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be held personally liable for failure on his part to protect the priority of the Government respecting taxes of which he has notice. Under section 64 of the Bankruptcy Act, taxes may be entitled to priority over other claims therein stated and the trustee, receiver, debtor in possession or other person designated as in control of the assets or affairs of the debtor by the court in which the bankruptcy proceeding is pending may be held personally liable for any failure on his part to protect a priority of the Government respecting taxes of which he has notice and which are entitled to priority under the Bankruptcy Act. Sections 77(e), 199, 337(2), 455, and 659(6) of the Bankruptcy Act also contain provisions with respect to the rights of the United States relative to priority of payment. Bankruptcy courts have jurisdiction under the Bankruptcy Act to determine all disputes regarding the amount and the validity of tax claims against a bankrupt or a debtor in a proceeding under the Bankruptcy Act. A receivership proceeding or an assignment for the benefit of creditors does not discharge any portion of a claim of the United States for taxes and any portion of such claim allowed by the court in which the proceeding is pending and which remains unsatisfied after the termination of the proceeding shall be collected with interest in accordance with law. A bankruptcy proceeding under Chapters I through VII of the Bankruptcy Act does discharge that portion of a claim of the United States which became legally due and owning more than three years preceding bankruptcy, with certain exceptions provided in the Bankruptcy Act as does a proceeding under section 77 or Chapter X of the Bankruptcy Act. Any taxes which are dischargeable under the Bankruptcy Act which remain unsatisfied after the termination of the proceeding may be collected only from exempt or abandoned property.

[32 FR 15990, Nov. 22, 1967, as amended at 33 FR 6821, May 4, 1968; 35 FR 15917, Oct. 9, 1970; 43 FR 44503, Sept. 28, 1978; 45 FR 7255, Feb. 1, 1980]

Subpart B—Rulings and Other Specific Matters

§ 601.201 Rulings and determinations letters.

(a) *General practice and definitions.* (1) It is the practice of the Internal Revenue Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and as to the tax effects of their acts or transactions. One of the functions of the National Office of the Internal Revenue Service is to issue rulings in such matters. If a taxpayer's request for a ruling concerns an action that may have an impact on the environment, compliance by the Service with the requirements of the National Environmental Policy Act of 1969 (Pub. L. 91–190) may result in delaying issuing the ruling. Accordingly, taxpayers requesting rulings should take this factor into account. District directors apply the statutes, regulations, Revenue Rulings, and other precedents published in the Internal Revenue Bulletin in the determination of tax liability, the collection of taxes, and the issuance of determination letters in answer to taxpayers' inquiries or requests. For purposes of this section any reference to district director or district office also includes, where appropriate, the Office of the Director, Office of International Operations.

(2) A *ruling* is a written statement issued to a taxpayer or his authorized representative by the National Office which interprets and applies the tax laws to a specific set of facts. Rulings are issued only by the National Office. The issuance of rulings is under the general supervision of the Assistant Commissioner (Technical) and has been largely redelegated to the Director, Corporation Tax Division and Director, Individual Tax Division.

(3) A *determination letter* is a written statement issued by a district director in response to a written inquiry by an individual or an organization that applies to the particular facts involved, the principles and precedents previously announced by the National Office. A determination letter is issued

only where a determination can be made on the basis of clearly established rules as set forth in the statute, Treasury decision, or regulation, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. Where such a determination cannot be made, such as where the question presented involves a novel issue or the matter is excluded from the jurisdiction of a district director by the provisions of paragraph (c) of this section, a determination letter will not be issued. However, with respect to determination letters in the pension trust area, see paragraph (o) of this section.

(4) An *opinion letter* is a written statement issued by the National Office as to the acceptability of the form of a master or prototype plan and any related trust or custodial account under sections 401 and 501(a) of the Internal Revenue Code of 1954.

(5) An *information letter* is a statement issued either by the National Office or by a district director which does no more than call attention to a well-established interpretation or principle of tax law, without applying it to a specific set of facts. An information letter may be issued when the nature of the request from the individual or the organization suggests that it is seeking general information, or where the request does not meet all the requirements of paragraph (e) of this section, and it is believed that such general information will assist the individual or organization.

(6) A *Revenue Ruling* is an official interpretation by the Service which has been published in the Internal Revenue Bulletin. Revenue Rulings are issued only by the National Office and are published for the information and guidance of taxpayers, Internal Revenue Service officials, and others concerned.

(7) A *closing agreement*, as the term is used herein, is an agreement between the Commissioner of Internal Revenue or his delegate and a taxpayer with respect to a specific issue or issues entered into pursuant to the authority contained in section 7121 of the Internal Revenue Code. Such a closing agreement is based on a ruling which has been signed by the Commissioner or his delegate and in which it is indicated that a closing agreement will be entered into on the basis of the holding of the ruling letter. Closing agreements are final and conclusive except upon a showing of fraud, malfeasance, or misrepresentation of material fact. They may be entered into where it is advantageous to have the matter permanently and conclusively closed, or where a taxpayer can show good and sufficient reasons for an agreement and the Government will sustain no disadvantage by its consummation. In appropriate cases, taxpayers may be required to enter into a closing agreement as a condition to the issuance of a ruling. Where in a single case, closing agreements are requested on behalf of each of a number of taxpayers, such agreements are not entered into if the number of such taxpayers exceed 25. However, in a case where the issue and holding are identical as to all of the taxpayers and the number of taxpayers is in excess of 25, a Mass Closing Agreement will be entered into with the taxpayer who is authorized by the others to represent the entire group. See, for example, Rev. Proc. 78–15, 1978–2 C.B. 488, and Rev. Proc. 78–16, 1978–2 C.B. 489.

(b) *Rulings issued by the National Office.* (1) In income and gift tax matters and matters involving taxes imposed under Chapter 42 of the Code, the National Office issues rulings on prospective transactions and on completed transactions before the return is filed. However, rulings will not ordinarily be issued if the identical issue is present in a return of the taxpayer for a prior year which is under active examination or audit by a district office, or is being considered by a branch office of the Appellate Division. The National Office issues rulings involving the exempt status of organizations under section 501 or 521 of the Code, only to the extent provided in paragraph (n) of this section, Revenue Procedure 72–5, Internal Revenue Bulletin No. 1972–1, 19, and Revenue Procedure 68–13, C.B. 1968–1, 764. The National Office issues rulings as to the foundation status of certain organizations under sections 509(a) and 4942(j) (3) of the Code only to the extent provided in paragraph (r) of this section. The National Office issues rulings involving qualification of plans under

section 401 of the Code only to the extent provided in paragraph (o) of this section. The National Office issues opinion letters as to the acceptability of the form of master or prototype plans and any related trusts or custodial accounts under sections 401 and 501(a) of the Code only to the extent provided in paragraphs (p) and (q) of this section. The National Office will not issue rulings with respect to the replacement of involuntarily converted property, even though replacement has not been made, if the taxpayer has filed a return for the taxable year in which the property was converted. However, see paragraph (c)(6) of this section as to the authority of district directors to issue determination letters in this connection.

(2) In estate tax matters, the National Office issues rulings with respect to transactions affecting the estate tax of a decedent before the estate tax return is filed. It will not rule with respect to such matters after the estate tax return has been filed, nor will it rule on matters relating to the application of the estate tax to property or the estate of a living person.

(3) In employment and excise tax matters (except taxes imposed under Chapter 42 of the Code), the National Office issues rulings with respect to prospective transactions and to completed transactions either before or after the return is filed. However, the National Office will not ordinarily rule with respect to an issue, whether related to a prospective or a completed transaction, if it knows or has reason to believe that the same or an identical issue is before any field office (including any branch office of the Appellate Division) in connection with an examination or audit of the liability of the same taxpayer for the same or a prior period.

(4) The Service will not issue rulings to business, trade, or industrial associations or to other similar groups relating to the application of the tax laws to members of the group. However, rulings may be issued to such groups or associations relating to their own tax status or liability provided such tax status or liability is not an issue before any field office (including any branch office of the Appellate Division) in connection with an examination or audit of the liability of the same taxpayer for the same or a prior period.

(5) Pending the adoption of regulations (either temporary or final) that reflect the provisions of any Act, consideration will be given to the issuance of rulings under the conditions set forth below.

(i) If an inquiry presents an issue on which the answer seems to be clear from an application of the provisions of the statute to the facts described, a ruling will be issued in accordance with usual procedures.

(ii) If an inquiry presents an issue on which the answer seems reasonably certain but not entirely free from doubt, a ruling will be issued only if it is established that a business emergency requires a ruling or that unusual hardship will result from failure to obtain a ruling.

(iii) If an inquiry presents an issue that cannot be reasonably resolved prior to the issuance of regulations, a ruling will not be issued.

(iv) In any case in which the taxpayer believes that a business emergency exists or that an unusual hardship will result from failure to obtain a ruling, he should submit with the request a separate letter setting forth the facts necessary for the Service to make a determination in this regard. In this connection, the Service will not deem a ''business emergency'' to result from circumstances within the control of the taxpayer such as, for example, scheduling within an inordinately short time the closing date for a transaction or a meeting of the board of directors or the shareholders of a corporation.

(c) *Determination letters issued by district directors.* (1) In income and gift tax matters, and in matters involving taxes imposed under Chapter 42 of the Code, district directors issue determination letters in response to taxpayers' written requests submitted to their offices involving completed transactions which affect returns over which they have audit jurisdiction, but only if the answer to the question presented is covered specifically by statute, Treasury Decision or regulation, or specifically by a ruling, opinion, or

court decision published in the Internal Revenue Bulletin. A determination letter will not usually be issued with respect to a question which involves a return to be filed by the taxpayer if the identical question is involved in a return or returns already filed by the taxpayer. District directors may not issue determination letters as to the tax consequence of prospective or proposed transactions, except as provided in subparagraphs (5) and (6) of this paragraph.

(2) In estate and gift tax matters, district directors issue determination letters in response to written requests submitted to their offices affecting the estate tax returns of decedents that will be audited by their offices, but only if the answer to the questions presented are specifically covered by statute, Treasury Decision or regulation, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. District directors will not issue determination letters relating to matters involving the application of the estate tax to property or the estate of a living person.

(3) In employment and excise tax matters (except excise taxes imposed under Chapter 42 of the Code), district directors issue determination letters in response to written requests from taxpayers who have filed or who are required to file returns over which they have audit jurisdiction, but only if the answers to the questions presented are specifically covered by statute, Treasury Decision or regulation, or a ruling, opinion, or court decision published in the Internal Revenue Bulletin. Because of the impact of these taxes upon the business operation of the taxpayer and because of special problems of administration both to the Service and to the taxpayer, district directors may take appropriate action in regard to such requests, whether they relate to completed or prospective transactions or returns previously filed or to be filed.

(4) Notwithstanding the provisions of subparagraphs (1), (2), and (3), of this paragraph, a district director will not issue a determination letter in response to an inquiry which presents a question specifically covered by statute, regulations, rulings, etc., published in the Internal Revenue Bulletin, where (i) it appears that the taxpayer has directed a similar inquiry to the National Office, (ii) the identical issue involving the same taxpayer is pending in a case before the Appellate Division, (iii) the determination letter is requested by an industry, trade association, or similar group, or (iv) the request involves an industrywide problem. Under no circumstances will a district director issue a determination letter unless it is clearly indicated that the inquiry is with regard to a taxpayer or taxpayers who have filed or are required to file returns over which his office has or will have audit jurisdiction. Notwithstanding the provisions of subparagraph (3) of this paragraph, a district director will not issue a determination letter on an employment tax question when the specific question involved has been or is being considered by the Central Office of the Social Security Administration. Nor will district directors issue determination letters on excise tax questions if a request is for a determination of a constructive sales price under section 4216(b) or 4218(e) of the Code. However, the National Office will issue rulings in this area. See paragraph (d)(2) of this section.

(5) District directors issue determination letters as to the qualification of plans under sections 401 and 405(a) of the Code, and as to the exempt status of related trusts under section 501 of the Code, to the extent provided in paragraphs (o) and (q) of this section. Selected district directors also issue determination letters as to the qualification of certain organizations for exemption from Federal income tax under sections 501 and 521 of the Code, to the extent provided in paragraph (n) of this section. Selected district directors also issue determination letters as to the qualification of certain organizations for foundation status under sections 509(a) and 4942(j)(3) of the Code, to the extent provided in paragraph (r) of this section.

(6) District directors issue determination letters with regard to the replacement of involuntarily converted property under section 1033 of the Code even though the replacement has not been made, if the taxpayer has filed his income tax return for the year in

which the property was involuntarily converted.

(7) A request received by a district director with respect to a question involved in an income, estate, or gift tax return already filed will, in general, be considered in connection with the examination of the return. If response is made to such inquiry prior to an examination or audit, it will be considered a tentative finding in any subsequent examination or audit of the return.

(d) *Discretionary authority to issue rulings and determination letters.* (1) It is the practice of the Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and the tax effect of their acts or transactions.

(2) There are, however, certain areas where, because of the inherently factual nature of the problem involved, or for other reasons, the Service will not issue rulings or determination letters. A ruling or determination letter is not issued on alternative plans of proposed transactions or on hypothetical situations. A specific area or a list of these areas is published from time to time in the Internal Revenue Bulletin. Such list is not all inclusive since the Service may decline to issue rulings or determination letters on other questions whenever warranted by the facts or circumstances of a particular case. The National Office and district directors may, when it is deemed appropriate and in the best interest of the Service, issue information letters calling attention to well-established principles of tax law.

(3) The National Office will issue rulings in all cases on prospective or future transactions when the law or regulations require a determination of the effect of a proposed transaction for tax purposes, as in the case of a transfer coming within the provisions of sections 1491 and 1492 of the Code, or an exchange coming within the provisions of section 367 of the Code. The National Office will issue rulings in all cases involving the determination of a constructive sales price under section 4216(b) or 4218(e) of the Code.

(e) *Instructions to taxpayers.* (1) A request for a ruling or a determination letter is to be submitted in duplicate if (i) more than one issue is presented in the request or (ii) a closing agreement is requested with respect to the issue presented. There shall accompany the request a declaration, 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 or determination letter are true, correct, and complete''. The declaration must accompany requests that are postmarked or hand delivered to the Internal Revenue Service after October 31, 1976. The declaration must be signed by the person or persons on whose behalf the request is made.

(2) Each request for a ruling or a determination letter must contain a complete statement of all relevant facts relating to the transaction. Such facts include names, addresses, and taxpayer identifying numbers of all interested parties; the location of the district office that has or will have audit jurisdiction over the return or report of each party; a full and precise statement of the business reasons for the transaction; and a carefully detailed description of the transaction. In addition, true copies of all contracts, wills, deeds, agreements, instruments, and other documents involved in the transaction must be submitted with the request. However, relevant facts reflected in documents submitted must be included in the taxpayer's statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the issue or issues, specifying the pertinent provisions. (The term ''all interested parties'' is not to be construed as requiring a list of all shareholders of a widely held corporation requesting a ruling relating to a reorganization, or a list of employees where a large number may be involved in a plan.) The request must contain a statement whether, to the best of the knowledge of the taxpayer or his representative, the identical issue is being considered by any field office of the Service in connection with an active examination or audit of a tax return of the taxpayer already filed or is being considered by a branch office of the Appellate Division. Where

the request pertains to only one step of a larger integrated transaction, the facts, circumstances, etc., must be submitted with respect to the entire transaction. The following list contains references to revenue procedures for advance ruling requests under certain sections of the Code.

(i) For ruling requests under section 103 of the Code, see Rev. Proc. 79–4, 1979–1 C.B. 483, as amplified by Rev. Proc. 79–12, 1979–1 C.B. 492. Revenue Procedure 79–12 sets forth procedures for submitting ruling requests to which sections 103 and 7478 of the Code apply.

(ii) For ruling requests under section 367 of the Code, see Rev. Proc. 68–23, 1968–1 C.B. 821, as amplified by Rev. Proc. 76–20, 1976–1 C.B. 560, Rev. Proc. 77–5, 1977–1 C.B. 536, Rev. Proc. 78–27, 1978–2 C.B. 526, and Rev. Proc. 78–28, 1978–2 C.B. 526. Revenue Procedure 68–23 contains guidelines for taxpayers and their representatives in connection with issuing rulings under section 367. Revenue Procedure 76–20 explains the effect of Rev. Rul. 75–561, 1975–2 C.B. 129, on transactions described in section 3.03(1)(c) of Rev. Proc. 68–23. Revenue Procedure 77–5 sets forth procedures for submitting ruling requests under section 367, and the administrative remedies available to a taxpayer within the Service after such rulings have been issued. Revenue Procedure 78–27 relates to the notice requirement set forth in the setion 367(b) temporary regulations. Revenue Procedure 78–28 relates to the timely filing of a section 367(a) ruling request.

(iii) For ruling requests under section 351 of the Code, see Rev. Proc. 73–10, 1973–1 C.B. 760, and Rev. Proc. 69–19, 1969–2 C.B. 301. Revenue Procedure 73–10 sets forth the information to be included in the ruling request. Revenue Procedure 69–19 sets forth the conditions and circumstances under which an advance ruling will be issued under section 367 of the Code that an agreement which purports to furnish technical know-how in exchange for stock is a transfer of property within the meaning of section 351.

(iv) For ruling requests under section 332, 334(b)(1), or 334(b)(2) of the Code, see Rev. Proc. 73–17, 1973–2 C.B. 465. Revenue Procedure 73–17 sets forth the information to be included in the ruling request.

(v) See Rev. Proc. 77–30, 1977–2 C.B. 539, and Rev. Proc. 78–18, 1978–2 C.B. 491, relating to rules for the issuance of an advance ruling that a proposed sale of employer stock to a related qualified defined contribution plan of deferred compensation will be a sale of the stock rather than a distribution of property.

(vi) For ruling requests under section 302 or section 311 of the Code, see Rev. Proc. 73–35, 1973–2 C.B. 490. Revenue Procedure 73–35 sets forth the information to be included in the ruling request.

(vii) For ruling requests under section 337 of the Code (and related section 331) see Rev. Proc. 75–32, 1975–2 C.B. 555. Revenue Procedure 75–32 sets forth the information to be included in the ruling request.

(viii) For ruling requests under section 346 of the Code (and related sections 331 and 336), see Rev. Proc. 73–36, 1973–2 C.B. 496. Revenue Procedure 73–36 sets forth the information to be included in the ruling request.

(ix) For ruling requests under section 355 of the Code, see Rev. Proc. 75–35, 1975–2 C.B. 561. Revenue Procedure 75–35 sets forth the information to be included in the ruling request.

(x) For ruling requests under section 368(a)(1)(E) of the Code, see Rev. Proc. 78–33, 1978–2 C.B. 532. Revenue Procedure 78–33 sets forth the information to be included in the ruling request.

(xi) For ruling requests concerning the classification of an organization as a limited partnership where a corporation is the sole general partner, see Rev. Proc. 72–13, 1972–1 C.B. 735. See also Rev. Proc. 74–17, 1974–1 C.B. 438, and Rev. Proc. 75–16, 1975–1 C.B. 676. Revenue Procedure 74–17 announces certain operating rules of the Service relating to the issuance of advance ruling letters concerning the classification of organizations formed as limited partnerships. Revenue Procedure 75–16 sets forth a checklist outlining required information frequently omitted from requests for rulings relating to classification of organizations for Federal tax purposes.

(xii) For ruling requests concerning the creditability of a foreign tax under

section 901 or 903 of the Code, see Rev. Rul. 67–308, 1967–2 C.B. 254, which sets forth requirements for establishing that translations of foreign law are satisfactory as evidence for purposes of determining the creditability of a particular foreign tax.

Original documents should not be submitted because documents and exhibits become a part of the Internal Revenue Service file which cannot be returned. If the request is with respect to a corporate distribution, reorganization, or other similar or related transaction, the corporate balance sheet nearest the date of the transaction should be submitted. (If the request relates to a prospective transaction, the most recent balance sheet should be submitted.) In the case of requests for rulings or determination letters, other than those to which section 6104 of the Code applies, postmarked or hand delivered to the Internal Revenue Service after October 31, 1976, there must accompany such requests a statement, described in paragraph (5) of this paragraph, of proposed deletions pursuant to section 6110(c) of the Code. Such statement is not required if the request is to secure the consent of the Commissioner with respect to the adoption of or change in accounting or funding periods or methods pursuant to section 412, 442, 446(e), or 706 of the Code. If, however, the person seeking the consent of the Commissioner receives from the Internal Revenue Service a notice that proposed deletions should be submitted because the resulting ruling will be open to public inspection under section 6110, the statement of proposed deletions must be submitted within 20 days after such notice is mailed.

(3) As an alternative procedure for the issuance of rulings on prospective transactions, the taxpayer may submit a summary statement of the facts he considers controlling the issue, in addition to the complete statement required for ruling requests by subparagraph (2) of this paragraph. Assuming agreement with the taxpayer's summary statement, the Service will use it as the basis for the ruling. Any taxpayer wishing to adopt this procedure should submit with the request for ruling:

(i) A complete statement of facts relating to the transaction, together with related documents, as required by subparagraph (2) of this paragraph; and

(ii) A summary statement of the facts which he believes should be controlling in reaching the requested conclusion.

Where the taxpayer's statement of controlling facts is accepted, the ruling will be based on those facts and only this statement will ordinarily be incorporated in the ruling letter. It is emphasized, however, that:

(a) This procedure for a ''two-part'' ruling request is elective with the taxpayer and is not to be considered a required substitute for the regular procedure contained in paragraphs (a) through (m) of this section;

(b) Taxpayers' rights and responsibilities are the same under the ''two-part'' ruling request procedure as those provided in paragraphs (a) through (m) of this section;

(c) The Service reserves the right to rule on the basis of a more complete statement of facts it considers controlling and to seek further information in developing facts and restating them for ruling purposes; and

(d) The ''two-part'' ruling request procedure will not apply where it is inconsistent with other procedures applicable to specific situations such as: Requests for permission to change accounting method or period; application for recognition of exempt status under section 501 or 521; or rulings on employment tax status.

(4) If the taxpayer is contending for a particular determination, he must furnish an explanation of the grounds for his contentions, together with a statement of relevant authorities in support of his views. Even though the taxpayer is urging no particular determination with regard to a proposed or prospective transaction, he must state his views as to the tax results of the proposed action and furnish a statement of relevant authorities to support such views.

(5) In order to assist the Internal Revenue Service in making the deletions, required by section 6110(c) of the Code, from the text of rulings and determination letters, which are open to public inspection pursuant to section

6110(a) of the Code, there must accompany requests for such rulings or determination letters either a statement of the deletions proposed by the person requesting the ruling or determination letter and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted. Such statement shall be made in a separate document. The statement of proposed deletions shall be accompanied by a copy of the request for a ruling or determination letter and supporting documents, on which shall be indicated, by the use of brackets, the material which the person making such request indicates should be deleted pursuant to section 6110(c) of the Code. The statement of proposed deletions shall indicate the statutory basis, under section 6110(c) of the Code, for each proposed deletion. The statement of proposed deletions shall not appear or be referred to anywhere in the request for a ruling of determination letter. If the person making the request decides to request additional deletions pursuant to section 6110(c) of the Code prior to the time the ruling or determination letter is issued, additional statements may be submitted.

(6) If the request is with respect to the qualification of a plan under section 401 or 405(a) of the Code, see paragraphs (o) and (p) of this section. If the request is with respect to the qualification of an organization for exemption from Federal income tax under section 501 or 521 of the Code, see paragraph (n) of this section, Revenue Procedure 72–5, Internal Revenue Bulletin No. 1972–1, 19, and Revenue Procedure 68–13, C.B. 1968–1, 764.

(7) A request by or for a taxpayer must be signed by the taxpayer or his authorized representative. If the request is signed by a representative of the taxpayer, or if the representative is to appear before the Internal Revenue Service in connection with the request, he must either be:

(i) 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 files with the service a written declaration that he is currently qualified as an attorney and he is authorized to represent the principal,

(ii) A certified public accountant who is duly qualified to practice in any State, possession, territory, Commonwealth, or the District of Columbia, and who files with the Service a written declaration that he is currently qualified as a certified public accountant and he is authorized to represent the principal, or

(iii) A person, other than an attorney or certified public accountant, enrolled to practice before the Service, and who files with the Service a written declaration that he is currently enrolled (including in the declaration either his enrollment number or the expiration date of his enrollment card) and that he is authorized to represent the principal. (See Treasury Department Circular No. 230, as amended, C.B. 1966–2, 1171, for the rules on who may practice before the Service. See § 601.503(c) for the statement required as evidence of recognition as an enrollee.)

(8) A request for a ruling or an opinion letter by the National Office should be addressed to the Commissioner of Internal Revenue, Attention: T:FP:T. Washington, DC 20224. A request for a determination letter should be addressed to the district director of internal revenue whose office has or will have audit jurisdiction of the taxpayer's return. See also paragraphs (n) through (q) of this section.

(9) Any request for a ruling or determination letter that does not comply with all the provisions of this paragraph will be acknowledged, and the requirements that have not been met will be pointed out. If a request for a ruling lacks essential information, the taxpayer or his representative will be advised that if the information is not forthcoming within 30 days, the request will be closed. 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 of the receipt of the essential information. Priority treatment of such request will be granted only in rare cases upon the approval of the division director.

(10) A taxpayer or his representative who desires an oral discussion of the

issue or issues involved should indicate such desire in writing when filing the request or soon thereafter in order that the conference may be arranged at that stage of consideration when it will be most helpful.

(11) Generally, prior to issuing the ruling or determination letter, the National Office or district director shall inform the person requesting such ruling or determination letter orally or in writing of the material likely to appear in the ruling or determination letter which such person proposed be deleted but which the Internal Revenue Service determines should not be deleted. If so informed, the person requesting the ruling or determination letter may submit within 10 days any further information, arguments or other material in support of the position that such material be deleted. The Internal Revenue Service will attempt, if feasible, to resolve all disagreements with respect to proposed deletions prior to the issuance of the ruling or determination letter. However, in no event shall the person requesting the ruling or determination letter have the right to a conference with respect to resolution of any disagreements concerning material to be deleted from the text of the ruling or determination letter, but such matters may be considered at any conference otherwise scheduled with respect to the request.

(12) It is the practice of the Service to process requests for rulings, opinion letters, and determination letters in regular order and as expeditiously as possible. Compliance with a request for consideration of a particular matter ahead of its regular order, or by a specified time, tends to delay the disposition of other matters. Requests for processing ahead of the regular order, made in writing in a separate letter submitted with the request or subsequent thereto and showing clear need for such treatment, will be given consideration as the particular circumstances warrant. However, no assurance can be given that any letter will be processed by the time requested. For example, the scheduling of a closing date for a transaction or a meeting of the Board of Directors or shareholders of a corporation without due regard to the time it may take to obtain a ruling, opinion letter, or determination letter will not be deemed sufficient reason for handling a request ahead of its regular order. Neither will the possible effect of fluctuation in the market price of stocks on a transaction be deemed sufficient reason for handling a request out of order. Requests by telegram will be treated in the same manner as requests by letter. Rulings, opinion letters, and determination letters ordinarily will not be issued by telegram. A taxpayer or his representative desiring to obtain information as to the status of his case may do so by contacting the appropriate division in the office of the Assistant Commissioner (Technical).

(13) The Director, Corporation Tax Division, has responsibility for issuing rulings in areas involving the application of Federal income tax to taxpayers; those involving income tax conventions or treaties with foreign countries; those involving depreciation, depletion, and valuation issues; and those involving the taxable status of exchanges and distributions in connection with corporate reorganizations, organizations, liquidations, etc.

(14) The Director, Individual Tax Division, has responsibility for issuing rulings with respect to the application of Federal income tax to taxpayers (including individuals, partnerships, estates and trusts); areas involving the application of Federal estate and gift taxes including estate and gift tax conventions or treaties with foreign countries; areas involving certain excise taxes; the provisions of the Internal Revenue Code dealing with procedure and administration; and areas involving employment taxes.

(15) A taxpayer or the taxpayer's representative desiring to obtain information as to the status of the taxpayer's case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

Official	*Telephone numbers, (Area Code 202)*
Director, Corporation Tax Division	566–4504, 566–4505.
Director, Individual Tax Division	566–3767 or 566–3788.

(16) After receiving the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the ruling or determination letter (including a copy of

the version proposed to be open to public inspection and notations of third-party communications pursuant to section 6110(d) of the Code), if the person requesting the ruling or determination letter desires to protest the disclosure of certain information in the ruling or determination letter, such person must within 20 days after the notice is mailed submit a written statement identifying those deletions not made by the Internal Revenue Service which such person believes should have been made. Such person shall also submit a copy of the version of the ruling or determination letter proposed to be open to public inspection on which such person indicates, by the use of brackets, the deletions proposed by the taxpayer but which have not been made by the Internal Revenue Service. Generally, the Internal Revenue Service will not consider the deletion under this subparagraph of any material which the taxpayer did not, prior to the issuance of the ruling or determination letter, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the person requesting the ruling or determination letter to the notice pursuant to section 6110(f)(1) of the Code, mail to such person its final administrative conclusion with respect to the deletions to be made.

(17) After receiving the notice pursuant to section 6110(f)(1) of the Code of intention to disclose (but no later than 60 days after such notice is mailed), the person requesting a ruling or determination letter may submit a request for delay of public inspection pursuant to either section 6110(g)(3) or section 6110(g) (3) and (4) of the Code. The request for delay shall be submitted to the office to which the request for a ruling or determination letter was submitted. A request for delay shall contain the date on which it is expected that the underlying transaction will be completed. The request for delay pursuant to section 6110(g)(4) of the Code shall contain a statement from which the Commissioner may determine that good cause exists to warrant such delay.

(18) When a taxpayer receives a ruling or determination letter prior to the filing of his return with respect to any transaction that has been consummated and that is relevant to the return being filed, he should attach a copy of the ruling or determination letter to the return.

(19) A taxpayer may protest an adverse ruling letter, or the terms and conditions contained in a ruling letter, issued after January 30, 1977, under section 367(a)(1) of the Code (including a ruling with respect to an exchange described in section 367(b) which begins before January 1, 1978) or section 1042(e)(2) of the Tax Reform Act of 1976, not later than 45 days after the date of the ruling letter. (For rulings issued under these sections prior to January 31, 1977, see section 4.01 of Revenue Procedure 77–5.) The Assistant Commissioner (Technical) will establish an ad hoc advisory board to consider each protest, whether or not a conference is requested. A protest is considered made on the date of the postmark of a letter of protest or the date of the postmark of a letter of protest or the date that such letter is hand delivered to any Internal Revenue Service office, including the National Office. The protest letter must be addressed to the Assistant Commissioner (Technical), Attention: T:FP:T. The taxpayer will be granted one conference upon request. Whether or not the request is made the board may request one or more conferences or written submissions. The taxpayer will be notified of the time, date, and place of the conference, and the names of the members of the board. The board will consider all materials submitted in writing by the taxpayer and oral arguments presented at the conference. Any oral arguments made at a conference by the taxpayer, which have not previously been submitted to the Service in writing, may be submitted to the Service in writing if postmarked not later than seven days after the day of the conference.

The Board will make its recommendation to the Assistant Commissioner (Technical) and the Assistant Commissioner will make the decision. The taxpayer will be informed of the decision of the Assistant Commissioner by certified or registered mail. The specific procedures to be used by a taxpayer in protesting an adverse ruling letter, or the terms and conditions contained in

a ruling letter, under section 367 will be published from time to time in the Internal Revenue Bulletin (see, for example, Revenue Procedure 77–5).

(f) *Conferences in the National Office.* (1) If a conference has been requested, the taxpayer will be notified of the time and place of the conference. A conference is normally scheduled only when the Service deems it will be helpful in deciding the case or an adverse decision is indicated. If conferences are being arranged with respect to more than one request for a ruling involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer.

(2) A taxpayer is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in subparagraph (3) of this paragraph develops. This conference will usually be held at the branch level of the appropriate division in the office of the Assistant Commissioner (Technical) and will usually be attended by a person who has authority to act for the branch chief. (See § 601.201(a) (2) for the divisions involved.) If more than one subject is to be discussed at the conference, the discussion will constitute a conference with respect to each subject. In order to promote a free and open discussion of the issues, the conference will usually be held after the branch has had an opportunity to study the case. However, at the request of the taxpayer or his representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. No taxpayer has a ''right'' to appeal the action of a branch to a division director or to any other official of the Service, nor is a taxpayer entitled, as a matter of right, to a separate conference in the Chief Counsel's office on a request for a ruling.

(3) In the process of review in Technical of a holding proposed by a branch, it may appear that the final answer will involve a reversal of the branch proposal with a result less favorable to the taxpayer. Or it may appear that an adverse holding proposed by a branch will be approved, but on a new or different issue or on different grounds than those on which the branch decided the case. Under either of these circumstances, the taxpayer of his representative will be invited to another conference. The provisions of this section limiting the number of conferences to which a taxpayer is entitled will not foreclose the invitation of a taxpayer to attend further conferences when, in the opinion of National Office personnel, such need arises. All additional conferences of the type discussed in this paragraph are held only at the invitation of the Service.

(4) It is the responsibility of the taxpayer to add to the case file a written record of any additional data, lines of reasoning, precedents, etc., which are proposed by the taxpayer and discussed at the conference but which were not previously or adequately presented in writing.

(g) *Referral of matters to the National Office.* (1) Requests for determination letters received by the district directors that, in accordance with paragraph (c) of this section, may not be acted upon by a district office, will be forwarded to the National Office for reply and the taxpayer advised accordingly. District directors also refer to the National Office any request for a determination letter that in their judgement warrants the attention of the National Office. See also the provisions of paragraphs (o), (p), and (q) of this section, with respect to requests relating to qualification of a plan under sections 401 and 405(a) of the Code, and paragraph (n) of this section, Revenue Procedure 72–5, Internal Revenue Bulletin No. 1972–1, 19, and Revenue Procedure 68–13, C.B. 1968–1, 764, with respect to application for recognition of exempt status under sections 501 and 521 of the Code.

(2) If the request is with regard to an issue or an area with respect to which the Service will not issue a ruling or a determination letter, such request will not be forwarded to the National Office, but the district office will advise the taxpayer that the Service will not issue a ruling or a determination letter on the issue. See paragraph (d) (2) of this section.

(h) *Referral of matters to district offices.* Requests for rulings received by the National Office that, in accordance with the provisions of paragraph (b) of

this section, may not be acted upon by the National Office will be forwarded for appropriate action to the district office that has or will have audit jurisdiction of the taxpayer's return and the taxpayer advised accordingly. If the request is with respect to an issue or an area of the type discussed in paragraph (d)(2) of this section, the taxpayer will be so advised and the request may be forwarded to the appropriate district office for association with the related return or report of the taxpayer.

(i) *Review of determination letters.* (1) Determination letters issued with respect to the types of inquiries authorized by paragraphs (c) (1), (2), and (3) of this section are not generally reviewed by the National Office as they merely inform a taxpayer of a position of the Service which has been previously established either in the regulations or in a ruling, opinion, or court decision published in the Internal Revenue Bulletin. If a taxpayer believes that a determination letter of this type is in error, he may ask the district director to reconsider the matter. He may also ask the district director to request advice from the National Office. In such event, the procedures in paragraphs (b)(5) of § 601.105 will be followed.

(2) The procedures for review of determination letters relating to the qualification of employers' plans under section 401(a) of the Code are provided in paragraph (o) of this section.

(3) The procedures for review of determination letters relating to the exemption from Federal income tax of certain organizations under sections 501 and 521 of the Code are provided in paragraph (n) of this section.

(j) *Withdrawals of requests.* The taxpayer's request for a ruling or a determination letter may be withdrawn at any time prior to the signing of the letter of reply. However, in such a case, the National Office may furnish its views to the district director whose office has or will have audit jurisdiction of the taxpayer's return. The information submitted will be considered by the district director in a subsequent audit or examination of the taxpayer's return. Even though a request is withdrawn, all correspondence and exhibits will be retained in the Service and may not be returned to the taxpayer.

(k) *Oral advice to taxpayers.* (1) The Service does not issue rulings or determination letters upon oral requests. Furthermore, National Office officials and employees ordinarily will not discuss a substantive tax issue with a taxpayer or his representative prior to the receipt of a request for a ruling, since oral opinions or advice are not binding on the Service. This should not be construed as preventing a taxpayer or his representative from inquiring whether the Service will rule on a particular question. In such cases, however, the name of the taxpayer and his identifying number must be disclosed. The Service will also discuss questions relating to procedural matters with regard to submitting a request for a ruling, including the application of the provisions of paragraph (e) to the particular case.

(2) A taxpayer may, of course, seek oral technical assistance from a district office in the preparation of his return or report, pursuant to other established procedures. Such oral advice is advisory only and the Service is not bound to recognize it in the examination of the taxpayer's return.

(l) *Effect of rulings.* (1) A taxpayer may not rely on an advance ruling issued to another taxpayer. A ruling, except to the extent incorporated in a closing agreement, may be revoked or modified at any time in the wise administration of the taxing statutes. See paragraph (a)(6) of this section for the effect of a closing agreement. If a ruling is revoked or modified, the revocation or modification applies to all open years under the statutes, unless the Commissioner or his delegate exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the revocation or modification. The manner in which the Commissioner or his delegate generally will exercise this authority is set forth in this section. With reference to rulings relating to the sale or lease of articles subject to the manufacturers excise tax and the retailers excise tax, see specifically subparagraph (8) of this paragraph.

(2) As part of the determination of a taxpayer's liability, it is the responsibility of the district director to ascertain whether any ruling previously issued to the taxpayer has been properly applied. It should be determined whether the representations upon which the ruling was based reflected an accurate statement of the material facts and whether the transaction actually was carried out substantially as proposed. If, in the course of the determination of the tax liability, it is the view of the district director that a ruling previously issued to the taxpayer should be modified or revoked, the findings and recommendations of that office will be forwarded to the National Office for consideration prior to further action. Such reference to the National Office will be treated as a request for technical advice and the procedures of paragraph (b)(5) of § 601.105 will be followed. Otherwise, the ruling is to be applied by the district office in its determination of the taxpayer's liability.

(3) Appropriate coordination with the National Office will be undertaken in the event that any other field official having jurisdiction of a return or other matter proposes to reach a conclusion contrary to a ruling previously issued to the taxpayer.

(4) A ruling found to be in error or not in accord with the current views of the Service may be modified or revoked. Modification or revocation may be effected by a notice to the taxpayer to whom the ruling originally was issued, or by a Revenue Ruling or other statement published in the Internal Revenue Bulletin.

(5) Except in rare or unusual circumstances, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer whose tax liability was directly involved in such ruling if (i) there has been no misstatement or omission of material facts, (ii) the facts subsequently developed are not materially different from the facts on which the ruling was based, (iii) there has been no change in the applicable law, (iv) the ruling was originally issued with respect to a prospective or proposed transaction, and (v) the taxpayer directly involved in the ruling acted in good faith in reliance upon the ruling and the retroactive revocation would be to his detriment. To illustrate, the tax liability of each employee covered by a ruling relating to a pension plan of an employer is directly involved in such ruling. Also, the tax liability of each shareholder is directly involved in a ruling related to the reorganization of a corporation. However, the tax liability of members of an industry is not directly involved in a ruling issued to one of the members, and the position taken in a revocation or modification of ruling to one member of an industry may be retroactively applied to other members of that industry. By the same reasoning, a tax practitioner may not obtain the nonretroactive application to one client of a modification or revocation of a ruling previously issued to another client. Where a ruling to a taxpayer is revoked with retroactive effect, the notice to such taxpayer will, except in fraud cases, set forth the grounds upon which the revocation is being made and the reasons why the revocation is being applied retroactively.

(6) A ruling issued to a taxpayer with respect to a particular transaction represents a holding of the Service on that transaction only. However, the application of that ruling to the transaction will not be affected by the subsequent issuance of regulations (either temporary or final), if the conditions specified in subparagraph (5) of this paragraph are met. If the ruling is later found to be in error or no longer in accord with the holding of the Service, it will afford the taxpayer no protection with respect to a like transaction in the same or subsequent year, except to the extent provided in subparagraphs (7) and (8) of this paragraph.

(7) If a ruling is issued covering a continuing action or a series of actions and it is determined that the ruling was in error or no longer in accord with the position of the Service, the Assistant Commissioner (Technical) ordinarily will limit the retroactivity of the revocation or modification to a date not earlier than that on which the original ruling was modified or revoked. To illustrate, if a taxpayer rendered service or provided a facility

which is subject to the excise tax on services or facilities, and in reliance on a ruling issued to the same taxpayer did not pass the tax on to the user of the service or the facility, the Assistant Commissioner (Technical) ordinarily will restrict the retroactive application of the revocation or modification of the ruling. Likewise, if an employer incurred liability under the Federal Insurance Contributions Act, but in reliance on a ruling made to the same employer neither collected the employee tax nor paid the employee and employer taxes under the Act, the Assistant Commissioner (Technical) ordinarily will restrict the retroactive application of the revocation or modification of the ruling with respect to both the employer tax and the employee tax. In the latter situation, however, the restriction of retroactive application ordinarily will be conditioned on the furnishing by the employer of wage data, or of such corrections of wage data as may be required by §31.6011(a)–1(c) of the Employment Tax Regulations. Consistent with these provisions, if a ruling relates to a continuing action or a series of actions, the ruling will be applied until the date of issuance of applicable regulations or the publication of a Revenue Ruling holding otherwise, or until specifically withdrawn. Publication of a notice of proposed rulemaking will not affect the application of any ruling issued under the procedures set forth herein. (As to the effective date in cases involving revocation or modification of rulings or determination letters recognizing exemption, see paragraph (n)(1) of this section.)

(8) A ruling holding that the sale or lease of a particular article is subject to the manufacturers excise tax or the retailers excise tax may not revoke or modify retroactively a prior ruling holding that the sale or lease of such article was not taxable, if the taxpayer to whom the ruling was issued, in reliance upon such prior ruling, parted with possession or ownership of the article without passing the tax on to his customer. Section 1108(b), Revenue Act of 1926.

(9) In the case of rulings involving completed transactions, other than those described in subparagraphs (7) and (8) of this paragraph, taxpayers will not be afforded the protection against retroactive revocation provided in subparagraph (5) of this paragraph in the case of proposed transactions since they will not have entered into the transactions in reliance on the rulings.

(m) *Effect of determination letters.* A determination letter issued by a district director in accordance with this section will be given the same effect upon examination of the return of the taxpayer to whom the determination letter was issued as is described in paragraph (l) of this section, in the case of a ruling issued to a taxpayer, except that reference to the National Office is not necessary where, upon examination of the return, it is the opinion of the district director that a conclusion contrary to that expressed in the determination letter is indicated. A district director may not limit the modification or revocation of a determination letter but may refer the matter to the National Office for exercise by the Commissioner or his delegate of the authority to limit the modification or revocation. In this connection see also paragraphs (n) and (o) of this section.

(n) *Organization claiming exemption under section 501 or 521 of the Code*—(1) *Filing applications for exemption.* (i) An organization seeking recognition of exempt status under section 501 or 521 of the Code is required to file an application with the key district director for the Internal Revenue district in which the principal place of business or principal office of the organization is located. Following are the 19 key district offices that process the applications and the Internal Revenue districts covered by each:

Key district(s) and IRS districts covered

Central Region:
- Cincinnati: Cincinnati, Louisville, Indianapolis.
- Cleveland: Cleveland, Parkersburg.
- Detroit: Detroit.

Mid-Atlantic Region:
- Baltimore: Baltimore (which includes the District of Columbia and Office of International Operations), Pittsburgh, Richmond.
- Philadelphia: Philadelphia, Wilmington.
- Newark: Newark.

Midwest Region:

Chicago: Chicago.
St. Paul: St. Paul, Fargo, Aberdeen, Milwaukee.
St. Louis: St Louis, Springfield, Des Moines, Omaha.
North-Atlantic Region:
Boston: Boston, Augusta, Burlington, Providence, Hartford, Portsmouth.
Manhattan: Manhattan.
Brooklyn: Brooklyn, Albany, Buffalo.
Southeast Region:
Atlanta: Atlanta, Greensboro, Columbia, Nashville.
Jacksonville: Jacksonville, Jackson Birmingham.
Southwest Region:
Austin: Austin, New Orleans, Albuquerque, Denver, Cheyenne.
Dallas: Dallas, Oklahoma City, Little Rock, Wichita.
Western Region:
Los Angeles: Los Angeles, Phoenix, Honolulu.
San Francisco: San Francisco, Salt Lake City, Reno.
Seattle: Seattle, Portland, Anchorage, Boise, Helena.

(ii) A ruling or determination letter will be issued to an organization provided its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy these requirements. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities; the anticipated sources to receipts; and the nature of contemplated expenditures. Where the Service considers it warranted, a record of actual operations may be required before a ruling or determination letter will be issued.

(iii) Where an application for recognition of exemption does not contain the required information, the application may be returned to the applicant without being considered on its merits with an appropriate letter of explanation. In the case of an application under section 501 (c) (3) of the Code, the applicant will also be informed of the time within which the completed application must be resubmitted in order for the application to be considered as timely notice within the meaning of section 508(a) of the Code.

(iv) A ruling or determination letter recognizing exemption will not ordinarily be issued if an issue involving the organization's exempt status under section 501 or 521 of the Code is pending in litigation or on appeal within the Service.

(2) *Processing applications and requests for determination of foundation status.* (i) Under the general procedures outlined in paragraphs (a) through (m) of this section, key district directors are authorized to issue determination letters involving applications for exemption under sections 501 and 521 of the Code, and requests for foundation status under sections 509 and 4942 (j)(3).

(ii) A key district director will refer to the National Office those applications that present questions the answers to which are not specifically covered by statute, Treasury decision or regulation, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. The National Office will consider each such application, issue a ruling directly to the organization, and send a copy of the ruling to the key district director. Where the issue of exemption under section 501(c)(3) of the Code is referred to the National Office for decision under this subparagraph, the foundation status issue will also be the subject of a National Office ruling. In the event of a conclusion unfavorable to the applicant, it will be informed of the basis for the conclusion and of its rights to file a protest and to a conference in the National Office. If a conference is requested, the conference procedures set forth in subparagraph (9)(v) of this paragraph will be followed. After reconsideration of the application in the light of the protest and any information developed in conference, the National Office will affirm, modify, or reverse the original conclusion, issue a ruling to the organization, and send a copy of the ruling to the key district director.

(iii) Key district directors will issue determination letters on foundation status. All adverse determinations issued by key district directors (including adverse determinations on the foundation status under section 509(a) of the Code of nonexempt charitable trusts described in section 4947(a)(1)) are subject to the protest and conference procedures outlined in subparagraph (5) of this paragraph. Key district directors will issue such determinations in response to applications for recognition of exempt status under section 501(c)(3). They will also issue such determinations in response to requests for determination of foundation status by organizations presumed to be private foundations under section 508(b), requests for new determinations of foundation status by organizations previously classified as other than private foundations, and, subject to the conditions set forth in subdivision (vi) of subparagraph (6) of this paragraph, requests to reconsider status. The requests described in the preceding sentence must be made in writing. For information relating to the circumstances under which an organization presumed to be a private foundation under section 508(b) may request a determination of its status as other than a private foundation, see Revenue Ruling 73–504, 1973–2 C.B. 190. All requests for determinations referred to in this paragraph should be made to the key district director for the district in which the principal place of business or principal office of the organization is located.

(iv) If the exemption application or request for foundation status involves an issue which is not covered by published precedent or on which there may be nonuniformity between districts, or if the National Office had issued a previous contrary ruling or technical advice on the issue, the key district director must request technical advice from the National Office. If, during the consideration of its application or request by a key district director, the organization believes that the case involves an issue with respect to which referral for technical advice is appropriate, the organization may ask the district director to request technical advice from the National Office. The district director shall advise the organization of its right to request referral of the issue to the National Office for technical advice. The technical advice provisions applicable to these cases are set forth in subparagraph (9) of this paragraph. The effect on an organization's appeal rights of technical advice or a National Office ruling issued under this subparagraph are set forth in § 601.106(a)(1)(iv)(*a*) and in subparagraph (5)(i) of this paragraph.

(3) *Effect of exemption rulings or determination letters.* (i) A ruling or determination letter recognizing exemption is usually effective as of the date of formation of an organization, if its purposes and activities during the period prior to the date of the ruling or determination letter were consistent with the requirements for exemption. However, with respect to organizations formed after October 9, 1969, applying for recognition of exemption under section 501(c)(3) of the Code, the provisions of section 508(a) apply. If the organization is required to alter its activities or make substantive amendments to its enabling instrument, the ruling or determination letter recognizing its exemption will be effective as of the date specified therein.

(ii) A ruling or determination letter recognizing exemption may not be relied upon if there is a material change inconsistent with exemption in the character, the purpose, or the method of operation of the organization.

(iii) (*a*) When an organization that has been listed in IRS Publication No. 78, ''Cumulative List of Organizations described in section 170 (c) of the Internal Revenue Code of 1954,'' as an organization contributions to which are deductible under section 170 of the Code subsequently ceases to qualify as such, and the ruling or determination letter issued to it is revoked, contributions made to the organization by persons unaware of the change in the status of the organization generally will be considered allowable until (*1*) the date of publication of an announcement in the Internal Revenue Bulletin that contributions are no longer deductible, or (*2*) a date specified in such an announcement where deductibility is terminated as of a different date.

(*b*) In appropriate cases, however, this advance assurance of deductibility of contributions made to such an organization may be suspended pending verification of continuing qualification under section 170 of the Code. Notice of such suspension will be made in a public announcement by the Service. In such cases allowance of deductions for contributions made after the date of the announcement will depend upon statutory qualification of the organization under section 170.

(*c*) If an organization, whose status under section 170 (c)(2) of the Code is revoked, initiates within the statutory time limit a proceeding for declaratory judgment under section 7428, special reliance provisions apply. If the decision of the court is adverse to the organization, it shall nevertheless be treated as having been described in section 170 (c)(2) for purpose of deductibility of contributions from other organizations described in section 170 (c) (2) and individuals (up to a maximum of $1,000), for the period beginning on the date that notice of revocation was published and ending on the date the court first determines that the organization is not described in section 170 (c)(2).

(*d*) In any event, the Service is not precluded from disallowing any contributions made after an organization ceases to qualify under section 170 of the Code where the contributor (*1*) had knowledge of the revocation of the ruling or determination letter, (*2*) was aware that such revocation was imminent, or (*3*) was in part responsible for, or was aware of, the activities or deficiencies on the part of the organization which gave rise to the loss of qualification.

(4) *National Office review of determination letters.* The National Office will review determination letters on exemption issues under sections 501 and 521 of the Code and foundation status under sections 509(a) and 4942(j)(3) to assure uniformity in the application of the established principles and precedents of the Service. Where the National Office takes exception to a determination letter the key district director will be advised. If the organization protests the exception taken, the file and protests will be returned to the National Office. The referral will be treated as a request for technical advice and the procedures of subparagraph (a) of this paragraph will be followed.

(5) *Protest of adverse determination letters.* (i) Upon the issuance of an adverse determination letter, the key district director will advise the organization of its right to protest the determination by requesting Appeals office consideration. However, if the determination was made on the basis of National Office technical advise the organization may not appeal the determination to the Appeals office. See § 601.106(a)(1)(iv)(*a*). To request Appeals consideration, the organization shall submit to the key district director, within 30 days from the date of the letter, a statement of the facts, law, and arguments in support of its position. The organization must also state whether it wishes an Appeals office conference. Upon receipt of an organization's request for Appeals consideration, the key district director will, if it maintains its position, forward the request and the case file to the Appeals office.

(ii) Except as provided in subdivisions (iii) and (iv) of this subparagraph, the Appeals office, after considering the organization's protest and any additional information developed, will advise the organization of its decision and issue an appropriate determination letter. Organizations should make full presentation of the facts, circumstances, and arguments at the initial level of consideration, since submission of additional facts, circumstances, and arguments at the Appeals office may result in suspension of Appeals procedures and referral of the case back to the key district for additional consideration.

(iii) If the proposed disposition by the Appeals office is contrary to a National Office technical advice or ruling concerning tax exemption, issued prior to the case, the proposed disposition will be submitted, through the Office of the Regional Director of Appeals, to the Assistant Commissioner (Employee Plans and exempt Organizations) or, in a section 521 case, to the Assistant Commissioner (Technical). The decision of the Assistant Commissioner will be followed by the Appeals office. See § 601.106(a)(1)(iv)(*b*).

(iv) If the case involves an issue that is not covered by published precedent or on which there may be nonuniformity between regions, and on which the National Office has not previously rules, the Appeals office must request technical advice from the National Office. If, during the Consideration of its case by Appeals the Organization believes that the case involves an issue with respect to which referal for technical advice is appropriate, the organization may ask the Appeals office to request technical advice from the National Office. The Appeals office shall advise the organization of its right to request referral of the issue to the National Office for technical advice. If the Appeals office requests technical advice, the decision of the Assistant Commissioner (Employee Plans and Exempt Organizations) or, in a section 521 case, the decision of the Assistant Commissioner (Technical), in a technical advice memorandum is final and the Appeals office must dispose of the case in accordance with that decision. See subparagraph (9)(viii)(*a*) of this paragraph.

(6) *Revocation of modification of rulings or determination letters on exemption and foundation status.* (i) An exemption ruling or determination letter may be revoked or modified by a ruling or determination letter addressed to the organization, or by a revenue ruling or other statement published in the Internal Revenue Bulletin. The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or engaged in a prohibited transaction of the type described in subdivision (vii) of this subparagraph. In any event, revocation or modification will ordinarily take effect no later than the time at which the organization received written notice that its exemption ruling of determination letter might be revoked or modified.

(ii)(*a*) If a key district director concludes as a result of examining an information return, or considering information from any other source, that an exemption ruling or determination letter should be revoked or modified, the organization will be advised in writing of the proposed action and the reasons therefor. If the case involves an issue not covered by published precedent or on which there may be nonuniformity between districts, or if the National Office has issued a previous contrary ruling or technical advice on the issue, the district director must seek technical advice from the National Office. If the organization believes that the case involves an issue with respect to which referral for technical advice is appropriate, the organization may ask the district director to request technical advice from the National Office. The district director shall advise the organization of its right to request referral of the issue to the National Office for technical advice.

(*b*) The key district director will advise the organization of its right to protest the proposed revocation or modification by requesting Appeals office consideration. However, if National Office technical advice was furnished concerning revocation or modification under (*a*) of this subdivision, the decision of the Assistant Commissioner in the technical advice memorandum is final and the organization has no right of appeal to the Appeals office. See § 601.106(a)(1)(iv)(*a*) to request Appeals consideration, the organization must submit to the key district director, within 30 days from the date of the letter, a statment of the facts, law, and arguments in support of its continued exemption. The organization must also state whether it wishes an Appeals office conference. Upon receipt of an organization's request for Appeals consideration, the key district office, will, if it maintains its position, forward the request and the case file to the Appeals office.

(*c*) Except as provided in (*d*) and (*e*) of this subdivision, the Appeals office, after considering the organization's protest and any additional information developed, will advise the organization of its decision and issue an appropriate determination letter. Organizations should make full presentation of the facts, circumstances, and arguments at the initial level of consideration, since submission of additional facts, circumstances, and arguments at the Appeals office may result in suspension of Appeals procedures and referral of the

case back to the key district for additional consideration.

(*d*) If the proposed disposition by the Appeals office is contrary to a National Office technical advice or ruling concerning tax exemption, issued prior to the case, the proposed disposition will be submitted, through the Office of the Regional Director of Appeals, to the Assistant Commissioner (Employee Plans and Exempt Organizations) or, in a section 521 case, to the Assisant Commissioner (Technical). The decision of the Assistant Commissioner will be followed by the Appeals office. See § 601.106(a)(1)(iv)(*b*).

(*e*) If the case involves an issue that is not covered by published precedent or on which there may be nonuniformity between regions, and on which the National Office has not previously rules, the Appeals office must request technicla advice from the National Office. If the organization believes that the case involves an issue with respect to which referral for technical advice is appropriate, the organization may ask the Appeals office to request technical advice from the National Office. The Appeals office shall advice the organization of tis right to request referral of the issue to the National Office for technical advice.

(iii) A ruling or determination letter respecting private foundations or operating foundation status may be revoked or modified by a ruling or determination letter addressed to the organization, or by a revenue ruling or other statement published in the Internal Revenue Bulletin. If a key district director concludes, as a result of examining an information return or considering information from any other source, that a ruling or determination letter concerning private foundation status (including foundation status under section 509(a)(3) of the Code of a nonexempt charitable trust described in section 4947(a)(1)) or operating foundation status should be modified or revoked, the procedures in subdivision (iv) or (v) of this subparagraph should be followed depending on whether the revocation or modification is adverse or non-adverse to the affected organization. Where there is a proposal by the Service to change foundation status classification from one particular paragraph of section 509(a) to another paragraph of that section, the procedures described in subdivision (iv) of this paragraph will be followed to modify the ruling or determination letter.

(iv) If a key district director concludes that a ruling or determination letter concerning private foundation or operating foundation status should be revoked or modified. The organization will be advised in writing of the proposed adverse action, the reasons therefor, and the proposed new determination of foundation status. The procedures set forth in subdivision (ii) of this subparagraph apply to a proposed revocation or modification under this subdivision. Unless the effective date or revocation or modification of a ruling or determination letter concerning private foundation or operating foundation status is expressly covered by statute or regulations, the effective date generally is the same as the effective date of revocation or modification of exemption rulings or determination letters as provided in subdivision (i) of this subparagraph.

(v) If the key district director concludes that a ruling or determination letter concerning private foundation or operating foundation status should be revoked or modified and that such revocation of modification will not be adverse to the organization, the key district director will issue a determination letter revoking or modifying foundation status. The determination letter will also serve to notify the organization of its foundation status as redetermined. A nonadverse revocation or modification as to private foundation or operating foundation status will ordinarily be retroactive if the initial ruling or determination letter was incorrect.

(vi) In cases where an organization believes that it received an incorrect ruling or determination letter as to its private foundation or operating foundation status, the organization may request a key district director to reconsider such ruling or determination letter. Except in are circumstances, the key district director will only consider such requests where the organization had not exercised any protest or conference rights with respect to the

issuance of such ruling or determination letter. If a key district director decides that reconsideration is warranted, the request will be treated as an initial request for a determination of foundation status, and the key district director will issue a determination on foundation status or operating foundation status under the procedures of subparagrph (2) of this paragraph. If a nonadverse determination is issued, it will also inform the organization that the prior ruling or determination letter is revoked or modified. Adverse determinations are subject to the procedures set out in subparagraph (5) of this paragraph. If the key district director decides that reconsideration is not warranted, the organization will be notified accordingly. The organization does not have a right to protest the key district director's decision not to reconsider.

(vii) If it is concluded that an organization that is subject to the provisions of section 503 of the Code entered into a prohibited transaction for the purpose of diverting corpus or income from its exempt purpose, and if the transaction involved a substantial part of the corpus or income of the organization, its exemption is revoked effective as of the beginning of the taxable year during which the prohibited transaction was commenced.

(viii) The provisions of this subparagraph relating to protests, conferences, and the rights of organizations to ask the technical advice be requested before a revocation (or modification) notice is issued are not applicable to matters where delay would be prejudicial to the interests of the Internal Revenue Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the period of limitations, or where immediate action is necessary to protect the interests of the Government).

(7) *Declaratory judgments relating to status and classification of organizations under section 501(c)(3) of the Code.* (i) An organization seeking recognition of exempt status under section 501(c)(3) of the Code must follow the procedures of subparagraph (1) of this paragraph regarding the filing of Form 1023, Application of Recognition of Exemption. The 270-day period referred to in section 7428(b)(2) will be considered by the Service to begin on the date a substantially completed Form 1023 is sent to the appropriate key district director. A substantially completed Form 1023 is one that:

(*a*) Is signed by an authorized individual;

(*b*) Includes an Employer Identification Number (EIN) or a completed Form SS–4, Application of Employer Identification Number;

(*c*) Includes a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years or the years the organization was in existence, if less then four years (if the organization has not yet commenced operations, a proposed budget for two full accounting periods and a current statement of assets and liabilities will be acceptable);

(*d*) Includes a statement of proposed activities and a description of anticipated receipts and contemplated expenditures;

(*e*) Includes a copy of the organizing or enabling document that the organizing or enabling document that is signed by a principal officer or is accompanied by written declaration signed by an officer authorized to sign for the organization certifying that the document is a complete and accurate copy of the original; and

(*f*) If the organization is a corporation or unincorporated association and it has adopted bylaws, includes a copy that is signed or otherwise verified as current by an authorized officer.

If an application does not contain all of the above items, it will not be further processed and may be returned to the applicant for completion. The 270-day period will not be considered as starting until the date the application is remailed to the Service with the requested information, or, if a postmark is not evident, on the date the Service receives a substantially completed application.

(ii) Generally, rulings and determination letters in cases subject to declaratory judgment are issued under the procedures outlined in the paragraph. In National Office exemption application cases, proposed adverse rulings will be issued by the rulings sections in the Exempt organizations

Technical Branch. Applicants shall appeal these proposed adverse rulings to the Conference and Review Staff of the Exempt organizations Technical Branch. In those cases where an organization is unable to describe fully its purposes and activities (see subparagraph (1)(ii) of this paragraph), a refusal to rule will be considered an adverse determination ofr which administrative appeal rights will be afforded. Any oral representation of additional facts or modification of the facts as represented or alleged in the aplication for a ruling or determination letter must be reduced to writing.

(iii) If an organization withdraws in writing its request for a ruling or determination letter, the withdrawal will not be considered by the Service as either a failure to make a determination within the meaning of section 7428(a)(2) of the Code or as an exhaustion of administrative remedies within the meaning of section 7428(b)(2).

(iv) Section 7428(b)(2) of the Code requires that an organization must exhaust its administrative remedies by taking timely, reasonable steps to secure a determination. Those steps and administrative remedies that must be exhausted within the Intereal Revenue Service are:

(*a*) The filing of a substantially completed application form 1023 pursuant to subdivision (i) of this subparagraph, or the filing of a request for a determination of foundation status pursuant to subparagrpah (2) of this paragraph;

(*b*) The timely submission of all additional information requested to perfect an exemption application or request for determination of private foundation status; and

(*c*) Exhaustion of all administrative appeals available within the Service pursuant to subparagraphs (5) and (6) of this paragraph, as well as appeal of a proposed adverse ruling to the Conference and Review Staff of the Exempt Organizations Technical Branch in National Office original jurisdiction exemption application cases.

(v) An organization will in no event be deemed to have exhausted its administrative remedies prior to the completion of the steps described in subdivision (iv) of this subparagraph and the earlier of:

(*a*) The sending by certified or registered mail of a notice of final determination; or

(*b*) The expiration of the 270-day period described in section 7428(b)(2) of the Code, in a case in which the Service has not issued a notice of final determination and the organization has taken, in a timely manner, all reasonable steps to secure a ruling or determination.

(vi) The steps described in subdivision (iv) of this subparagraph will not be considered completed until the Internal Revenue Service has had a reasonable time to act upon the appeal or request for consideration, as the case may be.

(vii) A notice of final determination to which section 7428 of the Code applies is a ruling or determination letter, sent by certified or registered mail, which holds that the organization is not described in section 501(c)(3) or section 170(c)(2), is a private foundation as defined in section 509(a), or is not a private operating foundation as defined in section 4942(j)(3).

(8) *Group exemption letters*—(i) *General. (a)* A group exemption letter is a ruling issued to a central organization recognizing on a group basis the exemption under section 501(c) of the Code of subordinate organizations on whose behalf the central organization has applied for exemption in accordance with this subparagraph.

(b) A central organization is an organization which has one or more subordinates under its general supervision or control.

(c) A subordinate is a chapter, local, post, or unit of a central organization. It may or may not be incorporated. A central organization may be a subordinate itself, such as a state organization which has subordinate units and is itself affiliated with a national organization.

(d) A subordinate included in a group exemption letter should not apply separately for an exemption letter, unless it no longer wants to be included in the group exemption letter.

(e) A subordinate described in section 501(c)(3) of the Code may not be included in a group exemption letter if it is a private foundation as defined in

section 509(a) of the Code. Such an organization should apply separately for exempt status under the procedures outlined in subparagraph (1) of this paragraph.

(ii) *Requirements for inclusion in a group exemption letter. (a)* A central organization applying for a group exemption letter must establish its own exempt status.

(b) It must also establish that the subordinates to be included in the group exemption letter are:

(1) Affiliated with it;

(2) Subject to its general supervision or control;

(3) Exempt under the same paragraph of section 501(c) of the Code, though not necessarily the paragraph under which the central organization is exempt; and

(4) Not private foundations if application for a group exemption letter involves section 501(c)(3) of the Code.

(c) Each subordinate must authorize the central organization to include it in the application for the group exemption letter. The authorization must be signed by a duly authorized officer of the subordinate and retained by the central organization while the group exemption letter is in effect.

(iii) *Filing application for a group exemption letter. (a)* A central organization seeking a group exemption letter for its subordinates must obtain recognition of its own exemption by filing an application with the District Director of Internal Revenue for the district in which is located the principal place of business or the principal office of the organization. For the form of organization see §1.501(a)–1 of the Income Tax Regulations. Any application received by the National Office or by a district director other than as provided above will be forwarded, without any action thereon, to the appropriate district director.

(b) If the central organization has previously established its own exemption, it must indicate its employer identification number, the date of the exemption letter, and the Internal Revenue Office that issued it. It need not resubmit documents already submitted. However, if it has not already done so, it must submit a copy of any amendments to its governing instruments or internal regulations as well as any information regarding any change in its character, purposes, or method of operation.

(c) In addition to the information required to establish its own exemption, the central organization must submit to the district director the following information, in duplicate, on behalf of those subordinates to be included in the group exemption letter:

(1) A letter signed by a principal officer of the central organization setting forth or including as attachments:

(i) Information verifying the existence of the relationships required by subdivision (ii)*(b)* of this subparagraph;

(ii) A description of the principal purposes and activities of the subordinates;

(iii) A sample copy of a uniform governing instrument (charter, trust indenture, articles of association, etc.), if such an instrument has been adopted by the subordinates; or, in the absence of a uniform governing instrument, copies of representative instruments;

(iv) An affirmation to the effect that, to the best of his knowledge, the subordinates are operating in accordance with the stated purposes;

(v) A statement that each subordinate to be included in the group exemption letter has furnished written authorization to the central organization as described in subdivision (ii)*(c)* of this subparagraph; and

(vi) A list of subordinates to be included in the group exemption letter to which the Service has issued an outstanding ruling or determination letter relating to exemption.

(vii) If the application for a group exemption letter involves section 501(c)(3) of the Code, an affirmation to the effect that, to the best of his knowledge and belief, no subordinate to be included in the group exemption letter is a private foundation as defined in section 509(a) of the Code.

(2) A list of the names, mailing addresses (including Postal ZIP Codes), and employer identification numbers (if required for group exemption letter purposes by paragraph *(e)* of this subdivision) of subordinates to be included in the group exemption letter. A current directory of subordinates may be

furnished in lieu of the list if it includes the required information and if the subordinates not to be included in the group exemption letter are identified.

(d) If the central organization does not have an employer identification number, it must submit a completed Form SS–4, Application for Employer Identification Number, with its exemption application. See Rev. Rul. 63–247, C.B. 1963–2, 612.

(e) Each subordinate required to file an annual information return, Form 990 or 990–A, must have its own employer identification number, even if it has no employees. The central organization must submit with the exemption application a completed Form SS–4 on behalf of each subordinate not having a number. Although subordinates not required to file annual information returns, Form 990 or 990–A, need not have employer identification numbers for group exemption letter purposes, they may need such numbers for other purposes.

(iv) *Information required annually to maintain a group exemption letter. (a)* The central organization must submit annually within 45 days after the close of its annual accounting period the information set out below to the Philadelphia Service Center, 11601 Roosevelt Boulevard, Philadelphia, PA 19155, Attention: EO: R Branch:

(1) Information regarding all changes in the purposes, character, or method of operation of subordinates included in the group exemption letter.

(2) Lists of—

(i) Subordinates which have changed their names or addresses during the year,

(ii) Subordinates no longer to be included in the group exemption letter because they have ceased to exist, disaffiliated, or withdrawn the authorization to the central organization, and

(iii) Subordinates to be added to the group exemption letter because they are newly organized or affiliated or they have newly authorized the central organization to include them. A separate list must be submitted for each of the three categories set out above. Each list must show the names, mailing addresses (including Postal ZIP Codes), and employer identification numbers of the affected subordinates. An annotated directory of subordinates will not be acceptable for this purpose. If there were none of the above changes, the central organization must submit a statement to that effect.

(3) The information required by subdivision (iii)*(c)(l)* of this subparagraph, with respect to subordinates to be added to the group exemption letter. However, if the information upon which the group exemption letter was based is applicable in all material respects to such subordinates, a statement to this effect may be submitted in lieu of the information required by subdivision (iii)*(c)(l)(i)* through *(v)* of this subparagraph.

(b) Submission of the information required by this subdivision does not relieve the central organization or any of its subordinates of the duty to submit such additional information as a key district director may require to enable him to determine whether the conditions for continued exemption are being met. See sections 6001 and 6033 of the Code and the regulations thereunder.

(v) *Termination of a group exemption letter. (a)* Termination of a group exemption letter will result in nonrecognition of the exempt status of all included subordinates. To establish an exempt status in such cases, each subordinate must file an exemption application under the procedures outlined in subparagraph (1) of this paragraph, or a new group exemption letter must be applied for under this subparagraph.

(b) If a central organization dissolves or ceases to exist, the group exemption letter will be terminated, notwithstanding that the subordinates continue to exist and operate independently.

(c) Failure of the central organization to submit the information required by subdivision (iv) of this subparagraph, or to file a required information return. Form 990 or 990–A, or to otherwise comply with section 6001 or 6033 of the Code and the regulations thereunder, may result in termination of the group exemption letter on the grounds that the conditions required for the continuance of the group exemption letter have not been met. See Rev. Rul. 59–95, C.B. 1959–1, 627.

(d) The dissolution of a subordinate included in a group exemption letter will not affect the exempt status of the other included subordinates.

(e) If a subordinate covered by a group exemption letter fails to comply with section 6001 or 6033 of the Code and the regulations thereunder (for example, by failing to file a required information return) and the Service terminates its recognition of the subordinate's status, a copy of the termination letter to the subordinate will be furnished to the central organization. The group exemption letter will no longer be applicable to such subordinate, but will otherwise remain in effect. (It should be noted that if Form 990 is required to be filed, failure to file such return on time may also result in the imposition of a penalty of $10 for each day the return is late, up to a maximum of $5,000. See section 6652 of the Code and the regulations thereunder.)

(vi) *Revocation of a group exemption letter. (a)* If the Service determines, under the procedures described in subparagraph (6) of this paragraph, that a central organization no longer qualifies for exemption under section 501(c) of the Code, the group exemption letter will be revoked. The revocation will result in nonrecognition of the exempt status of all included subordinates. To reestablish an exempt status in such cases, each subordinate must file an exemption application under the procedures outlined in subparagraph (1) of this paragraph or a new group exemption letter must be applied for under this subparagraph.

(b) If the Service determines, under the procedures described in subparagraph (6) of this paragraph, that a subordinate included in a group exemption letter no longer qualifies for exemption under section 501(c) of the Code, the central organization and the subordinate will be notified accordingly, and the group exemption letter will no longer apply to such subordinate, but will otherwise remain in effect.

(c) Where a subordinate organization has been disqualified for inclusion in a group exemption letter as described in *(b)* of this subdivision, and thereafter wishes to reestablish its exempt status, the central organization should, at the time it submits the information required by subdivision (iv) of this subparagraph, submit detailed information relating to the subordinate's qualification for reinclusion in the group exemption letter.

(vii) *Instrumentalities or agencies of political subdivisions.* An instrumentality or agency of a political subdivision that exercises control or supervision over a number of organizations similar in purposes and operations, each of which may qualify for exemption under the same paragraph of section 501(c) of the Code, may obtain a group exemption letter covering those organizations in the same manner as a central organization. However, the instrumentality or agency must furnish evidence that it is a qualified governmental agency. Examples of organizations over which governmental agencies exercise control or supervision are Federal credit unions, State chartered credit unions, and Federal land bank associations.

(viii) *Listing in cumulative list of organizations to which charitable contributions are deductible.* If a central organization to which a group exemption letter has been issued is eligible to receive deductible charitable contributions as provided in section 107 of the Code, it will be listed in Publication No. 78, Cumulative List—organizations Described in section 170(c) of the Internal Revenue Code of 1954. The names of the subordinates covered by the group exemption letter will not be listed individually. However, the identification of the central organization will indicate whether contributions to its subordinates are also deductible.

(9) *Technical advice from the National Office*—(i) *Definition and nature of technical advice.* (*a*) As used in this subparagraph, *technical advice* means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, in Employee Plans and Exempt Organization matters, furnished by the National Office upon request of a key district office or Appeals office in connection with the processing and consideration of a nondocketed case. It is furnished as a means of assisting Service personnel in closing cases and establishing and

maintaining consistent holdings. It does not include memorandums on matters of general technical application furnished to key district offices or to Appeals offices where the issues are not raised in connection with the consideration and handling of a specific case.

(*b*) The provisions of this subparagraph only apply to Employee Plans and Exempt Organization cases being considered by a key district director or Appeals office. They do not apply to any other case under the jurisdiction of a district director or Appeals office or to a case under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms. The technical advice provisions applicable to cases under the jurisdiction of a district director, other than Employee Plans and Exempt Organization cases, are set forth in § 601.105(b)(5). The technical advice provisions applicable to cases under the jurisdiction of an Appeals office, other than Employee Plans and Exempt Organization cases are set forth in § 601.106(f)(10).

(*c*) A key district director or an Appeals office may, under this subparagraph, request technical advice with respect to the consideration of a request for a determination letter. If the case involves certain Exempt Organization issues that are not covered by published precedent or on which there may be nonuniformity, requesting technical advice is mandatory rather than discretionary. See subparagraphs (2)(iv) and (5)(iii) of this paragraph.

(*d*) If a key district director is of the opinion that a National Office ruling letter or technical advice previously issued should be modified or revoked and it requests the National Office to reconsider the ruling or technical advice, the reference of the matter to the National Office is treated as a request for technical advice. The procedures specified in subdivision (iii) of this subparagraph should be followed in order that the National Office may consider the recommendation. Only the National Office can revoke a National Office ruling letter or technical advice. Before referral to the National Office, the key district director should inform the plan/organization of its opinion that the ruling letter or technical advice should be revoked. The key district director, after development of the facts and consideration of the arguments, will decide whether to recommend revocation of the ruling or technical advice to the National Office.

(*e*) The Assistant Commissioner (Employee Plans and Exempt Organizations) and, in section 521 cases, the Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, are exclusively responsible for providing technical advice in any issue involving the establishment of basic principles and rules for the uniform interpretation and application of tax laws in cases under this subparagraph. This authority has been largely redelegated to subordinate officials.

(ii) *Areas in which technical advice may be requested.* (*a*) Key district directors and Appeals offices may request technical advice on any technical or procedural question that develops during the processing and consideration of a case. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(*b*) Key district directors and Appeals offices are encouraged to request technical advice on any technical or procedural question arising in connection with any case described in subdivision (i) of this subparagraph which cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other precedent issued by the National Office. However, in Exempt Organization cases concerning qualification for exemption or foundation status, key district directors and Appeals offices must request technical advice on any issue that is not covered by published precedent or on which nonuniformity may exist. Requests for technical advice should be made at the earliest possible stage of the proceedings.

(iii) *Requesting technical advice.* (*a*) It is the responsibility of the key district office or the Appeals office to determine whether technical advice is to be requested on any issue before that office. However, while the case is under the jurisdiction of the key district director or the Appeals office, an employee plan/organization or its representative may request that an issue

be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. This request should be made at the earliest possible stage of the proceedings. While plans/organizations are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reason for requesting National Office advice, a plan/organization may make the request orally. If, after considering the plan's/organization's request, the examiner or the Appeals Officer is of the opinion that the circumstances do not warrant referral of the case to the National Office, he/she will so advise the plan/organization. (See subdivision (iv) of this subparagraph for a plan's/organization's appeal rights where the examiner or Appeal Officer declines to request technical advice.)

(*b*) When technical advice is to be requested, whether or not upon the request of the plan/organization, the plan/organization will be so advised, except as noted in (*j*) of this subdivision. If the key district office or the Appeals office initiates the action, the plan/organization will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

(*c*) After receipt of the statement of facts and specific questions, the plan/organization will be given 10 calendar days in which to indicate in writing the extent, if any, to which it may not be in complete agreement. An extension of time must be justified by the plan/organization in writing and approved by the Chief, Employee Plans and Exempt Organizations Division (in the district office) or the Chief, Appeals Office, as the case may be. Every effort should be made to reach agreement as to the facts and specific points at issue. If agreement cannot be reached, the plan/organization may submit, within 10 calendar days after receipt of notice from the key district director or the Appeals office, a statement of its understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice. An extension of time must be justified by the plan/organization in writing and approved by the Chief, Employee Plans and Exempt Organizations Division or the Chief, Appeals Office.

(*d*) If the plan/organization initiates the action to request advice, and its statement of the facts and point or points at issue are not wholly acceptable to the key district office or the Appeals office, the plan/organization will be advised in writing as to the areas of disagreement. The plan/organization will be given 10 calendar days after receipt of the written notice to reply to such notice. An extension of time must be justified by the plan/organization in writing and approved by the Chief, Employee Plans and Exempt Organizations Division or the Chief, Appeals Office. If agreement cannot be reached, both the statements of the plan/organization and the key district office or the Appeals office will be forwarded to the National Office.

(*e*)(*1*) In the case of requests for technical advice subject to the disclosure provisions of section 6110 of the Code, the plan/organization must also submit, within the 10-day period referred to in (*c*) and (*d*) of this subdivision, whichever applicable (relating to agreement by the plan/organization with the statement of facts and points submitted in connection with the request for technical advice) the statement described in (*f*) of this subdivision of proposed deletions pursuant to section 6110(c) of the Code. If the statement is not submitted, the plan/organization will be informed by the key district director or the Appeals office that the statement is required. If the key district director or the Appeals office does not receive the statement within 10 days after the plan/organization has been informed of the need for the statement, the key district director or the Appeals office may decline to submit the request for technical advice. If the key district director or the Appeals office decides to request technical advice in a case where the plan/organization has not submitted the statement of

proposed deletions, the National Office will make those deletions which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(*2*) The requirements included in this subparagraph, relating to the submission of statements and other material with respect to proposed deletions to be made from technical advice memoranda before public inspection is permitted to take place, do not apply to requests made by the key district director before November 1, 1976, or requests for any document to which section 6104 of the Code applies.

(*f*) In order to assist the Internal Revenue Service in making the deletions, required by section 6110(c) of the Code, from the text of technical advice memoranda which are open to public inspection pursuant to section 6110(a) of the Code, there must accompany requests for such technical advice either a statement of the deletions proposed by the plan/organization, or a statement that no information other than names, addresses, and identifying numbers need be deleted. Such statements shall be made in a separate document. The statement of proposed deletions shall be accompanied by a copy of all statements of facts and supporting documents which are submitted to the National Office pursuant to (*c*) or (*d*) of this subdivision, on which shall be indicated, by the use of brackets, the material which the plan/organization indicates should be deleted pursuant to section 6110(c) of the Code. The statement of proposed deletions shall indicate the statutory basis for each proposed deletion. The statement of proposed deletions shall not appear or be referred to anywhere in the request for technical advice. If the plan/organization decides to request additional deletions pursuant to section 6110(c) of the Code prior to the time the National Office replies to the request for technical advice, additional statements may be submitted.

(*g*) If the plan/organization has not already done so, it may submit a statement explaining its position on the issues, citing precedents which it believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be forwarded for association with the case file.

(*h*) At the time the plan/organization is informed that the matter is being referred to the National Office, it will also be informed of the right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether a conference is desired.

(*i*) Generally, prior to replying to the request for technical advice, the National Office shall inform the plan/organization orally or in writing of the material likely to appear in the technical advice memorandum which the plan/organization proposed be deleted but which the Internal Revenue Service determined should not be deleted. If so informed, the plan/organization may submit within 10 days any further information, arguments, or other material in support of the position that such material be deleted. The Internal Revenue Service will attempt, if feasible, to resolve all disagreements with respect to proposed deletions prior to the time the National Office replies to the request for technical advice. However, in no event shall the plan/organization have the right to a conference with respect to resolution of any disagreements concerning material to be deleted from the text of the technical advice memorandum, but such matters may be considered at any conference otherwise scheduled with respect to the request.

(*j*) The provisions of (*a*) through (*i*) of this subdivision, relating to the referral of issues upon request of the plan/organization, advising plans/organizations of the referral of issues, the submission of proposed deletions, and the granting of conferences in the National Office, are not applicable to technical advice memoranda described in section 6110(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments. However, in such cases the plan/organization shall be allowed to provide the statement of proposed deletions to the National Office upon the completion of all proceedings with respect to the investigations or assessments, but prior to the date on which the Commissioner mails the notice pursuant to section 6110(f)(1) of the

Code of intention to disclose the technical advice memorandum.

(*k*) Form 4463, Request for Technical Advice, should be used for transmitting requests for technical advice to the National Office.

(iv) *Appeal by plans/organizations of determinations not to seek technical advice.* (*a*) If the plan/organization has requested referral of an issue before a key district office or an Appeals office to the National Office for technical advice, and after consideration of the request the examiner or the Appeals Officer is of the opinion that the circumstances do not warrant such referral, he/she will so advise the plan/organization.

(*b*) The plan/organization may appeal the decision of the examiner or the Appeals Officer not to request technical advice by submitting to the relevant official, within 10 calendar days after being advised of the decision, a statement of the facts, law, and arguments with respect to the issue, and the reasons why the plan/organization believes the matter should be referred to the National Office for advice. An extension of time must be justified by the plan/organization in writing and approved by the Chief, Employee Plans and Exempt Organizations Division of the Chief, Appeals Office.

(*c*) The examiner or the Appeals Officer will submit the statement of the plan/organization to the Chief, Employee Plans and Exempt Organizations Division or the Chief, Appeals Office, accompanied by a statement of the official's reasons why the issue should not be referred to the National Office. The Chief will determine, on the basis of the statements submitted, whether technical advice will be requested. If the Chief determines that technical advice is not warranted, that official will inform the plan/organization in writing that he/she proposes to deny the request. In the letter to the plan/organization the Chief will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The plan/organization will be given 15 calendar days after receipt of the letter in which to notify the Chief whether it agrees with the proposed denial. The plan/organization may not appeal the decision of the Chief, Employee Plans and Exempt Organizations Division, or of the Chief, Appeals Office, not to request technical advice from the National Office. However, if the plan/organization does not agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including the plan's/organization's written request and statements, will be submitted to the National Office, Attention: Director, Exempt Organizations or Employee Plans Division or Actuarial Division or, in a section 521 case, Attention: Director, Corporation Tax Division for review. After review in the National Office, the submitting office will be notified whether the proposed denial is approved or disapproved.

(*d*) While the matter is being reviewed in the National Office, the key district office or the Appeals office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

(v) *Conference in the National Office. (a)* If, after a study of the technical advice request, it appears that advice adverse to the plan/organization should be given and a conference has been requested, the plan/organization will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same plan/organization, they will be so scheduled as to cause the least inconvenience to the plan/organization. The conference will be arranged by telephone, if possible, and must be held within 21 calendar days after contact has been made. Extensions of time will be granted only if justified in writing by the plan/organization and approved by the appropriate branch chief.

(b) A plan/organization is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in

(c) of this subdivision exists. This conference will usually be held at the branch level in the appropriate division in the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations) or, in section 521 cases, in the Office of the Assistant Commissioner (Technical), and will usually be attended by a person who has authority to act for the branch chief. In appropriate cases the examiner or the Appeals Officer may also attend the conference to clarify the facts in the case. If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each subject. At the request of the plan/organization or its representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A plan/organization has no ''right'' of appeal from an action of a branch to the director of a division or to any other National Office official.

(c) In the process of review of a holding proposed by a branch, it may appear that the final answer will involve a reversal of the branch proposal with a result less favorable to the plan/organization. Or it my appear that an adverse holding proposed by a branch will be approved, but on a new or different issue or on different grounds than those on which the branch decided the case. Under either of these circumstances, the plan/organization or its representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a plan/organization is entitled will not foreclose inviting the plan/organization to attend further conferences when, in the opinion of National Office personnel, such need arises. All additional conferences of this type discussed are held only at the invitation of the Service.

(d) It is the responsibility of the plan/organization to furnish to the National Officer; within 21 calendar days after the conference, a written record of any additional data, line of reasoning, precedents, etc., that were proposed by the plan/organization and discussed at the conference but were not previously or adequately presented in writing. Extensions of time will be granted only if justified in writing by the plan/organization and approved by the appropriate branch chief. Any additional material and a copy thereof should be addressed to and sent to the National Office which will forward the copy to the appropriate key district director or Appeals office. The key district director or the Appeals office will be requested to give the matter prompt attention, will verify the additional facts and data, and will comment on it to the extent deemed appropriate.

(e) A plan/organization or its representative desiring to obtain information as to the status of its case (other than a section 521 case) may do so by contacting the following offices with respect to matters in the areas of their responsibility:

Official	*Telephone numbers, (Area Code 202)*
Chief, Employee Plans Technical Branch	566–3871.
Chief, Exempt Organizations Technical Branch	566–3856 or 566–3593.
Director, Actuarial Division	566–4311

An organization or its representative desiring to obtain information as to the status of its section 521 case may do so by contacting the Director, Corporation Tax Division (202–566–4504 or 566–4505).

(vi) *Preparation of technical advice memorandum by the National Office.* (*a*) Immediately upon receipt in the National Office, the employee to whom the case is assigned will analyze the file to ascertain whether it meets the requirements of subdivision (iii) of this subparagraph. If the case is not complete with respect to any requirement in subdivision (iii) (*a*) through (*d*) of this subparagraph, appropriate steps will be taken to complete the file. If any request for technical advice does not comply with the requirements of subdivision (iii)(*e*) of this subparagraph, if applicable, relating to the statement of proposed deletions, the National Office will make those deletions from the technical advice memorandum which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(*b*) If the plan/organization has requested a conference in the National Office, the procedures in subdivision (v) of this subparagraph will be followed.

(*c*) Replies to requests for technical advice will be addressed to the key district director or to the Appeals office and will be drafted in two parts. Each part will identify the plan/organization by name, address, identification number, and year or years involved. The first part (hereafter called the ''technical advice memorandum'') will contain (*1*) a recitation of the pertinent facts having a bearing on the issue; (*2*) a discussion of the facts, precedents, and reasoning of the National Office; and (*3*) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the key district director or the Appeals office. The discussion of the issues will be in such detail that the key district director or the Appeals office is apprised of the reasoning underlying the conclusion. There shall accompany the technical advice memorandum, where applicable, a notice, pursuant to section 6110(f)(1) of the Code, 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 pursuant to section 6110 (d) of the Code) which the key district director or the Appeals office will forward to the plan/organization at such time that it furnishes a copy of the technical advice memorandum to the plan/organization pursuant to (*e*) of this subdivision and subdivision (vii)(*b*) of this subparagraph.

(*d*) The second part of the reply will consist of a transmittal memorandum. In the unusual cases it will serve as a vehicle for providing the key district office or Appeals office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the plan/organization.

(*e*) It is the general practice of the Service to furnish a copy of the technical advice memorandum to the plan/organization after it has been adopted by the key district director or the Appeals office. However, in the case of technical advice memoranda described in section 6110(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments, a copy of the technical advice memorandum shall not be furnished the plan/organization until all proceedings with respect to the investigations or assessments are completed.

(*f*) After receiving the notice, pursuant to section 6110 (f)(1) of the Code, of intention to disclose the technical advice memorandum (if applicable), the plan/organization, if desiring to protest the disclosure of certain information in the memorandum, must, within 20 days after the notice is mailed, submit a written statement identifying those deletions not made by the Internal Revenue Service which the plan/organization believes should have been made. The plan/organization shall also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection on which it indicates, by the use of brackets, the deletions proposed by the plan/organization but which have not been made by the Internal Revenue Service. Generally, the Internal Revenue Service will not consider the deletion of any material which the plan/organization did not, prior to the time when the National Office sent its reply to the request for technical advice to the key district director or the Appeals office, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the plan/organization to the notice pursuant to section 6110(f)(1) of the Code (if applicable), mail to the plan/organization its final administrative conclusion regarding the deletions to be made.

(vii) *Action on technical advice in key district offices and in Appeals offices.* (*a*) Unless the key district director or the Chief, Appeals office, feels that the conclusions reached by the National Office in a technical advice memorandum should be reconsidered and promptly requests such reconsideration, the key district office or the Appeals office will proceed to process the case on the basis of the conclusions expressed in the technical advice memorandum. The effect of technical advice on the plan's/organization's case once the technical advice memorandum is adopted is set forth in subdivision (viii) of this subparagraph.

(*b*) The key district director or the Appeals office will furnish the plan/organization a copy of the technical advice memorandum described in subdivision (vi)(*c*) of this subparagraph and the notice pursuant to section 6110(f)(1) of the Code (if applicable) 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 pursuant to section 6110(d) of the Code). The preceding sentence shall not apply to technical advice memoranda involving civil fraud or criminal investigations, or jeopardy or termination assessments, as described in subdivision (iii)(*j*) of this subparagraph (except to the extent provided in subdivision (vi)(*e*) of this subparagraph) or to documents to which section 6104 of the Code applies.

(*c*) In those cases in which the National Office advises the key district director or the Appeals office that it should not furnish a copy of the technical advice memorandum to the plan/organization, the key district director or the Appeals office will so inform the plan/organization if it requests a copy.

(viii) *Effect of technical advice.* (*a*) A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case, and is issued primarily as a means of assisting Service officials in the examination and closing of the case involved. In cases under this subparagraph concerning a plan's/organization's qualification or an organization's status, the conclusions expressed in a technical advice memorandum are final and will be followed by the key district office or the Appeals office.

(*b*) Unless otherwise stated, a hold ing in a technical advice memorandum will be applied retroactively. Moreover, where the plan/organization had previously been issued a favorable ruling or determination letter (whether or not it was based on a previous technical advice memorandum) concerning that transaction, its purpose, or method of operation, the holding in a technical advice memorandum that is adverse to the plan/organization is also applied retroactively unless the Assistant Commissioner or Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) or, in a section 521 case, the Assistant Commissioner or Deputy Assistant Commissioner (Technical) exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the holding as illustrated, in the case of rulings, in paragraph (l)(5) of this section.

(*c*) Technical advice memoranda often form the basis for revenue rulings. For the description of revenue rulings and the effect thereof, see §§ 601.601 (d)(2)(i)(*a*) and 601.601 (d)(2)(v).

(*d*) A key district director or an Appeals office may raise an issue in a taxable period, even though technical advice may have been asked for and furnished with regard to the same or a similar issue in any other taxable period. However, if the proposal by the key district director or the Appeals office is contrary to a prior technical advice or ruling issued to the same plan/organization, the proposal must be submitted to the National Office. See § 601.106(a)(1)(iv)(*b*) and subdivision (i)(*d*) of this subparagraph.

(o) *Employees' trusts or plans*—(1) *In general.* Paragraph (o) provides procedures relating to the issuance of determination letters with respect to the qualification of retirement plans. Paragraph (o)(2) of this section sets forth the authority of key district directors to issue determination letters. Paragraph (o)(3) provides instructions to applicants, including which forms to file, where such forms must be filed, and requirements for giving notice to interested parties. Paragraph (o)(5) describes the administrative remedies available to interested parties and the Pension Benefit Guaranty Corporation. Paragraphs (o)(6) describes the administrative appeal rights available to applicants. Paragraph (o)(7) provides for the issuance of notice of final determination. Paragraph (o)(8) describes the documents which will make up the administrative record. Paragraph (o)(9) describes the notice of final determination. Paragraph (o)(10) sets forth the actions that will be necessary on the part of applicants, interested parties, and the Pension Benefit Guaranty Corporation in order for each to exhaust

the administrative remedies within the meaning of section 7476(b)(3) of the Code.

(2) *Determination letters.* (i) The district directors of the key district offices (described in paragraph (o)(4) of this section) shall have the authority to issue determination letters involving the provisions of sections 401, 403 (a), 405, and 501(a) of the Internal Revenue Code of 1954 with respect to:

(a) Initial qualification of stock bonus, pension, profit-sharing, annuity, and bond purchase plans;

(b) Initial exemption from Federal income tax under section 501(a) of trusts forming a part of such plans, provided that the determination does not involve application of section 502 (feeder organizations) or section 511 (unrelated business income), or the question of whether a proposed transaction will be a prohibited transaction under section 503;

(c) Compliance with the applicable requirements of foreign situs trusts as to taxability of beneficiaries (section 402(c)) and deductions for employer contributions (section 404(a)(4)) in connection with a request for a determination letter as to the qualification of a retirement plan;

(d) Amendments, curtailments, or terminations of such plans and trusts.

(ii) Determination letters authorized by paragraph (o)(2)(i) of this section do not include determinations or opinions relating to other inquiries with respect to plans or trusts. Thus, except as specifically provided in paragraph (o)(2)(i) of this section, key district directors may not issue determination letters relating to issues under other sections of the Code, such as sections 72, 402 through 404, 412, 502, 503, and 511 through 515, unless such determination letters are otherwise authorized under paragraph (c) of this section.

(iii) If, during the consideration of a case described in paragraph (o)(2)(i) of this section by a key district director, the applicant believes that the case involves an issue with respect to which referral for technical advice is appropriate, the applicant may ask the district director to request technical advice from the National Office. The district director shall advise the applicant of its right to request referral of the issue to the National Office for technical advice. The technical advice provisions applicable in these cases are set forth in paragraph (n)(9) of this section. If technical advice is issued, the decision of the National Office is final and the applicant may not thereafter appeal the issue to the Appeals office. See §601.106(a)(1)(iv)(*a*) and paragrph (o)(6) of this section

(3) *Instructions to taxpayers.* (i) If an applicant for a determination letter does not comply with all the provisions of this paragraph, the district director, in his discretion, may return the application and point out to the applicant those provisions which have not been met. If such a request is returned to the applicant, the 270 day period described in section 7476(b)(3) will not begin to run until such time as the provisions of this paragraph are complied with.

(ii) An applicant requesting a determination letter must file with the appropriate district director specified in paragraph (o)(3)(xii) of this section the application form required by paragraphs (o)(3) (iii) through (x) of this section including all information and documents required by such form. (See section 6104 and the regulations thereunder for provisions relating to the extent to which information submitted to the Internal Revenue Service in connection with the application for determination may be subject to public inspection.) However, before filing such application, the applicant must comply with the provisions of paragraphs (o)(3) (xiv) through (xx) of this section (relating to notification of interested parties). (See paragraph (o)(5)(vi) of this section with respect to the effective date of paragraphs (o) (3) (xiv) through (xx) of this section.)

(iii) Paragraphs (o)(3) (iv)–(vi), (viii), and (ix) apply only to applications for determinations in respect of plan years to which section 410 of the Code does not apply. Paragraph (o)(3)(x) applies only to applications for determinations in respect of plan years to which section 410 applies. Paragraph (o)(3)(vii) applies whether or not the application is for a determination in respect of plan years to which section 410 applies. For this purpose, section 410 will be considered to apply with respect to a

plan year if an election has been made under section 1017(d) of the Employee Retirement Income Security Act of 1974 to have section 410 apply to such plan year, whether or not the election is conditioned upon the issuance by the Commissioner of a favorable determination. For purposes of this paragraph (o)(3), in the case of an organization described in section 410(c)(1), section 410 will be considered to apply to a plan year of such organization for any plan year to which section 410(c)(2) applies to such plan.

(iv) If the request relates to the initial qualification of an individually designed plan, a subsequent amendment thereto, or compliance with the requirements for a foreign situs trust, the employer should *(a)* if the plan does not include self-employed individuals, file Form 4573, Application for Determination—Individually Designed Plan (not covering self-employed individuals), or *(b)* if the plan includes self-employed individuals, file Form 4574, Application for Determination—Individually Designed Plan Covering Self-Employed Individuals, except that where a bond purchase plan includes a self-employed individual, file Form 4578, Application for Approval of Bond Purchase Plan. (See paragraph (o)(3)(iii) for plan years to which this paragraph (o)(3)(iv) applies.)

(v) If the request involves a curtailment or termination of the plan (or complete discontinuance of contributions), the applicant should file Form 4576, Application for Determination—Termination or Curtailment of Plan. This form will also be applicable to the termination of a plan that includes self-employed individuals. (See paragraph (o)(3)(iii) of this section for plan years to which this paragraph (o)(3)(v) applies.)

(vi) An association of employers or a board of trustees should file Form 4577, Application for Determination—Industry-Wide Plan and Trust, if the request relates to the initial qualification or subsequent amendments of an industry-wide or area-wide union negotiated plan. (See paragraph (o)(3)(iii) of this section for plan years to which this paragraph (o)(3)(vi) applies.)

(vii) If the request relates to the qualification of a bond purchase plan, which includes self-employed individuals, the applicant should file, in duplicate, Form 4578, Application for Approval of Bond Purchase Plan that includes Self-Employed Individuals. When properly completed, Form 4578 will constitute a bond purchase plan. (See paragraph (o)(3)(iii) for plan years to which this section (o)(3)(vii) applies.)

(viii) An employer who desires a determination letter on his adoption of a master or prototype plan which is designed to satisfy section 401(a) or 403(a) but which is not designed to include self-employed individuals within the meaning of section 401(c)(1) must file Form 4462, Employer Application—Determination as to Qualification of Pension, Annuity, or Profit-sharing Plan and Trust, and furnish a copy of the adoption agreement or other evidence of adoption of the plan and such additional information as the district director may require. (See paragraph (o)(3)(iii) of this section for plan years to which this paragraph (o)(3)(viii) applies.)

(ix) An applicant who amends his adoption agreement under a master or prototype plan may request a determination letter as to the effect of such amendment by filing Form 4462 with his district director, together with a copy of the amendment and a summary of the changes. However, in the event an applicant desires to amend his adoption agreement under a master or prototype plan and such amendment is not contemplated or permitted under the plan, then such amendment will in effect substitute an individually designed plan for the master or prototype plan. (See paragraph (o)(3)(iii) of this section for plan years to which this paragraph (o)(3)(ix) applies.)

(x) An applicant requesting a determination letter relating to a defined contribution plan, other than a letter on the qualification of a bond purchase plan, shall file in duplicate, Form 5301, Application for Determination of Defined Contribution Plan, and Form 5302, Employee Census. Those forms are to be filed in accordance with the instructions therefor and accompanied by any schedules or additional material prescribed in those instructions. (See paragraph (o)(3)(iii) of this section

for plan years to which this paragraph (o)(3)(x) applies.)

(xi) When, in connection with an application for a determination on the qualification of the plan, it is necessary to determine whether an organization (including a professional service organization) is a corporation or an association classified as a corporation under §301.7701–2 of this chapter of the Regulations on Procedure and Administration, and whether an employer-employee relationship exists between it and its associates, the district director will make such determination. In such cases, the application with respect to the qualification of the plan should be filed in accordance with the provisions herein set forth and should contain the information and documents specified in the application. It should also be accompanied by such information and copies of documents as the organization deems appropriate to establish its status. The Service may, in addition, require any further information that is considered necessary to determine the status of the organization, the employment status of the individuals involved, or the qualification of the plan. After the taxable status of the organizations and the employer-employee relationship have been determined, the key district director may issue a determination letter as to the qualification of the plan.

(xii) Requests for determination letters on matters authorized by paragraph (o)(2) of this section, and the necessary supporting data, are to be addressed to the district director (whether or not such district director is the director of a key district) specified below (determined without regard to the application of section 414 (b) or (c) to the plan):

(a) In the case of a plan for a single employer, the request shall be addressed to the district director for the district in which such employer's principal place of business is located.

(b) In the case of a single plan for a parent company and its subsidiaries, the request shall be addressed to the district director for the district in which the principal place of business of the parent company is located, whether separate or consolidated returns are filed.

(c) In the case of a plan established or proposed for an industry by all subscribing employers whose principal places of business are located within more than one district, the request shall be addressed to the district director for the district in which is located the principal place of business of the trustee, or if more than one trustee, the usual meeting place of the trustees.

(d) In the case of a pooled fund arrangement (individual trusts under separate plans pooling their funds for investment purposes through a master trust), the request on behalf of the master trust shall be addressed to the district director for the district where the principal place of business of such trust is located. Requests on behalf of the participating trusts and related plans will be addressed as otherwise provided herein.

(e) In the case of a plan of multiple employers (other than a master or prototype plan) not otherwise herein provided for, the request shall be addressed to the district director for the district in which is located the principal place of business of the trustee, or if not trusteed or if more than one trustee, the principal or usual meeting place of the trustees or plan supervisors.

(xiii) The applicant's request for a determination letter may be withdrawn by a written request at any time prior to appealing a proposed determination to the regional office as described in paragraph (o)(6) of this section. In the case of such a withdrawal the Service will not render a determination of any type. A failure to render a determination as a result of such a withdrawal will not be considered a failure of the Secretary or his delegate to make a determination within the meaning of section 7476. In the case of a withdrawal the district director may consider the information submitted in connection with the withdrawn request in a subsequent audit or examination.

(xiv) In the case of an application for a determination for plan years to which section 410 applies (see paragraph (o)(5)(vi) of this section), notice that an application for an advance determination regarding the qualification of plans described in section 401(a),

403(a), or 405(a) is to be made must be given to all interested parties in the manner set forth in the regulations under section 7476 of the Code.

(xv) When the notice referred to in paragraph (o)(3)(xiv) of this section 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 date that application for a determination is made. When the notice is given by mailing, it should be given not less than 10 days nor more than 24 days prior to the date the application for a determination is made. See paragraph (o)(3)(xxi) of this section for determining when an application is made. If, however, an application is returned to the applicant for failure to adequately satisfy the notification requirement 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 paragraph (o)(3)(xv) would not be met.

(xvi) The notice referred to in paragraph (o)(3)(xiv) of this section shall be in writing and shall contain the following information:

(a) 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);

(b) The name of the plan, the plan identification number, and the name of the plan administrator;

(c) The name and taxpayer identification number of the applicant;

(d) That an application for a determination as to the qualified status of the plan is to be made to the Internal Revenue Service, stating whether the application relates to an initial qualification, a plan amendment or a plan termination, and the address of the district director to whom the application will be submitted;

(e) A description of the class of employees eligible to participate under the plan;

(f) Whether or not the Service has issued a previous determination as to the qualified status of the plan;

(g) A statement that any person to whom the notice is addressed is entitled to submit, or request the Department of Labor to submit, to the district director described in paragraph (o)(3)(xvi)*(d)* of this section, a comment on the question of whether the plan meets the requirements for qualification under Part I of Subchapter D of Chapter 1 of the Internal Revenue Code of 1954; that two or more such persons may join in a single comment or request; and that if such a person or persons request the Department of Labor to submit a comment and that department declines to do so in respect of one or more matters raised in the request, the person or persons so requesting may submit a comment to the district director in respect of the matters on which the Department of Labor declines to comment;

(h) That a comment to the district director or a request of the Department of Labor must be made according to the following procedures:

(1) A comment to the district director must be received on or before the 45th day (specified by date) after the day on which the application for determination is received by the district director;

(2) Or if the comment is being submitted on a matter on which the Department of Labor was first requested but declined to comment, on or before the later of such 45th day or the 15th day after the day on which the Department of Labor notifies such person or persons that it declines to comment, but in no event later than the 60th day (specified by date) after the day the application is received by the district director; and

(3) A request of the Department of Labor to submit such a comment must be received by such department on or before the 25th day (specified by date) (or if the person or persons requesting the Department of Labor to submit such a comment wish to preserve their right to submit a comment to the district director in the event the Department of Labor declines to comment, on or before the 15th day (specified by

date)) after the day the application is received by the district director;

(i) except to the extent there is included in the notice the additional informational materials which paragraphs (o) (3) (xviii), (xix), and (xx) of this section require to be made available to interested parties, a description of a reasonable procedure whereby such additional informational material will be made available to them (see paragraph (o)(3)(xvii) of this section).

(xvii) The procedure referred to in paragraph (o)(3)(xvi)*(i)* of this section whereby the additional informational material required by paragraphs (o)(3)(xviii), (xix) and (xx) of this section will (to the extent not included in this 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 to interested parties requesting the same in person or by mail, or by a combination of the foregoing, provided such procedure is immediately available to all interested parties and 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 the filing of a pleading commencing a declaratory judgement action under section 7476 of the Code with respect to the qualification of the plan or the ninety-second day after the day the notice of final determination is mailed to the applicant.

(xviii) Unless provided in the notice, the following materials shall be made available to interested parties under a procedure described in paragraph (o)(3)(xviii) of this section:

(a) An updated copy of the plan and the related trust agreement (if any);

(b) The application for determination;

Provided, however, That if there would be less than 26 participants in the plan, as described in the application (including, as participants, retired employees and beneficiaries of deceased employees who have a nonforefeitable right to benefits under the plan and employees who would be eligible to participate upon making mandatory employee contributions, if any), then in lieu of making such materials 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: a description of the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable benefits; a description of the circumstances which may result in ineligibility, or denial or loss of benefits; a description of the source of financing of the plan and the identity of any organization through which benefits are provided; whether the applicant is claiming in his application that the plan meets the requirements of section 410(b) (1) (A) of the Code, and, if not, the coverage schedule required by the application in the case of plans not meeting the requirements of such section. However, once such an interested party or his designated representative receives a notice of final determination, the applicant must, upon request, make available to such interested party (regardless of whether or not the interested party is a participant in the plan and regardless of 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 of the type described in section 6104(a) (1) (D) of the Code should not be included in the application, plan, or related trust agreement submitted to the Internal Revenue Service. Accordingly, such information should not be included in any of the materials required by this paragraph (o)(3) to be available to interested parties. There may be excluded from such material information contained in Form 5302 (Employee Census). However, information showing the number of individuals covered and not covered in the plan, listed by compensation range, shall not be excluded.

(xix) Unless provided in the notice, there shall be made available to interested parties under a procedure described in paragraph (o)(3)(xvii) of this section, any additional document dealing with the application which is submitted by or for the applicant to the Internal Revenue Service, or furnished

by the Internal Revenue 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, retired employees and beneficiaries of deceased employees who have a nonforfeitable right to 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 section 6104(a) (1) (C) and (D) of the Code which may be contained in such additional documents.

(xx) Unless provided in the notice, there shall be made available to all interested parties under a procedure described in paragraph (o)(3)(xvii) of this section, material setting forth the following information:

(a) The rights of interested parties described in paragraph (o)(5)(i) of this section; and

(b) The information provided in paragraphs (o)(5)(ii), (iii), (iv) and (v) of this section.

(xxi) An application for an advance determination, a comment to the district director, or a request to the Department of Labor, shall be deemed made when it is received by the district director, or the Department of Labor. The notice to interested parties required by paragraph (o)(3)(xiv) of this section shall be deemed given when it is given in person, posted as prescribed in the regulations under section 7476 or received through the mail. In any case where such an application, request, comment, or notice is sent by mail, it shall be deemed received as of the date of the postmark (or if sent by certified or registered mail, the date of certification or registration), if it is deposited in the mail in the United States in an envelope, or other appropriate wrapper first class postage prepaid, properly addressed. However, if such an application, request or comment is not received within a reasonable period from the date of postmark, the immediately preceding sentence shall not apply.

(4) *Key district offices.* Following are the 19 key district offices that issue determination letters and the area covered:

Key district(s)	*IRS districts covered*
Central Region:	
Cincinnati	Cincinnati, Louisville, Indianapolis
Cleveland	Cleveland, Parkersburg
Detroit	Detroit
Mid-Atlantic Region:	
Baltimore	Baltimore (which includes the District of Columbia and Office of International Operations), Pittsburgh, Richmond
Philadelphia	Philadelphia, Wilmington
Newark	Newark
Midwest Region:	
Chicago	Chicago
St. Paul	St. Paul, Fargo, Aberdeen, Milwaukee
St. Louis	St. Louis, Springfield, Des Moines, Omaha
North-Atlantic Region:	
Boston	Boston, Augusta, Burlington, Providence, Hartford, Portsmouth
Manhattan	Manhattan
Brooklyn	Brooklyn, Albany, Buffalo
Southeast Region:	
Atlanta	Atlanta, Greensboro, Columbia, Nashville
Jacksonville	Jacksonville, Jackson, Birmingham
Southwest Region:	
Austin	Austin, New Orleans, Albuquerque, Denver, Cheyenne
Dallas	Dallas, Oklahoma City, Little Rock, Wichita
Western Region:	
Los Angeles	Los Angeles, Phoenix, Honolulu
San Francisco	San Francisco, Salt Lake City, Reno
Seattle	Seattle, Portland, Anchorage, Boise, Helena

(5) *Administrative remedies of interested parties and the Pension Benefit Guaranty Corporation.* (i) With respect to plan years to which section 410 applies (see paragraph (o)(5)(vi) of this section), persons who qualify as interested parties under the regulations issued under section 7476 and the Pension Benefit Guaranty Corporation shall have the following rights:

(a) To submit to the district director for the district where an application for determination is filed, by the 45th day after the day on which the application is received by the district director, a written comment on said application, with respect to the qualification of the plan under Subchapter D of Chapter 1 of the Internal Revenue Code.

(b) To request the Administrator of Pension and Welfare Benefit Programs, Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, to

submit to such district director such a written comment under the provisions of section 3001(b) (2) of the Employee Retirement Income Security Act of 1974. Such a request, if made by an interested party or parties, must be received by such department on or before the 25th day after the day said application is received by the district director. However, if such party or parties requesting the Department of Labor to submit such a comment wish to preserve their rights to submit a comment to the district director in the event the Department of Labor declines to comment (pursuant to paragraph (o)(5)(i) *(c)* of this section), such request must be received by such department on or before the 15th day after the day the application is received by the district director.

(c) If a request described in paragraph (o)(5)(i)*(b)* of this section is made and the Department of Labor notifies the interested party or parties making the request that it declines to submit a comment on a matter concerning qualification of the plan which was raised in such request, to submit a written comment to the district director on such matter by the later of the 45th day after the day the application for determination is received by the district director or the 15th day after the day on which the Department of Labor notifies such party or parties that it declines to submit a comment on such matter, but, in no event later than the 60th day after the application for determination was received. (See paragraph (o)(5)(iii) of this section for determining when notice that the Department of Labor declines to comment is received by an interested party or parties.) Such a comment must comply with the requirements of paragraph (o)(5)(ii) of this section, and include a statement that the comment is being submitted on matters raised in a request to the Department of Labor on which that department declined to comment.

(ii) A comment submitted by an interested party or parties to the district director must be in writing, signed by such party or parties or by an authorized representative of such party or parties (as provided in paragraph (e) (6) of this section), be addressed to the district director described in paragraph (o)(3)(xvi)*(d)* of this section, and contain the following:

(a) The name or names of the interested party or parties making the comment;

(b) The name of taxpayer identification number of the applicant making the application;

(c) The name of the plan and the plan identification number;

(d) Whether the party or parties submitting the comments are—

(1) Employees eligible to participate under the plan,

(2) Former employees or beneficiaries of deceased former employees who have a vested right to benefits under the plan, or

(3) Employees not eligible to participate under the plan;

(e) The specific matter or matters raised by the interested party or parties on the question of whether the plan meets the requirements for qualification under Part I of Subchapter D of the Code, and how such matter or matters relate to the interests of such party or parties making such comment.

(f) The address of the interested party submitting the comment to which all correspondence, including a notice of the Internal Revenue Service's final determination with respect to qualification, should be sent. (See section 7476(b)(5) of the Code.) If more than one interested party submits the comment, they must designate a representative for receipt of such correspondence and notice on behalf of all interested parties submitting the said comment, and state the address of such representative. Such representative shall be one of the interested parties submitting the comment or the authorized representative.

(iii) For purposes of paragraph (o)(3)(xvi)*(h)* and (o)(5)(i)*(c)*, notice by the Department of Labor that it declines to comment shall be deemed given to the interested party designated to receive such notice when received by him.

(iv) A request of the Department of Labor to submit a comment to the district director must be in writing, signed, and in addition to the information prescribed in paragraph (o)(5)(ii) of

this section must also contain the address of the district director to whom the application was, or will be, submitted. The address designated for notice by the Internal Revenue Service will be used by the Department of Labor in communicating with the party or parties submitting the request.

(v) The contents of written comments submitted by interested parties to the Internal Revenue Service pursuant to paragraphs (o)(5)(i)*(a)* and *(c)* will not be treated as confidential material and may be inspected by persons outside the Internal Revenue Service, including the applicant for the determination. Accordingly, designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting a written comment should not include therein material that he considers to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it is intended by the party or parties submitting it to be subject in its entirety to public inspection and copying.

(vi) *(a)* Paragraphs (o)(3)(xiv) through (xxi) and (o)(5) of this section apply to an application for an advance determination in respect of a plan year or years to which section 410 applies to the plan, whether or not such application is received by the district director before the first date on which such section applies to the plan.

(b) For purposes of paragraph (o)(5)(vi)*(a)* of this section, section 410 shall be considered to apply to a plan year if an election has been made under section 1017(d) of the Employee Retirement Income Security Act of 1974 to have section 410 apply to such plan year, whether or not the election is conditioned upon the issuance by the Commissioner of a favorable determination.

(c) For purposes of paragraph (o)(5)(vi)*(a)* of this section, in the case of an organization described in section 410(c) (1), section 410 will be considered to apply to a plan year of such organization for any plan year to which section 410(c) (2) applies to such plan.

(vii) The Internal Revenue Service will provide to the applicant a copy of all comments on the application submitted pursuant to paragraph (o)(5)(i)*(a)*, *(b)* or *(c)* of this section. In addition, the Internal Revenue Service will provide to the applicant a copy of all correspondence in respect of a comment between the Internal Revenue Service and a person submitting the comment.

(6) *Reference of matters to the Appeals office.* (i) Where issues arise in a district director's office on matters within the contemplation of paragraph (o)(2)(i) of this section, and the key district director issues a notice of proposed determination which is adverse to the applicant, the applicant may appeal the proposed determination to the Appeals office. However, the applicant may not appeal a determination that is based on a National Office technical advice. See §601.106 (a)(1)(iv)(*a*) and paragraph (o)(2)(iii) of this section. The applicant shall notify the key district director that it intends to request Appeals office consideration by submitting the request, in writing, to the key district director within 30 days from issuance of the notice of proposed determination. The key district director will forward the request and the administrative record to the Appeals office and will so notify the applicant in writing. A failure by the applicant to request

Appeals office consideration will constitute a failure to exhaust available administrative remedies as required by section 7476(b)(3) and will thus preclude the applicant from seeking a declaratory judgment as provided under section 7476. (See paragraph (o)(10)(i)(*c*) of this section.)

(ii) The request for Appeals office consideration must show the following:

(*a*) Date of application for determination letter;

(*b*) Name and address of the applicant and the name and address of the representative, if any, who has been authorized to represent the applicant as provided in paragraph (c)(6) of this section;

(*c*) The key district office in which the case is pending;

(*d*) Type of plan (pension, annuity, profit-sharing, stock bonus, bond purchase, and foreign situs trusts), and type of action involved (initial qualification, amendment, curtailment, or termination);

(*e*) Date of filing this request with the key district director and the date and symbols of the letter referred to in paragraph (o)(6)(i) of this section;

(*f*) A complete statement of the issues and a presentation of the arguments in support of the applicant's position; and

(*g*) Whether a conference is desired.

(iii) After receipt of the administrative record in the Appeals office, the applicant will be afforded the opportunity for a conference, if a conference was requested. After full consideration of the entire administrative record, the Appeals office will notify the applicant in writing of the proposed decision and the reasons therefor and will issue a notice of final determination in accordance with the decision. However, if the proposed disposition by the Appeals office is contrary to a National Office technical advice concerning qualification, issued prior to the case, the proposed disposition will be submitted to the Assistant Commissioner (Employee Plans and Exempt Organizations) and the decision of that official will be followed by the Appeals office. See § 601.106(a)(1)(iv)(*b*). Additionally, if the applicant believes that the case involves an issue with respect to which referral for technical advice is appropriate, the applicant may ask the appeals office to request technical advice from the National Office. The Appeals office shall advise the applicant of its right to request referral of the issue to the National Office for technical advice. The technical advice provisions applicable to these cases are set forth in paragraph (n)(9) of this section. If technical advice is issued, the decision of the National Office will be followed by the Appeals office. See paragraph (n)(9)(viii)(*a*) of this section.

(iv) Applicants are advised to make full presentation of the facts, circumstances, the arguments at the initial level of consideration, since submission of additional facts, circumstances, and arguments at the Appeals office may result in suspension of Appeals procedures and referral of the case back to the key district for additional consideration.

(7) *Issuance of the notice of final determination.* The key district director or Appeals office will send notice of the final determination to the applicant. The key district director will send notice of the final determination to the interested parties who have previously submitted comments on the application to the Internal Revenue Service pursuant to paragraph (o)(5)(i) *(a)* or *(c)* of this section (or to the persons designated by them to receive such notice), to the Department of Labor in the case of a comment submitted by that department upon the request of interested parties or the Pension Benefit Guaranty Corporation pursuant to paragraph (o)(5)(i)*(b)* of this section, and to the Pension Benefit Guaranty Corporation if it has filed a comment pursuant to paragraph (o)(5)(i)*(a)* of this section.

(8) *Administrative record.* (i) In the case of a request for an advance determination in respect of a retirement plan, the determination of the district director or Appeals office on the qualification or nonqualification of the retirement plan shall be based solely on the facts contained in the administrative record. Such 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 thereof made by the applicant during the proceedings within the Internal Revenue Service;

(b) All other documents submitted to the Internal Revenue Service by or on behalf of the applicant in respect of the request for determination;

(c) All written correspondence between the Internal Revenue Service and the applicant in respect of the request for determination and any other documents issued to the applicant from the Internal Revenue Service;

(d) All written comments submitted to the Internal Revenue Service pursuant to paragraphs (o)(5)(i) *(a)*, *(b)*, and *(c)* of this section, and all correspondence in respect of comments submitted between the Internal Revenue Service and persons (including the Pension

Benefit Guaranty Corporation and the Department of Labor) submitting comments pursuant to paragraphs (o)(5)(i) *(a)*, *(b)*, and *(c)* of this section;

(e) In any case in which the Internal Revenue Service makes an investigation regarding the facts as represented or alleged by the applicant in his request for determination or in comments submitted pursuant to paragraphs (o)(5)(i) *(a)*, *(b)*, and *(c)* of this section, a copy of the official report of such investigation.

(ii) 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 Internal Revenue Service in respect of the application for determination; or

(b) The filing of a petition with the United States Tax Court seeking a declaratory judgment in respect of the retirement plan.

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 and submitted to the Service 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 the district director or Appeals office.

(9) *Notice of final determination.* For purposes of this paragraph (o), the notice of final determination shall be—

(i) In the case of a final determination which is favorable to the applicant, the letter issued by the key district director or Appeals office (whether or not by certified or registered mail) which states that the applicant's plan satisfies the qualification requirements of the Internal Revenue Code.

(ii) In the case of a final determination which is adverse to the applicant, the letter issued by certified or registered mail by the key district director or Appeals office, subsequent to a letter of proposed determination, stating that the applicant's plan fails to satisfy the qualification requirements of the Internal Revenue Code.

(10) *Exhaustion of administrative remedies.* For purposes of section 7476(b)(3), a petitioner shall be deemed to have exhausted the administrative remedies available to him in the Internal Revenue Service upon the completion of the steps described in paragraph (o)(10)(i), (ii), or (iii) of this section, subject, however, to paragraphs (o)(10)(iv) and (v) of this section. If an applicant, interested party, or the Pension Benefit Guaranty Corporation does not complete the applicable steps described below, such applicant, interested party, or the Pension Benefit Guaranty Corporation will not have exhausted available administrative remedies as required by section 7476(b)(3) and will thus be precluded from seeking a declaratory judgment under section 7476 except to the extent that paragraph (o)(10)(iv)(*b*) or (v) of this section applies.

(i) The administrative remedies of an applicant with respect to any matter relating to the qualification of a plan are:

(*a*) Filing a completed application with the appropriate district director pursuant to paragraphs (o)(3)(iii) through (xii) of this section;

(*b*) Compliance with the requirements pertaining to notice to interested parties as set forth in paragraphs (o)(3)(xiv) through (o)(3)(xxi) of this section;

(*c*) An appeal to the Appeals office pursuant to paragraph (o)(6) of this section, in the event of a notice of proposed adverse determination from the district director.

(ii) The administrative remedy of an interested party with respect to any matter relating to the qualification of the plan is submission to the district director of a comment raising such matter in accordance with paragraph (o)(5)(i)(*a*) of this section or requesting the Department of Labor to submit to the district director a comment with respect to such matter in accordance with paragraph (o)(5)(i)(*b*) of this section, and, if such department declines to comment, submission of such a comment in accordance with paragraph (o)(5)(i)(*c*) of this section, so that such comment may be considered by the Internal Revenue Service through the administrative process.

(iii) The administrative remedy of the Pension Benefit Guaranty Corporation with respect to any matter relating to the qualification of the plan is submission to the district director of a comment raising such matter in accordance with paragraph (o)(5)(i)(*a*) of this section or requesting the Department of Labor to submit to the district director a comment with respect to such matter in accordance with paragraph (o)(5)(i)(*b*) of this section, and, if such department declines to comment, submission of such a comment to the Internal Revenue Service directly, so that such comment may be considered by the Internal Revenue Service through the administrative process.

(iv) An applicant, or an interested party, or the Pension Benefit Guaranty Corporation shall in no event be deemed to have exhausted his (its) administrative remedies prior to the earlier of:

(*a*) The completion of all the steps described in paragraph (o)(11) (i), (ii), or (iii) of this section, whichever is applicable, subject, however, to paragraph (o)(11)(v), or

(*b*) The expiration of the 270 day period described in section 7476(b)(3), in a case where the completion of the steps referred to in paragraph (o)(11)(iv)(*a*) of this section shall not have occurred before the expiration of such 270 day period because of the failure of the Internal Revenue Service to proceed with due diligence.

The step described in paragraph (o)(10)(i)(*c*) of this section will not be considered completed until the Internal Revenue Service has had a reasonable time to act upon the appeal. In addition, the administrative remedies described in paragraphs (o)(11) (ii) and (iii) will not be considered completed until the Internal Revenue Service has had a reasonable time to consider the comments submitted pursuant to such paragraphs at each step of the administrative process described in paragraph (o)(11)(i).

(v) The administrative remedy described in paragraph (o)(10)(i)(*c*) of this section will not be available to an applicant with respect to any issue on which technical advice from the National Office has been obtained.

(p) *Pension plans of self-employed individuals*—(1) *Rulings, determination letters, and opinion letters.* (i) The National Office of the Service, upon request, will furnish a written opinion as to the acceptability (for the purpose of sections 401 and 501(a) of the Code) of the form of any master or prototype plan designed to include groups of self-employed individuals who may adopt the plan, where the plan is submitted by a sponsor that is a trade or professional association, bank, insurance company, or regulated investment company as defined in section 851 of the Code. Each opinion letter will bear an identifying plan serial number. If the trustee or custodian has been designated at the time of approval of a plan as to form, a ruling will be issued as to the exempt status of such trust or custodial account which forms part of the master or prototype plan. As used here, the term ''master plan'' refers to a standardized form of plan, with a related trust or custodial agreement, where indicated, administered by the sponsoring organization for the purpose of providing plan benefits on a standardized basis. The term ''prototype plan'' refers to a standardized form of plan, with or without a related form of trust or custodial agreement, that is made available by the sponsoring organization, for use without change by employers who wish to adopt such a plan, and which will not be administered by the sponsoring organization that makes such form available. The degree of relationship among the separate employers adopting either a master plan or prototype plan or to the sponsoring organization is immaterial.

(ii) Since a determination as to the qualification of a particular employer's plan can be made only with regard to facts peculiar to that employer, a letter expressing the opinion of the Service as to the acceptability of the form of a master or prototype plan will not constitute a ruling or determination as to the qualification of a plan as adopted by any individual employer or as to the exempt status of a related trust or custodial account. However, where an employer adopts a master or prototype plan and any related prototype trust or custodial account previously approved as to form, and observes the provisions

thereof, such plan and trust or custodial account will be deemed to satisfy the requirements of sections 401 and 501(a) of the Code, provided the eligibility requirements and contributions on benefits under the plan for owner-employees are not more favorable than for other employees, including those required to be covered under plans of all businesses controlled by such owner-employees.

(iii) Although district directors no longer make advance determinations on plans of self-employed individuals who have adopted previously approved master or prototype plans, they will continue, upon request, to issue determination letters as to the qualification of individually designed plans (those not utilizing a master or prototype plan) and the exempt status of a related trust or custodial account, if any, in accordance with the procedures set forth in paragraph (o) of this section.

(2) *Determination letters as to qualified bond purchase plans.* A determination as to the qualification of a bond purchase plan will, upon request, be made by the appropriate district director. Form 4578, Application for Approval of Bond Purchase Plan, must be used for this purpose. When properly completed, this form will constitute a bond purchase plan.

(3) *Instructions to sponsoring organizations and employers.* (i) A sponsoring organization of the type referred to in subparagraph (1)(i) of this paragraph, that desires a written opinion as to the acceptability of the form of a master or prototype plan (or as to the exempt status of a related trust or custodial account) should submit its request to the National Office. Copies of all documents, including the plan and trust instruments and all amendments thereto, together with specimen insurance contracts (where applicable) must be submitted with the request. The request must be submitted to the Commissioner of Internal Revenue Service, Washington, DC 20224, Attn: T:MS: PT. Form 3672, Application for Approval of Master or Prototype Plan for Self-Employed Individuals, is to be used for this purpose.

(ii) If, subsequent to obtaining approval of the form of a master or prototype plan, an amendment is to be made, the procedure will depend on whether the sponsor is authorized to act on behalf of the subscribers.

(a) If the plan provides that each employer has delegated to the sponsor the power to amend the plan and that each employer shall be deemed to have consented thereto, the plan may be amended by the sponsor. If the plan contains no specific provision permitting the sponsor to amend such plan, but all employers consent in writing to permit such amendment, the sponsor may then amend the plan. However, where a sponsor is unable to secure the consent of each employer, the plan cannot be amended by the sponsor. In such cases, any change will have to be effected by the adoption of a new plan and the submission of a new Form 3672. The new plan will be complete and separate from the old plan and individual employers may, if they desire, substitute the new plan for the old plan.

(b) In the first two instances mentioned above, where the plan has been properly amended, the sponsor must submit Form 3672, a copy of the amendment and, if required, copies of the signed consent of each participating employer.

(c) Upon approval of the amendment by the Service, an opinion letter will be issued to the sponsor containing the serial number of the original plan followed by a suffix: ''A–1'' for the first amendment, ''A–2'' for the second amendment, etc. Employers adopting the form of plan subsequent to the date of the amendment will use the revised serial number.

(d) If a new plan is submitted, together with Form 3672 and copies of all documents evidencing the plan, an opinion letter bearing a new serial number will be issued to the sponsor and all employers who adopt the new plan shall use the new serial number. Employers who adopted the old plan will continue to use the original serial number.

(4) *Applicability.* The general procedures of paragraph (a) through (m) and paragraph (o) of this section, relating to the issuance of rulings and determination letters, are applicable to requests relating to the qualification of plans covering self-employed individuals under sections 401 and 405(a) of the

Code and the exempt status of related trusts or custodial accounts under section 501(a), to the extent that the matter is not covered by the specific procedures and instructions contained in this paragraph.

(q) *Corporate Master and prototype plans*— (1) *Scope and definitions.* (i) The general procedures set forth in this paragraph pertain to the issuance of rulings, determination letters, and opinion letters relating to master and prototype pension, annuity, and profit-sharing plans (except those covering self-employed individuals) under section 401(a) of the Code, and the status for exemption of related trusts or custodial accounts under section 501(a). (A custodial account described in section 401(f) of the Code is treated as a qualified trust for purposes of the Code.) These procedures are subject to the general procedures set forth in paragraph (o) of this section, and relate only to master plans and prototype plans that do not include self-employed individuals and are sponsored by trade or professional associations, banks, insurance companies, or regulated investment companies. These plans are further identified as ''variable form'' and ''standardized form'' plans.

(ii) A *master plan* is a form of plan in which the funding organization (trust, custodial account, or insurer) is specified in the sponsor's application, and a ''prototype plan'' is a form of plan in which the funding organization is specified in the adopting employer's application.

(iii) A *variable form* plan is either a master or prototype plan that permits an employer to select various options relating to such basic provisions as employee coverage, contributions, benefits, and vesting. These options must be set forth in the body of the plan or in a separate document. Such plan, however, is not complete until all provisions necessary for qualification under section 401(a) of the Code are appropriately included.

(iv) A *standardized form* plan is either a master or prototype plan that meets the requirements of subparagraph (2) of this paragraph.

(2) *Standardized form plan requirements.* A standardized form plan must be complete in all respects (except for choices permissible under subdivisions (i) and (iv) of this subparagraph) and contain among other things provisions as to the following requirements:

(i) *Coverage.* The percentage coverage requirements set forth in section 401(a)(3)(A) of the Code must be satisfied. Provisions may be made, however, for an adopting employer to designate such eligibility requirements as are permitted under that section.

(ii) *Nonforfeitable rights.* Each employee's rights to or derived from the contributions under the plan must be nonforfeitable at the time the contributions are paid to or under the plan, except to the extent that the limitations set forth in §1.401–4(c) of the Income Tax Regulations, regarding early termination of a plan, may be applicable.

(iii) *Bank trustee.* In the case of a trusteed plan, the trustee must be a bank.

(iv) *Definite contribution formula.* In the case of a profit-sharing plan, there must be a definite formula for determining the employer contributions to be made. Provision may be made, however, for an adopting employer to specify his rate of contribution.

(3) *Rulings, determination letters, and opinion letters.* (i) A favorable determination letter as to the qualification of a pension or profit-sharing plan and the exempt status of any related trust or custodial account, is not required as a condition for obtaining the tax benefits pertaining thereto. However, paragraph (c)(5) of this section authorizes district directors to issue determination letters as to the qualification of plans and the exempt status of related trusts or custodial accounts.

(ii) In addition, the National Office upon request from a sponsoring organization will furnish a written opinion as to the acceptability of the form of a master or prototype plan and any related trust or custodial account, under sections 401(a) and 501(a) of the Code. Each opinion letter will bear an identifying plan serial number. However, opinion letters will not be issued under this paragraph as to *(a)* plans of a parent company and its subsidiaries, *(b)* pooled fund arrangements contemplated by Revenue Ruling 56–267, C.B. 1956–1, 206, *(c)* industry-wide or

area-wide union-negotiated plans, *(d)* plans that include self-employed individuals, *(e)* stock bonus plans, and *(f)* bond purchase plans.

(iii) A ruling as to the exempt status of a trust or custodial account under section 501(a) of the Code will be issued to the trustee or custodian by the National Office where such trust or custodial account forms part of a plan described in subparagraph (1) of this paragraph and the trustee or custodian is specified on Form 4461, Sponsor Application—Approval of Master or Prototype Plan. Where not so specified, a determination letter as to the exempt status of a trust or custodial account will be issued by the district director for the district in which is located the principal place of business of an employer who adopts such trust or custodial account after he furnishes the name of the trustee or custodian.

(iv) Since a determination as to the qualification of a particular employer's plan can be made only with regard to facts peculiar to such employer, a letter expressing the opinion of the Service as to the acceptability of the form of a master or prototype plan will not constitute a ruling or determination as to the qualification of a plan as adopted by any individual employer nor as to the exempt status of a related trust or custodial account.

(v) A determination as to the qualification of a plan as it relates to a particular employer will be made by the district director for the district in which each employer's principal place of buisness is located, if the employer has adopted a master or prototype plan that has been previously approved as to form. An employer who desires such a determination must file Form 4462, Employer Application—Determination as to Qualification of Pension, Annuity, or Profit-Sharing Plan and Trust, and furnish a copy of the adoption agreement or other evidence of adoption of the plan and such additional information as the district director may require.

(vi) Where master or prototype plans involve integration with Social Security benefits, it is impossible to determine in advance whether in an individual case a particular restrictive definition of the compensation (such as basic compensation) on which contributions or benefits are based would result in discrimination in contributions or benefits in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees. See Revenue Ruling 69–503 C.B. 1969–2, 94. Accordingly, opinion letters relating to master or prototype plans that involve integration with Social Security benefits will not be issued except for those plans where annual compensation, for the purposes of §§3.01, 5.02, 6.02, 6.03, 13.01, 13.02, and 14.02 of Revenue Ruling 69–4 C.B. 1969–1, 118, is defined to be all of each employee's compensation that would be subject to tax under section 3101(a) of the Code without the dollar limitation of section 3121(a)(1) of the Code.

(4) *Request by sponsoring organizations and employers.* (i) The National Office will consider the request of a sponsoring organization desiring a written opinion as to the acceptability of the form of a master or prototype plan and any related trust or custodial account. Such request is to be made on Form 4461 and filed with the Commissioner of Internal Revenue, Washington, DC 20224, attention T:MS:PT. Copies of all documents, including the plan and trust or custodial agreement, together with specimen insurance contracts, if applicable, are to be submitted with the request. In making its determination, the National Office may require additional information as appropriate.

(ii) Each district director, in whose jurisdiction there are employers who adopt the form of plan, must be furnished a copy of the previously approved form of plan and related documents by the sponsoring organization. The sponsoring organization must also furnish such district director a copy of all amendments subsequently approved as to form by the National Office.

(iii) The sponsoring organization must furnish copies of opinion letters as to the acceptability of the form of plan, including amendments (see subparagraph (5) of this paragraph), to all adopting employers.

(5) *Amendments.* (i) Subsequent to obtaining approval of the form of a master or prototype plan, a sponsoring organization may wish to amend the plan. Whether a sponsoring organization may effect an amendment depends on the plan's administrative provisions.

(ii) If the plan provides that each subscribing employer has delegated authority to the sponsor to amend the plan and that each such employer shall be deemed to have consented thereto, the plan may be amended by the sponsor acting on behalf of the subscribers. If the plan does not contain such provision but all subscribing employers consent in a collateral document to permit amendment, the sponsor, acting on their behalf, may amend the plan. However, where a sponsor is unable to secure the consent of each such employer, the plan cannot be amended. In such cases any change can only be effected by the establishment of a new plan and the submission of a new Form 4461 by the sponsor. The new plan must be complete and separate from the old plan, and individual employers may, if they desire, substitute the new plan for the old plan.

(iii) Where the plan has been amended pursuant to subdivision (ii) of this subparagraph, the sponsor is to submit an application, Form 4461, a copy of the amendment, a description of the changes, and a statement indicating the provisions in the original plan authorizing amendments, or a statement that each participating employer's consent has been obtained.

(iv) Upon approval of the amendment by the National Office, an opinion letter will be issued to the sponsor containing the serial number of the original plan, followed by a suffix: ''A–1'' for the first amendment, ''A–2'' for the second amendment, etc. Employers adopting the form of plan subsequent to the date of the amendment must use the revised serial number.

(v) If a new plan is submitted, together with Form 4461 and copies of all documents evidencing the plan, an opinion letter bearing a new serial number will be issued to the sponsor, and all employers who adopt the new plan are to use the new serial number. Employers who adopted the old plan continue to use the original serial number. However, any employer who wishes to change to the new plan may do so by filing with his district director a new Form 4462, indicating the change.

(vi) An employer who amends his adoption agreement may request a determination letter as to the effect of such amendment by filing Form 4462 with his district director, together with a copy of the amendment and a summary of the changes. However, in the event an employer desires to amend his adoption agreement under a master or prototype plan, and such amendment is not contemplated or permitted under the plan, then such amendment will in effect substitute an individually designed plan for the master or prototype plan and the amendment procedure described in paragraph (o) of this section will be applicable.

(6) *Effect on other plans.* Determination letters previously issued by district directors specified in paragraph (o)(2)(viii) of this section are not affected by these procedures even though the plans covered by the determination letters were designed by organizations described in subparagraph (1)(i) of this paragraph. However, such organizations may avail themselves of these procedures with respect to any subsequent action regarding such plans if they otherwise come within the scope of this paragraph.

(r) *Rulings and determination letters with respect to foundation status classification*—(1) *Rulings and determination letters on private and operating foundation status.* The procedures relating to the issuance of rulings and determination letters on private foundation status under section 509(a), and operating foundation status under section 4942(j)(3), of organizations exempt from Federal Income Tax under section 501(c)(3) of the Code will be published from time to time in the Internal Revenue Bulletin (see for example, Rev. Proc. 76–34. 1976–2 C.B. 657, as modified by Rev. Proc. 80–25, 1980–1 C.B. 667. These procedures apply in connection with notices filed by the organizations on Form 4653, Notification Concerning Foundation Status, or with applications for recognition of exempt status under section 501(c)(3) of the Code.

Such notices and statements are filed by organizations in accordance with section 508(a) of the Code in order for an organization to avoid the presumption of private foundation status or to claim status as an operating foundation. In addition, these procedures also relate to National Office review of determination letters on foundation status under sections 509(a) and 4942(j)(3) of the Code and protest of adverse determination letters regarding foundation status.

(2) *Nonexempt charitable trusts claiming nonprivate foundation status under section 509(a)(3) of the Code.* A trust described in section 4947(a)(1) of the Code is one that is not exempt from tax under section 501(a) of the Code, has all of its unexpired interests devoted to one or more of the purposes described in section 170(c)(2)(B) of the Code, and is a trust for which a charitable deduction was allowed. These trusts are subject to the private foundation provisions (Part II of Subchapter F of Chapter 1 and chapter 42 of the Code) except section 508 (a), (b), and (c) of the Code. The procedures to be used by nonexempt charitable trusts to obtain determinations of their foundation status under section 509(a)(3) of the Code will be published from time to time in the Internal Revenue Bulletin (see, for example, Rev. Proc. 72–50, 1972–2 C.B. 830).

(s) *Advance rulings or determination letters*—(1) *General.* It is the practice of the Service to answer written inquiries, when appropriate and in the interest of sound tax administration, as to the tax effects of acts or transactions of individuals and organizations and as to the status of certain organizations for tax purposes prior to the filing of returns or reports as required by the Revenue laws.

(2) *Exceptions.* There are, however, certain areas where, because of the inherently factual nature of the problems involved or for other reasons, the Service will not issue advance rulings or determination letters. Ordinarily, an advance ruling or determination letter is not issued on any matter where the determination requested is primarily one of fact (*e.g.,* market value of property), or on the tax effect of any transaction to be consummated at some indefinite future time or of any transaction or matter having as a major purpose the reduction of Federal taxes. A specific area or a list of these areas is published from time to time in the Internal Revenue Bulletin (see, for example, Rev. Proc. 80–22, 1980–1, C.B. 654). Such list is not all inclusive. Whenever a particular item is added to or deleted from the list, however, appropriate notice thereof will be published in the Internal Revenue Bulletin. The authority and general procedures of the National Office of the Internal Revenue Service and of the offices of the district directors of internal revenue with respect to the issuance of advance rulings and determination letters are outlined in paragraphs (b) and (c) of this section.

(t) *Alternative method of depletion*—(1) *In general.* Section 1.613–4(d)(1)(i) of the regulations, adopted by T.D. 7170, March 10, 1972, provides that in those cases where it is impossible to determine a representative market of field price under the provisions of §1.613–4(c), gross income from mining shall be computed by use of the proportionate profits method set forth in §1.613–4(d)(4).

(2) *Exception.* An exception is provided in §1.613–4(d)(1)(ii) where, upon application, the Office of the Assistant Commissioner (Technical) approves the use of an alternative method that is more appropriate than the proportionate profits method or the alternative method being used by the taxpayer.

(3) *Procedure.* The procedure for making application for approval to compute gross income from mining by use of an alternative method, other than the proportionate profits method; the conditions for approval and use of an alternative method; changes in an approved method; and other pertinent information with respect thereto, will be published from time to time in the Cumulative Bulletin (see, for example, Rev. Proc. 74–43, 1974–2 C.B. 496).

(u) *Conditions for issuing rulings involving bonuses and advanced royalties of lessors under section 631(c) of IRC of 1954*—(1) *In general.* Rev. Proc. 77–11, 1977–1 C.B. 568, provides that the tax liability of a lessor who received a bonus or an advance royalty is required to be recomputed for the taxable year or

years in which such payment or payments were received if the right to mine coal or iron ore under the lease expires, terminates, or is abandoned before (with respect to bonuses) any coal or iron ore has been mined; or (with respect to advance royalties) the coal or iron ore that has been paid for in advance is mined. In such recomputation, the lessor is required to treat the bonus payment or payments or any portion of the advance royalty payment or payments attributable to unmined coal or iron ore, as ordinary income and not as received from the sale of coal or iron ore under section 631(c) of the Code.

(2) *Condition for issuing rulings.* Prior to issuing a ruling to lessors who request a ruling that they may treat bonuses or advance royalties received under a lease for coal or iron ore as received from a sale of coal or iron under section 631(c) of the Code, the Internal Revenue Service will require that the lessor enter a closing agreement in which the lessor agrees that—

(i) If the lease under which the lessor received a bonus or an advance royalty expires, terminates, or is abandoned before (with respect to a bonus) any coal or iron ore has been mined or (with respect to an advance royalty) the coal or iron ore that has been paid for in advance is mined, the tax liability of the lessor will be recomputed for the taxable year or years of receipt of (A) the bonus by treating the bonus payment or payments as ordinary income or (B) the advance royalty by treating any portion or the advance royalty payment or payments attributable to unmined coal or iron ore as ordinary income;

(ii) If the recomputation described in paragraph (u)(2)(i) of this section is required, the lessor will pay the additional amount, if any, of all federal income tax finally determined as due and payable by the lessor for the taxable year or years of the receipt of the bonus or advance royalty; and

(iii) If any of the described events has occurred, the lessor will notify the appropriate district director of such event in writing within 90 days of the close of the taxable year in which the lease expires, terminates, or is abandoned.

[32 FR 15990, Nov. 22, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 601.201, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 601.202 Closing agreements.

(a) *General.* (1) Under section 7121 of the Code and the regulations and delegations thereunder, the Commissioner, or any officer or employee of the Internal Revenue Service authorized in writing by the Commissioner, may enter into and approve a written agreement with a person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period. Such agreement, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, shall be final and conclusive.

(2) Closing agreements under section 7121 of the Code may relate to any taxable period ending prior or subsequent to the date of the agreement. With respect to taxable periods ended prior to the date of the agreement, the matter agreed upon may relate to the total tax liability of the taxpayer or it may relate to one or more separate items affecting the tax liability of the taxpayer. A closing agreement may also be entered into in order to provide a ''determination'', as defined in section 1313 of the Code, and for the purpose of allowing a deficiency dividend deduction under section 547 of the Code. But see also sections 547(c)(3) and 1313(a)(4) of the Code and the regulations thereunder as to other types of ''determination'' agreements. With respect to taxable periods ending subsequent to the date of the agreement, the matter agreed upon may related to one or more separate items affecting the tax liability of the taxpayer. A closing agreement with respect to any taxable period ending subsequent to the date of the agreement is subject to any change in or modification of the law enacted subsequent to the date of the agreement and applicable to such taxable period, and each such closing agreement shall so recite. Closing agreements may be entered into even though

under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of agreements relating to the tax liability for a single period. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or where good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner or his representatives that the Government will sustain no disadvantage through consummation of such an agreement.

(b) *Use of prescribed forms.* In cases in which it is proposed to close conclusively the total tax liability for a taxable period ending prior to the date of the agreement, Form 866, Agreement as to Final Determination of Tax Liability generally will be used. In cases in which agreement has been reached as to the disposition of one or more issues and a closing agreement is considered necessary to insure consistent treatment of such issues in any other taxable period Form 906, Closing Agreement as to Final Determination Covering Specific Matters, generally will be used. A request for a closing agreement which determines tax liability may be submitted and entered into at any time before the determination of such liability becomes a matter within the province of a court of competent jurisdiction and may thereafter be entered into in appropriate circumstances when authorized by the court (*e.g.*, in certain bankruptcy situations). The request should be submitted to the district director of internal revenue with whom the return for the period involved was filed. However, if the matter to which the request relates is pending before an office of the Appellate Division, the request should be submitted to that office. A request for a closing agreement which relates only to a subsequent period should be submitted to the Commissioner of Internal Revenue, Washington, DC 20224.

(c) *Approval.* (1) Closing agreements relating to alcohol, tobacco, and firearms, taxes in respect of any prospective transactions or completed transactions affecting returns to be filed may be entered into and approved by the Director, Bureau of Alcohol, Tobacco, and Firearms.

(2) Closing agreements relating to taxes other than those taxes covered in subparagraph (1) of this paragraph in respect of any prospective transactions or completed transactions affecting returns to be filed may be entered into and approved by the Assistant Commissioner (Technical).

(3) Closing agreements for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods (including those covering competent authority determinations in the administration of the operating provisions of the tax conventions of the United States) may be entered into and approved by the Assistant Commissioner (Compliance).

(4) Regional commissioners, assistant regional commissioners (appellate), assistant regional commissioners (examination), district directors (including the Director, Foreign Operations District), chiefs and assistant chiefs of appellate branch offices may enter into and approve closing agreements on cases under their jurisdiction (but excluding cases docketed before the U.S. Tax Court) for a taxable period or periods which end prior to the date of agreement and related specific items affecting other taxable periods.

(5) Regional commissioners, assistant regional commissioners (examination) and (appellate), chiefs and assistant chiefs of appellate branch offices are authorized to enter into and approve closing agreements in cases under their jurisdiction docketed in the U.S. Tax Court but only in respect to related specific items affecting other taxable periods.

(6) Closing agreements providing for the mitigation of economic double taxation under section 3 of the Revenue Procedure 64–54, C.B. 1964–2, 1008, or under Revenue Procedure 69–13, C.B. 1969–1, 402 or for such mitigation and relief under Revenue Procedure 65–17, C.B. 1965–1, 833, may be entered into and approved by the Director, Foreign Operations District.

(7) Closing agreements in cases under the jurisdiction of a district director providing that the taxability of earnings from a deposit or account of the

type described in Revenue Procedure 64–24, C.B. 1964–1 (Part 1), 693, opened prior to November 15, 1962, will be determined on the basis that earnings on such deposits or accounts are not includable in gross income until maturity or termination, whichever occurs earlier, and that the full amount of earnings on the deposit or account will constitute gross income in the year the plan matures, is assigned, or is terminated, whichever occurs first, may be entered into and approved by such district director.

(d) *Applicability of ruling requirements.* The requirement relating to requests for rulings (see § 601.291) shall be applicable with respect to requests for closing agreements pertaining to prospective transactions or completed transactions affecting returns to be filed (see paragraph (c) (2) of this section).

[32 FR 15990, Nov. 22, 1967, as amended at 32 FR 20647, Dec. 21, 1967; 33 FR 17237, Nov. 21, 1968; 34 FR 14601, Sept. 19, 1969; 35 FR 15920, Oct. 9, 1970; 38 FR 4967, Feb. 23, 1973; 42 FR 46520, Sept. 16, 1977; 43 FR 53030, Nov. 15, 1978; 49 FR 36499, Sept. 18, 1984; T.D. 8685, 61 FR 58008, Nov. 12, 1996]

§ 601.203 Offers in compromise.

(a) *General.* (1) The Commissioner may compromise, in accordance with the provisions of section 7122 of the Code, any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense. Certain functions of the Commissioner with respect to compromise of civil cases involving liability of $100,000 or more, based solely on doubt as to liability, have been delegated to regional commissioners and, for cases arising in the District Office, Foreign Operations District, to the Assistant Commissioner (Compliance). The authority concerning liability of $100,000 or more based on doubt as to collectibility or doubt as to both collectibility and liability has been delegated to the Director, Collection Division and regional commissioners. The authority with respect to compromise of civil cases involving liability under $100,000, and of certain specific penalties has been delegated to district directors, assistant district directors (including the District Director and Assistant District Director, Foreign Operations District), regional directors of Appeals, and chiefs and associate chiefs, Appeals offices. The authority concerning offers in compromise of penalties based solely on doubt as to liability, if the liability is less than $100,000, has also been delegated to service center directors and assistant service center directors. In civil cases involving liability of $500 or over and in criminal cases the functions of the General Counsel are performed by the Chief Counsel for the Internal Revenue Service. These functions are performed in the District Council, Regional Counsel, or National Office as appropriate. (See also paragraph (c) of this section.) In cases arising under Chapters 51, 52, and 53 of the Code, offers are acted upon by the Bureau of Alcohol, Tobacco and Firearms.

(2) An offer in compromise of taxes, interest, delinquency penalties, or specific penalties may be based on either inability to pay or doubt as to liability. Offers in compromise arise usually when payments of assessed liabilities are demanded, penalties for delinquency in filing returns are asserted, or specific civil or criminal penalties are incurred by taxpayers. A criminal liability will not be compromised unless it involves only the regulatory provisions of the Internal Revenue Code and related statutes. However, if the violations involving the regulatory provisions are deliberate and with intent to defraud, the criminal liabilities will not be compromised.

(b) *Use of prescribed form.* Offers in compromise are required to be submitted on Form 656, properly executed, and accompanied by a financial statement on Form 433 (if based on inability to pay). Form 656 is used in all cases regardless of whether the amount of the offer is tendered in full at the time the offer is filed or the amount of the offer is to be paid by deferred payment or payments. Copies of Form 656 and Form 433 may be obtained from district directors. An offer in compromise, should be filed with the district director or service center director.

(c) *Consideration of offer.* (1) An offer in compromise is first considered by

the director having jurisdiction. Except in certain penalty cases, an investigation of the basis of the offer is required. The examining officer makes a written recommendation for acceptance or rejection of the offer. If the director has jurisdiction over the processing of the offer he or she will:

(i) Reject the offer, or

(ii) Accept the offer if it involves a civil liability under $500, or

(iii) Accept the offer if it involves a civil liability of $500 or more, but less than $100,000, or involves a specific penalty and the District Counsel concurs in the acceptance of the offer, or

(iv) Recommend to the Regional Commissioner the acceptance of the offer if it involves a civil liability of $100,000 or over.

(2)(i) If the district director does not have jurisdiction over the entire processing of the offer, the offer is transmitted to the appropriate District Counsel if the case is one in which:

(a) Recommendations for prosecution are pending in the Office of the Chief Counsel, the Department of Justice, or in an office of a United States attorney, including cases in which criminal proceedings have been instituted but not disposed of and related cases in which offers in compromise have been submitted or are pending;

(b) The taxpayer is in receivership or is involved in a proceeding under any provision of the Bankruptcy Act;

(c) The taxpayer is deceased joint liability cases, where either taxpayer is deceased.

(d) A proposal is made to discharge property from the effect of a tax lien or to subordinate the lien or liens;

(e) An insolvent bank is involved;

(f) An assignment for the benefit of creditors is involved;

(g) A liquidation proceeding is involved; or

(h) Court proceedings are pending, except Tax Court cases.

(ii) The District Counsel considers and processes offers submitted in cases described in paragraphs (c)(2)(i) (*a*) through (*h*) of this section and forwards those offers to the district director, service center director, Regional Counsel, or Office of Chief Counsel in Washington, as appropriate.

(iii) In those cases described in *(a)* of subdivision (i) of this subparagraph no investigation will be made unless specifically requested by the office having jurisdiction of the criminal case.

(iv) In those cases described in *(b)* through *(h)* of subdivision (i) of this subparagraph the district director retains the duplicate copy of the offer and the financial statement for investigation. After investigation, the district director transmits to the appropriate district counsel for consideration and processing his or her recommendation for acceptance or rejection of the offer together with the examining officer's report of the investigation.

(3) The district directors, assistant district directors (including the District Director and Assistant District Director, Foreign Operations District), service center directors, assistant service center directors, Regional Directors of Appeals, and Chiefs and Associate Chiefs, Appeals Offices are authorized to reject any offer in compromise referred for their consideration. Unacceptable offers considered by the District Counsel, Regional Counsel, or Office of Chief Counsel in Washington, or the Appeals office are also rejected by the district directors (including the Director, Foreign Operations District), as applicable. If an offer is not acceptable, the taxpayer is promptly notified of the rejection of that offer. If an offer is rejected, the sum submitted with the offer is returned to the proponent, unless the taxpayer authorizes application of the sum offered to the tax liability. Each Regional Commissioner will perform a post review of offers accepted, rejected, or withdrawn in the district director's office if the offer covers liabilities of $5,000 or more. The post review will cover a sampling of cases processed by the Collection function and all cases processed by the Examination function.

(4) If an offer involving unpaid liability of $100,000 or more is considered acceptable by the office having jurisdiction over the offer, a recommendation for acceptance is forwarded to the National Office or Regional Office, as appropriate for review. If the recommendation for acceptance is approved, the offer is forwarded to the

Regional Counsel or Office of Chief Counsel in Washington, as appropriate, for approval. After approval by the Regional Counsel or Office of Chief Counsel in Washington, as appropriate, it is forwarded to the Assistant Commissioner (Compliance), Director, Collection Division, or Regional Commissioner, as appropriate for acceptance. The taxpayer is notified of the acceptance of the offer in accordance with its terms. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

(d) *Conferences.* Before filing a formal offer in compromise, a taxpayer may request a meeting in the office which would have jurisdiction over the offer to explore the possibilities of compromising unpaid tax liability. After all investigations have been made, the taxpayer may also request a meeting in the office having jurisdiction of the offer to determine the amount which may be accepted as a compromise. If agreement is not reached at such meeting and the district director has processing jurisdiction over the offer, the taxpayer will be informed that the taxpayer may request consideration of the case by an Appeals Office. The request may be in writing or oral. If the tax, penalty, and assessed (but not accrued) interest sought to be compromised exceeds $2,500 for any return, taxable year or taxable period, a written protest is required. Taxpayers and their representatives are required to comply with the applicable conference and practice requirements. See Subpart E of this part.

[32 FR 15990, Nov. 22, 1967, as amended at 33 FR 17238, Nov. 21, 1968; 35 FR 7116, May 6, 1970; 35 FR 15920, Oct. 9, 1970; 43 FR 44510, Sept. 28, 1978; 45 FR 7255, Feb. 1, 1980; 46 FR 26054, May 11, 1981; 49 FR 36499, Sept. 18, 1984; T.D. 8685, 61 FR 58008, Nov. 12, 1996]

§ 601.204 Changes in accounting periods and in methods of accounting.

(a) *Accounting periods.* A taxpayer who changes his accounting period shall, before using the new period for income tax purposes, comply with the provisions of the income tax regulations relating to changes in accounting periods. In cases where the regulations require the taxpayer to secure the consent of the Commissioner to the change, the application for permission to change the accounting period shall be made on Form 1128 and shall be submitted to the Commissioner of Internal Revenue, Washington, DC 20224, within the period of time prescribed in such regulations. See section 442 of the Code and regulations thereunder. If the change is approved by the Commissioner, the taxpayer shall thereafter make his returns and compute his net income upon the basis of the new accounting period. A request for permission to change the accounting period will be considered by the Corporation Tax Division. However, in certain instances, Form 1128 may be filed with the Director of the Internal Revenue Service Center in which the taxpayer files its return. See, for example, Rev. Proc. 66–13, 1966–1 C.B. 626; Rev. Proc. 66–50, 1966–2 C.B. 1260, and Rev. Proc. 68–41, 1968–2 C.B. 943. With respect to partnership adoptions, see § 1.706–1(b) of the Income Tax Regulations.

(b) *Methods of accounting.* A taxpayer who changes the method of accounting employed in keeping his books shall, before computing his income upon such method for purposes of income taxation, comply with the provisions of the income tax regulations relating to changes in accounting methods. The regulations require that, in the ordinary case, the taxpayer secure the consent of the Commissioner to the change. See section 446 of the Code and the regulations thereunder. Application for permission to change the method of accounting employed shall be made on Form 3115 and shall be submitted to the Commissioner of Internal Revenue, Washington, DC, 20224, during the taxable year in which it is desired to make the change. Permission to change the method of accounting will not be granted unless the taxpayer and the Commissioner agree to the terms and conditions under which the change will be effected. The request will be considered by the Corporation Tax Division. However, in certain instances, Form 3115 may be filed with the Director of the Internal Revenue Service Center. See, for example, Rev. Proc. 74–11, 1974–1 C.B. 420.

(c) *Verification of changes.* Written permission to a taxpayer by the National Office consenting to a change in his annual accounting period or to a change in his accounting method is a ''ruling''. Therefore, in the examination of returns involving changes of annual accounting periods and methods of accounting, district directors must determine whether the representations upon which the permission was granted reflect an accurate statement of the material facts, and whether the agreed terms, conditions, and adjustments have been substantially carried out as proposed. An application, Form 3115, filed with the Director of the Internal Revenue Service Center is also subject to similar verification.

(d) *Instructions to taxpayers.* The person seeking to secure the consent of the Commissioner with respect to a change of accounting periods or methods pursuant to section 442 or 446(e) of the Code need not submit the statement of proposed deletions described in § 601.201(e)(5) at the time the request is made. If, however, the person seeking the consent of the Commissioner receives from the National Office a notice that proposed deletions should be submitted because the resulting ruling will be open to public inspection under section 6110, the statement of proposed deletions must be submitted within 20 days after such notice is mailed.

[41 FR 20882, May 21, 1976, as amended at 41 FR 48742, Nov. 5, 1976; 42 FR 34280, July 5, 1977; T.D. 8742, 62 FR 68173, Dec. 31, 1997]

§ 601.205 Tort claims.

Claims for property loss or damage, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the Service, acting within the scope of his office or employment, filed under the Federal Tort Claims Act, as amended, must be prepared and filed in accordance with Treasury Department regulations entitled ''Central Office Procedures'' and ''Claims Regulations'' (31 CFR Parts 1 and 3). Such regulations contain the procedural and substantive requirements relative to such claims, and set forth the manner in which they are handled. The claims should be filed with the Commissioner of Internal Revenue, Washington, DC 20224, and must be filed within 2 years after the accident or incident occurred.

§ 601.206 Certification required to obtain reduced foreign tax rates under income tax treaties.

(a) *Basis of certification.* Most of the income tax treaties between the United States and foreign countries provide for either a reduction in the statutory rate of tax or an exemption from tax on certain types of income received from sources within the foreign treaty country by citizens, domestic corporations, and residents of the United States. Some of the treaty countries reduce the withholding tax on such types of income or exempt the income from withholding tax after the claimant furnishes evidence that he is entitled to the benefits of the treaty. Other countries initially withhold the tax at statutory rates and refund the excess tax withheld after satisfactory evidence of U.S. residence has been accepted. As part of the proof that the applicant is a resident of the United States and thus entitled to the benefits of the treaty, he must usually furnish a certification from the U.S. Government that he has filed a U.S. income tax return as a citizen, domestic corporation, or resident of the United States.

(b) *Procedure for obtaining the certification.* Most of the treaty countries which require certification have printed special forms. The forms contain a series of questions to be answered by the taxpayer claiming the benefits of the treaty, followed by a statement which the foreign governments use for the U.S. taxing authority's certification. This certification may be obtained from the office of the district director of the district in which the claimant filed his latest income tax return. Some certification forms are acceptable for Service execution; however, others cannot be executed by the Service without revision. In these instances the office of the district director will prepare its own document of certification in accordance with internal instructions. This procedure has been accepted by most treaty countries as a satisfactory substitute.

(c) *Obtaining the official certification forms.* The forms may be obtained from the foreign payor, the tax authority of

the treaty country involved, or the District Office, Foreign Operations District.

[34 FR 14601, Sept. 19, 1969, as amended at 49 FR 36500, Sept. 18, 1984]

Subpart C [Reserved]

Subpart D—Provisions Special to Certain Employment Taxes

§ 601.401 Employment taxes.

(a) *General*—(1) *Description of taxes.* Federal employment taxes are imposed by Subtitle C of the Internal Revenue Code. Chapter 21 (Federal Insurance Contributions Act) imposes a tax on employers of one or more individuals and also a tax on employees, with respect to ''wages'' paid and received. Chapter 22 (Railroad Retirement Tax Act) imposes (i) an employer tax and employee tax with respect to ''compensation'' paid and received, (ii) an employee representative tax with respect to ''compensation'' received, and (iii) a supplemental tax on employers, measured by man-hours for which ''compensation'' is paid. Chapter 23 (Federal Unemployment Tax Act) imposes a tax on employers of one or more individuals with respect to ''wages'' paid. Chapter 24 (collection of income tax at source on wages) requires every employer making payment of ''wages'' to deduct and withhold upon such wages the tax computed or determined as provided therein. The tax so deducted and withheld is allowed as a credit against the income tax liability of the employee receiving such wages.

(2) *Applicable regulations.* The descriptive terms used in this section to designate the various classes of taxes are intended only to indicate their general character. Specific information relative to the scope of each tax, the forms used, and the functioning of the Service with respect thereto is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the district director of internal revenue.

(3) *Collection methods.* Employment taxes are collected by means of returns and by withholding by employers. Employee tax must be deducted and withheld by employers from ''wages'' or ''compensation'' (including tips reported in writing to employer) paid to employees, and the employer is liable for the employee tax whether or not it is so deducted. For special rules relating to tips see §§ 31.3102–3 and 31.3402 (k)–1. Rev. Proc. 81–48, 1981–2 C.B. 623, provides guidelines for determining wages when the employer pays the employee tax imposed by Chapter 21 without deducting the amount from the employee's pay. Employee representatives (as defined in the Railroad Retirement Tax Act) are required to file returns. Employment tax returns must be filed with the district director or, if so provided in instructions applicable to a return, with the service center designated in the instructions. The return of the Federal unemployment tax is required to be filed annually on Form 940 with respect to wages paid during the calendar year. All other returns of Federal employment taxes (with the exception of returns filed for agricultural employees) are required to be filed for each calendar quarter except that if pursuant to regulations the district director so notifies the employer, returns on Form 941 are required to be filed on a monthly basis. In the case of certain employers required to report withheld income tax but not required to report employer and employee taxes imposed by Chapter 21 (for example, state and local government employers), Form 941E is prescribed for reporting on a quarterly basis. The employer and employee taxes imposed by Chapter 21 (other than the employer and employee taxes on wages paid for agricultural labor) and the tax required to be deducted and withheld upon wages by Chapter 24 are combined in a single return on Form 941. In the case of wages paid by employers for domestic service performed in a private home not on a farm operated for profit, the return of both the employee tax and the employer tax imposed by Chapter 21 is on Form 942. However, if the employer is required to file a return for the same quarter on Form 941, the employer may elect to include the taxes with respect to such domestic service on Form 941. The employer and employee taxes imposed by Chapter 21 with respect to