

M. IRC 6110 - PUBLICATION INSPECTION OF WRITTEN DETERMINATIONS

1. Introduction

The enactment of IRC 6110 provided, except for documents that fall within the ambit of IRC 6103 or IRC 6104, for the public inspection of certain written determinations and background file documents. In this connection, a complete set of rulings and technical advice memoranda must be made available in a central public reading room, and background file documents are made available upon request. However, under the provisions of IRC 6110 taxpayers' names, addresses, and other identifying information must be deleted before the documents are made available to the public.

Specialists responsible for processing written determinations that are subject to the provisions of IRC 6110 are also responsible for ensuring that (1) proper deletions are made before documents are open for public inspection, and (2) recordation of third-party communications are properly accounted for. This topic is intended to emphasize the responsibility of Exempt Organizations specialists. A discussion of the general disclosure instructions is contained in Chapter (49)00 of IRM 7751, EO Handbook, Chapter 900 of IRM 1272, Disclosure of Official Information Handbook, and to some extent, IRM 7(16)00, Publicity and Limitations of EP/EO Material.

2. Definitions of Written Determinations

- A. **RULING.** A written statement by the National Office to a taxpayer or to the taxpayer's authorized representative on behalf of the taxpayer, that interprets and applies tax laws to a specific set of facts. A ruling generally recites the relevant facts, sets forth the applicable provisions of law, and shows the application of the law to the facts.

- B. **DETERMINATION LETTER.** A written statement issued by a district director in response to a written inquiry by an individual or an organization that applies principles and precedents previously announced by the National Office to the particular facts involved.

C. **TECHNICAL ADVICE MEMORANDUM.** A written statement issued by the National Office to, and adopted by, a district director or an Appeals office in connection with the examination of a taxpayer's return or consideration of a taxpayer's claim for refund or credit. A technical advice memorandum generally recites the relevant facts, sets forth the applicable law, and states a legal conclusion.

3. Written Determinations Subject to the Provisions of IRC 6110

Rulings, determination letters, and technical advice memoranda involving the following are subject to the provisions of IRC 6110:

- (a) applicability of Chapter 42 provisions;
- (b) applicability of the unrelated business income tax provisions of IRC 511 through 515;
- (c) applicability of IRC 527(f) regarding political activity of IRC 501(c) organizations
- (d) IRC 509(a) status of nonexempt charitable trusts;
- (e) IRC 6033 regarding filing requirements;
- (f) lobbying provisions of IRC 4911 and 501(h).

4. Information Required for Issues Subject to IRC 6110

Ruling requests, determination requests, and requests for technical advice that are subject to the provisions of IRC 6110 must include the following special submissions:

- (a) A copy of the request and supporting documents on which are indicated, in brackets, those portions the taxpayer suggests be deleted in accordance with IRC 6110(c). In lieu of these copies, a statement may be submitted indicating that no deletions need be made except names, addresses, and taxpayer identifying numbers.

- (b) A statement in support of the deletions suggested, indicating which specific exemption provided by IRC 6110(c) applies to each bracketed portion.
- (c) For rulings and determinations (but not technical advice) a declaration, signed by the taxpayer, in the following form:

"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 facts presented in support of the requested ruling (determination) are true, correct, and complete."

5. Procedures Regarding Deletions

Senate Report No. 94-938, 1976-3 C.B. 345, provides the following guideline statement with respect to making deletions:

"Generally, it is intended that the standard the IRS is to use in determining whether information will identify a person is a standard of a reasonable person generally knowledgeable with respect to the appropriate community.* The standard is not, however, to be one of a person with inside knowledge of the particular taxpayer."

* The appropriate community could be, e.g., an industry or a geographical community and will vary for the problem involved. For example, the community for a steel company will be all steel producers, but may also be the locale in which the main plant is to be located if the determination deals with a land transaction.

Reg. 301.6110-3 sets forth the types of information that must be deleted before the text of any written document is open to public inspection. The seven provisions as set out in the regulations are reproduced below.

Section 301.6110-3. **Deletion of certain information in written determinations open to public inspection.**--(a) Information subject to deletion. There shall be deleted from the text of any written determination open to public inspection or subject to inspection upon written request and background file document subject to inspection upon written request pursuant to section 6110 the following types of information:

(1) *Identifying details:* (i) The names, addresses, and identifying numbers (including telephone, license, social security, employer identification, credit card, and selective service numbers) of any person, other than the identifying details of a person who makes a third-party communication described in Section 301.6110-4(a), and

(ii) Any other information that would permit a person generally knowledgeable with respect to the appropriate community to identify any person. The determination of whether information would permit identification of a particular person will be made in view of information available to the public at the time the written determination or background file document is made open or subject to inspection and in view of information that will subsequently become available, provided the Internal Revenue Service is made aware of such information and the potential that such information may identify any person. The "appropriate community" is that group of persons who would be able to associate a particular person with a category of transactions one of which is described in the written determination or background file document. The appropriate community may vary according to the nature of the transaction which is the subject of the written determination. For example, if a steel company proposes to enter a transaction involving the purchase and installation of blast furnaces, the "appropriate community" may include all steel producers and blast furnace manufacturers, but if the installation process is a unique process of which everyone in national industry is aware, the "appropriate community" might also include the national industrial community. On the other hand, if the steel company proposes to enter a transaction involving the purchase of land on which to construct a building to house the blast furnaces, the "appropriate community" may also include those residing or doing business within the geographical locale of the land to be purchased.

(2) *Information concerning national defense and foreign policy.* Information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which is in fact properly classified pursuant to such order.

(3) *Information exempted by other statutes and agency rules.* Information specifically exempted from disclosure by any statute other than the Internal Revenue Code of 1954 and 5 U. S. C. 552 which is applicable to the Internal Revenue Service, and any information obtained by the Internal Revenue Service solely and directly from another Federal agency subject to a nondisclosure rule of such agency. Deletion of

information shall not be made solely because the same information was submitted to another Federal agency subject to a nondisclosure rule applicable only to such agency.

(4) Trade secrets and privileged or confidential commercial or financial information.--(i) Deletions to be made. Any--

(A) Trade secrets, and

(B) Commercial or financial information obtained from any person which, despite the fact that identifying details are deleted pursuant to paragraph (a)(1) of this section, nonetheless remains privileged or confidential.

(ii) *Trade secret.* For purposes of paragraph (a)(4)(i)(A) of this section, a trade secret may consist of any formula, pattern, device or compilation of information that is used in one's business, and that gives one an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. The subject of a trade secret must be secret, that is, it must not be of public knowledge or of a general knowledge in the trade or business. Novelty, in the patent law sense, is not required for a trade secret.

(iii) *Privileged or confidential.* For purposes of paragraph (a)(4)(i)(B) of this section, information is privileged or confidential if from examination of the request and supporting documents relating to a written determination, and in consideration of the fact that identifying details are deleted pursuant to paragraph (a)(1) of this section, it is determined that disclosure of such information would cause substantial harm to the competitive position of any person. For example, while determining whether disclosure of certain information would cause substantial harm to X's competitive position, the Internal Revenue Service becomes aware that this information has previously been disclosed to the public. In this situation, the Internal Revenue Service will not agree with X's argument that disclosure of the information would cause substantial harm to X's competitive position. An example of information previously disclosed to the public is financial information contained in the published annual reports of widely held public corporations.

(5) *Information within the ambit of personal privacy.* Information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, despite the fact that identifying details are deleted pursuant to paragraph (a)(1) of this section. Personal privacy information encompasses embarrassing or sensitive information that a reasonable person would not reveal to the public under ordinary circumstances. Matters of personal privacy include, but are not limited to, details not yet public of a pending divorce, medical treatment for physical or mental disease or injury, adoption of a child, the amount of a gift, and political preferences. A clearly unwarranted invasion of personal privacy exists if from analysis of information submitted in support of the request for a written determination it is determined that the public interest purpose for requiring disclosure is outweighed by the potential harm attributable to such invasion of personal privacy.

(6) *Information concerning agency regulation of financial institutions.* Information contained in or related to reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions concerning examination, operation or condition of a financial institution, disclosure of which would damage the standing of such financial institution.

(7) *Information concerning wells.* Geological or geophysical information and data, including maps, concerning wells.

(b) *Manner of deletions.* Whenever information, which is not to be disclosed pursuant to section 6110(c), is deleted from the text of a written determination or background file document, substitutions therefore shall be made to the extent feasible if necessary for an understanding of the legal analysis developed in such written determination or to make the disclosed text of a background file document comprehensible. Wherever any material is deleted, an indication of such deletion, and of any substitution therefor, shall be made in such manner as the Commissioner deems appropriate.

(c) *Limitations on the making of deletions.* Any portion of a written determination or background file document that has been deleted will be restored to the text thereof--

(1) If pursuant to section 6110(d)(3) or (f)(4)(A) a court orders disclosure of such portion, or

(2) If pursuant to Section 301.6110-5(d)(1) an agreement is reached to disclose information. [Reg. Section 301.6110-3.]

A. Ruling Letters and Determination Letters

Before a ruling is reviewed and ready for signing, the deletions suggested by the taxpayer will not be discussed with him/her. However, if a conference has been scheduled in the National Office pursuant to Section 7 of Rev. Proc. 80-24, 1980-1 C.B. 658, or in accordance with procedures relating to conferences in an Appeals office, and it appears that the suggested deletions will not be made because they are not properly deletable under IRC 6110(c), the problem relating to the deletions may be discussed with the taxpayer at the time of the conference.

After a ruling is reviewed and ready for signature and mailing, and the deletions suggested by the taxpayer will not be made, the taxpayer should be notified by telephone of the Service's view. Providing an agreement cannot be reached, the taxpayer should be invited to submit further submissions supporting his/her views. After the telephone contact, a letter should be sent to the taxpayer setting forth a discussion of the disagreement. The letter should state that he/she

does not have conference rights with respect to the deletion issue, and that a response should be received within 10 days from the date of the letter. If a written or telephone response is not received within that time frame, the ruling letter or determination letter should be issued without deleting the material in question.

B. Requests for Technical Advice

Before a case subject to the provisions of IRC 6110 is forwarded to the National Office for technical advice, the key district office will obtain the information required by IRC 6110(c).

Technical advice requests will contain the following:

- (a) Either a statement of the deletions proposed by the taxpayer, or a statement that no information other than the names, addresses, and identifying numbers need be deleted. Such statement may be made on a separate document.
- (b) A copy of all statement of facts and supporting documents which the taxpayer indicates should be deleted. The statement of proposed deletions must indicate the statutory basis pursuant to IRC 6110(c) for each proposed deletion. The statement should not appear or be referred to anywhere in the request for technical advice.
- (c) If the statement of proposed deletions is not submitted, the taxpayer must be informed that the statement is required before the request is referred to the National Office for technical advice. If the statement is not received within 10 working days after the taxpayer has been informed, the key district office may decline to submit the request for technical advice.
- (d) Failure of the taxpayer to submit a list of proposed deletions in cases in which the key district office initiates the request for technical advice will not preclude submission of the request for technical advice. However, such a failure to respond should be included with the request for technical advice. In these cases the National Office will make deletions which in its judgment are required by IRC 6110(c). Generally, this will only include the names, addresses, and taxpayers identifying numbers.

C. Illustrations of Captions

To facilitate the deletion process, alphabet letters should be used in the ruling letters, determination letters, and technical advice memoranda texts in lieu of names and numbers whenever possible. Generally, capital letters "A", "B", "C", etc., should be used for the names of individuals, and "M", "X", "Y", and "Z" for the names of corporations, places, and businesses. Lower case letters "x" and "y" should be used with the word "dollars", to represent sums of money.

The manner in which the legend identification should be placed on the first page of the written document is illustrated below.

INTERNAL REVENUE SERVICE

National Office Technical Advice Memorandum

**District Director
Baltimore, Maryland**

Taxpayer Name:	XXX Corporation
Taxpayer Address:	Kalamazoo, Maryland
Taxpayer Identification No.:	50-0000000
Years Involved:	8001, 8101
Date of Conference:	No Conference Held

Legend:

M = YYY Corporation
A = Foundation Manager
x = Shares of Stock
y dollars = Cost of Stock

6. Recordation of Third-Party Communications

Reg. 301.6110-4 provides that a record will be made of any communication, whether written, by telephone, at a meeting, or otherwise, received by the Service prior to the issuance of a written determination from any person other than a person to whom the written determination pertains or the authorized representative of such person. This provision, however, does not include internal communications, communications from the Chief of Staff of the Joint Committee on Internal Revenue Taxation, communications from the Department of Justice

with respect to any pending civil or criminal case or investigation, or communication from any government agency in response to a request made by the Service to such agency for assistance.

Third-party contacts must be noted on the communication and be a part of the written determination when it is made open to public inspection or available for inspection upon written request. The notation must consist of the date on which the communication was received and the category of the person making such communication for example, White House, trade association. A reproduced copy of the form used for recording third-party communication is set forth below.

[Form M-6535 (Memorandum of Contact) not shown here]

7. Determinations Which Include IRC 6110 and IRC 6104 Issues

Some determinations may include issues that are subject to the provisions of IRC 6110 and the provisions of IRC 6104. For example, a technical advice request may be the subject of an exemption issue and an unrelated business income issue. Whenever possible the issues should be segregated so that one determination can be written on the issues subject to IRC 6110 and another determination written on issues subject to IRC 6104. If it is not possible to segregate the issues, preparation and issuance of the document should be handled as though the entire determination were subject to IRC 6110.

An initial application involving a determination under IRC 501(c)(3) and advance approval of grant making procedures under IRC 4945(g) is not treated as subject to the provisions of IRC 6110. In this situation, IRC 6104 will apply to such a request.