum issued by the Service for another taxpayer.

**Usually applies retroactively**

.02 Except when stated otherwise, a holding in a technical advice memorandum 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.

**Generally applied retroactively to modify or revoke prior technical advice**

.03 A holding that modifies or revokes a holding in a prior technical advice memorandum 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 technical advice memorandum 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 technical advice memorandum.

**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 technical advice memorandum involving a continuing action or a series of actions occurring after the material facts on which the technical advice memorandum is based have changed.

**Does not apply retroactively under certain conditions**

.06 Generally, a technical advice memorandum that modifies or revokes a letter ruling or another technical advice memorandum or a determination letter is not applied retroactively either to the taxpayer to whom or for whom the letter ruling or technical advice memorandum or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling or technical advice memorandum 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 technical advice memorandum 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 technical advice memorandum or determination letter acted in good faith in relying on the letter ruling or technical advice memorandum 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 technical advice memorandum or determination letter relating to a pension plan of an employer is directly involved in the letter ruling or technical advice memorandum or determination letter. However, the tax liability of members of an industry is not directly involved in a letter ruling or technical advice memorandum or determination letter issued to one of the members, and the holding in a modification or revocation of a letter ruling or technical advice memorandum 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 technical advice memorandum or determination letter previously issued to another client.

When a letter ruling or determination letter to a taxpayer or a technical advice memorandum 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 technical advice memorandum that modifies or revokes a letter ruling or another technical advice memorandum or a determination letter not to be applied retroactively either to the taxpayer to whom or for whom the letter ruling, technical advice memorandum or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling, technical advice memorandum 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 technical advice memorandum will be applied without retroactive effect.

### **Taxpayer may request Commissioner to exercise authority**

.02 A taxpayer who has received a technical advice memorandum or for whom a technical advice 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 technical advice memorandum or to limit the retroactive effect of any subsequent modification or revocation of the technical advice memorandum.

### **Form of request to limit retroactivity—before an examination**

.03 When a technical advice memorandum 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 technical advice memorandum 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. 2002-4.

**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, SB/SE-TE/GE, a taxpayer is informed that EP or EO Examinations or the Appeals Area Director, SB/SE-TE/GE, recommends that a technical advice memorandum be modified or revoked, a request to limit the retroactive application of the modification or revocation of the technical advice memorandum must itself be made in the form of a request for technical advice. *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, SB/SE-TE/GE, 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 technical advice memorandum that does not modify or revoke a technical advice memorandum may be made as part of that technical advice request, either initially, or at any time before the technical advice memorandum 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 technical advice 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 technical advice 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 technical advice 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 technical advice 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 technical advice. (*See* section 20 of Rev. Proc. 2002-6.)

**Exhaustion of administrative remedies — exempt organization matters**

.08 Where technical advice 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 technical advice.

**SECTION 20. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?**

Rev. Proc. 2001-5 is superseded.

**SECTION 21. EFFECTIVE DATE**

This revenue procedure is effective January 7, 2002.

**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 control number.

The collections of information in this revenue procedure are in sections 6.03, 9, 10.01, 10.02, 11.03, 11.04, 11.05, 12.02, 12.03, 13.01, 14.03, 14.10, 16.10, 16.12, 17.04, 19.03, 19.04, and 19.05. This information is required to evaluate and process the request for a technical advice memorandum. In addition, this information will be used to help the Service delete certain information from the text of the technical advice memorandum before it is made available for public inspection, as required by § 6110. The collections of information are required to obtain a technical advice memorandum. 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).

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**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).

**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. 2001-6, 2001-1 I.R.B. 194, which contains the Service's general procedures for employee plans determination letter requests. Most of the changes to Rev. Proc. 2001-6 involve minor revisions, such as updating citations to other revenue procedures.

### **Announcement 2001-77**

.02 In Announcement 2001-77, the Service described several changes to simplify the employee plans determination letter application procedures. One of the changes gives plan sponsors the flexibility to request a determination letter that considers either the form of the plan only or both the form of the plan and compliance with the minimum coverage and nondiscrimination requirements. A second change enables adopters of nonstandardized master and prototype (M&P) plans and volume submitter specimen plans to rely on the M&P or volume submitter specimen plan's favorable opinion or advisory letter without having to request individual determination letters. A third change enables employers that maintain multiple employer plans to rely on the favorable determination letter issued for the plan without having to request individual determination letters. Finally, Announcement 2001-77 provides certain transition rules that allow plan sponsors to file determination letter applications using the prior revision of the determination letter application forms. Announcement 2001-122, 2001-51 I.R.B. 604, extended these transition rules through March 31, 2002. The changes described in Announcement 2001-77 and Announcement 2001-155 have been incorporated in this revenue procedure.

### **EGTRRA and CRA**

.03 The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16, which was enacted on June 7, 2001, includes numerous changes to the qualified plan rules. Almost all of these changes are effective in years beginning after December 31, 2001. While many of the changes are not mandatory, a plan sponsor that chooses to implement an optional provision of EGTRRA will have to amend its plan to conform plan provisions to plan operation. Notice 2001-42, 2001-30 I.R.B. 70, provides that good faith plan amendments for EGTRRA must be adopted no later than the later of (1) the end of the plan year in which the amendments are required to be, or are optionally, put into effect or (2) the end of the GUST<sup>1</sup> remedial amendment period. Notice 2001-57, 2001-38 I.R.B. 279 provides sample amendments to assist plan sponsors in meeting this requirement. Notice 2001-42 also provides that until further notice determination, opinion and advisory letters will not consider and may not be relied on with respect to the EGTRRA changes. However, an employer's ability to rely on a favorable determination, opinion or advisory letter will not be adversely affected by the timely adoption of good faith EGTRRA plan amendments. Determination letters consider and may be relied on with respect to the changes to the qualification requirements made by the Community Renewal Tax Relief Act of 2000 (CRA), Pub. L. 106-554. Section 3 of this revenue procedure has been modified to incorporate this provision of Notice 2001-42. Section 3 has also been modified to provide that determination letters consider and may be relied on with respect to the changes to the qualification requirements made by CRA.

### **Evidence of eligibility for extended remedial amendment period under section 19 of Rev. Proc. 2000-20**

.04 Section 6 has been modified to require the submission of appropriate evidence of eligibility for the extension of the remedial amendment period under section 19 of Rev.

<sup>1</sup> The term "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353;
- the Small Business Job Protection Act of 1996, Pub. L. 104-188;
- the Taxpayer Relief Act of 1997, Pub. L. 105-34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554.

Proc. 2000–20 in cases where the determination letter application is filed after the time the period would otherwise expire.

**Clarification of the definition of a volume submitter plan**

.05 Section 9.03 is clarified to reflect that the definition of a volume submitter plan does not include a cash balance or similar defined benefit plan.

**Notice to interested parties**

.06 Proposed amendments to § 1.7476–2 of the Income Tax Regulations and § 601.201 of the Statement of Procedural Rules, relating to notice to interested parties, were published in the Federal Register on January 17, 2001, 66 F.R. 3954. The proposed regulations provide greater flexibility in the manner in which the notice may be provided, including use of electronic media. Because the regulations are proposed to be effective with respect to applications made on or after the date the regulations are published in the Federal Register as final regulations, the provisions of this revenue procedure relating to notice to interested parties have not been amended at this time. However, plan sponsors may rely on the proposed regulations for guidance pending the issuance of final regulations.

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## 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
<b>1. Initial Qualification, etc.</b>		
a. Initially-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)	8
d. Adoptions of Volume Submitter Plans	5300, Schedule Q (optional)	7
e. Multiple Employer Plans	5300, Schedule Q (optional)	10
f. Group Trusts	Cover letter	13
<b>2. Minor Amendments</b>	6406	11
<b>3. Termination</b>		
a. In general	5310, 6088, Schedule Q (optional)	12
b. Multiemployer plan covered by PBGC insurance	5300, 6088, Schedule Q (optional)	12
Note: Form 5310–A, Notice of Plan Merger, Consolidation, Spinoff or Transfer of Plan Assets or Liabilities—Notice of Qualified Separate Lines of Business 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.		
<b>4. Special Procedures</b>		
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. 2002-4, page 127, this Bulletin.

(2) Plans or plan amendments for which automatic approval is granted pursuant to section 8.05 below.

(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;

(b) An amendment that merely adjusts the maximum limitations under § 415 to reflect annual cost-of-living increases, 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 and CRA**

.03 As provided in Notice 2001-42, until further notice, determination, opinion and advisory letters will not consider and may not be relied on with respect to whether a plan satisfies the qualification requirements of the Code as amended by EGTRRA. However, an employer's ability to rely on a favorable determination, opinion or advisory letter will not be adversely affected by the timely adoption of good faith EGTRRA plan amendments. Determination letters consider and may be relied on with respect to whether a plan satisfies the qualification requirements of the Code as amended by CRA.

### **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. 2002-4.
- (2) M&P plans: *See* Rev. Proc. 2000-20, as modified by Rev. Proc. 2000-27, Notice 2001-42, and Rev. Proc. 2001-55, 2001-49 I.R.B. 552.
- (3) Technical advice requests: *See* Rev. Proc. 2002-5, page 173, 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. 2002-1, 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 9, 10 and 21 of this revenue procedure.

#### **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. Unless otherwise stated, a plan is reviewed on the basis of the requirements that apply to the plan as of the date the application is received, except for terminating plans. For terminating plans, the requirements are those that apply as of the date of termination.

**Nondiscrimination in amount requirements**

.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 6.18. 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, or minor amendments described in section 11, a complete copy of the plan and trust instrument is required to be included with the determination letter application. 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. 2001-4 applies**

.06 Section 9 of Rev. Proc. 2002-4 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.

**Reliance on section 19 of Rev. Proc. 2000-20**

.10 In general, the remedial amendment period for GUST ends on the later of February 28, 2002, or the last day of the first plan year beginning on or after January 1, 2001. Section 19 of Rev. Proc. 2000-20, as modified, provides an extension of the GUST remedial amendment period for employers who, by the deadline described in the preceding sentence, have adopted an M&P or volume submitter plan (a “pre-approved plan”) or certified their intent to adopt a pre-approved plan that has been restated for GUST. If the requirements for the extension are satisfied, the GUST remedial amendment period for the employer’s plan will not end before the later of the end of the 12th month beginning after the date on which the Service issues a GUST opinion or advisory letter for the pre-approved plan or December 31, 2002. As a condition of the extension, a plan that is eligible for the extension must request a determination letter by the end of the extended period if a determination letter is required for reliance. Most adopting employers of M&P plans and many adopting employers of volume submitter plans will be entitled to at least limited reliance on their plan’s opinion or advisory letter pursuant to section 8 of this revenue procedure and therefore will not have to request a determination letter as a condition of the extension. If an employer files an application for the initial GUST determination letter for a plan in reliance on section 19 of Rev. Proc. 2000-20 (that is, after the later of February 28, 2002, or the last day of the first plan year beginning on or after January 1, 2001), the employer must include with the application evidence of eligibility for the extension under Rev. Proc. 2000-20. That is, the employer must include a copy of the prior plan or adoption agreement, including opinion, advisory and or determination letters, or a copy of a timely completed certification. The plan sponsor should describe any special circumstances in a cover letter.

**User fees**

.11 The appropriate user fee, if applicable, must be paid according to the procedures of Rev. Proc. 2002-8, page 252, this Bulletin. Form 8717, User Fee for Employee Plan Determination Letter Request, must accompany each determination letter request.

**Interested party notification and comment**

.12 Before filing an application, the applicant requesting a determination letter must satisfy the requirements of § 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**

.13 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**

.14 The Service ordinarily does not make determinations regarding the existence of an employer-employee relationship as part of its determination of 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 Employee Work 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**

.15 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 will also be returned pursuant to Rev. Proc. 2002-8 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**

.16 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 which 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**

.17 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 request**

.18 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

#### **Withdrawal of requests**

.19 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**

.20 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**

.21 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 6.18. 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 actuary assigned to review the application or to the Actuarial manager, at the address in section 15.03. In this case, the right to a status conference will be with the EP Technical Manager.

## **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.

- (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 (if the ESOP is collectively bargained), 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 and Form 5303.

### **Application for amendments must include copy of plan**

.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.

### **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. 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 generally must be submitted for a plan that has not previously received a determination letter that takes into account all requirements of GUST. However, see section 3.04 of Rev. Proc. 2000–27 for exceptions to this requirement.

#### **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)).

### **SECTION 8. EMPLOYER RELIANCE ON M&P AND VOLUME SUBMITTER PLANS**

#### **Scope**

.01 This section describes 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. Rev. Proc. 2000–20 describes the requirements that apply to M&P plans and the procedures for requesting opinion letters on M&P plans. Section 9 of this revenue procedure describes the requirements that apply to volume submitter plans and the procedures for requesting advisory letters on volume submitter plans. Section 9 also 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.

#### **Standardized M&P plans**

.02 An employer adopting a standardized or paired M&P plan may rely on that plan's opinion letter, except as provided in section 8.02(1) through (3) and section 8.04 below, if the sponsor of such plan or plans has a currently valid favorable opinion letter, the employer has followed the terms of the plan(s), and the coverage and contributions or benefits under the plan(s) are not more favorable to highly compensated employees (as defined in § 414(q)) than for other employees.

(1) Except in the case of a combination of paired plans, an employer may not rely on an opinion letter for a standardized plan with respect to the requirements of §§ 415 and 416, without obtaining a determination letter, if the employer maintains at any time, or has maintained at any time, another plan, including a standardized plan, that was qualified or determined to be qualified covering some of the same participants. For this purpose, a plan that has been properly replaced by the adoption of a standardized plan is not considered another plan. The plan that has been replaced and the standardized plan must be of the same type (e.g., both money purchase pension plans) in order for the employer to be able to rely on the standardized plan with respect to the requirements of §§ 415 and 416 without obtaining a determination letter. In addition, an employer that adopts a standardized defined contribution plan will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of the standardized plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within a limitation year of the standardized plan. Likewise, an employer that adopts a standardized defined contribution plan that is first effective on or after the effective date of the repeal of § 415(e) will not be considered to have maintained another plan merely because the employer has maintained a defined benefit plan(s), provided the defined benefit plan(s) has been terminated prior to the effective date of the standardized defined contribution plan.

(2) An employer that has adopted a standardized defined benefit plan may rely on an opinion letter with respect to the requirements of § 401(a)(26) only if the plan satisfies the requirements of § 401(a)(26) with respect to its prior benefit structure or is deemed to satisfy § 401(a)(26) under the regulations. However, an employer may request a determination letter if the employer wishes to have reliance as to whether the plan satisfies § 401(a)(26) with respect to its prior benefit structure.

(3) An employer that adopts a standardized plan may not rely on an opinion letter with respect to: (a) whether the timing of any amendment to the plan (or series of amendments) satisfies the nondiscrimination requirements of § 1.401(a)(4)–5(a), except with respect to plan amendments granting past service that meet the safe harbor described in § 1.401(a)(4)–5(a)(3) and are not part of a pattern of amendments that significantly discriminates in favor of highly compensated employees; or (b) whether the plan satisfies the effective availability requirement of § 1.401(a)(4)–4(c) with respect to any benefit, right, or feature. An employer that adopts a standardized plan as an amendment to a plan other than a standardized plan may not rely on an opinion letter with respect to whether a benefit, right, or feature that is prospectively eliminated satisfies the current availability requirements of § 1.401(a)(4)–4 of the regulations. Such an employer may request a determination letter if the employer wishes to have reliance as to whether the prospectively eliminated benefit, right, or feature satisfies the current availability requirements.

### **Nonstandardized M&P plans and volume submitter plans**

.03 An employer adopting a nonstandardized M&P or volume submitter plan may rely on that plan's opinion or advisory letter as described below if the employer's plan is identical to an approved M&P or specimen plan with a currently valid favorable opinion or advisory letter, the employer has chosen only options permitted under the terms of the approved plan, and the employer has followed the terms of the plan. These employers can forego filing Form 5307 and rely on the plan's favorable opinion or advisory letter with respect to the qualification requirements, except as provided in section 8.03(1) through (4) and section 8.04 below.

(1) Except as provided in section 8.03(2) and (3), adopting employers of nonstandardized M&P plans and volume submitter plans may not rely on a favorable opinion or advisory letter with respect to the requirements of:

(a) §§ 401(a)(4), 401(a)(26), 401(l), 410(b) or 414(s); or

(b) if the employer maintains or has ever maintained another plan covering some of the same participants, §§ 415 or 416.

For this purpose, whether an employer maintains or has ever maintained another plan will be determined using principles consistent with section 8.02(1) above.

(2) Adopting employers of nonstandardized M&P plans and volume submitter plans may rely on the opinion or advisory letter with respect to the requirements of §§410(b) and 401(a)(26) (other than the § 401(a)(26) requirements that apply to a prior benefit structure) if 100 percent of all nonexcludable employees benefit under the plan.

(3) Nonstandardized M&P plans must give adopting employers the option to elect a safe harbor allocation or benefit formula and a safe harbor compensation definition. Adopting employers of nonstandardized M&P plans that elect a safe harbor allocation or benefit formula and a safe harbor compensation definition may rely on an opinion letter with respect to the nondiscriminatory amounts requirement under § 401(a)(4). Adopting employers of nonstandardized M&P plans that are § 401(k) and/or § 401(m) plans may rely on an opinion letter with respect to whether the form of the plan satisfies the actual deferral percentage test of § 401(k)(3) or the actual contribution percentage test of § 401(m)(2) if the employer elects to use a safe harbor definition of compensation in the test. Adopting employers of nonstandardized M&P plans described in § 401(k)(11) and/or

§ 401(m)(12) may rely on an opinion letter with respect to whether the form of the plan satisfies these requirements unless the plan provides for the safe harbor contribution to be made under another plan.

(4) Adopting employers of nonstandardized safe harbor M&P plans (which require adopting employers to elect a safe harbor allocation or benefit formula) are entitled to the same reliance as adopting employers of nonstandardized plans except that they have automatic reliance with respect to the nondiscriminatory amounts requirement if they elect a safe harbor definition of compensation.

**Other limitations and conditions on reliance**

.04 The following conditions and limitations apply with respect to standardized and nonstandardized M&P plans as well as volume submitter plans.

(1) An adopting employer of an M&P or volume submitter plan can rely on a favorable opinion or advisory letter only if the letter has taken into account the requirements of GUST and the plan has been amended to the extent necessary to comply with the requirements of § 314(e) of CRA, relating to changes to the definition of compensation under §§ 414(s) and 415(c)(3). In addition, if the opinion or advisory letter is a “GUST I” letter (as defined in Rev. Proc. 2000–27, 2000–26 I.R.B. 1272), the plan must have been amended to the extent necessary to comply with the requirements of GUST that are effective after 1998.

(2) An adopting employer can rely on a favorable opinion or advisory letter for a plan that amends or restates a plan of the employer only if the plan that is being amended or restated satisfies the qualification requirements as in effect prior to GUST and the operational compliance requirements of GUST, and the GUST amendments are retroactively effective to the extent required.

(3) An adopting employer cannot rely on an opinion or advisory letter for a plan if the repealed family aggregation rules continued to apply under the plan after 1996 or if the repealed § 415(e) limits continued to apply under the plan after 1999. The continued application of these rules and limits in years following their repeal could cause a plan to fail to satisfy one or more requirements of § 401(a).

(4) An adopting employer cannot rely on an advisory letter issued after the date the employer adopts the GUST-amended plan.

(5) An adopting employer can rely on an opinion or advisory letter only if the employer has not added any terms to the approved M&P or volume submitter plan document and has not modified or deleted any terms of the document other than choosing options permitted under the document or, in the case of an M&P plan, amending the document as permitted under sections 5.07 and 5.11 of Rev. Proc. 2000–20. Thus, for example, in the case of a volume submitter plan, the employer’s plan must be identical to the approved specimen plan except as the result of the employer’s selection among options that are permitted under the terms of the approved specimen plan.

(6) An adopting employer cannot rely on an opinion or advisory letter if the adopting employer has modified the terms of the plan’s approved trust in a manner that would cause the plan to fail to be qualified.

**Reliance equivalent to determination letter**

.05 If an employer can rely on a favorable opinion or advisory letter pursuant to this section, 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. 2001–17, 2001–7 I.R.B. 589, regarding the definition of “favorable letter” for purposes of the Employee Plans Compliance Resolution System.

**SECTION 9. ADVISORY LETTER  
AND DETERMINATION LETTER  
FILING PROCEDURES FOR  
M&P AND VOLUME  
SUBMITTER PLANS**

**Scope**

.01 This section contains procedures for requesting advisory letters and determination letters for volume submitter plans and determination letters for M&P plans.

**Description of volume submitter  
program**

.02 Under the volume submitter program, a practitioner who qualifies may request the Service to issue an advisory letter regarding a volume submitter specimen plan. A specimen plan is a sample plan of a practitioner (rather than the actual plan of an employer) that contains provisions that are identical or substantially similar to the provisions in plans that such practitioner's clients have adopted or are expected to adopt. Once the Service has approved the specimen plan, employers who adopt the same plan and meet the conditions described in section 8 of this revenue procedure will be able to rely on the advisory letter to the extent provided in section 8. 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.

**Definition of volume submitter plan**

.03 A volume submitter plan is a profit-sharing plan (without a § 401(k) arrangement), a profit-sharing plan (with a § 401(k) arrangement), a money purchase pension plan, or a defined benefit plan that is submitted under the procedures described in this section 9 for filing requests for volume submitter advisory letters (with respect to the specimen plan) and requests for determination letters (with respect to an employer's adoption of a plan that is substantially similar to an approved specimen plan). The Service will not accept volume submitter requests with respect to ESOPs or other stock bonus plans or cash balance or similar defined benefit plans.

**Incorporation by reference**

.04 Incorporation by reference in a volume submitter plan is subject to the limits described in sections 5.18 and 8.03 of Rev. Proc. 2000-20.

**User fees**

.05 Rev. Proc. 2002-8 provides reduced user fees for requests under the volume submitter program if certain requirements are satisfied. For adopting employers to be entitled to file a request for a determination letter with the lower fees, the volume submitter practitioner must certify at the time of filing a request for an advisory letter for the specimen plan that at least 30 employers are expected to adopt plans that are substantially similar in form to the specimen plan. Also, the volume submitter practitioner must be a representative of the employer when the employer's determination letter application is filed. Although the volume submitter is not required to submit a list of adopting employers, the Service reserves the right to request such a list. Reduced user fees also apply to advisory letter applications for volume submitter specimen plans that are identical to volume submitter lead specimen plans. See section 17.02 of Rev. Proc. 2000-20.

**Advisory letter for specimen plan**

.06 With respect to advisory letters for volume submitter specimen plans:

(1) A request for approval of a volume submitter specimen plan must be sent to the volume submitter coordinator for EP Determinations at the following address:

Internal Revenue Service  
P.O. Box 2508

Cincinnati, OH 45201  
Attn: VSC Coordinator  
Room 5106

A request shipped by Express Mail or a delivery service should be sent to:

Internal Revenue Service  
550 Main Street  
Cincinnati, OH 45202  
Attn: VSC Coordinator  
Room 5106

- (2) The request for approval must include the following:
  - (a) A copy of the specimen plan and any related specimen trust instrument;
  - (b) A cover letter requesting approval that includes the certification described in section 9.05 above and indicates the type of plan for which approval is being requested;
  - (c) The required user fee submitted with Form 8717, User Fee for Employee Plan Determination Letter Request; and
  - (d) An index/table of contents listing the location of all variable sections.
- (3) For procedures regarding volume submitter lead specimen plans, see section 17.02 of Rev. Proc. 2000-20.

#### **Requests for information**

.07 The Service may, at its discretion, require any additional information it considers necessary to the issuance of a favorable advisory letter. If a letter requesting changes to the specimen plan is sent to the volume submitter practitioner or authorized representative, the changes must be received no later than 30 days from the date of the letter. If the changes are not received within 30 days, the advisory letter application may be considered withdrawn. An extension of the 30-day time limit will only be granted for reasonable cause.

#### **Determination letter for adoption of volume submitter plan**

- .08 With respect to determination letters for 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 6.18.
  - (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) 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 and 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 and the determination letter application is for a complete GUST letter, 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;

(e) A copy of the plan's latest favorable determination letter, if applicable; and

(f) 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.

#### **Determination letter for adoption of M&P plan**

.09 Form 5307 must be filed to request a determination letter for the adoption of an M&P plan. Schedule Q may be filed as an attachment to Form 5307.

#### **Required information**

.10 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**

.11 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.

#### **Requests made prior to the issuance of opinion letter**

.12 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 submitted prior to the time the M&P plan is approved.

## **SECTION 10. MULTIPLE EMPLOYER PLANS**

### **Scope**

.01 This section contains procedures for applications filed with respect to plans described in § 413(c).

### **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 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, filed on behalf of one employer, 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 and a separate Form 5300 application, completed through line 8, 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 6.06 of Rev. Proc. 2002-8, 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 8 of this revenue procedure above also apply in the case of an employer maintaining a multiple employer plan.

### **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 6.18

### **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 the determination letter only to the applicant and the new employers.

**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 which 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 GUST 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. Except as provided in section 3.05 of Rev. Proc. 2000-27, the minor amendment procedures may not be used to obtain a GUST 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.

**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 board of director's resolution) 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 stated that 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 stated that 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.

#### **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.

**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.

**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.

**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. 94-41

.02 The procedures of Rev. Proc. 94-41, 1994-1 C.B. 711, apply to the request for a waiver of the minimum funding requirement.

### Waiver and determination letter request submitted to EP Technical

.03 Under this section, both the request for a waiver ruling and the request for a determination letter on the effect of any amendment necessary to satisfy section 3 of Rev. Rul. 78-223, 1978-1 C.B. 125, must be submitted by the taxpayer to EP Technical where it will be treated as a mandatory request for technical advice. The request that is submitted to EP Technical must include the following:

- (1) All the procedural requirements described in section 3 of Rev. Proc. 94-41 must be satisfied;
- (2) The submission must include a completed Form 5300 and all necessary documents, plan amendments, and information required by the Form 5300 and by this revenue procedure for approval of the plan amendments; and
- (3) The request and the applicable user fee (required by Rev. Proc. 2002-8) for both the waiver request and the determination letter request should be sent to:

Internal Revenue Service  
Tax Exempt and Government Entities  
Division  
Attention: T:EP:RA  
P.O. Box 27063  
McPherson Station  
Washington, DC 20038

Additional information sent after the initial request should be sent to:

Manager, Actuarial  
T:EP:RA:T:A  
Internal Revenue Service  
1111 Constitution Ave., NW.  
Washington, DC 20224

### Handling of the request

.04 The waiver request will be handled by EP Technical as follows:

- (1) The waiver request and supporting documents will be forwarded to Actuarial, T:EP:RA:T:A, 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) EP Determinations 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 EP Determinations for consideration while the technical advice request is completed.
- (3) EP Technical will consider both the application for a funding waiver and the proposed plan amendment. 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 EP Determinations. EP Determinations 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 an 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 EP Determinations does not ask for reconsideration of the technical advice memorandum within 10 working days, Actuarial will issue the waiver ruling. This ruling will not contain the caveat described in section 3.02 of Rev. Proc. 94-41.

**Interested party notice and comment**

.05 The notice and comment requirements for interested parties provided in sections 17 and 18 of this revenue procedure must be satisfied. Comments are to be forwarded to EP Determinations. With respect to the waiver request, the notice requirements applicable to waiver requests found in Rev. Proc. 94-41 must be satisfied.

**When waiver request should be submitted**

.06 In the case of a plan other than a multiemployer plan, no waiver may be granted under § 412(d) with respect to any plan for any plan year unless an application therefor is submitted to the Service not later than the 15th day of the third month beginning after the close of such plan year. The Service may not extend this 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 which 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, 2005.
- (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 by the Tax Relief Extension Act of 1999, Pub. L. 106–170 (TREA ’99). If applicable, the provisions of the plan must also reflect the transition rule in § 535(c)(2) of 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. 2002-4), addressed to EP Determinations at the address in section 6.18, 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 § 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 6.18;

(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  
Pension and Welfare Benefits  
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 given in person, posted as prescribed in the regulations under § 7476, or received through the mail or a private delivery service that has been designated under § 7502(f). In the case of an application, comment, request, notification, or notice that is sent by mail or designated private delivery service, 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 described in §§ 401, 403(a), 409 and 4975(e)(7) is to be made must be given to all interested parties in the manner set forth in § 1.7476-2(c) and in accordance with the requirements of this section.

**Time when notice must be given**

.02 When the notice referred to in section 18.01 is given by posting or in person, such notice must be given not less than 7 days nor more than 21 days prior to the day the application for a determination is made. When the notice is given by mailing or designated private delivery service, it should 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 be in writing and 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 6.18, 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 in person or by mail, or by a combination of the foregoing, 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) Whether the applicant is claiming in the application that the plan meets the requirements of § 410(b)(1)(A), and, if not, the coverage schedule required by the application in the case of plans not meeting the requirements of such section.

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 6.20 and 6.21 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. 2002-5).

**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 which 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. 2002-4 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. 2002-4.

**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 revenue ruling for subsequent years. Unless specifically stated otherwise in the revenue ruling or in other published guidance of general applicability, the conforming amendment to an individually-designed plan must be adopted before the end of the first plan year that begins after the revenue ruling, revenue procedure, or administrative pronouncement is published in the Internal Revenue Bulletin and must be effective, for all purposes, not later than the first day of the first plan year beginning after the revenue ruling is published. For the rule as to the conforming amendment to an M&P plan, see section 12 of Rev. Proc. 2000-20.

**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. 2001-6 is superseded. Rev. Proc. 2000-20 is modified to provide that an employer that adopts a nonstandardized M&P plan may rely on a favorable opinion letter for the plan without having to request a determination letter, to the extent provided in section 8 of this revenue procedure.

**SECTION 23. EFFECTIVE DATE**

This revenue procedure is effective January 7, 2002. However, with regard to determination letter application filing requirements, plan sponsors may follow the transitional rules in section I.G of Announcement 2001-77, as provided, and for the period specified, in Announcement 2001-122, 2001-51 I.R.B. 604.

**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 control number.

The collections of information in this revenue procedure are in sections 6.17, 6.19, 6.20, 6.21, 7.04, 9.08, 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 business 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 James Flannery 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. Mr. Flannery 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 lessor 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  
Pension and Welfare Benefits  
Administration  
ATTN: 3001 Comment Request  
U.S. Department of Labor,  
200 Constitution Avenue, NW.  
Washington, D.C. 20210

#### COMMENTS TO THE INTERNAL REVENUE SERVICE

12. Comments submitted by you to EP Determinations must be in writing and received by him 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 them 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. 2002-6. 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. 2002-6 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 which 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, 2005? 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 by TREA '99? 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 by TREA '99? Yes No \_\_\_\_\_
13. Do the Plan's provisions reflect the transition rule in § 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. 2002-7

### SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 This revenue procedure updates Rev. Proc. 2001-7, 2001-1 I.R.B. 236, by providing a current list of subject areas under the jurisdiction of the Associate Chief Counsel (International) in which the Internal Revenue Service will not issue letter rulings or determination letters.

#### .02 Changes

(1) New section 3.02(7), which describes frivolous issues on which the Service generally will not rule, has been moved from old section 4.02(4), and amended to cross reference section 7.04 of Rev. Proc. 2002-1.

(2) Section 4.01(11), dealing with whether the income received by a non-resident alien student for services performed for a university or other educational institution is exempt from federal income tax or withholding under specific United States income tax treaties, has been restated as a general statement in order to make the provision applicable to all income tax treaties currently in effect, and also has been expanded to cover similar issues involving trainees.

(3) Section 4.01(12), dealing with whether the income received by a non-resident alien performing research or teaching at a university is exempt from federal income tax or withholding under United States income tax treaties, has been restated as a general statement in order to make the provision applicable to all income tax treaties currently in effect.

### 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 deter-

mination 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 Director, (International), or Area Director, Appeals from submitting requests for technical advice in the areas listed to the Office.

### SECTION 3. AREAS IN WHICH RULING OR DETERMINATION LETTERS WILL NOT BE ISSUED

#### .01 Specific Questions and Problems

(1) Section 871(g).—Special Rules for Original Issue Discount.—Whether a debt instrument having original issue discount within the meaning of § 1273 of the Internal Revenue Code 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).

(2) 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.

(3) Section 954.—Foreign Base Company Income.—The effective rate of tax that a foreign country will impose on income.

(4) 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.

#### .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 Rev. Proc. 88-50, 1988-2 C.B. 711, and section 5.05 of Rev. Proc. 2002-1.

(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. 2002-1.

(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 Section 7.04 of Rev. Proc. 2002-1, this Bulletin.

#### 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 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 received by local governmental authorities of the United Kingdom from certain United States investments of money allocable to their superannuation funds is exempt from federal income taxation.

(7) Section 892.—Income of Foreign Governments and of International Organizations.—Whether a foreign government is engaged in commercial activities for purposes of § 892, and whether income received by a foreign government is derived from the conduct of such commercial activities.

(8) Section 893.—Compensation of Employees of Foreign Governments and International Organizations.—Whether a foreign government is engaged in commercial activities for purposes of § 893, and whether the services of an employee of a foreign government are primarily in connection with such commercial activities.

(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, 2000-52 I.R.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), 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* section 3.01(4), Rev. Proc. 2002-7.

(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.—Tax on Nonresident Alien Individuals.—Whether an alien individual is either a resident or a nonresident of the United States, in situations where the determination depends on facts that cannot be confirmed until the close of the taxable year (including, for example, the length of the alien's stay or the nature of the alien's activities).

(28) Section 7701.—Definitions.—Whether an estate or trust is a foreign estate or trust for federal income tax purposes.

(29) Section 7701.—Definitions.—Whether an intermediate entity is a con-

duit 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 sections 8.01(2)(b) and (c) of Rev. Proc. 2002-1, 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. 2001-7 is superseded.

## SECTION 8. EFFECTIVE DATE

This revenue procedure is effective January 7, 2002.

## 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. 2002-8**

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**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. 2001-8, 2001-1 I.R.B. 239.

.02 *New application procedures for multiple employer plans.* Announcement 2001-77, 2001-30 I.R.B. 83, established new determination letter application procedures, for multiple employer plans and modifies section 6.06. Under the new procedures, multiple employer plans applications for a determination letter can request either (1) a letter for the plan 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. If an applicant submits an application for the plan, the user fee for a single employer plan under section 6.06 will apply. If an applicant submits an application for the plan and each employer maintaining the plan (filing a separate Form 5300 application (completed through line 8) for each employer), the user fee for the application will be determined under the user fee scheduled for multiple employer plans in section 6.06.

.03 *Elimination of fee for certain determination letter applications.* Section

620 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA) directs the Internal Revenue Service not to require payment of user fees for request for determination letters with respect to the qualified status of certain pension benefit plans (generally plans maintained by employers with 100 or less employees). The provisions in section 620 of EGTRRA are effective with respect to a request for a determination letter made after December 31, 2001.

.04 *Changes to Fee Schedule.* The Employee Plans and Exempt Organizations user fees are increased for all categories except the reduced fee categories, the determination letter categories and the volume submitter categories.

**SECTION 3. BACKGROUND**

.01 *Legislation authorizing user fees.* Section 10511 of the Revenue Act of 1987, Pub. L. 100-203, 101 Stat. 1330-382, 1330-446, enacted December 22, 1987, directed 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) were to vary according to categories or subcategories established by the Secretary; (2) were to be determined after taking into account the average time for, and difficulty of, complying with requests in each category and subcategory; and (3) were to be payable in advance. The Secretary was to provide for exemptions and reduced fees under the program as the Secretary determined to be appropriate, but the average fee

applicable to each category must not be less than the amount specified in the statute. The fees were to apply to requests made on or after February 1, 1988, and before September 30, 1990. Section 11319 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, 1991-2 C.B. 481, 511, extended the time during which the user fees would be applicable through September 30, 1995. Section 743 of the Uruguay Round Agreements Act, Pub. L. 103-465, 1995-1 C.B. 230, 239, extended the time during which the user fees would be applicable through September 30, 2000. Section 2 of the Tax Relief to Operation Joint Endeavor Participants Act, Pub. L. 104-117, 1996-3 C.B. 1, extended the time during which the user fees will be applicable through September 30, 2003.

.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. 2002-4, page 127, 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, *Individual Retirement Trust Account*, or Form 5305-A, *Individual Retirement Custodial Account*, in order to adopt an individual retirement account under § 408(a). This form should not be filed with the Service.

(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 Voluntary Compliance Program (VCP) 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. 2001-17, 2001-7 I.R.B. 589.

.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.

(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, *Information for Use in Determining Whether a Worker is an Employee for 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. 2002-6, page 203, 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.

(3) Effective with respect to a determination letter application made after December 31, 2001, user fees for request for determination letters for pension benefit plans maintained by employers with 100 or less employees, as provided for in section 620 of EGTRRA.

## 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. 2000-20
Advisory letter	Rev. Procs. 2000-20, 2002-6
Basic plan document	Rev. Proc. 2000-20
Determination letter	Rev. Procs. 90-27, 2002-4
Dual-purpose IRA	Rev. Proc. 98-59
Group exemption letter	Rev. Proc. 80-27
Information letter	Rev. Proc. 2002-4
Letter ruling	Rev. Proc. 2002-4
Mass submitter	Rev. Procs. 87-50, 2000-20
Mass submitter plan	Rev. Proc. 2000-20
Master plan	Rev. Proc. 2000-20
Minor modification	Rev. Procs. 87-50, 2000-20

Opinion letter	Rev. Procs. 2000–20, 2002–4
Prototype plan	Rev. Proc. 2000–20
Roth IRA	Rev. Proc. 98–59
SIMPLE IRA	Rev. Proc. 97–29
SIMPLE IRA Plan	Rev. Proc. 97–29
Plan Sponsor	Rev. Proc. 2000–20
Sponsoring organization	Rev. Procs. 87–50, Rev. Proc. 2000–20
Volume submitter lead specimen plan	Rev. Proc. 2000–20
Volume submitter plan	Rev. Proc. 2002–6
Volume submitter specimen plan	Rev. Proc. 2002–6
Word-for-word identical adoption	Rev. Procs. 87–50, 2000–20

## 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	FEE
<b>EMPLOYEE PLANS USER FEES</b>	
<i>.01 Letter ruling requests.</i>	
(1) Computation of exclusion for annuitant under § 72	\$90
(2) Change in plan year (Form 5308)	\$140

**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.

(3) Change in funding method	\$540
(4) Approval to become a nonbank trustee (see § 1.408–2(e) of the Income Tax Regulations)	\$3,520
(5) Waiver of minimum funding standard, under § 412(d):	
(a) Waiver of \$1,000,000 or more	\$5,200
(b) Waiver of less than \$1,000,000	\$2,200
(6) Waiver of excise tax under § 4971(b):	
(a) Waiver of \$1,000,000 or more	\$5,200
(b) Waiver of less than \$1,000,000	\$2,220
(7) Waiver of the excise tax, under § 4971(f), on failure to pay a liquidity shortfall:	
(a) Waiver of \$1,000,000 or more	\$5,200
(b) Waiver of less than \$1,000,000	\$2,200
(8) Letter ruling under Rev. Proc. 90–49, 1990–2 C.B. 620	\$325
(9) Letter ruling involving the determination of the account limit under § 419A(c)	\$2,470
(10) Individually designed simplified employee pension (SEP)	\$2,470
(11) All other letter rulings	\$2,470

Reduced fees, or augmented fee, applicable to all other letter rulings:

(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 \$200,000	\$600
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- (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 \$200,000 \$600

**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 \$200,000. 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 \$200,000.

- (c) Letter ruling requests from organizations exempt from income tax under “Subchapter F-Exempt Organizations” with gross receipts of less than \$200,000 \$600

**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 \$200,000.

- (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 \$2,470 fee or the \$600 reduced fee, as applicable, has been paid for the first letter ruling request \$200
- (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 \$2,470 fee or \$600 reduced fee, as applicable, has been paid for the first entity \$200

*.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 \$2,470

**Note:** The provisions of Rev. Proc. 75–26, 1975–1 C.B. 722, are applicable to such requests.

*.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 \$4,720
- (2) For each additional separate line of business for which a determination is requested \$1,520

*.04 Opinion letters and advisory letters on master and prototype plans.*

- (1) Mass submitter M & P plan, per basic plan document, new or amended, with one adoption agreement \$3,520
- (2) Mass submitter M & P plan, per each additional adoption agreement \$460
- (3) Sponsor’s word-for-word identical adoption of M & P mass submitter’s basic plan document (or an amendment thereof), per adoption agreement \$120

**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.

(4) Sponsor's minor modification of M & P mass submitter's plan document, per adoption agreement	\$270
(5) Nonmass submission (new or amended) by M & P sponsor, per adoption agreement	\$2,110
(6) 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 16.031(c) of Rev. Proc. 2000-20), per basic plan document (regardless of the number of adoption agreements)	\$570
(7) 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	\$460
(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	\$270

*.05 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	\$1,250
(2) 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	\$120

**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.

(3) Sponsoring organization's minor modification of mass submitter's prototype IRA, SEP, SIMPLE IRA, SIMPLE IRA Plan, or Roth IRA, per plan document	\$320
(4) Sponsoring organization's nonmass submission of prototype IRA, SEP, SIMPLE IRA, SIMPLE IRA Plan, or Roth IRA, per plan document	\$460
(5) 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	\$2,470
(b) Sponsoring organization's word-for-word identical adoption of mass submitter's prototype dual-purpose IRA, per plan document or an amendment thereof	\$120

**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.

(c) Sponsoring organization's minor modification of mass submitter's prototype dual-purpose IRA, per plan document	\$650
(d) Sponsoring organization's nonmass submission of prototype dual-purpose IRA, per plan document	\$950

.06 *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	\$700
(b) Form 5307	\$125
(c) Form 5310	\$225
(d) Form 6406	\$125
(e) Multiple employer plans (Form 5300):	
(i) 2 to 10 Forms 5300	\$700
(ii) 11 to 99 Forms 5300	\$1,400
(iii) 100 to 499 Forms 5300	\$2,800
(iv) Over 499 Forms 5300	\$5,600

**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.

(f) Multiple employer plans (Form 5310):	
(i) 2 to 10 employers	\$225
(ii) 11 to 99 employers	\$450
(iii) 100 to 499 employers	\$900
(iv) Over 499 employers	\$1,800

(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	\$1,250
(b) Form 5307	\$1,000
(c) Form 5310	\$375
(d) Multiple employer plans (Form 5300):	
(i) 2 to 10 Forms 5300	\$1,250
(ii) 11 to 99 Forms 5300	\$2,000
(iii) 100 to 499 Forms 5300	\$3,500
(iv) Over 499 Forms 5300	\$6,500

**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.

(e) Multiple employer plans (Form 5310):	
(i) 2 to 10 employers	\$375
(ii) 11 to 99 employers	\$600
(iii) 100 to 499 employers	\$1,000
(iv) Over 499 employers	\$2,000

(3) Group trusts contemplated by Rev. Rul. 81-100, 1981-1 C.B. 326	\$750
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.07 *Advisory letters on volume submitter plans.*

(1) Volume submitter specimen plans	\$1,500
(2) Volume Submitter lead specimen plan	\$3,000

(3) Volume submitter specimen plan that is word-for-word identical to a lead specimen plan \$100

#### EXEMPT ORGANIZATIONS USER FEES

##### .08 Letter rulings.

(1) Applications with respect to change in accounting period (Form 1128) \$150

**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) \$150

**Note:** No user fee is charged if the method described in Rev. Proc. 97-37, 1997-2 C.B. 455, is used. Taxpayers complying timely with Rev. Proc. 97-37 will be deemed to have obtained the consent of the Commissioner of Internal Revenue to change their method of accounting.

(3) Advance approval of scholarship grant-making procedures of a private foundation that has an agreement for the administration of the scholarship program with the National Merit Scholarship Corp., or similar organization administering a scholarship program shown to meet Service requirements \$240

(4) Request for a letter ruling as to whether an organization exempt from federal income tax is required to file an annual return under § 6033 \$240

**Note 1:** See Rev. Proc. 95-48, 1995-2 C.B. 418, which specifies that governmental units and affiliates of governmental units that are exempt from federal income tax under § 501(a) are not required to file annual information returns on Form 990, *Return of Organization Exempt from Income Tax*.

**Note 2:** There is no additional charge for a determination of the § 6033 filing requirement from an organization seeking recognition of exempt status under § 501 if the organization submits the information required by line 9 of Part I of Form 1023, *Application for Recognition of Exemption under Section 501(c)(3) of the Code*, or submits a separate written request with its application for recognition of exemption. Only the user fee for the initial application for recognition of exemption applies.

(5) Request for approval of a qualified subsidiary related to a § 501(c)(25) organization. \$595

(6) All other letter rulings \$2,470

Reduced fees applicable to all other letter rulings:

(a) Organizations with gross receipts less than \$200,000 \$600

**Note:** An exempt organization seeking a reduced fee must certify in the letter ruling request that its gross receipts for the last taxable year before the request is filed were less than \$200,000.

(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 \$200,000 \$600

**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 \$200,000. 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 \$200,000.

(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 \$2,470 fee or the \$600 reduced fee, as applicable, has been paid for the first letter ruling request	\$200
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*.09 Determination letters and requests for group exemption letters*

(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
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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 6.13 whose actual or anticipated gross receipts exceed the \$10,000 average annually	\$500
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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
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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.

*.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.

<i>ISSUE</i>	<i>OFFICE</i>	<i>FEE</i>
Accounting period and method changes	Technical	\$150
Advance ruling period inquiries	Determinations	None
Amendments, reorganizations, name changes	Determinations	None
Application for recognition of exemption	Determinations	\$500

<i>ISSUE</i>	<i>OFFICE</i>	<i>FEE</i>
Confirmation of exemption	Determinations	None
Qualified subsidiaries of section 501(c)(25) organizations	Technical	\$595
Regulations 301.9100 relief in connection with applications for recognition of exemption	Determinations	None
Section 507 terminations		
(a) Notice under section 507(b)(1) or (2)	Determinations	None
(b) Advance ruling under 507(b)(1) or (2)	Technical	\$2,470
Section 514(b)(3) Neighborhood Land Use Rule	Technical	None
Section 4940(d) exempt operating foundation status	Determinations	None
Section 4942(g)(2) set-asides notification	Determinations	None
Section 4943(c)(7) extensions of disposal period	Technical	\$2,470
Section 4945 advance approval of organization's grant making procedures	Determinations	None
Section 4945(f) advance approval of voter registration activities	Determinations	None
Section 6033 annual information return filing requirements		
(a) requested with original application	Determinations	None
(b) requested after recognition of exemption	Technical	\$240
Unusual grants to certain organizations under sections 170(b)(1)(A)(vi) and 509(a)(2)	Determinations	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. 79-61, 79-62, 87-50, 90-49, 94-41, 94-42, 2000-41 or 2002-4:*

Internal Revenue Service  
 Attention: EP Letter Rulings  
 P.O. Box 27063  
 McPherson Station  
 Washington, D.C. 20038

(2) *Employee plans opinion letters or advisory letters under Rev. Procs. 87-50, 97-29, 98-59 and 2000-20:*

Internal Revenue Service  
 Attention: EP Opinion/Advisory Letter  
 P.O. Box 27063  
 McPherson Station  
 Washington, D.C. 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, D.C. 20038

(4) *Exempt organizations letter rulings:*

Internal Revenue Service  
 Attention: EO Letter Rulings  
 P.O. Box 27720  
 McPherson Station  
 Washington, D.C. 20038

**Note:** Hand delivered requests must be marked RULING REQUEST SUBMISSION. The delivery should be made:

To the following address between the hours of 8:00 a.m. and 4:00 p.m., where a receipt will be given:

Courier's Desk  
Internal Revenue Service  
Attention: T:EP [or T:EO]  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

.02 *Matters handled by EP or EO Determinations Office.* 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 and volume submitter advisory letters on the qualified status of employee plans under §§ 401, 403(a), and 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. 2002-1, 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 sub-category 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(11) and 6.08(6) 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 determination letter, notification 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, opinion letters, 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. 2002-4, page 127, 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 cover-

ing 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

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. 2001-8, 2001-1 I.R.B. 239, is superseded.

## **SECTION 13. EFFECTIVE DATE**

This revenue procedure is effective January 1, 2002.

## **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 control number.

The collections of information in this revenue procedure are in sections 6.01(11)(d), 6.08(6)(b), 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, business 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 Jeanne Royal Singley of 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. Ms. Singley 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. 2002-4, 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 and Rev. Proc. 92-38, 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. 2000-20, 2000-6 I.R.B. 553, revises and combines the Service's master and prototype (M&P) and regional prototype programs into a unified program for the pre-approval of pension, profit-sharing and annuity plans.

Rev. Proc. 2002-6, 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. Employee Plans Actuarial Matters

Rev. Proc. 79-61, 1979-2 C.B. 575, 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 § 304(a) of ERISA.

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. 94-41, 1994-1 C.B. 711, sets forth procedures for requesting waivers of the minimum funding standard

described in § 412(d) and the issuance of such waivers by the Assistant Commissioner (Employee Plans and Exempt Organizations).

Rev. Proc. 94-42, 1994-1 C.B. 717, supersedes Rev. Proc. 79-18, 1979-1 C.B. 525, and Rev. Rul. 79-215, 1979-2 C.B. 190, and 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, 2000-42, I.R.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 § 302(c)(5) of ERISA.

### D. Procedures Applicable to Exempt Organizations Matters Only

Rev. Proc. 80-27, 1980-1 C.B. 677, 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, 2001, through December 31, 2001.

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 organizations 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.

Fountain of Life, Inc. (March 2, 1998)	Greensboro, NC
IHC Health Plans, Inc. (October 12, 1999)	Salt Lake City, UT
Living Truth Ministries (August 28, 2000)	Austin, TX
Sta-Home Health Agency, Inc. (October 12, 1999)	Jackson, MS
Sta-Home Home Health Agency, Inc., of Forest, Mississippi (October 12, 1999)	Jackson, MS
Sta-Home Health Agency, Inc., of Grenada, Mississippi (October 12, 1999)	Jackson, MS

II. The organizations listed below have timely filed declaratory judgment suits under section 7428 of the Code during 2001. Protection under section 7428(c) begins on the date indicated.

Career Guidance Foundation (June 4, 2001)	San Diego, CA
Endowment for Paso Del Norte Schools, Inc. (September 17, 2001)	El Paso, TX
San Diego World Heritage Foundation, Inc. (August 20, 2001)	San Diego, CA
Watts 13 Foundation (March 26, 2001)	Los Angeles, CA

III. The organizations listed below are no longer described in section 170(c)(2) and are not recognized as exempt under section 501(c)(3) of the Code.

American Heart Foundation	Des Moines, IA
Anclote Psychiatric Center, Inc.	Tarpon Springs, FL
Abraham Lincoln Opportunity Foundation	Denver, CO
Music Square Church	Van Buren, AR

IV. The organizations listed below continue to be described in section 170(c)(2) and section 501(c)(3) and are exempt from tax under section 501(a).

Great Plains Health Alliance, Inc.	Phillipsburg, KS
Program to Aid Drug Abusers, Inc.	Lakeland, FL

V. This announcement serves notice to donors that on February 12, 2001, the United States Tax Court entered a Decision accepting the agreement of the parties regarding the organization described below. Pursuant to the Decision, the organization listed below is not recognized as an organization described in section 501(c)(3) and is not exempt from tax under section 501(a) and the organization is not described in sections 509(a)(1) and 170(b)(1)(A)(i) for the taxable year ending December 31, 1987, only. However, the organization listed below is recognized as an organization described in section 501(c)(3) which is exempt from tax under section 501(a) and the organization is a church organization as described in sections 509(a)(1) and 170(b)(1)(A)(i) for the taxable years ending after December 31, 1987.

Don Stewart Association	Phoenix, AZ
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# 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 law 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 the 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.—Statements 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 List<sup>1</sup>

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### Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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