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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.