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SUBCHAPTER H—INTERNAL REVENUE PRACTICE

PART 600 [RESERVED]

PART 601—STATEMENT OF PROCEDURAL RULES

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Subpart A—General Procedural Rules

§ 601.101 Introduction.

(a) *General.* The Internal Revenue Service is a bureau of the Department of the Treasury under the immediate direction of the Commissioner of Internal Revenue. The Commissioner has general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue. The Internal Revenue Service is the agency by which these functions are performed. Within an internal revenue district the internal revenue laws are administered by a district director of internal revenue. The Director, Foreign Operations District, administers the internal revenue laws applicable to taxpayers residing or doing business abroad, foreign taxpayers deriving income from sources within the United States, and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations, provided the books and records of those taxpayers are located outside the United States. For purposes of these procedural rules any reference to a district director or a district office includes the Director, Foreign Operations District, or the District Office, Foreign Operations District, if appropriate. Generally, the procedural rules of the Service are based on the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954, and the procedural rules in this part apply to the taxes imposed by both Codes except to the extent specifically stated or where the procedure under one Code is incompatible with the procedure under the other Code. Reference to sections of the Code are references to the Internal Revenue Code of 1954, unless otherwise expressly indicated.

(b) *Scope.* This part sets forth the procedural rules of the Internal Revenue Service respecting all taxes administered by the Service, and supersedes the previously published statement (26 CFR (1949 ed., Part 300-End) Parts 600 and 601) with respect to such procedural rules. Subpart A provides a descriptive statement of the general course and method by which the Service's functions are channeled and determined, insofar as such functions relate generally to the assessment, collection, and enforcement of internal revenue taxes. Certain provisions special to particular taxes are separately described in Subpart D of this part. Conference and practice requirements of the Internal Revenue Service are contained in Subpart E of this part. Specific matters not generally involved in the assessment, collection, and enforcement functions are separately described in Subpart B of this part. A description of the rule making functions of the Department of the Treasury with respect to internal revenue tax matters is contained in Subpart F of this part. Subpart G of this part relates to matters of official record in the Internal Revenue Service and the extent to which records and documents are subject to publication or open to public inspection. This part does not contain a detailed discussion of the substantive provisions pertaining to any particular tax or the procedures relating thereto, and for such information it is necessary that reference be made to the applicable provisions of law and the regulations promulgated thereunder. The regulations relating to the taxes administered by the Service are contained in Title 26 of the Code of Federal Regulations.

[38 FR 4955, Feb. 23, 1973 and 41 FR 20880, May 21, 1976, as amended at 45 FR 7251, Feb. 1, 1980; 49 FR 36498, Sept. 18, 1984; T.D. 8685, 61 FR 58008, Nov. 12, 1996]

§ 601.102 Classification of taxes collected by the Internal Revenue Service.

(a) *Principal divisions.* Internal revenue taxes fall generally into the following principal divisions:

(1) Taxes collected by assessment.

(2) Taxes collected by means of revenue stamps.

(b) *Assessed taxes.* Taxes collected principally by assessment fall into the following two main classes:

(1) Taxes within the jurisdiction of the U.S. Tax Court. These include:

(i) Income and profits taxes imposed by Chapters 1 and 2 of the 1939 Code and taxes imposed by subtitle A of the 1954 Code, relating to income taxes.

(ii) Estate taxes imposed by Chapter 3 of the 1939 Code and Chapter 11 of the 1954 Code.

(iii) Gift tax imposed by Chapter 4 of the 1939 Code and Chapter 12 of the 1954 Code.

(iv) The tax on generation-skipping transfers imposed by Chapter 13 of the 1954 Code.

(v) Taxes imposed by Chapters 41 through 44 of the 1954 Code.

(2) Taxes not within the jurisdiction of the U.S. Tax Court. Taxes not imposed by Chapter 1, 2, 3, or 4 of the 1939 Code or Subtitle A or Chapter 11 or 12 of the 1954 Code are within this class, such as:

(i) Employment taxes.

(ii) Miscellaneous excise taxes collected by return.

(3) The difference between these two main classes is that only taxes described in subparagraph (1) of this paragraph, i.e., those within the jurisdiction of the Tax Court, may be contested before an independent tribunal prior to payment. Taxes of both classes may be contested by first making payment, filing claim for refund, and then bringing suit to recover if the claim is disallowed or no decision is rendered thereon within six months.

[32 FR 15990, Nov. 22, 1967, as amended at 35 FR 7111, May 6, 1970; 46 FR 26053, May 11, 1981; T.D. 8685, 61 FR 58008, Nov. 12, 1996]

§ 601.103 Summary of general tax procedure.

(a) *Collection procedure.* The Federal tax system is basically one of self-assessment. In general each taxpayer (or person required to collect and pay over the tax) is required to file a prescribed form of return which shows the facts upon which tax liability may be determined and assessed. Generally, the taxpayer must compute the tax due on the return and make payment thereof on or before the due date for filing the return. If the taxpayer fails to pay the tax when due, the district director of internal revenue, or the director of the regional service center after assessment issues a notice and demands payment within 10 days from the date of the notice. In the case of wage earners, annuitants, pensioners, and nonresident aliens, the income tax is collected in large part through withholding at the source. Another means of collecting the income tax is through payments of estimated tax which are required by law to be paid by certain individual and corporate taxpayers. Neither withholding nor payments of estimated tax relieves a taxpayer from the duty of filing a return otherwise required. Certain excise taxes are collected by the sale of internal revenue stamps.

(b) *Examination and determination of tax liability.* After the returns are filed and processed in internal revenue service centers, some returns are selected for examination. If adjustments are proposed with which the taxpayer does not agree, ordinarily the taxpayer is afforded certain appeal rights. If the taxpayer agrees to the proposed adjustments and the tax involved is an income, profits, estate, gift, generation–skipping transfer, or Chapter 41, 42, 43, or 44, tax, and if the taxpayer waives restrictions on the assessment and collection of the tax (see § 601.105(b)(4)), the deficiency will be immediately assessed.

(c) *Disputed liability*—(1) *General.* The taxpayer is given an opportunity to request that the case be considered by an Appeals Office provided that office has jurisdiction (see § 601.106(a)(3)). If the taxpayer requests such consideration, the case will be referred to the Appeals Office, which will afford the taxpayer the opportunity for a conference. The determination of tax liability by the Appeals Office is final insofar as the taxpayer's appeal rights within the Service are concerned. Upon protest of cases under the jurisdiction of the Director, Foreign Operations District, exclusive settlement authority is vested in the Appeals Office having jurisdiction of the place where the taxpayer requests the conference. If the taxpayer does not specify a location for the conference, or if the location specified is outside the territorial limits of the United States, the Washington, D.C. Appeals Office of the Mid-Atlantic Region assumes jurisdiction.

(2) *Petition to the U.S. Tax Court.* In the case of income, profits, estate, and gift taxes, imposed by Subtitles A and B, and excise taxes under Chapters 41 through 44 of the 1954 Code, before a deficiency may be assessed a statutory notice of deficiency (commonly called a ''90-day letter'') must be sent to the taxpayer by certified mail or registered

mail unless the taxpayer waives this restriction on assessment. See, however, §§ 601.105(h) and 601.109 for exceptions. The taxpayer may then file a petition for a redetermination of the proposed deficiency with the U.S. Tax Court within 90 days from the date of the mailing of the statutory notice. If the notice is addressed to a person outside the States of the Union and the District of Columbia, the period within which a petition may be filed in the Tax Court is 150 days in lieu of 90 days. In other words, the taxpayer has the right in respect of these taxes to contest any proposed deficiency before an independent tribunal prior to assessment or payment of the deficiency. Unless the taxpayer waives the restrictions on assessment and collection after the date of the mailing of the statutory notice, no assessment or collection of a deficiency (not including the correction of a mathematical error) may be made in respect of these taxes until the expiration of the applicable period or, if a petition is filed with the Tax Court, until the decision of the Court has become final. If, however, the taxpayer makes a payment with respect to a deficiency, the amount of such payment may be assessed. See, however, § 601.105(h). If the taxpayer fails to file a petition with the Tax Court within the applicable period, the deficiency will be assessed upon the expiration of such period and notice and demand for payment of the amount thereof will be mailed to the taxpayer. If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by a final decision of the Tax Court will be assessed and is payable upon notice and demand. There are no restrictions on the timely assessment and collection of the amount of any deficiency determined by the Tax Court, and a notice of appeal of the Court's decision will not stay the assessment and collection of the deficiency so determined, unless on or before the time the notice of appeal is filed the taxpayer files with the Tax Court a bond in a sum fixed by the Court not exceeding twice the portion of the deficiency in respect of which the notice of appeal is filed. No part of an amount determined as a deficiency but disallowed as such by a decision of the Tax Court which has become final may be assessed or collected by levy or by proceeding in court with or without assessment.

(3) *Claims for refund.* After payment of the tax a taxpayer may, within the applicable period of limitations, contest the assessment by filing with the district director a claim for refund of all or any part of the amount paid, except with respect to certain taxes determined by the Tax Court, the decision of which has become final. If the claim is allowed, the overpayment of tax and allowable interest thereon will be credited against other liabilities of the taxpayer, or will be refunded to the taxpayer. Generally, if the claim for refund is rejected in whole or in part, the taxpayer is notified of the rejection by certified mail or registered mail. The taxpayer may then bring suit in the United States District Court or in the United States Claims Court for recovery of the tax. Suit may not be commenced before the expiration of six months from the date of filing of the claim for refund, unless a decision is rendered thereon within that time, nor after the expiration of two years from the date of mailing by certified mail or registered mail to the taxpayer of a notice of the disallowance of the part of the claim to which the suit relates. Under the 1954 Code, the 2-year period of limitation for bringing suit may be extended for such period as may be agreed upon in a properly executed Form 907. Also, under the 1954 Code, if the taxpayer files a written waiver of the requirement that the taxpayer be sent a notice of disallowance, the 2-year period for bringing suit begins to run on the date such waiver is filed. See section 6532(a) of the Code.

[32 FR 15990, Nov. 22, 1967, as amended at 38 FR 4955, Feb. 23, 1973; 43 FR 44497, Sept. 28, 1978; 45 FR 7251, Feb. 1, 1980; 46 FR 26053, May 11, 1981; 49 FR 36498, Sept. 18, 1984]

§ 601.104 Collection functions.

(a) *Collection methods*—(1) *Returns.* Generally, an internal revenue tax assessment is based upon a return required by law or regulations to be filed by the taxpayer upon which the taxpayer computes the tax in the manner indicated by the return. Certain taxpayers who choose to use the Optional

Tax Tables may elect to have the Internal Revenue Service compute the tax and mail them a notice stating the amount of tax due. If a taxpayer fails to make a return it may be made for the taxpayer by a district director or other duly authorized officer or employee. See section 6020 of the Code and the regulations thereunder. Returns must be made on the forms prescribed by the Internal Revenue Service. Forms are obtainable at the principal and branch offices of district directors of internal revenue. Taxpayers overseas may also obtain forms from any U.S. Embassy or consulate. Forms are generally mailed to persons whom the Service has reason to believe may be required to file returns, but failure to receive a form does not excuse failure to comply with the law or regulations requiring a return. Returns, supplementary returns, statements or schedules, and the time for filing them, may sometimes be prescribed by regulations issued under authority of law by the Commissioner with the approval of the Secretary of the Treasury or the Secretary's delegate. A husband and wife may make a single income tax return jointly. Certain affiliated groups of corporations may file consolidated income tax returns. See section 1501 of the Code and the regulations thereunder.

(2) *Withholding of tax at source.* Withholding at the source of income payments is an important method used in collecting taxes. For example, in the case of wage earners, the income tax is collected in large part through the withholding by employers of taxes on wages paid to their employees. The tax withheld at the source on wages is applied as a credit in payment of the individual's income tax liability for the taxable year. In no case does withholding of the tax relieve an individual from the duty of filing a return otherwise required by law. The chief means of collecting the income tax due from nonresident alien individuals and foreign corporations having United States source gross income which is not effectively connected with the conduct of a trade or business in the United States is the withholding of the tax by the persons paying or remitting the income to the recipients. The tax withheld is allowed as a credit in payment of the tax imposed on such nonresident alien individuals and foreign corporations.

(3) *Payments of estimated tax.* Any individual who may reasonably expect to receive gross income for the taxable year from wages or from sources other than wages, in excess of amounts specified by law, and who can reasonably expect his or her estimated tax to be at least $200 in 1982, $300 in 1983, $400 in 1984, and $500 in 1985 and later is required to make estimated tax payments. Payments of estimated tax are applied in payment of the tax for the taxable year. A husband and wife may jointly make a single payment which may be applied in payment of the income tax liability of either spouse in any proportion they may specify. For taxable years ending on or after December 31, 1955, the law requires payments of estimated tax by certain corporations. See section 6154 of the Code.

(b) *Extension of time for filing returns*—(1) *General.* Under certain circumstances the district directors or directors of service centers are authorized to grant a reasonable extension of time for filing a return or declaration. The maximum period for extensions cannot be in excess of 6 months, except in the case of taxpayers who are abroad. With an exception in the case of estate tax returns, written application for extension must be received by the appropriate director on or before the date prescribed by law for filing the return or declaration.

(2) *Corporations.* On or before the date prescribed by law for filing its income tax return, a corporation may obtain an automatic 6-month extension of time (a 3-month extension in the case of taxable years ending before December 31, 1982) for filing the income tax return by filing Form 7004 and paying the full amount of the properly estimated unpaid tax liability. For taxable years beginning before 1983, however, the corporation must remit with Form 7004 an estimated amount not less than would be required as the first installment of tax should the corporation elect to pay the tax in installments.

(3) *Individuals.* On or before the date prescribed for the filing of the return of an individual, such individual may obtain an automatic 4-month extension

of time for filing his or her return by filing Form 4868 accompanied by payment of the full amount of the estimated unpaid tax liability.

(c) *Enforcement procedure*—(1) *General.* Taxes shown to be due on returns, deficiencies in taxes, additional or delinquent taxes to be assessed, and penalties, interest, and additions to taxes, are recorded by the district director or the director of the appropriate service center as ''assessments.'' Under the law an assessment is prima facie correct for all purposes. Generally, the taxpayer bears the burden of disproving the correctness of an assessment. Upon assessment, the district director is required to effect collection of any amounts which remain due and unpaid. Generally, payment within 10 days from the date of the notice and demand for payment is requested; however, payment may be required in a shorter period if collection of the tax is considered to be in jeopardy. When collection of income tax is in jeopardy, the taxpayer's taxable period may be terminated under section 6851 of the Code and assessment of the tax made expeditiously under section 6201 of the Code.

(2) *Levy.* If a taxpayer neglects or refuses to pay any tax within the period provided for its payment, it is lawful for the district director to make collection by levy on the taxpayer's property. However, unless collection is in jeopardy, the taxpayer must be furnished written notice of intent to levy no fewer than 10 days before the date of the levy. See section 6331 of the Code. No suit for the purpose of restraining the assessment or collection of an internal revenue tax may be maintained in any court, except to restrain the assessment or collection of income, estate, Chapters 41 through 44, or gift taxes during the period within which the assessment or collection of deficiencies in such taxes is prohibited. See section 7421 of the Code. Property taken under authority of any revenue law of the United States is irrepleviable. 28 U.S.C. 2463. If the Service sells property, and it is subsequently determined that the taxpayer had no interest in the property or that the purchaser was misled by the Service as to the value of the taxpayer's interest, immediate action will be taken to refund any money wrongfully collected if a claim is made and the pertinent facts are present. The mere fact that a taxpayer's interest in property turns out to be less valuable than the purchaser expected will not be regarded as giving the purchaser any claim against the Government.

(3) *Liens.* The United States' claim for taxes is a lien on the taxpayer's property at the time of assessment. Such lien is not valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice has been filed by the district director. Despite such filing, the lien is not valid with respect to certain securities as against any purchaser of such security who, at the time of purchase, did not have actual notice or knowledge of the existence of such lien and as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien. Certain motor vehicle purchases are similarly protected. Even though a notice of lien has been filed, certain other categories are afforded additional protection. These categories are: Retail purchases, casual sales, possessory liens, real property taxes and property assessments, small repairs and improvements, attorneys' liens, certain insurance contracts and passbook loans. A valid lien generally continues until the liability is satisfied, becomes unenforceable by reason of lapse of time or is discharged in bankruptcy. A certificate of release of lien will be issued not later than 30 days after the taxpayer furnishes proper bond in lieu of the lien, or 30 days after it is determined that the liability has been satisfied, has become unenforceable by reason of lapse of time, or has been discharged in bankruptcy. If a certificate has not been issued and one of the foregoing criteria for release has been met, a certificate of release of lien will be issued within 30 days after a written request by a taxpayer, specifying the grounds upon which the issuance of release is sought. The Code also contains additional provisions with respect to the discharge of specific property from the effect of the lien. Also, under certain conditions, a

lien may be subordinated. The Code also contains additional provisions with respect to liens in the case of estate and gift taxes. For the specific rules with respect to liens, see Subchapter C of Chapter 64 of the Code and the regulations thereunder.

(4) *Penalties.* In the case of failure to file a return within the prescribed time, a certain percentage of the amount of tax (or a minimum penalty) is, pursuant to statute, added to the tax unless the failure to file the return within the prescribed time is shown to the satisfaction of the district director or the director of the appropriate service center to be due to reasonable cause and not neglect. In the case of failure to file an exempt organization information return within the prescribed time, a penalty of $10 a day for each day the return is delinquent is assessed unless the failure to file the return within the prescribed time is shown to be due to reasonable cause and not neglect. In the case of failure to pay or deposit taxes due within the prescribed time, a certain percentage of the amount of tax due is, pursuant to statute, added to the tax unless the failure to pay or deposit the tax due within the prescribed time is shown to the satisfaction of the district director or the director of the appropriate service center to be due to reasonable cause and not neglect. Civil penalties are also imposed for fraudulent returns; in the case of income and gift taxes, for intentional disregard of rules and regulations or negligence; and additions to the tax are imposed for the failure to comply with the requirements of law with respect to the estimated income tax. There are also civil penalties for filing false withholding certificates, for substantial understatement of income tax, for filing a frivolous return, for organizing or participating in the sale of abusive tax shelters, and for aiding and abetting in the understatement of tax liability. See Chapter 68 of the Code. A 50 percent penalty, in addition to the personal liability incurred, is imposed upon any person who fails or refuses without reasonable cause to honor a levy. Criminal penalties are imposed for willful failure to make returns, keep records, supply information, etc. See Chapter 75 of the Code.

(5) *Informants' rewards.* Payments to informers are authorized for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws. See section 7623 of the Code and the regulations thereunder. Claims for rewards should be made on Form 211. Relevant facts should be stated on the form, which after execution should be forwarded to the district director of internal revenue for the district in which the informer resides, or to the Commissioner of Internal Revenue, Washington, DC 20224.

[32 FR 15990, Nov. 22, 1967, as amended at 32 FR 20645, Dec. 21, 1967; 33 FR 17234, Nov. 21, 1968; 34 FR 6424, Apr. 12, 1969; 35 FR 7112, May 6, 1970; 36 FR 7584, Apr. 22, 1971; 38 FR 4956, Feb. 23, 1973; 45 FR 7251, Feb. 1, 1980; 49 FR 36499, Sept. 18, 1984; 49 FR 40809, Oct. 18, 1984; T.D. 8685, 61 FR 58008, Nov. 12, 1996]

§ 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(a) *Processing of returns.* When the returns are filed in the office of the district director of internal revenue or the office of the director of a regional service center, they are checked first for form, execution, and mathematical accuracy. Mathematical errors are corrected and a correction notice of any such error is sent to the taxpayer. Notice and demand is made for the payment of any additional tax so resulting, or refund is made of any overpayment. Returns are classified for examination at regional service centers. Certain individual income tax returns with potential unallowable items are delivered to Examination Divisions at regional service centers for correction by correspondence. Otherwise, returns with the highest examination potential are delivered to district Examinations Divisions based on workload capacities. Those most in need of examination are selected for office or field examination.

(b) *Examination of returns*—(1) *General.* The original examination of income (including partnership and fiduciary), estate, gift, excise, employment, exempt organization, and information returns is a primary function of examiners in the Examination Division of the office of each district director of internal revenue. Such examiners are organized in groups, each of which is

under the immediate supervision of a group supervisor designated by the district director. Revenue agents (and such other officers or employees of the Internal Revenue Service as may be designated for this purpose by the Commissioner) are authorized to examine any books, papers, records, or memoranda bearing upon matters required to be included in Federal tax returns and to take testimony relative thereto and to administer oaths. See section 7602 of the Code and the regulations thereunder. There are two general types of examination. These are commonly called ''office examination'' and ''field examination''. During the examination of a return a taxpayer may be represented before the examiner by an attorney, certified public accountant, or other representative. See Subpart E of this part for conference and practice requirements.

(2) *Office examination*—(i) *Adjustments by Examination Division at service center.* Certain individual income tax returns identified as containing potential unallowable items are examined by Examination Divisions at regional service centers. Correspondence examination techniques are used. If the taxpayer requests an interview to discuss the proposed adjustments, the case is transferred to the taxpayer's district office. If the taxpayer does not agree to proposed adjustments, regular appellate procedures apply.

(ii) *Examinations at district office.* Certain returns are examined at district offices by office examination techniques. These returns include some business returns, besides the full range of nonbusiness individual income tax returns. Office examinations are conducted primarily by the interview method. Examinations are conducted by correspondence only when warranted by the nature of the questionable items and by the convenience and characteristics of the taxpayer. In a correspondence examination, the taxpayer is asked to explain or send supporting evidence by mail. In an office interview examination, the taxpayer is asked to come to the district director's office for an interview and to bring certain records in support of the return. During the interview examination, the taxpayer has the right to point out to the examiner any amounts included in the return which are not taxable, or any deductions which the taxpayer failed to claim on the return. If it develops that a field examination is necessary, the examiner may conduct such examination.

(3) *Field examination.* Certain returns are examined by field examination which involves an examination of the taxpayer's books and records on the taxpayer's premises. An examiner will check the entire return filed by the taxpayer and will examine all books, papers, records, and memoranda dealing with matters required to be included in the return. If the return presents an engineering or appraisal problem (e.g., depreciation or depletion deductions, gains or losses upon the sale or exchange of property, or losses on account of abandonment, exhaustion, or obsolescence), it may be investigated by an engineer agent who makes a separate report.

(4) *Conclusion of examination.* At the conclusion of an office or field examination, the taxpayer is given an opportunity to agree with the findings of the examiner. If the taxpayer does not agree, the examiner will inform the taxpayer of the appeal rights. If the taxpayer does agree with the proposed changes, the examiner will invite the taxpayer to execute either Form 870 or another appropriate agreement form. When the taxpayer agrees with the proposed changes but does not offer to pay any deficiency or additional tax which may be due, the examiner will also invite payment (by check or money order), together with any applicable interest or penalty. If the agreed case involves income, profits, estate, gift, generation–skipping transfer, or Chapter 41, 42, 43, or 44 taxes, the agreement is evidenced by a waiver by the taxpayer of restrictions on assessment and collection of the deficiency, or an acceptance of a proposed overassessment. If the case involves excise or employment taxes or 100 percent penalty, the agreement is evidenced in the form of a consent to assessment and collection of additional tax or penalty and waiver of right to file claim for abatement, or the acceptance of the proposed overassessment. Even though the taxpayer

signs an acceptance of a proposed overassessment the district director or the director of the regional service center remains free to assess a deficiency. On the other hand, the taxpayer who has given a waiver may still claim a refund of any part of the deficiency assessed against, and paid by, the taxpayer, or any part of the tax originally assessed and paid by the taxpayer. The taxpayer's acceptance of an agreed overassessment does not prevent the taxpayer from filing a claim and bringing a suit for an additional sum, nor does it preclude the Government from maintaining suit to recover an erroneous refund. As a matter of practice, however, waivers or acceptances ordinarily result in the closing of a case insofar as the Government is concerned.

(5) *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, furnished by the National Office upon request of a district office in connection with the examination of a taxpayer's return or consideration of a taxpayer's return claim for refund or credit. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent holdings in the several districts. It does not include memorandums on matters of general technical application furnished to district offices where the issues are not raised in connection with the examination of the return of a specific taxpayer.

(*b*) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the examination or consideration of a return of the taxpayer. Thus, a district director may, in his discretion, request technical advice with respect to the consideration of a request for a determination letter.

(*c*) If a district director is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked, and requests the National Office to reconsider the ruling, the reference of the matter to the National Office is treated as a request for technical advice and the procedures specified in subdivision (iii) of this subparagraph should be followed in order that the National Office may consider the district director's recommendation. Only the National Office can revoke a ruling letter. Before referral to the National Office, the district director should inform the taxpayer of his opinion that the ruling letter should be revoked. The district director, after development of the facts and consideration of the taxpayer's arguments, will decide whether to recommend revocation of the ruling to the National Office. For procedures relating to a request for a ruling, see § 601.201.

(*d*) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, is 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 other than those which are under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms. This authority has been largely redelegated to subordinate officials.

(*e*) The provisions of this subparagraph apply only to a case under the jurisdiction of a district director but do not apply to an Employee Plans case under the jurisdiction of a key district director as provided in § 601.201(o) or to an Exempt Organization case under the jurisdiction of a key district director as provided in § 601.201(n). The technical advice provisions applicable to Employee Plans and Exempt Organization cases are set forth in § 601.201(n)(9). The provisions of this subparagraph do not apply to a case under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms. They also do not apply to a case under the jurisdiction of an Appeals office, including a case previously considered by Appeals. The technical advice provisions applicable to a case under the jurisdiction of an Appeals office, other than Employee Plans and Exempt Organizations cases, are set forth in § 601.106(f)(10). A case remains under the jurisdiction of the district director even though an Appeals office has the identical issue under consideration in

the case of another taxpayer (not related within the meaning of section 267 of the Code) in an entirely different transaction. Technical advice may not be requested with respect to a taxable period if a prior Appeals disposition of the same taxable period of the same taxpayer's case was based on mutual concessions (ordinarily with a Form 870–AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment). However, technical advice may be requested by a district director on issues previously considered in a prior Appeals disposition, not based on mutual concessions, of the same taxable periods of the same taxpayer with the concurrence of the Appeals office that had the case.

(ii) *Areas in which technical advice may be requested. (a)* District directors may request technical advice on any technical or procedural question that develops during the audit or examination of a return, or claim for refund or credit, of a taxpayer. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(*b*) District directors are encouraged to request technical advice on any technical or procedural question arising in connection with any case of the type 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. This request should be made at the earliest possible stage of the examination process.

(iii) *Requesting technical advice. (a)* It is the responsibility of the district 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 district director, a taxpayer or his/her 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 examination process. While taxpayers 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 taxpayer may make the request orally. If, after considering the taxpayer's request, the examiner is of the opinion that the circumstances do not warrant referral of the case to the National Office, he/she will so advise the taxpayer. (See subdivision (iv) of this subparagraph for taxpayer's appeal rights where the examiner declines to request technical advice.)

(*b*) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in *(g)* of this subdivision. If the examiner initiates the action, the taxpayer 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 submitted by the district director 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 from the district office, the taxpayer will be given 10 calendar days in which to indicate in writing the extent, if any, to which he may not be in complete agreement. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division. Every effort should be made to reach agreement as to the facts and specific point at issue. If agreement cannot be reached, the taxpayer may submit, within 10 calendar days after receipt of notice from the district office, a statement of his 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 taxpayer in writing and approved by the Chief, Examination Division.

(*d*) If the taxpayer initiates the action to request advice, and his statement of the facts and point or points at issue are not wholly acceptable to the district officials, the taxpayer will be advised in writing as to the areas of disagreement. The taxpayer will be given 10 calendar days after receipt of

the written notice to reply to the district official's letter. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division. If agreement cannot be reached, both the statements of the taxpayer and the district official will be forwarded to the National Office.

(*e*)(*1*) In the case of requests for technical advice the taxpayer must also submit, within the 10-day period referred to in (*c*) and (*d*) of this subdivision, whichever applicable (relating to agreement by the taxpayer with the statement of facts 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 taxpayer will be informed by the district director that such a statement is required. If the district director does not receive the statement within 10 days after the taxpayer has been informed of the need for such statement, the district director may decline to submit the request for technical advice. If the district director decides to request technical advice in a case where the taxpayer 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 § 601.105(b)(5) with respect to submissions 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 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 taxpayer 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 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 taxpayer 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 technical advice. If the taxpayer 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 taxpayer has not already done so, the taxpayer may submit a statement explaining the taxpayer's position on the issues, citing precedents which the taxpayer 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 taxpayer is informed that the matter is being referred to the National Office, the taxpayer will also be informed of the taxpayer's right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether such a conference is desired.

(*i*) Generally, prior to replying to the request for technical advice, the National Office shall inform the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum which the taxpayer proposed be deleted but which the Internal Revenue Service determined should not be deleted. If so informed, the taxpayer 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 taxpayer 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 taxpayer, advising taxpayers 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 611(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 taxpayer 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 taxpayers of determinations not to seek technical advice. (a)* If the taxpayer has requested referral of an issue before a district office to the National Office for technical advice, and after consideration of the request the examiner is of the opinion that the circumstances do not warrant such referral, he will so advise the taxpayer.

(*b*) The taxpayer may appeal the decision of the examining officer not to request technical advice by submitting to that 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 he believes the matter should be referred to the National Office for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division.

(*c*) The examining officer will submit the statement of the taxpayer through channels to the Chief, Examination Division, accompanied by a statement of his reasons why the issue should not be referred to the National Office. The Chief, Examination Division, will determine, on the basis of the statements submitted, whether technical advice will be requested. If he determines that technical advice is not warranted, he will inform the taxpayer in writing that he proposes to deny the request. In the letter to the taxpayer the Chief, Examination Division, 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 taxpayer will be given 15 calendar days after receipt of the letter in which to notify the Chief, Examination Division, whether he agrees with the proposed denial. The taxpayer may not appeal the decision of the Chief, Examination Division, not to request technical advice from the National Office. However, if he does not agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including taxpayer's written request and statements, will be submitted to the National Office, Attention: Director, Examination Division, for review. After review in the National Office, the district office will be notified whether the proposed denial is approved or disapproved.

(*d*) While the matter is being reviewed in the National Office, the district 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 taxpayer should be given

and a conference has been requested, the taxpayer 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 taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer. 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 taxpayer and approved by the appropriate Technical branch chief.

(*b*) A taxpayer 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 (Corporation Tax Division or Individual Tax 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. In appropriate cases the examining 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 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. A taxpayer 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 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 or his representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer 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 taxpayer to furnish to the National Office, within 21 calendar days after the conference, a written record of any additional data, line of reasoning, precedents, etc., that were proposed by the taxpayer 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 taxpayer and approved by the appropriate Technical 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 district director. The district director will be requested to give the matter his prompt attention. He may verify the additional facts and data and comment upon it to the extent he deems it appropriate.

(*e*) A taxpayer or a taxpayer's representative desiring to obtain information as to the status of the 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.

(vi) *Preparation of technical advice memorandum by the National Office. (a)* Immediately upon receipt in the National Office, the technical 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 subdivisions (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, 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 taxpayer 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 district director and will be drafted in two parts. Each part will identify the taxpayer 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 district office. The discussion of the issues will be in such detail that the district officials are apprised of the reasoning underlying the conclusion. There shall accompany the technical advice memorandum 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 district director shall forward to the taxpayer at such time that the district director furnishes a copy of the technical advice memorandum to the taxpayer pursuant to *(e)* of this subsection.

(*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 district office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(*e*) It is the general practice of the Service to furnish a copy of the technical advice memorandum to the taxpayer after it has been adopted by the district director. 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 taxpayer 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 the taxpayer desires to protest the disclosure of certain information in the technical advice memorandum, the taxpayer 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 taxpayer believes should have been made. The taxpayer shall also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection on which the taxpayer 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 time when the National Office sent its reply to the request for technical advice to the district director, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the taxpayer to the notice pursuant to section 6110(f)(1) of the Code, mail to the taxpayer its final administrative conclusion with respect to the deletions to be made.

(vii) *Action on technical advice in district offices. (a)* Unless the district director feels that the conclusions reached by the National Office in a technical advice memorandum should be reconsidered and promptly requests such reconsideration, his office will proceed to process the taxpayer's case on the basis of the conclusions expressed in the technical advice memorandum.

(*b*) The district director will furnish to the taxpayer 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 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 or to documents to which section 6104 of the Code applies.

(*c*) In those cases in which the National Office advises the district director that he should not furnish a copy of the technical memorandum to the taxpayer, the district director will so inform the taxpayer if he 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 district officials in the examination and closing of the case involved.

(*b*) Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied retroactively. Moreover, since technical advice, as described in subdivision (i) of this subparagraph, is issued only on closed transactions, a holding in a technical advice memorandum that is adverse to the taxpayer is also applied retroactively unless the Assistant Commissioner (Technical) exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the holding. Likewise, a holding in a technical advice memorandum that modifies or revokes a holding in a prior technical advice memorandum will also be applied retroactively, with one exception. If the new holding is less favorable to the taxpayer, it will generally not be applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions of the type described in §§ 601.201(1) (7) and 601.201(1) (8).

(*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 district director may raise an issue in any taxable period, even though he or she may have asked for and been furnished technical advice with regard to the same or a similar issue in any other taxable period.

(c) *District procedure*—(1) *Office examination.* (i) In a correspondence examination the taxpayer is furnished with a report of the examiner's findings by a form letter. The taxpayer is asked to sign and return an agreement if the taxpayer accepts the findings. The letter also provides a detailed explanation of the alternatives available if the taxpayer does not accept the findings, including consideration of the case by an Appeals office, and requests the taxpayer to inform the district director, within the specified period, of the choice of action. An Appeals office conference will be granted to the taxpayer upon request without submission of a written protest.

(ii) If, at the conclusion of an office interview examination, the taxpayer does not agree with the adjustments proposed, the examiner will fully explain the alternatives available which include, if practicable, an immediate interview with a supervisor or an immediate conference with an Appeals Officer. If an immediate interview or Appeals office conference is not practicable, or is not requested by the taxpayer, the examination report will be mailed to the taxpayer under cover of an appropriate transmittal letter. This letter provides a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requests the taxpayer to inform the district director, within the specified period, of the choice of action. An appeals office conference will be granted to the taxpayer upon request without submission of a written protest.

(2) *Field examination.* (i) If, at the conclusion of an examination, the taxpayer does not agree with the adjustments proposed, the examiner will prepare a complete examination report fully explaining all proposed adjustments. Before the report is sent to the taxpayer, the case file will be submitted to the district Centralized Services and, in some cases, Quality Review function for appropriate review. Following such review, the taxpayer will

be sent a copy of the examination report under cover of a transmittal (30-day) letter, providing a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requesting the taxpayer to inform the district director, within the specified period, of the choice of action.

(ii) If the total amount of proposed additional tax, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) does not exceed $2,500 for any taxable period, the taxpayer will be granted an Appeals office conference on request. A written protest is not required.

(iii) If for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000, the taxpayer, on request, will be granted an Appeals office conference, provided a brief written statement of disputed issues is submitted.

(iv) If for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000, the taxpayer, on request, will be granted an Appeals office conference, provided a written protest is filed.

(d) *Thirty-day letters and protests*—(1) *General.* The report of the examiner, as approved after review, recommends one of four determinations:

(i) Acceptance of the return as filed and closing of the case;

(ii) Assertion of a given deficiency or additional tax;

(iii) Allowance of a given overassessment, with or without a claim for refund, credit, or abatement;

(iv) Denial of a claim for refund, credit, or abatement which has been filed and is found wholly lacking in merit. When a return is accepted as filed (as in subdivision (i) of this subparagraph), the taxpayer is notified by appropriate ''no change'' letter. In an unagreed case, the district director sends to the taxpayer a preliminary or ''30-day letter'' if any one of the last three determinations is made (except a full allowance of a claim in respect of any tax). The 30-day letter is a form letter which states the determination proposed to be made. It is accompanied by a copy of the examiner's report explaining the basis of the proposed determination. It suggests to the taxpayer that if the taxpayer concurs in the recommendation, he or she indicate agreement by executing and returning a waiver or acceptance. The preliminary letter also informs the taxpayer of appeal rights available if he or she disagrees with the proposed determination. If the taxpayer does not respond to the letter within 30 days, a statutory notice of deficiency will be issued or other appropriate action taken, such as the issuance of a notice of adjustment, the denial of a claim in income, profits, estate, and gift tax cases, or an appropriate adjustment of the tax liability or denial of a claim in excise and employment tax cases.

(2) *Protests.* (i) No written protest or brief written statement of disputed issues is required to obtain an Appeals office conference in office interview and correspondence examination cases.

(ii) No written protest or brief written statement of disputed issues is required to obtain an Appeals office conference in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) is $2,500 or less for any taxable period.

(iii) A written protest is required to obtain Appeals consideration in a field examination case if the total amount of proposed tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000 for any taxable period.

(iv) A written protest is optional (although a brief written statement of disputed issues is required) to obtain Appeals consideration in a field examination case if for any taxable period

the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000.

(v) Instructions for preparation of written protests are sent to the taxpayer with the transmittal (30-day) letter.

(e) *Claims for refund or credit.* (1) After payment of the tax a taxpayer may (unless he has executed an agreement to the contrary) contest the assessment by filing a claim for refund or credit for all or any part of the amount paid, except as provided in section 6512 of the Code with respect to certain taxes determined by the Tax Court, the decision of which has become final. A claim for refund or credit of income taxes shall be made on Form 1040X, 1120X, or an amended income tax return, in accordance with § 301.6402–3. In the case of taxes other than income taxes, a claim for refund or credit shall be made on Form 843. The appropriate forms are obtainable from district directors or directors of service centers. Generally, the claim, together with appropriate supporting evidence, must be filed at the location prescribed in § 301.6402–2(a) (2). A claim for refund or credit must be filed within the applicable statutory period of limitation. In certain cases, a properly executed income tax return may operate as a claim for refund or credit of the amount of the overpayment disclosed by such return. (See § 301.6402–3).

(2) When claims for refund or credit are examined by the Examination Division, substantially the same procedure is followed (including appeal rights afforded to taxpayers) as when taxpayers' returns are originally examined. But see § 601.108 for procedure for reviewing proposed overpayment exceeding $200,000 of income, estate, and gift taxes.

(3) As to suits for refund, see § 601.103 (c).

(4) [Reserved]

(5) There is also a special procedure applicable to applications for tentative carryback adjustments under section 6411 of the Code (consult Forms 1045 and 1139).

(6) For special procedure applicable to claims for payment or credit in respect of gasoline used on a farm for farming purposes, for certain nonhighway purposes, for use in commercial aircraft, or used by local transit systems, see sections 39, 6420, and 6421 of the Code and § 601.402(c)(3). For special procedure applicable to claims for payment or credit in respect of lubricating oil used otherwise than in a highway motor vehicle, see sections 39 and 6424 of the Code and § 601.402(c)(3). For special procedure applicable for credit or refund of aircraft use tax, see section 6426 of the Code and § 601.402(c)(4). For special procedure applicable for payment or credit in respect of special fuels not used for taxable purposes, see sections 39 and 6427 of the Code and § 601.402(c)(5).

(7) For special procedure applicable in certain cases to adjustment of overpayment of estimated tax by a corporation see section 6425 of the Code.

(f) *Interruption of examination procedure.* The process of field examination and the course of the administrative procedure described in this section and in the following section may be interrupted in some cases by the imminent expiration of the statutory period of limitations for assessment of the tax. To protect the Government's interests in such a case, the district director of internal revenue or other designated officer may be required to dispatch a statutory notice of deficiency (if the case is within jurisdiction of U.S. Tax Court), or take other appropriate action to assess the tax, even though the case may be in examination status. In order to avoid interruption of the established procedure (except in estate tax cases), it is suggested to the taxpayer that he execute an agreement on Form 872 (or such other form as may be prescribed for this purpose). To be effective this agreement must be entered into by the taxpayer and the district director or other appropriate officer concerned prior to the expiration of the time otherwise provided for assessment. Such a consent extends the period for assessment of any deficiency, or any additional or delinquent tax, and extends the period during which

the taxpayer may claim a refund or credit to a date 6 months after the agreed time of extension of the assessment period. When appropriate, a consent may be entered into restricted to certain issues.

(g) *Fraud.* The procedure described in this section does not apply in any case in which criminal prosecution is under consideration. Such procedure does obtain, however, in cases involving the assertion of the civil fraud penalty after the criminal aspects of the case have been closed.

(h) *Jeopardy assessments.* If the district director believes that the assessment or collection of a tax will be jeorpardized by delay, he/she is authorized and required to assess the tax immediately, together with interest and other additional amounts provided by law, notwithstanding the restrictions on assessment or collection of income, estate, gift, generation–skipping transfer, or Chapter 41, 42, 43, or 44 taxes contained in section 6213(a) of the Code. A jeopardy assessment does not deprive the taxpayer of the right to file a petition with the Tax Court. Collection of a tax in jeopardy may be immediately enforced by the district director upon notice and demand. To stay collection, the taxpayer may file with the district director a bond equal to the amount for which the stay is desired. The taxpayer may request a review in the Appeals office of whether the making of the assessment was reasonable under the circumstances and whether the amount assessed or demanded was appropriate under the circumstances. See section 7429. This request shall be made, in writing, within 30 days after the earlier of—

(1) The day on which the taxpayer is furnished the written statement described in section 7429(a)(1); or

(2) The last day of the period within which this statement is required to be furnished.

An Appeals office conference will be granted as soon as possible and a decision rendered without delay.

(i) *Regional post review of examined cases.* Regional Commissioners review samples of examined cases closed in their district offices to insure uniformity throughout their districts in applying Code provisions, regulations, and rulings, as well as the general policies of the Service.

(j) *Reopening of Cases Closed After Examination.* (1) The Service does not reopen any case closed after examination by a district office or service center, to make an adjustment unfavorable to the taxpayer unless:

(i) There is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact; or

(ii) The prior closing involved a clearly defined substantial error based on an established Service position existing at the time of the previous examination; or

(iii) Other circumstances exist which indicate failure to reopen would be a serious administrative omission.

(2) All reopenings are approved by the Chief, Examination Division (District Director in streamlined districts), or by the Chief, Compliance Division, for cases under his/her jurisdiction. If an additional inspection of the taxpayer's books of account is necessary, the notice to the taxpayer required by Code section 7605(b) will be delivered to the taxpayer at the time the reexamination is begun.

(k) *Transfer of returns between districts.* When request is received to transfer returns to another district for examination or the closing of a cased, the district director having jurisdiction may transfer the case, together with pertinent records to the district director of such other district. The Service will determine the time and place of the examination. In determining whether a transfer should be made, circumstances such as the following will be considered:

(1) Change of the taxpayer's domicile, either before or during examination.

(2) Discovery that taxpayer's books and records are kept in another district.

(3) Change of domicile of an executor or administrator to another district before or during examination.

(4) The effective administration of the tax laws.

(l) *Special procedures for crude oil windfall profit tax cases.* For special procedures relating to crude oil windfall profit tax cases, see § 601.405.

(5 U.S.C. 301 and 552) 80 Stat. 379 and 383; sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805))

[32 FR 15990, Nov. 22, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 601.105, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 601.106 Appeals functions.

(a) *General.* (1)(i) There are provided in each region Appeals offices with office facilities within the region. Unless they otherwise specify, taxpayers living outside the United States use the facilities of the Washington, DC, Appeals Office of the the Mid-Atlantic Region. Subject to the limitations set forth in subparagraphs (2) and (3) of this paragraph, the Commissioner has delegated to certain officers of the Appeals offices authority to represent the regional commissioner in those matters set forth in subdivisions (ii) through (v) of this subparagraph. If a statutory notice of deficiency was issued by a district director or the Director, Foreign Operations District, the Appeals office may waive jurisdiction to the director who issued the statutory notice during the 90-day (or 150-day) period for filing a petition with the Tax Court, except where criminal prosecution has been recommended and not finally disposed of, or the statutory notice includes the ad valorem fraud penalty. After the filing of a petition in the Tax Court, the Appeals office will have exclusive settlement jurisdiction, subject to the provisions of subparagraph (2) of this paragraph, for a period of 4 months (but no later than the receipt of the trial calendar in regular cases and no later than 15 days before the calendar call in S cases), over cases docketed in the Tax Court. Subject to the exceptions and limitations set forth in subparagraph (2) of this paragraph, there is also vested in the Appeals offices authority to represent the regional commissioner in his/her exclusive authority to settle (*a*) all cases docketed in the Tax Court and designated for trial at any place within the territory comprising the region, and (*b*) all docketed cases originating in the office of any district director situated within the region, or in which jurisdiction has been transferred to the region, which are designated for trial at Washington, DC, unless the petitioner resides in, and his/her books and records are located or can be made available in, the region which includes Washington, DC.

(ii) Certain officers of the Appeals offices may represent the regional commissioner in his/her exclusive and final authority for the determination of—

(*a*) Federal income, profits, estate (including extensions for payment under section 6161(a)(2)), gift, generation–skipping transfer, or Chapter 41, 42, 43, or 44 tax liability (whether before or after the issuance of a statutory notice of deficiency);

(*b*) Employment or certain Federal excise tax liability; and

(*c*) Liability for additions to the tax, additional amounts, and assessable penalties provided under Chapter 68 of the Code,

in any case originating in the office of any district director situated in the region, or in any case in which jurisdiction has been transferred to the region.

(iii) The taxpayer must request Appeals consideration.

(*a*) An oral request is sufficient to obtain Appeals consideration in (*1*) all office interview or correspondence examination cases or (*2*) a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) is $2,500 or less for any taxable period. No written protest or brief statement of disputed issues is required.

(*b*) A brief written statement of disputed issues is required (a written protest is optional) to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000 for any taxable period.

(*c*) A written protest is required to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000 for any taxable period.

(*d*) A written protest is required to obtain Appeals consideration in all employee plan and exempt organization cases.

(*e*) A written protest is required to obtain Appeals consideration in all partnership and S corporation cases.

(iv) Sections 6659(a)(1) and 6671(a) provide that additions to the tax, additional amounts, penalties and liabilities (collectively referred to in this subdivision as ''penalties'') provided by Chapter 68 of the Code shall be paid upon notice and demand and shall be assessed and collected in the same manner as taxes. Certain Chapter 68 penalties may be appealed after assessment to the Appeals office. This post-assessment appeal procedure applies to all but the following Chapter 68 penalties:

(*a*) Penalties that are not subject to a reasonable cause or reasonable basis determination (examples are additions to the tax for failure to pay estimated income tax under sections 6654 and 6655);

(*b*) Penalties that are subject to the deficiency procedures of subchapter B of Chapter 63 of the Code (because the taxpayer has the right to appeal such penalties, such as those provided under section 6653 (a) and (b), prior to assessment):

(*c*) Penalties that are subject to an administratively granted preassessment appeal procedure such as that provided in §1.6694–2(a)(1) because taxpayers are able to protest such penalties prior to assessment;

(*d*) The penalty provided in section 6700 for promoting abusive tax shelters (because the penalty is subject to the procedural rules of section 6703 which provides for an extension of the period of collection of the penalty when a person pays not less than 15 percent of the amount of such penalty); and

(*e*) The 100 percent penalty provided under section 6672 (because the taxpayer has the opportunity to appeal this penalty prior to assessment).

The appeal may be made before or after payment, but shall be made before the filing of a claim for refund. Technical advice procedures are not applicable to an appeal made under this subdivision.

(v) The Appeals office considers cases involving the initial or continuing recognition of tax exemption and foundation classification. See §601.201(n)(5) and (n)(6). The Appeals office also considers cases involving the initial or continuing determination of employee plan qualification under Subchapter D of Chapter 1 of the Code. See §601.201(o)(6). However, the jurisdiction of the Appeals office in these cases is limited as follows:

(*a*) In cases under the jurisdiction of a key district director (or the National Office) which involve an application for, or the revocation or modification of, the recognition of exemption or the determination of qualification, if the determination concerning exemption is made by a National Office ruling, or if National Office technical advice is furnished concerning exemption or qualification, the decision of the National Office is final. The organization/plan has no right of appeal to the Appeals office or any other avenue of administrative appeal. See §601.201(n)(i), (n)(6)(ii)(*b*), (n)(9)(viii)(*a*), (o)(2)(iii), and (o)(6)(i).

(*b*) In cases already under the jurisdiction of an Appeals office, if the proposed disposition by that office is contrary to a National Office ruling concerning exemption, or to a National Office technical advice concerning exemption or qualification, 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 section 521 cases, to the Assistant Commissioner (Technical). The decision of the Assistant Commissioner will be followed by the Appeals office. See §601.201(n)(5)(iii), (n)(6)(ii)(*d*), (n)(6)(iv), and (o)(6)(iii).

(2) The authority described in subparagraph (1) of this paragraph does not include the authority to:

(i) Negotiate or make a settlement in any case docketed in the Tax Court if the notice of deficiency, liability or other determination was issued by Appeals officials;

(ii) Negotiate or make a settlement in any docketed case if the notice of deficiency, liability or other determination was issued after appeals consideration of all petitioned issues by the Employee Plans/Exempt Organizations function;

(iii) Negotiate or make a settlement in any docketed case if the notice of deficiency, liability or final adverse determination letter was issued by a District Director and is based upon a National Office ruling or National Office technical advice in that case involving a qualification of an employee plan or tax exemption and/or foundation status of an organization (but only to the extent the case involves such issue);

(iv) Negotiate or make a settlement if the case was docketed under Code sections 6110, 7477, or 7478;

(v) Eliminate the ad valorem fraud penalty in any case in which the penalty was determined by the district office or service center office in connection with a tax year or period, or which is related to or affects such year or period, for which criminal prosecution against the taxpayer (or related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, except upon the recommendation or concurrence of Counsel; or

(vi) Act in any case in which a recommendation for criminal prosecution is pending, except with the concurrence of Counsel.

(3) The authority vested in Appeals does not extend to the determination of liability for any excise tax imposed by Subtitle E or by Subchapter D of chapter 78, to the extent it relates to Subtitle E.

(4) In cases under Appeals jurisdiction, the Appeals official has the authority to make and subscribe to a return under the provisions of section 6020 of the Code where taxpayer fails to make a required return.

(b) *Initiation of proceedings before Appeals.* In any case in which the district director has issued a preliminary or ''30-day letter'' and the taxpayer requests Appeals consideration and files a written protest when required (see paragraph (c)(1) of §§ 601.103, (c)(1) and (c)(2) of 601.105 and 601.507) against the proposed determination of tax liability, except as to those taxes described in paragraph (a)(3) of this section, the taxpayer has the right (and will be so advised by the district director) of administrative appeal to the Appeals organization. However, the appeal procedures do not extend to cases involving solely the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds. Organizations such as labor unions and trade associations which have been examined by the district director to determine the amounts expended by the organization for purposes of lobbying, promotion or defeat of legislation, political campaigns, or propaganda related to those purposes are treated as ''taxpayers'' for the purpose of this right of administrative appeal. Thus, upon requesting appellate consideration and filing a written protest, when required, to the district director's findings that a portion of member dues is to be disallowed as a deduction to each member because expended for such purposes, the organization will be afforded full rights of administrative appeal to the Appeals activity similar to those rights afforded to taxpayers generally. After review of any required written protest by the district director, the case and its administrative record are referred to Appeals. Appeals may refuse to accept a protested nondocketed case where preliminary review indicates it requires further consideration or development. No taxpayer is required to submit a case to Appeals for consideration. Appeal is at the option of the taxpayer. After the issuance by the district director of a statutory notice of deficiency, upon the taxpayer's request, Appeals may take up the case for settlement and may grant the taxpayer a conference thereon.

(c) *Nature of proceedings before Appeals.* Proceedings before Appeals are informal. Testimony under oath is not taken, although matters alleged as facts may be required to be submitted

in the form of affidavits, or declared to be true under the penalties of perjury. Taxpayers may represent themselves or designate a qualified representative to act for them. See Subpart E of this part for conference and practice requirements. At any conference granted by Appeals on a nondocketed case, the district director will be represented if the Appeals official having settlement authority and the district director deem it advisable. At any such conference on a case involving the ad valorem fraud penalty for which criminal prosecution against the taxpayer (or a related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, the District Counsel will be represented if he or she so desires.

(d) *Disposition and settlement of cases before Appeals*—(1) *In general.* During consideration of a case, the Appeals office should neither reopen an issue as to which the taxpayer and the office of the district director are in agreement nor raise a new issue, unless the ground for such action is a substantial one and the potential effect upon the tax liability is material. If the Appeals raises a new issue, the taxpayer or the taxpayer's representative should be so advised and offered an opportunity for discussion prior to the taking of any formal action, such as the issuance of a statutory notice of deficiency.

(2) *Cases not docketed in the Tax Court.* (i) If after consideration of the case by Appeals a satisfactory settlement of some or all the issues is reached with the taxpayer, the taxpayer will be requested to sign Form 870–AD or other appropriate agreement form waiving restrictions on the assessment and collection of any deficiency and accepting any overassessment resulting under the agreed settlement. In addition, in partially unagreed cases, a statutory notice of deficiency will be prepared and issued in accordance with subdivision (ii) of this subparagraph with respect to the unagreed issue or issues.

(ii) If after consideration of the case by Appeals it is determined that there is a deficiency in income, profits, estate, gift tax, generation–skipping transfer, or Chapter 41, 42, 43, or 44 tax liability to which the taxpayer does not agree, a statutory notice of deficiency will be prepared and issued by Appeals. Officers of the Appeals office having authority for the administrative determination of tax liabilities referred to in paragraph (a) of this section are also authorized to prepare, sign on behalf of the Commissioner, and send to the taxpayer by registered or certified mail any statutory notice of deficiency prescribed in sections 6212 and 6861 of the Code, and in corresponding provisions of the Internal Revenue Code of 1939. Within 90 days, or 150 days if the notice is addressed to a person outside of the States of the Union and the District of Columbia, after such a statutory notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the U.S. Tax Court for a redetermination of the deficiency. In addition, if a claim for refund is disallowed in full or in part by the Appelate Division and the taxpayer does not sign Form 2297, Appeals will prepare the statutory notice of claim disallowance and send it to the taxpayer by certified mail (or registered mail if the taxpayer is outside the United States), with a carbon copy to the taxpayer's representative by regular mail, if appropriate. In any other unagreed case, the case and its administrative file will be forwarded to the appropriate function with directions to take action with respect to the tax liability determined in Appeals. Administrative appeal procedures will apply to 100-percent penalty cases, except where an assessment is made because of Chief Counsel's request to support a third-party action in a pending refund suit. See Rev. Proc. 69–26.

(iii) Taxpayers desiring to further contest unagreed excise (other than those under Chapters 41 through 44 of the Code) and employment tax cases and 100-percent penalty cases must pay the additional tax (or portion thereof of divisible taxes) when assessed, file claim for refund within the applicable statutory period of limitations (ordinarily 3 years from time return was required to be filed or 2 years from payment, whichever expires later), and upon disallowance of claim or after 6

months from date claim was filed, file suit in U.S. District Court or U.S. Claims Court. Suits for refund of taxes paid are under the jurisdiction of the Department of Justice.

(3) *Cases docketed in the Tax Court.* (i) If the case under consideration in Appeals is docketed in the Tax Court and agreement is reached with the taxpayer with respect to the issues involved, the disposition of the case is effected by a stipulation of agreed deficiency or overpayment to be filed with the Tax Court and in conformity with which the Court will enter its order.

(ii) If the case under consideration in Appeals is docketed in the Tax Court and the issues remain unsettled after consideration and conference in Appeals, the case will be referred to the appropriate district counsel for the region for defense of the tax liability determined.

(iii) If the deficiency notice in a case docketed in the Tax Court was not issued by the Appeals office and no recommendation for criminal prosecution is pending, the case will be referred by the district counsel to the Appeals office for settlement as soon as it is at issue in the Tax Court. The settlement procedure shall be governed by the following rules:

(*a*) The Appeals office will have exclusive settlement jurisdiction for a period of 4 months over certain cases docketed in the Tax Court. The 4-month period will commence at the time Appeals receives the case from Counsel, which will be after the case is at issue. Appeals will arrange settlement conferences in such cases within 45 days of receipt of the case. In the event of a settlement, Appeals will prepare and forward to Counsel the necessary computations and any stipulation decisions secured. Counsel will prepare any needed settlement documents for execution by the parties and filing with the Tax Court. Appeals will also have authority to settle less than all the issues in the case and to refer the unsettled issues to Counsel for disposition. In the event of a partial settlement, Appeals will inform Counsel of the agreement of the petitioner(s) and Appeals may secure and forward to Counsel a stipulation covering the agreed issues. Counsel will, if necessary, prepare documents reflecting settlement of the agreed issues for execution by the parties and filing with the Tax Court at the appropriate time.

(*b*) At the end of the 4-month period, or before that time if Appeals determines the case is not susceptible of settlement, the case will be returned to Counsel. Thereafter, Counsel will have exclusive authority to dispose of the case. If, at the end of the 4-month period, there is substantial likelihood that a settlement of the entire case can be effected in a reasonable period of time, Counsel may extend Appeals settlement jurisdiction for a period not to exceed 60 days, but not beyond the date of the receipt of a trial calendar upon which the case appears. Extensions beyond the 50-day period or after the event indicated will be granted only with the personal approval of regional counsel and will be made only in those cases in which the probability of settlement of the case in its entirety by Appeals clearly outweighs the need to commence trial preparation.

(*c*) During the period of Appeals jurisdiction, Appeals will make available such files and information as may be necessary for Counsel to take any action required by the Court or which is in the best interests of the Government. When a case is referred by Counsel to Appeals, Counsel may indicate areas of needed factual development or areas of possible technical uncertainties. In referring a case to Counsel, Appeals will furnish its summary of the facts and the pertinent legal authorities.

(*d*) The Appeals office may specify that proposed Counsel settlements be referred back to Appeals for its views. Appeals may protest the proposed Counsel settlements. If Counsel disagrees with Appeals, the Regional Counsel will determine the disposition of the cases.

(*e*) If an offer is received at or about the time of trial in a case designated by the Appeals office for settlement consultation, Counsel will endeavor to have the case placed on a motions calendar to permit consultation with and review by Appeals in accordance with the foregoing procedures.

(*f*) For issues in docketed and nondocketed cases pending with Appeals

which are related to issues in docketed cases over which Counsel has jurisdiction, no settlement offer will be accepted by either Appeals or Counsel unless both agree that the offer is acceptable. The protest procedure will be available to Appeals and regional counsel will have authority to resolve the issue with respect to both the Appeals and Counsel cases. If settlement of the docketed case requires approval by regional counsel or Chief Counsel, the final decision with respect to the issues under the jurisdiction of both Appeals and Counsel will be made by regional counsel or Chief Counsel. See Rev. Proc. 79–59.

(g) Cases classified as ''Small Tax'' cases by the Tax Court are given expeditious consideration because such cases are not included on a Trial Status Request. These cases are considered by the Court as ready for placing on a trial calendar as soon as the answer has been filed and are given priority by the Court for trial over other docketed cases. These cases are designated by the Court as small tax cases upon request of petitioners and will include letter ''S'' as part of the docket number.

(e) *Transfer and centralization of cases.* (1) An Appeals office is authorized to transfer settlement jurisdiction in a non-docketed case or in an excise or employment tax case to another region, if the taxpayer resides in and the taxpayer's books and records are located (or can be made available) in such other region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division.

(2) An Appeals office is authorized to transfer settlement jurisdiction in a docketed case to another region if the location for the hearing by the Tax Court has been set in such other region, except that if the place of hearing is Washington, DC, settlement jurisdiction shall not be transferred to the region in which Washington, DC, is located unless the petitioner resides in and the petitioner's books and records are located (or can be made available) in that region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division. Likewise, the Chief Counsel has corresponding authority to transfer the jurisdiction, authority, and duties of the regional counsel for any region to the regional counsel of another region within which the case has been designated for trial before the Tax Court.

(3) Should a regional commissioner determine that it would better serve the interests of the Government, he or she may, by order in writing, withdraw any case not docketed before the Tax Court from the jurisdiction of the Appeals office, and provide for its disposition under his or her personal direction.

(f) *Conference and practice requirements.* Practice and conference procedure before Appeals is governed by Treasury Department Circular 230 as amended (31 CFR Part 10), and the requirements of Subpart E of this part. In addition to such rules but not in modification of them, the following rules are also applicable to practice before Appeals:

(1) *Rule I.* An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

(2) *Rule II.* Appeals will ordinarily give serious consideration to an offer to settle a tax controversy on a basis which fairly reflects the relative merits of the opposing views in light of the hazards which would exist if the case were litigated. However, no settlement will be made based upon nuisance value of the case to either party. If the taxpayer makes an unacceptable proposal of settlement under circumstances indicating a good faith attempt to reach an agred disposition of the case on a basis fair both to the Government and the taxpayer, the Appeals official generally should give an evaluation of the case in such a manner as to enable the taxpayer to ascertain the kind of settlement that would be recommended

for acceptance. Appeals may defer action on or decline to settle some cases or issues (for example, issues on which action has been suspended nationwide) in order to achieve greater uniformity and enhance overall voluntary compliance with the tax laws.

(3) *Rule III.* Where the Appeals officer recommends acceptance of the taxpayer's proposal of settlement, or, in the absence of a proposal, recommends action favorable to the taxpayer, and said recommendation is disapproved in whole or in part by a reviewing officer in Appeals the taxpayer shall be so advised and upon written request shall be accorded a conference with such reviewing officer. The Appeals office may disregard this rule where the interest of the Government would be injured by delay, as for example, in a case involving the imminent expiration of the period of limitations or the dissipation of assets.

(4) *Rule IV.* Where the Appeals official having settlement authority and the district director deem it advisable, the district director may be represented at any Appeals conferences on a nondocketed case. This rule is also applicable to the Director, Foreign Operations District in the event his or her office issued the preliminary or ''30-day letter''.

(5) *Rule V.* In order to bring an unagreed income, profits, estate, gift, or Chapter 41, 42, 43, or 44 tax case in prestatutory notice status, an employment or excise tax case, a penalty case, an Employee Plans and Exempt Organization case, a termination of taxable year assessment case, a jeopardy assessment case, or an offer in compromise before the Appeals office, the taxpayer or the taxpayer's representative should first request Appeals consideration and, when required, file with the district office (including the Foreign Operations District) or service center a written protest setting forth specifically the reasons for the refusal to accept the findings. If the protest includes a statement of facts upon which the taxpayer relies, such statement should be declared, to be true under the penalties of perjury. The protest and any new facts, law, or arguments presented therewith will be reviewed by the receiving office for the purpose of deciding whether further development or action is required prior to referring the case to Appeals. Where Appeals has an issue under consideration it may, with the concurrence of the taxpayer, assume jurisdiction in a related case, after the office having original jurisdiction has completed any necessary action. The Director, Appeals Division, may authorize the regional Appeals office to accept jurisdiction (after any necessary action by office having original jurisdiction) in specified classes of cases without written protests provided written or oral requests for Appeals consideration are submitted by or for each taxpayer.

(6) *Rule VI.* A taxpayer cannot withhold evidence from the district director of internal revenue and expect to introduce it for the first time before Appeals, at a conference in nondocketed status, without being subject to having the case returned to the district director for reconsideration. Where newly discovered evidence is submitted for the first time to Appeals, in a case pending in nondocketed status, that office, in the reasonable exercise of its discretion, may transmit same to the district director for his or her consideration and comment.

(7) *Rule VII.* Where the taxpayer has had the benefit of a conference before the Appeals office in the prestatutory notice status, or where the opportunity for such a conference was accorded but not availed of, there will be no conference granted before the Appeals office in the 90-day status after the mailing of the statutory notice of deficiency, in the absence of unusual circumstances.

(8) *Rule VIII.* In cases not docketed in the United States Tax Court on which a conference is being conducted by the Appeals office, the district counsel may be requested to attend and to give legal advice in the more difficult cases, or on matters of legal or litigating policy.

(9) *Rule IX—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, furnished by the National Office upon request of an 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 in the various regions. It does not include memorandum on matters of general technical application furnished to Appeals offices where the issues are not raised in connection with the consideration and handling of a specific taxpayer's case.

(*b*) The provisions of this subparagraph do not apply to a case under the jurisdiction of a district director or the Bureau of Alcohol, Tobacco, and Firearms, to Employee Plans, Exempt Organization, or certain penalty cases being considered by an Appeals office, or to any case previously considered by an Appeals office. 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 Employee Plans and Exempt Organization cases are set forth in § 601.201(n)(9). Technical advice may not be requested with respect to a taxable period if a prior Appeals disposition of the same taxable period of the same taxpayer's case was based on mutual concessions (ordinarily with a form 870–AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment). However, technical advice may be requested by a district director on issues previously considered in a prior Appeals disposition, not based on mutual concessions, of the same taxable periods of the same taxpayer with the concurrence of the Appeals office that had the case.

(*c*) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the consideration and handling of a taxpayer's case. Thus, an Appeals office may, under this subparagraph, request technical advice with respect to the consideration of a request for a determination letter. The technical advice provisions applicable to a request for a determination letter in Employee Plans and Exempt Organization cases are set forth in § 601.201(n)(9).

(*d*) If an Appeals office is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked and it requests the National Office to reconsider the ruling, 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 ruling letter. Before referral to the National Office, the Appeals office should inform the taxpayer of its opinion that the ruling letter should be revoked. The Appeals office, after development of the facts and consideration of the taxpayer's arguments, will decide whether to recommend revocation of the ruling to the National Office. For procedures relating to a request for a ruling, see § 601.201.

(*e*) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, is 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*) 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*) As provided in § 601.105(b)(5) (ii)(*b*) and (iii)(*a*), requests for technical advice should be made at the earliest possible stage of the examination process. However, if identification of an issue on which technical advice is appropriate is not made until the case is in Appeals, a decision to request such advice (in nondocketed cases) should be made prior to or at the first conference.

(*c*) Subject to the provisions of (*b*) of this subdivision, Appeals Offices are

encouraged to request technical advice on any technical or procedural question arising in connection with a 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.

(iii) *Requesting technical advice. (a)* It is the responsibility of the Appeals Office to determine whether technical advice is to be requested on any issue being considered. However, while the case is under the jurisdiction of the Appeals Office, a taxpayer or his/her 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. While taxpayers 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 taxpayer may make the request orally. If, after considering the taxpayer's request, 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 advice the taxpayer. (See subdivision (iv) of this subparagraph for taxpayer's appeal rights where the Appeals Officer declines to request technical advice.)

(*b*) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in (*j*) of this subdivision. If the Appeals Office initiates the action, the taxpayer 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 taxpayer will be given 10 calendar days in which to indicate in writing the extent, if any, to which he/she may not be in complete agreement. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office. Every effort should be made to reach agreement as to the facts and specific points at issue. If agreement cannot be reached, the taxpayer may submit, within 10 calendar days after receipt of notice from the Appeals Office, a statement of his/her 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 taxpayer in writing and approved by the Chief, Appeals Office.

(*d*) If the taxpayer initiates the action to request advice, and his/her statement of the facts and point or points at issue are not wholly acceptable to the Appeals Office, the taxpayer will be advised in writing as to the areas of disagreement. The taxpayer 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 taxpayer in writing and approved by the Chief, Appeals Office. If agreement cannot be reached, both the statements of the taxpayer and the Appeals Office will be forwarded to the National Office.

(*e*) *(1)* In the case of requests for technical advice, the taxpayer must also submit, within the 10-day period referred to in (*c)* and (*d)* of this subdivision, whichever is applicable (relating to agreement by the taxpayer 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 taxpayer will be informed by the Appeals Office that the statement is required. If the Appeals Office does not receive the statement within 10 days after the taxpayer has been informed of the need for the statement, the Appeals Office may decline to submit the request for technical advice. If the Appeals Office decides to request technical advice in a case where the taxpayer 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 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 taxpayer, or a statement that no information other than names, addresses, and taxpayer 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 taxpayer 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 taxpayer 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 taxpayer has not already done so, he/she may submit a statement explaining his/her position on the issues, citing precedents which the taxpayer 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 taxpayer is informed that the matter is being referred to the National Office, he/she 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 taxpayer orally or in writing of the material likely to appear in the technical advice memorandum which the taxpayer proposed be deleted but which the Internal Revenue Service determined should not be deleted. If so informed, the taxpayer 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 taxpayer 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 taxpayer, advising taxpayers 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 taxpayer 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 taxpayers of determinations not to seek technical advice.* (*a*) If

the taxpayer has requested referral of an issue before an Appeals Office to the National Office for technical advice, and after consideration of the request, the Appeals Officer is of the opinion that the circumstances do not warrant such referral, he/she will so advise the taxpayer.

(*b*) The taxpayer may appeal the decision of the Appeals Officer not to request technical advice by submitting to that 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 taxpayer believes the matter should be referred to the National Office for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office.

(*c*) The Appeals Officer will submit the statement of the taxpayer to the chief, Appeals Office, accompanied by a statement of the officer'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 taxpayer in writing that he/she proposes to deny the request. In the letter to the taxpayer 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 taxpayer will be given 15 calendar days after receipt of the letter in which to notify the Chief whether the taxpayer agrees with the proposed denial. The taxpayer may not appeal the decision of the Chief, Appeals Office not to request technical advice from the National Office. However, if the taxpayer does not agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including the taxpayer's written request and statements, will be submitted to the National Office, Attention: Director, Appeals Division, for review. After review in the National Office, the Appeals Office will be notified whether the proposed denial is approved or disapproved.

(*d*) While the matter is being reviewed in the National Office, 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 taxpayer should be given and a conference has been requested, the taxpayer 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 taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer. 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 taxpayer and approved by the appropriate Technical branch chief.

(*b*) A taxpayer 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 (Corporation Tax Division or Individual Tax 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. In appropriate cases 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 taxpayer or the taxpayer's representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A taxpayer 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 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 or the taxpayer's representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer 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 taxpayer to furnish to the National Office, within 21 calendar days after the conference, a written record of any additional data, line of reasoning, precedents, etc., that were proposed by the taxpayer 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 taxpayer and approved by the appropriate Technical 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 Appeals Office. 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 taxpayer or the taxpayer's representative desiring to obtain information as to the status of the 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.

(vi) *Preparation of technical advice memorandum by the National Office.* (*a*) Immediately upon receipt in the National Office, the technical 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, 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 taxpayer 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 Appeals office and will be drafted in two parts. Each part will identify the taxpayer 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 Appeals office. The discussion of the issues will be in such detail that the Appeals office is apprised of the reasoning underlying the conclusion. There shall accompany the technical advice memorandum 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 Appeals office shall forward to the taxpayer at such time that it furnishes a copy of the technical advice memorandum to the taxpayer 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 Appeals office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(*e*) It is the general practice of the Service to furnish a copy of the technical advice memorandum to the taxpayer after it has been adopted by the Appeals office. However, in the case of technical advice memorandums 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 taxpayer 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, the taxpayer, 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 taxpayer believes should have been made. The taxpayer shall also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection on which the taxpayer 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 of any material which the taxpayer did not, prior to the time when the National Office sent its reply to the request for technical advice to the Appeals office, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the taxpayer to the notice pursuant to section 6110(f)(1) of the Code, mail to the taxpayer its final administrative conclusion regarding the deletions to be made.

(vii) *Action on technical advice in Appeals offices.* (*a*) Unless 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 Appeals office will proceed to process the taxpayer's case taking into account the conclusions expressed in the technical advice memorandum. The effect of technical advice on the taxpayer's case is set forth in subdivision (viii) of this subparagraph.

(*b*) The Appeals office will furnish the taxpayer 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 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 memorandums 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 Appeals office that it should not furnish a copy of the technical advice memorandum to the taxpayer, the Appeals office will so inform the taxpayer if he/she 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 closing of the case involved.

(*b*) Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied retroactively. Moreover, since technical advice, as described in subdivision (i) of this subparagraph, is issued only on closed transactions, a holding in a technical advice memorandum that is adverse to the taxpayer is also applied retroactively unless the Assistant Commissioner or Deputy Assisitant Commissioner (Technical) exercises the discretionary authority under section

7805(b) of the Code to limit the retroactive effect of the holding. Likewise, a holding in a technical advice memorandum that modifies or revokes a holding in a prior technical advice memorandum will also be applied retroactively, with one exception. If the new holding is less favorable to the taxpayer, it will generally not be applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions of the type described in § 601.201(l)(7) and § 601.201(l)(8).

(*c*) The Appeals office is bound by technical advice favorable to the taxpayer. However, if the technical advice is unfavorable to the taxpayer, the Appeals office may settle the issue in the usual manner under existing authority. For the effect of technical advice in Employee Plans and Exempt Organization cases see § 601.201(n)(9)(viii).

(*d*) In connection with section 446 of the Code, taxpayers may request permission from the Assistant Commissioner (Technical) to change a method of accounting and obtain a 10-year (or less) spread of the resulting adjustments. Such a request should be made prior to or at the first Appeals conference. The Appeals office has authority to allow a change and the resulting spread without referring the case to Technical.

(*e*) Technical advice memorandums 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).

(*f*) 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.

(g) *Limitation on the jurisdiction and function of Appeals*—(1) *Overpayment of more than $200,000.* If Appeals determines that there is an overpayment of income, war profits, excess profits, estate, generation–skipping transfer, or gift tax, or any tax imposed by chapters 41 through 44, including penalties and interest, in excess of $200,000, such determination will be considered by the Joint Committee on Taxation, See § 601.108

(2) *Offers in compromise.* For jurisdiction of Appeals with respect to offers in compromise of tax liabilities, see § 601.203.

(3) *Closing agreements.* For jurisdiction of Appeals with respect to closing agreements under section 7121 of the Code relating to any internal revenue tax liability, see § 601.202.

(h) *Reopening closed cases not docketed in the Tax Court.* (1) A case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both the Appeals and the taxpayer will not be reopened by action initiated by the Service unless the disposition involved fraud, malfeasance, concealment or misrepresentation of material fact, or an important mistake in mathematical calculations, and then only with the approval of the Regional Director of Appeals.

(2) Under certain unusual circumstances favorable to the taxpayer, such as retroactive legislation, a case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both Appeals and the taxpayer may be reopened upon written application from the taxpayer, and only with the approval of the Regional Director of Appeals. The processing of an application for a tentative carryback adjustment or of a claim for refund or credit for an overassessment (for a year involved in the prior closing) attributable to a claimed deduction or credit for a carryback provided by law, and not included in a previous Appeals determination, shall not be considered a reopening requiring approval. A subsequent assessment of an excessive tentative allowance shall likewise not be considered such a reopening. The Director of the Appeals Division may authorize, in advance, the reopening of similar classes of cases where legislative enactments or compelling administrative reasons require such advance approval.

(3) A case not docketed in the Tax Court and closed by Appeals on a basis not involving concessions made by both Appeals and the taxpayer will not be reopened by action initiated by the Service unless the disposition involved fraud, malfeasance, concealment or misrepresentation of material fact, an important mistake in mathematical

calculation, or such other circumstance that indicates that failure to take such action would be a serious administrative omission, and then only with the approval of the Regional Director of Appeals.

(4) A case not docketed in the Tax Court and closed by the Appeals on a basis not involving concessions made by both Appeals and the taxpayer may be reopened by the taxpayer by any appropriate means, such as by the filing of a timely claim for refund.

(i) *Special procedures for crude oil windfall profit tax cases.* For special procedures relating to crude oil windfall profit tax cases, see § 601.405.

((5 U.S.C. 301 and 552) 80 Stat. 379 and 383; sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805))

[32 FR 15990, Nov. 22, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 601.106, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 601.107 Criminal investigation functions.

(a) *General.* Each district has a Criminal Investigation function whose mission is to encourage and achieve the highest possible degree of voluntary compliance with the internal revenue laws by: Enforcing the statutory sanctions applicable to income, estate, gift, employment, and certain excise taxes through the investigation of possible criminal violations of such laws and the recommendation (when warranted) of prosecution and/or assertion of the 50 percent ad valorem addition to the tax; developing information concerning the extent of criminal violations of all Federal tax laws (except those relating to alcohol, tobacco, narcotics, and firearms); measuring the effectiveness of the investigation process; and providing protection of persons and of property and other enforcement coordination as required.

(b) *Investigative procedure.* (1) A witness when questioned in an investigation conducted by the Criminal Investigation Division may have counsel present to represent and advise him. Upon request, a copy of an affidavit or transcript of a question and answer statement will be furnished a witness promptly, except in circumstances deemed by the Regional Commissioner to necessitate temporarily withholding a copy.

(2) A taxpayer who may be the subject of a criminal recommendation will be afforded a district Criminal Investigation conference when he requests one or where the Chief, Criminal Investigation Division, makes a determination that such a conference will be in the best interests of the Government. At the conference, the IRS representative will inform the taxpayer by a general oral statement of the alleged fraudulent features of the case, to the extent consistent with protecting the Government's interests, and, at the same time, making available to the taxpayer sufficient facts and figures to acquaint him with the basis, nature, and other essential elements of the proposed criminal charges against him.

(c) *Processing of cases after investigation.* The Chief, Criminal Investigation Division, shall ordinarily notify the subject of an investigation and his authorized representative, if any, when he forwards a case to the Regional Counsel with a recommendation for prosecution. The rule will not apply if the case is with a United States Attorney.

[33 FR 17235, Nov. 21, 1968, as amended at 38 FR 9227, Apr. 12, 1973; 39 FR 8917, Mar. 7, 1974; 43 FR 53029, Nov. 15, 1978]

§ 601.108 Review of overpayments exceeding $200,000.

(a) *General.* Section 6405(a) of the Code provides that no refund or credit of income, war profits, excess profits, estate, or gift taxes or any tax imposed by Chapters 41 through 44, including penalties and interest, in excess of $200,000 may be made until after the expiration of 30 days from the date a report is made to the Joint Committee on Taxation. Taxpayers, in cases requiring review by the Joint Committee, are afforded the same appeal rights as other taxpayers. In general, these cases follow regular procedures, except for preparation of reports to and review by the Joint Committee.

(b) *Reports to Joint Committee.* In any case in which no protest is made to Appeals and no petition docketed in the Tax Court, the report to the Joint

Committee is prepared by a Joint Committee Coordinator, who is an Examination Division regional specialist. In cases in which a protest has been made, the report to the Joint Committee is prepared by an Appeals officer; in cases in which a petition is docketed, either an Appeals officer or a Counsel attorney prepares the report, depending on the circumstances.

(c) *Procedure after report to Joint Committee.* After compliance with section 6405 of the Code, the case is processed for issuance of a certificate of overassessment, and payment or credit of any overpayment. If the final determination involves a rejection of a claimed overpayment in whole or in part, a statutory notice of disallowance will be sent by certified or registered mail to the taxpayer, except where the taxpayer has filed a written waiver of such notice of disallowance.

[32 FR 15990, Nov. 22, 1967, as amended at 42 FR 46519, Sept. 16, 1977; 43 FR 44503, Sept. 28, 1978; 43 FR 53030, Nov. 15, 1978; 45 FR 7255, Feb. 1, 1980]

§ 601.109 Bankruptcy and receivership cases.

(a) *General.* (1) Upon the adjudication of bankruptcy of any taxpayer in any liquidating proceeding, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act or the appointment of a receiver for any taxpayer in any receivership proceeding before a court of the United States or of any State or Territory or of the District of Columbia, the assessment of any deficiency in income, profits, estate, or gift tax (together with all interests, additional amounts, or additions to the tax provided for by law) shall be made immediately. See section 6871 of the Code. In such cases the restrictions imposed by section 6213(a) of the Code upon assessments are not applicable. (In the case of an assignment for the benefit of creditors, the assessment will be made under section 6861, relating to jeopardy assessments. See § 601.105(h).) Cases in which immediate assessment will be made include those of taxpayers in receivership or in bankruptcy, reorganization, arrangement, or wage earner proceedings, under Chapters I to VII, section 77, Chapters X, XI, XII, and XIII of the Bankruptcy Act. The term ''approval of a petition in any other proceeding under the Bankruptcy Act'' includes the filing of a petition under Chapters XI to XIII of the Bankruptcy Act with a court of competent jurisdiction. A fiduciary in any proceeding under the Bankruptcy Act (including a trustee, receiver, debtor in possession, or other person designated by the court as in control of the assets or affairs of a debtor) or a receiver in any receivership proceeding may be required, as provided in regulations prescribed under section 6036 of the Code, to give notice in writing to the district director of his qualification as such. Failure on the part of such fiduciary in a receivership proceeding or a proceeding under the Bankruptcy Act to give such notice, when required, results in the suspension of the running of the period of limitations on the making of assessments from the date of the institution of the proceeding to the date upon which such notice is received by the district director, and for an additional 30 days thereafter. However, in no case where the required notice is not given shall the suspension of the running of the period of limitations on assessment exceed 2 years. See section 6872 of the Code.

(2) Except in cases where departmental instructions direct otherwise, the district director will, promptly after ascertaining the existence of any outstanding Federal tax liability against a taxpayer in any proceeding under the Bankruptcy Act or receivership proceeding, and in any event within the time limited by appropriate provisions of law or the appropriate orders of the court in which such proceeding is pending, file a proof of claim covering such liability in the court in which the proceeding is pending. Such a claim may be filed regardless of whether the unpaid taxes involved have been assessed. Whenever an immediate assessment is made of any income, estate, or gift tax after the commencement of a proceeding the district director will send to the taxpayer notice and demand for payment together with a copy of such claim.

(b) *Procedure in office of district director.* (1) While the district director is required by section 6871 of the Code to make immediate assessment of any deficiency in income, estate, or gift taxes, such assessment is not made as a jeopardy assessment (see paragraph (h) of § 601.105), and the provisions of section 6861 of the Code do not apply to any assessment made under section 6871. Therefore, the notice of deficiency provided for in section 6861(b) will not be mailed to the taxpayer. Nevertheless, Letter 1005 (DO) will be prepared and addressed in the name of the taxpayer, immediately followed by the name of the trustee, receiver, debtor in possession, or other person designated to be in control of the assets or affairs of the debtor by the court in which the bankruptcy or receivership proceeding is pending. Such letter will state how the deficiency was computed, advise that within 30 days a written protest under penalties of perjury may be filed with the district director showing wherein the deficiency is claimed to be incorrect, and advise that upon request an Appeals office conference will be granted with respect to such deficiency. If, after protest is filed (in triplicate), and an Appeals office conference is held, adjustment appears necessary in the deficiency, appropriate action will be taken. Except where the interests of the Government require otherwise, Letters 1005 (DO) are issued by the office of the district director.

(2) The immediate assessment required by section 6871 of the Code represents an exception to the usual restrictions on the assessment of Federal income, estate, and gift taxes. Since there are no restrictions on the assessment of Federal excise or employment taxes, immediate assessment of such taxes will be made in any case where section 6871 of the Code would require immediate assessment of income, estate, or gift taxes.

(3) If after such assessment a claim for abatement is filed and such claim is accompanied by a request in writing for a conference, an Appeals office conference will be granted. Ordinarily, only one conference will be held, unless it develops that additional information can be furnished which has a material bearing upon the tax liability, in which event the conference will be continued to a later date.

(c) *Procedure before the Appeals office.* If an income, estate, or gift tax case is under consideration by an Appeals office (whether before or after issuance of a statutory notice of deficiency) at the time of either: (i) The adjudication of bankruptcy of the taxpayer in any liquidating proceeding; (ii) the filing with a court of competent jurisdiction or (where approval is required by the Bankruptcy Act) the approval of a petition of, or against, the taxpayer in any other proceeding under the Bankruptcy Act; or (iii) the appointment of any receiver, then the case will be returned to the district director for assessment (if not previously made), for issuance of the Letter 1005 (DO), and for filing proof of claim in the proceeding. Excise and employment tax cases pending in the Appeals office at such time will likewise be returned to the district director for assessment (if not previously made) and for filing proof of claim in the proceeding. A petition for redetermination of a deficiency may not be filed in the Tax Court after the adjudication of bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, the taxpayer in any other bankruptcy proceeding, or the appointment of a receiver. See section 6871(b) of the Code. However, the Tax Court is not deprived of jurisdiction where the adjudication of bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, the taxpayer in any other bankruptcy proceeding, or the appointment of a receiver, occurred after the filing of the petition. In such a case, the jurisdiction of the bankruptcy or receivership court and the Tax Court is concurrent.

(d) *Priority of claims.* Under section 3466 of the Revised Statutes and section 3467 of the Revised Statutes, as amended, taxes are entitled to priority over other claims therein stated and the receiver or other person designated as in control of the assets or affairs of the debtor by the court in which the receivership proceeding is pending may

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

wages paid for agricultural labor are required to be reported annually on Form 943. Under the Railroad Retirement Tax Act, the return required of the employer is on Form CT–1, and the return required of each employee representative is on Form CT–2. An employee is not required to file a return of employee tax, except that the employee must include in his or her income tax return (as provided in the applicable instructions) any amount of employee tax (i) due with respect to tips that the employee failed to report to the employer or (ii) shown on the employee's Form W–2 as ''Uncollected Employee Tax on Tips''.

(4) *Receipts for employees.* Employers are required to furnish each employee a receipt or statement, in duplicate, showing the total wages subject to income tax withholding, the amount of income tax withheld, the amount of wages subject to tax under the Federal Insurance Contributions Act, and the amount of employee tax withheld. See section 6051 of the Code.

(5) *Use of authorized financial institutions in connection with payment of Federal employment taxes.* Most employers are required to deposit employment taxes either on a monthly basis, a semimonthly basis or quarter-monthly period basis as follows:

(i) *Quarter-monthly period deposits.* With respect to wages paid after January 31, 1971 (March 31, 1971, in the case of wages paid for agricultural labor), if at the close of any quarter-monthly period (that ends on the 7th, 15th, 22d, or the last day of any month) the aggregate amount of undeposited taxes, exclusive of taxes reportable on Form 942, is $2,000 or more, the employer shall deposit such taxes within 3 banking days after the close of such quarter-monthly period.

(ii) *Monthly deposits.* With respect to employers not required to make deposits under subdivision (i) of this subparagraph, if after January 31, 1971 (March 31, 1971, in the case of income tax withheld from wages paid for agricultural labor) *(a)* during any calendar month, other than the last month of a calendar quarter, the aggregate amount of the employee tax deducted and the employer tax under Chapter 21 and the income tax withheld at source on wages under Chapter 24, exclusive of taxes reportable on Form 942, exceeds $200 or *(b)* at the end of any month or period of 2 or more months and prior to December 1 of any calendar year, the total amount of undeposited taxes imposed by Chapter 21, with respect to wages paid for agricultural labor, exceeds $200, it is the duty of the employer to deposit such amount within 15 days after the close of such calendar month.

(iii) *Quarterly and year-end deposits.* Whether or not an employer is required to make deposits under subdivisions (i) and (ii) of this subparagraph, if the amount of such taxes reportable on Form 941 or 943 (reduced by any previous deposits) exceeds $200, the employer shall, on or before the last day of the first calendar month following the period for which the return is required to be filed, deposit such amount with an authorized financial institution. However, if the amount of such taxes (reduced by any previous deposits) does not exceed $200, the employer may either include with his return a direct remittance for the amount of such taxes or, on or before the last day of the first calendar month following the period for which the return is required to be filed, voluntarily deposit such amount with an authorized financial institution.

(iv) *Additional rules.* Deposits under subdivisions (i), (ii) and (iii) of this subparagraph are made with an authorized financial institution. The remittance of such amount must be accompanied by a Federal Tax Deposit form. Each employer making deposits shall report on the return for the period with respect to which such deposits are made information regarding such deposits in accordance with the instructions applicable to such return and pay therewith (or deposit by the due date of such return) the balance, if any, of the taxes due for such period.

(v) *Employers under Chapter 22 of the Code.* Depositary procedures similar to those prescribed in this subparagraph are prescribed for employers as defined by the Railroad Retirement Tax Act, except that railroad retirement taxes are not requested to be deposited semimonthly or quarter-monthly. Such

taxes must be deposited by using a Federal Tax Deposit form.

(vi) *Employers under chapter 23 of the Code.* Every person who is an employer as defined by the Federal Unemployment Tax Act shall deposit the tax imposed under Chapter 23 on or before the last day of the first calendar month following the quarterly period in which the amount of such tax exceeds $100.

(6) *Separate accounting.* If an employer fails to withhold and pay over income, social security, or railroad retirement tax due on wages of employees, the employer may be required by the district director to collect such taxes and deposit them in a separate banking account in trust for the United States not later than the second banking day after such taxes are collected.

(b) *Provisions special to the Federal Insurance Contributions Act*—(1) *Employers' identification numbers.* For purposes of the Federal Insurance Contributions Act each employer who files Form 941 or Form 943 must have an identification number. Any such employer who does not have an identification number must secure a Form SS–4 from the district director of internal revenue or from a district office of the Social Security Administration and, after executing the form in accordance with the instructions contained thereon, file it with the district director or the district office of the Social Security Administration. At a subsequent date the district director will assign the employer a number which must appear in the appropriate space on each tax return, Form 941 or Form 943, filed thereafter. The requirement to secure an identification number does not apply to an employer who employs only employees who are engaged exclusively in the performance of domestic service in the employer's private home not on a farm operated for profit.

(2) *Employees' account numbers.* Each employee (or individual making a return of net earnings from self-employment) who does not have an account number must file an application on Form SS–5, a copy of which may be obtained from any district office of the Social Security Administration or from a district director of internal revenue. The form, after execution in accordance with the instructions thereon, must be filed with the district office of the Social Security Administration, and at a later date the employee will be furnished an account number. The employee must furnish such number to each employer for whom the employee works, in order that such number may be entered on each tax return filed thereafter by the employer.

(3) *Reporting of wages.* Forms 941, 942, and 943 each require, as a part of the return, that the wages of each employee paid during the period covered by the return be reported thereon. Form 941a is available to employers who need additional space for the listing of employees. Employers who meet the requirements of the Social Security Administration may, with the approval of the Commissioner of Internal Revenue, submit wage information on reels of magnetic tape in lieu of Form 941a. It is necessary at times that employers correct wage information previously reported. A special form, Form 941c, has been adopted for use in correcting erroneous wage information or omissions of such wage information on Form 941, 942, or 943. Instructions on Form 941, 941c, 942, and 943 explain the manner of preparing and filing the forms. Any further instructions should be obtained from the district director.

(c) *Adjustments by employers*—(1) *Undercollections and underpayments*—(i) *Employer tax or employee tax.* If a return is filed by an employer under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act, and the employer reports and pays less than the correct amount of employer tax or employee tax, the employer is required to report and pay the additional amount due. The reporting will be an adjustment without interest only if the employer reports and pays the additional amount on or before the last day on which the return is required to be filed for the return period in which the error is ascertained. The employer may so report the additional amount either on the return for that period or on a supplemental return for the period for which the underpayment was made. If the employer fails to report the additional amount due within the time so fixed for making an interest-free adjustment, the employer nevertheless is

required to report the additional amount in the same manner, but interest will be due. No adjustment of an underpayment may be made under this section or § 31.6205–1(b)(2) if the employer is sent a notice and demand for payment of the additional tax.

(ii) *Income tax withholding.* If an employer files a return reporting and paying less than the correct amount of income tax required to be withheld from wages paid during the return period, the employer is required to report and pay the additional amount due, either *(a)* on a return for any return period in the calendar year in which the wages were paid, or *(b)* on a supplemental return for the return period in which the wages were paid. The reporting will be an adjustment without interest only if the employer reports and pays the additional amount on or before the last day on which the return is required to be filed for the return period in which the error was ascertained. If an employer reports and pays less than the correct amount of income tax required to be withheld in a calendar year, and the employer does not correct the underpayment in the same calendar year, the employer should consult the District Director of Internal Revenue as to the manner of correcting the error.

(2) *Overcollections from employees*—(i) *Employee tax.* If an employer collects from an employee more than the correct amount of employee tax under the Federal Insurance Contributions Act or the Railroad Retirement Act, and the error is ascertained within the applicable period of limitation on credit or refund, the employer is required either to repay the amount to the employee, or to reimburse the employee by applying the amount of the overcollection against employee tax which otherwise would be collected from the employee after the error is ascertained. If the overcollection is repaid to the employee, the employer is required to obtain and keep the employee's written receipt showing the date and amount of the repayment. In addition, if the employer repays or reimburses an employee in any calendar year for an overcollection which occurred in a prior calendar year, the employer is required to obtain and keep the employee's written statement *(a)* that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and *(b)* that the employee will not claim refund or credit of such amount.

(ii) *Income tax withholding.* If, in any return period in a calendar year, an employer withholds more than the correct amount of income tax, and pays over to the Internal Revenue Service the amount withheld, the employer may repay or reimburse the employee in the excess amount in any subsequent return period in the same calendar year. If the amount is so repaid, the employer is required to obtain and keep the employee's written receipt showing the date and amount of the repayment.

(3) *Employer's claims for credit or refund of overpayments*—(i) *Employee tax.* If an employer repays or reimburses an employee for an overcollection of employee tax, as described in subparagraph (2)(i) of this paragraph, the employer may claim credit on a return in accordance with the instructions applicable to the return. In lieu of claiming credit the employer may claim refund by filing Form 843, but the employer may not thereafter claim credit for the same overpayment.

(ii) *Income tax withholding.* If an employer repays or reimburses an employee for an excess amount withheld as income tax, as described in subparagraph (2)(ii) of this paragraph, the employer may claim credit on a return for a return period in the calendar year in which the excess amount was withheld. The employer is not otherwise permitted to claim credit or refund for any overpayment of income tax that the employer deducted or withheld from an employee.

(d) *Special refunds of employee social security tax.* (1) An employee who receives wages from more than one employer during a calendar year may, under certain conditions, receive a ''special refund'' of the amount of employee social security tax (*i.e.,* employee tax under the Federal Insurance Contributions Act) deducted and withheld from wages that exceed the following amounts: calendar years 1968 through 1971, $7,800; calendar year 1972, $9,000; calendar year 1973, $10,800; calendar year 1974, $13,200; calendar years

after 1974, an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) effective with respect to that year. An employee who is entitled to a special refund of employee tax with respect to wages received during a calendar year, and who is required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year), may obtain the benefits of such special refund only by claiming credit for such special refund on such income tax return in the same manner as if such special refund were an amount deducted and withheld as income tax at source on wages.

(2) The amount of the special refund allowed as a credit shall be considered as an amount deducted and withheld as income tax at source on wages. If the amount of such special refund when added to amounts deducted and withheld as income tax under chapter 24 exceeds the income tax imposed by chapter 1, the amount of the excess constitutes an overpayment of income tax, and interest on such overpayment is allowed to the extent provided under section 6611 of the Code upon an overpayment of income tax resulting from a credit for income tax withheld at source on wages.

(3) If an employee entitled to a special refund of employee social security tax is not required to file an income tax return for the year in which such special refund may be claimed as a credit, the employee may file a claim for refund of the excess social security tax on Form 843. Claims must be filed with the district director of internal revenue for the district in which the employee resides.

(4) Employee taxes under the Federal Insurance Contributions Act and the Railroad Retirement Tax Act include a percentage rate for hospital insurance. If in 1968 or any calendar year thereafter employee taxes under both Acts are deducted from an employee's wages and compensation aggregating more than $7,800, the ''special refund'' provisions may apply to the portion of the tax that is deducted for hospital insurance. The employee may take credit on Form 1040 for the amount allowable, in accordance with the instructions applicable to that form.

[32 FR 15990, Nov. 22, 1967, as amended at 33 FR 6825, May 4, 1968; 33 FR 17239, Nov. 21, 1968; 36 FR 7586, Apr. 22, 1971; 38 FR 4970, Feb. 23, 1973; 39 FR 8918, Mar. 7, 1974; 41 FR 20883, May 21, 1976; 45 FR 7257, Feb. 1, 1980; 49 FR 19648, 19649, May 9, 1984; 49 FR 25239, June 20, 1984; 49 FR 36500, Sept. 18, 1984; T.D. 8952, 66 FR 33832, June 26, 2001]

Subpart E—Conference and Practice Requirements

AUTHORITY: 68A Stat. 917, 26 U.S.C. 7805; 5 U.S.C. 301.

§ 601.501 Scope of rules; definitions.

(a) *Scope of rules.* The rules prescribed in this subpart concern, among other things, the representation of taxpayers before the Internal Revenue Service under the authority of a power of attorney. These rules apply to all offices of the Internal Revenue Service in all matters under the jurisdiction of the Internal Revenue Service and apply to practice before the Internal Revenue Service (as defined in 31 CFR 10.2(a) and 10.7(a)(7). For special provisions relating to alcohol, tobacco, and firearms activities, see §§ 601.521 through 601.527. These rules detail the means by which a recognized representative is authorized to act on behalf of a taxpayer. Such authority must be evidenced by a power of attorney and declaration of representative filed with the appropriate office of the Internal Revenue Service. In general, a power of attorney must contain certain information concerning the taxpayer, the recognized representative, and the specific tax matter(s) for which the recognized representative is authorized to act. (See § 601.503(a).) A ''declaration of representative'' is a written statement made by a recognized representative that he/she is currently eligible to practice before the Internal Revenue Service and is authorized to represent the particular party on whose behalf he/she acts. (See § 601.502(c).)

(b) *Definitions*—(1) *Attorney-in-fact.* An agent authorized by a principal under a power of attorney to perform certain specified act(s) or kinds of act(s) on behalf of the principal.

(2) *Centralized Authorization File (CAF) system.* An automated file containing information regarding the authority of a person appointed under a power of attorney or designated under a tax information authorization.

(3) *Circular No. 230.* Treasury Department Circular No. 230 codified, at 31 CFR part 10, which sets forth the regulations governing practice before the Internal Revenue Service.

(4) *Declaration of representative.* (See § 601.502(c).)

(5) *Delegation of authority.* An act performed by a recognized representative whereby authority given under a power of attorney is delegated to another recognized representative. After a delegation is made, both the original recognized representative and the recognized representative to whom a delegation is made will be recognized to represent the taxpayer. (See § 601.505(b)(2).)

(6) *Form 2848,* ''*Power of Attorney and Declaration of Representative.*'' The Internal Revenue Service power of attorney form which may be used by a taxpayer who wishes to appoint an individual to represent him/her before the Internal Revenue Service. (See § 601.503(b)(1).)

(7) *Matter.* The application of each tax imposed by the Internal Revenue Code and the regulations thereunder for each taxable period constitutes a (separate) matter.

(8) *Office of the Internal Revenue Service.* The Office of each district director, the office of each service center, the office of each compliance center, the office of each regional commissioner, and the National Office constitute separate offices of the Internal Revenue Service.

(9) *Power of attorney.* A document signed by the taxpayer, as principal, by which an individual is appointed as attorney-in-fact to perform certain specified act(s) or kinds of act(s) on behalf of the principal. Specific types of powers of attorney include the following—

(i) *General power of attorney.* The attorney-in-fact is authorized to perform any or all acts the taxpayer can perform.

(ii) *Durable power of attorney.* A power of attorney which specifies that the appointment of the attorney-in-fact will not end due to either the passage of time (i.e., the authority conveyed will continue until the death of the taxpayer) or the incompetency of the principal (e.g., the principal becomes unable or is adjudged incompetent to perform his/her business affairs).

(iii) *Limited power of attorney.* A power of attorney which is limited in any facet (i.e., a power of attorney authorizing the attorney-in-fact to perform only certain specified acts as contrasted to a general power of attorney authorizing the representative to perform any and all acts the taxpayer can perform).

(10) *Practice before the Internal Revenue Service.* Practice before the Internal Revenue Service encompasses all matters connected with presentation to the Internal Revenue Service or any of its personnel relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include the preparation and filing of necessary documents, correspondence with and communications to the Internal Revenue Service, and the representation of a taxpayer at conferences, hearings, and meetings. (See 31 CFR 10.2(a) and 10.7(a)(7).)

(11) *Principal.* A person (i.e., taxpayer) who appoints an attorney-in-fact under a power of attorney.

(12) *Recognized representative.* An individual who is recognized to practice before the Internal Revenue Service under the provisions of § 601.502.

(13) *Representation.* Acts performed on behalf of a taxpayer by a representative in practice before the Internal Revenue Service. (See § 601.501(b)(10).) Representation does not include the furnishing of information at the request of the Internal Revenue Service or any of its officers or employees. (See 31 CFR 10.7(c).)

(14) *Substitution of representative.* An act performed by an attorney-in-fact whereby authority given under a power of attorney is transferred to another recognized representative. After a substitution is made, only the newly recognized representative will be considered the taxpayer's representative. (See § 601.505(b)(2).)

(15) *Tax information authorization.* A document signed by the taxpayer authorizing any individual or entity (e.g.,

corporation, partnership, trust or organization) designated by the taxpayer to receive and/or inspect confidential tax information in a specified matter. (See section 6103 of the Internal Revenue Code and the regulations thereunder.)

(c) *Conferences*—(1) *Scheduling.* The Internal Revenue Service encourages the discussion of any Federal tax matter affecting a taxpayer. Conferences may be offered only to taxpayers and/or their recognized representative(s) acting under a valid power of attorney. As a general rule, such conferences will not be held without previous arrangement. However, if a compelling reason is shown by the taxpayer that an immediate conference should be held, the Internal Revenue Service official(s) responsible for the matter has the discretion to make an exception to the general rule.

(2) *Submission of information.* Every written protest, brief, or other statement the taxpayer or recognized representative wishes to be considered at any conference should be submitted to or filed with the appropriate Internal Revenue Service official(s) at least five business days before the date of the conference. If the taxpayer or the representative is unable to meet this requirement, arrangement should be made with the appropriate Internal Revenue Service official for a postponement of the conference to a date mutually agreeable to the parties. The taxpayer or the representative remains free to submit additional or supporting facts or evidence within a reasonable time after the conference.

[56 FR 24003, May 28, 1991; amended at 57 FR 27356, June 19, 1992]

§ 601.502 Recognized representative.

(a) A recognized representative is an individual who is

(1) Appointed as an attorney-in-fact under a power of attorney, and a

(2) Member of one of the categories described in § 601.502(b) and who files a declaration of representative, as described in § 601.502(c).

(b) *Categories*—(1) *Attorney.* Any individual 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;

(2) *Certified public accountant.* Any individual who is duly qualified to practice as a certified public accountant in any state, possession, territory, commonwealth, or the District of Columbia;

(3) *Enrolled agent.* Any individual who is enrolled to practice before the Internal Revenue Service and is in active status pursuant to the requirements of Circular No. 230;

(4) *Enrolled actuary.* Any individual who is enrolled as an actuary by and is in active status with the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242.

(5) *Other individuals*—(i) *Temporary recognition.* Any individual who is granted temporary recognition as an enrolled agent by the Director of Practice (31 CFR 10.5(c)).

(ii) *Practice based on a relationship or special status with a taxpayer.* Any individual authorized to represent a taxpayer with whom/which a special relationship exists (31 CFR 10.7(a) (1)–(6)). (For example, an individual may represent another individual who is his/her regular full-time employer or a member of his/her immediate family; an individual who is a bona fide officer or regular full-time employee of a corporation or certain other organizations may represent that entity.)

(iii) *Unenrolled return preparer.* Any individual who signs a return as having prepared it for a taxpayer, or who prepared a return with respect to which the instructions or regulations do not require that the return be signed by the preparer. The acts which an unenrolled return preparer may perform are limited to representation of a taxpayer before revenue agents and examining officers of the Examination Division in the offices of District Director with respect to the tax liability of the taxpayer for the taxable year or period covered by a return prepared by the unenrolled return prepared (31 CFR 10.7(a)(7)).

(iv) *Special appearance.* Any individual who, upon written application, is authorized by the Director of Practice to represent a taxpayer in a particular matter (31 CFR 10.7(b)).

(c) *Declaration of representative.* A recognized representative must attach to

the power of attorney a written declaration (e.g., part II of form 2848) stating the following—

(1) I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;

(2) I am aware of the regulations contained in Treasury Department Circular No. 230 (31 CFR part 10), concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others);

(3) I am authorized to represent the taxpayer(s) identified in the power of attorney; and

(4) I am an individual described in § 601.502(b).

If an individual is unable to make such declaration, he/she may not engage in representation of a taxpayer before the Internal Revenue Service or perform the acts described in §§ 601.504(a) (2) through (6).

[56 FR 24004, May 28, 1991; amended at 57 FR 27356, June 19, 1992]

§ 601.503 Requirements of power of attorney, signatures, fiduciaries and Commissioner's authority to substitute other requirements.

(a) *Requirements.* A power of attorney must contain the following information—

(1) Name and mailing address of the taxpayer;

(2) Identification number of the taxpayer (i.e., social security number and/or employer identification number);

(3) Employee plan number (if applicable);

(4) Name and mailing address of the recognized representative(s);

(5) Description of the matter(s) for which representation is authorized which, if applicable, must include—

(i) The type of tax involved;

(ii) The Federal tax form number;

(iii) The specific year(s)/period(s) involved; and

(iv) In estate matters, decedent's date of death; and

(6) A clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s).

(b) *Acceptable power of attorney documents*—(1) *Form 2848.* A properly completed form 2848 satisfies the requirements for both a power of attorney (as described in § 601.503(a)) and a declaration of representative (as described in § 601.502(c)).

(2) *Other documents.* The Internal Revenue Service will accept a power of attorney other than form 2848 provided such document satisfies the requirements of § 601.503(a). However, for purposes of processing such documents onto the Centralized Authorization File (see § 601.506(d)), a completed form 2848 must be attached. (In such situations, form 2848 is not the operative power of attorney and need not be signed by the taxpayer. However, the Declaration of Representative must be signed by the representative.)

(3) *Special provision.* The Internal Revenue Service will not accept a power of attorney which fails to include the information required by §§ 601.503(a)(1) through (5). If a power of attorney fails to include some or all of the information required by such section, the attorney-in-fact can cure this defect by executing a form 2848 (on behalf of the taxpayer) which includes the missing information. Attaching a form 2848 to a copy of the original power of attorney will validate the original power of attorney (and will be treated in all circumstances as one signed and filed by the taxpayer) provided the following conditions are satisfied—

(i) The original power of attorney contemplates authorization to handle, among other things, Federal tax matters, (e.g., the power of attorney includes language to the effect that the attorney-in-fact has the authority to perform any and all acts).

(ii) The attorney-in-fact attaches a statement (signed under penalty of perjury) to the form 2848 which states that the original power of attorney is valid under the laws of the governing jurisdiction.

(4) *Other categories of powers of attorney.* Categories of powers of attorney not addressed in these rules (e.g., durable powers of attorney and limited powers of attorney) will be accepted by the Internal Revenue Service provided such documents satisfy the requirements of §§ 601.503(b) (2) or (3).

(c) *Signatures.* Internal Revenue Service officials may require a taxpayer (or

such individual(s) required or authorized to sign on behalf of a taxpayer) to submit appropriate identification or evidence of authority. Except when form 2848 (or its equivalent) is executed by an attorney-in-fact under the provisions of § 601.503(b)(3), the individual who must execute a form 2848 depends on the type of taxpayer involved—

(1) *Individual taxpayer.* In matter(s) involving an individual taxpayer, a power of attorney must be signed by such individual.

(2) *Husband and wife.* In matters involving a joint return the following rules apply—

(i) *Joint representation.* In the case of any matter concerning a joint return in which both husband and wife are to be represented by the same representative(s), the power of attorney must be executed by both husband and wife.

(ii) *Individual representation.* In the case of any matter concerning a joint return in which both husband and wife are not to be represented by the same recognized representative(s), the power of attorney must be executed by the spouse who is to be represented. However, the recognized representative of such spouse cannot perform any act with respect to a tax matter that the spouse being represented cannot perform alone.

(3) *Corporation.* In the case of a corporation, a power of attorney must be executed by an officer of the corporation having authority to legally bind the corporation, who must certify that he/she has such authority.

(4) *Association.* In the case of an association, a power of attorney must be executed by an officer of the association having authority to legally bind the association, who must certify that he/she has such authority.

(5) *Partnership.* In the case of a partnership, a power of attorney must be executed by all partners, or if executed in the name of the partnership, by the partner or partners duly authorized to act for the partnership, who must certify that he/she has such authority.

(6) *Dissolved partnership.* In the case of a dissolved partnership, each of the former partners must execute a power of attorney. However, if one or more of the former partners is deceased, the following provisions apply—

(i) The legal representative of each deceased partner(s) (or such person(s) having legal control over the disposition of partnership interest(s) and/or the share of partnership asset(s) of the deceased partner(s)) must execute a power of attorney in the place of such deceased partner(s). (See § 601.503(c)(6)(ii).)

(ii) Notwithstanding § 601.503(c)(6)(i), if the laws of the governing jurisdiction provide that such partner(s) has exclusive right to control or possession of the firm's assets for the purpose of winding up its affairs, the signature(s) of the surviving partner(s) alone will be sufficient. (If the surviving partner(s) claims exclusive right to control or possession of the firm's assets for the purpose of winding up its affairs, Internal Revenue Service officials may require the submission of a copy of or a citation to the pertinent provisions of the law of the governing jurisdiction upon which the surviving partner(s) relies.)

(d) *Fiduciaries.* In general, when a fiduciary is involved in a tax matter, a power of attorney is not required. Instead form 56, ''Notice Concerning Fiduciary Relationship'' should be filed. Types of taxpayer for which fiduciaries act are—

(1) *Dissolved corpoority of the voting stock of the corporation as of the date of dissolution.* Internal Revenue Service officials may require submission of a statement showing the total number of outstanding shares of voting stock as of the date of dissolution, the number of shares held by each signatory to a power of attorney, the date of dissolution, and a representation that no trustee has been appointed.

(2) *Insolvent taxpayer.* In the case of an insolvent taxpayer, form 56, ''Notice Concerning Fiduciary Relationship,'' should be filed by the trustee, receiver, or attorney appointed by the court. Internal Revenue Service officials may require the submission of a certified order or document from the court having jurisdiction over the insolvent taxpayer which shows the appointment and qualification of the trustee, receiver, or attorney and that his/her authority has not been terminated. In cases pending before a court of the United States (e.g., U.S. District Court

or U.S. Bankruptcy Court), an authenticated copy of the order approving the bond of the trustee, receiver, or attorney will meet this requirement.

(3) *Deceased taxpayers*—(i) *Executor, personal representative or administrator.* In the case of a deceased taxpayer, a form 56, ''Notice Concerning Fiduciary Relationship,'' should be filed by the executor, personal representative or administrator if one has been appointed and is responsible for disposition of the matter under consideration. Internal Revenue Service officials may require the submission of a short-form certificate (or authenticated copy of letters testamentary or letters of administration) showing that such authority is in full force and effect at the time the form 56, ''Notice Concerning Fiduciary Relationship,'' is filed.

(ii) *Testamentary trustee(s).* In the event that a trustee is acting under the provisions of the will, a form 56, ''Notice Concerning Fiduciary Relationship,'' should be filed by the trustee, unless the executor, personal representative or administrator has not been discharged and is responsible for disposition of the matter. Internal Revenue Service officials may require either the submission of evidence of the discharge of the executor and appointment of the trustee or other appropriate evidence of the authority of the trustee.

(iii) *Residuary legatee(s).* If no executor, administrator, or trustee named under the will is acting or responsible for disposition of the matter and the estate has been distributed to the residuary legatee(s), a form 56, ''Notice Concerning Fiduciary Relationship,'' should be filed by the residuary legatee(s). Internal Revenue Service officials may require the submission of a statement from the court certifying that no executor, administrator, or trustee named under the will is acting or responsible for disposition of the matter, naming the residuary legatee(s), and indicating the proper share to which each is entitled.

(iv) *Distributee(s).* In the event that the decedent died intestate and the administrator has been discharged and is not responsible for disposition of the matter (or none was ever appointed), a form 56, ''Notice Concerning Fiduciary Relationship,'' should be filed by the distributee(s). Internal Revenue Service officials may require the submission of evidence of the discharge of the administrator (if one had been appointed) and evidence that the administrator is not responsible for disposition of the matter. It also may require a statement(s) signed under penalty of perjury (and such other appropriate evidence as can be produced) to show the relationship of the individual(s) who sign the form 56, ''Notice Concerning Fiduciary Relationship,'' to the decedent and the right of each signer to the respective shares of the assets claimed under the law of the domicile of the decedent.

(4) *Taxpayer for whom a guardian or other fiduciary has been appointed.* In the case of a taxpayer for whom a guardian or other fiduciary has been appointed by a court of record, a form 56, ''Notice Concerning Fiduciary Relationship,'' should be filed by the fiduciary. Internal Revenue Service officials may require the submission of a court certificate or court order showing that the individual who executes the form 56, ''Notice Concerning Fiduciary Relationship,'' has been appointed and that his/her appointment has not been terminated.

(5) *Taxpayer who has appointed a trustee.* In the case of a taxpayer who has appointed a trustee, a form 56, ''Notice Concerning Fiduciary Relationship,'' should be filed by the trustee. If there is more than one trustee appointed, all should join unless it is shown that fewer than all have authority to act. Internal Revenue Service officials may require the submission of documentary evidence of the authority of the trustee to act. Such evidence may be either a copy of a properly executed trust instrument or a certified copy of extracts from the trust instruments, showing—

(i) The date of the instrument;

(ii) That it is or is not of record in any court;

(iii) The names of the beneficiaries;

(iv) The appointment of the trustee, the authority granted, and other information as may be necessary to show that such authority extends to Federal tax matters; and

(v) That the trust has not been terminated and the trustee appointed therein is still legally acting as such.

In the event that the trustee appointed in the original trust instrument has been replaced by another trustee, documentary evidence of the appointment of the new trustee must be submitted.

(e) *Commissioner's authority to substitute other requirements for power of attorney.* Upon application of a taxpayer or a recognized representative, the Commissioner of Internal Revenue may substitute a requirement(s) other than provided herein for a power of attorney as evidence of the authority of the representative.

[56 FR 24005, May 28, 1991; 57 FR 27356, June 19, 1992]

§ 601.504 Requirements for filing power of attorney.

(a) *Situations in which a power of attorney is required.* Except as otherwise provided in § 601.504(b), a power of attorney is required by the Internal Revenue Service when the taxpayer wishes to authorize a recognized representative to perform one or more of the following acts on behalf of the taxpayer—

(1) *Representation.* (See §§ 601.501(b)(10) and 601.501(b)(13).)

(2) *Waiver.* Offer and/or execution of either

(i) A waiver of restriction on assessment or collection of a deficiency in tax, or

(ii) A waiver of notice of disallowance of a claim for credit or refund.

(3) *Consent.* Execution of a consent to extend the statutory period for assessment or collection of a tax.

(4) *Closing agreement.* Execution of a closing agreement under the provisions of the Internal Revenue Code and the regulations thereunder.

(5) *Check drawn on the United States Treasury.* The authority to receive (but not endorse or collect) a check drawn on the United States Treasury must be specifically granted in a power of attorney. (The endorsement and payment of a check drawn on the United States Treasury are governed by Treasury Department Circular No. 21, as amended, 31 CFR part 240. Endorsement and payment of such check by any person other than the payee must be made under one of the special types of powers of attorney prescribed by Circular No. 21, 31 CFR part 240. For restrictions on the assignment of claims, see Revised Statute section 3477, as amended (31 U.S.C. 3727).)

(6) *Signing tax returns.* The filing of a power of attorney does not authorize the recognized representative to sign a tax return on behalf of the taxpayer unless such act is both—

(i) Permitted under the Internal Revenue Code and the regulations thereunder (e.g., the authority to sign income tax returns is governed by the provisions of § 1.6012–1(a)(5) of the Income Tax Regulations); and

(ii) Specifically authorized in the power of attorney.

(b) *Situations in which a power of attorney is not required*—(1) *Disclosure of confidential tax information.* The submission of a tax information authorization to request a disclosure of confidential tax information does not constitute practice before the Internal Revenue Service. (Such procedure is governed by the provisions of section 6103 of the Internal Revenue Code and the regulations thereunder.) Nevertheless, if a power of attorney is properly filed, the recognized representative also is authorized to receive and/or inspect confidential tax information concerning the matter(s) specified (provided the power of attorney places no limitations upon such disclosure).

(2) *Estate matter.* A power of attorney is not required at a conference concerning an estate tax matter if the individual seeking to act as a recognized representative presents satisfactory evidence to Internal Revenue Service officials that he/she is—

(i) An individual described in § 601.502(b); and

(ii) The attorney of record for the executor, personal representative, or administrator before the court where the will is probated or the estate is administered.

(3) *Bankruptcy matters.* A power of attorney is not required in the case of a trustee, receiver, or an attorney (designated to represent a trustee, receiver, or debtor in possession) appointed by a court having jurisdiction over a debtor. In such a case, Internal Revenue Service officials may require

the submission of a certificate from the court having jurisdiction over the debtor showing the appointment and qualification of the trustee, receiver, or attorney and that his/her authority has not been terminated. In cases pending before a court of the United States (e.g., U.S. District Court or U.S. Bankruptcy Court), an authenticated copy of the order approving the bond of the trustee, receiver, or attorney will meet this requirement.

(c) *Administrative requirements of filing*—(1) *General.* Except as provided in this section, a power of attorney (including the declaration of representative and any other required statement(s)) must be filed in each office of the Internal Revenue Service in which the recognized representative desires to perform one or more of the acts described in §601.504(a).

(2) *Regional offices.* If a power of attorney (including the declaration of representative and any other required statement(s)) is filed with the office of a district director or with a service center which has the matter under consideration, it is not necessary to file a copy with the office of a regional commissioner which subsequently has the matter under consideration unless requested.

(3) *National Office.* In case of a request for a ruling or other matter to be considered in the National Office, a power of attorney, including the declaration of representative and any other required statement(s), must be submitted with each request or matter.

(4) *Copy of power of attorney.* The Internal Revenue Service will accept either the original or a copy of a power of attorney. A copy of a power of attorney received by facsimile transmission (FAX) also will be accepted.

(d) *Practice by correspondence.* If an individual desires to represent a taxpayer through correspondence with the Internal Revenue Service, such individual must submit a power of attorney, including the declaration of representative and any other required statement(s), even though no personal appearance is contemplated.

[56 FR 24007, May 28, 1991; 57 FR 27356, June 19, 1992]

§601.505 Revocation, change in representation and substitution or delegation of representative.

(a) *By the taxpayer*—(1) *New power of attorney filed.* A new power of attorney revokes a prior power of attorney if it is granted by the taxpayer to another recognized representative with respect to the same matter. However, a new power of attorney does not revoke a prior power of attorney if it contains a clause stating that it does not revoke such prior power of attorney and there is attached to the new power of attorney either—

(i) A copy of the unrevoked prior power of attorney; or

(ii) A statement signed by the taxpayer listing the name and address of each recognized representative authorized under the prior unrevoked power of attorney.

(2) *Statement of revocation filed.* A taxpayer may revoke a power of attorney without authorizing a new representative by filing a statement of revocation with those offices of the Internal Revenue Service where the taxpayer has filed the power of attorney to be revoked. The statement of revocation must indicate that the authority of the first power of attorney is revoked and must be signed by the taxpayer. Also, the name and address of each recognized representative whose authority is revoked must be listed (or a copy of the power of attorney to be revoked must be attached).

(b) *By the recognized representative*—(1) *Revocation of power of attorney.* A recognized representative may withdraw from representation in a matter in which a power of attorney has been filed by filing a statement with those offices of the Internal Revenue Service where the power of attorney to be revoked was filed. The statement must be signed by the representative and must identify the name and address of the taxpayer(s) and the matter(s) from which the representative is withdrawing.

(2) *Substitution or delegation of recognized representative.* Any recognized representative appointed in a power of attorney may substitute or delegate authority under the power of attorney to another recognized representative if

substitution or delegation is specifically permitted under the power of attorney. Unless otherwise provided in the power of attorney, a recognized representative may make a substitution or delegation without the consent of any other recognized representative appointed to represent the taxpayer in the same matter. A substitution or delegation if effected by filing the following items with offices of the Internal Revenue Service where the power of attorney has been filed—

(i) *Notice of substitution or delegation.* A Notice of Substitution or Delegation is a statement signed by the recognized representative appointed under the power of attorney. The statement must contain the name and mailing address of the new recognized representative and, if more than one individual is to represent the taxpayer in the matter, a designation of which recognized representative is to receive notices and other written communications;

(ii) *Declaration of representative.* A written declaration which is made by the new representative as required by § 601.502(c); and

(iii) *Power of attorney.* A power of attorney which specifically authorizes the substitution or delegation.

An employee of a recognized representative may not be substituted for his/her employer with respect to the representation of a taxpayer before the Internal Revenue Service unless the employee is a recognized representative in his/her own capacity under the provisions of § 601.502(b). However, even if such employee is not a recognized representative in his/her own capacity under the provisions of § 601.502(a), that individual may be authorized by the taxpayer under a tax information authorization to receive and/or inspect confidential tax information under the provisions of section 6103 of the Internal Revenue Code and the regulations thereunder.

[56 FR 24007, May 28, 1991, amended at 57 FR 27356, June 19, 1992]

§ 601.506 Notices to be given to recognized representative; direct contact with taxpayer; delivery of a check drawn on the United States Treasury to recognized representative.

(a) *General.* Any notice or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the Internal Revenue Service must be given to the taxpayer and, unless restricted by the taxpayer, to the representative according to the following procedures—

(1) If the taxpayer designates more than one recognized representative to receive notices and other written communications, it will be the practice of the Internal Revenue Service to give copies of such to two (but not more than two) individuals so designated.

(2) In a case in which the taxpayer does not designate which recognized representative is to receive notices, it will be the practice of the Internal Revenue Service to give notices and other communications to the first recognized representative appointed on the power of attorney.

(3) Failure to give notice or other written communication to the recognized representative of a taxpayer will not affect the validity of any notice or other written communication delivered to a taxpayer.

Unless otherwise indicated in the document, a power of attorney other than form 2848 will be presumed to grant the authority to receive notices or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter(s) before the Internal Revenue Service to which the power of attorney pertains.

(b) *Cases where taxpayer may be contacted directly.* Where a recognized representative has unreasonably delayed or hindered an examination, collection or investigation by failing to furnish, after repeated request, nonprivileged information necessary to the examination, collection or investigation, the Internal Revenue Service employee conducting the examination, collection

or investigation may request the permission of his/her immediate supervisor to contact the taxpayer directly for such information.

(1) *Procedure.* If such permission is granted, the case file will be documented with sufficient facts to show how the examination, collection or investigation was being delayed or hindered. Written notice of such permission, briefly stating the reason why it was granted, will be given to both the recognized representative and the taxpayer together with a request of the taxpayer to supply such nonprivileged information. (See 7521(c) of the Internal Revenue Code and the regulations thereunder.)

(2) *Effect of direct notification.* Permission to by-pass a recognized representative and contact a taxpayer directly does not automatically disqualify an individual to act as the recognized representative of a taxpayer in a matter. However, such information may be referred to the Director of Practice for possible disciplinary proceedings under Circular No. 230, 31 CFR part 10.

(c) *Delivery of a check drawn on the United States Treasury*—(1) *General.* A check drawn on the United States Treasury (e.g., a check in payment of refund of internal revenue taxes, penalties, or interest, see §601.504(a)(5)) will be mailed to the recognized representative of a taxpayer provided that a power of attorney is filed containing specific authorization for this to be done.

(2) *Address of recognized representative.* The check will be mailed to the address of the recognized representative listed on the power of attorney unless such recognized representative notifies the Internal Revenue Service in writing that his/her mailing address has been changed.

(3) *Authorization of more than one recognized representative.* In the event a power of attorney authorizes more than one recognized representative to receive a check on the taxpayer's behalf, and such representatives have different addresses, the Internal Revenue Service will mail the check diretly to the taxpayer, unless a statement (signed by all of the recognized representatives so authorized) is submitted which indicates the address to which the check is to be mailed.

(4) *Cases in litigation.* The provisions of §601.506(c) concerning the issuance of a tax refund do not apply to the issuance of a check in payment of claims which have been either reduced to judgment or settled in the course (or as a result) of litigation.

(d) *Centralized Authorization File (CAF) system*—(1) *Information recorded onto the CAF system.* Information from both powers of attorney and tax information authorizations is recorded onto the CAF system. Such information enables Internal Revenue Service personnel who do not have access to the actual power of attorney or tax information authorizations to—

(i) Determine whether a recognized representative or an appointee is authorized by a taxpayer to receive and/or inspect confidential tax information;

(ii) Determine, in the case of a recognized representative, whether that representative is authorized to perform the acts set forth in §601,504(a); and

(iii) Send copies of computer generated notices and communications to an appointee or recognized representative so authorized by the taxpayer.

(2) *CAF number.* A Centralized Authorization File (CAF) number generally will be issued to—

(i) A recognized representative who files a power of attorney and a written declaration of representative; or

(ii) An appointee authorized under a tax information authorization.

The issuance of a CAF number does not indicate that a person is either recognized or authorized to practice before the Internal Revenue Service. Such determination is made under the provisions of Circular No. 230, 31 CFR part 10. The purpose of the CAF number is to facilitate the processing of a power of attorney or a tax information authorization submitted by a recognized representative or an appointee. A recognized representative or an appointee should include the same CAF number on every power of attorney or tax information authorization filed. However, because the CAF number is not a substantive requirement (i.e., as listed in §601.503(a)), a tax information authorization or power of attorney which

does not include such number will not be rejected based on the absence of a CAF number.

(3) *Tax matters recorded on CAF.* Although a power of attorney or tax information authorization may be filed in all matters under the jurisdiction of the Internal Revenue Service, only those documents which meet each of the following criteria will be recorded onto the CAF system—

(i) *Specific tax period.* Only documents which concern a matter(s) relating to a specific tax period will be recorded onto the CAF system. A power of attorney or tax information authorization filed in a matter unrelated to a specific period (e.g., the 100% penalty for failure to pay over withholding taxes imposed by section 6672 of the Internal Revenue Code, applications for an employer identification number, and requests for a private letter ruling request pertaining to a proposed transaction) cannot be recorded onto the CAF system.

(ii) *Future three-year limitation.* Only documents which concern a tax period that ends no later than three years after the date on a power of attorney is received by the Internal Revenue Service will be recorded onto the CAF system. For example, a power of attorney received by the Internal Revenue Service on August 1, 1990, which indicates that the authorization applies to form 941 for the quarters ended December 31, 1990 through December 31, 2000, will be recorded onto the CAF system for the applicable tax periods which end no later than July 31, 1993 (i.e., three years after the date of receipt by the Internal Revenue Service).

(iii) *Documents for prior tax periods.* Documents which concern any tax period which has ended prior to the date on which a power of attorney is received by the Internal Revenue Service will be recorded onto the CAF system provided that matters concerning such years are under consideration by the Internal Revenue Service.

(iv) *Limitation on representatives recorded onto the CAF system.* No more than three representatives appointed under a power of attorney or three persons designated under a tax information authorization will be recorded onto the CAF system. If more than three representatives are appointed under a power of attorney or more than three persons designated under a tax information authorization, only the first three names will be recorded onto the CAF system.

The fact that a power of attorney or tax information authorization cannot be recorded onto the CAF system is not determinative of the (current or future) validity of such document. (For example, documents which concern tax periods that end more than three years from the date of receipt by the IRS are not invalid for the period(s) not recorded onto the CAF system, but can be resubmitted at a later date.)

[56 FR 24008, May 28, 1991]

§ 601.507 Evidence required to substantiate facts alleged by a recognized representative.

The Internal Revenue Service may require a recognized representative to submit all evidence, except that of a supplementary or incidental character, over a declaration (signed under penalty of perjury) that the recognized representative prepared such submission and that the facts contained therein are true. In any case in which a recognized representative is unable or unwilling to declare his/her own knowledge that the facts are true and correct, the Internal Revenue Service may require the taxpayer to make such a declaration under penalty of perjury.

[56 FR 24009, May 28, 1991]

§ 601.508 Dispute between recognized representatives of a taxpayer.

Where there is a dispute between two or more recognized representatives concerning who is entitled to represent a taxpayer in a matter pending before the Internal Revenue Service (or to receive a check drawn on the United States Treasury), the Internal Revenue Service will not recognize any party. However, if the contesting recognized representatives designate one or more of their number under the terms of an agreement signed by all, the Internal Revenue Service will recognize such designated recognized representatives

upon receipt of a copy of such agreement according to the terms of the power of attorney.

[56 FR 24009, May 28, 1991]

§ 601.509 Power of attorney not required in cases docketed in the Tax Court of the United States.

The petitioner and the Commissioner of Internal Revenue stand in the position of parties litigant before a judicial body in a case docketed in the Tax Court of the United States. The Tax Court has its own rules of practice and procedure and its own rules respecting admission to practice before it. Accordingly, a power of attorney is not required to be submitted by an attorney of record in a case which is docketed in the Tax Court. Correspondence in connection with cases docketed in the Tax Court will be addressed to counsel of record before the Court. However, a power of attorney is required to be submitted by an individual other than the attorney of record in any matter before the Internal Revenue Service concerning a docketed case.

[56 FR 24009, May 8, 1991]

REQUIREMENTS FOR ALCOHOL, TOBACCO, AND FIREARMS ACTIVITIES

§ 601.521 Requirements for conference and representation in conference.

Any person desiring a conference in the office of the regional regulatory administrator in the Bureau of Alcohol, Tobacco, and Firearms of his region or of the Director, Bureau of Alcohol, Tobacco, and Firearms, in Washington, DC, relative to any matter arising in connection with his operations, will be accorded such a conference upon request. No formal requirements are prescribed for such conference. Where an industry member or other person is to be represented in conference, the representative must be recognized to practice as provided in paragraph (b) of § 601.502. When a representative presents himself on behalf of an industry member or other person for the initial meeting in the office of an regional regulatory administrator in the Bureau of Alcohol, Tobacco, and Firearms or of the Director, Bureau of Alcohol, Tobacco, and Firearms, he must submit evidence of recognition; or he should state in his first letter or other written communication with such office whether he is recognized to practice, and should enclose evidence of such recognition. In the case of a qualified attorney or a qualified certified public accountant, the filing of the applicable written declaration described in paragraphs (b)(1) (i) and (ii) of § 601.502 shall constitute evidence of recognition. In the case of an enrollee, the filing of a notification, stating that he is enrolled to practice and giving his enrollment number or the expiration date of his enrollment card, shall constitute evidence of recognition.

[34 FR 6432, Apr. 12, 1969, as amended at 45 FR 7259, Feb. 1, 1980]

§ 601.522 Power of attorney.

Except as otherwise provided in this section, a power of attorney, or copy thereof, will be required for a representative of a principal (a) to perform the acts specified in paragraph (c)(1) of § 601.502; or (b) to sign any application, bond, notice, return, report, or other document required by, or provided for in, regulations issued pursuant to chapter 51 (Distilled Spirits, Wines, and Beer), Chapter 52 (Cigars, Cigarettes, and Cigarette Papers and Tubes), and chapter 53 (Machine Guns, Destructive Devices, and Certain Other Firearms), Internal Revenue Code, title 1 of the Gun Control Act of 1968, or the Federal Alcohol Administration Act, which is filed with or acted on by (1) the office of a regional regulatory administrator in the Bureau of Alcohol, Tobacco, and Firearms, or (2) the Director, Bureau of Alcohol, Tobacco, and Firearms. The power of attorney may be executed on Form 1534, copies of which may be obtained from the regional regulatory administrator in the Bureau of Alcohol, Tobacco, and Firearms. A power of attorney will not be required for a person authorized to sign on behalf of the principal by articles of incorporation, bylaws, or a board of directors, where an acceptable copy of such authorization is on file in the office of the regional regulatory administrator or of the Director. A power of attorney filed under the provisions of this section may cover one or more acts for which a power of attorney is required and will continue in effect

with respect to such acts until revoked as provided in § 601.526. The exceptions to the requirements for a power of attorney contained in paragraph (c) (3) and (4) of § 601.502 are applicable to powers of attorney under this section.

[34 FR 14603, Sept. 19, 1969, as amended at 45 FR 7259, Feb. 1, 1980]

§ 601.523 Tax information authorization.

Where any of the acts specified in paragraph (c)(2)(i) of § 601.502 are to be performed by a representative, and a power of attorney for such representative has not been filed, a tax information authorization, or copy thereof, will be required. The authorization may be executed on Form 1534–A, copies of which may be obtained from the regional regulatory administrator in the Bureau of Alcohol, Tobacco, and Firearms. Such authorization may cover one or more of the acts for which a tax information authorization is required and will continue in effect with respect to such acts until revoked as provided in § 601.526. The exceptions to the requirements for a tax information authorization, provided in paragraphs (c) (3) and (4) of § 601.502, are applicable to such authorizations under this section.

[34 FR 6432, Apr. 12, 1969]

§ 601.524 Execution and filing powers of attorney and tax information authorizations.

(a) *Time of filing.* A copy of the power of attorney must be filed in each office (that is, office of a regional regulatory administrator and Office of the Director, Bureau of Alcohol, Tobacco, and Firearms), in which a document specified in § 601.522, covered by the power of attorney, is required to be filed, or in which the representative desires to perform one or more of the acts enumerated in paragraph (c)(1) of § 601.502. If a power of attorney covering an act otherwise requiring the filing of a tax information authorization has not been filed, a copy of the tax information authorization must be filed in each office in which the representative inspects or receives confidential information, or, where acts requiring a power of attorney or a tax information authorization are handled by correspondence, the representative should enclose a copy of the power or authorization with the initial correspondence. However, where a power of attorney or tax information authorization is on file with the regional regulatory administrator in the Bureau of Alcohol, Tobacco, and Firearms, an additional copy thereof will not be required in the office of the regional counsel of the same region.

(b) *Execution.* The power of attorney required by § 601.522, or tax information authorization required by § 601.523, shall be executed in the manner prescribed in paragraph (b) of § 601.504; shall indicate all acts to which it relates; should contain the mailing address of the representative; and, if more than one representative is authorized to perform the same acts on behalf of the industry member or other person, a designation as to which representative is to receive notices and other written communications. For rules relating to the mailing of notices or other written communications to a representative, see § 601.506.

(c) *Attestation and corporate seal.* In the case of a corporation, a power of attorney filed with an officer of the Bureau of Alcohol, Tobacco, and Firearms must be attested by the secretary and the corporate seal must be affixed. If the officer who signs the power of attorney is also the secretary, another officer of the corporation, preferably the president, vice president, or treasurer, must also sign the power of attorney so that two different individuals' signatures appear thereon. If the corporation has no seal, a certified copy of a resolution duly passed on by the board of directors of the corporation authorizing the execution of powers of attorney should be attached.

(d) *Acknowledgment.* A power of attorney filed with an office of the Bureau of Alcohol, Tobacco, and Firearms must be acknowledged, witnessed, or certified as provided in paragraph (d) of § 601.504.

[32 FR 15990, Nov. 22, 1967, as amended at 34 FR 6432, Apr. 12, 1969; 45 FR 7259, Feb. 1, 1980]

§ 601.525 Certification of copies of documents.

The provisions of paragraph (e) of § 601.504 with respect to certification of

copies are applicable to a power of attorney or a tax information authorization required to be filed under § 601.522 or § 601.523.

§ 601.526 Revocation of powers of attorney and tax information authorizations.

The revocation of the authority of a representative covered by a power of attorney or tax information authorization filed in an office of the Bureau of Alcohol, Tobacco, and Firearms shall in no case be effective prior to the giving of written notice to the proper official that the authority of such representative has been revoked.

[34 FR 6432, Apr. 12, 1969, as amended at 45 FR 7259, Feb. 1, 1980]

§ 601.527 Other provisions applied to representation in alcohol, tobacco, and firearms activities.

The provisions of paragraph (b) of § 601.505, and of §§ 601.506 through 601.508 of this subpart, as applicable, shall be followed in offices of the Bureau of Alcohol, Tobacco, and Firearms.

[34 FR 6433, Apr. 12, 1969, as amended at 34 FR 14604, Sept. 19, 1969; 45 FR 7259, Feb. 1, 1980]

Subpart F—Rules, Regulations, and Forms

§ 601.601 Rules and regulations.

(a) *Formulation.* (1) Internal revenue rules take various forms. The most important rules are issued as regulations and Treasury decisions prescribed by the Commissioner and approved by the Secretary or his delegate. Other rules may be issued over the signature of the Commissioner or the signature of any other official to whom authority has been delegated. Regulations and Treasury decisions are prepared in the Office of the Chief Counsel. After approval by the Commissioner, regulations and Treasury decisions are forwarded to the Secretary or his delegate for further consideration and final approval.

(2) Where required by 5 U.S.C. 553 and in such other instances as may be desirable, the Commissioner publishes in the FEDERAL REGISTER general notice of proposed rules (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law). This notice includes:

(i) A statement of the time, place, and nature of public rulemaking proceedings;

(ii) Reference to the authority under which the rule is proposed.

(iii) Either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(3)(i) This subparagraph shall apply where the rules of this subparagraph are incorporated by reference in a notice of hearing with respect to a notice of proposed rule making.

(ii) A person wishing to make oral comments at a public hearing to which this subparagraph applies shall file his written comments within the time prescribed by the notice of proposed rule making (including any extensions thereof) and submit the outline referred to in subdivision (iii) of this subparagraph within the time prescribed by the notice of hearing. In lieu of the reading of a prepared statement at the hearing, such person's oral comments shall ordinarily be limited to a discussion of matters relating to such written comments and to questions and answers in connection therewith. However, the oral comments shall not be merely a restatement of matters the person has submitted in writing. Persons making oral comments should be prepared to answer questions not only on the topics listed in his outline but also in connection with the matters relating to his written comments. Except as provided in paragraph (b) of this section, in order to be assured of the availability of copies of such written comments or outlines on or before the beginning of such hearing, any person who desires such copies should make such a request within the time prescribed in the notice of hearing and shall agree to pay reasonable costs for coping. Persons who make such a request after the time prescribed in the notice of hearing will be furnished copies as soon as they are available, but it may not be possible to furnish the copies on or before the beginning of the hearing. Except as provided in the preceding sentences, copies of written comments regarding the rules proposed

shall not be made available at the hearing.

(iii) A person who wishes to be assured of being heard shall submit, within the time prescribed in the notice of hearing, an outline of the topics he or she wishes to discuss, and the time he or she wishes to devote to each topic. An agenda will then be prepared containing the order of presentation of oral comments and the time allotted to such presentation. A period of 10 minutes will be the time allotted to each person for making his or her oral comments.

(iv) At the conclusion of the presentations of comments of persons listed in the agenda, to the extent time permits, other persons may be permitted to present oral comments provided they have notified, either the Commissioner of Internal Revenue (Attention: CC:LR:T) before the hearing, or the representative of the Internal Revenue Service stationed at the entrance to the hearing room at or before commencement of the hearing, of their desire to be heard.

(v) In the case of unusual circumstances or for good cause shown, the application of rules contained in this subparagraph, including the 10-minute rule in subdivision (iii), above, may be waived.

(vi) To the extent resources permit, the public hearings to which this subparagraph applies may be transcribed.

(b) *Comments on proposed rules*—(1) *In general.* Interested persons are privileged to submit any data, views, or arguments in response to a notice of proposed rule making published pursuant to 5 U.S.C. 553. Further, procedures are provided in paragraph (d)(9) of § 601.702 for members of the public to inspect and to obtain copies of written comments submitted in response to such notices. Designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting written comments in response to a notice of proposed rule making 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 in response to a notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of paragraph (d)(9) of § 601.702. The name of any person requesting a public hearing and hearing outlines described in paragraph (a)(3)(iii) of this section are not exempt from disclosure.

(2) *Effective date.* This paragraph (b) applies only to comments submitted in response to notices of proposed rule making of the Internal Revenue Service published in the FEDERAL REGISTER after June 5, 1974.

(c) *Petition to change rules.* Interested persons are privileged to petition for the issuance, amendment, or repeal of a rule. A petition for the issuance of a rule should identify the section or sections of law involved; and a petition for the amendment or repeal of a rule should set forth the section or sections of the regulations involved. The petition should also set forth the reasons for the requested action. Such petitions will be given careful consideration and the petitioner will be advised of the action taken thereon. Petitions should be addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, DC 20224. However, in the case of petitions to amend the regulations pursuant to subsection (c)(4)(A)(viii) or (5)(A)(i) of section 23 or former section 44C, follow the procedure outlined in paragraph (a) of § 1.23–6.

(d) *Publication of rules and regulations*—(1) *General.* All Internal Revenue Regulations and Treasury decisions are published in the FEDERAL REGISTER and in the Code of Federal Regulations. See paragraph (a) of § 601.702. The Treasury decisions are also published in the weekly Internal Revenue Bulletin and the semiannual Cumulative Bulletin. The Internal Revenue Bulletin is the authoritative instrument of the Commissioner for the announcement of official rulings, decisions, opinions, and procedures, and for the publication of Treasury decisions, Executive orders, tax conventions, legislation, court decisions, and other items pertaining to internal revenue matters. It is the policy of the Internal Revenue Service to publish in the Bulletin all

substantive and procedural rulings of importance or general interest, the publication of which is considered necessary to promote a uniform application of the laws administered by the Service. Procedures set forth in Revenue Procedures published in the Bulletin which are of general applicability and which have continuing force and effect are incorporated as amendments to the Statement of Procedural Rules. It is also the policy to publish in the Bulletin all rulings which revoke, modify, amend, or affect any published ruling. Rules relating solely to matters of internal practices and procedures are not published; however, statements of internal practices and procedures affecting rights or duties of taxpayers, or industry regulation, which appear in internal management documents, are published in the Bulletin. No unpublished ruling or decision will be relied on, used, or cited by any officer or employee of the Internal Revenue Service as a precedent in the disposition of other cases.

(2) *Objectives and standards for publication of Revenue Rulings and Revenue Procedures in the Internal Revenue Bulletin*—(i)*(a)* A *Revenue Ruling* is an official interpretation by the Service that 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.

(b) A *Revenue Procedure* is a statement of procedure that affects the rights or duties of taxpayers or other members of the public under the Code and related statutes or information that, although not necessarily affecting the rights and duties of the public, should be a matter of public knowledge.

(ii) *(a)* The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for the publication of official rulings and procedures of the Internal Revenue Service, including all rulings and statements of procedure which supersede, revoke, modify, amend, or affect any previously published ruling or procedure. The Service also announces in the Bulletin the Commissioner's acquiescences and nonacquiescences in decisions of the U.S. Tax Court (other than decisions in memorandum opinions), and publishes Treasury decisions, Executive orders, tax conventions, legislation, court decisions, and other items considered to be of general interest. The Assistant Commissioner (Technical) administers the Bulletin program.

(b) The Bulletin is published weekly. In order to provide a permanent reference source, the contents of the Bulletin are consolidated semiannually into an indexed Cumulative Bulletin. The Bulletin Index-Digest System provides a research and reference guide to matters appearing in the Cumulative Bulletins. These materials are sold by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(iii) The purpose of publishing revenue rulings and revenue procedures in the Internal Revenue Bulletin is to promote correct and uniform application of the tax laws by Internal Revenue Service employees and to assist taxpayers in attaining maximum voluntary compliance by informing Service personnel and the public of National Office interpretations of the internal revenue laws, related statutes, treaties, regulations, and statements of Service procedures affecting the rights and duties of taxpayers. Therefore, issues and answers involving substantive tax law under the jurisdiction of the Internal Revenue Service will be published in the Internal Revenue Bulletin, except those involving:

(*a*) Issues answered by statute, treaty, or regulations;

(*b*) Issues answered by rulings, opinions, or court decisions previously published in the Bulletin;

(*c*) Issues that are of insufficient importance or interest to warrant publication;

(*d*) Determinations of fact rather than interpretations of law;

(*e*) Informers and informers' rewards; or

(*f*) Disclosure of secret formulas, processes, business practices, and similar information.

Procedures affecting taxpayers' rights or duties that relate to matters under

the jurisdiction of the Service will be published in the Bulletin.

(iv) [Reserved]

(v) *(a)* Rulings and other communications involving substantive tax law published in the Bulletin are published in the form of Revenue Rulings. The conclusions expressed in Revenue Rulings will be directly responsive to and limited in scope by the pivotal facts stated in the revenue ruling. Revenue Rulings arise from various sources, including rulings to taxpayers, technical advice to district offices, studies undertaken by the Office of the Assistant Commissioner (Technical), court decisions, suggestions from tax practitioner groups, publications, etc.

(b) It will be the practice of the Service to publish as much of the ruling or communication as is necessary for an understanding of the position stated. However, in order to prevent unwarranted invasions of personal privacy and to comply with statutory provisions, such as 18 U.S.C. 1905 and 26 U.S.C. 7213, dealing with disclosure of information obtained from members of the public, identifying details, including the names and addresses of persons involved, and information of a confidential nature are deleted from the ruling.

(c) Revenue Rulings, other than those relating to the qualification of pension, annuity, profit-sharing, stock bonus, and bond purchase plans, apply retroactively unless the Revenue Ruling includes a specific statement indicating, under the authority of section 7805(b) of the Internal Revenue Code of 1954, the extent to which it is to be applied without retroactive effect. Where Revenue Rulings revoke or modify rulings previously published in the Bulletin the authority of section 7805(b) of the Code ordinarily is invoked to provide that the new rulings will not be applied retroactively to the extent that the new rulings have adverse tax consequences to taxpayers. Section 7805(b) of the Code provides that the Secretary of the Treasury or his delegate may prescribe the extent to which any ruling is to be applied without retroactive effect. The exercise of this authority requires an affirmative action. For the effect of Revenue Rulings on determination letters and opinion letters issued with respect to the qualification of pension, annuity, profit-sharing, stock bonus, and bond purchase plans, see paragraph (o) of § 601.201.

(d) Revenue Rulings published in the Bulletin do not have the force and effect of Treasury Department Regulations (including Treasury decisions), but are published to provide precedents to be used in the disposition of other cases, and may be cited and relied upon for that purpose. No unpublished ruling or decision will be relied on, used, or cited, by any officer or employee of the Service as a precedent in the disposition of other cases.

(e) Taxpayers generally may rely upon Revenue Rulings published in the Bulletin in determining the tax treatment of their own transactions and need not request specific rulings applying the principles of a published Revenue Ruling to the facts of their particular cases. However, since each Revenue Ruling represents the conclusion of the Service as to the application of the law to the entire state of facts involved, taxpayers, Service personnel, and others concerned are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. They should consider the effect of subsequent legislation, regulations, court decisions, and revenue rulings.

(f) Comments and suggestions from taxpayers or taxpayer groups on Revenue Rulings being prepared for publication in the Bulletin may be solicited, if justified by special circumstances. Conferences on Revenue Rulings being prepared for publication will not be granted except where the Service determines that such action is justified by special circumstances.

(vi) Statements of procedures which affect the rights or duties of taxpayers or other members of the public under the Code and related statutes will be published in the Bulletin in the form of Revenue Procedures. Revenue Procedures usually reflect the contents of internal management documents, but, where appropriate, they are also published to announce practices and procedures for guidance of the public. It is Service practice to publish as much of the internal management document or communication as is necessary for an

understanding of the procedure. Revenue Procedures may also be based on internal management documents which should be a matter of public knowledge even though not necessarily affecting the rights or duties of the public. When publication of the substance of a Revenue Procedure in the FEDERAL REGISTER is required pursuant to 5 U.S.C. 552, it will usually be accomplished by an amendment of the Statement of procedural Rules (26 CFR Part 601).

(vii) *(a)* The Assistant Commissioner (Technical) is responsible for administering the system for the publication of Revenue Rulings and Revenue Procedures in the Bulletin, including the standards for style and format.

(b) In accordance with the standards set forth in subdivision (iv) of this subparagraph, each Assistant Commissioner is responsible for the preparation and appropriate referral for publication of Revenue Rulings reflecting interpretations of substantive tax law made by his office and communicated in writing to taxpayers or field offices. In this connection, the Chief Counsel is responsible for the referral to the appropriate Assistant Commissioner, for consideration for publication as Revenue Rulings, of interpretations of substantive tax law made by his Office.

(c) In accordance with the standards set forth in subdivision (iv) of this subparagraph, each Assistant Commissioner and the Chief Counsel is responsible for determining whether procedures established by any office under his jurisdiction should be published as Revenue Procedures and for the initiation, content, and appropriate referral for publication of such Revenue Procedures.

(e) *Foreign tax law.* (1) The Service will accept the interpretation placed by a foreign tax convention country on its revenue laws which do not affect the tax convention. However, when such interpretation conflicts with a provision in the tax convention, reconsideration of that interpretation may be requested.

(2) Conferences in the National Office of the Service will be granted to representatives of American firms doing business abroad and of American citizens residing abroad, in order to discuss with them foreign tax matters with respect to those countries with which we have tax treaties in effect.

[32 FR 15990, Nov. 22, 1967, as amended at 33 FR 6826, May 4, 1968; 35 FR 16593, Oct. 24, 1970; 38 FR 4971, Feb. 23, 1973; 39 FR 15755, May 6, 1974; 41 FR 13611, Mar. 31, 1976; 41 FR 20883, May 21, 1976; 43 FR 17821, Apr. 26, 1978; 47 FR 56333, Dec. 16, 1982; 48 FR 15624, Apr. 12, 1983; 52 FR 26673, July 16, 1987]

§ 601.602 Tax forms and instructions.

(a) *Tax return forms and instructions.* The Internal Revenue Service develops forms and instructions that explain the requirements of the Internal Revenue Code and regulations. The Service distributes the forms and instructions to help taxpayers comply with the law. The tax system is based on voluntary compliance, and the taxpayers complete and return the forms with payment of any tax owed.

(b) *Other forms and instructions.* In addition to tax return forms, the Internal Revenue Service furnishes the public copies of other forms and instructions developed for use in complying with the laws and regulations. These forms and instructions lead the taxpayer step-by-step through data needed to accurately report information required by law.

(c) *Where to get forms and instructions.* The Internal Revenue Service mails tax return forms to taxpayers who have previously filed returns. However, taxpayers can call or write to district directors or directors of service centers for copies of any forms they need. These forms are described in Publication 676, *Catalog of Federal Tax Forms, Form Letters, and Notices,* which the public can buy from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

[46 FR 26055, May 11, 1981]

Subpart G—Records (Note)

NOTE: The regulations in Subpart G of 26 CFR Part 601 are superseded in part by 27 CFR Part 71 to the extent that it applied to alcohol, tobacco, firearms, and explosives records, formerly administered by the Internal Revenue Service and transferred to the Bureau of Alcohol, Tobacco and Firearms. (See 37 FR 13691, July 13, 1972.)

§ 601.701 Publicity of information.

(a) *General.* Section 552 of title 5 of the United States Code, as amended, prescribes rules regarding the publicizing of information by Federal agencies. Generally, such section divides agency information into three major categories and provides methods by which each category is to be made available to the public. The three major categories, for which the disclosure requirements of the Internal Revenue Service are set forth in § 601.702, are as follows:

(1) Information required to be published in the FEDERAL REGISTER:

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale; and

(3) Information required to be made available to any member of the public upon specific request.

The provisions of section 552 (Freedom of Information Act) are intended to assure the right of the public to information. Section 552 is not authority to withhold information from Congress. Subject only to the exemptions set forth in paragraph (b) of this section, the public generally or any member thereof shall be afforded access to information or records in the possession of the Internal Revenue Service. Such access shall be governed by the regulations in this subpart and those in 31 CFR Part 1 (relating to disclosure of Treasury Department records).

(b) *Exemptions*—(1) *In general.* Under 5 U.S.C. 552(b), the disclosure requirements of section 552(a), do not apply to certain matters which are:

(i) (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(ii) Related solely to the internal personnel rules and practices of the Internal Revenue Service which communicate to Internal Revenue Service personnel information or instructions relating to (A) enforcement tolerances and criteria with respect to the allocation of resources, (B) criteria for determining whether or not a case merits further enforcement action, (C) enforcement tactics, including but not limited to investigative techniques, internal security information, protection of identities of confidential sources of information used by the Service, and techniques for evaluating, litigating, and negotiating cases of possible violations of civil or criminal laws, or (D) use of parking facilities, regulation of lunch hours, statements of policy as to sick leave and the like;

(iii) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld (e.g., I.R.C. sections 6103, 6110, and 4424);

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intraagency memorandums or letters which would not routinely be available by law to a party other than an agency in litigation with the agency, including communications (such as internal drafts, memorandums between officials or agencies, opinions and interpretations prepared by agency staff personnel or consultants for the use of the agency, and records of the deliberations of the agency or staff groups) (A) which the Internal revenue Service has received from another agency, (B) which the Internal Revenue Service generates in the process of issuing an order, decision, ruling or regulation, drafting proposed legislation, or otherwise carrying out its functions and responsibilities or (C) which is the attorney work product of the Office of the Chief Counsel or is generated by that Office as attorney for the Internal Revenue Service;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Investigatory records compiled for law enforcement purposes, including records prepared in connection with civil, criminal or administrative Government litigation and adjudicative proceedings, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a

right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and in the case of a record compiled by a criminal investigation, or by an agency conducting a lawful national security intellegence investigation, confidential information furnished only by confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(viii) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(ix) Geological and geophysical information and data, including maps, concerning wells.

(2) *Application of exemptions.* Even though an exemption described in subparagraph (1) of this paragraph may be fully applicable to a matter in a particular case, the Internal Revenue Service may, if not precluded by law, elect under the circumstances of that case not to apply the exemption to such matter. The fact that the exemption is not applied by the Service in that particular case has no precedential significance as to the application of the exemption to such matter in other cases but is merely an indication that in the particular case involved the Service finds no compelling necessity for applying the exemption to such matter.

(3) *Segregable portions of records.* Any reasonably segregable portion of a record shall be provided to any person making a request for such record, after deletion of the portions which are exempt under 5 U.S.C. 552(b) (see paragraph (b)(1) of this section). The term ''reasonably segregable portion'' as used in this subparagraph means any portion of the record requested which is not exempt from disclosure under 5 U.S.C. 552(b), and which, after deletion of the exempt material, still conveys meaningful information which is not misleading.

[32 FR 15990, Nov. 22, 1967, as amended at 34 FR 6433, Apr. 12, 1969; 38 FR 4973, Feb. 23, 1973; 41 FR 19937, May 14, 1976; 41 FR 24704, June 18, 1976; 41 FR 48742, Nov. 5, 1976; 45 FR 7259, Feb. 1, 1980]

§ 601.702 Publication and public inspection.

(a) *Publication in the Federal Register*—(1) *Requirement.* Subject to the application of the exemptions described in paragraph (b)(1) of § 601.701 and subject to the limitations provided in subparagraph (2) of this paragraph, the Internal Revenue Service is required under 5 U.S.C. 552(a)(1) to separately state and currently publish in the FEDERAL REGISTER for the guidance of the public the following information:

(i) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions, from the Service;

(ii) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures which are available;

(iii) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(iv) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Service; and

(v) Each amendment, revision, or repeal of matters referred to in subdivisions (i) through (iv) of this subparagraph.

Pursuant to the foregoing requirements, the Commissioner publishes in the FEDERAL REGISTER from time to time a statement, which is not codified in this chapter, on the organization and functions of the Internal Revenue Service, and such amendments as are

needed to keep the statement on a current basis. In addition, there are published in the FEDERAL REGISTER the rules set forth in this part (Statement of Procedural Rules), such as those in Subpart E of this part, relating to conference and practice requirements of the Internal Revenue Service; the regulations in Part 301 of this chapter (Procedure and Administration Regulations); and the various substantive regulations under the Internal Revenue Code of 1986, such as the regulations in Part 1 of this chapter (Income Tax Regulations), in Part 20 of this chapter (Estate Tax Regulations) and, in Part 31 of this chapter (Employment Tax Regulations).

(2) *Limitations*—(i) *Incorporation by reference in the Federal Register*. Matter which is reasonably available to the class of persons affected thereby, whether in a private or public publication, will be deemed published in the FEDERAL REGISTER for purposes of subparagraph (1) of this paragraph when it is incorporated by reference therein with the approval of the Director of the Federal Register. The matter which is incorporated by reference must be set forth in the private or public publication substantially in its entirety and not merely summarized or printed as a synopsis. Matter, the location and scope of which are familiar to only a few persons having a special working knowledge of the activities of the Internal Revenue Service, may not be incorporated in the FEDERAL REGISTER by reference. Matter may be incorporated by reference in the FEDERAL REGISTER only pursuant to the provisions of 5 U.S.C. 552(a)(1) and 1 CFR Part 20.

(ii) *Effect of failure to publish*. Except to the extent that a person has actual and timely notice of the terms of any matter referred to in subparagraph (1) of this paragraph which is required to be published in the FEDERAL REGISTER, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to subdivision (i) of this subparagraph. Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or affect a person's rights.

(b) *Public inspection and copying*—(1) *In general*. Subject to the application of the exemptions described in paragraph (b)(1) of § 601.701, the Internal Revenue Service is required under 5 U.S.C. 552(a)(2) to make available for public inspection and copying or, in the alternative, to promptly publish and offer for sale the following information:

(i) Final opinions, including concurring and dissenting opinions, and orders, if such opinions and orders are made in the adjudication of cases;

(ii) Those statements of policy and interpretations which have been adopted by the Internal Revenue Service but are not published in the FEDERAL REGISTER; and

(iii) Its administrative staff manuals and instructions to staff that affect a member of the public.

The Internal Revenue Service is also required by 5 U.S.C. 552(a)(2) to maintain and make available for public inspection and copying current indexes identifying any matter described in (b)(1) (i) through (iii) of this paragraph which is issued, adopted, or promulgated after July 4, 1967, and which is required to be made available for public inspection or published. In addition, the Internal Revenue Service will also promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the FEDERAL REGISTER that the publication would be unnecessary and impracticable, in which case the Internal Revenue Service will nonetheless provide copies of such indexes on request at a cost not to exceed the direct cost of duplication. No matter described in (b)(1) (i) through (iii) of this paragraph which is required by this section to be made available for public inspection or published may be relied upon, used, or cited as precedent by the Internal Revenue Service against a party other than an agency unless such party has actual and timely notice of the terms of such matter or unless the matter has been indexed and either made available for inspection or published, as provided by this subparagraph. This subparagraph applies only to matters

which have precedential significance. It does not apply, for example, to any ruling or advisory interpretation issued to a taxpayer on a particular transaction or set of facts which applies only to that transaction or set of facts. Rulings, determination letters, and technical advice memorandums are open to public inspection and copying pursuant to section 6110 of the Code and not pursuant to 5 U.S.C. 552. This subparagraph does not apply to matters which have been made available pursuant to paragraph (a) of this section.

(2) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, the Internal Revenue Service will, in accordance with 5 U.S.C. 552(a)(2), delete identifying details contained in any matter described in subparagraphs (1) (i) through (iii) of this paragraph before making such matter available for inspection or publishing it. However, in every case where identifying details are so deleted, the justification for the deletion must be explained in writing. The written justification for deletion will be placed as a preamble to the document from which the identifying details have been deleted, except in the case of any matter which is published in the Internal Revenue Bulletin. An introductory statement will be placed in each Internal Revenue Bulletin providing that identifying details, including the names and addresses of persons involved, and information of a confidential nature are deleted to prevent unwarranted invasions of personal privacy and to comply with statutory provisions, such as section 6103 of the Internal Revenue Code.

(3) *Public reading rooms*—(i) *In general.* The National Office and each regional office of the Internal Revenue Service will provide a reading room or reading area where the matters described in paragraphs (b)(1) (i) through (iii) of this section which are required by such paragraph to be made available for public inspection or published, and the current indexes to such matters, will be made available to the public for inspection and copying. Indexes of such materials issued by offices other than the National Office will be maintained in the reading room of the region of issuance as well as in the National Office reading room, but the material itself will be available only in the regional reading room. Copies of materials described in paragraph (b)(1) (i) through (iii) of this section which are controlled by officers in the National Office (see paragraph (g) of this section) will not be made available in regional office reading rooms. The reading rooms will contain other matters determined to be helpful for the guidance of the public, including a complete set of rules and regulations (except those pertaining to alcohol, tobacco, firearms, and explosives) contained in this title, any Internal Revenue matters which may be incorporated by reference in the FEDERAL REGISTER (but not a copy of the FEDERAL REGISTER so doing) pursuant to paragraph (a)(2)(i) of this section, a set of Cumulative Bulletins, and copies of various Internal Revenue Service publications, such as the description of forms or publications contained in Publication No. 676. Fees will be charged for copying materials in the reading rooms as provided in paragraph (f) of this section. The public will not be allowed to remove any record from a reading room.

(ii) *Addresses of public reading rooms.* The addresses of the reading rooms are as follows:

NATIONAL OFFICE

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

Location: Same as mailing address.

NORTH ATLANTIC REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 120 Church Street, 11th Floor, New York, NY 10007.

Location: Same as mailing address.

MID-ATLANTIC REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 600 Arch Street, Philadelphia, PA 19105.

Location: Same as mailing address.

SOUTHEAST REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 275 Peachtree Street, NE., Room 342, Atlanta, GA 30043.

Location: Same as mailing address.

MIDWEST REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 230 Dearborn Street, Room 1980, Chicago, IL 60604.

Location: Same as mailing address.

CENTRAL REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 201 W. Fourth Street, Covington, KY 41019.

Location: Same as mailing address.

SOUTHWEST REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 1100 Commerce Street, Room 11B15, Dallas, TX 75242.

Location: Same as mailing address.

WESTERN REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 450 Golden Gate Avenue, Room 2307, San Francisco, CA 94102.

Location: Same as mailing address.

(iii) *Copying facilities.* The National Office and each regional office will provide facilities whereby a person may obtain copies of material located on the shelves of the reading rooms. (For schedule of fees for copying see paragraph (f)(5)(iii) of this section.)

(iv) *Inability to use public reading rooms.* If persons are unable or unwilling to visit a reading room in person but wish to inspect identifiable reading room material, they may request permission to inspect such material at any office of the Internal Revenue Service. To the extent that requested material is available for inspection at the reading rooms and is also readily available for inspection at the office where the request is made, such material will promptly be made available for inspection at such office to the person making the request for inspection and, where facilities are available, for copying in accordance with the schedule of fees prescribed by subdivision (iii) of this subparagraph. Copies of the requested material may also be mailed to such person by such office upon request. If the requested reading room material is not readily available for inspection at the office where the request is made, then the request will be referred by such office to one of the reading rooms of the Internal Revenue Service.

(c) *Specific requests for other records*—(1) *In general.* Subject to the application of the exemptions described in paragraph (b)(1) of § 601.701, the Internal Revenue Service will, in conformance with 5 U.S.C. 552(a)(3), make reasonably described records available to a person making a request for such records which conforms in every respect with the rules and procedures set forth in this subpart. This paragraph applies only to records in being which are in the possession or control of the Internal Revenue Service.

(2) *Requests for records not in control of the Internal Revenue Service.* (i) Where the request is for a record which is determined to be in the possession or under the control of a constituent unit of the Department of the Treasury other than the Internal Revenue Service the request for such record will immediately be transferred to the appropriate constituent unit and the requester notified to that effect. Such referral will not be deemed a denial of access within the meaning of these regulations. The constituent unit of the Department to which such referral is made will treat such request as a new request addressed to it and the time limits for response set forth in 31 CFR Part 1.5 (g), (h), and (i) (relating to disclosure of Treasury Department records) shall commence when the referral is received by the designated office or officer of the constituent unit. Where the request is for a record which is determined not to be in the possession or control of any constituent unit of the Department of the Treasury, the requester will be so advised and the request will be returned to the requester.

(ii) Where the record requested was created by another agency or Department of the Treasury constituent unit (*i.e.,* in its control) and a copy thereof is in the possession of the Internal Revenue Service, the Internal Revenue Service official to whom the request is delivered shall refer the request to the agency or constituent unit which originated the record for direct reply to the requester. The requester shall be informed of such referral. This referral

shall not be considered a denial of access within the meaning of these regulations. However, where the record is determined to be exempt from disclosure under 5 U.S.C. 552, the referral need not be made, but the Internal Revenue Service shall inform the originating agency or constituent unit of its determination. Where notifying the requester of its referral may cause a harm to the originating agency or constituent unit which would enable the originating agency or constituent unit to withhold the record under 5 U.S.C. 552, then such referral need not be made. In both of these circumstances, the Internal Revenue Service official to whom the request is delivered shall process the request in accordance with the procedures set forth in this subpart.

(iii) When a request is received for a record created by the Internal Revenue Service (*i.e.*, in its possession and control) that includes information originated by another agency or Department of the Treasury constituent unit, the record shall be referred to the originating agency or constituent unit for review, coordination, and concurrence. The Internal Revenue Service official to whom the request is delivered shall not issue its determination with respect to that record without prior consultation with the originating agency or constituent unit.

(3) *Form of request.* The initial request for records must—

(i) Be made in writing and signed by the person making the request,

(ii) State that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or regulations thereunder,

(iii) Be addressed to and mailed or hand delivered to the office of the Internal Revenue Service official who is responsible for the control of the records requested (see paragraph (g) of this section for the responsible officials and their addresses), regardless of where such records are maintained; if the person making the request does not know the official responsible for the control of the records being requested, the request should be addressed to and mailed or hand delivered to the office of the director of the Internal Revenue Service district office in the district where the requester resides.

(iv) Reasonably describe the records in accordance with subparagraph (4)(i) of this paragraph,

(v) In the case of a request for records the disclosure of which is limited by statute or regulations (as, for example, the Privacy Act (5 U.S.C. 552a), section 6103 of the Internal Revenue Code of 1986, or regulations thereunder), establish the identity and the right of the person making the request to the disclosure of the records in accordance with paragraph (c)(4)(ii) of this section,

(vi) Set forth the address where the person making the request desires to be notified of the determination as to whether the request will be granted,

(vii) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them,

(viii) State the firm agreement of the requester to pay the fees for search and duplication ultimately determined in accordance with paragraph (f) of this section, or request that such fees be reduced or waived and state the justification for such request, and

(ix) Identify the category of the requester and state how the records will be used, as required by paragraph (f)(3) of this section.

Where the initial requests, rather than stating a firm agreement to pay the fees ultimately determined in accordance with paragraph (f) of this section, place an upper limit on the amount the requesters agree to pay, which upper limit is deemed likely to be lower than the fees estimated to ultimately be due, or where the requesters ask for an estimate of the fees to be charged, the requesters shall be promptly advised of the estimate of fees and asked to agree to pay such amount. Where the initial requests include a request for reduction or waiver of fees, the Internal Revenue Service officials responsible for the control of the requested records (or their delegates) will determine whether to grant the requests for reduction or waiver in accordance with paragraph (f) of this section and notify the requesters of their decisions and, if their decisions result in the requesters being liable for all or part of the fees normally due, ask the requesters to agree to pay the amounts so determined. The

requirements of this subparagraph will not be deemed met until the requesters have explicitly agreed to pay the fees applicable to their requests for records, if any, or have made payment in advance of the fees estimated to be due. In addition, requesters are advised that only requests for records which fully comply with the requirements of this subparagraph can be processed in accordance with this section. Requesters will be promptly notified in writing of any requirements which have not been met or any additional requirements to be met. However, every effort will be made to comply with the requests as written.

(4) *Reasonable description of records; identity and right of the requester.* (i)(A) The request for records must describe the records in reasonably sufficient detail to enable the Internal Revenue Service employees who are familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the Internal Revenue Service. While no specific formula for a reasonable description of a record can be established, the requirement will generally be satisfied if the requester gives the name, subject matter, location, and years at issue, of the requested records. If the request seeks records pertaining to pending litigation, the request should indicate the title of the case, the court in which the case was filed, and the nature of the case. However, it is suggested that the person making the request furnish any additional information which will more clearly identify the requested records. Where the requester does not reasonably describe the records being sought, the requester shall be afforded an opportunity to refine the request. Such opportunity may, where desirable, involve a conference with knowledgeable Internal Revenue Service personnel. The reasonable description requirement will not be used by officers or employees of the Internal Revenue as a device for improperly withholding records from the public.

(B) The Internal Revenue Service will make every reasonable effort to comply fully with all requests for access to records subject only to any applicable exemption set forth in § 601.701(b)(1). However, in any situation in which it is determined that a request for voluminous records would unduly burden and interfere with the operations of the Internal Revenue Service, the person making the request will be asked to be more specific and to narrow the request, and to agree on an orderly procedure for the production of the requested records, in order to satisfy the request without disproportionate adverse effects on Internal Revenue Service operations.

(ii) In the case of records containing information with respect to particular persons the disclosure of which is limited by statute or regulations, persons making requests shall establish their identity and right to access to such records. Persons requesting access to such records which pertain to themselves may establish their identity by—

(A) The presentation of a single document bearing a photograph (such as a passport or identification badge), or the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card), in the case of a request made in person,

(B) The submission of the requester's signature, address, and one other identifier (such as a photocopy of a driver's license) bearing the requester's signature, in the case of a request by mail, or

(C) The presentation in person or the submission by mail of a notarized statement swearing to or affirming such person's identity.

Additional proof of persons' identity shall be required before the requests will be deemed to have met the requirement of paragraph (c)(3)(v) of this section if it is determined that additional proof is necessary to protect against unauthorized disclosure of information in a particular case. Persons who have identified themselves to the satisfaction of Internal Revenue Service officials pursuant to this subdivision shall be deemed to have established their right to access records pertaining to themselves. Persons requesting records on behalf of or pertaining to another person must provide adequate proof of the legal relationship under which they assert the right to

access the requested records before the requirement of paragraph (c)(3)(v) of this section will be deemed met. In the case of an attorney-in-fact, the requester shall furnish an original of a properly executed power of attorney together with one other identifier bearing the signature of the person executing such power of attorney. In the case of a corporation, if the requester has the authority to legally bind the corporation under applicable state law, such as its president or chief executive officer, then a written statement that the person making the request on behalf of the corporation, on corporate letterhead, shall be sufficient. If the requester is an officer or an employee of a corporation, then such person shall furnish a certification by one of the corporation's officers (other than the requester) that the person making the request on behalf of the corporation is properly authorized to make such request. If the requester is other than one of the above, then such person shall furnish a resolution by the corporation's board of directors providing that the person making the request on behalf of the corporation is properly authorized to make such a request. A person requesting access to records of a one-man corporation or a partnership shall provide a notarized statement that the requester is in fact an officer or official of the corporation or a member of the partnership.

(5) *Date of receipt of request.* Requests for records and any separate agreement to pay, final notification of waiver of fees, or letter transmitting prepayment shall be promptly stamped with the date of delivery to or dispatch by the office of the Internal Revenue Service officials responsible for the control of the records requested (or their delegates). The latest of such stamped dates will be deemed for purposes of this section to be the date of receipt of the request, provided that the requirements of paragraph (c)(3) (i) through (vii) of this paragraph have been satisfied, and, where applicable—

(i) The requester has agreed in writing, by executing a separate contract or otherwise, to pay the fees for search, duplication, and review determined due in accordance with paragraph (f) of this section, or

(ii) The fees have been waived in accordance with paragraph (f) of this section, or

(iii) Payment in advance has been received from the requester.

As soon as the date of receipt has been established as provided above, the requester shall be informed and advised when a response may be expected within the time limits specified in paragraphs (c) (7) and (8) of this section, unless extended as provided in paragraph (9) of this section, and the title of the officer responsible for such response.

(6) *Search for records requested.* Upon the receipt of a request, search services will be performed by Internal Revenue Service personnel to identify and locate the requested records. Search time includes any and all time spent looking for material responsive to the request, including page-by-page or line-by-line identification of material within records. However, where duplication of an entire record would be less costly than a line-by-line identification, duplication should be substituted for this kind of search. With respect to records maintained in computerized form a search will include services functionally analogous to search for records which are maintained in a conventional form. However, the Internal Revenue Service is not required under 5 U.S.C. 552 to tabulate or compile information for the purpose of creating a record.

(7) *Initial determination*—(i) *In general.* The Director of the Office of Disclosure or his/her delegate shall have the authority to make initial determinations with respect to all requests for records of the Internal Revenue Service. With the exception of records which are controlled by the Assistant Commissioner (Inspection), the Director of the Internal Revenue Service Data Center, the Assistant Commissioner (International), or the Director of Practice, the Director of the Office of Disclosure or his/her delegate shall have the sole authority to make such determinations with respect to records controlled by the National Office. Except where the Director of the Office of Disclosure or his/her delegate has such sole authority, the initial determination as to whether to grant the request for

records may be made either by the Director of the Office of Disclosure or by the Internal Revenue Service officials responsible for the control of the records requested or their delegates (see paragraph (g) of this section), including those officials mentioned in the preceding sentence. The initial determination will be made and notification thereof mailed within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (c)(5) of this section or the requester otherwise agrees to an extension of the 10-day time limitation.

(ii) *Granting of request.* If it is determined that the request is to be granted, and if the person making the request desires a copy of the requested records, a statement of fees, if any, in accordance with paragraph (f) of this section, will be mailed to the requester, requesting such payment prior to release of the records determined to be available. Upon receipt of such fees, the Internal Revenue Service official responsible for the control of the records (or his/her delegate) will promptly mail such copies to the requester, with any explanation of the deletions or withholdings, as applicable. However, if no fees are due, then a copy of the available records will be promptly mailed to the requester. In the case of a request for inspection the requester will be notified in writing of the determination, when and where the requested records may be inspected and of the fees involved in complying with the request. Any fees involved in complying with the request for inspection of records shall be submitted prior to making the records available for inspection.

The records will promptly be made available for inspection, at the time and place stated, normally at the appropriate office where the records requested are controlled. However, if the person making the request has expressed a desire to inspect the records at another office of the Internal Revenue Service, every reasonable effort will be made to comply with the request. Records will be made available for inspection at such reasonable and proper times as not to interfere with their use by the Internal Revenue Service or to exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The person making the request will not be allowed to remove the records from the office where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies will be furnished upon payment of the established fees prescribed by paragraph (f) of this section.

(iii) *Denial of request.* If it is determined that the request for records should be denied (whether in whole or in part or subject to conditions or exceptions), the person making the request will be so notified by mail. The letter of notification will specify the city or other location where the requested records are situated, contain a brief statement of the grounds for not granting the request in full, set forth the name and title or position of the official responsible for the denial, and advise the person making the request of the right to appeal to the Commissioner in accordance with paragraph (c)(8) of this section.

(iv) *Inability to locate and evaluate within time limits.* Where the records requested cannot be located and evaluated within the initial 10-day period or any extension thereof in accordance with paragraph (c)(9) of this section, the search for the records or evaluation will continue, but the requesters will be so notified, advised that they may consider such notification a denial of their requests for records, and provided with the address to which an administrative appeal may be delivered. However, the requesters may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. Such voluntary extension of time will not constitute a waiver of the requesters' right to appeal any denial of access ultimately made or their right to appeal in the event of failure to comply with the time extension granted.

(8) *Administrative appeal.* The requester may submit an administrative appeal to the Commissioner at any time within 35 days after the date of

any notification described in paragraph (c)(7) (iii) or (iv) of this section or after receipt of an adverse determination of the requester's category described in paragraph (f)(3) of this section, or the date of the letter transmitting the last records released, whichever is later. The letter of appeal shall—

(i) Be made in writing and signed by the requester,

(ii) Be addressed and mailed to the Office of the Commissioner of Internal Revenue: to expedite delivery, requests made by mail should be addressed to—

Freedom of Information Appeal, Commissioner of Internal Revenue, c/o Ben Franklin Station, P.O. Box 929, Washington, DC 20044, or

if hand delivered, delivery should be made to the Office of the Director, Disclosure Litigation Division, Chief Counsel, National Office of the Internal Revenue Service, 1111 Constitution Avenue, Washington, DC 20224.

(iii) Reasonably describe the records requested to which the appeal pertains in accordance with paragraph (c)(4)(i) of this paragraph,

(iv) Set forth the address where the appellant desires to be notified of the determination on appeal,

(v) Specify the date of the request, and the office to which the request was submitted and, where possible, enclose a copy of the initial request and the initial determination being appealed, and

(vi) Petition the Commissioner to grant the request for records and state any arguments in support thereof.

Appeals will be promptly stamped with the date of their delivery to the Office of the Director, Disclosure Litigation Division, and the later of this stamped date or the stamped date of a document submitted subsequently which supplements the original appeal so that the appeal satisfies the requirements set forth in paragraphs (c)(8) (i) through (vi) of this section will be deemed by the Internal Revenue Service to be the date of their receipt for all purposes of this section. The Commissioner or his/her delegate will acknowledge receipt of the appeal and advise the requester of the date of receipt and when a response is due in accordance with this paragraph. If an appeal fails to satisfy any of such requirements the person making the request will be promptly advised in writing of the additional requirements to be met. The determination to affirm the initial denial (in whole or in part) or to grant the request for records will be made and notification of the determination mailed within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal unless extended pursuant to paragraph (c)(9)(i) of this section. If it is determined that the appeal from the initial denial is to be denied (in whole or in part), the requester will be notified in writing of the denial, the reasons therefor, of the name and title or position of the official responsible for the denial on appeal, and of the provisions of 5 U.S.C. 552(a)(4) for judicial review of that determination. If a determination cannot be made within the 20-day period (or extension thereof pursuant to paragraph (c)(9)(i) of this section or by grant of the requester) the requester shall be promptly notified in writing that the determination will be made as soon as practicable but that the requester is nonetheless entitled to commence an action in a district court as provided in paragraph (c)(11) of this section. However, the requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to decide the appeal. Such voluntary extension shall not constitute a waiver of the right of the requester ultimately to commence an action in a United States district court.

(9) *Time extensions*—(i) *10-day extension.* In unusual circumstances, the time limitations specified in paragraphs (7) and (8) of this section may be extended by written notice from the official charged with the duty of making the determination to the person making the request or appeal setting forth the reasons for such extension and the date on which the determination is expected to be dispatched. Any such extension or extensions of time provided by statute shall not cumulatively total more than 10 working days. If an extension pursuant to this subparagraph is invoked in connection with an initial determination any unused days of the

extension may be invoked in connection with the determination on administrative appeal by written notice from the official who is to make the appellate determination to the requester. If no extension is sought for the initial determination, the 10-day extension may be added to the ordinary 20-day period for appellate review. As used in this paragraph, ''unusual circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular request, the following:

(A) The need to search for and collect the requested records from field facilities or other establishments in buildings that are separate from that of the office processing the request,

(B) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request, or related requests, or

(C) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or with another constituent unit of the Department of the Treasury or among two or more components of the Internal Revenue Service (other than the Disclosure Litigation Division of the Office of the Chief Counsel or the Office of Disclosure) having substantial subject-matter interest therein. Consultations with personnel of the Department of Justice, acting in their capacity as legal counsel to the executive departments with respect to requests for records under 5 U.S.C. 552, do not constitute a basis for an extension under this paragraph (c)(9)(i)(C).

(ii) *Extension by judicial review.* If the Internal Revenue Service fails to comply with the time limitations specified in paragraph (c) (7) or (8) of this section and the person making the request initiates a suit in accordance with paragraph (c)(11) of this section, the court in which the suit was initiated may retain jurisdiction and allow the Internal Revenue Service additional time to review its records, provided that the Internal Revenue Service demonstrates (A) the existence of exceptional circumstances, and (B) the exercise of due diligence in responding to the request.

(10) *Failure to comply.* If the Internal Revenue Service fails to comply with the time limitations specified in paragraphs (c) (7), (8), or (9)(i) of this section, any persons making requests for records satisfying the requirements of subdivisions (i) through (ix) of paragraph (c)(3) of this section, shall be deemed to have exhausted their administrative remedies with respect to such requests. Accordingly, these persons may initiate suit in accordance with paragraph (c)(11) of this section.

(11) *Judicial review.* If a request for records is denied upon appeal pursuant to paragraph (c)(8) of this section, or if no determination is made within the 10-day or 20-day periods specified in paragraphs (c) (7) and (8) of this section, or the period of any extension pursuant to paragraph (c)(9)(i) of this section, or by grant of the requester, respectively, the person making the request may commence an action in a U.S. district court in the district in which the requester resides, in which the requester's principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4)(B). The statute authorizes an action only against the agency. With respect to records of the Internal Revenue Service, the agency is the Internal Revenue Service, not an officer or an employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Delivery of process upon the Internal Revenue Service must be directed to the Commissioner of Internal Revenue, Attention: CC:GLS, 1111 Constitution Avenue, NW., Washington, DC 20224. The Internal Revenue Service will serve an answer or otherwise plead to any complaint made under this paragraph within 30 days after service upon it, unless the court otherwise directs for good cause shown. The district court will determine the matter *de novo,* and may examine the contents of the Internal Revenue Service records in question in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions described in paragraph (b)(1) of § 601.701. The burden

will be upon the Internal Revenue Service to sustain its action in not making the requested records available. The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the person making the request in any case in which the complainant has substantially prevailed.

(12) *Preservation of records.* All correspondence relating to the requests received by the Internal Revenue Service under this chapter, and all records processed pursuant to such requests, shall be preserved, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under 5 U.S.C. 552.

(13) *Proceeding against officer or employee.* Under 5 U.S.C. 552(a)(4)(F), the Special Counsel is required, upon the issuance of a specified finding by a court, to initiate a proceeding to determine whether disciplinary action is warranted against an officer or employee of the Internal Revenue Service who was primarily responsible for a withholding of records. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the Special Counsel and the Secretary of the Treasury, and shall send copies of the findings and recommendations to the officer or employee or his/her representative. (See 5 CFR Part 294.1201–1207 (relating to disciplinary actions by the Special Counsel).)

(d) *Rules for disclosure of certain specified matters*—(1) *Inspection of tax returns and return information.* The inspection of returns and return information is governed by the provisions of the internal revenue laws and regulations thereunder promulgated by the Secretary of the Treasury. See section 6103 and the regulations thereunder. Written requests for this information shall be made in accordance with Rev. Proc. 66–3, as modified by Rev. Proc. 84–71, 1984–2 C.B. 735 and Rev. Proc. 85–56, 1985–2 C.B. 739.

(2) *Record of seizure and sale of real estate.* Subject to the rules on disclosure set forth in section 6103, Record 21, Part 2, ''Record of seizure and sale of real estate'', is open for public inspection in offices of district directors and copies are furnished upon application. However, Record 21 does not list real estate seized for forfeiture under the internal revenue laws (see IRC 7302).

(3) *Information returns of certain tax-exempt organizations and certain trusts.* Information furnished on Form 990, Form 1041–A, and on the annual report by private foundations pursuant to sections 6033, 6034, 6056 (as in effect before its repeal by Pub. L. 96–603), is open to public inspection. This information will be made available for public inspection in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, as well as in the office of any district director. Copies of these records may, upon written request, be obtained from these offices or from the office of any service center director. The applicability of this subparagraph is subject to the rules on disclosure set forth in section 6104(b) and § 301.6104(b)–1.

(4) *Applications of certain organizations for tax exemption.* Subject to the rules on disclosure set forth in section 6104(a) and § 301.6104 (a)–1, (a)–5, and (a)–6, applications and certain papers submitted in support of such applications, filed by organizations described in section 501 (c) or (d) and determined to be exempt from taxation under section 501(a), and any letter or other document issued by the Internal Revenue Service with respect to such applications, will be made available for public inspection, upon written request, in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or the office of any district director.

(5) *Applications with respect to certain deferred compensation plans and accounts.* Applications and papers submitted in support of such applications, filed after September 2, 1974, with respect to the qualification of a pension, profit sharing, or stock bonus plan under section 401(a), 403(a), or 405(a), an individual retirement account described in section 408(a), an individual

retirement annuity described in section 408(b), or with respect to the exemption from tax of an organization forming part of such a plan or account, and any documents issued by the Internal Revenue Service dealing with such qualification or exemption, are open to public inspection. Such material will be made available for public inspection in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, as well as in the office of any district director regardless of where the applications are filed. This subparagraph shall not apply with respect to plans having not more than 25 plan participants and its applicability is subject to the rules set forth in section 6104(a) and §301.6104 (a)–1 through (a)–6 of this chapter.

(6) *Publication of statistics of income.* Statistics with respect to the operation of the income tax laws are published annually in accordance with section 6108 and §301.6108–1 of this chapter.

(7) *Comments received in response to a notice of proposed rule making.* Written comments received in response to a notice of proposed rule making may be inspected, upon written request, by any person upon compliance with the provisions of this paragraph. Comments which may be inspected are located in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. The request to inspect comments must be in writing and signed by the person making the request and should be addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, DC 20224. Upon delivery of such a written request to the place where the comments are located during the regular business hours of that office, the person making the request may inspect those comments that are the subject of the request. Copies of comments may be made in the Freedom of Information Reading Room by the person making the request or may be requested, in writing, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, DC 20224. The person making the request for copies should allow a reasonable time for processing the request. The provisions of paragraph (f)(5) of this section, relating to fees, shall apply with respect to requests made in accordance with this subparagraph.

(8) *Accepted offers in compromise.* A copy of the Abstract and Statement and the attached narrative report for each accepted offer in compromise with respect to any liability for a tax imposed by Title 26 will be made available for inspection and copying in the following locations:

(i) Except for Exempt Organizations, in the district office (or the Office of the Assistant Commissioner (International)) having jurisdiction over the place in which the taxpayer resides and

(ii) For Exempt Organizations, in the key district which has jurisdiction over the particular organization.

(9) *Public inspection of written determinations.* Certain rulings, determination letters, and technical advice memorandums are open to public inspection pursuant to section 6110 of the Code.

(e) *Other disclosure procedures.* For procedure to be followed by officers and employees of the Internal Revenue Service upon receipt of a request or demand for certain internal revenue records or information the disclosure procedure for which is not covered by this section, see §301.9000–1 of this chapter.

(f) *Fees for services*—(1) *In general.* The fees to be charged for search, duplication, and review services performed by the Internal Revenue Service, whether or not such services are performed pursuant to the Freedom of Information Act or the regulations thereunder, shall be determined and collected in accordance with the provisions of this paragraph. A fee shall not be charged for monitoring a requester's inspection of records which contains exempt matter. The Internal Revenue Service may recover the applicable fees even if there is ultimately no disclosure of records. Should services other than the services described in this paragraph be requested and rendered, appropriate fees will be established by the Commissioner or his/her delegate, and imposed and collected pursuant to 31 U.S.C. 483(a), subject, however, to the constraint imposed by 5 U.S.C. 552(a)(4)(A).

(2) *Waiver or reduction of fees.* The fees authorized by this paragraph may be waived or reduced—

(i) At the discretion of any Internal Revenue Service official—

(A) Who is authorized to make the initial determination pursuant to paragraph (c)(7) of this section, in the case of a record which is not located for any reason, or

(B) Who determines any portion of the requested record to be exempt from disclosure; or

(ii) On a case-by-case basis in accordance with this subdivision by any Internal Revenue Service official who is authorized to make the initial determination pursuant to paragraph (c)(7) of this section, provided such waiver or reduction has been requested in writing. Fees will be waived or reduced by such official when it is determined that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Internal Revenue Service and is not primarily in the commercial interest of the requester. Such officials shall consider several factors, including, but not limited to, those set forth below, in determining requests for waiver or reduction of fees—

(A) Whether the subject of the releasable records concerns the agency's operations or activities;

(B) Whether the releasable records are likely to contribute to an understanding of the agency's operations or activities;

(C) Whether the releasable records are likely to contribute to the general public's understanding of the agency's operations or activities (*e.g.*, how will the requester convey the information to the general public);

(D) The significance of the contribution to the general public's understanding of the agency's operations or activities (*e.g.*, is the information contained in the releasable records already available to the general public);

(E) The existence and magnitude of the requester's commercial interest, as that term is used in paragraph (f)(3)(i)(A) of this section, being furthered by the releasable records; and

(F) Whether the magnitude of the requester's commercial interest is sufficiently large in comparison to the general public's interest.

(iii) Requesters asking for reduction or waiver of fees must state the reasons why they believe disclosure meets the standards set forth in paragraph (f)(2)(ii) of this section.

(iv) Requesters who base their request for reduction or waiver of fees solely on the basis of their indigency will not be entitled to a reduction or waiver of fees.

(v) Normally, no charge will be made for providing records to Federal, state, or foreign governments, international governmental organizations, or local governmental agencies or offices thereof. The initial request for waiver or reduction of fees should be addressed to the official of the Internal Revenue Service to whose office the request for disclosure is delivered pursuant to paragraph (c)(3)(iii) of this section. Appeals from denials of requests for waiver or reduction of fees shall be decided by the Commissioner in accordance with the criteria set forth in subdivision (iii) of this subparagraph. Appeals shall be addressed in writing to the Office of the Commissioner within 35 days of the denial of the initial request for waiver or reduction and shall be decided promptly. See paragraph (c)(8) of this section for the appropriate address. Upon receipt of the determination on appeal to deny a request for waiver of fees, the requester may initiate an action in U.S. district court to review the request for waiver of fees. In such actions, the courts will consider the matter *de novo*, except that the court's review of the matter shall be limited to the record before the Internal Revenue Service official to whose office the request for waiver is delivered. Upon receipt of the determination on appeal to deny a request for reduction of fees, the requester may initiate an action in U.S. district court to review the request for reduction of fees. In such actions, the courts will consider the matter under the arbitrary and capricious standard.

(3) *Categories of requesters*—(i) *In general.* A request for records under this section shall include an attestation,

under penalty of perjury, as to the status of the requester solely for use by the Internal Revenue Service official to whose office the request is delivered in determining the appropriate fees to be assessed. Requesters shall attest that they fall into one of the categories set forth below—

(A) *Commercial use requester*. Any person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(B) *Media requester*. Any person actively gathering news for an entity that is organized and operated to publish or broadcast news (*i.e.*, information about current events or of current interest to the public) to the public. News media entities include, but are not limited to, television or radio stations broadcasting to the public at large, publishers of periodicals, to the extent they disseminate news, who make their periodicals available for purchase or subscription by the general public, and telecommunications. Free lance journalists shall be included as media requesters if they can demonstrate a solid basis for expecting publication through a qualifying news entity (*e.g.*, publication contract, past publication record). Specialized periodicals, although catering to a narrower audience, may be considered media requesters so long as they are available to the public generally, via newsstand or subscription.

(C) *Educational institution requester*. Any person who, on behalf of a preschool, public or private elementary or secondary school, institution of undergraduate or graduate higher education, institution or professional or vocational education, which operates a program or programs of scholarly research, seeks records in furtherance of the institution's scholarly research and is not for a commercial use.

(D) *Noncommercial scientific institution requester*. Any person on behalf of an institution that is not operated on a commercial basis, that is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(E) *Other requester*. Any requester who falls outside the above categories.

(ii) Allowable charges—

(A) *Commercial use requesters*. Records shall be provided for the cost of search, duplication, and review (including doing all that is necessary to excise and otherwise prepare records for release) of records. Commercial use requesters are not entitled to 2 hours of free search time or 100 pages of duplication.

(B) *Media requesters*. Records shall be provided for the cost of duplication alone, excluding fees for the first 100 pages.

(C) *Educational institution requesters*. Records shall be provided for the cost of duplication alone, excluding fees for the first 100 pages.

(D) *Noncommercial scientific institution requesters*. Records shall be provided for the cost of duplication alone, excluding fees for the first 100 pages.

(E) *Other requesters*. Requesters who do not fit into any of the above categories shall be charged fees that will cover the full direct cost of searching for and duplicating records, except that the first 2 hours of search time and first 100 pages of duplication shall be furnished without charge.

(4) *Avoidance of unexpected fees*. In order to protect requesters from unexpected fees, all requests for records shall state the agreement of the requesters to pay the fees determined in accordance with paragraph (f)(5) of this section or state the upper limit they are willing to pay to cover the costs of processing their requests. When the fees for processing requests are estimated by the Internal Revenue Service to exceed that limit, or when requesters have failed to state a limit and the costs are estimated to exceed $250, and the Internal Revenue Service has not then determined to waive or reduce the fees, a notice shall be sent to the requesters. This notice shall—

(i) Inform the requester of the estimated costs;

(ii) Extend an offer to the requester to confer with agency personnel in an attempt to reformulate the request in a manner which will reduce the fees and still meet the needs of the requester;

(iii) If the requester is not amenable to reformulation, which would reduce fees to under $250, then advance payment shall be required; and

(iv) Inform the requester that the time period, within which the Internal Revenue Service is obliged to make a determination on the request, will not begin to run, pending a reformulation of the request or the receipt of advance payment from the requester, as appropriate.

(5) *Fees for services.* The fees for services performed by the Internal Revenue Service shall be imposed and collected as set forth in this paragraph. No fees shall be charged if the costs of routine collecting and processing the fees allowable under 5 U.S.C. 552(a)(4)(A) are likely to equal or exceed the amount of the fee.

(i) *Search services.* Fees charged for search services are as follows—

(A) Searches other than for computerized records—$17.00 for each hour or fraction thereof for time spent by each clerical, professional, and supervisor in finding the records and information within the scope of the request.

(B) Searches for computerized records—Actual direct cost of the search. The fee for computer printouts will be actual costs.

(C) Searches requiring travel or transportation—Shipping charges to transport records from one location to another, or for the transportation of an employee to the site of requested records when it is necessary to locate rather than examine the records, shall be at the rate of the actual cost of such shipping or transportation.

(D) Other services and materials requested, pursuant to the Freedom of Information Act, which are not covered by this part are chargeable at the actual cost to the Internal Revenue Service.

(ii) *Review services.* (A) Review is the process of examining records in response to a commercial use requester, as that term is defined in paragraph (f)(3)(i)(A) of this section, upon initial consideration of the applicability of an exemption described in paragraph (b)(1) of § 601.701 to the requested records, be it at the initial request or administrative appeal level, to determine whether any portion of any record responsive to the request is permitted to be withheld. Review includes doing all that is necessary to excise and otherwise prepare the records for release. Review does not include the time spent on resolving general legal or policy issues regarding the applicability of exemptions to the requested records.

(B) Fees charged for review services—$21.00 for each hour or fraction thereof for time spent by each clerical, professional, and supervisor in reviewing the records for disclosure.

(iii) *Duplication other than for returns and related documents.* Fees charged for duplication other than for returns and related documents are as follows—(A) $.15 per copy of each page, up to 8½″ x 14″, made by photocopy or similar process.

(B) Photographs, films, and other materials—actual cost of duplication.

(C) Records may be released to a private contractor for copying and the requester will be charged for the actual cost of duplication charged by the private contractor, so long as the cost to the requester is not higher than if the Internal Revenue Service had duplicated the records itself.

(D) When other duplications not specifically identified above are requested and provided pursuant to the Freedom of Information Act their direct cost to the Internal Revenue Service shall be charged.

(iv) *Charges for copies of returns and related documents.* Charges for furnishing copies of returns and related documents are as follows:

(A) A charge of $4.25 will be made for each request for a copy of a return or other related documents (other than Employee Plans and Exempt Organization returns). Payments are to be submitted in advance using IRS Form 4506, Request for Copy of Tax Form.

(B) A charge of $1.00 for the first page and $.15 for each subsequent page will be made for copies of Employee Plans and Exempt Organizations tax returns and related documents. Payments will be submitted subsequent to receipt of IRS Form 2860, Document Transmittal and Bill.

(6) *Printed material.* Certain relevant government publications which will be placed on the shelves of the reading

rooms and similar public inspection facilities will not be sold at these locations. However, copies of pages of these publications may be duplicated on the premises and a fee for such services may be charged in accordance with paragraph (f)(5)(iii) of this section. A person desiring to purchase the complete publication, for example, an Internal Revenue Bulletin, should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(7) *Search and deletion services with respect to records open to public inspection pursuant to section 6110 of the Code.* Fees charged for searching for and making deletions in records open to public inspection pursuant to section 6110 of the Code only upon written request shall be at actual cost, as the Commissioner may from time to time establish.

(8) *Form of payment.* Payment shall be made by check or money order, payable to the order of the Treasury of the United States or the Internal Revenue Service.

(9) *Advance payments.* (i) If previous search, review, or duplication fees have not been paid in a timely fashion as defined in paragraph (f)(10) of this section by a person making a request for records, the Internal Revenue Service shall require that person to remit any outstanding balance plus interest as authorized in paragraph (f)(10) of this section, plus payment of estimated fees in advance before processing the request. The ''person making the request'' for purposes of this paragraph is the person in whose name a request is made, except that if such person is making the request on behalf of another person whose identity is apparent on the face of the request (including attached documents), such other person is considered the ''person making the request.'' The person who made the prior request to which fees are outstanding is identified in the same manner.

(ii) Where it is estimated or determined that allowable fees required to be paid by a requester are likely to exceed $250, the requester will be required to make an advance payment of the entire fee before the Internal Revenue Service official to whom the request is delivered will begin to process the request.

(iii) When the Internal Revenue Service acts pursuant to paragraphs (f)(9)(i) or (ii) of this section, the administrative time limits prescribed in paragraphs (c)(7) and (8) of this section, plus permissible extensions of these time limits as prescribed in paragraph (c)(9)(i) of this section, will begin only after the Internal Revenue Service official to whom the request is delivered has received the fees described above.

(10) *Interest.* Interest shall be charged to requesters who fail to pay the fees in a timely fashion; that is, within 30 days following the day on which the statement of fees as set forth in paragraph (c)(7)(i) of this section was sent by the Internal Revenue Service official to whom the request was delivered. Interest accrues from the date the statement of fees was mailed to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717. Pursuant to the Debt Collection Act of 1982, Pub. L. 97–365, the Internal Revenue Service may take all steps authorize by the Debt Collection Act of 1982, including administrative offset, disclosure to consumer reporting agencies, and use of collection agencies, as otherwise authorized by law to encourage repayment.

(11) *Aggregating requests.* When the Internal Revenue Service official to whom a request is delivered reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, the Internal Revenue Service shall aggregate such requests and charge accordingly, upon notification to the requester and/or requesters.

(g) *Responsible officials and their addresses.* For purposes of this section, the Internal Revenue Service officials responsible for the control of records are the following officials, in the case of records under their jurisdiction: The Assistant Commissioner (Inspection), Assistant Commissioner (International), the Director of Practice, Regional Commissioners, District Directors, Service Center Directors, and the Director of the Internal Revenue Service Data Center. In the case of records

of the National Office not under the jurisdiction of one of the officials referred to in the preceding sentence (including records of the National Office of the Chief Counsel), the Director, Office of Disclosure is the responsible official. Records of a Regional Counsel's Office shall be deemed to be under the jurisdiction of the Regional Commissioner; records of a District Counsel's office shall be deemed to be under the jurisdiction of the District Director. The addresses of these officials are:

NATIONAL OFFICE

Mailing Address
Director, Office of Disclosure
Internal Revenue Service
FOIA Request
P.O. Box 388
c/o Ben Franklin Station
Washington, DC 20044

Walk-In Address
1111 Constitution Avenue NW.
Washington, DC

Mailing Address
Assistant Commissioner (Inspection)
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
1111 Constitution Avenue NW.
Washington, DC 20224

Walk-in Address
Same as mailing address

Mailing Address
Director, IRS Data Center
Attn: Disclosure Officer
Internal Revenue Service
FOIA Request
1300 John C. Lodge Drive
Detroit, Michigan 48226

Walk-in Address
Same as mailing address

Mailing Address
Director of Practice
Attn: Disclosure Officer
Internal Revenue Service
FOIA Request
1111 Constitution Avenue NW.
Washington, DC 20224

Walk-in Address
1200 Pennsylvania Avenue NW.
Ariel Rios Bldg. Room 1413
Washington, DC

Mailing Address
Assistant Commissioner (Intern't.)
Attn: Disclosure Officer
Internal Revenue Service
FOIA Request
950 L'Enfant Plaza
Washington, DC 20024

Walk-In Address
Same as mailing address

NORTH ATLANTIC REGION

Regional Office

Mailing Address
Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
90 Church Street
New York, New York 10007

Walk-in Address
Same as mailing address

Augusta District

Mailing Address
Director, Augusta District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 787
Augusta, Maine 04330

Walk-in Address
68 Sewall Street
Augusta, Maine

Albany District

Mailing Address
Director, Albany District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
Leo O'Brien Fed. Office Bldg.
Clinton Ave. & N. Pearl St.
Albany, New York 12207

Walk-in Address
Same as mailing address

Brooklyn District

Mailing Address
Director, Brooklyn District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
35 Tillary Street
Brooklyn, New York 11201

Walk-in Address

Same as mailing address

Boston District

Mailing Address

Director, Boston District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 9097 JFK Post Office
Boston, Massachusetts 02203

Walk-in Address

JFK Federal Building
Boston, Massachusetts

Buffalo District

Mailing Address

Director, Buffalo District

Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1040 Niagara Square Station
Buffalo, New York 14201

Walk-in Address

111 West Huron Street
Buffalo, New York

Burlington District

Mailing Address

Director, Burlington District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
11 Elmwood Avenue
Burlington, Vermont 05401

Walk-in Address

Same as mailing address

Hartford District

Mailing Address

Director, Hartford District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
135 High Street
Hartford, Connecticut 06103

Walk-in Address
Same as mailing address

Manhattan District

Mailing Address

Director, Manhattan District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
120 Church Street
New York, New York 10007

Walk-in Address

Same as mailing address

Portsmouth District

Mailing Address

Director, Portsmouth District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
80 Daniel Street
Portsmouth, NH 03801

Walk-in Address

Same as mailing address

Providence District

Mailing Address

Director, Providence District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
300 Westminister Mall
Providence, RI 02903

Walk-in Address

Same as mailing address

Andover Service Center

Mailing Address

Director, Andover Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
310 Lowell Street Stop 218
Andover, Massachusetts 01812

Walk-in Address

Same as mailing address

Brookhaven Service Center

Mailing Address

Director, Brookhaven Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 400, Stop 241
Brookhaven, New York 11719

Walk-in Address

1040 Waverly Avenue
Holtsville, New York

MID-ATLANTIC REGION

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 12010
Philadelphia, Pa. 19105

Walk-in Address

600 Arch Street, 7th Floor
Philadelphia, Pennsylvania

Newark District

Mailing Address

Director, Newark District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 270, Rm. 1535
Newark, New Jersey 07101

Walk-in Address

970 Broad Street
Newark, New Jersey

Baltimore District

Mailing Address

Director, Baltimore District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1018

Baltimore, Maryland 21203

Walk-in Address

31 Hopkins Plaza
Baltimore, Maryland

Philadelphia District

Mailing Address

Director, Philadelphia District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 12010
Philadelphia, Pa. 19105

Walk-in Address

600 Arch Street, 7th Floor
Philadelphia, Pennsylvania

Pittsburgh District

Mailing Address

Director, Pittsburgh District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 2488
Pittsburgh, Pa. 15230

Walk-in Address

1000 Liberty Avenue
Pittsburgh, Pennsylvania

Richmond District

Mailing Address

Director, Richmond District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 10107
Richmond, Va. 23240

Walk-in Address

400 North Eighth Street
Richmond, Virginia

Wilmington District

Mailing Address

Director, Wilmington District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 2415
Wilmington, Delaware 19899

Walk-in Address

844 King Street, 2nd Floor
Wilmington, Delaware

Philadelphia Service Center

Mailing Address

Director, Philadelphia Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 245, Drop Point 590A
Bensalem, Pennsylvania 19020

Walk-in Address

11601 Roosevelt Boulevard
Bensalem, Pennsylvania

SOUTHEAST REGION

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 926, Room 626
Atlanta, Georgia 30370

Walk-in Address

275 Peachtree Street, NE.,
Atlanta, Georgia

Atlanta District

Mailing Address

Director, Atlanta District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1037, Room 554
Atlanta, Georgia 30370

Walk-in Address

275 Peachtree Street, NE.,
Atlanta, Georgia

Birmingham District

Mailing Address

Director, Birmingham District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
500 22nd Street So., Rm. 312
Birmingham, Alabama 35233

Walk-in Address

Same as mailing address

Columbia District

Mailing Address

Director, Columbia District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
Fed. Office Bldg., Rm. 408
1835 Assembly Street
Columbia, S.C. 29202

Walk-in Address

Same as mailing address

Ft. Lauderdale District

Director, Ft. Lauderdale District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer

1 University Drive, Suite 220
Ft. Lauderdale, Florida 33324

Walk-in Address

Same as mailing address

Greensboro District

Mailing Address

Director, Greensboro District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
320 Federal Place, Room 240
Greensboro, NC 27401

Walk-in Address

Same as mailing address

Jackson District

Mailing Address

Director, Jackson District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
100 W. Capitol Street
Suite 504, Room 31
Jackson, Mississippi 39269

Walk-in Address

Same as mailing address

Jacksonville District

Mailing Address

Director, Jacksonville District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 35045, Stop 40340
Jacksonville, Fla. 32202

Walk-in Address

Same as mailing address

Little Rock District

Mailing Address

Director, Little Rock District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 3778, Stop 3
Little Rock, Arkansas 72203

Walk-in Address

700 W. Capitol Avenue
Room 1002
Little Rock, Arkansas

Nashville District

Mailing Address

Director, Nashville District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1107, Room 375
Nashville, Tennessee 37202

Walk-in Address

801 Broadway, Room 375
Nashville, Tennessee

New Orleans District

Mailing Address

Director, New Orleans District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
500 Camp Street
Room 705, Stop 40
New Orleans, La. 70130

Walk-in Address

Same as Mailing address

Atlanta Service Center

Mailing Address

Director, Atlanta Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
4800 Buford Highway
Chamblee, Georgia 30006

Walk-in Address

Same as mailing address

Memphis Service Center

Mailing Address

Director, Memphis Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 30309, Stop 30
Memphis, Tennessee 38130

Walk-in Address

3131 Democrat Road, Room 30
Memphis, Tennessee

MIDWEST REGION

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
One N. Wacker Drive
Chicago, Illinois 60606

Walk-in Address

Same as mailing address

Aberdeen District

Mailing Address

Director, Aderdeen District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 370

Aberdeen, SD 57402

Walk-in Address

115 Fourth Avenue, SE
Aberdeen, South Dakota

Chicago District

Mailing Address

Director, Chicago District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
230 S. Dearbrn St., Rm. 1980
Chicago, Illinois 60604

Walk-in Address

Same as mailing address

Des Moines District

Mailing Address

Director, Des Moines District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1337 Stop 15–1
Des Moines, Iowa 50305

Walk-in Address

210 Walnut Street
Des Moines, Iowa

Fargo District

Mailing Address

Director, Fargo District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 8
Fargo, North Dakota 58107

Walk-in Address

653 Second Avenue North
Fargo, North Dakota

Omaha District

Mailing Address

Director, Omaha District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1052, Downtown Sta.
Omaha, Nebraska 68101

Walk-in Address

106 South 15th Street
Omaha, Nebraska

Milwaukee District

Mailing Address

Director, Milwaukee District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 495, Room 436
Milwaukee, Wisconsin 53201

Walk-in Address

Federal Bldg. & Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin

Helena District

Mailing Address

Director, Helena District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
301 S. Park Avenue, 2d Floor
Helena, Montana 59626

Walk-in Address

Same as mailing address

St. Louis District

Mailing Address

Director, St. Louis District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1548 Room 935
St. Louis, Missouri 63188

Walk-in Address

1114 Market Street
St. Louis, Missouri

St. Paul District

Mailing Address

Director, St. Paul District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
316 N. Robert Street
Stop 2
St. Paul, Minnesota 55101

Walk-in Address

Same as mailing address

Springfield District

Mailing Address

Director, Springfield District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 19206
Springfield, Illinois 62705

Walk-in Address

320 W. Washington Street
Sprinfield, Illinois

Kansas City Service Center

Mailing Address

Director, Kansas City Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer

P.O. Box 24551 Stop 7
Kansas City, Missouri 64131

Walk-in Address

2306 East Bannister Road
Kansas City, Missouri

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1818
Cincinnati, Ohio 45201

Walk-In Address

550 Main Street
Cincinnati, Ohio

Cincinnati District

Mailing Address
Director, Cincinnati District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1818
Cincinnati, Ohio 45201

Walk-in Address
550 Main Street
Cincinnati, Ohio

CENTRAL REGION

Cleveland District

Mailing Address

Director, Cleveland District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 99181
Cleveland, Ohio 44199

Walk-in Address

1240 East 9th Street
Cleveland, Ohio

Detroit District

Mailing Address

Director, Detroit District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 32500 Stop 11
Detroit, Michigan 48232

Walk-in Address

Patrick McNamara Bldg.
477 Michigan Ave. Rm. 2483
Detroit, Michigan

Indianapolis District

Mailing Address

Director, Indianapolis District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 44242 Stop 27
Indianapolis, Indiana 46244

Walk-in Address

Federal Office Building
575 N. Pennsylvania Avenue
Indianapolis, Indiana

Louisville District

Mailing Address

Director, Louisville District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1735, Stop 27
Louisville, Kentucky 40201

Walk-in Address

Post Office Building Seventh & Broadway
Louisville, Kentucky

Parkersburg District

Mailing Address

Director, Parkersburg District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1388
Parkersburg, W. Va. 26102

Walk-in Address

425 Juliana Street
Parkersburg, West Virginia

Cincinnati Service Center

Mailing Address

Director, Cincinnati Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 267 Stop 68
Covington, Kentucky 41019

Walk-in Address

200 West Fourth Street
Covington, Kentucky

SOUTHWEST REGION

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
7839 Churchill Way LB–70
Dallas, Texas 75222

Walk-in Address

Same as mailing address

Dallas District

Mailing Address

Director, Dallas District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
1100 Commerce St. Stop 7000 DAL
Dallas, Texas 75242

Walk-in Address

Same as mailing address

Albuquerque District

Mailing Address

Director, Albuquerque District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1967 Stop 7000 ALB
Albuquerque, N.M. 87103

Walk-in Address

517 Gold Avenue, S.W.
Albuquerque, New Mexico

Austin District

Mailing Address

Director, Austin District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1448 Stop 7000 AUS
Austin, Texas 78767

Walk-in Address

300 E. 8th Street Stop 100D
Austin, Texas

Denver District

Mailing Address

Director, Denver District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
1050 17th St. Stop 7000 DEN
Denver, Colorado 80265

Walk-in Address

Same as mailing address

Houston District

Mailing Address

Director, Houston District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
3223 Briarpark Stop 7000 H–BP
Houston, Texas 77042

Walk-in Address

Same as mailing address

Cheyenne District

Mailing Address

Director, Cheyenne District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
308 West 21 Street
Stop 7000 CHE
Cheyenne, Wyoming 82001

Walk-in Address

Same as mailing address

Phoenix District

Mailing Address

Phoenix District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
2120 North Central Avenue
Mail Stop 7000 PH
Phoenix, Arizona 85004

Walk-in Address

Same as mailing address

Oklahoma City District

Mailing Address

Director, Okla. City District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 66 Stop 7000 OKC
Oklahoma City, OK 73102

Walk-in Address

200 N.W. Fourth Street
Oklahoma City, Oklahoma

Austin Service Center

Mailing Address

Director, Austin Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 934 Stop 70000 AUSC
Austin, Texas 78767

Walk-in Address

3651 S. Interregional Hwy.
Austin, Texas

Salt Lake City District

Mailing Address

Director, Salt Lake City District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
465 S. 400 East Street
Mail Stop 70000 SLC
Salt Lake City, Utah 84111

Walk-in Address

Same as mailing address

Wichita District

Mailing Address

Director, Wichita District

Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
412 S. Main St. Stop 7000 WIC
Wichita, Kansas 67202

Walk-in Address

Same as mailing address

Ogden Service Center

Mailing Address

Director, Ogden Service, Ctr.
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 9411 Stop 7000 OSC
Ogden, Utah 84409

WESTERN REGION

Walk-in Address

1160 West 1200 South Street
Ogden, Utah

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
450 Golden Gate Avenue
Room 2301 Stop 2231
San Francisco, Ca. 94102

Walk-in Address

Same as mailing address

Boise District

Mailing Address

Director, Boise District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
Box 041, Room 291
Boise, Idaho 83724

Walk-in Address

Same as mailing address

Anchorage District

Mailing Address

Director, Anchorage District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 101500
Anchorage, Alaska 99510

Walk-in Address

949 E. 36th Ave., Suite 101
Anchorage, Alaska

Laguna Niguel District

Mailing Address

Director, Laguna Niguel District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box C–8
Laguna Niguel, Ca. 92677

Walk-in Address

24000 Via Avila Road
Laguna Niguel, California

Honolulu District

Mailing Address

Director, Honolulu District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 50089
Honolulu, Hawaii 96850

Walk-in Address

300 Ala Moana Blvd.
Federal Bldg. Rm. 2104
Honolulu, Hawaii

Los Angeles District

Mailing Address

Director, Los Angeles District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 391 Room 5202
300 N. Los Angeles Street
Los Angeles, Ca. 90012

Walk-in Address

Same as mailing address

Las Vegas District

Mailing Address

Director, Las Vegas District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 16045
Las Vegas, Nevada 89101

Walk-in Address

300 Las Vegas Blvd. South
Las Vegas, Nevada

Sacramento District

Mailing Address

Director, Sacramento District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 2900 Stop 5201
Sacramento, Ca. 95812

Walk-in Address

2345 Fair Oaks Blvd.
Sacramento, California

Portland District

Mailing Address

Director, Portland District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 3341
Portland, Oregon 97208

Walk-in Address

1220 S.W. Third Ave. Rm. 817
Portland Oregon

San Francisco District

Mailing Address

Director, San Francisco District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
450 Golden Gate Avenue
Room 2301 Stop 2231
San Francisco, Ca. 94102

Walk-in Address

Same as mailing address

Seattle District

Mailing Address

Director, Seattle District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
915 Second Avenue
Stop 625 Room 2056
Seattle, Washington 98174

Walk-in Address

Same as mailing address

Fresno Service Center

Mailing Address

Director, Fresno Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 24014 Stop 891
Fresno, California 93779

Walk-in Address

5045 E. Bulter Avenue
Fresno, California

San Jose District

Mailing Address

Director, San Jose District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
55 S. Market Street, 9th Floor
Stop 3246
San Jose, California 95113

Walk-in Address

Same as mailing address

(h) *Business information procedures*—(1) *In general.* Business information provided to the Internal Revenue Service by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this paragraph.

(2) *Definition.* Business information is any trade secret or other financial, commercial (including research) information.

(3) *Notice to business submitters.* The official having control over the requested records, which includes business information, shall provide a business submitter with prompt written notice of a request encompassing its business information whenever required in accordance with paragraph (h)(4) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(4) *When notice is required.* (i) For business information submitted to the Internal Revenue Service prior to October 13, 1987, the official having control over the requested records shall provide a business submitter with notice of a request whenever—

(A) The business information is less than 10 years old;

(B) The business information was submitted to the Internal Revenue Service upon a commitment of confidentiality; or

(C) The Internal Revenue Service has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(ii) For business information submitted to the Internal Revenue Service on or after October 13, 1987, the Internal Revenue Service shall provide a business submitter with notice of a request whenever—

(A) The business submitter has in good faith designated the information as commercially or financially sensitive information; or

(B) The official has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

Notice of a request for business information falling within paragraph (h)(4)(ii)(A) of this section shall be required for a period of not more than

ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration. Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business that the information in question is, in fact, confidential commercial or financial information and has not been disclosed to the public.

(5) *Opportunity to object to disclosure.* Through the notice described in paragraph (h)(3) of this section, the official having control over the requested records shall afford a business submitter ten working days within which to provide the official with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information, with particular attention to why the information is claimed to be a trade secret or commercial or financial information that is privileged and confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under 5 U.S.C. 552.

(6) *Notice of intent to disclose.* The Internal Revenue Service shall carefully consider a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the official having control over the requested records decides to disclose business information over the objection of a business submitter, the official shall forward to the business submitter a written notice which shall include—

(i) Statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date, which is ten working days after the notice of the final decision to release the requested records has been mailed to the submitter. A copy of the disclosure notice shall be forwarded to the requester at the same time.

(7) *Judicial review.* (i) The Internal Revenue Service's disposition of the request and the submitter's objections shall be subject to judicial review under paragraph (c)(11) of this section. A requester is not required to exhaust administrative remedies if a complaint has been filed under this subparagraph by a business submitter of the information contained in the requested records. Likewise, a business submitter is not required to exhaust administrative remedies if a complaint has been filed by the requester of these records.

(ii) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (h)(4) of this section, the official having control over the requested records shall promptly provide the business submitter with written notice thereof.

(iii) *Exception to notice requirement.* The notice requirements of this paragraph shall not apply if—

(A) The official having control over the records determines that the business information shall not be disclosed;

(B) The information lawfully has been published or otherwise made available to the public;

(C) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(D) The information was acquired in the course of a lawful investigation of a possible violation of the internal revenue laws and notice would interfere with ongoing law enforcement proceedings.

(8) *Appeals.* Procedures for administrative appeals from denials of requests for business information are to be processed in accordance with paragraph (c)(8) of this section.

[32 FR 15990, Nov. 22, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 601.702, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Subpart H—Tax Counseling for the Elderly

AUTHORITY: Sec. 163(b)(5) of the Revenue Act of 1978, Pub. L. 95–600, Nov. 6, 1978 (92 Stat. 2811) and Pub. L. 89–554, Sept. 6, 1966 (80 Stat. 379, 5 U.S.C. 301).

SOURCE: 44 FR 72113, Dec. 13, 1979, unless otherwise noted.

§ 601.801 Purpose and statutory authority.

(a) This Subpart H contains the rules for implementation of the Tax Counseling for the Elderly assistance program under section 163 of the Revenue Act of 1978, Pub. L. 95–600, November 6, 1978 (92 Stat. 2810). Section 163 authorizes the Secretary of the Treasury, through the Internal Revenue Service, to enter into agreements with private or public non-profit agencies or organizations for the purpose of providing training and technical assistance to prepare volunteers to provide tax counseling assistance for elderly individuals, age 60 and over, in the preparation of their Federal income tax returns.

(b) Section 163 provides that the Secretary may provide:

(1) Preferential access to Internal Revenue Service taxpayer service representatives for the purpose of making available technical information needed during the course of the volunteers' work;

(2) Publicity for making elderly persons aware of the availability of volunteer taxpayer return preparation assistance programs under this section; and

(3) Technical materials and publications to be used by such volunteers.

(c) In carrying out responsibilities under section 163, the Secretary, through the Internal Revenue Service is also authorized:

(1) To provide assistance to organizations which demonstrate, to the satisfaction of the Secretary, that their volunteers are adequately trained and competent to render effective tax counseling to the elderly in the preparation of Federal income tax returns;

(2) To provide for the training of such volunteers, and to assist in such training, to ensure that such volunteers are qualified to provide tax counseling assistance to elderly individuals in the preparation of Federal income tax returns;

(3) To provide reimbursement to volunteers through such organizations for transportation, meals, and other expenses incurred by them in training or providing tax counseling assistance in the preparation of Federal income tax returns under this section, and such other support and assistance determined to be appropriate in carrying out the provisions of the section;

(4) To provide for the use of services, personnel, and facilities of Federal executive agencies and State and local public agencies with their consent, with or without reimbursement; and

(5) To prescribe rules and regulations necessary to carry out the provisions of the section.

(d) With regard to the employment status of volunteers, section 163 also provides that service as a volunteer in any program carried out under this section shall not be considered service as an employee of the United States. Volunteers under such a program shall not be subject to the provisions of law relating to Federal employment, except that the provisions relating to the illegal disclosure of income or other information punishable under section 1905 of Title 18, United States Code, shall apply to volunteers as if they were employees of the United States.

§ 601.802 Cooperative agreements.

(a) *General.* Tax Counseling for the Elderly programs will be administered by sponsor organizations under cooperative agreements with the Internal Revenue Service. Use of cooperative agreements is in accordance with the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, February 3, 1978 (92 Stat. 3, 41 U.S.C. 501–509). Cooperative agreements will be legally binding agreements in document form.

(b) *Nature and contents of cooperative agreements.* Each cooperative agreement will provide for implementation of the program in specified geographic areas. Cooperative agreements will set forth:

(1) The functions and duties to be performed by the Internal Revenue Service and the functions and duties to be performed by the program sponsor,

(2) The maximum amount of the award available to the program sponsor,

(3) The services to be provided for each geographical area, and

(4) Other requirements specified in the application.

(c) *Entry into cooperative agreements.* The Commissioner of Internal Revenue,

the Director, Taxpayer Service Division, or any other individual designated by the Commissioner may enter into a cooperative agreement for the Internal Revenue Service.

(d) *Competitive award of cooperative agreements.* Cooperative agreements will generally be entered into based upon competition among eligible applicants.

(1) To be eligible to enter into a cooperative agreement, an organization must be a private or public non-profit agency or organization with experience in coordinating volunteer programs. Federal, state, and local governmental agencies and organizations will not be eligible to become program sponsors.

(2) Eligible applicants will be selected to enter into cooperative agreements based on an evaluation by the Internal Revenue Service of material provided in their applications. The Service will set forth the evaluative criteria in the application instructions.

(3) Determinations as to the eligibility and selection of agencies and organizations to enter into cooperative agreements will be made solely by the Internal Revenue Service and will not be subject to appeal.

(e) *Noncompetitive award of cooperative agreements.* If appropriations to implement the Tax Counseling for the Elderly program are received at a time close to when tax return preparation assistance must be provided or when other factors exist which make the use of competition to select agencies and organizations to enter into cooperative agreements impracticable, cooperative agreements will be entered into without competition with eligible agencies and organizations selected by the Internal Revenue Service. Determination of when the use of competition is impracticable will be made solely by the Internal Revenue Service and will not be subject to appeal.

(f) *Renegotiation, suspension, termination and modification.* (1) Cooperative agreements will be subject to renegotiation (including the maximum amount of the award available to a sponsor), suspension, or termination if performance reports required by the cooperative agreement and/or other evaluations by or audits by the Internal Revenue Service or others indicate that planned performance goals or other provisions of the cooperative agreement, the regulations, or Section 163 of the Revenue Act of 1978 are not being satisfactorily met. The necessity for renegotiation, suspension, or termination, will be determined solely by the Internal Revenue Service and will not be subject to appeal.

(2) Cooperative agreements may be modified in writing by mutual agreement between the Internal Revenue Service and the program sponsor at any time. Modifications will be based upon factors such as an inability to utilize all funds available under a cooperative agreement, the availability of additional funds and an ability to effectively utilize additional funds, and interference of some provisions with the efficient operation of the program.

(g) *Negotiation.* If the proposed program of an eligible applicant does not warrant award of an agreement, the Internal Revenue Service may negotiate with the applicant to bring the application up to a standard that will be adequate for award. If more than one inadequate application has been received for the geographic area involved, negotiation to bring all such applications up to a standard will be conducted with all such applicants unless time does not permit negotiations with all.

§ 601.803 Program operations and requirements.

(a) *Objective.* The objective of the Tax Counseling for the Elderly program is to provide free assistance in the preparation of Federal income tax returns to elderly taxpayers age 60 and over, by providing training, technical and administrative support to volunteers under the direction of non-profit agencies and organizations that have cooperative agreements with the Internal Revenue Service.

(b) *Period of program operations.* Most tax return preparation assistance will be provided to elderly taxpayers during the period for filing Federal income tax returns, from January 1 to April 15 each year. However, the program activities required to ensure elderly taxpayers efficient and quality tax assistance will normally be conducted year round. Program operations will generally be divided into the following

segments each year: October—recruit volunteers; November and December—set training and testing schedules for volunteers, identify assistance sites, complete publicity plans for sites; December and January—train and test volunteers, set volunteer assistance schedules; January through May—provide tax assistance, conduct publicity for sites; May and June—prepare final reports and evaluate program; July and August—prepare for next year's program.

(c) *Assistance requirements.* All tax return preparation assistance provided under Tax Counseling for the Elderly programs must be provided free of charge to taxpayers and must be provided only to elderly individuals. An elderly individual is an individual age 60 or over at the close of the individual's taxable year with respect to which tax return preparation assistance is to be provided. Where a joint return is involved, assistance may be provided where only one spouse satisfies the 60 year age requirement.

(d) *Training and testing of volunteers.* Volunteers will normally be provided training and will normally be required to pass tests designed to measure their understanding of Federal tax subjects on which they will provide tax return assistance. Volunteers who do not receive a satisfactory score will not be eligible to participate in the program.

(e) *Confidentiality of tax information.* Program sponsors must obtain written assurance from all volunteers and all other individuals involved in the program, to respect the confidentiality of income and financial information known as a result of preparation of a return or of providing tax counseling assistance in the preparation of Federal income tax returns.

§ 601.804 Reimbursements.

(a) *General.* When provided for in cooperative agreements, the Internal Revenue Service will provide amounts to program sponsors for reimbursement to volunteers for transportation, meals, and other expenses incurred in training or providing tax return assistance and to program sponsors for reimbursement of overhead expenses. Cooperative agreements will establish the items for which reimbursements will be allowed and the method of reimbursement, e.g., stipend versus actual expenses for meals, as well as developing necessary procedures, forms, and accounting and financial control systems.

(b) *Direct, reasonable, and prudent expenses.* Reimbursements will be allowed only for direct, reasonable, and prudent expenses incurred as a part of a volunteer's service or as a part of the program sponsor's overhead.

(c) *Limitation.* Total reimbursements provided to a program sponsor shall not exceed the total amount specified in the cooperative agreement. The Internal Revenue Service shall not be liable for additional amounts to program sponsors, volunteers, or anyone else.

(d) *Availability of appropriated funds.* Expense reimbursements and other assistance to be provided by the Internal Revenue Service under cooperative agreements are contingent upon the availability of appropriated funds for the Tax Counseling for the Elderly program.

§ 601.805 Miscellaneous administrative provisions.

(a) *Responsibilities and relationship of Internal Revenue and program sponsor.* Substantial involvement is anticipated between the Internal Revenue Service and the program sponsors in conducting this program. Specific responsibilities and obligations of the Internal Revenue Service and the program sponsors will be set forth in each cooperative agreement.

(b) *Administrative requirements set forth in OMB and Treasury Circulars.* (1) The basic administrative requirements applicable to individual cooperative agreements are contained in Office of Management and Budget Circular No. A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations (41 FR 32016). All applicable provisions of this circular and any existing and further supplements and revisions are incorporated into these regulations and into all cooperative agreements entered into between the Internal Revenue Service and program sponsors.

(2) Additional operating procedures and instructions may be developed by

the Internal Revenue Service to direct recipient organizations in carrying out the provisions of this subpart, such as instructions for using letters of credit. Any such operating procedures or instructions will be incorporated into each cooperative agreement.

(c) *Joint funding.* Tax Counseling for the Elderly programs will not be eligible for joint funding. Accordingly, the Joint Funding Simplification Act of 1974, Pub. L. 93–510, December 5, 1974 (88 Stat. 1604, 42 U.S.C. 4251–4261) and Office of Management and Budget Circular No. A–111, Jointly Funded Assistance to State and Local Governments and Nonprofit Organizations (41 FR 32039), will not apply.

(d) *Discrimination.* No program sponsor shall discriminate against any person providing tax return assistance on the basis of age, sex, race, religion or national origin in conducting program operations. No program sponsor shall discriminate against any person in providing such assistance on the basis of sex, race, religion or national origin.

[44 FR 72113, Dec. 13, 1979, as amended at 49 FR 36500, Sept. 18, 1984]

§ 601.806 Solicitation of applications.

(a) *Solicitation.* The Commissioner of Internal Revenue or the Commissioner's delegate may, at any time, solicit eligible agencies and organizations to submit applications. Generally, applications will be solicited and accepted in June and July of each year. Deadlines for submitting applications and the schedule for selecting program sponsors will be provided with application documents.

(1) Before preparing and submitting an unsolicited application, organizations are strongly encouraged to contact the Internal Revenue Service at the address provided in paragraph (b)(2) of this section.

(2) A solicitation of an application is not an assurance or commitment that the Internal Revenue Service will enter into a cooperative agreement. The Internal Revenue Service will not pay any expenses or other costs incurred by the applicant in considering, preparing or submitting an application.

(b) *Application.* (1) In the application documents, the Commissioner or the Commissioner's delegate will specify program requirements which the applicant must meet.

(2) Eligible organizations interested in participating in the Internal Revenue Service Tax Counseling for the Elderly program should request an application from the:

Program Manager, Tax Counseling for the Elderly, Taxpayer Service Division TX:T:I, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, (202) 566–4904.

Subpart I—Use of Penalty Mail in the Location and Recovery of Missing Children

SOURCE: T.D. 8848, 64 FR 69398, Dec. 13, 1999, unless otherwise noted.

§ 601.901 Missing children shown on penalty mail.

(a) *Purpose.* To support the national effort to locate and recover missing children, the Internal Revenue Service (IRS) joins other executive departments and agencies of the Government of the United States in using official mail to disseminate photographs and biographical information on hundreds of missing children.

(b) *Procedures for obtaining and disseminating data.* (1) The IRS shall publish pictures and biographical data related to missing children in domestic penalty mail containing annual tax forms and instructions, taxpayer information publications, and other IRS products directed to members of the public in the United States and its territories and possessions.

(2) Missing children information shall not be placed on the ''Penalty Indicia,'' ''OCR Read Area,'' ''Bar Code Read Area,'' and ''Return Address'' areas of letter-size envelopes.

(3) The IRS shall accept photographic and biographical materials solely from the National Center for Missing and Exploited Children (National Center). Photographs that were reasonably current as of the time of the child's disappearance, or those which have been updated to reflect a missing child's current age through computer enhancement technique, shall be the only acceptable form of visual media or pictorial likeness used in penalty mail.

(c) *Withdrawal of data.* The shelf life of printed penalty mail is limited to 3 months for missing child cases. The IRS shall follow those guidelines whenever practicable. For products with an extended shelf life, such as those related to filing and paying taxes, the IRS will not print any pictures or biographical data relating to missing children without obtaining from the National Center a waiver of the 3-month shelf-life guideline.

(d) *Reports and contact official.* IRS shall compile and submit to OJJDP reports on its experience in implementing Public Law 99–87, 99 Stat. 290, as required by that office. The IRS contact person is: Chief, Business Publications Section (or successor office), Tax Forms and Publications Division, Technical Publications Branch, OP:FS:FP:P:3, Room 5613, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224.

(e) *Period of applicability.* This section is applicable December 13, 1999 through December 31, 2002.

[T.D. 8848, 64 FR 69398, Dec. 13, 1999; 65 FR 15862, Mar. 24, 2000]

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 OMB Control numbers.

(a) *Purpose.* This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part comply with the requirements of §§1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Display.*

CFR part or section where identified and described	Current OMB control No.
1.1(h)–1(e)	1545–1654
1.23–5	1545–0074
1.25–1T	1545–0922
	1545–0930
1.25–2T	1545–0922
	1545–0930
1.25–3T	1545–0922
	1545–0930
1.25–4T	1545–0922
1.25–5T	1545–0922
1.25–6T	1545–0922
1.25–7T	1545–0922
1.25–8T	1545–0922
1.28–1	1545–0619
1.31–2	1545–0074
1.32–2	1545–0074
1.32–3	1545–1575
1.37–1	1545–0074
1.37–3	1545–0074
1.41–2	1545–0619
1.41–3	1545–0619
1.41–4A	1545–0074
1.41–4 (b) and (c)	1545–0074
1.41–4(d)	1545–1625
1.41–8(b)	1545–1625
1.41–8(d)	1545–0732
1.41–9	1545–0619
1.42–1T	1545–0984
	1545–0988
1.42–2	1545–1005
1.42–5	1545–1357
1.42–6	1545–1102
1.42–8	1545–1102
1.42–10	1545–1102
1.42–13	1545–1357
1.42–14	1545–1423
1.42–17	1545–1357
1.43–3(a)(3)	1545–1292
1.43–3(b)(3)	1545–1292
1.44A–1	1545–0068
1.44A–3	1545–0074
1.44B–1	1545–0219
1.45D–1T	1545–1765
1.458–1	1545–0879
1.458–2	1545–0152
1.46–1	1545–0123
	1545–0155
1.46–3	1545–0155
1.46–4	1545–0155
1.46–5	1545–0155
1.46–6	1545–0155
1.46–8	1545–0155
1.46–9	1545–0155
1.46–10	1545–0118
1.46–11	1545–0155
1.47–1	1545–0166
	1545–0155
1.47–3	1545–0166
	1545–0155
1.47–4	1545–0123
1.47–5	1545–0092
1.47–6	1545–0099
1.48–3	1545–0155
1.48–4	1545–0808
	1545–0155
1.48–5	1545–0155
1.48–6	1545–0155
1.48–12	1545–0155
1.50A–1	1545–0895
1.50A–2	1545–0895
1.50A–3	1545–0895
1.50A–4	1545–0895