

however, to matters on which the determination of availability for public inspection is made under section 6104. Accordingly, §301.6110-1(a) describes matters which, for purposes of section 6110, are considered within the ambit of section 6104. Some determination letters and other documents relating to tax exempt organizations that are not open to public inspection under section 6104(a)(1)(A) and this section are nevertheless within the ambit of section 6104 for purposes of section 6110. These determination letters and other documents are therefore not available for public inspection under either section 6104 or section 6110. They include but are not limited to—

(1) Unfavorable rulings or determination letters (see §601.201(n)) issued in response to applications for tax exemption,

(2) Rulings or determination letters revoking or modifying a favorable determination letter (see §601.201(n)(6)),

(3) Technical advice memoranda (see §601.201(n)(9)) relating to a disapproved application for tax exemption or the revocation or modification of a favorable determination letter,

(4) Any letter or document filed with or issued by the Internal Revenue Service relating to whether a proposed or accomplished transaction is a prohibited transaction under section 503,

(5) Any letter or document filed with or issued by the Internal Revenue Service relating to an organization's status as an organization described in section 509 (a) or 4942(j)(3), unless the letter or document relates to the organization's application for tax exemption, and

(6) Any other letter or document filed with or issued by the Internal Revenue Service which, although it relates to an organization's tax exempt status as an organization described in section 501 (c) or (d), does not relate to that organization's application for tax exemption, within the meaning of paragraph (d).

(Secs. 6104(a)(1)(A), 6104(a)(1)(B), and 7805 of the Internal Revenue Code of 1954 (72 Stat. 1660, 88 Stat. 940, 68A Stat. 917; 26 U.S.C. 6104(a)(1)(A), 6104(a)(1)(B), 7805))

[T.D. 7845, 47 FR 50486, Nov. 8, 1982]

§ 301.6104(a)-2 Public inspection of material relating to pension and other plans.

(a) *Material open to inspection.* Except as provided in §301.6104(a)-4 with respect to plans having fewer than 26 participants, an application for a determination letter which is filed with the Internal Revenue Service after September 2, 1974, together with supporting documents filed by the applicant in support of the application, will be open to public inspection under section 6104(a)(1)(B) (i) and (ii). An application for a determination letter and supporting documents will be open to public inspection whether or not the application is withdrawn by the applicant, and whether or not the Internal Revenue Service determines that the plan, account, or annuity to which the application relates is qualified or that any related trust or custodial account is exempt from tax.

(b) *Documents included in the term "application for a determination letter"*—

(1) *Employees' plans and individual retirement plans.* For purposes of this section, the term "application for a determination letter" includes the documents that an applicant files with respect to a request that the Internal Revenue Service determine the qualification of—

(i) A pension, profit-sharing, or stock bonus plan under section 401(a),

(ii) An annuity plan under section 403(a),

(iii) A bond purchase plan under section 405(a), or

(iv) An individual retirement account or annuity described in section 408 (a), (b) or (c).

(2) *Tax exempt trusts or custodial accounts.* The term "application for a determination letter" also includes the documents an applicant files with respect to a request that the Internal Revenue Service determine the exemption from tax under section 501(a) of an organization forming part of a plan or account described in subparagraph (1) of this paragraph, or a custodial account described in section 401(f).

(3) *Master, prototype and pattern plans.* The term "application for a determination letter" also includes documents which an applicant files with respect to

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a request for approval of a master, prototype, pattern or other such plan or account.

(4) *Prescribed forms and application letters.* With respect to an application for a determination letter described in this paragraph (b) for which an application form is prescribed, the application for a determination letter includes the form and all documents and statements required to be filed in connection with the form. With respect to an application for a determination letter for which no application form is prescribed, the application for a determination letter includes the application letter and all documents and statements the Internal Revenue Service requires to be submitted with the application letter.

(c) *Documents not constituting an “application for a determination letter”.* The following are not applications for a determination letter for purposes of this section:

(1) An incomplete application that is returned without action for proper completion,

(2) An application that is returned without action to the applicant for failure to notify all interested parties in accordance with the regulations under section 7476 (relating to declaratory judgments), and

(3) A request for a ruling as to whether a proposed transaction is a prohibited transaction under section 4975.

(d) *Supporting documents.* “Supporting documents”, as used with respect to an application for a determination letter which is open to public inspection under this section, means any statement or document submitted in support of the application which is not specifically required by the application form or the Internal Revenue Service. For example, a legal brief submitted in support of an application for a determination letter is a supporting document.

(e) *Applicant.* For purposes of this section, §301.6104(a)-3 (relating to Internal Revenue Service letters and documents open to public inspection) and §301.6104(a)-5 (relating to the withholding of certain information from public inspection), an “applicant” includes, but is not limited to, an employer, plan administrator (as defined

in section 414(g)), labor union, bank, or insurance company that files an application for a determination letter.

(Secs. 6104(a)(1)(A), 6104(a)(1)(B), and 7805 of the Internal Revenue Code of 1954 (72 Stat. 1660, 88 Stat. 940, 68A Stat. 917; 26 U.S.C. 6104(a)(1)(A), 6104(a)(1)(B), 7805))

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§ 301.6104(a)-3 Public inspection of Internal Revenue Service letters and documents relating to pension and other plans.

(a) *In general.* Except as provided in §301.6104(a)-4 with respect to plans having fewer than 26 participants, a letter or other document issued by the Internal Revenue Service after September 2, 1974, is open to public inspection under section 6104(a)(1)(B)(iv) and this section, if it is issued with respect to—

(1) The qualification of a pension, profit-sharing or stock bonus plan under section 401(a), an annuity plan under section 403(a), a bond purchase plan under section 405(a), or an individual retirement account or annuity described in section 408 (a), (b) or (c),

(2) The exemption from tax under section 501(a) of an organization forming part of such a plan or account, or a custodial account described in section 401(f), or

(3) The approval of a master, prototype, pattern or other such plan or account.

(b) *Scope.* Internal Revenue Service letters and documents open to public inspection under section 6104(a)(1)(B)(iv) and this section are not limited to those issued in response to an application for a determination letter described in §301.6104(a)-2. They are, however, limited to those issued by the Internal Revenue Service to the person or organization which either did or could file an application for a determination letter for the plan, account or annuity to which the letter or document relates. If such a person or organization designates a representative having a power of attorney, however, then the letter or document will be open to inspection if issued to the representative. For rules relating to when a letter or document is issued, see §301.6110-2(h). Internal Revenue Service letters and documents are open to public inspection under section