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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

EMPLOYEE PLANS

Rev. Proc. 2011–4, page 123.

Rulings and information letters; issuance procedures. Revised procedures are provided for furnishing ruling letters, information letters, etc., on matters related to sections of the Code currently under the jurisdiction of the Office of the Division Commissioner, Tax Exempt and Government Entities. Rev. Proc. 2010–4 superseded.

Rev. Proc. 2011–5, page 167.

Technical advice. Revised procedures are provided for furnishing technical advice to area managers and appeals offices by the Office of the Division Commissioner, Tax Exempt and Government Entities, regarding issues in the employee plans area (including actuarial matters) and in the exempt organizations area. Rev. Proc. 2010-5 superseded.

Rev. Proc. 2011–6, page 195.

Employee plans determination letters. Revised procedures are provided for issuing determination letters on the qualified status of employee plans under sections 401(a), 403(a), 409, and 4975 of the Code. Rev. Proc. 2010–6 superseded.

Rev. Proc. 2011–8, page 237.

User fees for employee plans and exempt organizations. Up-to-date guidance for complying with the user fee program of the Service as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Office of the Division Commissioner, Tax Exempt and Government Entities Division, is provided. Rev. Proc. 2010–8 superseded.

EXEMPT ORGANIZATIONS

Rev. Proc. 2011–4, page 123.

Rulings and information letters; issuance procedures. Revised procedures are provided for furnishing ruling letters, information letters, etc., on matters related to sections of the Code currently under the jurisdiction of the Office of the Division Commissioner, Tax Exempt and Government Entities. Rev. Proc. 2010–4 superseded.

Rev. Proc. 2011–5, page 167.

Technical advice. Revised procedures are provided for furnishing technical advice to area managers and appeals offices by the Office of the Division Commissioner, Tax Exempt and Government Entities, regarding issues in the employee plans area (including actuarial matters) and in the exempt organizations area. Rev. Proc. 2010-5 superseded.

Rev. Proc. 2011–8, page 237.

User fees for employee plans and exempt organizations. Up-to-date guidance for complying with the user fee program of the Service as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Office of the Division Commissioner, Tax Exempt and Government Entities Division, is provided. Rev. Proc. 2010–8 superseded.

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Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

Rev. Proc. 2011–1, page 1.

Letter rulings, information letters, and determination letters. This procedure contains revised procedures for letter rulings and information letters issued by the Associate Chief Counsel (Corporate), Associate Chief Counsel (Financial Institutions and Products), Associate Chief Counsel (Income Tax and Accounting), Associate Chief Counsel (International), Associate Chief Counsel (Passthroughs and Special Industries), Associate Chief Counsel (Procedure and Administration), and Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). This procedure also contains revised procedures for determination letters issued by the Large Business and International Division, Small Business/Self-Employed Division, Wage and Investment Division, and Tax Exempt and Government Entities Division. Rev. Proc. 2010–1 superseded.

Rev. Proc. 2011–2, page 90.

Technical advice. This procedure explains when and how the Associate Chief Counsel (Corporate), Associate Chief Counsel (Financial Institutions and Products), Associate Chief Counsel (Income Tax and Accounting), Associate Chief Counsel (International), Associate Chief Counsel (Passthroughs and Special Industries), Associate Chief Counsel (Procedure and Administration), and Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) issue technical advice memoranda (TAMs) to a director or an Appeals Area Director. It also explains the rights a taxpayer has when a field office requests a TAM regarding a tax matter. Rev. Proc. 2010–2 superseded.

Rev. Proc. 2011–3, page 111.

Areas in which rulings will not be issued (domestic areas). This procedure provides a revised list of those provisions of the Code under the jurisdiction of the Associates Chief Counsel (Corporate, Financial Institutions and Products, Income Tax and Accounting, Passthroughs and Special Industries, and Procedure and Administration) and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) relating to matters on which the Service will not issue letter rulings or determination letters. Rev. Proc. 2010–3 superseded.

Rev. Proc. 2011–7, page 233.

Areas in which rulings will not be issued; Associate Chief Counsel (International). This procedure revises the list of those provisions of the Code under the jurisdiction of the Associate Chief Counsel (International) relating to matters where the Service will not issue letter rulings or determination letters. Rev. Proc. 2010–7 superseded.

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Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III. Administrative, Procedural, and Miscellaneous

26 CFR § 601.201: Rulings and determination letters.

Rev. Proc. 2011–1

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SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure explains how the Service provides advice to taxpayers on issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). It explains the forms of advice and the manner in which advice is requested by taxpayers and provided by the Service. A sample format of a request for a letter ruling is provided in Appendix B. *See* section 4 of this revenue procedure for issues outside the scope of this revenue procedure.

Description of terms used in this revenue procedure

.01 For purposes of this revenue procedure—

(1) the term "Service" includes the four operating divisions of the Internal Revenue Service and the Associate offices. The four operating divisions are:

(a) Large Business & International Division (LB&I), which generally serves corporations, including S corporations, and partnerships, with assets in excess of $10 million;

(b) Small Business/Self-Employed Division (SB/SE), which generally serves corporations, including S corporations, and partnerships, with assets less than or equal to $10 million; estates and trusts; individuals filing an individual Federal income tax return with accompanying Schedule C (*Profit or Loss From Business (Sole Proprietorship)*), Schedule E (*Supplemental Income and Loss*), Schedule F (*Profit or Loss From Farming*), Form 2106, *Employee Business Expenses*, or Form 2106–EZ, *Unreimbursed Employee Business Expenses*; and individuals with international tax returns;

(c) Wage and Investment Division (W&I), which generally serves individuals with wage and investment income only (and with no international tax returns) filing an individual Federal income tax return without accompanying Schedule C, E, or F, or Form 2106 or Form 2106–EZ; and

(d) Tax Exempt and Government Entities Division (TE/GE), which serves three distinct taxpayer segments: employee plans, exempt organizations, and government entities.

(2) the term "Associate office" refers to the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions and Products), the Office of Associate Chief Counsel (Income Tax and Accounting), the Office of Associate Chief Counsel (International), the Office of Associate Chief Counsel (Passthroughs and Special Industries), the Office of Associate Chief Counsel (Procedure and Administration), or the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate.

(3) the term "Director" refers to the Director, Field Operations, LB&I; Area Director, Field Examination, SB/SE; Chief, Estate & Gift Tax Operations, SB/SE; Chief, Employment Tax Operations, SB/SE; Chief, Excise Tax Operations, SB/SE; Director, Compliance, W&I; Director, Employee Plans Examinations; Director, Exempt Organizations Examinations; Director, Federal, State & Local Governments; Director, Tax Exempt Bonds; or Director, Indian Tribal Governments, as appropriate.

(4) the term "Field office" refers to the respective offices of the Directors, as appropriate.

(5) the term "taxpayer" includes all persons subject to any provision of the Internal Revenue Code (including issuers of tax-exempt obligations, mortgage credit certificates, tax credit bonds (including specified tax credit bonds), and build America bonds) and, when appropriate, their representatives.

Updated annually

.02 This revenue procedure is updated annually as the first revenue procedure of the year, but it may be modified or amplified during the year.

SECTION 2. WHAT ARE THE FORMS IN WHICH THE SERVICE PROVIDES ADVICE TO TAXPAYERS?

The Service provides advice in the form of letter rulings, closing agreements, determination letters, information letters, and oral advice.

Letter ruling

.01 A "letter ruling" is a written determination issued to a taxpayer by an Associate office in response to the taxpayer's written inquiry, filed prior to the filing of returns or reports that are required by the tax laws, about its status for tax purposes or the tax effects of its acts or transactions. A letter ruling interprets the tax laws and applies them to the taxpayer's specific set of facts. A letter ruling is issued when appropriate in the interest of sound tax administration. One type of letter ruling is an Associate office's response granting or denying a request for a change in a taxpayer's method of accounting or accounting period. Once issued, a letter ruling may be revoked or modified for a number of reasons. *See* section 11 of this revenue procedure.

A letter ruling may be issued with a closing agreement, however, and a closing agreement is final unless fraud, malfeasance, or misrepresentation of a material fact can be shown. *See* section 2.02 of this revenue procedure.

Closing agreement

.02 A "closing agreement" is a final agreement between the Service and a taxpayer on a specific issue or liability. It is entered into under the authority in § 7121, and it is final unless fraud, malfeasance, or misrepresentation of a material fact can be shown.

A taxpayer may request a closing agreement with a letter ruling or in lieu of a letter ruling, with respect to a transaction that would be eligible for a letter ruling. In such situations, the Associate Chief Counsel with subject matter jurisdiction signs the closing agreement on behalf of the Service.

A closing agreement may be entered into when it is advantageous to have the matter permanently and conclusively closed or when a taxpayer can show that there are good reasons for an agreement and that making the agreement will not prejudice the interests of the Government. In appropriate cases, a taxpayer may be asked to enter into a closing agreement as a condition for the issuance of a letter ruling.

If, in a single case, a closing agreement is requested for each person or entity in a class of taxpayers, separate agreements are entered into only if the class consists of 25 or fewer taxpayers. If the issue and holding are identical for the class and there are more than 25 taxpayers in the class, a "mass closing agreement" will be entered into with the taxpayer who is authorized by the others to represent the class.

Determination letter

.03 A "determination letter" is a written determination issued by a Director that applies the principles and precedents previously announced by the Service to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in a statute, a tax treaty, the regulations, a conclusion in a revenue ruling, or an opinion or court decision that represents the position of the Service.

Information letter

.04 An "information letter" is a statement issued by an Associate office or Director that calls attention to a well-established interpretation or principle of tax law (including a tax treaty) without applying it to a specific set of facts. An information letter may be issued if the taxpayer's inquiry indicates a need for general information or if the taxpayer's request does not meet the requirements of this revenue procedure and the Service concludes that general information will help the taxpayer. An information letter is advisory only and has no binding effect on the Service. If the Associate office issues an information letter in response to a request for a letter ruling that does not meet the requirements of this revenue procedure, the information letter is not a substitute for a letter ruling. The taxpayer should provide a daytime telephone number with the taxpayer's request for an information letter.

Information letters that are issued by the Associate offices to members of the public are made available to the public. Information letters that are issued by the Field offices are not made available to the public.

Because information letters do not constitute written determinations as defined in § 6110, they are not subject to public inspection under § 6110. The Service makes the information letters available to the public under the Freedom of Information Act (the "FOIA"). Before any information letter is made available to the public, an Associate office will redact any information exempt from disclosure under the FOIA. *See*, *e.g.*, 5 U.S.C. § 552(b)(6) (exemption for information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy); 5 U.S.C. § 552(b)(3) in conjunction with § 6103 (exemption for returns and return information as defined in § 6103(b)).

The following documents also will not be available for public inspection as part of this process:

(1) transmittal letters in which the Service furnishes publications or other publicly available material to taxpayers, without any significant legal discussion;

(2) responses to taxpayer or third party contacts that are inquiries with respect to a pending request for a letter ruling, technical advice memorandum, or Chief Counsel Advice (which are subject to public inspection under § 6110 after their issuance); and

(3) responses to taxpayer or third party communications with respect to any investigation, audit, litigation, or other enforcement action.

Oral Advice

.05

(1) No oral rulings and no written rulings in response to oral requests.

The Service does not orally issue letter rulings or determination letters, nor does it issue letter rulings or determination letters in response to oral requests from taxpayers. Service employees ordinarily will discuss with taxpayers or their representatives inquiries about whether the Service will rule on particular issues and about procedural matters regarding the submission of requests for letter rulings or determination letters for a particular case.

(2) Discussion possible on substantive issues.

At the discretion of the Service and as time permits, Service employees may also discuss substantive issues with taxpayers or their representatives. Such a discussion will not bind the Service or the Office of Chief Counsel, and it cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Service employees who are not directly involved in the examination, appeal, or litigation of particular substantive tax issues will not discuss those issues with taxpayers or their representatives unless the discussion is coordinated with Service employees who are directly involved. The taxpayer or the taxpayer's representative ordinarily will be asked whether an oral request for advice or information relates to a matter pending before another office of the Service or before a Federal court.

If a tax issue is not under examination, in appeals, or in litigation, the tax issue may be discussed even though the issue is affected by a nontax issue pending in litigation.

A taxpayer may seek oral technical guidance from a taxpayer service representative in a Field office or Service Center when preparing a return or report. Oral guidance is advisory only, and the Service is not bound by it, for example, when examining the taxpayer's return.

The Service does not respond to letters seeking to confirm the substance of oral discussions, and the absence of a response to such a letter is not a confirmation.

SECTION 3. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN ADVICE UNDER THIS PROCEDURE?

Taxpayers may request letter rulings, information letters, and closing agreements under this revenue procedure on issues within the jurisdiction of the Associate offices. Taxpayers uncertain as to whether an Associate office has jurisdiction with regard to a specific factual situation may call the telephone number for the Associate office listed in section 10.07(1) of this revenue procedure.

Except as provided in section 6.14 of this revenue procedure, taxpayers also may request determination letters from the Director in the appropriate operating division. *See* sections 7 and 12 of this revenue procedure. For determinations related to code sections under the jurisdiction of TE/GE. *See* Rev. Proc. 2011–4, this Bulletin, and Rev. Proc. 2011–6, this Bulletin, for determinations related to code sections under the jurisdiction of TEGE.

Issues under the jurisdiction of the Associate Chief Counsel (Corporate)

.01 Issues under the jurisdiction of the Associate Chief Counsel (Corporate) include those that involve consolidated returns, corporate acquisitions, reorganizations, liquidations, redemptions, spinoffs, transfers to controlled corporations, distributions to shareholders, corporate bankruptcies, the effect of certain ownership changes on net operating loss carryovers and other tax attributes, debt vs. equity determinations, allocation of income and deductions among taxpayers, acquisitions made to evade or avoid income tax, and certain earnings and profits questions.

Issues under the jurisdiction of the Associate Chief Counsel (Financial Institutions and Products)

.02 Issues under the jurisdiction of the Associate Chief Counsel (Financial Institutions and Products) include those that involve income taxes and changes in method of accounting of banks, savings and loan associations, real estate investment trusts (REITs), regulated investment companies (RICs), real estate mortgage investment conduits (REMICs), insurance companies and products, tax-exempt obligations, mortgage credit certificates, tax credit bonds (including specified tax credit bonds), build America bonds, and financial products.

For the procedures to obtain private letter rulings involving tax-exempt state and local obligations, *see also* Rev. Proc. 96–16, 1996–1 C.B. 630.

Issues under the jurisdiction of the Associate Chief Counsel (Income Tax and Accounting)

.03 Issues under the jurisdiction of the Associate Chief Counsel (Income Tax and Accounting) include those that involve recognition and timing of income and deductions of individuals and corporations, sales and exchanges, capital gains and losses, installment sales, equipment leasing, long-term contracts, inventories, amortization, depreciation, the alternative minimum tax, net operating losses generally, including changes in method of accounting for these issues, and accounting periods.

Issues under the jurisdiction of the Associate Chief Counsel (International)

.04 Issues under the jurisdiction of the Associate Chief Counsel (International) include the tax treatment of nonresident aliens and foreign corporations, withholding of tax on nonresident aliens and foreign corporations, foreign tax credit, determination of sources of income, income from sources without the United States, subpart F questions, domestic international sales corporations (DISCs), foreign sales corporations (FSCs), exclusions under § 114 for extraterritorial income (ETI), international boycott determinations, treatment of certain passive foreign investment companies, income affected by treaty, U.S. possessions, and other matters relating to the activities of non-U.S. persons within the United States or U.S.-related persons outside the United States, and changes in method of accounting for these persons.

For the procedures to obtain advance pricing agreements under § 482, *see* Rev. Proc. 2006–9, 2006–1 C.B. 278, as modified by Rev. Proc. 2008–31, 2008–23 I.R.B. 1133.

For competent authority procedures related to bilateral and multilateral advance pricing agreements, *see* Rev. Proc. 2006–54, 2006–2 C.B. 1035.

Issues under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries)

.05 Issues under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries) include those that involve income taxes of S corporations (except accounting periods and methods) and certain noncorporate taxpayers (including partnerships, common trust funds, and trusts), entity classification, estate (excluding § 6166), gift, generation-skipping transfer, and certain excise taxes, depletion, and other engineering issues, cooperative housing corporations, farmers' cooperatives under § 521, the low-income housing, disabled access, and qualified electric vehicle credits, research and experimental expenditures, shipowners' protection and indemnity associations under § 526, and certain homeowners associations under § 528.

Issues under the jurisdiction of the Associate Chief Counsel (Procedure and Administration)

.06 Issues under the jurisdiction of the Associate Chief Counsel (Procedure and Administration) include those that involve Federal tax procedure and administration, disclosure and privacy law, reporting and paying taxes (including payment of taxes under § 6166), assessing and collecting taxes (including interest and penalties), abating, crediting, or refunding overassessments or overpayments of tax, and filing information returns.

Issues under the jurisdiction of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)

.07 Issues under the jurisdiction of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) include those that involve income tax and other tax aspects of executive compensation and employee benefit programs, including changes in method of accounting for these issues (other than those within the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division), § 457 deferred compensation plans, sales of stock to employee stock ownership plans or eligible worker-owned cooperatives under § 1042, employment taxes, taxes on self-employment income, and Federal, state, local, and Indian tribal governments.

SECTION 4. ON WHAT ISSUES MUST WRITTEN ADVICE BE REQUESTED UNDER DIFFERENT PROCEDURES?

Alcohol, tobacco, and firearms taxes

.01 The procedures for obtaining letter rulings, closing agreements, determination letters, information letters, and oral advice that apply to Federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

Employee plans and exempt organizations

.02 The procedures for obtaining letter rulings, closing agreements, determination letters, information letters, and oral advice on employee plans and exempt organizations are under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. *See* Rev. Proc. 2011–4, this Bulletin. *See also* Rev. Proc. 2011–6, this Bulletin, for the procedures for issuing determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans under §§ 401, 403(a), 409, and 4975(e)(7), and the status for exemption of any related trusts or custodial accounts under § 501(a).

For the user fee requirements applicable to requests for letter rulings, closing agreements, determination letters, information letters, and oral advice under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, *see* Rev. Proc. 2011–8, this Bulletin.

SECTION 5. UNDER WHAT CIRCUMSTANCES DO THE ASSOCIATE OFFICES ISSUE LETTER RULINGS?

In income and gift tax matters

.01 In income and gift tax matters, an Associate office generally issues a letter ruling on a proposed transaction or on a completed transaction if the letter ruling request is submitted before the return is filed for the year in which the transaction is completed. An associate office will not ordinarily issue a letter ruling on a completed transaction if the letter ruling request is submitted after the return is filed for the year in which the transaction is completed. "Not ordinarily" means that unique and compelling reasons must be demonstrated to justify the issuance of a letter ruling submitted after the return is filed for the year in which the transaction is completed. The taxpayer must contact the Field Office having audit jurisdiction over their return and obtain the Field's consent to the issuance of such a letter ruling.

Special relief for late S corporation and related elections in lieu of letter ruling process

.02 In lieu of requesting a letter ruling under this revenue procedure, a taxpayer may obtain relief for certain late S corporation and related elections by following the procedures in Rev. Proc. 2004–49, 2004–2 C.B. 210; Rev. Proc. 2004–48, 2004–2 C.B. 172; Rev. Proc. 2003–43, 2003–1 C.B. 998, or Rev. Proc. 97–48, 1997–2 C.B. 521. These procedures are in lieu of the letter ruling process and do not require payment of any user fee. *See* section 4.04 of Rev. Proc. 2004–49, section 3.01 of Rev. Proc. 2004–48, section 3.01 of Rev. Proc. 2003–43, section 3 of Rev. Proc. 97–48, and section 15.03(3) of this revenue procedure.

A § 301.9100 request for extension of time for making an election or for other relief

.03 An Associate office will consider a request for an extension of time for making an election or other application for relief under § 301.9100–3 of the Treasury Regulations, even if submitted after the return covering the issue presented in the § 301.9100 request has been filed, an examination of the return has begun, or the issues in the return are being considered by Appeals or a Federal court. A § 301.9100 request is a letter ruling request. Therefore, the § 301.9100 request should be submitted pursuant to this revenue procedure. An election made pursuant to § 301.9100–2 for an automatic extension of time is not a letter ruling request and does not require payment of any user fee. *See* § 301.9100–2(d) and section 15.03(1) of this revenue procedure.

(1) Format of request. A § 301.9100 request (other than an election made pursuant to § 301.9100–2) must be in the general form of, and meet the general requirements for, a letter ruling request. These requirements are given in section 7 of this revenue procedure. In addition, a § 301.9100 request must include the information required by § 301.9100–3(e).

(2) Period of limitation. The filing of a request for relief under § 301.9100 does not suspend the running of any applicable period of limitation. *See* § 301.9100–3(d)(2). The Associate office ordinarily will not issue a § 301.9100 ruling if the period of limitation on assessment under § 6501(a) for the taxable year in which an election should have been made, or for any taxable years that would have been affected by the election had it been timely made, will expire before receipt of a § 301.9100 letter ruling. *See* § 301.9100–3(c)(1)(ii). If, however, the taxpayer consents to extend the period of limitation on assessment under § 6501(c)(4) for the taxable year in which the election should have been made and for any taxable years that would have been affected by the election had it been timely made, the Associate office may issue the letter ruling. *See* § 301.9100–3(d)(2). Note that the filing of a claim for refund under § 6511 does not extend the period of limitations on assessment. If § 301.9100–3 relief is granted, the Associate office may require the taxpayer to consent to an extension of the period of limitations on assessment. *See* § 301.9100–3(d)(2).

(3) Taxpayer must notify the Associate office if examination of its return begins while the request is pending. The taxpayer must notify the Associate office if the Service begins an examination of the taxpayer's return for the taxable year in which an election should have been made, or for any taxable years that would have been affected by the election had it been timely made, while a § 301.9100–3 request is pending. This notification must include the name and telephone number of the examining agent. *See* § 301.9100–3(e)(4)(i) and section 7.04(1)(b) of this revenue procedure.

(4) Associate office will notify examination agent, appeals officer, or attorney of a § 301.9100 request if the taxpayer's return is being examined by a Field office or is being considered by an Appeals office or a Federal court. If the taxpayer's return for the taxable year in which an election should have been made, or for any taxable years that would have been affected by the election had it been timely made, is being examined by a Field office or considered by an Appeals office or a Federal court, the Associate office will notify the appropriate examination agent, appeals officer, or attorney that a § 301.9100 request has been submitted to the Associate office. The examination agent, appeals officer, or attorney is not authorized to deny consideration of a § 301.9100 request. The letter ruling will be mailed to the taxpayer and a copy will be sent to the appeals officer, attorney, or appropriate Service official in the operating division that has examination jurisdiction over the taxpayer's tax return.

(5) Inclusion of statement required by section 4.04 of Rev. Proc. 2009–41. Eligible entities requesting a letter ruling because they do not meet all of the eligibility requirements of section 4.01 of Rev. Proc. 2009–41, 2009–2 C.B. 439, must include either the following representation as part of the entity's request for a letter ruling or an explanation regarding why they do not qualify to do so: "All required U.S. tax and information returns of the entity (or, if the entity was not required to file any such returns under the desired classification, then all required U.S. tax and information returns of each affected person as defined in Section 4.02 of Rev. Proc. 2009–41) were filed timely or within 6 months of the due date of the respective return (excluding extensions) as if the entity classification election had been in effect on the requested date. No U.S. tax or information returns were filed inconsistently with those described in the prior sentence."

(6) Relief for late initial classification election. In lieu of requesting a letter ruling under § 301.9100–1 through § 301.9100–3 and this revenue procedure, entities that satisfy the requirements set forth in section 4.01 of Rev. Proc. 2009–41, 2009–2 C.B. 439, may apply for late classification election relief under Rev. Proc. 2009–41. Requests for such relief are not subject to user fees. *See* section 3.01 of Rev. Proc. 2009–41 and section 15.03(2) of this revenue procedure.

Determinations under § 999(d)

.04 As provided in Rev. Proc. 77–9, 1977–1 C.B. 542, the Associate Chief Counsel (International) issues determinations under § 999(d) that may deny certain benefits of the foreign tax credit and the deferral of earnings of foreign subsidiaries and domestic international sales corporations (DISCs) to a person if that person is a member of a controlled group (within the meaning of § 993(a)(3)) that includes the person, or a foreign corporation of which a member

of the controlled group is a United States shareholder, that agrees to participate in, or cooperate with, an international boycott. The same principles shall apply with respect to exclusions under § 114 for exterritorial income (ETI). Requests for determinations under Rev. Proc. 77–9 are letter ruling requests and should be submitted to the Associate office pursuant to this revenue procedure.

In matters involving § 367

.05 Unless the issue is covered by section 6 of this revenue procedure, the Associate Chief Counsel (International) may issue a letter ruling under § 367 even if the taxpayer does not request a letter ruling as to the characterization of the transaction under the reorganization provisions of the Code. The Associate office will determine the § 367 consequences of a transaction based on the taxpayer's characterization of the transaction but will indicate in the letter ruling that it expresses no opinion as to the characterization of the transaction under the reorganization. The Associate office may decline to issue a § 367 ruling in situations in which the taxpayer inappropriately characterizes the transaction under the reorganization provisions.

In estate tax matters

.06 In general, the Associate Chief Counsel (Passthroughs and Special Industries) issues letter rulings on transactions affecting the estate tax on the prospective estate of a living person. The Associate office will not issue letter rulings for prospective estates on computations of tax, actuarial factors, or factual matters. With respect to the transactions affecting the estate tax of the decedent's estate, generally the Associate office issues letter rulings before the decedent's estate tax return is filed.

If the taxpayer is requesting a letter ruling regarding a decedent's estate tax and the estate tax return is due to be filed before the letter ruling is expected to be issued, the taxpayer should obtain an extension of time for filing the return and should notify the Associate office branch considering the letter ruling request that an extension has been obtained.

If the return is filed before the letter ruling is received from the Associate office, the taxpayer must disclose on the return that a letter ruling has been requested, attach a copy of the pending letter ruling request to the return, and notify the Associate office that the return has been filed. *See* section 7.04(2) of this revenue procedure. The Associate office will make every effort to issue the letter ruling within 3 months of the date the return was filed.

If the taxpayer requests a letter ruling after the return is filed, but before the return is examined, the taxpayer must notify the Field office having jurisdiction over the return that a letter ruling has been requested, attach a copy of the pending letter ruling request, and notify the Associate office that a return has been filed. *See* section 7.04(2) of this revenue procedure. The Associate office will make every effort to issue the letter ruling within 3 months of the date the return has been filed.

If the letter ruling cannot be issued within that 3-month period, the Associate office will notify the Field office having jurisdiction over the return, which may, by memorandum to the Associate office, grant an additional period for the issuance of the letter ruling.

In matters involving additional estate tax under § 2032A(c)

.07 In matters involving additional estate tax under § 2032A(c), the Associate Chief Counsel (Passthroughs and Special Industries) issues letter rulings on proposed transactions and on completed transactions that occurred before the return is filed.

In matters involving qualified domestic trusts under § 2056A

.08 In matters involving qualified domestic trusts under § 2056A, the Associate Chief Counsel (Passthroughs and Special Industries) issues letter rulings on proposed transactions and on completed transactions that occurred before the return is filed.

In generation-skipping transfer tax matters

.09 In general, the Associate Chief Counsel (Passthroughs and Special Industries) issues letter rulings on proposed transactions that affect the generation-skipping transfer tax and on completed transactions that occurred before the return is filed. In the case of a generation-skipping trust or trust equivalent, letter rulings are issued either before or after the trust or trust equivalent has been established.

In employment and excise tax matters

.10 In employment and excise tax matters, the Associate offices issue letter rulings on proposed transactions and on completed transactions either before or after the return is filed for those transactions.

Requests regarding employment status (employer/employee relationship) from Federal agencies and instrumentalities or their workers must be submitted directly to the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). Requests regarding employment status from other taxpayers must first be submitted to the appropriate Service office listed on the current Form SS–8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. *See* section 12.04 of this revenue procedure. If the service recipient (the firm) requests the letter ruling, the firm will receive any issued letter ruling. A copy will also be sent to any identified workers. If the worker requests the letter ruling, both the worker and the firm will receive any issued letter ruling. The letter ruling will apply to any individuals engaged by the firm under substantially similar circumstances.

In administrative provisions matters

.11 The Associate Chief Counsel (Procedure and Administration) issues letter rulings on matters arising under the Code and related statutes and regulations that involve—

(1) the time, place, manner, and procedures for reporting and paying taxes; or

(2) the filing of information returns.

In Indian tribal government matters

.12 Pursuant to Rev. Proc. 84–37, 1984–1 C.B. 513, as modified by Rev. Proc. 86–17, 1986–1 C.B. 550, and this revenue procedure, the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) issues determinations recognizing a tribal entity as an Indian tribal government within the meaning of § 7701(a)(40) or as a political subdivision of an Indian tribal government under § 7871(d) if it determines, after consultation with the Secretary of the Interior, that the entity satisfies the statutory definition of an Indian tribal government or has been delegated governmental functions of an Indian tribal government. Requests for determinations under Rev. Proc. 84–37 are letter ruling requests, and, therefore, should be submitted to the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) pursuant to this revenue procedure.

(1) Definition of Indian tribal government. The term "Indian tribal government" is defined under § 7701(a)(40) to mean the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary of the Treasury, after consultation with the Secretary of the Interior, to exercise governmental functions. Section 7871(d) provides that, for purposes of § 7871(a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a state if the Secretary of the Treasury determines, after consultation with the Secretary of the Interior, that the subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government.

(2) Inclusion in list of tribal governments. Rev. Proc. 2008–55, 2008–2 C.B. 768, designates the Indian tribal entities that appear on the current or future lists of federally recognized Indian tribes published annually by the Department of the Interior, Bureau of Indian Affairs, as Indian tribal governments that are treated similarly to states for certain Federal tax purposes. Rev. Proc. 84–36, 1984–1 C.B. 510, as modified by Rev. Proc. 86–17, 1986–1 C.B. 550, provides a list of political subdivisions of Indian tribal governments that are treated as political subdivisions of states for certain Federal tax purposes. Under Rev. Proc. 84–37, as modified by Rev. Proc. 86–17, tribal governments or subdivisions recognized under § 7701(a)(40) or § 7871(d) will be included in the list of recognized tribal government entities in future lists of federally recognized Indian tribes published annually by the Department of the Interior, Bureau of Indian Affairs, or revised versions of Rev. Proc. 84–36.

On constructive sales price under § 4216(b) or § 4218(c)

.13 The Associate Chief Counsel (Passthroughs and Special Industries) will issue letter rulings in all cases on the determination of a constructive sales price under § 4216(b) or § 4218(c)

and in all other cases on prospective transactions if the law or regulations require a determination of the effect of a proposed transaction for Federal tax purposes. *See* section 6.14(5) of this revenue procedure

Under some circumstances before the issuance of a regulation or other published guidance

.14 In general, the Service will not issue a letter ruling or determination letter on an issue that it cannot readily resolve before the promulgation of a regulation or other published guidance. *See* section 6.09 of this revenue procedure.

However, an Associate office may issue letter rulings under the following conditions:

(1) Answer is clear or is reasonably certain. If the letter ruling request presents an issue for which the answer seems clear by applying the statute, regulations, and applicable case law to the facts or for which the answer seems reasonably certain but not entirely free from doubt.

(2) Answer is not reasonably certain. If the letter ruling request presents an issue for which the answer does not seem reasonably certain, the Associate office may issue the letter ruling, using its best efforts to arrive at a determination, if it is in the best interests of tax administration.

SECTION 6. UNDER WHAT CIRCUMSTANCES DOES THE SERVICE NOT ISSUE LETTER RULINGS OR DETERMINATION LETTERS?

Ordinarily not if the request involves an issue under examination or consideration or in litigation

.01 The Service ordinarily does not issue a letter ruling or a determination letter if, at the time of the request, the identical issue is involved in the taxpayer's return for an earlier period and that issue—

(1) is being examined by a Field office;

(2) is being considered by Appeals;

(3) is pending in litigation in a case involving the taxpayer or a related taxpayer;

(4) has been examined by a Field office or considered by Appeals and the statutory period of limitations on assessment or on filing a claim for refund or credit of tax has not expired; or

(5) has been examined by a Field office or considered by Appeals and a closing agreement covering the issue or liability has not been entered into by a Field office or by Appeals.

If a return dealing with an issue for a particular year is filed while a request for a letter ruling on that issue is pending, an Associate office will issue the letter ruling unless it is notified by the taxpayer or otherwise learns that an examination of that issue or the identical issue on an earlier year's return has been started by a Field office. *See* section 7.04(2) of this revenue procedure. In income and gift tax matters, even if an examination has begun, an Associate office ordinarily will issue the letter ruling if the Field office agrees by memorandum to the issuance of the letter ruling.

Ordinarily not in certain areas because of factual nature of the problem or for other reasons

.02 The Service ordinarily does not issue letter rulings or determination letters in certain areas because of the factual nature of the problem involved or for other reasons. Rev. Proc. 2011–3, this Bulletin, and Rev. Proc. 2011–7, this Bulletin, provide a list of these areas. This list is not all-inclusive because the Service may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case.

Instead of issuing a letter ruling or determination letter, the Service may, when it is considered appropriate and in the best interests of the Service, issue an information letter calling attention to well-established principles of tax law.

Ordinarily not on part of an integrated transaction

.03 An Associate office ordinarily will not issue a letter ruling on only part of an integrated transaction. If a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Before preparing the letter ruling request, a taxpayer should call a branch having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether the Associate office will issue a letter ruling on part of the transaction.

In addition, the Office of Associate Chief Counsel (Corporate) may issue a letter ruling on part of an integrated transaction without ruling on the larger transaction if the requested ruling addresses one or more issues that: (1) are under the jurisdiction of the Associate Chief Counsel (Corporate), (2) are significant (as defined in section 3.01(38) of Rev. Proc. 2011–3, this Bulletin), and (3) involve the tax consequences or characterization of a transaction (or part of a transaction) that occurs in the context of a § 355 distribution. The Service may also rule on a particular legal issue under a code or regulations section without ruling on all aspects of such code or regulations section if the issue meets the three conditions of the preceding sentence.

Before preparing the letter ruling request under this section 6.03, a taxpayer should call the Office of the Associate Chief Counsel (Corporate) at the telephone number provided in section 10.07(1)(a) of this revenue procedure for pre-submission conferences to discuss with one of the branches whether the Office of the Associate Chief Counsel (Corporate) will issue a letter ruling under this section 6.03. The Service reserves the right to rule on any other aspect of the transaction (including ruling adversely) if the Service believes it is in the best interests of tax administration. *Cf.* section 2.01 of Rev. Proc. 2011–3, this Bulletin.

All requests for a ruling under this section 6.03 must contain the following:

(1) A narrative description of the transaction that puts the issue in context;

(2) An explanation concerning why the issue is significant within the meaning of section 3.01(38) of Rev. Proc. 2011–3, this Bulletin;

(3) Applicable information from relevant revenue procedures with respect to the significant issue. *See* Appendix E of this revenue procedure (referring to, *inter alia*, Rev. Proc. 96–30, 1996–1 C.B. 696, as amplified and modified by Rev. Proc. 2003–48, 2003–2 C.B. 86);

(4) The precise ruling being requested;

(5) Where the taxpayer is requesting a ruling on the tax treatment of part of an integrated transaction, a representation regarding the relevant tax consequences of the larger transaction (to the best knowledge and belief of the taxpayer), assuming that the Service issues the requested ruling; additionally, where the taxpayer is requesting a ruling on a particular legal issue under a code section or section of the regulations (*e.g.*, § 1.368–2(k)), a representation (to the best knowledge and belief of the taxpayer) regarding qualification or characterization of the transaction under such code or regulations section (*e.g.*, § 368(a)(1)(A)), assuming that the Service issues the requested ruling; and

(6) A statement that no rulings outside the jurisdiction of the Associate Chief Counsel (Corporate) are requested.

If the Service issues a ruling on a significant issue under this procedure, then the letter ruling will state that no opinion is expressed as to the overall tax consequences of the transactions described in the letter ruling or as to any issue or step not specifically addressed by the letter. In addition, letter rulings under this procedure will contain the following (or similar) language at the beginning of the letter:

This Office expresses no opinion as to the overall tax consequences of the transaction(s) described in this letter. Rather, the ruling(s) contained in this letter only address one or more discrete legal issues involved in the transaction.

Ordinarily not on which of two entities is a common law employer

.04 The Service ordinarily does not issue a letter ruling or a determination letter on which of two entities, under common law rules applicable in determining the employer-employee relationship, is the employer, when one entity is treating the worker as an employee.

Ordinarily not to business associations or groups

.05 The Service ordinarily does not issue letter rulings or determination letters to business, trade, or industrial associations or to similar groups concerning the application of the tax laws to members of the group. Groups and associations, however, may submit suggestions of generic issues that could be appropriately addressed in revenue rulings. *See* Rev. Proc. 89–14, 1989–1 C.B. 814, which states the objectives of, and standards for, the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

The Service may issue letter rulings or determination letters to groups or associations on their own tax status or liability if the request meets the requirements of this revenue procedure.

Ordinarily not where the request does not address the tax status, liability, or reporting obligations of the requester

.06 The Service ordinarily does not issue letter rulings or determination letters regarding the tax consequences of a transaction for taxpayers who are not directly involved in the request if the requested letter ruling or determination letter would not address the tax status, liability, or reporting obligations of the requester. For example, a taxpayer may not request a letter ruling relating to the tax consequences of a transaction to a customer or client, if the tax status, liability, or reporting obligations of the taxpayer would not be addressed in the ruling, because the customer or client is not directly involved in the letter ruling request. The tax liability of each shareholder is, however, directly involved in a letter ruling on the reorganization of a corporation. Accordingly, a corporate taxpayer could request a letter ruling that solely addressed the tax consequences to its shareholders of a proposed reorganization.

Rev. Proc. 96–16, 1996–1 C.B. 630, sets forth rules for letter ruling requests involving tax-exempt state and local government obligations.

Ordinarily not to foreign governments

.07 The Service ordinarily does not issue letter rulings or determination letters to foreign governments or their political subdivisions about the U.S. tax effects of their laws. The Associate offices also do not issue letter rulings on the effect of a tax treaty on the tax laws of a treaty country for purposes of determining the tax of the treaty country. *See* section 13.02 of Rev. Proc. 2006–54, 2006–2 C.B. 1035. Treaty partners can continue to address matters such as these under the provisions of the applicable tax treaty. In addition, the Associate offices may issue letter rulings to foreign governments or their political subdivisions on their own tax status or liability under U.S. law if the request meets the requirements of this revenue procedure.

Ordinarily not on Federal tax consequences of proposed legislation

.08 The Associate offices ordinarily do not issue letter rulings on a matter involving the Federal tax consequences of any proposed Federal, state, local, municipal, or foreign legislation. The Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) may issue letter rulings regarding the effect of proposed state, local, or municipal legislation upon an eligible deferred compensation plan under § 457(b) provided that the letter ruling request relating to the plan complies with the other requirements of this revenue procedure. The Associate offices also may provide general information in response to an inquiry.

Not before issuance of a regulation or other published guidance

.09 Generally, the Service will not issue a letter ruling or a determination letter if the request presents an issue that cannot be readily resolved before a regulation or any other published guidance is issued. When the Service has closed a regulation project or any other published guidance project that might have answered the issue or decided not to open a regulation project or any other published guidance project, the Associate offices may consider all letter ruling requests unless the issue is covered by section 6 of this revenue procedure, Rev. Proc. 2011–3, this Bulletin, or Rev. Proc. 2011–7, this Bulletin.

Not on frivolous issues

.10 The Service will not issue a letter ruling or a determination letter on frivolous issues. A "frivolous issue" is one without basis in fact or law or one that asserts a position that courts have held frivolous or groundless. Examples of frivolous or groundless issues include, but are not limited to:

(1) frivolous "constitutional" claims, such as claims that the requirement to file tax returns and pay taxes constitutes an unreasonable search barred by the Fourth Amendment, violates Fifth and Fourteenth Amendment protections of due process, violates Thirteenth Amendment protections against involuntary servitude, or is unenforceable because the Sixteenth Amendment does not authorize nonapportioned direct taxes or was never ratified;

(2) claims that income taxes are voluntary, that the term "income" is not defined in the Internal Revenue Code, or that preparation and filing of Federal income tax returns violates the Paperwork Reduction Act;

(3) claims that tax may be imposed only on coins minted under a gold or silver standard or that receipt of Federal Reserve Notes does not cause an accretion to wealth;

(4) claims that a person is not taxable on income because he or she falls within a class entitled to "reparation claims" or an extra-statutory class of individuals exempt from tax, *e.g.*, "free-born" individuals;

(5) claims that a taxpayer can refuse to pay taxes on the basis of opposition to certain Governmental expenditures;

(6) claims that taxes apply only to Federal employees; only to residents of Puerto Rico, Guam, the U.S. Virgin Islands, the District of Columbia, or "Federal enclaves;" or that §§ 861 through 865 or any other provision of the Code imposes taxes on U.S. citizens and residents only on income derived from foreign based activities;

(7) claims that wages or personal service income are "not income," are "nontaxable receipts," or are a "nontaxable exchange for labor;"

(8) claims that income tax withholding by an employer on wages is optional; or

(9) other claims that the courts have characterized as frivolous or groundless.

Additional examples of frivolous or groundless issues may be found in IRS publications and other guidance (including, but not limited to, Notice 2010–33, Frivolous Positions, and I.R.M. 4.10.12.1.1, Frivolous Arguments) and as may be described on the IRS website at *www.irs.gov/pub/irs-utl/friv_tax.pdf*.

No "comfort" letter rulings

.11 Except as otherwise provided in Rev. Proc. 2011–3, this Bulletin (*e.g.*, under section 3.01 (38)), where the Associate office already is ruling on a significant issue in the same transaction), a letter ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decisions of a court, revenue rulings, revenue procedures, notices, or other authority published in the Internal Revenue Bulletin. The Associate office may in its discretion decide to issue a letter ruling on such an issue if the Associate office is otherwise issuing a ruling to the taxpayer on another issue arising in the same transaction.

Not on alternative plans or hypothetical situations

.12 The Service will not issue a letter ruling or a determination letter on alternative plans of proposed transactions or on hypothetical situations.

Not on property conversion after return filed

.13 An Associate office will not issue a letter ruling on the replacement of involuntarily converted property, whether or not the property has been replaced, if the taxpayer has already filed a Federal tax return for the taxable year in which the property was converted. A Director may issue a determination letter in this case. *See* section 12.01 of this revenue procedure.

Circumstances under which determination letters are not issued by a Director

.14 A Director will not issue a determination letter if—

(1) the taxpayer has directed a similar inquiry to an Associate office;

(2) the same issue, involving the same taxpayer or a related taxpayer, is pending in a case in litigation or before Appeals;

(3) the request involves an industry-wide problem;

(4) the specific employment tax question at issue in the request has been, or is being, considered by the Central Office of the Social Security Administration or the Railroad Retirement Board for the same taxpayer or a related taxpayer; or

(5) the request is for a determination of constructive sales price under § 4216(b) or § 4218(c), which deal with special provisions applicable to the manufacturers excise tax. The Associate

Chief Counsel (Passthroughs and Special Industries) will, in certain circumstances, issue letter rulings in this area. *See* section 5.13 of this revenue procedure.

SECTION 7. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING LETTER RULINGS AND DETERMINATION LETTERS?

This section provides the general instructions for requesting letter rulings and determination letters. *See* section 9 of this revenue procedure for the specific and additional procedures for requesting a change in method of accounting.

Requests for letter rulings, closing agreements, and determination letters require the payment of the applicable user fee listed in Appendix A of this revenue procedure. Certain changes in method of accounting under the automatic change request procedures (*see* section 9.01(1) of this revenue procedure) and certain changes in accounting periods made under automatic change request procedures do not require payment of a user fee (*see* Appendix E of this revenue procedure). For additional user fee requirements, *see* section 15 of this revenue procedure.

Specific and additional instructions also apply to requests for letter rulings and determination letters on certain matters. Those matters are listed in Appendix E of this revenue procedure with a reference (usually to another revenue procedure) where more information can be obtained.

Documents and information required in all requests

.01

Facts

(1) Complete statement of facts and other information. Each request for a letter ruling or a determination letter must contain a complete statement of all facts relating to the transaction. These facts include—

(a) names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties (the term "all interested parties" does not mean all shareholders of a widely held corporation requesting a letter ruling relating to a reorganization or all employees where a large number may be involved);

(b) the annual accounting period, and the overall method of accounting (cash or accrual) for maintaining the accounting books and filing the Federal income tax return, of all interested parties;

(c) a description of the taxpayer's business operations;

(d) a complete statement of the business reasons for the transaction; and

(e) a detailed description of the transaction.

Documents and foreign laws

(2) Copies of all contracts, wills, deeds, agreements, instruments, other documents, and foreign laws.

(a) Documents. True copies of all contracts, wills, deeds, agreements, instruments, trust documents, proposed disclaimers, and other documents pertinent to the transaction must be submitted with the request.

If the request concerns a corporate distribution, reorganization, or similar transaction, the corporate balance sheet and profit and loss statement should also be submitted. If the request relates to a prospective transaction, the most recent balance sheet and profit and loss statement should be submitted.

If any document, including any balance sheet and profit and loss statement, is in a language other than English, the taxpayer must also submit a certified English translation of the document, along with a true copy of the document. For guidelines on the acceptability of such documents, *see* paragraph (c) of this section 7.01(2).

Each document other than the request should be labeled and attached to the request in alphabetical sequence. Original documents such as contracts, wills, etc. should not be submitted because they become part of the Service's file and will not be returned.

(b) Foreign laws. The taxpayer must submit with the request a copy of the relevant parts of all foreign laws, including statutes, regulations, administrative pronouncements, and any other relevant legal authority. The documents submitted must be in the official language of the country involved and must be copied from an official publication of the foreign government or another widely available and generally accepted publication. If English is not the official language of the country involved, the taxpayer must also submit a copy of an English language version of the relevant parts of all foreign laws. This translation must be: (i) from an official publication of the foreign government or another widely available, generally accepted publication; or (ii) a certified English translation submitted in accordance with paragraph (c) of this section 7.01(2).

The taxpayer must identify the title and date of publication, including updates, of any widely available and generally accepted publication that the taxpayer (or the taxpayer's qualified translator) uses as a source for the relevant parts of the foreign law.

(c) Standards for acceptability of submissions of documents in a language other than English and certified English translations of laws in a language other than English. The taxpayer must submit with the request an accurate and complete certified English translation of the relevant parts of all contracts, wills, deeds, agreements, instruments, trust documents, proposed disclaimers, or other documents that are in a language other than English. If the taxpayer chooses to submit certified English translations of foreign laws, those translations must be based on an official publication of the foreign government or another widely available and generally accepted publication. In either case, the translation must be that of a qualified translator and must be attested to by the translator. The attestation must contain: (i) a statement that the translation submitted is a true and accurate translation of the foreign language document or law; (ii) a statement as to the attestant's qualifications as a translator and as to that attestant's qualifications and knowledge regarding tax matters or foreign law if the law is not a tax law; and (iii) the attestant's name and address.

Analysis of material facts

(3) Analysis of material facts. The request must be accompanied by an analysis of facts and their bearing on the issue or issues. If documents attached to a request contain material facts, they must be included in the taxpayer's analysis of facts in the request rather than merely incorporated by reference.

Same issue in an earlier return

(4) Statement regarding whether same issue is in an earlier return. The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, any return of the taxpayer, a related taxpayer within the meaning of § 267, or of a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504, who would be affected by the requested letter ruling or determination letter, is currently under examination, before Appeals, or before a Federal court, or was previously under examination, before Appeals, or before a Federal court.

Same or similar issue previously submitted or currently pending

(5) Statement regarding whether same or similar issue was previously ruled on or whether a request involving it was submitted or is currently pending. The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives—

(a) the Service previously ruled on the same or a similar issue for the taxpayer, a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504, or a predecessor;

(b) the taxpayer, a related taxpayer, a predecessor, or any of their representatives previously submitted a request (including an application for change in method of accounting) involving the same or a similar issue but no letter ruling or determination letter was issued;

(c) the taxpayer, a related taxpayer, or a predecessor previously submitted a request (including an application for change in method of accounting) involving the same or a similar issue that is currently pending with the Service; or

(d) at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request (including an application for change in method of accounting) involving the same or a similar issue.

If the statement is affirmative for (a), (b), (c), or (d) of this section 7.01(5), the statement must give the date the request was submitted, the date the request was withdrawn or ruled on, if applicable, and other details of the Service's consideration of the issue.

Interpretation of a substantive provision of an income or estate tax treaty

(6) Statement regarding interpretation of a substantive provision of an income or estate tax treaty. If the request involves the interpretation of a substantive provision of an income or estate tax treaty, the request must state whether—

(a) the tax authority of the treaty jurisdiction has issued a ruling on the same or similar issue for the taxpayer, a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504, or any predecessor;

(b) the same or similar issue for the taxpayer, a related taxpayer, or any predecessor is being examined or has been settled by the tax authority of the treaty jurisdiction or is otherwise the subject of a closing agreement in that jurisdiction; and

(c) the same or similar issue for the taxpayer, a related taxpayer, or any predecessor is being considered by the competent authority of the treaty jurisdiction.

Letter from Bureau of Indian Affairs relating to certain letter ruling requests

(7) Letter from Bureau of Indian Affairs relating to a letter ruling request for recognition of Indian tribal government status or status as a political subdivision of an Indian tribal government. To facilitate prompt action on a letter ruling request for recognition of Indian tribal government status or status as a political subdivision of an Indian tribal government, the taxpayer must submit with the letter ruling request a letter from the Department of the Interior, Bureau of Indian Affairs ("BIA"), verifying that the tribe is recognized by BIA as an Indian tribe and that the tribal government exercises governmental functions or that the political subdivision of the Indian tribal government has been delegated substantial governmental functions. A letter ruling request that does not contain this letter from BIA cannot be resolved until the Service obtains a letter from BIA regarding the tribe's status.

The taxpayer should send a request to verify tribal status to the following address:

Branch of Tribal Government & Alaska
Division of Indian Affairs
Office of the Solicitor, Room 6456
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Statement of authorities supporting taxpayer's views

(8) Statement of supporting authorities. If the taxpayer advocates a particular conclusion, the taxpayer must include an explanation of the grounds for that conclusion and the relevant authorities to support it. Even if the taxpayer is not advocating a particular tax treatment of a proposed transaction, the taxpayer must furnish views on the tax results of the proposed transaction and a statement of relevant authorities to support those views.

In all events, the request must include a statement of whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities.

Statement of authorities contrary to taxpayer's views

(9) Statement of contrary authorities. To avoid a delay in the ruling process, contrary authorities should be brought to the attention of the Service at the earliest possible opportunity. If there are significant contrary authorities, it is usually helpful to discuss them in a pre-submission conference prior to submitting the ruling request. *See* section 10.07 of this revenue procedure as to pre-submission conferences. The taxpayer is strongly encouraged to inform the Service about, and discuss the implications of, any authority believed to be contrary to the position advanced, such as legislation, tax treaties, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements. If the taxpayer determines that there are

no contrary authorities, a statement in the request to this effect should be included. If the taxpayer does not furnish either contrary authorities or a statement that none exist, the Service in complex cases or those presenting difficult or novel issues may request submission of contrary authorities or a statement that none exists. Failure to comply with this request may result in the Service's refusal to issue a letter ruling or determination letter.

The taxpayer's identification of and discussion of contrary authorities generally will enable Service personnel more quickly to understand the issue and relevant authorities. Having this information should make research more efficient and lead to earlier action by the Service. If the taxpayer does not disclose and distinguish significant contrary authorities, the Service may need to request additional information, which will delay action on the request.

Statement identifying pending legislation

(10) Statement identifying pending legislation. When filing the request, the taxpayer must identify any pending legislation that may affect the proposed transaction. In addition, the taxpayer must notify the Service if any such legislation is introduced after the request is filed but before a letter ruling or determination letter is issued.

Deletion statement required by § 6110

(11) Statement identifying information to be deleted from public inspection copy of letter ruling or determination letter. The text of letter rulings and determination letters is open to public inspection under § 6110. The Service makes deletions from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), a request for a letter ruling or determination letter must be accompanied by a statement indicating the deletions desired ("deletion statement"). If the deletion statement is not submitted with the request, a Service representative will tell the taxpayer that the request will be closed if the Service does not receive the deletion statement within 21 calendar days. *See* section 8.05 of this revenue procedure.

(a) Format of deletion statement. A taxpayer who wants only names, addresses, and identifying numbers to be deleted should state this in the deletion statement. If the taxpayer wants more information deleted, the deletion statement must be accompanied by a copy of the request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletion statement must include the statutory basis under § 6110(c) for each proposed deletion.

If the taxpayer decides to ask for additional deletions before the letter ruling or determination letter is issued, additional deletion statements may be submitted.

(b) Location of deletion statement. The deletion statement must be made in a separate document from the request for a letter ruling or determination letter and must be placed on top of the request.

(c) Signature. The deletion statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or faxed signature is not permitted.

(d) Additional information. The taxpayer should follow the same procedures of this section 7.01(11) to propose deletions from any additional information submitted after the initial request. An additional deletion statement is not required with each submission of additional information if the taxpayer's initial deletion statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information.

(e) Taxpayer may protest deletions not made. After receiving from the Service the notice under § 6110(f)(1) of intention to disclose the letter ruling or determination letter (including a copy of the version proposed to be open to public inspection and notation of third-party communications under § 6110(d)), the taxpayer may protest the disclosure of certain information in the letter ruling or determination letter. The taxpayer must send a written statement to the Service office indicated on the notice of intention to disclose, within 20 calendar days of the date the notice of intention to disclose is mailed to the taxpayer. The statement must identify those deletions that the Service has not made and that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the letter ruling or determination letter and bracket the proposed deletions that have not been made by the Service. Generally, the

Service will not consider deleting any material that the taxpayer did not propose to be deleted before the letter ruling or determination letter was issued.

Within 20 calendar days after the Service receives the response to the notice under § 6110(f)(1), the Service will mail to the taxpayer its final administrative conclusion regarding the deletions to be made. The taxpayer does not have the right to a conference to resolve any disagreements concerning material to be deleted from the text of the letter ruling or determination letter. These matters may, however, be taken up at any conference that is otherwise scheduled regarding the request.

(f) Taxpayer may request delay of public inspection. After receiving the notice of intention to disclose under § 6110(f)(1), but no later than 60 calendar days after the date of the notice, the taxpayer may send a written request for delay of public inspection under either § 6110(g)(3) or (4). The request for delay must be sent to the Service office indicated on the notice of intention to disclose. A request for delay under § 6110(g)(3) must contain the date on which it is expected that the underlying transaction will be completed. The request for delay under § 6110(g)(4) must contain a statement from which the Commissioner of Internal Revenue ("Commissioner") may determine whether there are good reasons for the continued delay.

Signature on request

(12) Signature by taxpayer or authorized representative. The request for a letter ruling or determination letter must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or faxed signature is not permitted.

Authorized representatives

(13)

(a) Authorized representatives. To sign the request or to appear before the Service in connection with the request, the taxpayer's authorized representative must be (for rules on who may practice before the Service, *see* Treasury Department Circular No. 230, 31 C.F.R. part 10):

Attorney

(1) 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 is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an attorney and current authorization to represent the taxpayer;

Certified public accountant

(2) A certified public accountant who is duly qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as a certified public accountant and current authorization to represent the taxpayer;

Enrolled agent

(3) An enrolled agent who is a person, other than an attorney or certified public accountant, who is currently enrolled to practice before the Service and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current enrollment and authorization to represent the taxpayer. The enrollment number must be included in the declaration;

Enrolled actuary

(4) An enrolled actuary who is a person, other than an attorney or certified public accountant, who is currently enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. § 1242 and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an enrolled actuary and current authorization to represent the taxpayer. Practice before the Service as an enrolled actuary is limited to representation with respect to issues involving §§ 401, 403(a), 404, 412, 413, 414, 419, 419A, 420, 4971, 4972, 4976, 4980, 6057, 6058, 6059, 6652(e), 6652(f), 6692, and 7805(b); former § 405; and 29 U.S.C. § 1083; or

A person with a "Letter of Authorization"

(5) Any other person, including a foreign representative, who has received a "Letter of Authorization" from the Director of the Office of Professional Responsibility under section

10.7(d) of Treasury Department Circular No. 230. A person may make a written request for a "Letter of Authorization" to: Office of Professional Responsibility, SE:OPR, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224. Section 10.7(d) of Circular No. 230 authorizes the Commissioner to allow an individual who is not otherwise eligible to practice before the Service to represent another person in a particular matter.

Representative authorized based on relationship to taxpayer

(b) A regular full-time employee representing his or her employer; a general partner representing his or her partnership; a *bona fide* officer representing his or her corporation, association, or organized group; a regular full-time employee representing a trust, receivership, guardianship, or estate; or an individual representing an immediate family member may sign the request or appear before the Service in connection with the request.

A taxpayer may be required to file a Form 8821, *Tax Information Authorization*, in order for certain employees to receive taxpayer information from the Service.

Return preparer

(c) A return preparer that is not described in subsections (a) and (b) of this section may not sign the request, appear before the Service, or represent a taxpayer in connection with a request for a letter ruling or a determination letter. *See* section 10.7(c) of Treasury Department Circular No. 230.

Foreign representative

(d) A foreign representative, other than a person referred to in subsections (a) and (b) of this section, is not authorized to practice before the Service within the United States and must withdraw from representing a taxpayer in a request for a letter ruling or a determination letter. In this situation, the nonresident alien or foreign entity must submit the request for a letter ruling or a determination letter on the individual's or the entity's own behalf or through a person referred to in subsections (a) and (b) of this section.

Power of attorney and declaration of representative

(14) Power of attorney and declaration of representative. Form 2848, *Power of Attorney and Declaration of Representative*, should be used to provide the representative's authority (Part I of Form 2848, *Power of Attorney*) and the representative's qualification (Part II of Form 2848, *Declaration of Representative*). The name of the person signing Part I of Form 2848 should also be typed or printed on this form. A stamped signature is not permitted. An original, a copy, or fax of the power of attorney is acceptable so long as its authenticity is not reasonably disputed. For additional information regarding the power of attorney form, *see* section 7.02(2) of this revenue procedure.

The taxpayer's authorized representative, whether or not enrolled, must comply with Treasury Department Circular No. 230, which provides the rules for practice before the Service. In situations where the Service believes that the taxpayer's representative is not in compliance with Circular 230, the Service will bring the matter to the attention of the Office of Professional Responsibility.

Penalties of perjury statement

(15) Penalties of perjury statement.

(a) Format of penalties of perjury statement. A request for a letter ruling or determination letter and any change in the request submitted at a later time must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined [Insert, as appropriate: this request or this modification to the request], including accompanying documents, and, to the best of my knowledge and belief, [Insert, as appropriate: the request or the modification] contains all the relevant facts relating to the request, and such facts are true, correct, and complete."**

See section 8.05(4) of this revenue procedure for the penalties of perjury statement applicable for submissions of additional information.

(b) Signature by taxpayer. The declaration must be signed and dated by the taxpayer, not the taxpayer's representative. A stamped signature or faxed signature is not permitted.

The person who signs for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts and whose duties are not limited to obtaining a letter

ruling or determination letter from the Service. If the corporate taxpayer is a member of an affiliated group filing consolidated returns, a penalties of perjury statement must also be signed and submitted by an officer of the common parent of the group.

The person signing for a trust, a state law partnership, or a limited liability company must be, respectively, a trustee, general partner, or member-manager who has personal knowledge of the facts.

Number of copies of request to be submitted

(16) Number of copies of request to be submitted. Generally, a taxpayer needs to submit the original and one copy of the request for a letter ruling or determination letter. If more than one issue is presented in the letter ruling request, the taxpayer is encouraged to submit additional copies of the request.

Further, the original and two copies of the request for a letter ruling or determination letter are required if—

(a) the taxpayer is requesting separate letter rulings or determination letters on different issues as explained later under section 7.02(1) of this revenue procedure;

(b) the taxpayer is requesting deletions other than names, addresses, and identifying numbers, as explained in section 7.01(11)(a) of this revenue procedure (one copy is the request for the letter ruling or determination letter and the second copy is the deleted version of such request); or

(c) a closing agreement (as defined in section 2.02 of this revenue procedure) is being requested on the issue presented.

Sample format for a letter ruling request

(17) Sample format for a letter ruling request. To assist a taxpayer or the taxpayer's representative in preparing a letter ruling request, a sample format for a letter ruling request is provided in Appendix B of this revenue procedure. This format is not required to be used.

Checklist

(18) Checklist for letter ruling requests. An Associate office will be able to respond more quickly to a taxpayer's letter ruling request if the request is carefully prepared and complete. The checklist in Appendix C of this revenue procedure is designed to assist taxpayers in preparing a request by reminding them of the essential information and documents to be furnished with the request. The checklist in Appendix C must be completed to the extent required by the instructions in the checklist, signed and dated by the taxpayer or the taxpayer's representative, and placed on top of the letter ruling request. If the checklist in Appendix C is not received, a branch representative will ask the taxpayer or the taxpayer's representative to submit the checklist; this may delay action on the letter ruling request.

For letter ruling requests on certain matters, specific checklists supplement the checklist in Appendix C. These checklists are listed in section 1 of Appendix E of this revenue procedure and must also be completed and placed on top of the letter ruling request along with the checklist in Appendix C.

Taxpayers can obtain copies of the checklist in Appendix C by calling (202) 622–7280 (not a toll-free call) or by accessing this revenue procedure in Internal Revenue Bulletin 2011–1 on the IRS web site at *www.irs.gov*. Taxpayers can access this revenue procedure on the website by following the "Newsroom" link, the "IRS Guidance" link, and the "Internal Revenue Bulletins (after June 2003)" link to obtain Internal Revenue Bulletin 2011–1. A copy of this checklist may be used.

Additional procedural information required with request

.02

Multiple issues

(1) To request separate letter rulings for multiple issues in a single situation. If more than one issue is presented in a request for a letter ruling, the Associate office generally will issue a single letter ruling covering all the issues. If the taxpayer requests separate letter rulings on any of the issues (because, for example, one letter ruling is needed sooner than another), the

Associate office usually will comply with the request unless doing so is not feasible or not in the best interests of the Service. A taxpayer who wants separate letter rulings on multiple issues should make this clear in the request and submit the original and two copies of the request.

In issuing each letter ruling, the Associate office will state that it has issued separate letter rulings or that requests for other letter rulings are pending.

Power of attorney used to indicate recipient of a copy or copies of a letter ruling or a determination letter

(2) Power of attorney used to indicate recipient or recipients of a copy or copies of a letter ruling or a determination letter. Once the Service signs the letter ruling or determination letter, it will send the original to the taxpayer. The Service will not send the original letter ruling or determination letter to the taxpayer's representative. The Service may send copies of the letter ruling or determination to the taxpayer's representative, but it will not send copies to more than two representatives.

Unless otherwise specified by the taxpayer on the Form 2848, *Power of Attorney and Declaration of Representative*, the Service will send a copy of the letter ruling or determination letter to the first representative listed on the Form 2848. If the taxpayer appoints more than one representative on the Form 2848 and checks the Box (a) on Line 7, an additional copy will be send to the second representative listed on the Form 2848. The Service will not send a copy of the letter ruling or determination letter to any representative if the taxpayer checks the Box (b) on Line 7 on the Form 2848 indicating that notices or written communications from the Service should not be sent to the taxpayer's representative.

Taxpayers should use Form 2848 to appoint representatives. If a taxpayer does not use Form 2848, a copy of the letter ruling or determination letter will be mailed to the first representative listed on the power of attorney unless the taxpayer specifies that an additional copy of the letter ruling or determination letter should be mailed to a second representative or that no copies of the letter ruling or determination letter should be mailed to the taxpayer's representative.

"Two-part" letter ruling requests

(3) To request a particular conclusion on a proposed transaction. A taxpayer who requests a particular conclusion on a proposed transaction may make the request for a letter ruling in two parts. This type of request is referred to as a "two-part" letter ruling request. The first part must include the complete statement of facts and related documents described in section 7.01 of this revenue procedure. The second part must include a summary statement of the facts the taxpayer believes to be controlling in reaching the conclusion requested.

If the Associate office accepts the taxpayer's statement of controlling facts, it will base its letter ruling on these facts. Ordinarily, this statement will be incorporated into the letter ruling. The Associate office reserves the right to rule on the basis of a more complete statement of the facts and to seek more information in developing the facts and restating them.

A taxpayer who chooses this two-part procedure has all the rights and responsibilities provided in this revenue procedure.

Taxpayers may not use the two-part procedure if it is inconsistent with other procedures, such as those dealing with requests for permission to change accounting methods or periods, applications for recognition of exempt status under § 521, or requests for rulings on employment tax status.

After the Associate office has resolved the issues presented by a letter ruling request, the Associate office representative may request that the taxpayer submit a proposed draft of the letter ruling to expedite the issuance of the ruling. *See* section 8.07 of this revenue procedure.

Expedited handling

(4) To request expedited handling. The Service ordinarily processes requests for letter rulings and determination letters in order of the date received. Expedited handling means that a request is processed ahead of requests received before it. Expedited handling is granted only in rare and unusual cases, both out of fairness to other taxpayers and because the Service seeks to process all requests as expeditiously as possible and to give appropriate deference to normal

business exigencies in all cases not involving expedited handling. Notwithstanding the previous sentence, expedited handling may be available for certain issues under the jurisdiction of the Associate Chief Counsel (Corporate), as provided below.

A taxpayer with a compelling need to have a request processed ahead of requests received before it may request expedited handling. This request must explain in detail the need for expedited handling. The request for expedited handling must be made in writing, preferably in a separate letter included with the request for the letter ruling or determination letter or provided soon after its filing. If the request for expedited handling is contained in the letter requesting the letter ruling or determination letter, the letter should state at the top of the first page **"Expedited Handling Is Requested. See page ___ of this letter."**

A request for expedited handling will not be forwarded to a branch for action until the check for the user fee is received.

Whether a request for expedited handling will be granted is within the Service's discretion. The Service may grant the request when a factor outside a taxpayer's control creates a real business need to obtain a letter ruling or determination letter before a certain date to avoid serious business consequences. Examples include situations in which a court or governmental agency has imposed a specific deadline for the completion of a transaction, or where a transaction must be completed expeditiously to avoid an imminent business emergency (such as the hostile takeover of a corporate taxpayer), provided that the taxpayer can demonstrate that the deadline or business emergency, and the need for expedited handling, resulted from circumstances that could not reasonably have been anticipated or controlled by the taxpayer. To qualify for expedited handling in such situations, the taxpayer must also demonstrate that the taxpayer submitted the request as promptly as possible after becoming aware of the deadline or emergency. The extent to which the letter ruling or determination letter complies with all of the applicable requirements of this revenue procedure, and fully and clearly presents the issues, is a factor in determining whether expedited treatment will be granted. When the Service agrees to process a request out of order, it cannot give assurance that any letter ruling or determination letter will be processed by the date requested.

The scheduling of a closing date for a transaction or a meeting of the board of directors or shareholders of a corporation, without regard for the time it may take to obtain a letter ruling or determination letter, will not be considered a sufficient reason to process a request ahead of its regular order. Also, the possible effect of fluctuation in the market price of stocks on a transaction will not be considered a sufficient reason to process a request out of order.

Because most requests for letter rulings and determination letters cannot be processed out of order, the Service urges all taxpayers to submit their requests well in advance of the contemplated transaction. In addition, to facilitate prompt action on letter ruling requests, taxpayers are encouraged to ensure that their initial submissions comply with all of the requirements of this revenue procedure (including the requirements of other applicable guidelines set forth in Appendix E of this revenue procedure), to prepare "two-part" requests described in section 7.02(3) of this revenue procedure when possible, and to promptly provide any additional information requested by the Service.

(a) Expedited Letter Ruling Process for Certain Requests Under the Jurisdiction of the Associate Chief Counsel (Corporate): If a taxpayer requests a letter ruling on whether a transaction constitutes a reorganization under § 368 or a distribution under § 355, or a letter ruling involving certain significant issues under the jurisdiction of the Associate Chief Counsel (Corporate) as described in section 6.03 of this revenue procedure, and the taxpayer asks for expedited handling pursuant to this provision, the Service will grant expedited handling. If expedited handling is granted, the Service will endeavor to complete and issue the letter ruling, subject to section 3.01(38) of Rev. Proc. 2011–3, within ten weeks of receiving the ruling request. If the transaction involves an issue or issues not entirely within the jurisdiction of the Associate Chief Counsel (Corporate), the letter ruling request will be processed in the usual manner, unless each Associate Chief Counsel having jurisdiction over an issue in the transaction agrees to process the letter ruling request on an expedited basis.

To initiate this process, the taxpayer must (i) state at the top of the first page of the request letter "Expedited Handling is Requested" and (ii) provide the Associate Chief Counsel (Corporate) with a copy of the request letter and Form 2848, *Power of Attorney and Declaration of Representative* (*see* section 7.01(14) of this revenue procedure) by fax, without any other attachments, when the formal request is submitted. The fax copy should be sent to (202) 622–7707, Attn: CC:CORP (Expedite); and receipt should be confirmed shortly after the fax is sent by calling (202) 622–7700 (not a toll-free call), the telephone number for the office of the Associate Chief Counsel (Corporate). *See* section 10.07(1)(a) of this revenue procedure. In due course, the taxpayer must also provide the Associate Chief Counsel (Corporate) with a draft ruling letter, in the format used by the Associate Chief Counsel (Corporate) in similar cases, which sets forth the relevant facts, applicable representations, and requested rulings. *See* section 7.02(3) of this revenue procedure. In addition, the taxpayer must ensure that the formal submission of its letter ruling request complies with all of the requirements of this revenue procedure, including the requirements of other applicable guidelines set forth in Appendix E of this revenue procedure. *See* section 8.05(1) of this revenue procedure for a modified requirement regarding the submission of additional information. If the taxpayer does not satisfy the requirements of this paragraph, the letter ruling request will be processed in the usual manner instead of on an expedited basis. **For further information regarding this expedited letter ruling process for certain requests under the jurisdiction of the Associate Chief Counsel (Corporate), call (202) 622–7700 (not a toll-free call), for pre-submission conferences with the Office of Associate Chief Counsel (Corporate).** *See* section 10.07(1)(a) of this revenue procedure.

Fax to taxpayer or taxpayer's authorized representative of any document related to letter ruling request

(5) Taxpayer requests to receive any document related to letter ruling request by fax. If the taxpayer so requests, the Associate office may fax to the taxpayer or the taxpayer's authorized representative a copy of any document related to the letter ruling request (for example, the letter ruling itself or a request for additional information).

A request to fax to the taxpayer or the taxpayer's authorized representative a copy of any document related to the letter ruling request must be made in writing, preferably as part of the original request for the letter ruling. The request may be submitted at a later date, but it must be received prior to the mailing of correspondence other than the letter ruling and prior to the signing of the letter ruling. The request must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the document is to be faxed.

A document other than the letter ruling will be faxed by a branch representative. The copy of the letter ruling may be faxed by either a branch representative or the Disclosure and Litigation Support Branch of the Legal Processing Division of the Office of Associate Chief Counsel (Procedure and Administration) (CC:PA:LPD:DLS). For purposes of § 301.6110–2(h), however, a letter ruling is not issued until the ruling is mailed.

Requesting a conference

(6) To request a conference. A taxpayer who wants to have a conference on the issues involved in a request for a letter ruling should indicate this in writing when filing the request or soon thereafter. *See* sections 10.01, 10.02, and 11.11 (2) of this revenue procedure.

Address to which to send request for letter ruling or determination letter

.03

(1) Request for letter ruling. Original letter ruling requests must be sent to the appropriate Associate office. The packages should be marked RULING REQUEST SUBMISSION.

(a) Requests for letter rulings should be sent to the following address:

Internal Revenue Service
Attn: CC:PA:LPD:DRU
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

If a private delivery service is used, the address is:

Internal Revenue Service
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224

(b) Requests for letter rulings may also be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. to the courier's desk at the loading dock (behind the 12th Street security station) of 1111 Constitution Avenue, NW, Washington, DC. A receipt will be given at the courier's desk. The package should be addressed to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224

(c) Requests for letter rulings must not be submitted by fax. (*But see* section 7.02(4) of this revenue procedure regarding submissions of an initial fax in certain situations where expedited handling is requested.)

(2) Request for determination letter.

(a) Taxpayers under the jurisdiction of LB&I should send a request for a determination letter to the following address:

Internal Revenue Service
Attn: Manager, Office of Pre-Filing and Technical Services
Large Business & International Division
SE:LB&I:PFT:PFTS
Mint Building, 3rd Floor
1111 Constitution Ave., NW
Washington, DC 20224

(b) SB/SE and W&I taxpayers should send requests for determination letters to the appropriate SB/SE office listed in Appendix D of this revenue procedure.

(c) For a determination letter under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, *see* Rev. Proc. 2011–4, this Bulletin.

Pending letter ruling requests **.04**

(1) Circumstances under which the taxpayer with a pending letter ruling request must notify the Associate office. The taxpayer must notify the Associate office if, after the letter ruling request is filed but before a letter ruling is issued, the taxpayer knows that—

(a) a Field office has started an examination of the issue or the identical issue on an earlier year's return;

(b) in the case of a § 301.9100 request, a Field office has started an examination of the return for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made. *See* § 301.9100–3(e)(4)(i) and section 5.03(3) of this revenue procedure;

(c) legislation that may affect the transaction has been introduced. *See* section 7.01(10) of this revenue procedure; or

(d) another letter ruling request (including an application for change in method of accounting), involving the same or similar issue as that pending with the Service, has been submitted by the taxpayer or a related party within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504.

(2) Taxpayer must notify the Associate office if a return is filed and must attach the request to the return. If the taxpayer files a return before a letter ruling is received from the Associate office concerning an issue in the return, the taxpayer must notify the Associate office that the return has been filed. The taxpayer must also attach a copy of the letter ruling request to the return to alert the Field office and avoid premature field action on the issue. Taxpayers filing their returns electronically may satisfy this requirement by attaching to their return a statement providing the date of the letter ruling request and the control number of the letter ruling.

If, under the limited circumstances permitted in section 5 of this revenue procedure, the taxpayer requests a letter ruling after the return is filed, but before the return is examined, the taxpayer must notify the Associate office that the return has been filed. The taxpayer must also notify the Field office having jurisdiction over the return and attach a copy of the letter ruling request to the notification to alert the Field office and avoid premature field action on the issue.

This section 7.04 also applies to pending requests for a closing agreement on a transaction for which a letter ruling is not requested or issued.

For purposes of this section 7.04, the term "return" includes the original return, amended return, and claim for refund.

When to attach letter ruling or determination letter to return

.05 A taxpayer who, before filing a return, receives a letter ruling or determination letter about any transaction that has been consummated and that is relevant to the return being filed must attach to the return a copy of the letter ruling or determination letter. Taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling or determination letter.

For purposes of this section 7.05, the term "return" includes the original return, amended return, and claim for refund.

How to check on status of request for letter ruling or determination letter

.06 The taxpayer or the taxpayer's authorized representative may obtain information regarding the status of a request for a letter ruling or determination letter by calling the person whose name and telephone number are shown on the acknowledgment of receipt of the request or, in the case of a request for a letter ruling, the appropriate branch representative who contacts the taxpayer as explained in section 8.02 of this revenue procedure.

Request for letter ruling or determination letter may be withdrawn or Associate office may decline to issue letter ruling

.07

(1) In general. A taxpayer may withdraw a request for a letter ruling or determination letter at any time before the letter ruling or determination letter is signed by the Service. Correspondence and exhibits related to a request that is withdrawn or related to a letter ruling request for which an Associate office declines to issue a letter ruling will not be returned to the taxpayer. *See* section 7.01(2)(a) of this revenue procedure. In appropriate cases, an Associate office may publish its conclusions in a revenue ruling or revenue procedure.

(2) Notification of appropriate Service official.

(a) Letter ruling requests. If a taxpayer withdraws a letter ruling request or if the Associate office declines to issue a letter ruling, the Associate office generally will notify, by memorandum, the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer's tax return. For taxpayers under the jurisdiction of the Division Counsel/Associate Chief Counsel (Large Business & International), the Associate office will also send a copy of the memorandum to the Director of Pre-Filing Technical Guidance. In doing so, the Associate office may give the Service official its views on the issues in the request for consideration in any later examination of the return. This section 7.07(2)(a) generally does not apply if the taxpayer withdraws the letter ruling request and submits a written statement that the transaction has been, or is being, abandoned and if the Associate office has not already formed an adverse opinion. *See* section 7.07(1) of this revenue procedure.

(b) Notification of Service official may constitute Chief Counsel Advice. If the memorandum to the Service official referred to in paragraph (a) of this section 7.07(2) provides more than the fact that the request was withdrawn and that the Associate office was tentatively adverse, or more than the fact that the Associate office declines to issue a letter ruling, the memorandum may constitute Chief Counsel Advice, as defined in § 6110(i)(1), and may be subject to disclosure under § 6110.

(3) Refund of user fee. Ordinarily, the user fee will not be returned for a letter ruling request that is withdrawn. If the Associate office declines to issue a letter ruling on all of the issues in the request, the user fee will be returned. If the Associate office issues a letter ruling on some, but not all, of the issues, the user fee will not be returned. *See* section 15.10 of this revenue procedure for additional information regarding the refund of user fees.

SECTION 8. HOW DO THE ASSOCIATE OFFICES HANDLE LETTER RULING REQUESTS?

The Associate offices will issue letter rulings on the matters and under the circumstances explained in sections 3 and 5 of this revenue procedure and in the manner explained in this section and section 11 of this revenue procedure. *See* section 9 of this revenue procedure for procedures for change in method of accounting requests.

Docket, Records, and User Fee Branch receives, initially controls, and refers the request to the appropriate Associate office

.01 All requests for letter rulings will be received and initially controlled by the Docket, Records, and User Fee Branch of the Legal Processing Division of the Associate Chief Counsel (Procedure and Administration) (CC:PA:LPD:DRU). That office will process the incoming documents and the user fee, and it will forward the file to the appropriate Associate office for assignment to a branch that has jurisdiction over the specific issue involved in the request.

Branch representative of the Associate office contacts taxpayer within 21 calendar days

.02 Within 21 calendar days after a letter ruling request has been received in the branch of the Associate office that has jurisdiction over the issue, a representative of the branch will contact the taxpayer or, if the request includes a properly executed power of attorney, the authorized representative unless the power of attorney provides otherwise. During such contact, the branch representative will discuss the procedural issues in the letter ruling request. If the case is complex or a number of issues are involved, it may not be possible for the branch representative to discuss the substantive issues during this initial contact. When possible, for each issue within the branch's jurisdiction, the branch representative will tell the taxpayer—

(1) whether the branch representative will recommend that the Associate office rule as the taxpayer requested, rule adversely on the matter, or not rule;

(2) whether the taxpayer should submit additional information to enable the Associate office to rule on the matter;

(3) whether the letter ruling complies with all of the provisions of this revenue procedure, and if not, which requirements have not been met; or

(4) whether, because of the nature of the transaction or the issue presented, a tentative conclusion on the issue cannot be reached.

If the letter ruling request involves matters within the jurisdiction of more than one branch or Associate office, a representative of the branch that received the original request will tell the taxpayer within the initial 21 calendar days—

(1) that the matters within the jurisdiction of another branch or Associate office have been referred to that branch or Associate office for consideration, and the date the referral was made, and

(2) that a representative of that branch or Associate office will contact the taxpayer within 21 calendar days after receiving the referral to discuss informally the procedural and, to the extent possible, the substantive issues in the request.

This section 8.02 applies to all matters except for cases involving a request for change in method of accounting or accounting period and cases within the jurisdiction of the Associate Chief Counsel (Financial Institutions and Products) concerning insurance issues requiring actuarial computations.

Determine if transaction can be modified to obtain favorable letter ruling

.03 If less than a fully favorable letter ruling is indicated, the branch representative will tell the taxpayer whether minor changes in the transaction or adherence to certain published positions would bring about a favorable ruling. The branch representative may also tell the taxpayer the facts that must be furnished in a document to comply with Service requirements. The branch representative will not suggest precise changes that would materially alter the form of the proposed transaction or materially alter a taxpayer's proposed accounting period.

If, at the end of this discussion, the branch representative determines that a meeting in the Associate office would be more helpful to develop or exchange information, a meeting will be offered and an early meeting date arranged. When offered, this meeting is in addition to the taxpayer's conference of right that is described in section 10.02 of this revenue procedure.

Are not bound by informal opinion expressed

.04 The Service will not be bound by the informal opinion expressed by the branch representative or any other Service representative, and such an opinion cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

May request additional information

.05

Must be submitted within 21 calendar days

(1) Additional information must be submitted within 21 calendar days. If the request lacks essential information, which may include additional information needed to satisfy the procedural requirements of this revenue procedure as well as substantive changes to transactions or documents needed from the taxpayer, the branch representative will request such information during the initial or subsequent contacts with the taxpayer or its authorized representative. The representative will inform the taxpayer or its authorized representative that the request will be closed if the Associate office does not receive the requested information within 21 calendar days from the date of the request unless an extension of time is granted. To facilitate prompt action on letter ruling requests, taxpayers are encouraged to request that the Associate office request additional information by fax. *See* section 7.02(5) of this revenue procedure.

Material facts furnished to the Associate office by telephone or fax, or orally at a conference, must be promptly confirmed by letter to the Associate office. This confirmation, and any additional information requested by the Associate office that is not part of the information requested during the initial contact, must be furnished within 21 calendar days from the date the Associate office makes the request.

The Service will not endeavor to process on an expedited basis a ruling request regarding reorganizations under § 368, distributions under § 355, or certain significant issues under the jurisdiction of the Associate Chief Counsel (Corporate) as described in section 6.03 of this revenue procedure unless the branch representative in Associate Chief Counsel (Corporate) receives all requested additional information within 10 calendar days from the date of the request for such additional information, unless an extension of time is granted. *See* section 7.02(4) of this revenue procedure for information about seeking a request on an expedited basis. If the requested additional information is not provided within 10 calendar days (with any extension) but is provided within 21 calendar days (with any extension), the letter ruling request will be processed in the usual manner instead of on an expedited basis.

Extension of reply period if justified and approved

(2) Extension of reply period. The Service will grant an extension of the 21-day period for providing additional information only if the extension is justified in writing by the taxpayer and approved by the branch reviewer. A request for an extension should be submitted before the end of the 21-day period. If unusual circumstances close to the end of the 21-day period make a written request impractical, the taxpayer should notify the Associate office within the 21-day period that there is a problem and that the written request for extension will be provided shortly. The taxpayer will be told promptly of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

Letter ruling request closed if the taxpayer does not submit additional information

(3) Letter ruling request closed if the taxpayer does not submit additional information. If the taxpayer does not submit the information requested during the initial or subsequent contacts within the time provided, the letter ruling request will be closed and the taxpayer will be

notified in writing. 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 the information is received. The taxpayer must pay another user fee before the case can be reopened.

Penalties of perjury statement for additional information

(4) Penalties of perjury statement. Additional information submitted to the Service must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete."** This declaration must be signed in accordance with the requirements in section 7.01(15)(b) of this revenue procedure.

Faxing request and additional information

(5) Faxing request and additional information. To facilitate prompt action on letter ruling requests, taxpayers are encouraged to request that the Associate office request additional information by fax. *See* section 7.02(5) of this revenue procedure. Taxpayers also are encouraged to submit additional information by fax as soon as the information is available. The Associate office representative who requests additional information can provide a fax number to which the information can be faxed. The original of the faxed material and a signed perjury statement must be mailed or delivered to the Associate office.

Address to which to send additional information

(6) Address to which to send additional information

(a) If a private delivery service is not used, the additional information should be sent to:

Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and
room number of the Associate office
representative who requested
the information]
P. O. Box 7604
Ben Franklin Station
Washington, DC 20044

For cases involving a request for change in method of accounting or period, *see* section 9.05 of this revenue procedure for the address to which to send additional information.

(b) If a private delivery service is used, the additional information for all cases should be sent to:

Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and
room number of the Associate office
representative who requested
the information]
1111 Constitution Ave., NW
Washington, DC 20224

Identifying information included in additional information

(7) Identifying information. For all cases, the additional information should include the taxpayer's name and the case control number and the name, office symbols, and room number of the Associate office representative who requested the information. The Associate office representative can provide the latter information to the taxpayer.

Number of copies of additional information to be submitted

(8) Number of copies. A taxpayer only needs to submit one copy of the additional information unless the Associate office requests additional copies.

Near the completion of the ruling process, advise the taxpayer of conclusions and, if the Associate offices will rule adversely, offer the taxpayer the opportunity to withdraw the letter ruling request

.06 Generally, after the conference of right is held but before the letter ruling is issued, the branch representative will orally notify the taxpayer or the taxpayer's representative of the Associate office's conclusions. *See* section 10 of this revenue procedure for a discussion of conferences of right. If the Associate office is going to rule adversely, the taxpayer will be offered the opportunity to withdraw the letter ruling request. If, within ten calendar days of the notification by the branch representative, the taxpayer or the taxpayer's representative does not notify the branch representative that the taxpayer wishes to withdraw the ruling request, the adverse letter ruling will be issued unless an extension is granted. The user fee will not be refunded for a letter ruling request that is withdrawn. *See* section 15.10(1)(a) of this revenue procedure.

May request that taxpayer submit draft of proposed letter ruling near the completion of the ruling process

.07 To accelerate the issuance of letter rulings, in appropriate cases near the completion of the ruling process, the Associate office representative may request that the taxpayer or the taxpayer's representative submit a proposed draft of the letter ruling. Such draft would be based on the discussions of the issues between the representative and the taxpayer or the taxpayer's representative. The taxpayer is not required to prepare a draft letter ruling to receive a letter ruling.

The format of the submission should be discussed with the Associate office representative who requests the draft letter ruling. The representative usually can provide a sample format of a letter ruling and will discuss with the taxpayer or the taxpayer's representative the facts, analysis, and letter ruling language to be included.

Taxpayers are encouraged to submit this draft in a printed copy that is in a computer scannable format. The printed copy will become part of the permanent files of the Associate office. The printed copy should be sent to the same address as any additional information and should contain in the transmittal the information that should be included with any additional information (for example, a penalties of perjury statement is required). *See* section 8.05(4) of this revenue procedure.

Issues separate letter rulings for substantially identical letter rulings, but generally issues a single letter ruling for related § 301.9100 letter rulings

.08

(1) Substantially identical letter rulings. For letter ruling requests qualifying for the user fee provided in paragraph (A)(5)(a) of Appendix A of this revenue procedure for substantially identical letter rulings, a separate letter ruling generally will be issued for each entity with a common member or sponsor, or for each member of a common entity.

(2) Related § 301.9100 letter rulings.

(a) For a § 301.9100 letter ruling request for an extension of time to file a Form 3115, *Application for Change in Accounting Method*, requesting an identical change in method of accounting for multiple separate and distinct trades or businesses (including a qualified subchapter S subsidiary or a single-member limited liability company of a taxpayer, multiple members of a consolidated group, or multiple eligible CFCs or noncontrolled § 902 corporations (10/50 corporations) qualifying under section 15.07(4) for the user fee provided in paragraph (A)(5)(d) of Appendix A of this revenue procedure, the Associate office generally will issue a single letter on behalf of all separate and distinct trades or businesses of the taxpayer, all members of the consolidated group, or all eligible CFCs or all eligible 10/50 corporations that are the subject of the request.

(b) For a § 301.9100–3 letter ruling request for an extension of time to file an entity classification election for multiple entities qualifying under section 15.07(2) for the user fee provided in paragraph (A)(5)(a) of Appendix A of this revenue procedure, the Associate office generally will issue a single letter on behalf of all entities that are the subject of the request. The taxpayer may request that separate letters be issued to each entity that are the subject of the request. *See generally* section 5.03 of this revenue procedure.

Send a copy of the letter ruling to appropriate Service official

.09 The Associate office will send a copy of the letter ruling, whether favorable or adverse, to the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer's tax return.

SECTION 9. WHAT ARE THE SPECIFIC AND ADDITIONAL PROCEDURES FOR A REQUEST FOR A CHANGE IN METHOD OF ACCOUNTING FROM THE ASSOCIATE OFFICES?

This section provides the specific and additional procedures applicable to a request for a change in method of accounting under Rev. Proc. 2008–52, 2008–2 C.B. 587, as amplified, clarified, and modified by Rev. Proc. 2009–39, 2009–2 C.B. 371 (or any successor), other automatic change request procedures, and Rev. Proc. 97–27, 1997–1 C.B. 680, as amplified and modified by Rev. Proc. 2002–19, 2002–1 C.B. 696, as amplified and clarified by Rev. Proc. 2002–54, 2002–2 C.B. 432, as modified by Rev. Proc. 2007–67, 2007–2 C.B. 1072, and as clarified and modified by Rev. Proc. 2009–39.

A request for a change in method of accounting under Rev. Proc. 2008–52, as amplified, clarified, and modified by Rev. Proc. 2009–39 (or any successor), other automatic change request procedures, or Rev. Proc. 97–27, as amplified and modified by Rev. Proc. 2002–19, as amplified and clarified by Rev. Proc. 2002–54, as modified by Rev. Proc. 2007–67, and as clarified and modified by Rev. Proc. 2009–39 is a type of request for a letter ruling. *See* section 2.01 of this revenue procedure.

Automatic and advance consent change in method of accounting requests

.01

Automatic change in method of accounting under Rev. Proc. 2008–52, as amplified, clarified, and modified by Rev. Proc. 2009–39 (or any successor), or other automatic change request procedures

(1) Procedures for requesting an automatic change in method of accounting. Certain changes in methods of accounting may be made under automatic change request procedures. A change in method of accounting provided for in an automatic change request procedure must be made using that procedure if the taxpayer requesting the change is within the scope of the procedure and the change is an automatic change for the requested year of the change. The Commissioner's consent to an otherwise qualifying automatic change in method of accounting is granted only if the taxpayer timely complies with the applicable automatic change request procedures. *But see* section 9.19 of this revenue procedure concerning review by an Associate office and a Field office.

An application filed under Rev. Proc. 2008–52, as amplified, clarified, and modified by Rev. Proc. 2009–39 (or any successor) or other automatic change request procedure and this revenue procedure is hereinafter referred to as an "automatic change request." *See* section 9.22 of this revenue procedure for a list of automatic change request procedures. *See* section 9.23 for a list of the sections and Appendices of this revenue procedure in addition to this section 9 that apply to an automatic change request. No user fee is required for a change made under an automatic change request procedure.

Advance consent change in method of accounting under Rev. Proc. 97–27, 1997–1 C.B. 680 (or any successor)

(2) Advance consent letter ruling requests. If a change in method of accounting may not be made under an automatic change request procedure, the taxpayer may request an advance consent letter ruling by filing a current Form 3115, *Application for Change in Accounting Method*, under Rev. Proc. 97–27, 1997–1 C.B. 680, as amplified and modified by Rev. Proc. 2002–19, 2002–1 C.B. 696, as amplified and clarified by Rev. Proc. 2002–54, 2002–2 C.B. 432, as modified by Rev. Proc. 2007–67, 2007–2 C.B. 1072, and as clarified and modified by Rev. Proc. 2009–39, 2009–2 C.B. 371 (or any successor); and this revenue procedure. A Form 3115 filed under Rev. Proc. 97–27 (or any successor) and this revenue procedure is hereinafter referred to as an "advance consent Form 3115." A taxpayer filing an advance consent Form 3115 must submit the required user fee with the completed Form 3115. *See* section 15 and Appendix A of this revenue procedure for information about user fees. *See* section 9.23 for a list of the sections and Appendices of this revenue procedure in addition to this section 9 that apply to an advance consent Form 3115.

Ordinarily only one change in method of accounting on a Form 3115, *Application for Change in Accounting Method*, and a separate Form 3115 for each taxpayer and for each separate and distinct trade or business

.02

Ordinarily, a taxpayer may request only one change in method of accounting on a Form 3115, *Application for Change in Accounting Method*. If the taxpayer wants to request a change in method of accounting for more than one unrelated item or submethod of accounting, the taxpayer must submit a separate Form 3115 for each unrelated item or submethod, except in certain situations in which the Service specifically permits certain unrelated changes to be included on a single Form 3115. For an example of such a situation, *see* section 14.03 in the

Appendix of Rev. Proc. 2008–52, 2008–2 C.B. 587, as amplified, clarified, and modified by Rev. Proc. 2009–39, 2009–2 C.B. 371, or its successor.

A separate Form 3115 (and, therefore, a separate user fee pursuant to section 15 and Appendix A of this revenue procedure) must be submitted for each taxpayer and each separate trade or business of a taxpayer, including a qualified subchapter S subsidiary (QSub) or a single-member limited liability company (single member LLC), requesting a change in method of accounting, except as specifically permitted or required in guidance published by the Service. *See*, for example, section 15.07(4) of this revenue procedure.

Information required with a Form 3115

.03

Facts and other information

(1) Facts and other information requested on Form 3115 and in applicable revenue procedures. In general, a taxpayer requesting a change in method of accounting must file a current Form 3115, unless the procedures applicable to the specific type of change in method of accounting do not require a Form 3115 to be submitted.

To be eligible for approval of the requested change in method of accounting, the taxpayer must provide all information requested on the Form 3115 and in its instructions and in either Rev. Proc. 97–27 (or any successor), or the applicable automatic change request procedure. In addition, the taxpayer must provide all information requested in the applicable sections of this revenue procedure, including a detailed and complete description of the item being changed, the taxpayer's present and proposed method for the item being changed, information regarding whether the taxpayer is under examination, or before Appeals or a Federal court, and a summary of the computation of the § 481(a) adjustment and an explanation of the methodology used to determine the adjustment.

For an advance consent Form 3115, the taxpayer must also include a full explanation of the legal basis and relevant authorities supporting the proposed method, a detailed and complete description of the facts and explanation of how the law applies to the taxpayer's situation, a discussion of whether the law related to the request is uncertain or inadequately addresses the issue, a statement of the applicant's reasons for the proposed change, and copies of all documents related to the proposed change.

The applicant must provide the requested information to be eligible for approval of the requested change in method of accounting. The taxpayer may be required to provide information specific to the requested change in method of accounting, such as an attached statement. The taxpayer must provide all information relevant to the requested change in method of accounting, even if not specifically requested, including an explanation of all material facts relevant to the requested change in method of accounting.

See also sections 7.01(1) and 7.01(8) of this revenue procedure.

Statement of authorities contrary to taxpayer's views

(2) Statement of contrary authorities. For an advance consent Form 3115, the taxpayer is encouraged to inform the Associate office about, and discuss the implications of, any authority believed to be contrary to the proposed change in method of accounting, including legislation, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements.

If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Associate office may request submission of contrary authorities or a statement that none exists. Failure to comply with this request may result in the Associate office's refusal to issue a change in method of accounting letter ruling.

Documents

(3) Copies of all contracts, agreements, and other documents. True copies of all contracts, agreements, and other documents relevant to the requested change in method of accounting must be submitted with an advance consent Form 3115. Original documents should not be submitted because they become part of the Associate office's file and will not be returned.

Analysis of material facts

(4) Analysis of material facts. When submitting any document with a Form 3115 or in a supplemental letter, the taxpayer must explain and provide an analysis of all material facts in the document. The taxpayer may not merely incorporate the document by reference. The analysis of the facts must include their bearing on the requested change in method of accounting and must specify the provisions that apply.

Same issue in an earlier return

(5) Information regarding whether same issue is in an earlier return. A Form 3115, must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, any return of the taxpayer (or any return of a current or former consolidated group in which the taxpayer is or was a member) in which the taxpayer used the method of accounting being changed is under examination, before Appeals, or before a Federal court. *See* Rev. Proc. 2008–52, 2008–2 C.B. 587, as amplified, clarified, and modified by Rev. Proc. 2009–39, 2009–2 C.B. 371 (or any successor), and Rev. Proc. 97–27, 1997–1 C.B. 680, as amplified and modified by Rev. Proc. 2002–19, 2002–1 C.B. 696, as amplified and clarified by Rev. Proc. 2002–54, 2002–2 C.B. 432, as modified by Rev. Proc. 2007–67, 2007–2 C.B. 1072, and as clarified and modified by Rev. Proc. 2009–39.

Issue previously submitted or currently pending

(6) Statement regarding prior requests for a change in method of accounting and other pending requests.

(a) Other requests for a change in method of accounting within the past five years. A Form 3115 must state, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, whether the taxpayer or a related taxpayer within the meaning of § 267 or a member of a current or former affiliated group of which the taxpayer is or was a member within the meaning of § 1504 or a predecessor requested or made within the past five years (including the year of the requested change), or is currently filing, any request for a change in method of accounting.

If the statement is affirmative, for each separate and distinct trade or business, give a description of each request and the year of change and whether consent was obtained. If any application was withdrawn, not perfected, or denied, or if a Consent Agreement was sent to the taxpayer but was not signed and returned to the Associate office, or if the change was not made in the requested year of change, give an explanation.

(b) Any other pending request(s). A Form 3115 must state, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, whether the taxpayer or a related taxpayer within the meaning of § 267 or a member of a current or former affiliated group of which the taxpayer is or was a member within the meaning of § 1504 or a predecessor currently have pending (including any concurrently filed request) any request for a letter ruling, a change in method of accounting, or a technical advice.

If the statement is affirmative, for each request, give the name(s) of the taxpayer, identification number(s), the type of request (letter ruling, request for change in method of accounting, or request for technical advice), and the specific issues in the request.

Statement identifying pending legislation

(7) Statement identifying pending legislation. At the time the taxpayer files an advance consent Form 3115, the taxpayer must identify any pending legislation that may affect the proposed change in method of accounting. The taxpayer also must notify the Associate office if any such legislation is introduced after the request is filed but before a change in method of accounting letter ruling is issued.

Authorized representatives

(8) Authorized representatives. To appear before the Service in connection with a request for a change in method of accounting, the taxpayer's authorized representative must be an attorney, a certified public accountant, an enrolled agent, an enrolled actuary, a person with a "Letter of Authorization," an employee, general partner, *bona fide* officer, administrator, trustee, etc., as described in section 7.01(13) of this revenue procedure.

Power of attorney and declaration of representative

(9) Power of attorney and declaration of representative. Any authorized representative, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230,

which provides the rules for practice before the Service, and the conference and practice requirements of the Statement of Procedural Rules, which provide the rules for representing a taxpayer before the Service. *See* section 7.01(14) of this revenue procedure. A taxpayer should use Form 2848, *Power of Attorney and Declaration of Representative*, to provide the representative's authority.

Tax Information Authorization

(10) Tax Information Authorization. A taxpayer may use Form 8821, *Tax Information Authorization*, to authorize an individual, corporation, firm, organization, or partnership to receive a copy of the taxpayer's change in method of accounting letter ruling and other related correspondence. A Form 8821 does not authorize the taxpayer's appointee to advocate the taxpayer's position or to otherwise represent the taxpayer before the Service.

Penalties of perjury statement

(11) Penalties of perjury statement

(a) Format of penalties of perjury statement. A Form 3115and any change to a Form 3115 submitted at a later time, must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined this application, including accompanying schedules and statements, and to the best of my knowledge and belief, the application contains all the relevant facts relating to the application, and it is true, correct, and complete."**

See section 9.08(3) of this revenue procedure for the penalties of perjury statement required for submissions of additional information.

(b) Signature by taxpayer. A Form 3115 must be signed by, or on behalf of, the taxpayer requesting the change by an individual with authority to bind the taxpayer in such matters. For example, an officer must sign on behalf of a corporation, a general partner on behalf of a state law partnership, a member-manager on behalf of a limited liability company, a trustee on behalf of a trust, or an individual taxpayer on behalf of a sole proprietorship. If the taxpayer is a member of a consolidated group, a Form 3115 should be submitted on behalf of the taxpayer by the common parent and must be signed by a duly authorized officer of the common parent. Refer to the signature requirements set forth in the instructions for the current Form 3115 regarding those who are to sign. *See also* section 8.08 of Rev. Proc. 97–27 and section 6.02(5) of Rev. Proc. 2008–52. A stamped signature or faxed signature is not permitted.

(c) Signature by preparer. A declaration of preparer (other than the taxpayer) is based on all information of which the preparer has any knowledge.

Additional procedural information required in certain circumstances

.04

Recipients of original and copy of correspondence

(1) Recipients of original and copy of change in method of accounting correspondence. The Service will send the signed original of the change in method of accounting letter ruling and other related correspondence to the taxpayer, and copies to the taxpayer's representative, if so instructed on Form 2848. *See* section 7.02(2) of this revenue procedure for how to designate alternative routing of the copies of the letter ruling and other correspondence.

Expedited handling

(2) To request expedited handling. The Associate offices ordinarily process advance consent Forms 3115 in order of the date received. A taxpayer with a compelling need to have an advance consent Form 3115 processed on an expedited basis may request expedited handling. *See* section 7.02(4) of this revenue procedure for procedures regarding expedited handling.

Fax of any document to the taxpayer or taxpayer's authorized representative

(3) To receive the change in method of accounting letter ruling or any other correspondence related to a Form 3115 by fax. If the taxpayer wants a copy of the change in method of accounting letter ruling or any other correspondence related to a Form 3115, such as a request for additional information, faxed to the taxpayer or the taxpayer's authorized representative, the taxpayer must submit a written request to fax the letter ruling or related correspondence, preferably as part of the Form 3115. The request may be submitted at a later date, but it must

be received prior to the mailing of correspondence other than the letter ruling and prior to the signing of the change in method of accounting letter ruling.

The request to have correspondence relating to the Form 3115 faxed to the taxpayer or taxpayer's authorized representative must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the correspondence is to be faxed.

A document other than the change in method of accounting letter ruling will be faxed by a branch representative. The change in method of accounting letter ruling may be faxed by either a branch representative or the Disclosure and Litigation Support Branch of the Legal Processing Division of the Office of Associate Chief Counsel (Procedure and Administration) (CC:PA:LPD:DLS).

For purposes of § 301.6110–2(h), a change in method of accounting letter ruling is not issued until the change in method of accounting letter ruling is mailed.

Requesting a conference

(4) To request a conference. The taxpayer must complete the appropriate line on the Form 3115 to request a conference, or must request a conference in a later written communication, if an adverse response is contemplated by the Associate office. *See* section 8.10 of Rev. Proc. 97–27, section 10.03(1) of Rev. Proc. 2008–52, and sections 10.01, 10.02 of this revenue procedure.

Associate office addresses to which to send Forms 3115

.05 Associate office addresses to which to send Forms 3115. Submit the original Form 3115, in the case of an advance consent Form 3115, or the national office copy of the Form 3115, in the case of an automatic change request, as follows:

(a) Associate office mailing address if private delivery service is not used. If a private delivery service is not used, a taxpayer other than an exempt organization must send the original completed Form 3115, *Application for Change in Accounting Method*, and the required user fee (in the case of an advance consent Form 3115) or the national office copy of the completed Form 3115 (in the case of an automatic change request) to:

Internal Revenue Service
Attn: [insert either "CC:PA:LPD:DRU" for an advance consent Form 3115 or Automatic Ruling Branch" for an automatic change request]
P.O. Box 7604
Benjamin Franklin Station
Washington, DC 20044

An exempt organization must send the original completed Form 3115 and the required user fee (in the case of an advance consent Form 3115) or the national office copy of the completed Form 3115 (in the case of an automatic change request Form 3115) to:

Internal Revenue Service
Tax Exempt & Government Entities
P.O. Box 2508
Cincinnati, OH 45201

See Rev. Proc. 2011–8, this Bulletin, for the applicable user fee for exempt organization Forms 3115.

(b) Mailing address if private delivery service is used. If a private delivery service is used, a taxpayer other than an exempt organization must send the original completed Form 3115 and the required user fee (in the case of an advance consent Form 3115) or the national office copy of the completed Form 3115 (in the case of an automatic change request) to:

Internal Revenue Service
Attn: [insert either "CC:PA:LPD:DRU" for an advance consent Form 3115 or Automatic Rulings Branch" for an automatic change request]
Room 5336
1111 Constitution Ave., NW
Washington, DC 20224

If a private delivery service is used, an exempt organization must send the original completed Form 3115 and the required user fee (in the case of an advance consent Form 3115) or the national office copy of the completed Form 3115 (in the case of an automatic change request) to:

Internal Revenue Service
Tax Exempt & Government Entities
Attn: TEGE:EO
550 Main Street
Room 4024
Cincinnati, OH 45202

See Rev. Proc. 2011–8, this Bulletin, for the applicable user fee for exempt organization Forms 3115.

(c) Address if hand-delivered to the IRS Courier's desk. For taxpayers other than an exempt organization, the original completed Form 3115 and the required user fee (in the case of an advance consent Form 3115) or the national office copy of the completed Form 3115 (in the case of an automatic change request), may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. to the courier's desk at the loading dock (located behind the 12th Street security station) of 1111 Constitution Ave., NW, Washington, DC. A receipt will be given at the courier's desk. The package should be addressed to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224

A Form 3115 must not be submitted by fax

.06 A completed Form 3115 must not be submitted by fax.

Docket, Records, and User Fee Branch receives, initially controls, and refers the Form 3115 to the appropriate Associate office

.07 An advance consent Form 3115, is received and controlled by the Docket, Records, and User Fee Branch, Legal Processing Division of the Associate Chief Counsel (Procedure and Administration) (CC:PA:LPD:DRU) if the required user fee is submitted with the Form 3115. Once controlled, the Form 3115 is forwarded to the appropriate Associate office for assignment and processing.

Additional information required

.08

Incomplete Form 3115

(1) Incomplete Form 3115.

(a) Advance consent Form 3115 — 21 day rule. In general, for an advance consent Form 3115, additional information requested by the Associate office and additional information furnished to the Associate office by telephone must be furnished in writing within 21 calendar days from the date of the information request. The Associate office may impose a shorter reply period for a request for additional information made after an initial request. *See* section 10.06 of this revenue procedure for the 21-day rule for submitting information after any conference.

(b) Automatic change request — 30 day rule. In general, for an automatic change request, additional information requested by the Associate office, and additional information furnished to the Associate office by telephone or fax, must be furnished in writing (other than a fax) within 30 calendar days from the date of the information request. The Associate office may impose a shorter reply period for a request for additional information made after an initial request. *See* section 10.06 of this revenue procedure for the 21-day rule for submitting information after any conference with the Associate office.

Extension of reply period

(2) Request for extension of reply period.

(a) Advance consent Form 3115. For an advance consent Form 3115, an additional period, not to exceed 15 calendar days, to furnish information may be granted to a taxpayer. Any request for an extension of time must be made in writing and submitted before the end of the original 21-day period. If unusual circumstances close to the end of the 21-day period make a written request impractical, the taxpayer should notify the Associate office within the 21-day period that there is a problem and that the written request for extension will be provided shortly. An extension of the 21-day period will be granted only if approved by a branch reviewer. An extension of the 21-day period ordinarily will not be granted to furnish information requested on Form 3115. The taxpayer will be told promptly, and later in writing, of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

(b) Automatic change request. For an automatic change request, an additional period, not to exceed 30 calendar days, to furnish information may be granted to a taxpayer. Any request for an extension of time must be made in writing and submitted before the end of the original 30-day period. If unusual circumstances close to the end of the 30-day period make a written request impractical, the taxpayer should notify the Associate office within the 30-day period that there is a problem and that the written request for extension will be coming soon. An extension of the 30-day period will be granted only if approved by a branch reviewer. An extension of the 30-day period ordinarily will not be granted to furnish information requested on Form 3115. The taxpayer will be told promptly of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

Penalties of perjury statement for additional information

(3) Penalties of perjury statement. Additional information submitted to the Associate office must be accompanied by the following declaration: "**Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.**" This declaration must be signed in accordance with the requirements in section 9.03(11)(b) of this revenue procedure.

Identifying information included in additional information

(4) Identifying information. The additional information should also include the taxpayer's name and the case control number and the name, office symbols, and room number of the Associate office representative who requested the information. The Associate office representative can provide the latter information to the taxpayer.

Faxing information request and additional information

(5) Faxing information request and additional information. To facilitate prompt action on a change in method of accounting ruling request, taxpayers are encouraged to request that the Associate office request additional information by fax. *See* section 9.04(3) of this revenue procedure.

Taxpayers also are encouraged to submit additional information by fax as soon as the information is available. The Associate office representative who requests additional information can provide a telephone number to which the information can be faxed. A copy of the requested information and an original signed penalties of perjury statement also must be mailed or delivered to the Associate office.

Address to which to send additional information

(6) Address to which to send additional information.

(a) Address if private delivery service not used. For a request for change in method of accounting under the jurisdiction of the Associate Chief Counsel (Income Tax and Accounting), if a private delivery service is not used, the additional information should be sent to:

Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and
room number of the Associate office
representative who requested
the information]
P.O. Box 14095
Ben Franklin Station
Washington, DC 20044

For a request for change in method of accounting for an exempt organization, if a private delivery service is not used, the additional information should be sent to:

Internal Revenue Service
Tax Exempt & Government Entities
P.O. Box 2508
McPherson Station
Washington, DC 20038

For any other request for change in method of accounting, if a private delivery service is not used, the additional information should be sent to:

Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and
room number of the Associate office
representative who requested
the information]
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

(b) Address if private delivery service is used. For a request for a change in method of accounting for other than an exempt organization, if a private delivery service is used, the additional information should be sent to:

Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and
room number of the Associate office
representative who requested
the information]
1111 Constitution Ave., NW
Washington, DC 20224

For a request for change in method of accounting for an exempt organization, if a private delivery service is used the additional information should be sent to:

Internal Revenue Service
Tax Exempt & Government Entities
1750 Pennsylvania Ave., NW
Washington, DC 20038

Failure to timely submit additional information

(7) If taxpayer does not timely submit additional information.

(a) Advance consent Form 3115. In the case of an advance consent Form 3115, if the required information is not furnished to the Associate office within the reply period, the Form 3115 will not be processed and the case will be closed. The taxpayer or authorized representative will be so notified in writing.

(b) Automatic change request. In the case of an automatic change request, if the required information is not furnished to the Associate office within the reply period, the request does not qualify for the automatic consent procedure. In such a case, the Associate office will notify the taxpayer that consent to make the change in method of accounting is not granted.

(c) Submitting the additional information at a later date. If the taxpayer wants to submit the additional information at a later date, the taxpayer must submit it with a new completed Form 3115 (and user fee, if applicable) for a year of change for which such new Form 3115 is timely filed under the applicable change in method of accounting procedure.

Circumstances in which the taxpayer must notify the Associate office

.09

For an advance consent Form 3115, the taxpayer must promptly notify the Associate office if, after the Form 3115 is filed but before a change in method of accounting letter ruling is issued, the taxpayer knows that—

(1) a Field office has started an examination of the present or proposed accounting;

(2) a Field office has started an examination of the proposed year of change;

(3) legislation that may affect the change in method of accounting has been introduced, *see* section 9.03(7) of this revenue procedure; or

(4) another letter ruling request (including another Form 3115) has been submitted by the taxpayer or a related party within the meaning of § 267 or a member of an affiliated group of which the taxpayer is a member within the meaning of § 1504.

Determines if proposed method of accounting can be modified to obtain favorable letter ruling

.10 For an advance consent Form 3115, if a less than fully favorable change in method of accounting letter ruling is indicated, the branch representative will tell the taxpayer whether minor changes in the proposed method of accounting would bring about a favorable ruling. The branch representative will not suggest precise changes that materially alter a taxpayer's proposed method of accounting.

Near the completion of processing the Form 3115, advises the taxpayer if the Associate office will rule adversely and offers the taxpayer the opportunity to withdraw Form 3115

.11 Generally, after the conference is held (or offered, in the event no conference is held) and before issuing any change in method of accounting letter ruling that is adverse to the requested change in method of accounting, the taxpayer will be offered the opportunity to withdraw the Form 3115. *See* section 9.12 of this revenue procedure. If, within 10 calendar days of the notification by the branch representative, the taxpayer or the taxpayer's representative does not notify the branch representative of a decision to withdraw the Form 3115, the adverse change in method of accounting letter ruling will be issued unless an extension is granted. Ordinarily, the user fee required for an advance consent Form 3115 will not be refunded for a Form 3115 that is withdrawn.

Advance consent Form 3115 may be withdrawn or Associate office may decline to issue a change in method of accounting letter ruling

.12

(1) In general. A taxpayer may withdraw an advance consent Form 3115 at any time before the change in method of accounting letter ruling is signed by the Associate office. The Form 3115, correspondence, and any documents relating to the Form 3115 that is withdrawn or for which the Associate office declines to issue a letter ruling will not be returned to the taxpayer. *See* section 9.03(3) of this revenue procedure. In appropriate cases, the Service may publish its conclusions in a revenue ruling or revenue procedure.

(2) Notification of appropriate Service official. If a taxpayer withdraws, or the Associate office declines to grant (for any reason), a request to change from or to an improper method

of accounting, the Associate office will notify, in writing, the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer's tax return and the Change in Method of Accounting Technical Advisor, and may give its views on the issues in the request to the Service official to consider in any later examination of the return.

If the memorandum to the Service official provides more than the fact that the request was withdrawn and the Associate office was tentatively adverse, or that the Associate office declines to grant a change in method of accounting, the memorandum may constitute Chief Counsel Advice, as defined in § 6110(i)(1), and may be subject to disclosure under § 6110.

(3) Refund of user fee. Ordinarily, the user fee will not be returned for an advance consent Form 3115 that is withdrawn. *See* section 15.10 of this revenue procedure for information regarding refunds of user fees.

How to check status of a pending Form 3115

.13 The taxpayer or the taxpayer's authorized representative may obtain information regarding the status of an advance consent Form 3115 by calling the person whose name and telephone number are shown on the acknowledgement of receipt of the Form 3115.

Is not bound by informal opinion expressed

.14 The Service will not be bound by any informal opinion expressed by the branch representative or any other Service representative, and such an opinion cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Single letter ruling issued to a taxpayer or consolidated group for qualifying identical change in method of accounting

.15 For an advance consent Form 3115 qualifying under section 15.07(4) for the user fee provided in paragraph (A)(5)(b) of Appendix A of this revenue procedure for identical changes in method of accounting, the Associate office generally will issue a single letter ruling on behalf of all affected separate and distinct trades or businesses of a taxpayer, all affected members of the consolidated group, or all eligible and affected CFCs and 10/50 corporations.

Letter ruling ordinarily not issued for one of two or more interrelated items or submethods

.16 If two or more items or submethods of accounting are interrelated, the Associate office ordinarily will not issue a letter ruling on a change in method of accounting involving only one of the items or submethods.

Consent Agreement

.17 Ordinarily, for an advance consent Form 3115, the Commissioner's permission to change a taxpayer's method of accounting is set forth in a letter ruling (original and a Consent Agreement copy). If the taxpayer agrees to the terms and conditions contained in the change in method of accounting letter ruling, the taxpayer must sign and date the Consent Agreement copy of the letter ruling in the appropriate space. The Consent Agreement must be signed by an individual with authority to bind the taxpayer in such matters. The Consent Agreement copy must not be signed by the taxpayer's representative. The signed copy of the letter ruling will constitute an agreement (Consent Agreement) within the meaning of § 1.481–4(b) of the regulations. The signed Consent Agreement copy of the letter ruling must be returned to the Associate office within 45 calendar days. In addition, a copy of the signed Consent Agreement must be attached to the taxpayer's income tax return for the year of change. *See* section 8.11 of Rev. Proc. 97–27. A taxpayer filing its return electronically should attach the Consent Agreement as a PDF file named "Form3115Consent." If the taxpayer has filed its income tax return for the year of change before the ruling has been received and the Consent Agreement has been signed and returned, the copy of the signed Consent Agreement should be attached to the amended return for the year of change that the taxpayer files to implement the change in method of accounting.

A taxpayer must secure the consent of the Commissioner before changing a method of accounting for Federal income tax purposes. *See* Treas. Reg. § 1.446–1(e)(2)(i). For a change in method of accounting requested on an advance consent Form 3115, a taxpayer has secured the consent of the Commissioner when it timely signs and returns the Consent Agreement copy of the letter ruling from the Associate office granting permission to make the change in method of accounting. A taxpayer who timely files an advance consent Form 3115 and takes the requested change into account in its Federal income tax return for the year of change (and any subsequent tax year), prior to receiving the letter ruling granting permission for the requested change, may nevertheless rely on the letter ruling received from the Associate office after it is received, as provided in section 9.19 of this revenue procedure. If, however, the requested

change is modified or is withdrawn, denied, or similarly closed without the Associate office having granted consent, taxpayers are not relieved of any interest, penalties, or other adjustments resulting from improper implementation of the change.

A copy of the change in method of accounting letter ruling is sent to appropriate Service official

.18 The Associate office will send a copy of each change in method of accounting letter ruling, whether favorable or adverse, to the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer's tax return.

Consent to change a method of accounting may be relied on subject to limitations

.19 A taxpayer may rely on a change in method of accounting letter ruling received from the Associate office, subject to certain conditions and limitations. *See* sections 9, 10, and 11 of Rev. Proc. 97–27, 1997–1 C.B 680.

A qualifying taxpayer complying timely with an automatic change request procedure may rely on the consent of the Commissioner as provided in the automatic change request procedure to change the taxpayer's method of accounting, subject to certain conditions and limitations. *See generally* sections 6.01, 7, and 8 of Rev. Proc. 2008–52, 2008–2 C.B. 587 (or its successor). An Associate office may review a Form 3115, *Application for Change in Accounting Method*, filed under an automatic change request procedure and will notify the taxpayer if additional information is needed or if consent is not granted to the taxpayer for the requested change. *See* section 10 of Rev. Proc. 2008–52 (or its successor). Further, the Field office that has jurisdiction over the taxpayer's return may review the Form 3115. *See* section 9 of Rev. Proc. 2008–52.

Change in method of accounting letter ruling will not apply to another taxpayer

.20 A taxpayer may not rely on a change in method of accounting letter ruling issued to another taxpayer. *See* § 6110(k)(3).

Associate office discretion to permit requested change in method of accounting

.21 The Associate office reserves the right to decline to process any advance consent Form 3115 in situations in which it would not be in the best interest of sound tax administration to permit the requested change. In this regard, the Associate office will consider whether the change in method of accounting would clearly and directly frustrate compliance efforts of the Service in administering the income tax laws. *See* section 8.01 of Rev. Proc. 97–27.

List of automatic change in method of accounting request procedures

.22 For procedures regarding requests for an automatic change in method of accounting, refer to the following published automatic change request procedures. The Commissioner's consent to an otherwise qualifying automatic change in method of accounting is granted only if the taxpayer complies timely with the applicable automatic change request procedure.

The automatic change request procedures for obtaining a change in method of accounting include:

(1) Rev. Proc. 2008–52, 2008–36 C.B. 587, as amplified, clarified and modified by Rev. Proc. 2009–39, 2009–38 C.B. 371 (or any successor). Rev. Proc. 2008–52 applies to the changes in method of accounting described in the Appendix of Rev. Proc. 2008–52 involving §§ 56, 61, 77, 118, 162, 166, 167, 168, 171, 174, 179B, 181, 194, 197, 263, 263A, 267, 280F, 404, 446, 447, 448, 451, 454, 455, 460, 461, 467, 471, 472, 475, 585, 832, 846, 860A–860G, 985, 1012, 1272, 1273, 1278, 1281, 1363, 1400I, 1400L, 1400N, and former § 168.

(2) The following automatic change request procedures, which require a completed Form 3115, *Application for Change in Accounting Method*, provide both the procedures under which a change may be made automatically and the procedures under which such change must be made:

Treas. Reg. § 1.166–2(d)(3) (bank conformity for bad debts);

Treas. Reg. § 1.448–1 (to an overall accrual method for the taxpayer's first taxable year it is subject to § 448) (this change may also be subject to the procedures of Rev. Proc. 2008–52, 2008–2 C.B. 587, as amplified, clarified, and modified by Rev. Proc. 2009–39, 2009–2 C.B. 371 (or any successor));

Treas. Reg. § 1.458–1 and –2 (exclusion for certain returned magazines, paperbacks, or records);

Rev. Proc. 97–43, 1997–2 C.B. 494 (§ 475 — electing out of certain exemptions from securities dealer status); and

Rev. Proc. 91–51, 1991–2 C.B. 779 (§ 1286 — certain taxpayers under examination that sell mortgages and retain rights to service the mortgages).

(3) The following automatic change request procedures, which do not require a completed Form 3115, provide the type of change in method of accounting that may be made automatically and also provide the procedures under which such change must be made:

Notice 96–30, 1996–1 C.B 378 (§ 446 — change to comply with Statement of Financial Accounting Standards No. 116);

Rev. Proc. 92–29, 1992–1 C.B. 748 (§ 461 — change in real estate developer's method for including costs of common improvements in the basis of property sold);

Rev. Proc. 98–58, 1998–2 C.B. 712 (certain taxpayers seeking to change to the installment method of accounting under § 453 for alternative minimum tax purposes for certain deferred payment sales contracts relating to property used or produced in the trade or business of farming);

Treas. Reg. § 1.472–2 (taxpayers changing to the last-in, first-out (LIFO) inventory method);

Section 585(c) and Treas. Reg. §§ 1.585–6 and 1.585–7 (large bank changing from the reserve method of § 585); and

Rev. Proc. 92–67, 1992–2 C.B. 429 (election under § 1278(b) to include market discount in income currently or election under § 1276(b) to use constant interest rate to determine accrued market discount).

(4) *See* Appendix E for the list of revenue procedures for automatic changes in accounting period.

Other sections of this revenue procedure that are applicable to a Form 3115

.23 In addition to this section 9, the following sections of this revenue procedure apply to automatic change requests and advance consent Forms 3115:

1 (purpose of Rev. Proc. 2011–1);

2.01 (definition of "letter ruling");

2.02 (definition of "closing agreement");

2.05 (oral guidance);

3.01 (issues under the jurisdiction of the Associate Chief Counsel (Corporate));

3.02 (issues under the jurisdiction of the Associate Chief Counsel (Financial Institutions and Products));

3.03 (issues under the jurisdiction of the Associate Chief Counsel (Income Tax and Accounting));

3.04 (issues under the jurisdiction of the Associate Chief Counsel (International));

3.05 (issues under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries));

3.07 (issues under the jurisdiction of the Deputy Counsel/Deputy Associate Chief (Tax Exempt and Government Entities));

5.03(2) (period of limitations when filing a request for extensions of time for making an election or for other relief under § 301.9100);

6.02 (letter rulings ordinarily not issued in certain areas because of the factual nature of the problem);

6.05 (letter rulings ordinarily not issued to business associations or groups);

6.06 (letter rulings ordinarily not issued where the request does not address the tax status, liability, or reporting obligations of the requester);

6.08 (letter rulings ordinarily not issued on Federal tax consequences of proposed legislation);

6.10 (letter rulings not issued on frivolous issues);

6.12 (letter rulings not issued on alternative plans or hypothetical situation);

7.01(1) (statement of facts and other information);

7.01(8) (statement of supporting authorities);

7.01(13) (authorized representatives);

7.01(14) (power of attorney and declaration of representative);

7.02(2) (power of attorney used to indicate recipient of a copy or copies of a letter ruling or a determination letter);

7.02(4) (expedited handling);

7.04(2) (notify Associate office if a return, amended return, or claim for refund is filed while request is pending and attach request to the return);

7.05 (attach letter ruling to the return, amended return or claim for refund);

8.01 (receipt and control of the request, and referral to the appropriate Associate office);

8.04 (not bound by informal opinion expressed);

10 (scheduling conferences);

15 (user fees);

16 (significant changes to Rev. Proc. 2010–1);

17 (effect of Rev. Proc. 2011–1 on other documents);

18 (effective date of this revenue procedure);

Appendix A (schedule of user fees); and

Appendix E (revenue procedures and notices regarding letter ruling requests relating to specific Code sections and subject matters).

SECTION 10. HOW ARE CONFERENCES FOR LETTER RULINGS SCHEDULED?

Schedules a conference if requested by taxpayer

.01 A taxpayer may request a conference regarding a letter ruling request. Normally, a conference is scheduled only when the Associate office considers it to be helpful in deciding the case or when an adverse decision is indicated. If conferences are being arranged for more than one request for a letter ruling involving the same taxpayer, they will be scheduled so as to cause the least inconvenience to the taxpayer. As stated in sections 7.02(6) and 9.04(4) of this

revenue procedure, a taxpayer who wants to have a conference on the issue or issues involved should indicate this in writing when, or soon after, filing the request.

If a conference has been requested, the taxpayer or the taxpayer's representative will be notified by telephone, if possible, of the time and place of the conference, which must then be held within 21 calendar days after this contact. Instructions for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Associate office's approval or denial of the request for extension are the same as those explained in section 8.05(2) (section 9.08(2)(a) for a change in method of accounting request) of this revenue procedure regarding providing additional information.

Permits taxpayer one conference of right

.02 A taxpayer is entitled, as a matter of right, to only one conference in the Associate office, except as explained under section 10.05 of this revenue procedure. This conference is normally held at the branch level and is attended by a person who has the authority to sign the letter ruling in his or her own name or for the branch chief.

When more than one branch has taken an adverse position on an issue in a letter ruling request or when the position ultimately adopted by one branch will affect that adopted by another, a representative from each branch with the authority to sign in his or her own name or for the branch chief will attend the conference. If more than one subject is to be discussed at the conference, the discussion will constitute a conference on each subject.

To have a thorough and informed discussion of the issues, the conference usually will be held after the branch has had an opportunity to study the case. At the request of the taxpayer, the conference of right may be held earlier.

No taxpayer has a right to appeal the action of a branch to an Associate Chief Counsel or to any other official of the Service. *But see* section 10.05 of this revenue procedure for situations in which the Associate office may offer additional conferences.

In employment tax matters, if the service recipient (the firm) requests the letter ruling, the firm is entitled to a conference. If the worker requests the letter ruling, both the worker and the firm are entitled to a conference. *See* section 5.10 of this revenue procedure.

Disallows verbatim recording of conferences

.03 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Makes tentative recommendations on substantive issues

.04 The senior Associate office representative present at the conference ensures that the taxpayer has the opportunity to present views on all the issues in question. An Associate office representative explains the Associate office's tentative decision on the substantive issues and the reasons for that decision. If the taxpayer asks the Associate office to limit the retroactive effect of any letter ruling or limit the revocation or modification of a prior letter ruling, an Associate office representative will discuss the recommendation concerning this issue and the reasons for the recommendation. The Associate office representatives will not make a commitment regarding the conclusion that the Associate office will finally adopt.

May offer additional conferences

.05 The Associate office will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed, but on a new issue, or on the same issue but on different grounds from those discussed at the first conference. There is no right to another conference when a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limit on the number of conferences to which a taxpayer is entitled does not prevent the Associate office from offering additional conferences, including conferences with an official higher than the branch level, if the Associate office decides they are needed. These conferences are not offered as a matter of course simply because the branch has reached an adverse decision. In general, conferences with higher level officials are offered only if the Associate office determines that the case presents significant issues of tax policy or tax administration

and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

Requires written confirmation of information presented at conference

.06 The taxpayer should furnish to the Associate office any additional data, reasoning, precedents, etc. that were proposed by the taxpayer and discussed at the conference but not previously or adequately presented in writing. The taxpayer must furnish the additional information within 21 calendar days from the date of the conference. If the additional information is not received within that time, a letter ruling will be issued on the basis of the information on hand or, if appropriate, no ruling will be issued. *See* section 8.05 of this revenue procedure for instructions on submission of additional information for a letter ruling request other than a change in method of accounting request. *See* section 9.08 of this revenue procedure for instructions on submitting additional information for a change in method of accounting request.

May schedule a pre-submission conference

.07 Sometimes it will be advantageous to both the Associate office and the taxpayer to hold a conference before the taxpayer submits the letter ruling request to discuss substantive or procedural issues relating to a proposed transaction. These conferences are held only if the identity of the taxpayer is provided to the Associate office, only if the taxpayer actually intends to make a request, only if the request involves a matter on which a letter ruling is ordinarily issued, and only at the discretion of the Associate office and as time permits. For example, a pre-submission conference will not be held on an income tax issue if, at the time the pre-submission conference is requested, the identical issue is involved in the taxpayer's return for an earlier period and that issue is being examined by a Field office. *See* section 6.01(1) of this revenue procedure. A letter ruling request submitted following a pre-submission conference will not necessarily be assigned to the branch that held the pre-submission conference. Also, when a letter ruling request is not submitted following a pre-submission conference, the Associate office may notify, by memorandum, the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer's tax return and may give its views on the issues raised during the pre-submission conference. For LB&I taxpayers, a copy of the memorandum will be sent to the Director of Pre-Filing Technical Guidance. This memorandum may constitute Chief Counsel Advice, as defined in § 6110(i), and may be subject to disclosure under § 6110.

(1) Taxpayer may request a pre-submission conference in writing or by telephone. A taxpayer or the taxpayer's representative may request a pre-submission conference in writing or by telephone. If the taxpayer's representative is requesting the pre-submission conference, a power of attorney is required. A taxpayer should use Form 2848, *Power of Attorney and Declaration of Representative*, to provide the representative's authority. If multiple taxpayers and/or their authorized representatives will attend or participate in the pre-submission conference, cross powers of attorney (or, as appropriate, tax information authorizations) are required. If the taxpayer's representative is requesting the pre-submission conference by telephone, the Associate office's representative (see list of phone numbers below) will provide the fax number to send the power of attorney (or, as appropriate, tax information authorizations) prior to scheduling the pre-submission conference.

The request should identify the taxpayer and briefly explain the primary issue so it can be assigned to the appropriate branch. If submitted in writing, the request should also identify the Associate office expected to have jurisdiction over the request for a letter ruling. A written request for a pre-submission conference should be sent to the appropriate address listed in section 7.03 of this revenue procedure.

To request a pre-submission conference by telephone, call:

(a) (202) 622–7700 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Corporate);

(b) (202) 622–3900 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Financial Institutions and Products);

(c) (202) 622–4800 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Income Tax and Accounting);

(d) (202) 622–3800 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (International);

(e) (202) 622–3000 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Passthroughs and Special Industries);

(f) (202) 622–3400 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Procedure and Administration); or

(g) (202) 622–6000 (not a toll-free call) for matters under the jurisdiction of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

(2) Pre-submission conferences held in person or by telephone. Depending on the circumstances, pre-submission conferences may be held in person at the Associate office or may be conducted by telephone.

(3) Certain information required to be submitted to the Associate office prior to the pre-submission conference. Generally, the taxpayer will be asked to provide, at least three business days before the scheduled pre-submission conference, a statement of whether the issue is an issue on which a letter ruling is ordinarily issued, a draft of the letter ruling request or other detailed written statement of the proposed transaction, issue, and legal analysis. If the taxpayer's authorized representative will attend or participate in the pre-submission conference, a power of attorney is required.

(4) Discussion of substantive issues is not binding on the Service. Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service in general or on the Office of Chief Counsel in particular, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

May schedule a conference to be held by telephone

.08 Depending on the circumstances, conferences, including conferences of right and pre-submission conferences, may be held by telephone. This may occur, for example, when a taxpayer wants a conference of right but believes that the issue involved does not warrant incurring the expense of traveling to Washington, DC, or if it is believed that scheduling an in-person conference of right will substantially delay the ruling process. If a taxpayer makes such a request, the branch reviewer will decide if it is appropriate in the particular case to hold a conference by telephone. If the request is approved, the taxpayer will be advised when to call the Associate office representatives (not a toll-free call).

SECTION 11. WHAT EFFECT WILL A LETTER RULING HAVE?

May be relied on subject to limitations

.01 A taxpayer ordinarily may rely on a letter ruling received from the Associate office subject to the conditions and limitations described in this section.

Will not apply to another taxpayer

.02 A taxpayer may not rely on a letter ruling issued to another taxpayer. *See* § 6110(k)(3).

Will be used by a Field office in examining the taxpayer's return

.03 When determining a taxpayer's liability, the Field office must ascertain whether—

(1) the conclusions stated in the letter ruling are properly reflected in the return;

(2) the representations upon which the letter ruling was based reflect an accurate statement of the controlling facts;

(3) the transaction was carried out substantially as proposed; and

(4) there has been any change in the law that applies to the period during which the transaction or continuing series of transactions were consummated.

If, when determining the liability, the Field office finds that a letter ruling should be revoked or modified, the findings and recommendations of the Field office will be forwarded through the appropriate Director to the Associate office for consideration before further action is taken

by the Field office. Such a referral to the Associate office will be treated as a request for technical advice and the provisions of Rev. Proc. 2011–2, this Bulletin, relating to requests for technical advice will be followed. *See* section 13.02 of Rev. Proc. 2011–2, this Bulletin. Otherwise, the Field office should apply the letter ruling in determining the taxpayer's liability. If a Field office having jurisdiction over a return or other matter proposes to reach a conclusion contrary to a letter ruling previously issued to the taxpayer, it should coordinate the matter with the Associate office.

May be revoked or modified if found to be in error or there has been a change in law

.04 Unless it was part of a closing agreement as described in section 2.02 of this revenue procedure, a letter ruling found to be in error or not in accord with the current views of the Service may be revoked or modified. If a letter ruling is revoked or modified, the revocation or modification applies to all years open under the period of limitations unless the Service uses its discretionary authority under § 7805(b) to limit the retroactive effect of the revocation or modification.

A letter ruling may be revoked or modified by—

(1) a letter giving notice of revocation or modification to the taxpayer to whom the letter ruling was issued;

(2) the enactment of legislation or ratification of a tax treaty;

(3) a decision of the United States Supreme Court;

(4) the issuance of temporary or final regulations; or

(5) the issuance of a revenue ruling, revenue procedure, notice, or other statement published in the Internal Revenue Bulletin.

Consistent with these provisions, if a letter ruling relates to a continuing action or a series of actions, it ordinarily will be applied until any one of the events described above occurs or until it is specifically withdrawn.

Publication of a notice of proposed rulemaking will not affect the application of any letter ruling issued under this revenue procedure.

Where a letter ruling is revoked or modified by a letter to the taxpayer, the letter will state whether the revocation or modification is retroactive. Where a letter ruling is revoked or modified by the issuance of final or temporary regulations or by the publication of a revenue ruling, revenue procedure, notice, or other statement in the Internal Revenue Bulletin, the document may contain a statement as to its retroactive effect on letter rulings.

Letter ruling revoked or modified based on material change in facts applied retroactively

.05 An Associate office will revoke or modify a letter ruling and apply the revocation retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling if—

(1) there has been a misstatement or omission of controlling facts;

(2) the facts at the time of the transaction are materially different from the controlling facts on which the letter ruling was based; or

(3) the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction.

Not otherwise generally revoked or modified retroactively

.06 Where the revocation or modification of a letter ruling is for reasons other than a change in facts as described in section 11.05 of this revenue procedure, it will generally not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling provided that—

(1) there has been no change in the applicable law;

(2) the letter ruling was originally issued for a proposed transaction; and

(3) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment. For example, the tax liability of each shareholder is directly involved in a letter ruling on the reorganization of a corporation. Depending on all facts and circumstances, the shareholders' reliance on the letter ruling may be in good faith. The tax liability of a member of an industry, however, is not directly involved in a letter ruling issued to another member of the same industry. Therefore, a nonretroactive revocation or modification of a letter ruling to one member of an industry will not extend to other members of the industry who have not received letter rulings. By the same reasoning, a tax practitioner may not extend to one client the non-retroactive application of a revocation or modification of a letter ruling previously issued to another client.

If a letter ruling is revoked or modified by a letter with retroactive effect, the letter will, except in fraud cases, state the grounds on which the letter ruling is being revoked or modified and explain the reasons why it is being revoked or modified retroactively.

Retroactive effect of revocation or modification applied to a particular transaction

.07 A letter ruling issued on a particular transaction represents a holding of the Service on that transaction only. It will not apply to a similar transaction in the same year or any other year. Except in unusual circumstances, the application of that letter ruling to the transaction will not be affected by the later issuance of regulations (either temporary or final) if conditions (1) through (3) in section 11.06 of this revenue procedure are met.

If a letter ruling on a transaction is later found to be in error or no longer in accord with the position of the Service, it will not protect a similar transaction of the taxpayer in the same year or later year.

Retroactive effect of revocation or modification applied to a continuing action or series of actions

.08 If a letter ruling is issued covering a continuing action or series of actions and the letter ruling is later found to be in error or no longer in accord with the position of the Service, the appropriate Associate Chief Counsel or Division Counsel/Associate Chief Counsel ordinarily will limit the retroactive effect of the revocation or modification to a date that is not earlier than that on which the letter ruling is revoked or modified. For example, the retroactive effect of the revocation or modification of a letter ruling covering a continuing action or series of actions ordinarily would be limited in the following situations when the letter ruling is in error or no longer in accord with the position of the Service:

(1) A taxpayer received a letter ruling that certain payments are excludable from gross income for Federal income tax purposes. The taxpayer ordinarily would be protected only for the payment received after the letter ruling was issued and before the revocation or modification of the letter ruling.

(2) A taxpayer rendered a service or provided a facility that is subject to the excise tax on services or facilities and, in relying on a letter ruling received, it did not pass the tax on to the user of the service or the facility.

(3) An employer incurred liability under the Federal Insurance Contributions Act but, in relying on a letter ruling received, neither collected the employee tax nor paid the employee and employer taxes under the Federal Insurance Contributions Act. The retroactive effect would be limited for both the employer and employee tax. The limitation would be conditioned on the employer furnishing wage data, as may be required by § 31.6011(a)–1 of the Treasury Regulations.

Generally not retroactively revoked or modified if related to sale or lease subject to excise tax

.09 A letter ruling holding that the sale or lease of a particular article is subject to the manufacturer's excise tax or the retailer's excise tax may not retroactively revoke or modify an earlier letter ruling holding that the sale or lease of such an article was not taxable if the taxpayer to whom the letter ruling was issued, in relying on the earlier letter ruling, gave up possession or ownership of the article without passing the tax on to the customer. *See* § 1108(b), Revenue Act of 1926.

May be retroactively revoked or modified when transaction is entered into before the issuance of the letter ruling

.10 A taxpayer is not protected against retroactive revocation or modification of a letter ruling involving a transaction completed before the issuance of the letter ruling or involving a continuing action or series of actions occurring before the issuance of the letter ruling, because the taxpayer did not enter into the transaction relying on a letter ruling.

Taxpayer may request that retroactivity be limited

.11 Under § 7805(b), the Service may prescribe any extent to which a revocation or modification of a letter ruling will be applied without retroactive effect.

A taxpayer to whom a letter ruling has been issued may request that the appropriate Associate Chief Counsel limit the retroactive effect of any revocation or modification of the letter ruling.

Format of request

(1) Request for relief under § 7805(b) must be made in required format.

A request to limit the retroactive effect of the revocation or modification of a letter ruling must be in the general form of, and meet the general requirements for, a letter ruling request. These requirements are given in section 7 of this revenue procedure. Specifically, the request must also

(a) state that it is being made under § 7805(b);

(b) state the relief sought;

(c) explain the reasons and arguments in support of the relief requested (including a discussion of section 11.05 of this revenue procedure, the three items listed in section 11.06 of this revenue procedure, and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request.

A request that the Service limit the retroactive effect of a revocation or modification of a letter ruling may be made in the form of a separate request for a letter ruling when, for example, a revenue ruling has the effect of modifying or revoking a letter ruling previously issued to the taxpayer or when the Service notifies the taxpayer of a change in position that will have the effect of revoking or modifying the letter ruling.

When notice is given by the Field office during an examination of the taxpayer's return or by Appeals, during consideration of the taxpayer's return before Appeals, a request to limit retroactive effect must be made in the form of a request for technical advice as explained in section 14.02 of Rev. Proc. 2011–2, this Bulletin.

When germane to a pending letter ruling request, a request to limit the retroactive effect of a revocation or modification of a letter ruling may be made as part of the request for the letter ruling, either initially or at any time before the letter ruling is issued. When a letter ruling that concerns a continuing transaction is revoked or modified by, for example, a subsequent revenue ruling, a request to limit retroactive effect must be made before the examination of the return that contains the transaction that is the subject of the letter ruling request.

Request for conference

(2) Taxpayer may request a conference on application of § 7805(b).

A taxpayer who requests the application of § 7805(b) in a separate letter ruling request has the right to a conference in the Associate office as explained in sections 10.02, 10.04, and 10.05 of this revenue procedure. If the request is made initially as part of a pending letter ruling request or is made before the conference of right is held on the substantive issues, the § 7805(b) issue will be discussed at the taxpayer's one conference of right as explained in section 10.02 of this revenue procedure. If the request for the application of § 7805(b) relief is made as part of a pending letter ruling request after a conference has been held on the substantive issue and the Associate office determines that there is justification for having delayed the request, the taxpayer is entitled to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue only.

SECTION 12. UNDER WHAT CIRCUMSTANCES DO DIRECTORS ISSUE DETERMINATION LETTERS?

Directors issue determination letters only if the question presented is specifically answered by a statute, tax treaty, or regulations, a conclusion stated in a revenue ruling, or an opinion or court decision that represents the position of the Service.

Under no circumstances will a Director issue a determination letter unless it is clearly shown that the request concerns a return that has been filed or is required to be filed and over which the Director has, or will have, examination jurisdiction.

A determination letter does not include assistance provided by the U.S. competent authority pursuant to the mutual agreement procedure in tax treaties as set forth in Rev. Proc. 2006–54, 2006–2 C.B. 1035.

In income and gift tax matters

.01 In income and gift tax matters, Directors issue determination letters in response to taxpayers' written requests on completed transactions that affect returns over which they have examination jurisdiction. A determination letter usually is not issued for a question concerning a return to be filed by the taxpayer if the same question is involved in a return already filed.

Normally, Directors do not issue determination letters on the tax consequences of proposed transactions. A Director may issue a determination letter on the replacement of involuntarily converted property under § 1033, even if the replacement has not yet been made, if the taxpayer has filed an income tax return for the year in which the property was involuntarily converted.

In estate tax matters

.02 In estate tax matters, Directors issue determination letters in response to written requests affecting the estate tax returns over which they have examination jurisdiction. They do not issue determination letters on matters concerning the application of the estate tax to the prospective estate of a living person.

In generation-skipping transfer tax matters

.03 In generation-skipping transfer tax matters, Directors issue determination letters in response to written requests affecting the generation-skipping transfer tax returns over which they have examination jurisdiction. They do not issue determination letters on matters concerning the application of the generation-skipping transfer tax before the distribution or termination takes place.

In employment and excise tax matters

.04 In employment and excise tax matters, Directors issue determination letters in response to taxpayers' written requests on completed transactions over which they have examination jurisdiction. *See also* section 5.10 of this revenue procedure.

Requests concerning income, estate, or gift tax returns

.05 A request received by a Director on a question concerning an income, estate, or gift tax return already filed generally will be considered in connection with the examination of the return. If a response is made to the request before the return is examined, it will be considered a tentative finding in any later examination of that return.

Review of determination letters

.06 Determination letters issued under sections 12.01 through 12.04 of this revenue procedure are not reviewed by the Associate offices before they are issued. If a taxpayer believes that a determination letter of this type is in error, the taxpayer may ask the Director to reconsider the matter or to request technical advice from an Associate office as explained in Rev. Proc. 2011–2, this Bulletin.

SECTION 13. WHAT EFFECT WILL A DETERMINATION LETTER HAVE?

Has same effect as a letter ruling

.01 A determination letter issued by a Director has the same effect as a letter ruling issued to a taxpayer under section 11 of this revenue procedure.

If a Field office proposes to reach a conclusion contrary to that expressed in a determination letter, that office need not refer the matter to the Associate office as is required for a letter ruling found to be in error. The Field office must, however, refer the matter to the Associate office through the appropriate Director if it desires to have the revocation or modification of the determination letter limited under § 7805(b).

Taxpayer may request that retroactive effect of revocation or modification be limited

.02 Under § 7805(b), the Service may prescribe the extent to which a revocation or modification of a determination letter will be applied without retroactive effect. A Director does not have authority under § 7805(b) to limit the revocation or modification of the determination letter. Therefore, if the Field office proposes to revoke or modify a determination letter, the taxpayer may request limitation of the retroactive effect of the revocation or modification by asking the Director that issued the determination letter to seek technical advice from the Associate office. *See* section 14.02 of Rev. Proc. 2011–2, this Bulletin.

Format of request

(1) Request for relief under § 7805(b) must be made in required format.

A taxpayer's request to limit the retroactive effect of the revocation or modification of the determination letter must be in the form of, and meet the general requirements for, a technical advice request. *See* section 14.02 of Rev. Proc. 2011–2, this Bulletin. The request must also—

(a) state that it is being made under § 7805(b);

(b) state the relief sought;

(c) explain the reasons and arguments in support of the relief sought (including a discussion of section 11.05 of this revenue procedure, the three items listed in section 11.06 of this revenue procedure, and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request.

Request for conference

(2) Taxpayer may request a conference on application of § 7805(b).

When technical advice is requested regarding the application of § 7805(b), the taxpayer has the right to a conference with the Associate office to the same extent as does any taxpayer who is the subject of a technical advice request. *See* section 14.04 of Rev. Proc. 2011–2, this Bulletin.

SECTION 14. UNDER WHAT CIRCUMSTANCES ARE MATTERS REFERRED BETWEEN A DIRECTOR AND AN ASSOCIATE OFFICE?

Requests for determination letters

.01 If a Director receives a request for a determination letter, but it may not issue one under the provisions of this revenue procedure, the Director will forward the request to the appropriate Associate office for reply. The Field office will notify the taxpayer that the matter has been referred.

Directors will also refer to the appropriate Associate office any request for a determination letter that in their judgment should have the attention of the Associate office. The Field office will notify the taxpayer that the matter has been referred.

No-rule areas

.02 If the request involves an issue on which the Service will not issue a letter ruling or determination letter, the request will not be forwarded to an Associate office. The Director will notify the taxpayer that the Service will not issue a letter ruling or a determination letter on the issue. *See* section 6 of this revenue procedure for a description of no-rule areas.

Requests for letter rulings

.03 If an Associate office receives a request for a letter ruling that it may not act upon under section 6 of this revenue procedure, the Associate office may, in its discretion, forward the request to the Field office that has examination jurisdiction over the taxpayer's return. The taxpayer will be notified of this action. If the request is on an issue or in an area of the type discussed in section 6 of this revenue procedure and the Service decides not to issue a letter ruling or a determination letter, the Associate office will notify the taxpayer and will then forward the request to the appropriate Field office for association with the related return.

Letter ruling request mistakenly sent to a Director

.04 If a request for a letter ruling is mistakenly sent to a Director, the Director will return it to the taxpayer so that the taxpayer can send it to an Associate office.

SECTION 15. WHAT ARE THE USER FEE REQUIREMENTS FOR REQUESTS FOR LETTER RULINGS AND DETERMINATION LETTERS?

Legislation authorizing user fees

.01 Section 7528 was added to the Internal Revenue Code by section 202 of the Extension of the Temporary Assistance for Needy Families Block Grant Program, Pub. L. No. 108–89, amended by section 891(a) of the American Jobs Creation Act of 2004, Pub. L. 108–357, and was made permanent by section 8244 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110–28.

Section 7528 provides that the Secretary of the Treasury or delegate (the "Secretary") shall establish a program requiring the payment of user fees for requests to the Service for letter rulings, opinion letters, determination letters, and other similar requests. The fees charged under the program are to: (1) vary according to categories or subcategories established by the Secretary; (2) be determined after taking into account the average time for, and difficulty of, complying with requests in each category and subcategory; and (3) be payable in advance. The Secretary is to provide for exemptions and reduced fees under the program as the Secretary determines to be appropriate, but the average fee applicable to each category must not be less than the amount specified in § 7528(b)(3).

Requests to which a user fee applies

.02 In general, user fees apply to all requests for—

(1) letter rulings (including advance consent Forms 3115, *Application for Change in Accounting Method*), determination letters, and advance pricing agreements;

(2) closing agreements described in paragraph (A)(3)(d) of Appendix A of this revenue procedure and pre-filing agreements described in Rev. Proc. 2009–14, 2009–2 C.B. 324 (or its successor);

(3) renewal of advance pricing agreements; and

(4) reconsideration of letter rulings or determination letters.

Requests to which a user fee applies must be accompanied by the appropriate fee as determined from the fee schedule provided in Appendix A of this revenue procedure. The fee may be refunded as provided in section 15.10 of this revenue procedure.

Requests to which a user fee does not apply

.03 User fees do not apply to—

(1) elections made pursuant to § 301.9100–2, pertaining to automatic extensions of time (*see* section 5.03 of this revenue procedure);

(2) late initial classification elections made pursuant to Rev. Proc. 2009–41, 2009–2 C.B. 439 (*see* section 5.03(6) of this revenue procedure);

(3) late S corporation and related elections made pursuant to Rev. Proc. 2004–49, 2004–2 C.B. 210; Rev. Proc. 2004–48, 2004–2 C.B. 172; Rev. Proc. 2003–43, 2003–1 C.B. 998; or Rev. Proc. 97–48, 1997–2 C.B. 521 (*see* section 5.02 of this revenue procedure); or

(4) requests for a change in accounting period or method of accounting permitted to be made by a published automatic change revenue procedure (*see* section 9.01(1) of this revenue procedure); or

(5) information letters.

Exemptions from the user fee requirements

.04 The user fee requirements do not apply to—

(1) departments, agencies, or instrumentalities of the United States if they certify that they are seeking a letter ruling or determination letter on behalf of a program or activity funded by Federal appropriations. The fact that a user fee is not charged does not have any bearing on

whether an applicant is treated as an agency or instrumentality of the United States for purposes of any provision of the Code; or

(2) requests as to whether a worker is an employee for Federal employment taxes and income tax withholding purposes (Subtitle C of the Code) submitted on Form SS–8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding,* or its equivalent.

Fee schedule

.05 The schedule of user fees is provided in Appendix A of this revenue procedure. For the user fee requirements applicable to—

(1) requests for advance pricing agreements or renewals of advance pricing agreements, *see* section 4.12 of Rev. Proc. 2006–9, 2006–1 C.B. 278; or section 5.14 of Rev. Proc. 96–53, 1996–2 C.B. 375; or

(2) requests for letter rulings, determination letters, etc. under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, *see* Rev. Proc. 2011–8, this Bulletin.

Applicable user fee for a request involving multiple offices, fee categories, issues, transactions, or entities

.06

(1) Requests involving several offices. If a request dealing with only one transaction involves more than one office within the Service (for example, one issue is under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries) and another issue is under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division), only one fee applies, namely the highest fee that otherwise would apply to each of the offices involved. *See* Rev. Proc. 2011–8, this Bulletin, for the user fees applicable to issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

(2) Requests involving several fee categories. If a request dealing with only one transaction involves more than one fee category, only one fee applies, the highest fee that otherwise would apply to each of the categories involved.

(3) Requests involving several issues. If a request dealing with only one transaction involves several issues, a request for a change in method of accounting dealing with only one item or submethod of accounting involves several issues, or a request for a change in accounting period dealing with only one item involves several issues, the request is treated as one request. Therefore, only one fee applies, *i.e.* the fee that applies to the particular category or subcategory involved. The addition of a new issue relating to the same transaction, item, or submethod will not result in an additional fee unless the issue places the transaction, item, or submethod in a higher fee category.

(4) Requests involving several unrelated transactions. If a request involves several unrelated transactions, a request for a change in method of accounting involves several unrelated items or submethods of accounting, or a request for a change in accounting period involves several unrelated items, each transaction or item is treated as a separate request. As a result, a separate fee will apply for each unrelated transaction, item, or submethod. An additional fee will apply if the request is changed by the addition of an unrelated transaction, item, or submethod not contained in the initial request. An example of a request involving unrelated transactions is a request involving relief under § 301.9100–3 and the underlying issue.

(5) Requests involving several entities. Each entity involved in a transaction (for example, a reorganization) that desires a separate letter ruling in its own name must pay a separate fee regardless of whether the transaction or transactions may be viewed as related. *But see* section 15.07 of this revenue procedure.

Applicable user fee for requests for substantially identical letter rulings or identical changes in method of accounting

.07

(1) In general. The user fees provided in paragraph (A)(5) of Appendix A of this revenue procedure apply to the situations described in sections 15.07(2) and 15.07(4) of this revenue procedure. To assist in the processing of these user fee requests, all letter ruling requests submitted under this section 15.07 should—

(a) except for advance consent Forms 3115, include the following typed or printed language at the top of the letter ruling request: "REQUEST FOR USER FEE UNDER SECTION 15.07 OF REV. PROC. 2011–1";

(b) list on the first page of the submission all taxpayers and entities, and separate and distinct trades or businesses, including qualified subchapter S subsidiaries (QSubs) or single member limited liability companies (single member LLCs), requesting a letter ruling (including the taxpayer identification number and the amount of user fee submitted for each taxpayer, entity, or separate and distinct trade or business); and

(c) submit one check to cover all user fees.

If the Service determines that the letter ruling requests do not qualify for the user fee provided in paragraph (A)(5) of Appendix A of this revenue procedure, the Service will request the proper fee. *See* section 15.09 of this revenue procedure.

(2) Substantially identical letter rulings. The user fee provided in paragraph (A)(5)(a) of Appendix A of this revenue procedure applies to a taxpayer who requests substantially identical letter rulings (including accounting period, method of accounting, and earnings and profits requests other than those submitted on Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, Form 2553, *Election by a Small Business Corporation*, Form 3115, *Application for Change in Accounting Method*, and Form 5452, *Corporate Report of Nondividend Distributions*) for either multiple entities with a common member or sponsor, or multiple members of a common entity. To qualify for this user fee, all information and underlying documents must be substantially identical and all letter ruling requests must be submitted at the same time. In addition, the letter ruling requests must—

(a) state that the letter ruling requests and all information and underlying documents are substantially identical; and

(b) specifically identify the extent to which the letter ruling requests, information, and underlying documents are not identical.

(3) Substantially identical plans under § 25(c)(2)(B). The user fee provided in paragraph (A)(5)(b) of Appendix A of this revenue procedure shall apply to a taxpayer who submits substantially identical plans for administering the 95-percent requirement of § 143(d)(1) following the submission and approval of an initial plan for administering the requirement. The request for subsequent approvals of substantially identical plans must (1) state that a prior plan was submitted and approved and include a copy of the prior plan and approval; (2) state that the subsequent plan is substantially identical to the approved plan; and (3) describe any differences between the approved plan and the subsequent plan.

(4) Identical changes in method of accounting and related § 301.9100 letter rulings. Each of the following situations (separately, but not in any combination) are eligible for the user fees provided in paragraphs (A)(5)(b) and (d) of Appendix A of this revenue procedure:

(a) A common parent or other taxpayer requests an identical change in method of accounting on a single Form 3115, *Application for Change in Accounting Method*, or an extension of time to file Form 3115 under § 301.9100–3 for the identical change in method of accounting, for two or more—

(i) members of that consolidated group or

(ii) separate and distinct trades or businesses (for purposes of § 1.446–1(d)) of that taxpayer or member(s) of the consolidated group. Separate and distinct trades or businesses, include QSubs and single member LLCs;

(b) A common parent requests the identical change in method of accounting on a single Form 3115 or an extension of time to file Form 3115 under § 301.9100–3 for the identical change in method of accounting, on behalf of two or more controlled foreign corporations (CFCs) or noncontrolled § 902 corporations (10/50 corporations) that do not engage in a trade or business within the United States where all controlling U.S. shareholders of the CFCs and all majority domestic corporate shareholders of the 10/50 corporations are members of the consolidated group; or

(c) A taxpayer requests an identical change in method of accounting on a single Form 3115 or an extension of time to file Form 3115 under § 301.9100–3 for the identical change in method of accounting, on behalf of two or more CFCs or 10/50 corporations that do not engage in a trade or business within the United States for which the taxpayer is the sole controlling U.S. shareholder of the CFCs or the sole domestic corporate shareholder of the 10/50 corporations.

To qualify as an identical change in method of accounting, the multiple members of a consolidated group or separate and distinct trades or businesses, or the multiple eligible CFCs or 10/50 corporations (applicants) must request to change from an identical present method of accounting to an identical proposed method of accounting. All aspects of the requested change in method of accounting must be identical, including the year of change, the present and proposed methods, the underlying facts and the authority for the request, except for the § 481(a) adjustments. If the Associate office determines that the requested changes in method of accounting are not identical, additional user fees will be required before any letter ruling is issued.

The taxpayer or common parent must, for each applicant, for which the change in method of accounting is being requested, attach to the Form 3115 a schedule providing the name, employer identification number (where applicable), and § 481(a) adjustment. If the request is on behalf of eligible CFCs or 10/50 corporations, the taxpayer or common parent must attach a statement that "[a]ll controlling U.S. shareholders (as defined in § 1.964–1(c)(5)(i)) of all the CFCs to which the request relates are members of the common parent's consolidated group," "[a]ll majority domestic corporate shareholders (as defined in § 1.964–1(c)(5)(ii)) of all the 10/50 corporations to which the request relates are members of the common parent's consolidated group," that "[t]he taxpayer filing the request is the sole controlling U.S. shareholder (as defined in § 1.964–1(c)(5)) of the CFCs to which the request relates," or "[t]he taxpayer filing the request is the sole domestic corporate shareholder (as defined in § 1.964–1(c)(5)) of the 10/50 corporations to which the request relates," as applicable.

In the case of a § 301.9100 request for an extension of time to file a Form 3115 requesting an identical change in method of accounting for multiple members of a consolidated group and/or multiple separate and distinct trades or businesses of a taxpayer or member(s) of the consolidated group, or multiple eligible CFCs or 10/50 corporations (applicants), the taxpayer or common parent must submit the information required in the preceding paragraph in addition to the information required by section 5.03 of this revenue procedure.

Method of payment

.08 Each request to the Service for a letter ruling, determination letter, advance pricing agreement, closing agreement described in paragraph (A)(3)(d) of Appendix A of this revenue procedure, or reconsideration of a letter ruling or determination letter must be accompanied by a check or money order in U.S. dollars, payable to the Internal Revenue Service, in the appropriate amount. The user fee check or money order should not be attached to the Form 2553, *Election by a Small Business Corporation*, when it is filed at the Service Center. If on the Form 2553, an electing S corporation requests a ruling to use a fiscal year under section 6.03 of Rev. Proc. 2002–39, 2002–1 C.B. 1046, the Service Center will forward the request to the Associate office. When the Associate office receives the Form 2553 from the Service Center, it will notify the taxpayer that the fee is due. Taxpayers should not send cash.

Effect of nonpayment or payment of incorrect amount

.09 If a request is not accompanied by a properly completed check or money order or is accompanied by a check or money order for less than the correct amount, the office within the Service that is responsible for issuing the letter ruling, determination letter, information letter, advance pricing agreement, closing agreement, or reconsideration of a letter ruling or determination letter generally will exercise discretion in deciding whether to immediately return the request. If a request is not immediately returned, the taxpayer will be contacted and given a reasonable amount of time to submit the proper fee. If the proper fee is not received within a reasonable amount of time, the entire request will then be returned. The Service will usually defer substantive consideration of a request until proper payment has been received. The return of a request to the taxpayer may adversely affect substantive rights if the request is not perfected and resubmitted to the Service within 30 calendar days of the date of the cover letter returning the request.

If a request is accompanied by a check or money order for more than the correct amount, the request will be accepted and the amount of the excess payment will be returned to the taxpayer.

Refunds of user fee

.10 In general, the user fee will not be refunded unless the Service declines to rule on all issues for which a ruling is requested.

(1) The following situations are examples of situations in which the user fee will not be refunded:

(a) The request for a letter ruling, determination letter, etc. is withdrawn at any time subsequent to its receipt by the Service, unless the only reason for withdrawal is that the Service has advised the taxpayer that a higher user fee than was sent with the request is applicable and the taxpayer is unwilling to pay the higher fee.

(b) The request is procedurally deficient, although accompanied by the proper fee or an overpayment, and is not timely perfected. When there is a failure to timely perfect the request, the case will be considered closed and the failure to perfect will be treated as a withdrawal for purposes of this revenue procedure. *See* section 8.05(3) of this revenue procedure.

(c) The Associate office notifies the taxpayer that the Associate office will not issue the letter ruling and has closed the case as a result of the taxpayer's failure to submit timely the additional information requested by the Associate office. The failure to submit the additional information will be treated as a withdrawal for purposes of this revenue procedure. *See* section 8.05(3) of this revenue procedure (section 9.08(7) for a request for a change in method of accounting).

(d) A letter ruling, determination letter, etc. is revoked in whole or in part at the initiative of the Service. The fee paid at the time the original letter ruling, determination letter, etc. was requested will not be refunded.

(e) The request contains several issues, and the Service rules on some, but not all, of the issues. The highest fee applicable to the issues on which the Service rules will not be refunded.

(f) The taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or not responsive (other than an issue on which the Associate office has declined to rule) and requests reconsideration. The Associate office, upon reconsideration, does not agree that the letter ruling is erroneous or is not responsive. The fee accompanying the request for reconsideration will not be refunded.

(g) The situation is the same as described in paragraph (f) of this section 15.10(1) except that the letter ruling covered several unrelated transactions. The Associate office, upon reconsideration, does not agree with the taxpayer that the letter ruling is erroneous or is not responsive for all of the transactions, but does agree that it is erroneous as to one transaction. The fee accompanying the request for reconsideration will not be refunded except to the extent applicable to the transaction for which the Associate office agrees the letter ruling was in error.

(h) The request is for a supplemental letter ruling, determination letter, etc. concerning a change in facts (whether significant or not) relating to the transaction on which the Service ruled.

(i) The request is for reconsideration of an adverse or partially adverse letter ruling or a final adverse determination letter, and the taxpayer submits arguments and authorities not submitted before the original letter ruling or determination letter was issued.

(2) The following situations are examples of situations in which the user fee will be refunded:

(a) In a situation to which section 15.10(1)(i) of this revenue procedure does not apply, the taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or is not responsive (other than an issue on which the Associate office declined to rule) and requests reconsideration. Upon reconsideration, the Associate office agrees that the letter ruling is erroneous or is not responsive. The fee accompanying the taxpayer's request for reconsideration will be refunded.

(b) In a situation to which section 15.10(1)(i) of this revenue procedure does not apply, the taxpayer requests a supplemental letter ruling, determination letter, etc. to correct a mistake that the Service agrees it made in the original letter ruling, determination letter, etc. such as a mistake in the statement of facts or in the citation of a Code section. Once the Service agrees that it made a mistake, the fee accompanying the request for the supplemental letter ruling, determination letter, etc. will be refunded.

(c) The taxpayer requests and is granted relief under § 7805(b) in connection with the revocation in whole or in part, of a previously issued letter ruling, determination letter, etc. The fee accompanying the request for relief will be refunded.

(d) In a situation to which section 15.10(1)(e) of this revenue procedure applies, the taxpayer requests reconsideration of the Service's decision not to rule on an issue. Once the Service agrees to rule on the issue, the fee accompanying the request for reconsideration will be refunded.

(e) The letter ruling is not issued and taking into account all the facts and circumstances, including the Service's resources devoted to the request, the responsible Associate Chief Counsel determines a refund is appropriate. This determination is at the sole discretion of the Associate Chief Counsel.

(f) Refunds based on grounds listed in section 15.10(1)(a) through (d) of this revenue procedure are approved at the branch level by a reviewer or branch chief. Refunds based on the ground listed in section 15.10(1)(e) of this revenue procedure must be approved by the Associate Chief Counsel.

Request for reconsideration of user fee

.11 A taxpayer who believes the user fee charged by the Service for its request for a letter ruling, determination letter, advance pricing agreement, or closing agreement is either inapplicable or incorrect and wishes to receive a refund of all or part of the amount paid (*see* section 15.10 of this revenue procedure) may request reconsideration and, if desired, the opportunity for an oral discussion by sending a letter to the Service at the appropriate address given in section 7.03 in this revenue procedure. Both the incoming envelope and the letter requesting such reconsideration should be prominently marked "USER FEE RECONSIDERATION REQUEST." No user fee is required for these requests. The request should be marked for the attention of:

If the matter involves primarily:	*Mark for the attention of:*
Associate Chief Counsel (Corporate) letter ruling requests	Associate Chief Counsel (Corporate)
Associate Chief Counsel (Financial Institutions and Products) letter ruling requests	Associate Chief Counsel (Financial Institutions and Products)
Associate Chief Counsel (Income Tax and Accounting) letter ruling requests	Associate Chief Counsel (Income Tax and Accounting)
Associate Chief Counsel (International) letter ruling and advance pricing agreement requests	Associate Chief Counsel (International)
Associate Chief Counsel (Passthroughs and Special Industries) letter ruling requests	Associate Chief Counsel (Passthroughs and Special Industries)
Associate Chief Counsel (Procedure and Administration) letter ruling requests	Associate Chief Counsel (Procedure and Administration)
Deputy Chief Counsel/Deputy Associate Chief Counsel (Tax Exempt and Government Entities) letter ruling requests	Deputy Chief Counsel/Deputy Associate Chief Counsel ( ) (Complete by using the applicable designation "Employee Benefits" or "Employment Tax/Exempt Organizations/Government Entities")
Determination letter requests submitted pursuant to this revenue procedure by taxpayers under the jurisdiction of LB&I	Manager, Office of Pre-Filing and Technical Services
Determination letter requests submitted pursuant to this revenue procedure by taxpayers under the jurisdiction of SB/SE, W&I	The appropriate SB/SE official listed in Appendix D
Determination letter requests submitted pursuant to this revenue procedure by taxpayers under the jurisdiction of TE/GE	Director, Employee Plans Examinations Director, Exempt Organizations Examinations Director, Federal, State & Local Governments Director, Tax Exempt Bonds Director, Indian Tribal Governments (Add name of Field office handling the request)

SECTION 16. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2010–1?

Section 5.01 has been amended to provide that an Associate office will not ordinarily issue a letter ruling on a completed transaction if the letter ruling request is submitted after the return is filed for the year in which the transaction is completed. "Not ordinarily" means that unique and compelling reasons must be demonstrated to justify the issuance of a letter ruling submitted

after the return is filed for the year in which the transaction is completed. The taxpayer must contact the Field Office having audit jurisdiction over their return and obtain the Field's consent to the issuance of such a letter ruling.

SECTION 17. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

Rev. Proc. 2010–1, 2010–1 C.B. 1 is superseded.

SECTION 18. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?

This revenue procedure is effective January 3, 2011.

SECTION 19. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1522.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 5.06, 6.03, 7.01, 7.02, 7.03, 7.04, 7.05, 7.07, 8.02. 8.05, 8.07, 10.01, 10.06, 10.07, 11.11, 13.02, 15.02, 15.07, 15.08, 15.09, 15.11, paragraph (B)(1) of Appendix A, Appendix C, and Appendix E (subject matter-rate orders; regulatory agency; normalization). This information is required to evaluate and process the request for a letter ruling or determination letter. In addition, this information will be used to help the Service delete certain information from the text of the letter ruling or determination letter before it is made available for public inspection as required by § 6110. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 513,150 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 to 200 hours, depending on individual circumstances, with an estimated average burden of 90.1054 hours. The estimated number of respondents and/or recordkeepers is 5,695.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Kimberly S. Barsa of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure for matters under the jurisdiction of—

(1) the Associate Chief Counsel (Corporate), contact Paul Arends at (202) 622–7700 (not a toll-free call),

(2) the Associate Chief Counsel (Financial Institutions and Products), contact Arturo Estrada at (202) 622–3900 (not a toll-free call),

(3) the Associate Chief Counsel (Income Tax and Accounting), contact Brenda Wilson at (202) 622–4800 (not a toll-free call),

(4) the Associate Chief Counsel (Passthroughs and Special Industries), contact David Kirk at (202) 622–3060 (not a toll-free call),

(5) the Associate Chief Counsel (Procedure and Administration), contact George Bowden or Henry Schneiderman at (202) 622–3400 (not a toll-free call),

(6) the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), contact Paul Carlino at (202) 622–6000 (not a toll-free call), or

(7) the Associate Chief Counsel (International), contact Willard Yates at (202) 622–3164 (not a toll-free call).

For further information regarding user fees, contact the Docket, Records, and User Fee Branch at (202) 622–7280 (not a toll-free call).

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APPENDIX A

SCHEDULE OF USER FEES

NOTE: Checks or money orders must be in U.S. dollars.

(A) *FEE SCHEDULE*

CATEGORY	*USER FEE FOR REQUESTS RECEIVED AFTER FEBRUARY 1, 2010*
(1) User fee for a request for a determination letter from a Director. The user fee for each determination letter request governed by Rev. Proc. 2011–1, this revenue procedure.	$275
(2) User fee for a request for an advance pricing agreement or a renewal of an advance pricing agreement.	*See* section 4.12 of Rev. Proc. 2006–9, 2006–1 C.B. 278.
(3) User fee for a request for a letter ruling or closing agreement. Except for the user fees for advance pricing agreements and renewals, the reduced fees provided in paragraph (A)(4) of this appendix, the user fees provided in paragraph (A)(5) of this appendix, and the exemptions provided in section 15.04 of Rev. Proc. 2011–1, this Bulletin, the user fee for each request for a letter ruling or closing agreement under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) is as follows:	
(a) Accounting periods	
(i) Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, (except as provided in paragraph (A)(4)(a) or (b) of this appendix)	$3,200
(ii) Requests made on Part II of Form 2553, *Election by a Small Business Corporation*, to use a fiscal year based on a business purpose (except as provided in paragraph (A)(4)(a) or (b) of this appendix)	$3,200
(iii) Letter ruling requests for extensions of time to file Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, Form 8716, *Election To Have a Tax Year Other Than a Required Tax Year*, or Part II of Form 2553 under § 301.9100–3 (except as provided in paragraph (A)(4)(a) or (b) of this appendix)	$2,300
(b) Changes in Methods of Accounting	
(i) Advance consent Form 3115, *Application for Change in Accounting Method* (except as provided in paragraph (A)(4)(a) or (b), or (5)(b) of this appendix)	$4,200
(ii) Letter ruling requests for extensions of time to file Form 3115, *Application for Change in Accounting Method*, under § 301.9100–3 (except as provided in paragraph (A)(4)(a) or (b), or (5)(c) of this appendix)	$5,000
NOTE: No user fee is required if the change in accounting period or method of accounting is permitted to be made pursuant to a published automatic change request procedure. *See* section 9.22 and Appendix E of Rev. Proc. 2011–1, this revenue procedure, for the list of automatic change request procedures published and/or in effect as of December 31, 2010.	

CATEGORY	USER FEE FOR REQUESTS RECEIVED AFTER FEBRUARY 1, 2010
(c) All other letter ruling requests (which includes accounting period and method of accounting requests other than those properly submitted on Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, Part II of Form 2553, *Election by a Small Business Corporation*, or Form 3115, *Application for Change in Accounting Method*) (except as provided in paragraph (A)(4)(a) or (b), or (5)(a) of this appendix)	$14,000
(d) Requests for closing agreements on a proposed transaction or on a completed transaction before a return for the transaction has been filed in which a letter ruling on that transaction is not requested or issued (except as provided in paragraph (A)(4)(a) or (b) of this appendix)	$14,000
(e) A request for a Foreign Insurance Excise Tax Waiver Agreement	$4,000

NOTE: A taxpayer who receives relief under § 301.9100–3 (for example, an extension of time to file Form 3115, *Application for Change in Accounting Method*) will be charged a separate user fee for the letter ruling request on the underlying issue (for example, the accounting period or method of accounting application).

(4) Reduced user fee for a request for a letter ruling, method or period change or closing agreement. A reduced user fee is provided in the following situations if the person provides the certification described in paragraph (B)(1) of this appendix:

(a) Request involves a personal or business tax issue from a person with gross income (as determined under paragraphs (B)(2), (3) and (4) of this appendix) of less than $250,000	$625
(b) Request involves a personal or business tax issue from a person with gross income (as determined under paragraphs (B)(2), (3), and (4) of this appendix) of less than $1 million and $250,000 or more.	$2,000

(5) User fee for substantially identical letter ruling requests, identical changes in method of accounting, or plans from issuing authorities under section 25(c)(2)(B). If the requirements of section 15.07 of Rev. Proc. 2011–1, this revenue procedure, are satisfied, the user fee for the following situations is as follows:

(a) Substantially identical letter rulings requested (other than changes in methods of accounting requested on Form 3115)

Situations in which a taxpayer requests substantially identical letter rulings for multiple entities with a common member or sponsor, or for multiple members of a common entity, or for two or more identical trusts or for multiple beneficiaries of a trust or a trust divided into identical subtrusts or for husband and wife making split gifts, for each additional letter ruling request after the $11,500 fee or reduced fee, as applicable, has been paid for the first letter ruling request — $2,000

NOTE: Each entity or member that is entitled to the user fee under paragraph (A)(5)(a) of this appendix, that receives relief under § 301.9100–3 (for example, an extension of time to file an election) will be charged a separate user fee for the letter ruling request on the underlying issue.

NOTE: The fee charged for the first letter ruling is the highest fee applicable to any of the entities. If any of the additional entities would meet the income test for the $625 fee, then that fee applies.

(b) Identical change in method of accounting requested on a single Form 3115, *Application for Change in Accounting Method,* for a situation (but not a combination of situations) described in section 15.07(4).

CATEGORY	USER FEE FOR REQUESTS RECEIVED AFTER FEBRUARY 1, 2010
A situation (but not a combination of situations) described in section 15.07(4) for each additional applicant seeking the identical change in method of accounting on the same Form 3115 after the $3,800 fee or $625 reduced fee, as applicable, has been paid for the first applicant.	$150
(c) Substantially identical plans under § 25(c)(2)(B)	
Situations where an issuing authority under § 25 submits substantially identical plans for administering the 95-percent requirement of § 143(d)(1) following the submission of an initial plan that was approved.	$1,500
NOTE: The fee charged for the first letter ruling is the highest fee applicable to any of the entities. If any of the additional entities would meet the income test for the $625 fee, then that fee applies.	
(d) Extension of time requested to file Form 3115, *Application for Change in Accounting Method*, for an identical change in method of accounting for a situation (but not combination of situations) described in section 15.07(4).	
A situation (but not a combination of situations) described in section 15.07(4), in which a common parent or other taxpayer requests an extension of time under § 301.9100–3 to file a single Form 3115 for the identical change in method of accounting on behalf of two or more applicants, for each additional applicant seeking the identical change in method of accounting on the same Form 3115 after the $5,000 fee or $625 reduced fee as applicable, has been paid for the first applicant.	$150
NOTE: When an extension of time to file Form 3115, *Application for Change in Accounting Method*, is granted under § 301.9100–3 for multiple applicants, a separate user fee will be charged for the change in method of accounting application, Form 3115.	
(6) User fee for information letter requests.	$0
(7) User fee for pre-filing agreements	$50,000

(B) *PROCEDURAL MATTERS*

(1) Required certification. A person seeking a reduced user fee under paragraph (A)(4) of this appendix must provide the following certification in order to obtain the reduced user fee:

(a) If a person is seeking a reduced user fee under paragraph (A)(4)(a) of this appendix, the person must certify in the request that his, her, or its gross income, as defined under paragraphs (B)(2) and (4) of this appendix, is less than $250,000 as reported on their last federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed.

(b) If a person is seeking a reduced user fee under paragraph (A)(4)(b) of this appendix, the person must certify in the request that his, her, or its gross income, as defined under paragraphs (B)(3) and (4) of this appendix, is less than $1 million and more than $250,000 for the last full (12 months) taxable year ending before the date the request is filed.

The certification must be attached as part of the ruling request.

(2) Gross income for a request involving a personal tax issue. For purposes of the reduced user fees provided in paragraphs (A)(4)(a) and (b) of this appendix of—

(a) U.S. citizens and resident alien individuals, domestic trusts, and domestic estates, "gross income" is equal to "total income" as reported on their last federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus any interest income not subject to tax under § 103 (interest on state and local bonds) for that period. "Total income" is a line item on Federal tax returns. For example, if the 2009 Form 1040, *U.S. Individual Income Tax Return*, is the most recent 12-month taxable year return filed by a U.S. citizen, "total income" on the Form 1040 is the amount entered on line 22.

In the case of a request for a letter ruling or closing agreement from a domestic estate or trust that, at the time the request is filed, has not filed a Federal income tax return for a full taxable year, the reduced user fee in paragraph (A)(4)(a) of this appendix will apply if the decedent's or (in the case of an individual grantor) the grantor's total income as reported on the last Federal income tax return filed for a full taxable year ending before the date of death or the date of the transfer, taking into account any additions required to be made to total income described in this paragraph (B)(2)(a), is less than $250,000. In this case, the executor or administrator of the decedent's estate or the grantor must provide the certification required under paragraph (B)(1) of this appendix.

(b) Nonresident alien individuals, foreign trusts, and foreign estates, "gross income" is equal to "total effectively connected income" as reported on their last Federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus any income for the period from United States or foreign sources that is not taxable by the United States, whether by reason of § 103, an income tax treaty, § 871(h) (regarding portfolio interest), or otherwise, plus the total amount of any fixed or determinable annual or periodical income from United States sources, the United States tax liability for which is satisfied by withholding at the source. "Total effectively connected income" is a line item on Federal tax returns. For example, if the 2009 Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, is the most recent 12-month taxable year return filed by a nonresident alien individual, "total effectively connected income" on the Form 1040NR is the amount entered on line 23.

In the case of a request for a letter ruling or closing agreement from a foreign estate or trust that, at the time the request is filed, has not filed a Federal income tax return for a full taxable year, the reduced user fee in paragraph (A)(4)(a) of this appendix will apply if the decedent's or (in the case of an individual grantor) the grantor's total income or total effectively connected income, as relevant, as reported on the last Federal income tax return filed for a full taxable year ending before the date of death or the date of the transfer, taking into account any additions required to be made to total income or total effectively connected income described respectively in paragraph (B)(2)(a) of this appendix or in this paragraph (B)(2)(b), is less than $250,000. In this case, the executor or administrator of the decedent's estate or the grantor must provide the certification required under paragraph (B)(1) of this appendix.

(3) Gross income for a request involving a business-related tax issue. For purposes of the reduced user fees provided in paragraphs (A)(4)(a) and (b) of this appendix of—

(a) U.S. citizens and resident alien individuals, domestic trusts, and domestic estates, "gross income" is equal to gross income as defined under paragraph (B)(2)(a) of this appendix, plus "cost of goods sold" as reported on the same Federal income tax return.

(b) Nonresident alien individuals, foreign trusts, and foreign estates, "gross income" is equal to gross income as defined under paragraph (B)(2)(b) of this appendix, plus "cost of goods sold" as reported on the same Federal income tax return.

(c) Domestic partnerships and corporations, "gross income" is equal to "total income" as reported on their last Federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus "cost of goods sold" as reported on the same Federal income tax return, plus any interest income not subject to tax under § 103 (interest on state and local bonds) for that period. If a domestic partnership or corporation is not subject to tax, "total income" and "cost of goods sold" are the amounts that the domestic partnership or corporation would have reported on the Federal income tax return if the domestic partnership or corporation were subject to tax.

"Cost of goods sold" and "total income" are line items on Federal tax returns. For example, if the 2009 Form 1065, *U.S. Return of Partnership Income*, is the most recent 12-month taxable year return filed by a domestic partnership, "cost of goods sold" and "total income" on the Form 1065 are the amounts entered on lines 2 and 8, respectively, and if the 2009 Form 1120, *U.S. Corporation Income Tax Return*, is the most recent 12-month taxable year return filed by a domestic corporation, "cost of goods sold" and "total income" on the Form 1120 are the amounts entered on lines 2 and 11, respectively.

If, at the time the request is filed, a domestic partnership or corporation subject to tax has not filed a Federal income tax return for a full taxable year, the reduced user fee in paragraph (A)(4)(b) of this appendix will apply if, in the aggregate, the partners' or the shareholders' gross income (as defined in paragraph (B)(3)(a), (b), (c), or (d) of this appendix, as applicable) is less than $1 million for the last full (12 months) taxable year ending before the date the request is filed. In this case, the partners or the shareholders must provide the certification required under paragraph (B)(1) of this appendix.

(d) Organizations exempt from income tax under "Subchapter F-Exempt Organizations" of the Code, "gross income" is equal to the amount of gross receipts for the last full (12 months) taxable year ending before the date the request for a letter ruling or closing agreement is filed.

(e) Gross income of state, local, and Indian tribal government entities, "gross income" is equal to the annual operating revenue of the government requesting the ruling for its last fiscal year ending before the date of the ruling request. The annual operating revenue is to be determined at the government level and not at the level of the government entity or agency making the request.

(4) Special rules for determining gross income. For purposes of paragraphs (B)(2) and (3) of this appendix, the following rules apply for determining gross income.

(a) Gross income of individuals, trusts, and estates.

(1) In the case of a request from a married individual, the gross incomes (as defined in paragraph (B)(2) or (3) of this appendix, as applicable) of the applicant and the applicant's spouse must be combined. This rule does not apply to an individual: (1) who is legally separated from his or her spouse and (2) who did not file a joint income tax return; and

(2) If there are two or more applicants filing the request, the gross incomes (as defined in paragraph (B)(2) or (3) of this appendix, as applicable) of the applicants must be combined.

(b) Gross income of domestic partnerships and corporations.

(1) In the case of a request from a domestic corporation, the gross income (as defined in paragraph (B)(3) of this appendix) of (i) all members of the applicant's controlled group (as defined in § 1563(a)), and (ii) any related taxpayer who is involved in the transaction on which the letter ruling or closing agreement is requested, must be combined; and

(2) In the case of a request from a domestic partnership, the gross income (as defined in paragraph (B)(3) of this appendix) of (i) the partnership, and (ii) any partner who owns, directly or indirectly, 50 percent or more of the capital interest or profits interest in the partnership, must be combined.

(c) Gross income of exempt organizations. If there are two or more organizations exempt from income tax under Subchapter F filing the request, the gross receipts (as defined in paragraph (B)(3)(d) of this appendix) of the applicants must be combined.

APPENDIX B

SAMPLE FORMAT FOR A LETTER RULING REQUEST

INSTRUCTIONS

To assist you in preparing a letter ruling request, the Service is providing this sample format. You are not required to use this sample format. If your request is not identical or similar to the sample format, the different format will not defer consideration of your request.

(Insert the date of request)

Internal Revenue Service
Insert either: Associate Chief Counsel (Insert one of the following: Corporate, Financial Institutions and Products, Income Tax and Accounting, International, Passthroughs and Special Industries, or Procedure and Administration) *or* Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)
Attn: CC:PA:LPD:DRU
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Sir or Madam:

(*Insert the name of the taxpayer*) requests a ruling on the proper treatment of (*insert the subject matter of the letter ruling request*) under section (*insert the number*) of the Internal Revenue Code..

[If the taxpayer is requesting expedited handling, a statement to that effect must be attached to, or contained in, the letter ruling request. The statement must explain the need for expedited handling. *See* section 7.02(4) of Rev. Proc. 2011–1, 2011–1 I.R.B. 1. Hereafter, all references are to Rev. Proc. 2011–1 unless otherwise noted.]

A. STATEMENT OF FACTS

1. Taxpayer Information

[Provide the statements required by sections 7.01(1)(a) and (b).]

2. Description of Taxpayer's Business Operations

[Provide the statement required by section 7.01(1)(c).]

3. Facts Relating to Transaction

[The ruling request must contain a complete statement of the facts relating to the transaction that is the subject of the letter ruling request. This statement must include a detailed description of the transaction, including material facts in any accompanying documents, and the business reasons for the transaction. *See* sections 7.01(1)(d), 7.01(1)(e), and 7.01(2).]

B. RULING REQUESTED

[The ruling request should contain a concise statement of the ruling requested by the taxpayer. The Service prefers that the language of the requested ruling be exactly the same as that the taxpayer wishes to receive.]

C. STATEMENT OF LAW

[The ruling request must contain a statement of the law in support of the taxpayer's views or conclusion and identify any pending legislation that may affect the proposed transaction. The taxpayer also is strongly encouraged to identify and discuss any authorities believed to be contrary to the position advanced in the ruling request. *See* sections 7.01(6), 7.01(8), 7.01(9), and 7.01(10).]

D. ANALYSIS

[The ruling request must contain a discussion of the facts and an analysis of the law. The taxpayer also is strongly encouraged to identify and discuss any authorities believed to be contrary to the position advanced in the ruling request. *See* sections 7.01(3), 7.01(6), 7.01(8), 7.01(9), and 7.01(10).]

E. CONCLUSION

[The ruling request should contain a statement of the taxpayer's conclusion on the ruling requested.]

F. PROCEDURAL MATTERS

1. Revenue Procedure 2011–1 Statements

   a. [Provide the statement required by section 7.01(4) regarding whether any return of the taxpayer, a related taxpayer within the meaning of § 267 or of a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504 which would be affected by the requested letter ruling or determination letter, is currently under examination, before Appeals, or before a Federal court, or was previously under examination, before Appeals, or before a Federal court.]

   b. [Provide the statement required by section 7.01(5)(a) regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor. Please further note that if a reduced user fee is being submitted, a certification of eligibility for the reduced fee must be included with the ruling request.]

   c. [Provide the statement required by section 7.01(5)(b) regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted a request (including an application for change in method of accounting) involving the same or similar issue but withdrew the request before a letter ruling or determination letter was issued.]

   d. [Provide the statement required by section 7.01(5)(c) regarding whether the taxpayer, a related taxpayer, or a predecessor previously submitted a request (including an application for change in method of accounting) involving the same or a similar issue that is currently pending with the Service.]

   e. [Provide the statement required by section 7.01(5)(d) regarding whether, at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request (including an application for change in method of accounting) involving the same or similar issue to the Service.]

   f. [If the letter ruling request involves the interpretation of a substantive provision of an income or estate tax treaty, provide the statement required by section 7.01(6) regarding whether the tax authority of the treaty jurisdiction has issued a ruling on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor; whether the same or similar issue is being examined, or has been settled, by the tax authority of the treaty jurisdiction or is otherwise the subject of a closing agreement in that jurisdiction; and whether the same or similar issue is being considered by the competent authority of the treaty jurisdiction.]

   g. [Provide the statement required by section 7.01(8) regarding whether the law in connection with the letter ruling request is uncertain and whether the issue is adequately addressed by relevant authorities.]

   h. [If the taxpayer determines that there are no contrary authorities, a statement to that effect would be helpful. *See* section 7.01(9).]

   i. [If the taxpayer wants to have a conference on the issues involved in the letter ruling request, the ruling request should contain a statement to that effect. *See* section 7.02(6).]

   j. [If the taxpayer is requesting a copy of any document related to the letter ruling request to be sent by facsimile (fax) transmission, the ruling request should contain a statement to that effect. *See* section 7.02(5).]

   k. [If the taxpayer is requesting separate letter rulings on multiple issues, the letter ruling request should contain a statement to that effect. *See* section 7.02(1).]

   l. [If the taxpayer is seeking to obtain the user fee provided in paragraph (A)(5)(a) of Appendix A for substantially identical letter rulings, the letter ruling request must contain the statements required by section 15.07.]

2. Administrative

a. [The ruling request should state: "The deletion statement and checklist required by Rev. Proc. 2011–1 are enclosed." *See* sections 7.01(11) and 7.01(18).]

b. [The ruling request should state: "The required user fee of $ (*Insert the amount of the fee*) is enclosed." Please note that the check or money order must be in U.S. dollars and made payable to the Internal Revenue Service. *See* section 15 and Appendix A.]

c. [If the taxpayer's authorized representative is to sign the letter ruling request or is to appear before the Service in connection with the request, the ruling request should state: "A Power of Attorney is enclosed." *See* sections 7.01(13), 7.01(14), and 7.02(2).]

Sincerely yours,

(*Insert the name of the taxpayer or the taxpayer's authorized representative*)

By:

Signature Date

Typed or printed name of
person signing request

DECLARATION: [*See* section 7.01(15).]

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 request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.

(*Insert the name of the taxpayer*)

By:

_____

Signature Title Date

(*must be signed by taxpayer, not by taxpayer's representative, see section 7.01(15)(b) of this revenue procedure*)

Typed or printed name of
person signing declaration

[If the taxpayer is a corporation that is a member of an affiliated group filing consolidated returns, the above declaration must also be signed and dated by an officer of the common parent of the group. *See* section 7.01(15).]

APPENDIX C

CHECKLIST
IS YOUR LETTER RULING REQUEST COMPLETE?

INSTRUCTIONS

The Service will be able to respond more quickly to your letter ruling request if it is carefully prepared and complete. Use this checklist to ensure that your request is in order. Complete the four items of information requested before the checklist. Answer each question by circling "Yes," "No," or "N/A." When a question contains a place for a page number, insert the page number (or numbers) of the request that gives the information called for by a "Yes" answer to a question. **Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.**

If you are an authorized representative submitting a request for a taxpayer, you must include a completed checklist with the request or the request will either be returned to you or substantive consideration of it will be deferred until a completed checklist is submitted. **If you are a taxpayer preparing your own request without professional assistance, an incomplete checklist will not cause the return of your request or defer substantive consideration of your request.** You should still complete as much of the checklist as possible and submit it with your request.

TAXPAYER'S NAME

TAXPAYER'S I.D. NO.

ATTORNEY/P.O.A.

PRIMARY CODE SECTION

CIRCLE ONE	ITEM
Yes No	1. Does your request involve an issue under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)? *See* section 3 of Rev. Proc. 2011–1, 2011–1 I.R.B. 1. For issues under the jurisdiction of other offices, *see* section 4 of Rev. Proc. 2011–1. (Hereafter, all references are to Rev. Proc. 2011–1 unless otherwise noted.)
Yes No	2. Have you read Rev. Proc. 2011–3, 2011–1 I.R.B. 111 and Rev. Proc. 2011–7, 2011–1 I.R.B. 233, to see if part or all of the request involves a matter on which letter rulings are not issued or are ordinarily not issued?
Yes No N/A	3. If your request involves a matter on which letter rulings are not ordinarily issued, have you given compelling reasons to justify the issuance of a letter ruling? Before preparing your request, you may want to call the branch in the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions and Products), the Office of Associate Chief Counsel (Income Tax and Accounting), the Office of Associate Chief Counsel (International), the Office of Associate Chief Counsel (Passthroughs and Special Industries), the Office of Associate Chief Counsel (Procedure and Administration), or the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) responsible for substantive interpretations of the principal Internal Revenue Code section on which you are seeking a letter ruling to discuss the likelihood of an exception. For matters under the jurisdiction of—

(a) the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions and Products), the Office of Associate Chief Counsel (Income Tax and Accounting), the Office of Associate Chief Counsel (Passthroughs and Special Industries), or the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), the Office of the Associate Chief Counsel (Procedure and Administration), the appropriate branch to call may be obtained by calling (202) 622–7280 (not a toll-free call);

(b) the Office of the Associate Chief Counsel (International), the appropriate branch to call may be obtained by calling (202) 622–3800 (not a toll-free call).

Yes No N/A
Page _____

4. If the request deals with a completed transaction, have you filed the return for the year in which the transaction was completed? *See* section 5.01.

Yes No

5. Are you requesting the letter ruling on a hypothetical situation or question? *See* section 6.12.

Yes No

6. Are you requesting the letter ruling on alternative plans of a proposed transaction? *See* section 6.12.

Yes No

7. Are you requesting the letter ruling for only part of an integrated transaction? *See* sections 6.03.

Yes No

8. Are you requesting the letter ruling for a business, trade, industrial association, or similar group concerning the application of tax law to its members? *See* section 6.05.

Yes No

9. Are you requesting the letter ruling for a foreign government or its political subdivision? *See* section 6.07.

Yes No
Pages _____

10. Have you included a complete statement of all the facts relevant to the transaction? *See* section 7.01(1).

Yes No N/A

11. Have you submitted with the request true copies of all wills, deeds, and other documents relevant to the transaction, and labeled and attached them in alphabetical sequence? *See* section 7.01(2).

Yes No N/A

12. Have you submitted with the request a copy of all applicable foreign laws, and certified English translations of documents that are in a language other than English or of foreign laws in cases where English is not the official language of the foreign country involved? *See* section 7.01(2).

Yes No

13. Have you included an analysis of facts and their bearing on the issues? Have you included, rather than merely incorporated by reference, all material facts from the documents in the request? *See* section 7.01(3).

Yes No
Page _____

14. Have you included the required statement regarding whether any return of the taxpayer (or any return of a related taxpayer within the meaning of § 267 or of a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) who would be affected by the requested letter ruling or determination letter is currently or was previously under examination, before Appeals, or before a Federal court? *See* section 7.01(4).

Yes No
Page _____

15. Have you included the required statement regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor? *See* section 7.01(5)(a).

Yes No
Page _____

16. Have you included the required statement regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted a request (including an application for change in method of accounting) involving the same or similar issue but withdrew the request before the letter ruling or determination letter was issued? *See* section 7.01(5)(b).

Yes No
Page _____

17. Have you included the required statement regarding whether the taxpayer, a related taxpayer, or a predecessor previously submitted a request (including an application for change in method of accounting) involving the same or similar issue that is currently pending with the Service? *See* section 7.01(5)(c).

Yes No
Page _____

18. Have you included the required statement regarding whether, at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request (including an application for change in method of accounting) involving the same or similar issue to the Service? *See* section 7.01(5)(d).

Yes No N/A
Page _____

19. If your request involves the interpretation of a substantive provision of an income or estate tax treaty, have you included the required statement regarding whether the tax authority of the treaty jurisdiction has issued a ruling on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor; whether the same or similar issue is being examined, or has been settled, by the tax authority of the treaty jurisdiction or is otherwise the subject of a closing agreement in that jurisdiction; and whether the same or similar issue is being considered by the competent authority of the treaty jurisdiction? *See* section 7.01(6).

Yes No N/A
Page _____

20. If your request is for recognition of Indian tribal government status or status as a political subdivision of an Indian tribal government, does your request contain a letter from the Bureau of Indian Affairs regarding the tribe's status? *See* section 7.01(7), which states that taxpayers are encouraged to submit this letter with the request and provides the address for the Bureau of Indian Affairs.

Yes No
Pages _____

21. Have you included the required statement of relevant authorities in support of your views? *See* section 7.01(8).

Yes No
Page _____

22. Have you included the required statement regarding whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities? *See* section 7.01(8).

Yes No
Pages _____

23. Does your request discuss the implications of any legislation, tax treaties, court decisions, regulations, notices, revenue rulings, or revenue procedures that you determined to be contrary to the position advanced? *See* section 7.01(9), which states that taxpayers are encouraged to inform the Service of such authorities.

Yes No N/A
Page _____

24. If you determined that there are no contrary authorities, have you included a statement to this effect in your request? *See* section 7.01(9).

Yes No N/A
Page _____

25. Have you included in your request a statement identifying any pending legislation that may affect the proposed transaction? *See* section 7.01(10).

Yes No

26. Is the request accompanied by the deletion statement required by § 6110? *See* section 7.01(11).

Yes No
Page _____

27. Have you (or your authorized representative) signed and dated the request? *See* section 7.01(12).

Yes No N/A

28. If the request is signed by your representative or if your representative will appear before the Service in connection with the request, is the request accompanied by a properly prepared and signed power of attorney with the signatory's name typed or printed? *See* section 7.01(14).

Yes No Page _____	29. Have you included, signed, and dated the penalties of perjury statement in the format required by section 7.01(15)?
Yes No N/A	30. Are you submitting your request in duplicate if necessary? *See* section 7.01(16).
Yes No N/A Pages _____	31. If you are requesting separate letter rulings on different issues involving one factual situation, have you included a statement to that effect in each request? *See* section 7.02(1).
Yes No N/A	32. If you want copies of the letter ruling sent to a representative, does the power of attorney contain a statement to that effect? *See* section 7.02(2).
Yes No N/A	33. If you do not want a copy of the letter ruling to be sent to any representative, does the power of attorney contain a statement to that effect? *See* section 7.02(2).
Yes No N/A	34. If you are making a two-part letter ruling request, have you included a summary statement of the facts you believe to be controlling? *See* section 7.02(3).
Yes No N/A Page _____	35. If you want your letter ruling request to be processed ahead of the regular order or by a specific date, have you requested expedited handling in the manner required by section 7.02(4) and stated a compelling need for such action in the request? Note that certain requests under the jurisdiction of the Associate Chief Counsel (Corporate) may receive expedited treatment without stating a compelling need. *See* section 7.02(4) of this revenue procedure.
Yes No N/A Page _____	36. If you are requesting a copy of any document related to the letter ruling request to be sent by facsimile (fax) transmission, have you included a statement to that effect? *See* section 7.02(5).
Yes No N/A Page _____	37. If you want to have a conference on the issues involved in the request, have you included a request for conference in the letter ruling request? *See* section 7.02(6).
Yes No	38. Have you included the correct user fee with the request and is your check or money order in U.S. dollars and payable to the Internal Revenue Service? *See* section 15 and Appendix A to determine the correct amount.
Yes No N/A Page _____	39. If your request involves a personal tax issue and you qualify for the reduced user fee because your gross income is less than $250,000, have you included the required certification? *See* paragraphs (A)(4)(a) and (B)(1) of Appendix A.
Yes No N/A Page _____	40. If your request involves a business-related tax issue and you qualify for the reduced user fee because your gross income is less than $1 million, have you included the required certification? *See* paragraphs (A)(4)(b) and (B)(1) of Appendix A.
Yes No N/A Page _____	41. If you qualify for the user fee for substantially identical letter rulings, have you included the required information? *See* section 15.07(2) and paragraph (A)(5)(a) of Appendix A.
Yes No N/A Page _____	42. If you qualify for the user fee for a § 301.9100 request to extend the time for filing an identical change in method of accounting on a single Form 3115, *Application for Change in Accounting Method*, have you included the required information? *See* section 15.07(4) and paragraph (A)(5)(d) of Appendix A.

Yes No N/A

43. If your request is covered by any of the checklists, guideline revenue procedures, notices, safe harbor revenue procedures, or other special requirements listed in Appendix E, have you complied with all of the requirements of the applicable revenue procedure or notice?

Rev. Proc. _____
_____
_____

List other applicable revenue procedures or notices, including checklists, used or relied upon in the preparation of this letter ruling request (Cumulative Bulletin or Internal Revenue Bulletin citation not required).

Yes No N/A
Page _____

44. If you are requesting relief under § 7805(b) (regarding retroactive effect), have you complied with all of the requirements in section 11.11?

Yes No N/A

45. If you are requesting relief under § 301.9100 for a late entity classification election, have you included a statement that complies with section 4.04 of Rev. Proc. 2009–41, 2009–2 C.B. 439? *See* section 5.03(5) of this revenue procedure.

Yes No

46. Have you addressed your request to the attention of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate? The mailing address is:

Internal Revenue Service
Attn: CC:PA:LPD:DRU
P. O. Box 7604
Ben Franklin Station
Washington, DC 20044

If a private delivery service is used, the address is:

Internal Revenue Service
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224

The package should be marked: RULING REQUEST SUBMISSION. Improperly addressed requests may be delayed (sometimes for over a week) in reaching CC:PA:LPD:DRU for initial processing.

_____

Signature | Title or Authority | Date

Typed or printed name of person signing checklist

APPENDIX D

LIST OF SMALL BUSINESS/SELF-EMPLOYED OPERATING DIVISION (SB/SE) OFFICES TO WHICH TO SEND REQUESTS FOR DETERMINATION LETTERS

SB/SE and W&I taxpayers should send requests for determination letters under this Rev. Proc. 2011–1 to the appropriate SB/SE office listed below. Both the request and its envelope should be marked "DETERMINATION LETTER REQUEST."

INCOME TAX

Requests for determination letters regarding income tax (including requests from international taxpayers) should be sent to:

Office of the Director, Technical Services
Internal Revenue Service
Attn: SE:S:E:TS
Mail Stop 5000
24000 Avila Road
Laguna Niguel, CA 92677

ESTATE AND GIFT TAXES

Requests for determination letters regarding estate and gift tax should be sent to:

Chief, Estate & Gift Tax Operations
Internal Revenue Service
SE:S:SP:E&G
1222 Spruce Street
M/S 1022STL
St. Louis, MO 63103–2839

EMPLOYMENT TAXES

Requests for determination letters regarding employment tax (except for requests for determination of worker status, which should be sent to the appropriate office listed in the instructions to Form SS–8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*) should be sent to:

Chief, Employment Tax Operations
Internal Revenue Service
Attn: SE:S:SP:ET
5000 Ellin Road
Room C9–202
Lanham, MD 20706

EXCISE TAXES

Requests for determination letters regarding excise taxes should be sent to:

Chief, Excise Tax Operations
Internal Revenue Service
Attn: SE:S:SP:EX
5000 Ellin Road
Room C9–207
Lanham, MD 20706

APPENDIX E

CHECKLISTS, GUIDELINE REVENUE PROCEDURES, NOTICES, SAFE HARBOR REVENUE PROCEDURES, AND AUTOMATIC CHANGE REVENUE PROCEDURES

Specific revenue procedures and notices supplement the general instructions for requests explained in section 7 of this revenue procedure and apply to requests for letter rulings or determination letters regarding the Code sections and matters listed in this section.

Checklists, guideline revenue procedures, and notices

.01 For requests relating to the following Code sections and subject matters, refer to the following checklists, guideline revenue procedures, and notices.

CODE OR REGULATION SECTION	*REVENUE PROCEDURE AND NOTICE*
103, 141 – 150, 1394, 1400L(d), 1400N(a), 1400U–1, 1400U–3, 7478, and 7871 Issuance of state or local obligations	Rev. Proc. 96–16, 1996–1 C.B. 630 (for a reviewable ruling under § 7478 and a nonreviewable ruling); Rev. Proc. 88–31, 1988–1 C.B. 832 (for approval of areas of chronic economic distress); and Rev. Proc. 82–26, 1982–1 C.B. 476 (for "on behalf of" and similar issuers). For approval of areas of chronic economic distress, Rev. Proc. 88–31 explains how this request for approval must be submitted to the Assistant Secretary for Housing/Federal Housing Commissioner of the Department of Housing and Urban Development.
1.166–2(d)(3) Uniform express determination letter for making election	Rev. Proc. 92–84, 1992–2 C.B. 489.
Subchapter C-Corporate Distributions, Adjustments, Transfers, and Reorganizations	Rev. Proc. 77–37, 1977–2 C.B. 568, as modified by Rev. Proc. 89–30, 1989–1 C.B. 895, and as amplified by Rev. Proc. 77–41, 1977–2 C.B. 574, Rev. Proc. 83–81, 1983–2 C.B. 598 (*see also* Rev. Proc. 2011–3, this Bulletin), Rev. Proc. 84–42, 1984–1 C.B. 521 (superseded as to no-rule areas by Rev. Proc. 2011–3, this Bulletin), Rev. Proc. 86–42, 1986–2 C.B. 722, and Rev. Proc. 89–50, 1989–2 C.B. 631. *But see* section 3.01 of Rev. Proc. 2011–3, this Bulletin, (corporate distributions, transfers, and reorganizations under §§ 332, 351, 368(a)(1)(A), 368(a)(1)(B), 368(a)(1)(C), 368(a)(1)(E), 368(a)(1)(F), and 1036), which describes certain corporate transactions where, generally, the Service will not issue letter rulings or determination letters.
301 Nonapplicability on sales of stock of employer to defined contribution plan	Rev. Proc. 87–22, 1987–1 C.B. 718.
302, 311 Checklist questionnaire	Rev. Proc. 86–18, 1986–1 C.B. 551; and Rev. Proc. 77–41, 1977–2 C.B. 574.
302(b)(4) Checklist questionnaire	Rev. Proc. 81–42, 1981–2 C.B. 611.
311 Checklist questionnaire	Rev. Proc. 86–16, 1986–1 C.B. 546.
332 Checklist questionnaire	Rev. Proc. 90–52, 1990–2 C.B. 626. *But see* section 3.01 of Rev. Proc. 2011–3, this Bulletin, which describes certain corporate transactions where the Service will not issue letter rulings or determination letters.
338 Extension of time to make elections	Rev. Proc. 2003–33, 2003–1 C.B. 803, provides guidance as to how an automatic extension of time under § 301.9100–3 of the Treasury Regulations may be obtained to file elections under § 338. This revenue procedure also informs taxpayers who do not qualify for the automatic extension, of the information necessary to obtain a letter ruling.

351 Checklist questionnaire	Rev. Proc. 83–59, 1983–2 C.B. 575. *But see* section 3.01 of Rev. Proc. 2011–3, this Bulletin, which describes certain transfers to controlled corporations where the Service will not issue letter rulings or determination letters.
355 Checklist questionnaire	Rev. Proc. 96–30, 1996–1 C.B. 696, as amplified and modified by Rev. Proc. 2003–48, 2003–2 C.B. 86.
368(a)(1)(E) Checklist questionnaire	Rev. Proc. 81–60, 1981–2 C.B. 680. *But see* section 3.01 of Rev. Proc. 2011–3, this Bulletin, which describes circumstances under which the Service will not issue letter rulings or determination letters as to whether a transaction constitutes a corporate recapitalization within the meaning of § 368(a)(1)(E) (or a transaction that also qualifies under § 1036).
461(h) Alternative method for the inclusion of common improvement costs in basis	Rev. Proc. 92–29, 1992–1 C.B. 748.
482 Advance pricing agreements	Rev. Proc. 2006–9, 2006–1 C.B. 278, as amplified by Rev. Proc. 2006–54, 2006–2 C.B. 1035, and modified by Rev. Proc. 2008–31, 2008–23 I.R.B. 1133.
521 Appeal procedure with regard to adverse determination letters and revocation or modification of exemption letter rulings and determination letters	Rev. Proc. 90–27, 1990–1 C.B. 514.
817(h) Closing agreement for inadvertent failures of variable contracts	Rev. Proc. 2008–41, 2008–29 I.R.B. 155.
860 Self Determination of Deficiency Dividend	Rev. Proc. 2009–28, 2009–1 C.B. 1011.
877, 2107, and 2501(a)(3) Individuals who lose U.S. citizenship or cease to be taxed as long-term U.S. residents with a principal purpose to avoid U.S. taxes	Notice 97–19, 1997–1 C.B. 394, as modified by Notice 98–34, 1998–2 C.B. 29, and as obsoleted in part by Notice 2005–36, 2005–1 C.B. 1007.
1362(b)(5) and 1362(f) Relief for late S corporation and related elections under certain circumstances	Rev. Proc. 2004–49, 2004–2 C.B. 210; Rev. Proc. 2003–43, 2003–1 C.B. 998, as supplemented by Rev. Proc. 2007–62, 2007–2 C.B. 786; Rev. Proc. 97–48, 1997–2 C.B. 521.

1362(b)(5) and 301.7701–3 Automatic extensions of time for late S corporation election and late corporate entity classification	Rev. Proc. 2004–48, 2004–2 C.B. 172, as supplemented by Rev. Proc. 2007–62, 2007–2 C.B. 786.
1.1502–13(e)(3) Consent to treat intercompany transactions on a separate entity basis and revocation of this consent	Rev. Proc. 2009–31, 2009–2 C.B. 107.
1.1502–76(a)(1) Consent to file a consolidated return where member(s) of the affiliated group use a 52–53 week taxable year	Rev. Proc. 89–56, 1989–2 C.B. 643, as modified by Rev. Proc. 2006–21, 2006–1 C.B. 1050.
1504(a)(3)(A) and (B) Waiver of application of § 1504(a)(3)(A) for certain corporations	Rev. Proc. 2002–32, 2002–1 C.B. 959, as modified by Rev. Proc. 2006–21, 2006–1 C.B. 1050.
1552 Consent to elect or change method of allocating affiliated group's consolidated federal income tax liability	Rev. Proc. 90–39, 1990–2 C.B. 365, as clarified by Rev. Proc. 90–39A, 1990–2 C.B. 367, and as modified by Rev. Proc. 2006–21, 2006–1 C.B. 1050.
2642 Allocations of generation-skipping transfer tax exemption	Rev. Proc. 2004–46, 2004–2 C.B. 142, provides an alternative method for requesting relief to make a late allocation of the generation-skipping transfer tax exemption. This revenue procedure also informs taxpayers who are denied relief or who are outside the scope of the revenue procedure of the information necessary for obtaining a letter ruling.
2652(a)(3) Reverse qualified terminable interest property elections	Rev. Proc. 2004–47, 2004–2 C.B. 1011, provides an alternative method for certain taxpayers to obtain an extension of time to make a late reverse qualified terminable interest property election under § 2652(a)(3). This revenue procedure also informs taxpayers who are denied relief or who are outside the scope of the revenue procedure of the information necessary to obtain a letter ruling.
4980B Failure to satisfy continuation coverage requirements of group health plans	Rev. Proc. 87–28, 1987–1 C.B. 770 (treating references to former § 162(k) as if they were references to § 4980B).
7701 Relief for a late initial classification election for a newly formed entity	Rev. Proc. 2009–41, 2009–2 C.B. 439.

7701(a)(40) and 7871(d) Indian tribal governments and subdivision of Indian tribal governments	Rev. Proc. 84–37, 1984–1 C.B. 513, as modified by Rev. Proc. 86–17, 1986–1 C.B. 550, and Rev. Proc. 2011–1, this revenue procedure, (provides guidelines for obtaining letter rulings recognizing Indian tribal government or tribal government subdivision status; also provides for inclusion in list of federally recognized Indian tribes published annually by the Department of the Interior, Bureau of Indian Affairs, or in list of recognized subdivisions of Indian tribal governments in revised versions of Rev. Proc. 84–36, 1984–1 C.B. 510, as modified and made permanent by Rev. Proc. 86–17).
301.7701–2(a) Classification of undivided fractional interests in rental real estate	Rev. Proc. 2002–22, 2002–1 C.B. 733 (specifies the conditions under which the Service will consider a letter ruling request that an undivided fractional interest in rental real property (other than a mineral property as defined in § 614) is not an interest in a business entity).
301.7701–3 Automatic extensions of time for late S corporation election and late corporate entity classification	Rev. Proc. 2004–48, 2004–2 C.B. 172.
301.9100–3 Extension of time to make entity classification election	Rev. Proc. 2009–41, 2009–2 C.B. 439.
7702 Closing agreement for failure to account for charges for qualified additional benefits	Rev. Proc. 2010–26, 2010–30 I.R.B. 91.
7702 Closing agreement for failed life insurance contracts	Rev. Proc. 2008–40, 2008–2 C.B. 151.
7702A Closing agreement for inadvertent non-egregious failure to comply with modified endowment contract rules	Rev. Proc. 2008–39, 2008–29 I.R.B. 143.
7704(g) Revocation of election	Notice 98–3, 1998–1 C.B. 333.

SUBJECT MATTERS	*REVENUE PROCEDURE*
Accounting periods; changes in period	Rev. Proc. 2002–39, 2002–1 C.B. 1046, as clarified and modified by Notice 2002–72, 2002–2 C.B. 843, as modified by Rev. Proc. 2003–34, 2003–1 C.B. 856, and modified by Rev. Proc. 2003–79, 2003–2 C.B. 1036; and Rev. Proc. 2011–1, this revenue procedure, for which sections 1, 2.01, 2.02, 2.05, 3.03, 5.02, 6.03, 6.05, 6.07, 6.11, 7.01(1), 7.01(2), 7.01(3), 7.01(4), 7.01(5), 7.01(6), 7.01(8), 7.01(9), 7.01(10), 7.01(13), 7.01(14), 7.01(15), 7.02(2), 7.02(4), 7.02(5), 7.02(6), 7.03, 7.04, 7.05, 7.07, 8.01, 8.03, 8.04, 8.05, 8.06, 10, 11, 15, 17, 18, Appendix A, and Appendix E are applicable.
Classification of liquidating trusts	Rev. Proc. 82–58, 1982–2 C.B. 847, as modified and amplified by Rev. Proc. 94–45, 1994–2 C.B. 684, and as amplified by Rev. Proc. 91–15, 1991–1 C.B. 484 (checklist questionnaire), as modified and amplified by Rev. Proc. 94–45.

Earnings and profits determinations	Rev. Proc. 75–17, 1975–1 C.B. 677; Rev. Proc. 2011–1, this revenue procedure, sections 2.05, 3.03, 7, 8, and 10.05; and Rev. Proc. 2011–3, this Bulletin, section 3.01.
Estate, gift, and generation-skipping transfer tax issues	Rev. Proc. 91–14, 1991–1 C.B. 482 (checklist questionnaire).
Deferred intercompany transactions; election not to defer gain or loss	Rev. Proc. 2009–31, 2009–2 C.B. 107.
Leveraged leasing	Rev. Proc. 2001–28, 2001–1 C.B. 1156, and Rev. Proc. 2001–29, 2001–1 C.B. 1160.
Rate orders; regulatory agency; normalization	A letter ruling request that involves a question of whether a rate order that is proposed or issued by a regulatory agency will meet the normalization requirements of § 168(f)(2) (pre-Tax Reform Act of 1986, § 168(e)(3)) and former §§ 46(f) and 167(l) ordinarily will not be considered unless the taxpayer states in the letter ruling request whether— (1) the regulatory authority responsible for establishing or approving the taxpayer's rates has reviewed the request and believes that the request is adequate and complete; and (2) the taxpayer will permit the regulatory authority to participate in any Associate office conference concerning the request. If the taxpayer or the regulatory authority informs a consumer advocate of the request for a letter ruling and the advocate wishes to communicate with the Service regarding the request, any such communication should be sent to: Internal Revenue Service, Associate Chief Counsel (Procedure and Administration), Attn: CC:PA:LPD:DRU, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (or, if a private delivery service is used: Internal Revenue Service, Associate Chief Counsel (Procedure and Administration), Attn: CC:PA:LPD:DRU, Room 5336, 1111 Constitution Ave., NW, Washington, DC 20224). These communications will be treated as third party contacts for purposes of § 6110.
Unfunded deferred compensation	Rev. Proc. 71–19, 1971–1 C.B. 698, as amplified by Rev. Proc. 92–65, 1992–2 C.B. 428. *See* Rev. Proc. 92–64, 1992–2 C.B. 422, as modified by Notice 2000–56, 2000–2 C.B. 393, for the model trust for use in Rabbi Trust Arrangements.

Safe harbor revenue procedures

.02 For requests relating to the following Code sections and subject matters, refer to the following safe harbor revenue procedures.

CODE OR REGULATION SECTION	*REVENUE PROCEDURE*
23 and 36C Adoption credit for foreign adoptions	Rev. Proc. 2010–31, 2010–40 I.R.B. 413.
103 and 141–150 Issuance of state or local obligations	Rev. Proc. 93–17, 1993–1 C.B. 507 (change of use of proceeds); Rev. Proc. 97–13, 1997–1 C.B. 632, as modified by Rev. Proc. 2001–39, 2001–2 C.B. 38 (management contracts); and Rev. Proc. 2007–47, 2007–2 C.B. 108 (research agreements).
61 Utility Cost Recovery Securitization Transactions	Rev. Proc. 2005–62, 2005–2 C.B. 507.
137 Exclusion for Employer Reimbursements	Rev. Proc. 2010–31, 2010–40 I.R.B. 413.
162 Restaurant Small Wares Costs	Rev. Proc. 2002–12, 2002–1 C.B. 374.

165 Losses from corrosive drywall	Rev. Proc. 2010–36, 2010–42 I.R.B. 439.
165 Theft losses from fraudulent investment arrangements	Rev. Proc. 2009–20, 2009–1 C.B. 749.
168 Depreciation of original and replacement tires for certain vehicles	Rev. Proc. 2002–27, 2002–1 C.B. 802.
168 Depreciation of fiber optic node and trunk line of a cable television distribution system	Rev. Proc. 2003–63, 2003–2 C.B. 304.
263 Treatment of rotable spare parts as depreciable assets	Rev. Proc. 2007–48, 2007–2 C.B. 110.
263A Safe harbor methods for certain motor vehicle dealerships	Rev. Proc. 2010–44, 2010–49 I.R.B. 811.
280B Certain structural modifications to a building not treated as a demolition	Rev. Proc. 95–27, 1995–1 C.B. 704.
446 Film producer's treatment of certain creative property costs	Rev. Proc. 2004–36, 2004–1 C.B. 1063.
446 Bank's treatment of uncollected interest	Rev. Proc. 2007–33, 2007–1 C.B. 1289.
451 Up-front network upgrade payments made to utilities	Rev. Proc. 2005–35, 2005–2 C.B. 76.
451 Capital cost reduction payments	Rev. Proc. 2002–36, 2002–1 C.B. 993.
461 Accrual of payroll tax liabilities for compensation	Rev. Proc. 2008–25, 2008–13 I.R.B. 686.
471 Estimating inventory shrinkage	Rev. Proc. 98–29, 1998–1 C.B. 857.

471 Valuation of automobile dealer vehicle parts inventory	Rev. Proc. 2002–17, 2002–1 C.B. 676.
471 Valuation of remanufactured cores	Rev. Proc. 2003–20, 2003–1 C.B. 445.
471 Valuation of heavy equipment dealer parts inventory	Rev. Proc. 2006–14, 2006–1 C.B. 350.
471 Rolling-average method of accounting for inventories	Rev. Proc. 2008–43, 2008–30 I.R.B. 186.
475 Eligible positions	Rev. Proc. 2007–41, 2007–1 C.B. 1492.
584(a) Qualification of a proposed common trust fund plan	Rev. Proc. 92–51, 1992–1 C.B. 988.
642(c)(5) Qualification of trusts as pooled income funds	Rev. Proc. 88–53, 1988–2 C.B. 712.
664 Charitable remainder trusts	Rev. Proc. 2005–24, 2005–1 C.B. 909, as modified by Notice 2006–15, 2006–1 C.B. 501.
664(d)(1) Qualification of trusts as charitable remainder annuity trusts	Rev. Proc. 2003–53, 2003–2 C.B. 230; Rev. Proc. 2003–54, 2003–2 C.B. 236; Rev. Proc. 2003–55, 2003–2 C.B. 242; Rev. Proc. 2003–56, 2003–2 C.B. 249; Rev. Proc. 2003–57, 2003–2 C.B. 257; Rev. Proc. 2003–58, 2003–2 C.B. 262; Rev. Proc. 2003–59, 2003–2 C.B. 268; Rev. Proc. 2003–60, 2003–2 C.B. 274.
664(d)(2) and (3) Qualification of trusts as charitable remainder unitrusts	Rev. Proc. 2005–52, 2005–2 C.B. 326; Rev. Proc. 2005–53, 2005–2 C.B. 339; Rev. Proc. 2005–54, 2005–2 C.B. 353; Rev. Proc. 2005–55, 2005–2 C.B. 367; Rev. Proc. 2005–56, 2005–2 C.B. 383; Rev. Proc. 2005–57, 2005–2 C.B. 392; Rev. Proc. 2005–58, 2005–2 C.B. 402; Rev. Proc. 2005–59, 2005–2 C.B. 412.
832 Insurance company premium acquisition expenses	Rev. Proc. 2002–46, 2002–2 C.B. 105.
856(c) Certain loans treated as real estate assets	Rev. Proc. 2003–65, 2003–2 C.B. 336.
1031(a) Qualification as a qualified exchange accommodation arrangement	Rev. Proc. 2000–37, 2000–2 C.B. 308, as modified by Rev. Proc. 2004–51, 2004–2 C.B. 294.
1031 Safe harbor with respect to exchanges of residential real property	Rev. Proc. 2008–16, 2008–1 C.B. 547.

1031 Safe harbor for reporting gain or loss on failed exchanges	Rev. Proc. 2010–14, 2010–12 I.R.B. 456.
1286 Determination of reasonable compensation under mortgage servicing contracts	Rev. Proc. 91–50, 1991–2 C.B. 778.
1362(f) Automatic inadvertent termination relief to certain corporations	Rev. Proc. 2003–43, 2003–1 C.B. 998, as supplemented by Rev. Proc. 2007–62, 2007–2 C.B. 786.
2056A Qualified Domestic Trust	Rev. Proc. 96–54, 1996–2 C.B. 386.
2702(a)(3)(A) and 25.2702–5(c) Qualified Personal Residence Trust	Rev. Proc. 2003–42, 2003–1 C.B. 993.
4051(a)(2) Imposition of tax on heavy trucks and trailers sold at retail	Rev. Proc. 2005–19, 2005–1 C.B. 832.
1.7704–2(d) New business activity of existing partnership is closely related to pre-existing business	Rev. Proc. 92–101, 1992–2 C.B. 579.

SUBJECT MATTERS	*REVENUE PROCEDURE*
Certain rent-to-own contracts treated as leases	Rev. Proc. 95–38, 1995–2 C.B. 397.

Automatic change in accounting period revenue procedures

.03 For requests for an automatic change in accounting period, refer to the following automatic change revenue procedures published and/or in effect as of December 31, 2010:

Rev. Proc. 2006–45, 2006–2 C.B. 851, as clarified and modified by Rev. Proc. 2007–64, 2007–2 C.B. 818 (certain corporations); Rev. Proc. 2006–46, 2006–2 C.B. 859 (certain partnerships, subchapter S corporations, personal service corporations, and trusts); and Rev. Proc. 2003–62, 2003–2 C.B. 299 (individuals seeking a calendar year);

The Commissioner's consent to an otherwise qualifying automatic change in accounting period is granted only if the taxpayer timely complies with the applicable automatic change revenue procedure.

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SECTION 1. PURPOSE AND AUTHORITY

Description of purpose

.01 Technical advice. This revenue procedure explains when and how the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) issue technical advice memoranda (TAMs) to a director or an Appeals Area Director. It also explains the rights that a taxpayer has when a field office requests a TAM regarding a tax matter. Rev. Proc. 2010–2 superseded.

Updated annually

.02 This revenue procedure is updated annually as the second revenue procedure of the year, but may be modified during the year.

Delegation authority

.03 The provisions of this revenue procedure apply if the authority normally exercised by the director has been properly delegated to another official.

SECTION 2. DEFINITIONS

Operating division

.01 The term "operating division" means the (1) Large Business & International Division (LB&I); (2) the Small Business/Self-Employed Division (SB/SE); (3) the Wage and Investment Division (W&I); and (4) the Tax Exempt and Government Entities Division (TE/GE).

Director

.02 The term "director" means (1) the Director, Field Operations (LB&I) for the taxpayer's industry; (2) a Territory Manager, Field Compliance (SB/SE); (3) the Director, Compliance (W&I); (4) the Director, International Compliance, Strategy and Policy; (5) the Director, Employee Plans Examinations; (6) the Director, Exempt Organizations Examinations; (7) the Director, Federal, State & Local Governments; (8) the Director, Tax Exempt Bonds; (9) the Director, Indian Tribal Governments; (10) the Appeals Area Director; (11) any official to whom the authority normally exercised by a director has properly been delegated.

Territory manager

.03 The term "territory manager" means (1) a territory manager (LB&I); (2) a territory manager, examination (SB/SE); (3) a territory manager, specialty (SB/SE); (4) the Director, Compliance (W&I); (5) the Employee Plans Examinations Area manager; (6) the Exempt Organizations Examinations Area manager; (7) the Employee Plans Determinations manager; (8) the Exempt Organizations Determinations manager; (9) the group manager, Federal, State & Local Governments; (10) program managers within Tax Exempt Bonds; the manager, field operations, Tax Exempt Bonds; or (11) the group manager, Indian Tribal Governments.

Appeals officer

.04 The term "Appeals officer" means the appeals officer assigned to the taxpayer's case and includes an Appeals Team Case Leader or Settlement Officer.

Taxpayer

.05 The term "taxpayer" means any person subject to any provision of the Internal Revenue Code, including an issuer of obligations the interest on which is excluded from gross income under § 103, issuers of other bonds that provided a tax subsidy, and the taxpayer's representatives.

Associate office

.06 The term "Associate office" means (1) the Office of Associate Chief Counsel (Corporate); (2) the Office of Associate Chief Counsel (Financial Institutions and Products); (3) the Office of Associate Chief Counsel (Income Tax and Accounting); (4) the Office of Associate Chief Counsel (International); (5) the Office of Associate Chief Counsel (Passthroughs and Special Industries); (6) the Office of Associate Chief Counsel (Procedure and Administration); or (7) the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

Field office

.07 The term "field office" means personnel in any examination or Appeals office.

Field counsel

.08 The term "field counsel" means any attorney assigned to the Division Counsel for an operating division who is not a member of Division Counsel Headquarters.

SECTION 3. THE NATURE OF TECHNICAL ADVICE

When advice furnished

.01 Technical advice is advice furnished by an Associate office in a memorandum that responds to any request, submitted under this revenue procedure, for assistance on any technical or procedural question that develops during any proceeding before the IRS. The field office may request a TAM when the application of the law to the facts involved is unclear. The question must be on the interpretation and proper application of tax laws, tax treaties, regulations, revenue rulings, notices, or other precedents to a specific set of facts that concerns the treatment of an item in a period under examination or appeal. A TAM may not be requested for prospective or hypothetical transactions. Proceedings before the IRS include: (1) the examination of a taxpayer's return; (2) the consideration of a taxpayer's claim for credit or refund; (3) any matter under examination or in Appeals pertaining to tax-exempt bonds, tax credit bonds, or mortgage credit certificates; and (4) any other matter involving a specific taxpayer under the jurisdiction of a director. Technical advice does not include any oral legal advice or any written legal advice furnished to the field office that is not submitted and processed under this revenue procedure.

TAM may be requested even if previous TAM on same matter was issued

.02 A director may raise an issue in any tax period, even if a TAM was requested and furnished for the same or similar issue for another tax period. The field office may also request a TAM on an issue even if Appeals disposed of the same or similar issue for another tax period of the same taxpayer.

Taxpayer participation

.03 Taxpayers will be afforded an opportunity to participate in the TAM process. Taxpayer participation is preferred but not required in order to process a request for technical advice. A taxpayer's failure to participate in stages identified as "material," however, will constitute waiver of the right to the conference described in Section 9.

Under no circumstances will a taxpayer be treated as having waived its right to see the issued TAM or having waived its rights regarding disclosure and deletions described in Section 10.

SECTION 4. TYPES OF ISSUES NOT SUBJECT TO THIS PROCEDURE

Alcohol, tobacco, and firearms taxes

.01 The procedures for obtaining technical advice specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are currently under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau of the Treasury Department.

Tax exempt and government entities

.02 The procedures for requesting technical advice on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, are found in Rev. Proc. 2011–5, this Bulletin. The procedures under Rev. Proc. 2011–2, however, must be followed

to request technical advice on issues pertaining to tax-exempt bonds, tax credit bonds, direct payment bonds, Indian tribal governments, federal, state, or local governments, mortgage credit certificates, deferred compensation plans under § 457, and sales of stock to employee stock ownership plans or eligible worker-owned cooperatives under § 1042.

Farmers' cooperatives

.03 The term "territory manager" means (1) a territory manager (LB&I); (2) a territory manager, examination (SB/SE); (3) a territory manager, specialty (SB/SE); (4) the Director, Compliance (W&I); (5) the Employee Plans Examinations Area manager; (6) the Exempt Organizations Examinations Area manager; (7) the Employee Plans Determinations manager; (8) the Exempt Organizations Determinations manager; (9) the group manager, Federal, State & Local Governments; (10) program managers within Tax Exempt Bonds; (11) the manager, field operations, Tax Exempt Bonds; or (12) the group manager, Indian Tribal Governments.

Issues under § 301.9100

.04 A request for an extension of time for making an election or other application for relief under § 301.9100–3 of the Procedure and Administration Regulations is not submitted as a request for technical advice. Instead, the request must be submitted as a request for a letter ruling, even if submitted after the examination of the taxpayer's return has begun or after the issues in the return are being considered in Appeals or a federal court. Therefore, a request under § 301.9100 should be submitted under Rev. Proc. 2011–1 (this Bulletin), and the payment of the applicable user fee is determined under Appendix A of Rev. Proc. 2011–1.

Frivolous issues

.05 Associate offices will not issue a TAM on frivolous issues. The field office will deny a taxpayer's request for a TAM if it involves frivolous issues. For purposes of this revenue procedure, a "frivolous issue" is one without basis in fact or law or one asserting a position held by revenue ruling, case law, or any court to be frivolous or groundless. Examples of frivolous or groundless issues include but are not limited to: (1) positions that espouse frivolous "constitutional" claims, such as claims that the requirement to file tax returns and pay taxes constitutes an unreasonable search barred by the Fourth Amendment, violates Fifth and Fourteenth Amendment protections of due process, violates Thirteenth Amendment protections against involuntary servitude, or is unenforceable because the Sixteenth Amendment does not authorize nonapportioned direct taxes or because it was never ratified; and (2) positions asserting that income taxes are voluntary, that the term "income" is not defined in the Internal Revenue Code, or that the preparation and filing of income tax returns violates the Paperwork Reduction Act. Additional examples of frivolous or groundless issues may be found in IRS publications and other guidance (including but not limited to section 6.10 of Rev. Proc. 2011–1, Notice 2010–33, and I.R.M. Section 4.10.12.1.1) and as may be described on the IRS website at *www.irs.gov/ taxpros/article/0,,id=159932,00.html*.

Issues in a docketed case

.06 A field office may not request technical advice on an issue if the same issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) is in a docketed case for any taxable year. If a case is docketed for an estate tax issue of a taxpayer while a request for technical advice on the same issue of the same taxpayer is pending, the Associate office may issue the TAM only if the appropriate Appeals officer and field counsel agree, by memorandum, to the issuance of the TAM.

Collection issues

.07 The Associate Chief Counsel (Procedure and Administration) does not provide technical advice on matters arising under the Internal Revenue Code and related statutes and regulations that involve the collection of taxes (including interest and penalties). With respect to such matters, the Associate Chief Counsel (Procedure and Administration) may issue alternative forms of advice.

SECTION 5. INITIATING A REQUEST FOR TECHNICAL ADVICE

Initiating a request for technical advice

.01 Because technical advice is issued to assist field offices, it is the field office that determines whether to request it. In determining whether to request technical advice, the field office should consider whether other forms of guidance, *e.g.,* published guidance, generic advice, or

some other form of advice, would be more appropriate. Before requesting technical advice, however, the field office must request assistance and a recommendation from field counsel. If the field office disagrees with that recommendation, the field office must seek reconciliation with field counsel through their respective supervisors. Any request for technical advice must be approved in writing by a director.

Taxpayer may request technical advice

.02 While a case is under the jurisdiction of a director, a taxpayer may request that an issue be referred to the Associate office for technical advice. The request may be oral or written and should be directed to the field office. If the field office decides that a taxpayer's request for referral of an issue to the Associate office for a TAM is unwarranted, the field office will notify the taxpayer. A taxpayer's request for referral of an issue for technical advice will not be denied merely because the Associate office has already provided legal advice other than a TAM to the field office on the matter.

Appeal of field office denial of TAM request

.03 The taxpayer may appeal the field office's denial of the taxpayer's TAM request by submitting to the field office, within 30 calendar days after notification that the request was denied, a written statement of the reasons why the matter should be referred to the Associate office. The statement should include a description of all pertinent facts (including any facts in dispute); a statement of the issue that the taxpayer would like to have addressed; a discussion of any relevant statutory, regulatory, or administrative provisions, tax treaties, case law, or other authority; and an explanation of the taxpayer's position and the need for technical advice. Any extensions of the 30-day period must be requested in writing and must be approved by the director or, for LB&I, the field operations manager or, for Tax Exempt Bonds, the manager, field operations. Decisions on any extensions by the director, LB&I territory manager, or Tax Exempt Bonds territory manager, field operations are final and may not be appealed.

Upon receipt, the field office will refer the taxpayer's written statement, along with the field office's statement of why the issue should not be referred to the Associate office for technical advice, to the director for LB&I, the territory manager, or for Tax Exempt Bonds, the territory manager, for decision. The director, LB&I territory manager, or Tax Exempt Bonds territory manager will determine whether the issue should be referred for technical advice on the basis of the statements of the field office and the taxpayer. No conference will be held with the taxpayer or the taxpayer's representative. If the director, LB&I territory manager, or Tax Exempt Bonds territory manager, determines that a TAM is not warranted, the taxpayer will be informed in writing of the proposed denial of the request and the reasons for the denial (unless doing so would prejudice the Government's best interests).

The director or LB&I territory manager's decision may be reviewed but not appealed

.04 The taxpayer may not appeal the decision of the director, LB&I territory manager, or Tax Exempt Bonds territory manager not to request a TAM. If the taxpayer does not agree with the proposed denial, all data on the issue for which a TAM has been sought, including the taxpayer's written request and statements, will be submitted for review to the Director, LB&I; the Director, Examination, SB/SE; the Director, Specialty Tax, SB/SE; the Director, Compliance, W&I the Director, Federal, State & Local Governments; the Director, Tax Exempt Bonds; the Director, Indian Tribal Governments or Appeals Director, Tax Policy and Procedure (Exam). Review of the proposed denial will be based solely on the written record; no conference will be held with the taxpayer or the taxpayer's representative. The person responsible for review may consult with the Associate office, if appropriate, and will notify the field office whether the proposed denial of the taxpayer's request is approved or denied within 45 days of receiving all information. The field office will then notify the taxpayer. While the matter is under review, the field office will suspend any final decision on the issue (except when the delay would prejudice the Government's interests). If the request for technical advice has been denied because the issue is frivolous as described in 4.05 above, this review process is not available.

SECTION 6. PRE-SUBMISSION CONFERENCES

Purpose

.01 A pre-submission conference helps the field office, field counsel, the taxpayer, and the Associate office agree on the appropriate scope of the request for technical advice and the factual information and documents that must be included in the request. A pre-submission

conference is not an alternative procedure for addressing the merits of the substantive positions advanced by the field office or by the taxpayer. During the pre-submission conference, the parties should discuss the framing of the issues and the background information and documents that should be included in the formal submission of the request for technical advice.

Pre-submission conferences are mandatory

.02 Pre-submission conferences include the taxpayer and representatives from the field office, field counsel, and the Associate office. These conferences are mandatory because they promote expeditious processing of requests for technical advice. If a request for technical advice is submitted without first holding a pre-submission conference, the Associate office will return the request for advice. Requests for technical advice can proceed even if a taxpayer declines to participate in a pre-submission conference.

Actions before a pre-submission conference

.03 Before requesting a pre-submission conference, the field office and the taxpayer must exchange proposed statements of the pertinent facts and issues. The proposed statements should include any facts in dispute, the issues that the parties intend to discuss, any legal analysis and supporting authorities, and any other background information that the parties believe would facilitate the Associate office's understanding of the issues to be discussed during the conference. Prior to the scheduled pre-submission conference, the field office and the taxpayer must submit to the Associate office their respective statements of pertinent facts and issues. The legal analysis provided in the parties' statements should be sufficient to enable the Associate office to be reasonably informed about the subject matter. Failure of the taxpayer to provide such a statement shall not be allowed to unduly delay the scheduling of the pre-submission conference. If it is not provided within a reasonable period of time, the conference may be scheduled without the taxpayer's statement.

The field office or the taxpayer must ensure that the Associate office receives a copy of any required power of attorney. Form 2848, *Power of Attorney and Declaration of Representative* (Rev. June 2008), should be used. *See*, Conference and Practice Requirements of the Statement of Procedural Rules (26 C.F.R. §§ 601.501–601.509 (2002)). The assigned branch of the Associate office must receive the pre-submission materials at least 10 business days before the conference is to be held.

Initiating a pre-submission conference

.04 A request for a pre-submission conference must be submitted in writing by the field office, with the assistance of field counsel. The request should identify the Associate office expected to have jurisdiction over the request for a TAM and should include a brief explanation of the primary issue so that an assignment to the appropriate branch of an Associate can be made. If the request is submitted by Appeals, field counsel assignments will be subject to the *ex parte* rules set forth in section 1001(a)(4) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, and Rev. Proc. 2000–43, 2000–2 C.B. 404. If the request involves an issue under the office of the Director, Abusive Tax Avoidance Transactions (ATAT) Examination, SB/SE, an issue under the office of the Director, Office of Tax Shelter Analysis (OTSA), LB&I, or an industry issue under the Office of Pre-Filing and Technical Guidance, LB&I, then the field office and field counsel should coordinate with the technical advisor and field counsel contact. If the request is from Appeals and involves a coordinated issue or emerging issue under the Appeals Technical Guidance or Appeals Coordinated Issue (ACI) Program, the Appeals officer must coordinate with the Appeals Technical Guidance Coordinator or International Specialist Coordinator.

Manner of transmitting pre-submission materials

.05 To obtain the protection of taxpayer information offered by the Chief Counsel Intranet firewall, the pre-submission materials must be electronically transmitted by field counsel to the Technical Services Support Branch (TSS4510). TSS4510 will ensure delivery of the pre-submission materials to the appropriate Associate office. The TSS4510 email box cannot accept encrypted mail.

If documents are not electronically available, or if documents cannot reasonably be transmitted electronically, the request may be sent by fax to TSS4510 at 202–622–4817. If the documents are sent by fax, the director must also confirm the request in writing. Email or fax may be used to confirm the request. The Associate office will confirm receipt of the fax within one business day after receipt by the Associate office.

Copies of the taxpayer's statement of deletions and power of attorney (Form 2848, *Power of Attorney and Declaration of Representative* (Rev. June 2008)) should be transmitted by fax to the Associate office attorney assigned to the case.

The field office should send the original of the materials sent by fax, and any supporting materials, to the Associate office attorney assigned to the case by express mail or private delivery service in order to avoid any delays in regular mail.

Scheduling the pre-submission conference

.06 After the materials have been received, the branch of the Associate office responsible for conducting the pre-submission conference will contact the taxpayer, the field office, and field counsel to arrange a mutually convenient time for the parties to participate in the conference. The conference generally should be held within 15, but not more than 30, calendar days after the field office is contacted.

Pre-submission conferences may be conducted in person

.07 Although pre-submission conferences are generally conducted by telephone, the parties may choose to conduct the conference in person.

Pre-submission conference may not be taped

.08 No tape, stenographic, or other verbatim recording of a conference may be made by any party.

Discussion of substantive issues is not binding on the Service

.09 Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service or on the Office of Chief Counsel, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

New issues may be raised at pre-submission conference

.10 During the pre-submission conference, the Office of Chief Counsel may raise new issues in addition to those submitted by the field office and the taxpayer.

SECTION 7. SUBMITTING THE REQUEST FOR TECHNICAL ADVICE

Memorandum of issues, facts, law, and arguments

.01 Every request for technical advice must include a memorandum that describes the facts, issues, applicable law, and arguments supporting the taxpayer's position on the issues and the field office's position on the issues. The field office will prepare this statement with the assistance of field counsel. The memorandum must include a statement of all the facts and the issues. If the taxpayer and the field office disagree about ultimate findings of fact or about the relevance of facts, all of the facts should be included with an explanation that highlights the areas of disagreement. The memorandum must include an explanation of the taxpayer's position. This explanation must include a discussion of any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, and any other authority supporting the taxpayer's position. The memorandum must also include a similar explanation of the field office's position. Both the field office and the taxpayer should comment on any existing or pending legislation, tax treaties, regulations, revenue rulings, revenue procedures, or court decisions contrary to their respective positions. If either party determines that there are no authorities contrary to its position, that statement should be noted in the memorandum. The field office submits the request for technical advice.

When the taxpayer initiates the request for technical advice, the taxpayer must submit a written statement that incorporates the information provided above and the reasons for requesting technical advice. When the Service initiates the request for technical advice, the field office should notify the taxpayer that the Service is requesting technical advice and provide the taxpayer with a copy of the arguments supporting the Service's position. The taxpayer has 5 calendar days to state, in writing, any factual disagreement. The field office will make every effort to reach agreement on the facts and specific points at issue. The taxpayer is encouraged to submit a written statement with an explanation of the taxpayer's position and a discussion of the statutory provisions that support the taxpayer's position.

Transaction involving multiple taxpayers

.02 If the subject matter of the request involves a transaction among multiple taxpayers, the Associate office may issue a single TAM, but only if each taxpayer agrees to participate in the process, including the furnishing of Forms 8821, or other written taxpayer consent.

Foreign laws and documents: submission of relevant foreign laws and documents in the official language and in English

.03 If applicable, the request for technical advice must include a copy of the relevant parts of all foreign laws, including statutes, regulations, administrative pronouncements, and any other relevant legal authority. This copy must be in the official language of the country involved and must be produced from an official publication of the foreign government or another widely available, generally accepted publication. If English is not the official language of the country involved, the submission must also include a copy of an English translation of the relevant parts of all foreign laws. The translation must be from an official publication of the foreign government or another widely available, generally accepted publication or from a certified English translation submitted in accordance with Section 7.03(2) of this revenue procedure. The taxpayer or the field office must identify the title and date of publication, including updates, of any widely available, generally accepted publication used by the taxpayer or its qualified translator as a source for the relevant parts of the foreign law. The taxpayer and the field office must inform the Associate office of the implications of any authority believed to interpret the foreign law, such as pending legislation, treaties, court decisions, notices, and administrative decisions.

(1) If the interpretation of a foreign law or foreign document is a material fact, the Associate office, at its discretion, may refuse to issue a TAM. This section applies whether or not the field office and the taxpayer dispute the interpretation of a foreign law or foreign document. The interpretation of a foreign law or foreign document means making a judgment about the import or effect of the foreign law or document that goes beyond its plain meaning.

(2) If applicable, a request for technical advice must include an accurate and complete certified English translation of the relevant parts of all contracts, wills, deeds, agreements, instruments, trust documents, proposed disclaimers, or other documents in a language other than English. If the taxpayer or the field office chooses to submit certified English translations of foreign laws, those translations are to be based on an official publication of the foreign government or another widely available, generally accepted publication. In either case, the translation must be that of a qualified translator and are to be attested to by the translator. The attestation is to contain: (1) the attestant's name and address; (2) a statement that the translation submitted is a true and accurate translation of the foreign language document or law; and (3) a statement about the attestant's qualifications as a translator and that attestant's qualifications and knowledge regarding tax matters or any foreign law translated if the law is not a tax law.

Statement regarding interpretation of relevant income tax or estate tax treaty

.04 A request for technical advice involving the interpretation of a substantive provision of a relevant income tax or estate tax treaty must include a written statement addressing whether: (1) the tax authority of the treaty jurisdiction has issued a ruling on the same or similar issue for the taxpayer, a related taxpayer (within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504 (related taxpayer)), or any predecessor; (2) the same or similar issue for the taxpayer, a related taxpayer, or any predecessor, is being examined, or has been settled, by the tax authority of the treaty jurisdiction or is otherwise the subject of a closing agreement in that jurisdiction; and (3) the same or similar issue for the taxpayer, a related taxpayer, or any predecessor, is being considered by the competent authority of the treaty jurisdiction.

Statement recommending information to be deleted from public inspection

.05 Every request for technical advice must include a statement of proposed deletions from public inspection. The text of TAMs are open to public inspection under § 6110(a). The Service deletes certain information from the text before it is made available to the public in order to protect the privacy of taxpayers. To help the Service make the necessary deletions, the taxpayer must provide a statement indicating the deletions desired. A taxpayer who wants only names, addresses, and identifying numbers deleted should state this in the deletion statement. A taxpayer who wants more information deleted must provide a copy of the TAM request and supporting documents on which the taxpayer has placed brackets around the material to be deleted plus a statement indicating the statutory basis under § 6110(c) for each proposed deletion. The deletion statement must not appear in the memorandum described in Section 7.01 of this revenue procedure. Instead, the deletion statement is to be made in a separate document that is signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or faxed signature is not permitted. If the deletion statement is not submitted, the taxpayer will be notified and advised by the field office that the statement is required. If the

deletion statement is not received within 10 calendar days after the notification, the field office will use its best effort to provide the Associate office with an appropriate deletion statement. The taxpayer should follow this same process to propose deletions from any additional information submitted after the initial request for a TAM. An additional deletion statement is not required with each submission of additional information if the taxpayer's initial deletion statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information.

Preparation of the memorandum; resolution of disagreements

.06 The field office prepares the memorandum described in Section 7.01 of this revenue procedure with the assistance of field counsel and sends it to the taxpayer by mail or fax transmission. The taxpayer then will have 5 calendar days from the date of mailing or fax transmission to respond by providing a written statement specifying any disagreement on the facts and issues. A taxpayer who needs more than 5 calendar days must submit a written request for an extension of time, subject to the approval of the field office. The field office will make a determination on the request for extension as soon as reasonably possible. The request for extension will be considered denied unless the field office informs the taxpayer otherwise. The decision of the field office on whether to approve an extension, and the length of any extension granted, is final and may not be appealed. After the taxpayer's response is received by the field office, the parties will have 10 calendar days to resolve remaining disagreements. If all disagreements about the statement of facts and issues are resolved, then the field office will prepare a single statement of those agreed facts and issues. If disagreements continue, both the taxpayer's set of facts and issues and the field's sets of facts and issues will be forwarded to the Associate office. The field office, with the assistance of field counsel, will prepare a memorandum for the Associate office highlighting the material factual differences, and provide a copy to the taxpayer. This memorandum will be forwarded with the initial request for technical advice. The taxpayer's statement of facts and issues must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for technical advice, and such facts are true, correct, and complete." This declaration must be signed in accordance with the requirements in section 7.01(15)(b) of Rev. Proc. 2011–1. The field office must submit this declaration with the initial request for technical advice. If no agreement regarding the facts is reached, the Associate office may rely on the facts presented by the field office.

The field office will offer the taxpayer an opportunity to participate in the development of the TAM. If the taxpayer participates in the process, the field office will continue to offer the taxpayer the opportunity to participate. If the taxpayer does not participate in a material stage of the process after being offered an opportunity, the Associate office will nonetheless process the request, and the taxpayer will have waived the right to participate in the development and issuance of the TAM, including the right to the conference described in section 9.

Under no circumstances will a taxpayer be treated as having waived its right to see the issued TAM or having waived its rights regarding disclosure and deletions described in Section 10.

A taxpayer's failure to participate in the development of the memorandum will be considered a failure to participate in a material stage of the TAM process and result in a waiver of the right to the conference discussed in Section 9.

Transmittal Form 4463, *Request for Technical Advice*

.07 The field counsel, with whom the TAM request was coordinated, must use Form 4463, *Request for Technical Advice*, for submitting a request for a TAM through TSS4510 to the Associate office. While the field office is responsible for preparing Form 4463, field counsel must submit the Form 4463 for a TAM request to the TSS4510 email address. To the extent feasible, the accompanying documents should also be submitted to the TSS4510 email address, followed by hard copy upon the request of the assigned branch of the Associate office.

All supporting and additional documents

.08 Field counsel should send additional or supporting documents that are not available in electronic form by fax to TSS4510 at 202–622–4817 or by express mail or private delivery service to the following address to avoid any delays in regular mail:

Internal Revenue Service
Attn: CC:PA:LPD:TSS, Room 5329
1111 Constitution Avenue, NW
Washington, DC 20224

Whenever possible, all documents should contain the case number and name of the Associate office attorney assigned to the pre-submission conference for the TAM request.

The field office must indicate on the Form 4463 the proper mailing address of the director to whom the Associate office should mail a copy of its reply to the TAM request under Section 10.06 of this revenue procedure.

Number of copies of request to be submitted

.09 The field office must submit one paper copy of the request for a TAM to the address in Section 7.08 of this revenue procedure. If the TAM relates to a SB/SE, W&I, or TEGE taxpayer, the field office must send one paper copy to the Division Counsel of the operating division that has jurisdiction over the taxpayer's tax return. If the TAM relates to a LB&I taxpayer, an electronic copy (no paper copy to follow) to "&LB&I HQ" email address should be sent. If the request is from an Appeals office, an electronic copy (no paper copy to follow) is sent to the TAM Coordinator in the Office of Tax Policy & Valuation with a copy to the Director TPP (Exam).

Power of attorney

.10 Any authorized representative, as described in section 7.01(13) of Rev. Proc. 2011–1, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230 (31 C.F.R. part 10 (2002)) and with the Conference and Practice Requirements of the Statement of Procedural Rules (26 C.F.R. §§ 601.501–601.509 (2002)). Form 2848, *Power of Attorney and Declaration of Representative* (Rev. June 2008), should be used. An original, a copy, or a fax transmission of the power of attorney is acceptable, if its authenticity is not reasonably disputed.

Service not barred from issuing 30-day letter while a TAM request is pending

.11 After consultation with Appeals, the Service may send the taxpayer a letter (a letter from the 950 series, also known as a 30-day letter) notifying the taxpayer of the right to protest the proposed changes within 30 days, while a request for technical advice is pending.

SECTION 8. INITIAL PROCESSING OF THE REQUEST FOR TECHNICAL ADVICE BY THE ASSOCIATE OFFICE

Assignment and initial review by Associate office attorney

.01 After a request for technical advice has been received by the appropriate Associate office, it will be assigned to an Associate office attorney within a branch. The Associate office attorney determines whether the request meets all procedural requirements of sections 4, 5, 6, and 7 of this revenue procedure and whether it raises issues that may be appropriately addressed in a TAM.

Other forms of guidance

.02 If the assigned reviewer in the Associate office determines that guidance other than a TAM should be provided, the reviewer will immediately notify the Associate Chief Counsel. This other form of guidance may be published guidance, generic advice, or case-specific advice. Although the reviewer should make this determination as soon as possible, it may be made at any time during the processing of the request for advice. To make this determination, the reviewer should consider whether the issue has a broad application to similarly situated taxpayers or an industry and whether resolution of the issue is important to a clear understanding of the tax laws. The Associate Chief Counsel, after consultation with Division Counsel Headquarters and the Operating Division, will decide whether to issue the TAM or issue guidance in another form. The Associate Chief Counsel may decide to issue the TAM as well as another type of guidance, if doing so would promote sound tax administration.

Initial acknowledgment and processing

.03 Upon receipt of a request for technical advice, the Associate office attorney who is assigned as the primary attorney on the request should immediately contact the field office. The purpose of this contact is only to acknowledge receipt of the request. Unless otherwise

indicated, all references in this section to the Associate office or Associate office attorney are to the Associate office and attorney with primary responsibility for the TAM request.

Deficiencies in request leading to return

.04 Within 7 calendar days after assignment, the Associate office attorney will contact the field office and field counsel to discuss any deficiencies in the request and will work with the field office and field counsel to correct them. If the deficiencies cannot be corrected over the next 7 calendar days, the request will be closed and returned to the field office. The request may be resubmitted when the deficiencies are corrected.

If only minor procedural deficiencies exist, the Associate office attorney will request the additional information without returning the case. If substantial additional information is required to resolve an issue or if major procedural problems cannot be resolved, the Associate office attorney will inform the field office and field counsel that the request for technical advice will be returned. If a request is returned, the field office should promptly notify the taxpayer of that decision and the reasons for the decision.

Initial discussion

.05 Within 21 calendar days of receipt, the Associate office attorney should contact the field office to discuss any procedural and substantive issues in the request. The Associate office attorney should also inform the field office about any matters referred to another Associate office or branch for assistance and provide points of contact for the other Associate offices or branches.

If additional information requested

.06 If additional information is needed, the Associate office attorney will obtain that information from the taxpayer, the field office, the director, or the Appeals Area Director in the most expeditious manner possible. Any additional information requested from the taxpayer by the Associate office must be submitted by letter, accompanied by a penalties of perjury statement that conforms with the penalties of perjury statement set forth in Section 7.06 of this revenue procedure, within 10 calendar days after the request for information is made. Copies of the additional information must be sent to the field office either by the taxpayer or the Associate office attorney. To facilitate prompt action, the Service and taxpayers are encouraged to exchange information by fax or express mail service whenever feasible. A taxpayer's failure to submit the additional information requested is considered a failure to participate in a material stage of the TAM process and results in a waiver of the right to the conference discussed in Section 9.

Taxpayer request for extension of time to submit additional information

.07 A taxpayer's request for an extension of time to submit additional information must be made in writing and received by the Associate office within the 10-day period. It must provide compelling facts and circumstances to justify an extension. Only the Associate Chief Counsel of the primary office to which the case is assigned may determine whether to grant or deny the request for an extension. Except in rare and unusual circumstances, the Associate office will not agree to an extension of more than 10 calendar days beyond the end of the 10-day period. There is no right to appeal the denial of a request for an extension.

Where to send additional information

.08 Any additional information submitted by the taxpayer should be sent to the attention of the assigned Associate office attorney. Generally, only the original of the additional information is necessary. In appropriate cases, however, the Associate office may request additional copies of the information. The taxpayer must also send a copy of the additional information to the field office and field attorney for comment. Any comments by the field office or field attorney must be furnished within an agreed period of time to the Associate office with primary responsibility for the TAM request. If there are no comments, the Associate office attorney should be notified promptly. When the field office receives a copy of the additional information from the taxpayer, the field office must provide field counsel with a copy unless such copies have already been provided.

Tentative conclusions

.09 The Associate office attorney will inform the field office and field counsel when all necessary substantive and procedural information has been received. If possible, the Associate office attorney will provide a tentative conclusion. If no tentative conclusion can be reached, the Associate office is encouraged to discuss the underlying complexities with the field office and field counsel. Because the Associate office attorney's tentative conclusion may change

during the preparation and review of the TAM, the tentative conclusion is not considered final. If the tentative conclusion is changed, the Associate office attorney will inform the field office and field counsel. Neither the Associate office, nor the field office or the field counsel, should discuss the tentative conclusion and its underlying rationale with the taxpayer or the taxpayer's representative until the Associate office is ready to issue a TAM that agrees with the taxpayer's position or is ready to hold an adverse conference. To afford taxpayers an appropriate opportunity to prepare and present their position at an adverse conference, however, the taxpayer or the taxpayer's representative is to be told (by the Associate office attorney) the tentative conclusion when scheduling the adverse conference. Field counsel should be notified of, and given the opportunity to participate in, the notification to the taxpayer of the tentative conclusions and scheduling of the adverse conference.

SECTION 9. TAXPAYER CONFERENCES

Notification of conference

.01 If the Associate office proposes to issue a TAM that will be adverse to the taxpayer, and if the taxpayer has not waived its right to a conference, the taxpayer will be informed of the time and place of the conference.

Scheduling conference

.02 The conference for a TAM must occur within 10 calendar days after the taxpayer is informed that an adverse TAM is proposed. The Associate office will notify the field office and field counsel of the scheduled conference and will offer the field office and field counsel the opportunity to participate in the conference.

Taxpayer may request extensions

.03 Only an Associate Chief Counsel may approve an extension of the 10-day period for holding a conference. Although extensions are granted in appropriate circumstances at the discretion of the Associate Chief Counsel, taxpayers should not expect extensions to be routinely granted. The taxpayer must submit a request for an extension in writing to the Associate Chief Counsel of the primary office to which the case is assigned, and must immediately notify the field office and field counsel of the request. The request must contain a detailed justification for the extension and must be submitted sufficiently before the end of the 10-day period to allow the Associate Chief Counsel to consider, and either approve or deny, the request before the end of the 10-day period. If unusual circumstances near the end of the 10-day period make a timely written request impracticable, the taxpayer may orally inform the assigned Associate office attorney or reviewer before the end of the 10-day period about the need for an extension and then promptly submit the written request. The Associate office attorney will inform the taxpayer by telephone of the approval or denial of a requested extension. There is no right to appeal the denial of a request for extension.

One conference of right

.04 In general, a taxpayer who has not waived the right to a conference is entitled by right to only one conference with the Associate office. The conference is normally held at the branch level. A person who has authority to sign the transmittal memorandum in his or her own name, or on behalf of the branch chief, will participate. When more than one branch of an Associate office has taken an adverse position on issues in the request or when the position ultimately adopted by one branch will affect another branch's determination, a representative from each branch with authority to sign in his or her own name, or for the branch chief, will participate in the conference. The conference is the conference of right for each subject discussed.

Additional conferences may be offered

.05 After the conference of right, the Service will offer the taxpayer an additional conference of right only if an adverse holding is proposed on a new issue or on the same issue but on grounds different from those discussed at the first conference. If a tentative position is changed at a higher level with a result less favorable to the taxpayer, the taxpayer has no right to another conference if the grounds or arguments on which the change is based were discussed at the conference of right. The limitation on the number of conferences to which a taxpayer is entitled does not prevent the Associate office from inviting a taxpayer to participate in additional conferences if that office determines that additional conferences would be useful. These additional conferences are not to be offered routinely following an adverse decision.

Additional information submitted after the conference

.06 In order to ensure that the conference of right is productive, the taxpayer should make a reasonable effort to supply all information, documents, and arguments in writing well before the conference. Sometimes, however, it becomes apparent that new information may be helpful in resolving issues discussed at the conference. If the Associate office and the taxpayer agree that such information would be helpful, all such materials must be submitted and received within 10 calendar days after the conference. Any extension of the 10-day period must be requested by the taxpayer in writing and must be approved by the branch chief of the Associate office attorney. Extensions will not be routinely granted. Taxpayers have no right to submit additional materials after the conference, and are discouraged from providing additional copies or versions of materials already submitted. If the additional information is not received from the taxpayer within 10 calendar days plus any extensions granted by the branch chief, the TAM will be issued on the basis of the existing record.

The taxpayer must also send a copy of the additional information to the field office and field counsel for comment. If the additional information has a significant impact on the facts in the request, the Associate office will ask the field office and field counsel for comments, both of which will respond within the agreed upon period of time. If there are no comments, the Associate office attorney will be promptly notified.

Normally conducted in person

.07 Conferences under this section are generally conducted in person, but may be conducted by telephone.

Service makes only tentative recommendations

.08 At the conclusion of the conference, no commitment will be made about the conclusion that the Service will finally adopt for any issue, including the outcome of a request for relief under § 7805(b).

Conference may not be taped

.09 No tape, stenographic, or other verbatim recording of a conference may be made by any party.

SECTION 10. PREPARATION OF THE TECHNICAL ADVICE

Reply consists of two parts

.01 The Associate office attorney prepares replies to requests for technical advice in two parts. Each part identifies the taxpayer by name, address, identification number, and year or years involved. The first part of the reply is a transmittal memorandum (Form M–6000). If the transmittal memorandum provides information not in the TAM, or the case is returned for further development, the transmittal memorandum may be Chief Counsel Advice, as defined in § 6110(i)(1), subject to public inspection under § 6110. The second part is the TAM, which contains: (1) a statement of the issues; (2) the conclusions of the Associate office; (3) a statement of the facts pertinent to the issues; (4) a statement of the pertinent law, tax treaties, regulations, revenue rulings, and other precedents published in the Internal Revenue Bulletin, and court decisions; and (5) a discussion of the rationale supporting the conclusions reached by the Associate office. The conclusions give direct answers, whenever possible, to the specific issues raised by the field office. The Associate office is not bound by the issues as submitted by the taxpayer or by the field office and may reframe the issues to be answered in a TAM after consultation with the field office and field counsel. The discussion of the issues in a TAM will be in sufficient detail so that the field or Appeals officials will understand the reasoning underlying the conclusion.

Status of a request

.02 The taxpayer or the taxpayer's authorized representative may obtain information on the status of the request by contacting the field office that requested the advice. The Associate office attorney or reviewer assigned to the TAM request will give frequent status updates to the field office and field counsel.

Section 6110

.03 Accompanying the TAM is a notice under § 6110(f)(1) of intention to disclose a TAM, including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d). Before the TAM is issued, the Associate office will inform the taxpayer orally or in writing of the material likely to appear in the TAM that the taxpayer proposed for deletion but that the Service has determined should not be deleted. If

so informed, the taxpayer may submit within 10 calendar days any further information or arguments supporting the taxpayer's proposed deletions. The Service will attempt to resolve all disagreements about proposed deletions before the TAM is issued. The taxpayer does not have the right to a conference to resolve any disagreements about material to be deleted from the text of the TAM.

Opportunity for field counsel review

.04 The Associate office attorney will inform the field counsel regarding the Associate office's final conclusions before the TAM is sent to the field office, or the Director, Tax Exempt Bonds.. The field counsel will be offered a reasonable opportunity to review and informally discuss these conclusions before the final TAM is sent.

Copy of preliminary TAM to field office and field counsel

.05 After the field counsel is given a reasonable opportunity to review the Associate office's final conclusions, the Associate office attorney will provide a draft of the proposed final version of the TAM to the field office and field counsel. If the field office or field counsel disagrees with the proposed final conclusions, normal reconciliation and reconsideration procedures will be followed to resolve the disagreement.

Routing of reply

.06 A TAM is generally addressed to the field office that requested it. In the case of issues arising within the jurisdiction of the Director, Tax Exempt Bonds, the TAM is addressed to that Director with a copy sent to the field office and the field counsel attorney. A copy of the reply to a request from LB&I should be mailed simultaneously to the appropriate Industry Director. A reply to a request from Appeals should be addressed to the appropriate field office, and a copy to the TAM Coordinator in the Office of Tax Policy & Valuation through the Appeals Director, Tax Policy & Valuation.

Copy of final TAM to field counsel and Division Counsel

.07 The Associate office will provide a copy of the final TAM to the individual field counsel attorney who assisted the field office in submitting the request and to that attorney's Associate Area Counsel. The Associate office also will provide a copy of the final TAM to the Division Counsel for the operating division from which the request originated or that has jurisdiction over the particular matter in the TAM. The reply may be transmitted electronically if it is in .pdf format, or may be sent by mail or fax transmission.

Reconsideration

.08 Requests for reconsideration may be requested by the field office, or in the case of bonds under the jurisdiction of the Director of Tax Exempt Bonds, by that Director. Requests for reconsideration must describe with specificity the errors in the analysis and conclusions. Requests should focus on points that the TAM overlooked or misconstrued rather than simply re-argue points raised in the initial request. The Associate office will give priority consideration to the request and should act on the request as expeditiously as possible. The Associate office may request further submissions from the field or the taxpayer, but the parties should otherwise make no additional submissions. If a request for reconsideration fails to follow the procedures set forth in this section of this revenue procedure, or the request fails to raise issues or arguments different from those asserted in the initial request for technical advice, the Associate office may return the request for reconsideration without ruling on the request for reconsideration. The taxpayer is not entitled to be informed that a request for reconsideration is being considered.

Discussing contents with the taxpayer

.09 The Associate office will not discuss the specific contents of the TAM with the taxpayer until after the field office has given a copy of the TAM to the taxpayer.

TAM takes effect when taxpayer receives a copy

.10 After a TAM is sent to the field, or for Tax Exempt Bonds, the Director, the field or Director, Tax Exempt Bonds adopts and issues the TAM within the meaning of Treas. Reg. § 301.6110–2(h) and then gives the taxpayer a copy of the TAM, the notice of intention to disclose under § 6110(f)(1), and a copy of the version proposed to be open to public inspection, which includes notations of third party communications under § 6110. If a request for technical advice pertains to more than one taxpayer, the field or Tax Exempt Bond Director will provide each pertinent taxpayer with a copy of the TAM and will notify the Associate office when this occurs. The requirement to give a taxpayer a copy of the TAM does not apply to a TAM involving civil fraud or a criminal investigation, or involving a jeopardy or termination assessment.

Taxpayer may protest deletions not made

.11 Generally, the Associate office considers only the deletion of material that the taxpayer has proposed for deletion or other deletions as required under § 6110(c) before the TAM is sent to the director. After receiving the notice of intention to disclose under § 6110(f)(1), the taxpayer may protest the disclosure of certain information in it by submitting a written statement within 20 calendar days that identifies those deletions not made by the Service that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the TAM proposed to be open to public inspection with brackets around the deletions proposed by the taxpayer that have not been made by the Associate office plus a statement indicating the statutory basis under § 6110(c) for each proposed deletion. Within 20 calendar days after it receives the taxpayer's response to the notice under § 6110(f)(1), the Associate office must mail to the taxpayer its final administrative conclusion about the deletions to be made.

Public inspection in civil fraud or criminal investigation cases

.12 The provisions of this section about referring issues upon the taxpayer's request, telling the taxpayer about the referral of issues, giving the taxpayer a copy of the arguments submitted, submitting proposed deletions, granting conferences in the Associate office, or providing a copy of the TAM to the taxpayer do not apply to a TAM described in § 6110(g)(5)(A), which involves any matter that is the subject of a civil fraud or criminal investigation or involves a jeopardy or termination assessment. In these cases, a copy of the TAM may be given to the taxpayer only after all proceedings in the investigations or assessments are complete, but before the Commissioner mails the notice of intention to disclose under § 6110(f)(1). The taxpayer may then provide the statement of proposed deletions to the Associate office.

SECTION 11. WITHDRAWAL OF REQUESTS FOR TECHNICAL ADVICE

Taxpayer notified

.01 Once a request for a TAM has been sent to the Associate office, only a director may withdraw the request, and this must be done before the responding transmittal memorandum for the TAM is signed. To withdraw the request, the director must first notify the taxpayer of the intent to withdraw unless: (1) the period of limitations on assessment is about to expire and the taxpayer has declined to give written consent to extend the period; or (2) the notification would be prejudicial to the best interests of the Government. If the taxpayer does not agree that the request should be withdrawn and wishes to request review of the decision, the procedures in Section 5.04 of this revenue procedure for review must be followed.

Acknowledgment of withdrawal

.02 Acknowledgment of the withdrawal of a request submitted by a director or Appeals should be sent to the appropriate director or Appeals office, with a copy to the TAM coordinator in the Office of Tax Policy & Valuation.

Associate office may decide not to issue a TAM

.03 If the Associate office determines that a TAM will not be issued, it may return the TAM unanswered. This determination must be made on the basis of sound tax administration and must be approved by the Associate Chief Counsel. The decision not to issue a TAM should be an infrequent occurrence and be made only after consultation with field counsel and the requesting field office. If field counsel disagrees with this determination, they may request reconsideration through existing reconciliation procedures.

Associate office may provide views

.04 If a request for technical advice is withdrawn or an Associate office decides not to issue a TAM, the Associate office may address the substantive issues through published guidance, such as a regulation or revenue ruling. The Associate office may, in the alternative, address the substantive issues through legal advice, either generic or case-specific. The decision to address the issues through these other forms of guidance will be based on the general standards for issuing those types of guidance.

SECTION 12. USE OF THE TECHNICAL ADVICE

Service generally applies advice in processing the taxpayer's case

.01 After a TAM is issued, the field office must process the taxpayer's case on the basis of the conclusions in the TAM. In the case of a TAM unfavorable to the taxpayer, the Appeals Area Director may decide to settle the issue under existing settlement authority. If a TAM provides conclusions involving a § 103 obligation and the issuer of this obligation, the field

office must apply the conclusions to the issuer and any holder of the obligation, unless the holder also initiates a request for a TAM on the same issue addressed in the TAM involving the issuer, and the Associate office issues a TAM involving that issue and that holder.

SECTION 13. RETROACTIVITY AND RELIANCE

Usually applies retroactively

.01 The holdings in a TAM are applied retroactively, whether they are initial holdings or they are later holdings that modify or revoke holdings in a prior TAM. The Associate Chief Counsel with jurisdiction over the TAM, however, may exercise the discretionary authority under § 7805(b) to limit the retroactive effect of any holding. This authority is exercised in rare and unusual circumstances.

Revocation or modification of an earlier letter ruling or TAM

.02 A TAM may be used to seek revocation or modification of an earlier TAM or revocation or modification of a PLR. See Rev. Proc. 2011–1 § 11.03 with respect to revocation or modification of PLRs. Generally, a TAM that revokes or modifies a letter ruling or an earlier TAM will not be applied retroactively if: (1) the applicable law has not changed; (2) the taxpayer directly involved in the letter ruling or earlier TAM relied in good faith on it; and (3) revocation or modification would be detrimental to the taxpayer. The new TAM will be applied retroactively to the taxpayer whose tax liability was directly involved in the letter ruling or TAM if: (1) controlling facts have been misstated or omitted; or (2) the facts at the time of the transaction are materially different from the controlling facts on which the letter ruling or earlier TAM was based. If a letter ruling or a TAM is modified or revoked with retroactive effect, the notice to the taxpayer, except in fraud cases, should set forth the grounds on which the modification or revocation is being made and the reason why the modification or revocation is being applied retroactively.

Continuing action or series of actions

.03 If an issue addressed in the TAM relates to a continuing action or a series of actions, it is generally applied until it is withdrawn or until the conclusion is modified or revoked by a final decision in favor of the taxpayer with respect to that issue, the enactment of legislation, the ratification of a tax treaty, a decision of the United States Supreme Court, or the issuance of temporary regulations, final regulations, a revenue ruling, or other statement published in the Internal Revenue Bulletin. Publication of a notice of proposed rulemaking does not affect the application of a TAM. If a new holding in a TAM is less favorable to the taxpayer than the holding in an earlier TAM, the new holding is generally not applied to the period when the taxpayer relied on the earlier holding. It will be applied to that period, however, if material facts on which the earlier TAM was based have changed.

Other taxpayers

.04 Under § 6110(k)(3), a taxpayer may not rely on a TAM issued by the Service for another taxpayer. In addition, retroactive or non-retroactive treatment to one member of an industry directly involved in a letter ruling or TAM does not extend to another member of that same industry, and retroactive or non-retroactive treatment to one client of a tax practitioner does not extend to another client of that same practitioner.

SECTION 14. HOW MAY RETROACTIVE EFFECT BE LIMITED?

Requests for relief under § 7805(b)

.01 A taxpayer with respect to whom a TAM is issued or for whom a TAM request is pending may request that the appropriate Associate Chief Counsel limit the retroactive effect of any holding in the TAM or of any subsequent modification or revocation of the TAM. For a pending request for technical advice, the taxpayer should make the request for relief under § 7805(b) as part of the initial request for advice. The Associate office will consider a request for relief under § 7805(b) made at a later time if there is justification for having delayed the request.

Form of request for relief — in general

.02 During the course of an examination of a taxpayer's return by the field office or during consideration of the taxpayer's return by the Appeals Area Director, a taxpayer's request to limit retroactivity must be made in the form of a request for a TAM. This includes recommendations by a director that an earlier letter ruling or TAM be modified or revoked. The request

must meet the general requirements of a request for technical advice. It must also: (1) state that it is being made under § 7805(b); (2) state the relief sought; (3) explain the reasons and arguments in support of the relief sought; and (4) include any documents bearing on the request. The taxpayer's request must be submitted to the director, who should then forward the request to the Associate office for consideration.

Form of request for relief — continuing transaction before examination of return

.03 A request for relief under § 7805(b) must be made in the form of a request for a letter ruling if: (1) a TAM addressing a continuing transaction is modified or revoked by later published guidance; and (2) the request for relief is submitted before an examination has begun covering those years for which relief is sought. The requirements for a letter ruling request are given in Rev. Proc. 2011–1 (this Bulletin).

Taxpayer's right to a conference

.04 When a request for a TAM concerns only the application of § 7805(b), the taxpayer has the right to a conference with the Associate office in accordance with the provisions of Section 9 of this revenue procedure. If the request for application of § 7805(b) is included in the request for a TAM on the substantive issues or is made before the conference of right on the substantive issues, the § 7805(b) issues will be discussed at the taxpayer's one conference of right. If the request for the application of § 7805(b) is made as part of a pending TAM request after a conference has been held on the substantive issues and the Service determines that there is justification for having delayed the request, then the taxpayer will have the right to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue only.

Reconsideration of request for relief under § 7805(b)

.05 When a TAM grants a taxpayer relief under § 7805(b), the director may not request reconsideration of the § 7805(b) issue unless the director determines there has been a misstatement or omission of controlling facts by the taxpayer in its request for § 7805(b) relief.

SECTION 15. SIGNIFICANT CHANGES MADE TO REV. PROC. 2010–2

There were no significant changes made to Rev. Proc. 2010–2.

SECTION 16. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2010–2, 2010–1 I.R.B. 90, is superseded.

SECTION 17. EFFECTIVE DATE

This revenue procedure is effective January 3, 2011.

DRAFTING INFORMATION

The principal author of this revenue procedure is Danielle W. Pierce of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure for matters under the jurisdiction of:

(1) the Associate Chief Counsel (Corporate), contact Paul Arends at (202) 622–7700 (not a toll-free call);

(2) the Associate Chief Counsel (Financial Institutions and Products), contact Arturo Estrada at (202) 622–3900 (not a toll-free call);

(3) the Associate Chief Counsel (Income Tax and Accounting), contact Deborah Clark at (202) 622–4800 (not a toll-free call);

(4) the Associate Chief Counsel (Passthroughs and Special Industries), contact Mayer Samuels at (202) 622–3090 (not a toll-free call);

(5) the Associate Chief Counsel (Procedure and Administration), contact George Bowden or Henry Schneiderman at (202) 622–3400 (not a toll-free call);

(6) the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), contact Paul Carlino at (202) 622–6000 (not a toll-free call);

(7) the Associate Chief Counsel (International), contact Craig R. Gilbert at (202) 927–0811 (not a toll-free call);

(8) the Commissioner (Large Business & International Division), contact Shirley S. Lee at (202) 283–8417 (not a toll-free call);

(9) the Commissioner (Small Business/Self-Employed Division), contact Glenn Deloriea at (202) 283–0792 (not a toll-free call);

(10) the Commissioner (Wage and Investment Division), contact Geoffrey Gerbore at (631) 447–4428 (not a toll-free call); or

(11) the Office of Appeals, contact Julie M. Ferenci at (818) 637–3916 (not a toll-free call).

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SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 The purpose of this revenue procedure is to update Rev. Proc. 2010–3, 2010–1 C.B. 110, by providing a revised list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) relating to issues on which the Internal Revenue Service will not issue letter rulings or determination letters. For a list of areas under the jurisdiction of the Associate Chief Counsel (International) relating to international issues on which the Service will not issue letter rulings or determination letters, see Rev. Proc. 2011–7, this Bulletin. For a list of areas under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division relating to issues, plans or plan amendments on which the Service will not issue letter rulings and determination letters, see, respectively, section 8 of Rev. Proc. 2011–4, this Bulletin, and section 3.02 of Rev. Proc. 2011–6, this Bulletin.

.02 Changes.

(1) Section 3.01(48), regarding §§ 451 and 45 and Nonqualified Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations, has been modified.

(2) Section 3.01(60), regarding §1033 involuntary Conversions, has been modified.

(3) New section 4.01(45), regarding § 1362(d)(3), has been added.

(4) Section 4.07(53), regarding § 2601and the generation-skipping transfer tax, has been modified.

(5) Old section 5.02, regarding § 72 and "partial annuitization," has been deleted.

(6) New section 5.09, regarding §§ 661 and 662 and "decanting," has been added.

(7) New section 5.16, regarding § 2501 and "decanting," has been added.

(8) New section 5.17, regarding §§ 2601 and 2663 and "decanting," has been added.

(9) Section 6.02, regarding § 442, has been modified.

SECTION 2. BACKGROUND AND SCOPE OF APPLICATION

.01 Background.

Whenever appropriate in the interest of sound tax administration, it is the policy of the Service to answer inquiries of individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions, prior to the filing of returns or reports that are required by the revenue laws.

There are, however, certain areas in which, because of the inherently factual nature of the problems involved, or for other reasons, the Service will not issue rulings or determination letters. These areas are set forth in four sections of this revenue procedure. Section 3 reflects those areas in which rulings and determinations will not be issued. Section 4 sets forth those areas in which they will not ordinarily be issued. "Not ordinarily" means that unique and compelling reasons must be demonstrated to justify the issuance of a ruling or determination letter. Those sections reflect a number of specific questions and problems as well as general areas. Section 5 lists specific areas for which the Service is temporarily not issuing rulings and determinations because those matters are under study. Finally, section 6 of this revenue procedure lists specific areas where the Service will not ordinarily issue rulings because the Service has provided automatic approval procedures for these matters.

See Rev. Proc. 2011–1, this Bulletin, particularly section 6 captioned "Under What Circumstances Does The Service

Not Issue Letter Rulings Or Determination Letters?" for general instructions and other situations in which the Service will not or ordinarily will not issue letter rulings or determination letters.

With respect to the items listed, revenue rulings or revenue procedures may be published in the Internal Revenue Bulletin from time to time to provide general guidelines regarding the position of the Service.

Additions or deletions to this revenue procedure as well as restatements of items listed will be made by modification of this revenue procedure. Changes will be published as they occur throughout the year and will be incorporated annually in a new revenue procedure published as the third revenue procedure of the year. These lists should not be considered all-inclusive. Decisions not to rule on individual cases (as contrasted with those that present significant pattern issues) are not reported in this revenue procedure and will not be added to subsequent revisions.

.02 Scope of Application.

This revenue procedure does not preclude the submission of requests for technical advice to the National Office from other offices of the Service.

.03 No-Rule Issues Part of Larger Transactions.

If it is impossible for the Service to determine the tax consequences of a larger transaction without knowing the resolution of an issue on which the Service will not issue rulings and determinations under this revenue procedure involving a part of the transaction or a related transaction, the taxpayer must state in the request to the best of the taxpayer's knowledge and belief the tax consequences of the no-rule issue. The Service's ruling or determination letter will state that the Service did not consider, and no opinion is expressed upon, that issue. In appropriate cases the Service may decline to issue rulings or determinations on such larger transactions due to the relevance of the no-rule issue, despite the taxpayer's representation. See also section 4.02(2) of this revenue procedure.

SECTION 3. AREAS IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED

.01 Specific questions and problems.

(1) Section 61.—Gross Income Defined.—Whether amounts voluntarily deferred by a taxpayer under a deferred-compensation plan maintained by an organization described in § 501 (other than a plan maintained by an eligible employer pursuant to the provisions of § 457) are currently includible in the taxpayer's gross income.

(2) Section 61.—Gross Income Defined.—Whether a split-dollar life insurance arrangement is "materially modified" within the meaning of § 1.61–22(j)(2) of the Income Tax Regulations. (Also §§ 83, 301, 1401, 2501, 3121, 3231, 3306, 3401, and 7872.)

(3) Sections 61, 451, and 1001.—Gross Income Defined; General Rule for Taxable Year of Inclusion; Determination of Amount and Recognition of Gain or Loss.—Whether, under authorization by an appropriate State agency to recover certain costs pursuant to State specified cost recovery legislations, any investor-owned utility company realizes income upon: (i) the creation of an intangible property right; (ii) the transfer of that intangible property right; or (iii) the securitization of the intangible property right.

(4) Section 79.—Group-Term Life Insurance Purchased for Employees.—Whether a group insurance plan for 10 or more employees qualifies as group-term insurance, if the amount of insurance is not computed under a formula that would meet the requirements of § 1.79–1(c)(2)(ii) of the regulations if the group consisted of fewer than 10 employees.

(5) Section 83.—Property Transferred in Connection with Performance of Services.—Whether a restriction constitutes a substantial risk of forfeiture, if the employee is a controlling shareholder. Also, whether a transfer has occurred, if the amount paid for the property involves a nonrecourse obligation.

(6) Section 83.—Property Transferred in Connection with Performance of Services.—Which corporation is entitled to the deduction under § 83(h) in cases where a corporation undergoes a corporate division, if the facts are not similar to those described in Rev. Rul. 2002–1, 2002–1 C.B. 268.

(7) Section 101.—Certain Death Benefits.—Whether there has been a transfer for value for purposes of § 101(a) in situations involving a grantor and a trust when (i) substantially all of the trust corpus consists or will consist of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, and (iv) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

(8) Sections 101, 761, and 7701.—Definitions.—Whether, in connection with the transfer of a life insurance policy to an unincorporated organization, (i) the organization will be treated as a partnership under §§ 761 and 7701, or (ii) the transfer of the life insurance policy to the organization will be exempt from the transfer for value rules of § 101, when substantially all of the organization's assets consists or will consist of life insurance policies on the lives of the members.

(9) Section 102.—Gifts and Inheritances.— Whether a transfer is a gift within the meaning of § 102(a).

(10) Section 105(h).—Amount Paid to Highly Compensated Individuals Under Discriminatory Self-Insured Medical Expense Reimbursement Plan.—Whether a self-insured medical reimbursement plan satisfies the requirements of § 105(h) for a plan year.

(11) Section 107.—Rental Value of Parsonages.—Whether amounts distributed to a retired minister from a pension or annuity plan should be excludible from the minister's gross income as a parsonage allowance under § 107.

(12) Section 107.—Rental Value of Parsonages.—Whether an individual is a "minister of the gospel" for Federal tax purposes. (Also §§ 1402(a)(8), (c)(4) and (e), 3121(b)(8)(A), and 3401(a)(9)).

(13) Section 115.—Income of States, Municipalities, Etc.—The results of transactions pursuant to a plan or arrangement created by State statute a primary objective of which is to enable participants to pay for the costs of a post-secondary education for themselves or a designated beneficiary, including: (i) whether the plan or arrangement, itself, is an entity separate from a State and, if so, how the plan or

arrangement is treated for Federal tax purposes; and (ii) whether any contract under the plan or arrangement is a debt instrument and, if so, how interest or original issue discount attributable to the contract is treated for Federal tax purposes. (Also §§ 61, 163, 1275, 2501, and 7701.)

(14) Section 115.—Income of States, Municipalities, Etc.—Whether the income of membership organizations established by States exclusively to reimburse members for losses arising from workmen's compensation claims is excluded from gross income under § 115.

(15) Section 117.—Qualified Scholarships.—Whether amounts paid to research fellows and research associates are scholarships or fellowships excluded from wages for FICA tax purposes.

(16) Section 117.—Qualified Scholarships.—Whether an employer-related scholarship or fellowship grant is excludible from the employee's gross income, if there is no intermediary private foundation distributing the grants, as there was in Rev. Proc. 76–47, 1976–2 C.B. 670.

(17) Section 119.—Meals or Lodging Furnished for the Convenience of the Employer.—Whether the value of meals or lodging is excludible from gross income by an employee who is a controlling shareholder of the employer.

(18) Section 121.—Exclusion of Gain from Sale of Principal Residence.—Whether property qualifies as the taxpayer's principal residence.

(19) Section 125.—Cafeteria Plans.—Whether amounts used to provide group-term life insurance under § 79, accident and health benefits under §§ 105 and 106, and dependent care assistance programs under § 129 are includible in the gross income of participants and considered "wages" for purposes of §§ 3401, 3121, and 3306 when the benefits are offered through a cafeteria plan.

(20) Section 162.—Trade or Business Expenses.—Whether compensation is reasonable in amount.

(21) Section 163.—Interest.—The income tax consequences of transactions involving "shared appreciation mortgage" (SAM) loans in which a taxpayer, borrowing money to purchase real property, pays a fixed rate of interest on the mortgage loan below the prevailing market rate and will also pay the lender a percentage of the appreciation in value of the real property upon termination of the mortgage. This applies to all SAM arrangements where the loan proceeds are used for commercial or business activities, or where used to finance a personal residence, if the facts are not similar to those described in Rev. Rul. 83–51, 1983–1 C.B. 48. (Also §§ 61, 451, 461, 856, 1001, and 7701.)

(22) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a charitable contribution deduction under § 170 is allowed for a transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in § 170(c).

(23) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a taxpayer who advances funds to a charitable organization and receives therefor a promissory note may deduct as contributions, in one taxable year or in each of several years, amounts forgiven by the taxpayer in each of several years by endorsement on the note.

(24) Section 181.—Treatment of Certain Qualified Film and Television Productions.—The determination under § 1.181–1T(a)(1) and (2) as to who is the owner of a qualified film or television production.

(25) Section 199.—Income Attributable to Domestic Production Activities.—The determination under § 1.199–3(f)(1) as to who is the taxpayer that has the benefits and burdens of ownership under Federal income tax principles of any qualifying production property (as defined in § 1.199–3(j)(1)), qualified film (as defined in § 1.199–3(k)), or utilities (as defined in § 1.199–3(l)) during the period in which a qualifying activity under § 199 occurs.

(26) Section 213.—Medical, Dental, Etc., Expenses.—Whether a capital expenditure for an item that is ordinarily used for personal, living, or family purposes, such as a swimming pool, has as its primary purpose the medical care of the taxpayer or the taxpayer's spouse or dependent, or is related directly to such medical care.

(27) Section 264(b).—Certain Amounts Paid in Connection with Insurance Contracts.—Whether "substantially all" the premiums of a contract of insurance are paid within a period of 4 years from the date on which the contract is purchased. Also, whether an amount deposited is in payment of a "substantial number" of future premiums on such a contract.

(28) Section 264(c)(1).—Certain Amounts Paid in Connection with Insurance Contracts.—Whether § 264(c)(1) applies.

(29) Section 269.—Acquisitions Made to Evade or Avoid Income Tax.—Whether an acquisition is within the meaning of § 269.

(30) Section 274.—Disallowance of Certain Entertainment, Etc., Expenses.—Whether a taxpayer who is traveling away from home on business may, in lieu of substantiating the actual cost of meals, deduct a fixed per-day amount for meal expenses that differs from the amount authorized by the revenue procedure providing optional rules for substantiating the amount of travel expenses for the period in which the expense was paid or incurred.

(31) Section 302.—Distributions in Redemption of Stock.—Whether § 302(b) applies when the consideration given in redemption by a corporation consists entirely or partly of its notes payable, and the shareholder's stock is held in escrow or as security for payment of the notes with the possibility that the stock may or will be returned to the shareholder in the future, upon the happening of specific defaults by the corporation.

(32) Section 302.—Distributions in Redemption of Stock.—Whether § 302(b) applies when the consideration given in redemption by a corporation in exchange for a shareholder's stock consists entirely or partly of the corporation's promise to pay an amount based on, or contingent on, future earnings of the corporation, when the promise to pay is contingent on working capital being maintained at a certain level, or any other similar contingency.

(33) Section 302.—Distributions in Redemption of Stock.—Whether § 302(b) applies to a redemption of stock, if after the redemption the distributing corporation uses property that is owned by the shareholder from whom the stock is redeemed and the payments by the corporation for the use of the property are dependent upon the corporation's future earnings or are subordinate to the claims of the corporation's general creditors. Payments for the use of property will not be considered to be dependent upon future earnings

merely because they are based on a fixed percentage of receipts or sales.

(34) Section 302.—Distributions in Redemption of Stock.—Whether the acquisition or disposition of stock described in § 302(c)(2)(B) has, or does not have, as one of its principal purposes the avoidance of Federal income taxes within the meaning of that section, unless the facts and circumstances are materially identical to those set forth in Rev. Rul. 85–19, 1985–1 C.B. 94; Rev. Rul. 79–67, 1979–1 C.B. 128; Rev. Rul. 77–293, 1977–2 C.B. 91; Rev. Rul. 57–387, 1957–2 C.B. 225; Rev. Rul. 56–584, 1956–2 C.B. 179; or Rev. Rul. 56–556, 1956–2 C.B. 177.

(35) Section 302(b)(4) and (e).—Redemption from Noncorporate Shareholder in Partial Liquidation; Partial Liquidation Defined.—The amount of working capital attributable to a business or portion of a business terminated that may be distributed in partial liquidation.

(36) Section 312.—Effect on Earnings and Profits.—The determination of the amount of earnings and profits of a corporation.

(37) Sections 331, 453, and 1239.—The Tax Effects of Installment Sales of Property Between Entities with Common Ownership.—The tax effects of a transaction in which there is a transfer of property by a corporation to a partnership or other noncorporate entity (or the transfer of stock to such entity followed by a liquidation of the corporation) when more than a nominal amount of the stock of such corporation and the capital or beneficial interests in the purchasing entity (that is, more than 20 percent in value) is owned by the same persons, and the consideration to be received by the selling corporation or the selling shareholders includes an installment obligation of the purchasing entity.

(38) Sections 332, 351, 368(a)(1)(A), (B), (C), (E) and (F), and 1036.—Complete Liquidations of Subsidiaries; Transfer to Corporation Controlled by Transferor; Definitions Relating to Corporate Reorganizations; and Stock for Stock of Same Corporation.—Whether a transaction qualifies under § 332, § 351 or § 1036 for nonrecognition treatment, or whether it constitutes a corporate reorganization within the meaning of § 368(a)(1)(A) (including a transaction that qualifies under § 368(a)(1)(A) by reason of § 368(a)(2)(D) or § 368(a)(2)(E)), § 368(a)(1)(B), § 368(a)(1)(C), § 368(a)(1)(E) or § 368(a)(1)(F), and whether various consequences (such as nonrecognition and basis) result from the application of that section, unless the Service determines that there is a significant issue that must be resolved in order to decide those matters. If the Service determines that there is a significant issue, and to the extent the transaction is not described in another no-rule section, the Service will rule on the entire transaction, and not just the significant issue. However, the Service may rule on a significant issue in a transaction that occurs in the context of a § 355 distribution without ruling on the entire transaction. See section 6.03 of Rev. Proc. 2011–1, this Bulletin.

Notwithstanding the preceding paragraph, the Service will rule on the application of § 351 to a controlled corporation when the transaction is undertaken prior to the distribution of the stock of the controlled corporation in a transaction qualifying under § 355.

SIGNIFICANT ISSUE: A significant issue is an issue of law that meets the three following tests: (1) the issue is not clearly and adequately addressed by a statute, regulation, decision of a court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin; (2) the resolution of the issue is not essentially free from doubt; and (3) the issue is legally significant and germane to determining the major tax consequences of the transaction. An issue of law will be considered not clearly and adequately addressed by the authorities above, and its resolution will not be essentially free from doubt when, because of concern over a legal issue (as opposed to a factual issue), taxpayer's counsel is unable to render an unqualified opinion on what the tax consequences of the transaction will be.

OBTAINING A RULING: To obtain a ruling on a transaction involving a significant issue, the taxpayer must in its ruling request explain the significance of the issue, set forth the authorities most closely related to the issue, and explain why the issue is not resolved by these authorities.

(39) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether the distribution of the stock of a controlled corporation is being carried out for one or more corporate business purposes, whether the transaction is used principally as a device, and whether the distribution and an acquisition are part of a plan under § 355(e). *See* Rev. Proc. 2003–48, 2003–2 C.B. 86. Notwithstanding the preceding sentence, the Service may issue a ruling regarding the effect of redemptions under § 355(e) pending the issuance of temporary or final regulations regarding redemptions under § 355(e) if an adverse ruling on such question would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of a plan under § 355(e).

(40) Section 351.—See section 3.01(38), above.

(41) Section 358.—Basis to Distributees.—The acceptability of an estimation procedure or the acceptability of a specific sampling procedure to determine the basis of stock acquired by an acquiring corporation in a reorganization described in § 368(a)(1)(B).

(42) Section 368.—See section 3.01(38), above.

(43) Section 409A.—Inclusion in Gross Income of Deferred Compensation Under Nonqualified Deferred Compensation Plans.—— The income tax consequences of establishing, operating, or participating in a nonqualified deferred compensation plan within the meaning of § 1.409A–1(a); whether a plan is described in § 1.409A–1(a)(3)(iv) or (v); whether a plan is a bona fide vacation leave, sick leave or compensatory time plan described in § 1.409A–1(a)(5); and whether a plan provides for the deferral of compensation under § 1.409A–1(b).

(44) Section 424.—Substitution or Assumption of Incentive Stock Options.—Whether the substitution of a new Incentive Stock Option ("ISO") for an old ISO, or the assumption of an old ISO, by an employer by reason of a corporate transaction constitutes a modification which results in the issuance of a new option by reason of failing to satisfy the spread test requirement of § 424(a)(1) or the ratio test requirement of § 1.425–1(a)(4). The Service will continue to rule on the issue of whether the new ISO or the assumption of the old ISO gives the employee additional benefits not present under the old option within the meaning of § 424(a)(2).

(45) Section 451.—See section 3.01(3), above.

(46) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of a nonqualified unfunded deferred-compensation arrangement with respect to a controlling shareholder-employee eligible to participate in the arrangement.

(47) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of nonqualified unfunded deferred-compensation arrangements where the arrangements fail to meet the requirements of Rev. Proc. 92–65, 1992–2 C.B. 428; and Rev. Proc. 71–19, 1971–1 C.B. 698.

(48) Sections 451 and 457.—General Rule for Taxable Year of Inclusion; Nonqualified Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.—The tax consequences to unidentified independent contractors in nonqualified unfunded deferred compensation plans. This applies to plans established under § 451 by employers in the private sector and to plans of State and local governments and tax-exempt organizations under § 457. However, a ruling with respect to a specific independent contractor's participation in such a plan may be issued.

(49) Section 453.—See section 3.01(37), above.

(50) Section 457.—See section 3.01(48), above.

(51) Section 641.—Imposition of Tax.—Whether the period of administration or settlement of an estate or a trust (other than a trust described in § 664) is reasonable or unduly prolonged.

(52) Section 642(c).—Deduction for Amounts Paid or Permanently Set Aside for a Charitable Purpose.—Allowance of an unlimited deduction for amounts set aside by a trust or estate for charitable purposes when there is a possibility that the corpus of the trust or estate may be invaded.

(53) Section 664.—Charitable Remainder Trusts.—Whether the settlement of a charitable remainder trust upon the termination of the noncharitable interest is made within a reasonable period of time.

(54) Section 671.—Trust Income, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners.—Whether the grantor will be considered the owner of any portion of a trust when (i) substantially all of the trust corpus consists or will consist of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, and (iv) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

(55) Section 704(b)(2).—Partner's Distributive Share.—Whether the allocation to a partner under the partnership agreement of income, gain, loss, deduction, or credit (or an item thereof) has substantial economic effect.

(56) Section 704(e).—Family Partnerships.—Matters relating to the validity of a family partnership when capital is not a material income producing factor.

(57) Section 761.—See section 3.01(8), above.

(58) Section 856.—Definition of Real Estate Investment Trust.—Whether a corporation whose stock is "paired" with or "stapled" to stock of another corporation will qualify as a real estate investment trust under § 856, if the activities of the corporations are integrated.

(59) Section 1001.—See section 3.01(3), above.

(60) Section 1033.—Involuntary Conversions.—Whether the replacement or proposed replacement of compulsorily or involuntarily converted property does or does not qualify under § 1033(a), if the taxpayer has already filed a federal tax return for the taxable year in which the property was converted. The Service may issue a determination letter in this case. See section 12.01 of Rev. Proc. 2011–1, this Bulletin.

(61) Section 1036.—See section 3.01(38), above.

(62) Section 1221.—Capital Asset Defined.—Whether specialty stock allocated to an investment account by a registered specialist on a national securities exchange is a capital asset.

(63) Section 1239.—See section 3.01(37), above.

(64) Section 1551.—Disallowance of the Benefits of the Graduated Corporate Rates and Accumulated Earnings Credit.—Whether a transfer is within § 1551.

(65) Section 2031.—Definition of Gross Estate.—Actuarial factors for valuing interests in the prospective gross estate of a living person.

(66) Section 2055.— Transfers for Public, Charitable, and Religious Uses.—Whether a charitable contribution deduction under § 2055 is allowed for the transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in § 2055(a).

(67) Section 2512.—Valuation of Gifts.—Actuarial factors for valuing prospective or hypothetical gifts of a donor.

(68) Section 2522.—Charitable and Similar Gifts.—Whether a charitable contribution deduction under § 2522 is allowable for a transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in § 2522(a).

(69) Section 2601.—Tax Imposed. Exceptions: Retention of Trust's Generation-Skipping Transfer Tax Exempt Status in the Case of Modifications, Etc.—Whether a trust exempt from generation-skipping transfer (GST) tax under § 26.2601–1(b)(1), (2), or (3) of the Generation-Skipping Transfer Tax Regulations will retain its GST exempt status when there is a modification of a trust, change in the administration of a trust, or a distribution from a trust in a factual scenario that is similar to a factual scenario set forth in one or more of the examples contained in § 26.2601–1(b)(4)(i)(E).

(70) Sections 3121, 3306, and 3401.—Definitions.—For purposes of determining prospective employment status, whether an individual will be an employee or an independent contractor. A ruling with regard to prior employment status may be issued.

(71) Sections 3121, 3306, and 3401.—Definitions; Employment Taxes.—Who is the employer of an "employee-owner" as defined in § 269A(b)(2).

(72) Sections 3121, 3306, and 3401.—Definitions.—For purposes of determining employment classification pursuant to the filing of Form SS–8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income*

Tax Withholding, whether a worker is a bona fide partner and, therefore, not an employee of the business is at issue.

(73) Section 4980B.—Failure to Satisfy Continuation Coverage Requirements of Group Health Plans.—Whether an action is "gross misconduct" within the meaning of § 4980B(f)(3)(B). (See section 3.05 of Rev. Proc. 87–28, 1987–1 C.B. 770, 771.)

(74) Section 6166—Estates consisting largely of an interest in a closely held business — Requests involving section 6166 where there is no decedent.

(75) Section 6901 — Transferee Liability — Whether a taxpayer is liable for tax as a transferee.

(76) Section 7701.—Definitions.—The classification of an instrument that has certain voting and liquidation rights in an issuing corporation but whose dividend rights are determined by reference to the earnings of a segregated portion of the issuing corporation's assets, including assets held by a subsidiary.

(77) Section 7701.—See section 3.01(8), above.

(78) Section 7704.—Certain Publicly Traded Partnerships Treated as Corporations.—Whether interests in a partnership that are not traded on an established securities market (within the meaning of § 7704(b) and §1.7704–1(b)) are readily tradable on a secondary market or the substantial equivalent thereof under § 1.7704–1(c)(1) of the Procedure and Administration Regulations.

.02 General Areas.

(1) The results of transactions that lack a *bona fide* business purpose or have as their principal purpose the reduction of Federal taxes.

(2) A matter upon which a court decision adverse to the Government has been handed down and the question of following the decision or litigating further has not yet been resolved.

(3) A matter involving alternate plans of proposed transactions or involving hypothetical situations.

(4) Whether under Subtitle F (Procedure and Administration) reasonable cause, due diligence, good faith, clear and convincing evidence, or other similar terms that require a factual determination exist.

(5) Whether a proposed transaction would subject the taxpayer to a criminal penalty.

(6) A request that does not comply with the provisions of Rev. Proc. 2011–1, this Bulletin.

(7) Whether, under the common law rules applicable in determining the employer-employee relationship, a professional staffing corporation (loan-out corporation) or the subscriber is the employer of individuals, if:

(i) the loan-out corporation hires employees of the subscriber and assigns the employees back to the subscriber, or

(ii) the loan-out corporation assigns individuals to subscribers for more than a temporary period (1 year or longer).

(8) Questions that the Service determines, in its discretion, should not be answered in the general interests of tax administration.

(9) Any frivolous issue, as that term is defined in section 6.10 of Rev. Proc. 2011–1, this Bulletin.

SECTION 4. AREAS IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT ORDINARILY BE ISSUED

.01 Specific questions and problems.

(1) Sections 38, 39, 46, and 48.—General Business Credit; Carryback and Carryforward of Unused Credits; Amount of Credit; Energy Credit; Reforestation Credit.—Application of these sections where the formal ownership of property is in a party other than the taxpayer, except when title is held merely as security.

(2) Section 61.—Gross Income Defined.—Determination as to who is the true owner of property in cases involving the sale of securities, or participation interests therein, where the purchaser has the contractual right to cause the securities, or participation interests therein, to be purchased by either the seller or a third party.

(3) Sections 61 and 163.—Gross Income Defined; Interest.—Determinations as to who is the true owner of property or the true borrower of money in cases in which the formal ownership of the property, or the liability for the indebtedness, is in another party.

(4) Sections 83 and 451.—Property Transferred in Connection with Performance of Services; General Rule for Taxable Year of Inclusion.—When compensation is realized by a person who, in connection with the performance of services, is granted a nonstatutory option without a readily ascertainable fair market value to purchase stock at a price that is less than the fair market value of the stock on the date the option is granted.

(5) Section 103.—Interest on State and Local Bonds.—Whether the interest on State or local bonds will be excludible from gross income under § 103(a), if the proceeds of issues of bonds (other than advance refunding issues) are placed in escrow or otherwise not expended for a governmental purpose for an extended period of time even though the proceeds are invested at a yield that will not exceed the yield on the State or local bonds prior to their expenditure.

(6) Section 103.—Interest on State and Local Bonds.—Whether a State or local governmental obligation that does not meet the criteria of section 5 of Rev. Proc. 89–5, 1989–1 C.B. 774, is an "arbitrage bond" within the meaning of former § 103(c)(2) solely by reason of the investment of the bond proceeds in acquired nonpurpose obligations at a materially higher yield more than 3 years after issuance of the bonds or 5 years after issuance of the bonds in the case of construction issues described in former § 1.103–13(a)(2)(ii)(E) or § 1.148–2(e)(2)(ii).

(7) Section 141.—Private Activity Bond; Qualified Bond.—Whether State or local bonds will meet the "private business use test" and the "private security or payment test" under §141(b)(1) and (2) in situations in which the proceeds are used to finance certain output facilities and, pursuant to a contract to take, or take or pay for, a nongovernmental person purchases 30 percent or more of the actual output of the facility but 10 percent or less of the: (i) subparagraph (5) output of the facility as defined in § 1.103–7(b)(5)(ii)(b) (issued under former § 103(b)), or (ii) available output of the facility as defined in § 1.141–7(b)(1). In similar situations, the Service will not ordinarily issue rulings or determination letters concerning questions arising under paragraphs (3), (4), and (5) of § 141(b).

(8) Sections 142 and 144.—Exempt Facility Bond; Qualified Small Issue Bond.—Whether an issue of private activity bonds meets the requirements of § 142 or § 144(a), if the sum of—

(i) the portion of the proceeds used to finance a facility in which an owner (or related person) or a lessee (or a related person) is a user of the facility both after the bonds are issued and at any time before the bonds were issued, and

(ii) the portion used to pay issuance costs and non-qualified costs

equals more than 5 percent of the net proceeds, as defined in § 150(a)(3).

(9) Section 148.—Arbitrage.—Whether amounts received as proceeds from the sale of municipal bond financed property and pledged to the payment of debt service or pledged as collateral for the municipal bond issue are sinking fund proceeds within the meaning of former § 1.103–13(g) (issued under former § 103(c)) or replaced proceeds described in § 148(a)(2) (or former § 103(c)(2)(B)).

(10) Sections 162 and 262.—Trade or Business Expenses; Personal, Living, and Family Expenses.—Whether expenses are nondeductible commuting expenses, except for situations governed by Rev. Rul. 99–7, 1999–1 C.B. 361.

(11) Section 163.—See section 4.01(3), above.

(12) Section 167.—Depreciation.

(i) Useful lives of assets.

(ii) Depreciation rates.

(iii) Salvage value of assets.

(13) Sections 167 and 168.—Depreciation; Accelerated Cost Recovery System.—Application of those sections where the formal ownership of property is in a party other than the taxpayer except when title is held merely as security.

(14) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable contribution deduction under § 170(f)(2)(A).

(15) Section 170(c).—Charitable, Etc., Contributions and Gifts.—Whether a taxpayer who transfers property to a charitable organization and thereafter leases back all or a portion of the transferred property may deduct the fair market value of the property transferred and leased back as a charitable contribution.

(16) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives qualifies for a charitable deduction under § 170(f)(2)(A).

(17) Section 216.—Deduction of Taxes, Interest, and Business Depreciation by Cooperative Housing Corporation Tenant-Stockholder.—If a cooperative housing corporation (CHC), as defined in § 216(b)(1), transfers an interest in real property to a corporation (not a CHC) in exchange for stock or securities of the transferee corporation, which engages in commercial activity with respect to the real property interest transferred, whether (i) the income of the transferee corporation derived from the commercial activity, and (ii) any cash or property (attributable to the real property interest transferred) distributed by the transferee corporation to the CHC will be considered as gross income of the CHC for the purpose of determining whether 80 percent or more of the gross income of the CHC is derived from tenant-stockholders within the meaning of § 216(b)(1)(D).

(18) Section 262.—See section 4.01(10), above.

(19) Section 265(a)(2).—Expenses and Interest Relating to Tax-Exempt Income.—Whether indebtedness is incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by subtitle A.

(20) Section 302.—Distributions in Redemption of Stock.—The tax effect of the redemption of stock for notes, when the payments on the notes are to be made over a period in excess of 15 years from the date of issuance of such notes.

(21) Section 302(b)(4) and (e).—Redemption from Noncorporate Shareholder in Partial Liquidation; Partial Liquidation Defined.—Whether a distribution will qualify as a distribution in partial liquidation under § 302(b)(4) and (e)(1)(A), unless it results in a 20 percent or greater reduction in (i) gross revenue, (ii) net fair market value of assets, and (iii) employees. (Partial liquidations that qualify as § 302(e)(2) business terminations are not subject to this provision.)

(22) Sections 302(b)(4) and (e), 331, 332, and 346(a).—Effects on Recipients of Distributions in Corporate Liquidations.—The tax effect of the liquidation of a corporation preceded or followed by the transfer of all or a part of the business assets to another corporation (1) that is the alter ego of the liquidating corporation, and (2) which, directly or indirectly, is owned more than 20 percent in value by persons holding directly or indirectly more than 20 percent in value of the liquidating corporation's stock. For purposes of this section, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(23) Section 306.—Dispositions of Certain Stock.—Whether the distribution or disposition or redemption of "section 306 stock" in a closely held corporation is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes within the meaning of § 306(b)(4).

(24) Sections 331 and 332.—See section 4.01(22), above.

(25) Sections 331 and 346(a).—Gain or Loss to Shareholders in Corporate Liquidations.—The tax effect of the liquidation of a corporation by a series of distributions, when the distributions in liquidation are to be made over a period in excess of 3 years from the adoption of the plan of liquidation.

(26) Section 346(a).—See sections 4.01(22) and (25), above.

(27) Section 351.—Transfer to Corporation Controlled by Transferor.—Whether § 351 applies to the transfer of an interest in real property by a cooperative housing corporation (as described in § 216(b)(1)) to a corporation in exchange for stock or securities of the transferee corporation, if the transferee engages in commercial activity with respect to the real property interest transferred.

(28) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether the active business requirement of § 355(b) is met when, within the 5-year period described in § 355(b)(2)(B), a distributing corporation acquired control of a controlled corporation as a result of the distributing corporation transferring cash or other liquid or inactive assets to the controlled corporation in a transaction in which gain or loss was not recognized as a result of the transfer meeting the requirements of § 351(a) or § 368(a)(1)(D).

(29) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Any issue under § 355(e) other than whether a distribution and an acqui-

sition are part of a plan (*i.e.*, any non-plan issue). Notwithstanding the preceding sentence, the Service generally will rule on a non-plan issue or issues (*e.g.*, whether a corporation constitutes a predecessor of distributing) if an adverse ruling on such non-plan issue or issues would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of a plan under § 355(e).

(30) Section 441(i).—Taxable Year of Personal Service Corporations.—Whether the principal activity of the taxpayer during the testing period for the taxable year is the performance of personal services within the meaning of § 1.441–3(c)(1)(iii).

(31) Section 448(d)(2)(A).—Limitation on Use of Cash Method of Accounting; Qualified Personal Service Corporation.—Whether 95 percent or more of the time spent by employees of the corporation, serving in their capacity as such, is devoted to the performance of services within the meaning of § 1.448–1T(e)(4)(i).

(32) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of a nonqualified deferred compensation arrangement using a grantor trust where the trust fails to meet the requirements of Rev. Proc. 92–64, 1992–2 C.B. 422.

(33) Section 451.—See section 4.01(4), above.

(34) Section 451.—General Rule for Taxable Year of Inclusion—The income tax consequences as a result of being a beneficiary of a trust that an Indian tribe (as defined in 25 U.S.C. § 2703(5)) establishes to receive and invest *per capita* payments for its members who are minors or legal incompetents under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701–2721), if the trust meets the requirements of section 5.02 of Rev. Proc. 2003–14, 2003–1 C.B. 319.

(35) Section 584.—Common Trust Funds.—Whether a common trust fund plan meets the requirements of § 584. (For § 584 plan drafting guidance, see Rev. Proc. 92–51, 1992–1 C.B. 988.)

(36) Section 642.—Special Rules for Credits and Deductions; Pooled Income Fund.—Whether a pooled income fund satisfies the requirements described in § 642(c)(5).

(37) Section 664.—Charitable Remainder Trusts.—Whether a charitable remainder trust that provides for annuity or unitrust payments for one or two measuring lives or for annuity or unitrust payments for a term of years satisfies the requirements described in § 664.

(38) Section 664.—Charitable Remainder Trusts.—Whether a trust that will calculate the unitrust amount under § 664(d)(3) qualifies as a § 664 charitable remainder trust when a grantor, a trustee, a beneficiary, or a person related or subordinate to a grantor, a trustee, or a beneficiary can control the timing of the trust's receipt of trust income from a partnership or a deferred annuity contract to take advantage of the difference between trust income under § 643(b) and income for Federal income tax purposes for the benefit of the unitrust recipient.

(39) Section 664.—Charitable Remainder Trusts.—Whether the termination of a charitable remainder trust before the end of the trust term as defined in the trust's governing instrument, in a transaction in which the trust beneficiaries receive their actuarial shares of the value of the trust assets, causes the trust to have ceased to qualify as a charitable remainder trust within the meaning of § 664.

(40) Sections 671 to 679.—Grantors and Others Treated as Substantial Owners.—In a nonqualified, unfunded deferred compensation arrangement described in Rev. Proc. 92–64, the tax consequences of the use of a trust, other than the model trust described in that revenue procedure.

(41) Sections 671 to 679.—Grantors and Others Treated as Substantial Owners—Whether an Indian tribe (as defined in 25 U.S.C. § 2703(5)) that establishes a trust to receive and invest *per capita* payments for its members who are minors or legal incompetents under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701–2721) is the grantor and owner of the trust, if the trust meets the requirements of section 5.02 of Rev. Proc. 2003–14, 2003–1 C.B. 319.

(42) Section 1001.—Determination of Amount of and Recognition of Gain or Loss.—Whether the termination of a charitable remainder trust before the end of the trust term as defined in the trust's governing instrument, in a transaction in which the trust beneficiaries receive their actuarial shares of the value of the trust assets, is treated as a sale or other disposition by the beneficiaries of their interests in the trust.

(43) Section 1221.—Capital Asset Defined.—Whether the termination of a charitable remainder trust before the end of the trust term as defined in the trust's governing instrument, in a transaction in which the trust beneficiaries receive their actuarial shares of the value of the trust assets, is treated as a sale or exchange of a capital asset by the beneficiaries.

(44) Section 1362.—Election; Revocation; Termination.—All situations in which the Service has provided an automatic approval procedure or administrative procedure for an S corporation to obtain relief for late S corporation, qualified subchapter S subsidiary, qualified subchapter S trust, or electing small business trust elections. *See* Rev. Proc. 2003–43, 2003–1 C.B. 998; Rev. Proc. 2004–48, 2004–2 C.B. 172; Rev. Proc. 2004–49, 2004–2 C.B. 210; and Rev. Proc. 2007–62, 2007–41 I.R.B. 786. (For instructions on how to seek this relief, see the preceding revenue procedures.)

(45) Section 1362.—Election; Revocation; Termination.—Whether gross receipts from royalties, rents, dividends, interest, and annuities constitute passive investment income for purposes of § 1362(d)(3).

(46) Section 1502.—Regulations.—Whether a parent cooperative housing corporation (as defined in § 216(b)(1)) will be permitted to file a consolidated income tax return with its transferee subsidiary, if the transferee engages in commercial activity with respect to the real property interest transferred to it by the parent.

(47) Section 2055.—Transfers for Public, Charitable, and Religious Uses.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable deduction under § 2055(e)(2)(A).

(48) Section 2055.—Transfers for Public, Charitable, and Religious Uses.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives or a term of years qualifies for a charitable deduction under § 2055(e)(2)(A).

(49) Section 2503.—Taxable Gifts.—Whether the transfer of property to a trust will be a gift of a present interest

in property when (i) the trust corpus consists or will consist substantially of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, (iv) the trust beneficiaries have the power to withdraw, on demand, any additional transfers made to the trust, and (v) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

(50) Section 2514.—Powers of Appointment.—If the beneficiaries of a trust permit a power of withdrawal to lapse, whether § 2514(e) will be applicable to each beneficiary in regard to the power when (i) the trust corpus consists or will consist substantially of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, (iv) the trust beneficiaries have the power to withdraw, on demand, any additional transfers made to the trust, and (v) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

(51) Section 2522.—Charitable and Similar Gifts.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable deduction under § 2522(c)(2)(A).

(52) Section 2522.—Charitable and Similar Gifts.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives or a term of years qualifies for a charitable deduction under § 2522(c)(2)(A).

(53) Section 2601.—Tax Imposed.—Whether a trust that is exempt from the application of the generation-skipping transfer tax because it was irrevocable on September 25, 1985, will lose its exempt status if the situs of the trust is changed from the United States to a situs outside of the United States.

(54) Section 2702.—Special Valuation Rules in Case of Transfers of Interests in Trusts.—Whether annuity interests are qualified annuity interests under § 2702 if the amount of the annuity payable annually is more than 50 percent of the initial net fair market value of the property transferred to the trust, or if the value of the remainder interest is less than 10 percent of the initial net fair market value of the property transferred to the trust. For purposes of the 10 percent test, the value of the remainder interest is the present value determined under § 7520 of the right to receive the trust corpus at the expiration of the term of the trust. The possibility that the grantor may die prior to the expiration of the specified term is not taken into account, nor is the value of any reversion retained by the grantor or the grantor's estate.

(55) Section 2702—Special Valuation Rules in Case of Transfers of Interests in Trusts.—Whether a trust with one term holder satisfies the requirements of § 2702(a)(3)(A) and § 25.2702–5(c) to be a qualified personal residence trust.

(56) Section 3121.—Definitions.—Determinations as to which of two entities, under common law rules applicable in determining the employer-employee relationship, is the employer, when one entity is treating the worker as an employee.

.02 General areas.

(1) Any matter in which the determination requested is primarily one of fact, *e.g.*, market value of property, or whether an interest in a corporation is to be treated as stock or indebtedness. Although it is generally inappropriate for the Service to issue a letter ruling on whether an interest in a corporation is stock or indebtedness, there may be instances in which the Service may issue a letter ruling. For example, the Service may issue a letter ruling with respect to an instrument issued by a domestic corporation if (1) the taxpayer believes that the facts strongly support the classification of the instrument as stock and (2) the taxpayer can demonstrate that there are unique and compelling reasons to justify the issuance of a letter ruling. However, before submitting a letter ruling request, a taxpayer should first contact the office of the Associate Chief Counsel (Corporate) to discuss whether the Service will consider issuing a letter ruling for a particular factual situation (202–622–7700).

(2) Situations where the requested ruling deals with only part of an integrated transaction. Generally, a letter ruling will not be issued on only part of an integrated transaction. If, however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Before preparing the letter ruling request, a taxpayer should call the Office of the Associate Chief Counsel having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether a letter ruling will be issued on part of the transaction. To determine which division has jurisdiction over a particular issue see section 3 of Rev. Proc. 2011–1, this Bulletin. For a list of telephone numbers for the different divisions see section 10.07 of Rev. Proc. 2011–1.

Notwithstanding the previous paragraph, the Office of the Associate Chief Counsel (Corporate) may issue a letter ruling on part of an integrated transaction without ruling on the larger transaction if such transaction occurs in the context of a § 355 distribution. *See* section 6.03 of Rev. Proc. 2011–1, this Bulletin.

(3) Situations where two or more items or sub-methods of accounting are interrelated. If two or more items or sub-methods of accounting are interrelated, ordinarily a letter ruling will not be issued on a change in accounting method involving only one of the items or sub-methods.

(4) The tax effect of any transaction to be consummated at some indefinite future time.

(5) Any matter dealing with the question of whether property is held primarily for sale to customers in the ordinary course of a trade or business.

(6) The tax effect of a transaction if any part of the transaction is involved in litigation among the parties affected by the transaction, except for transactions involving bankruptcy reorganizations.

(7)(a) Situations where the taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal tax investigations, which would preclude the Service from obtaining informa-

tion located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(b) The provisions of subsection (a) above shall not apply if the taxpayer or affected related party (i) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination in order to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (ii) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

(8) A matter involving the Federal tax consequences of any proposed Federal, State, local, municipal, or foreign legislation. The Service may provide general information in response to an inquiry. However, the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) may issue letter rulings regarding the effect of proposed State, local, or municipal legislation upon an eligible deferred compensation plan under § 457(b) provided that the letter ruling request relating to the plan complies with the other requirements of Rev. Proc. 2011–1.

(9) Except as otherwise provided in this revenue procedure (*e.g.*, under section 3.01(38)), where the Service already is ruling on a significant issue in the same transaction), a letter ruling will not ordinarily be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decisions of a court, revenue rulings, revenue procedures, notices, or other authority published in the Internal Revenue Bulletin. However, the Service may in its discretion determine to issue a ruling on such an issue if the Service otherwise is issuing a ruling on another issue arising in the same transaction.

(10) Whether an amount received (in periodic payments or as a lump sum) in connection with a legal action or a settlement of a legal action is properly allocated (including an allocation of all payments to one category) to recovery of capital, compensatory damages, punitive damages, dividends, interest, back pay, etc., for Federal tax purposes.

SECTION 5. AREAS UNDER STUDY IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED UNTIL THE SERVICE RESOLVES THE ISSUE THROUGH PUBLICATION OF A REVENUE RULING, REVENUE PROCEDURE, REGULATIONS OR OTHERWISE

.01 Section 62(c).—Reimbursement Arrangements.—Whether amounts related to a salary reduction and paid under a purported reimbursement or other expense allowance arrangement will be treated as paid under an "accountable plan" in accordance with § 1.62–2(c)(2).

.02 Sections 101 and 7702.—Certain Death Benefits; Life Insurance Contract Defined.—Whether amounts received under an arrangement that is not regulated as an insurance company may be treated as received under a "life insurance contract" within the meaning of §§ 101(a) and 7702.

.03 Section 148.—Arbitrage.—Permission to use a single yield for two or more issues of qualified mortgage bonds or qualified student loan bonds under § 1.148–4(a).

.04 Sections 162 and 1502—Trade or Business Expenses; Consolidated Returns.—Treatment of manufacturer incentive payments under the intercompany transaction regulations of § 1.1502–13. *See* T.D. 9261, 2006–1 C.B. 919.

.05 Section 162(m). —Certain Excessive Employee Remuneration.—Whether the deduction limit under § 162(m) applies to compensation attributable to services performed for a related partnership.

.06 Sections 302 and 304.—Certain Redemptions.—Treatment of basis in a §§ 302/304 redemption. *See* Announcement 2006–30, 2006–1 C.B. 879.

07 Sections 351, 358 and 362(a).—Transfers to Corporation Controlled by Transferors; Basis to Distributees; Basis to Corporations.—The issues described as being under study in Rev. Rul. 2006–2, 2006–1 C.B. 261.

.08 Section 451.—General Rule for Taxable Year of Inclusion.—The income tax consequences as a result of being a beneficiary of a trust that an Indian tribe (as defined in 25 U.S.C. § 2703(5)) establishes to receive and invest *per capita* payments for its members (regardless of whether they are minors or legal incompetents) under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701–2721) if the trust does not meet the requirements of section 5.02 of Rev. Proc. 2003–14, 2003–1 C.B. 319.

.09 Sections 661 and 662.— Deduction for Estates and Trusts Accumulating Income or Distributing Corpus; Inclusion of Amounts in Gross Income of Beneficiaries of Estates and Trusts Accumulating Income or Distributing Corpus.—Whether the distribution of property by a trustee from an irrevocable trust to another irrevocable trust (sometimes referred to as a "decanting") resulting in a change in beneficial interests is a distribution for which a deduction is allowable under § 661 or which requires an amount to be included in the gross income of any person under § 662.

.10 Sections 671 to 679.—Grantors and Others Treated as Substantial Owners.—Whether an Indian tribe (as defined in 25 U.S.C. § 2703(5)) that establishes a trust to receive and invest *per capita* payments for its members (regardless of whether they are minors or legal incompetents) under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701–2721) is the grantor and owner of the trust if the trust does not meet the requirements of section 5.02 of Rev. Proc. 2003–14, 2003–1 C.B. 319.

.11 Section 1361.—Definition of a Small Business Corporation.—Whether a State law limited partnership electing under § 301.7701–3 to be classified as an association taxable as a corporation has more than one class of stock for purposes of § 1361(b)(1)(D). The Service will treat any request for a ruling on whether a State law limited partnership is eligible to elect S corporation status as a request for a ruling on whether the partnership complies with § 1361(b)(1)(D).

.12 Section 1502.—See section 5.05, above.

.13 Section 2036.—Transfers with Retained Life Estate.—Whether the corpus of a trust will be included in a grantor's es-

tate when the trustee of the trust is a private trust company owned partially or entirely by members of the grantor's family.

.14 Section 2038.—Revocable Transfers.-Whether the corpus of a trust will be included in a grantor's estate when the trustee of the trust is a private trust company owned partially or entirely by members of the grantor's family.

.15 Section 2041.—Powers of Appointment.—Whether the corpus of a trust will be included in an individual's estate when the trustee of the trust is a private trust company owned partially or entirely by members of the individual's family.

.16 Section 2501.—Imposition of Tax.—Whether the distribution of property by a trustee from an irrevocable trust to another irrevocable trust (sometimes referred to as a "decanting") resulting in a change in beneficial interests is a gift under § 2501.

.17 Sections 2601 and 2663.—Tax Imposed; Regulations.—Whether the distribution of property by a trustee from an irrevocable generation-skipping transfer tax (GST) exempt trust to another irrevocable trust (sometimes referred to as a "decanting") resulting in a change in beneficial interests is the loss of GST exempt status or constitutes a taxable termination or taxable distribution under § 2612.

.18 Section 6050P.—Returns Relating to the Cancellation of Indebtedness by Certain Entities.—Whether amounts reduced pursuant to the terms of a debt instrument are reportable under § 6050P and the regulations.

.19 Section 7702.—See section 5.03, above.

SECTION 6. AREAS COVERED BY AUTOMATIC APPROVAL PROCEDURES IN WHICH RULINGS WILL NOT ORDINARILY BE ISSUED

.01 Section 338.—Certain Stock Purchases Treated as Asset Acquisitions.—All requests for an extension of time under § 301.9100–3 within which to make an election under § 338(g) or (h)(10) where the Service has provided an administrative procedure to seek an extension. See Rev. Proc. 2003–33, 2003–1 C.B. 803 (extension automatically granted to certain persons required to file Form 8023 to make a valid section 338 election that have not filed Form 8023 by its due date).

.02 Section 442.—Change of Annual Accounting Period.—All requests for change in annual accounting period where the Service has provided an automatic change procedure for obtaining a change in annual accounting period. See Rev. Proc. 2002–39, 2002–1 C.B. 1046 (general procedures for prior approval), as clarified and modified by Notice 2002–72, 2002–2 C.B. 843, and modified by Rev. Proc. 2003–34, 2003–1 C.B. 856; Rev. Proc. 2006–45, 2006–2 C.B. 851 (certain corporations), as clarified and modified by Rev. Proc. 2007–64; Rev. Proc. 2006–46, 2006–2 C.B. 859 (partnership, S corporation, personal service corporation, or trust) and Rev. Proc. 2003–62, 2003–2 C.B. 299 (individual seeking a calendar year).

.03 Section 446.—General Rule for Methods of Accounting.—Except as otherwise specifically provided in applicable procedures published in the Internal Revenue Bulletin, all requests for change in method of accounting where the Service has provided an automatic change request procedure for obtaining a change in method of accounting. See the automatic change request procedures listed in section 9.22 of Rev. Proc. 2011–1, this Bulletin.

.04 Section 461.—General Rule for Taxable Year of Deduction.—All requests for making or revoking an election under § 461 where the Service has provided an administrative procedure for making or revoking an election under § 461. *See* Rev. Proc. 92–29, 1992–1 C.B. 748 (dealing with the use of an alternative method for including in basis the estimated cost of certain common improvements in a real estate development).

.05 Section 704(c).—Contributed Property.—Requests from Qualified Master Feeder Structures, as described in section 4.02 of Rev. Proc. 2001–36, 2001–1 C.B. 1326, for permission to aggregate built-in gains and losses from contributed qualified financial assets for purposes of making § 704(c) and reverse § 704(c) allocations.

.06 Section 1362.—Election; Revocation; Termination.—All situations in which an S corporation qualifies for automatic late S corporation relief under Rev. Proc. 97–48, 1997–2 C.B. 521.

.07 Sections 1502, 1504, and 1552.—Regulations; Definitions; Earnings and Profits.—All requests for waivers or consents on consolidated return issues where the Service has provided an administrative procedure for obtaining waivers or consents on consolidated return issues. See Rev. Proc. 2002–32, 2002–1 C.B. 959, as modified by Rev. Proc. 2006–21, 2006–1 C.B. 1050 (certain corporations seeking reconsolidation within the 5-year period specified in § 1504(a)(3)(A)); Rev. Proc. 90–39, 1990–2 C.B. 365, as modified by Rev. Proc. 2006–21, and as clarified by Rev. Proc. 90–39A, 1990–2 C.B. 367(certain affiliated groups of corporations seeking, for earnings and profits determinations, to make an election or a change in their method of allocating the group's consolidated Federal income tax liability); and Rev. Proc. 89–56, 1989–2 C.B. 643, as modified by Rev. Proc. 2006–21 (certain affiliated groups of corporations seeking to file a consolidated return where member(s) of the group use a 52–53 week taxable year).

.08 Section 7701.—Entity Classification Elections.—All requests for an extension of time under § 301.9100–3 within which to make an entity classification election under § 301.7701–3 where the Service has provided an administrative procedure to seek an extension. See Rev. Proc. 2009–41, 2009–39 I.R.B. 439 (extension automatically granted to certain persons required to file Form 8832 to make a valid entity classification election that have not filed Form 8832 by its due date).

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2010–3, 2010–1 C.B. 110, is superseded.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective January 3, 2011.

SECTION 9. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1522.

An agency may not conduct or sponsor, and a person is not required to respond

to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 2.03, 3.01(38), 3.01(39), 3.02(1) and (3), 4.02(2), and 4.02(7)(b).

This information is required to evaluate whether the request for a letter ruling or determination letter is not covered by the provisions of this revenue procedure. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden of this revenue procedure, and Rev. Proc. 2011–1, is 513,150 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 hour to 200 hours, depending on individual circumstances, with an estimated average burden of 90.1054 hours. The estimated number of respondents and/or record keepers is 5,695.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Paul Arends of the Office of the Associate Chief Counsel (Corporate). For further information about this revenue procedure, please contact Mr. Arends at (202) 622–7700 (not a toll-free call), or call the division contacts listed in section 10.07 of Rev. Proc. 2011–1, this Bulletin. To determine which division has jurisdiction over a particular issue, see section 3 of Rev. Proc. 2011–1.

Rev. Proc. 2011–4

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SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure explains how the Internal Revenue Service gives guidance to taxpayers on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. It explains the kinds of guidance and the manner in which guidance is requested by taxpayers and provided by the Service. A sample format of a request for a letter ruling is provided in Appendix A.

SECTION 2. WHAT CHANGES HAVE BEEN MADE TO REV. PROC. 2010–4?

.01 This revenue procedure is a general update of Rev. Proc. 2010–4, 2010–1 I.R.B. 122 which contains the Service's general procedures for employee plans and exempt organizations letter ruling requests. Most of the changes to Rev. Proc. 2010–4 involve minor revisions, such as updating citations to other revenue procedures.

.02 Section 3.05 is revised to clarify the general definition of an opinion letter and to add references to §§ 408(p) and 408(A).

.03 Section 3.11 is added to define advisory letter.

.04 Section 6.19 is added to provide that TE/GE will not issue a letter ruling regarding whether the estate administration exception to § 4941 is applicable when a disqualified person issues a promissory note in exchange for property of the estate or trust.

.05 Section 7.04(8) is changed to add that EO Determinations will issue determination letters as to whether a supporting organization is classified as type I, II or III, and whether a type III supporting organization is functionally integrated.

.06 Section 9.02(10) is revised to clarify an exception (in the case of Forms 1023) to when an authorized representative may sign a request for a determination letter.

.07 Section 10.03(5) is revised to refer to Rev. Proc. 2010–52.

SECTION 3. IN WHAT FORM IS GUIDANCE PROVIDED BY THE COMMISSIONER, TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION?

In general

.01 The Service provides guidance in the form of letter rulings, closing agreements, compliance statements, determination letters, opinion letters, advisory letters, information letters, revenue rulings, and oral advice.

Letter ruling

.02 A "letter ruling" is a written statement issued to a taxpayer by the Service's Employee Plans Technical office or Exempt Organizations Technical office that interprets and applies the tax laws or any nontax laws applicable to employee benefit plans and exempt organizations to the taxpayer's specific set of facts. Once issued, a letter ruling may be revoked or modified for any number of reasons, as explained in section 13 of this revenue procedure, unless it is accompanied by a "closing agreement."

Closing agreement

.03 A "closing agreement" is a final agreement between the Service and a taxpayer on a specific issue or liability. It is entered into under the authority in § 7121 and is final unless fraud, malfeasance, or misrepresentation of a material fact can be shown.

A closing agreement prepared in an office under the responsibility of the Commissioner, TE/GE, may be based on a ruling that has been signed by the Commissioner, TE/GE, or the Commissioner, TE/GE's, delegate that says that a closing agreement will be entered into on the basis of the ruling letter.

A closing agreement may be entered into when it is advantageous to have the matter permanently and conclusively closed, or when a taxpayer can show that there are good reasons for an agreement and that making the agreement will not prejudice the interests of the Government. In appropriate cases, taxpayers may be asked to enter into a closing agreement as a condition to the issuance of a letter ruling.

If, in a single case, a closing agreement is requested for each person in a class of taxpayers, separate agreements are entered into only if the class consists of 25 or fewer taxpayers. However, if the issue and holding are identical for the class and there are more than 25 taxpayers in the class, a "mass closing agreement" will be entered into with the taxpayer who is authorized by the others to represent the class.

In appropriate cases, a closing agreement may be made with sponsors of master and prototype plans.

A closing agreement may also be entered into with respect to retirement plan failures corrected under the Audit Closing Agreement Program of the Employee Plans Compliance Resolution System (EPCRS), as set forth in Rev. Proc. 2008–50, 2008–2 C.B. 464.

Determination letter

.04 A "determination letter" is a written statement issued to a taxpayer by the Service's EO Determinations or EP Determinations office that applies the principles and precedents previously announced to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in the statute, a tax treaty, or the regulations, or based on a conclusion in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin that specifically answers the questions presented.

The Manager, EP Determinations, issues determination letters involving §§ 401, 403(a), 409, and 4975(e)(7) as provided in Rev. Proc. 2011–6, page 195, this Bulletin.

Opinion letter

.05 An "opinion letter" is a written statement issued by the Service to a sponsor or M&P mass submitter as to the acceptability of the form of an M&P plan under § 401(a) or § 403(a), and, in the case of a master plan, the acceptability of the master trust under § 501(a), or as to the conformance of a prototype trust, custodial account, or individual annuity with the requirements of § 408(a), (b), (k) or (p) or 408A, as applicable. *See* Rev. Proc. 2005–16, 2005–1

C.B. 674. *See also* Rev. Proc. 87–50, 1987–2 C.B. 647; Rev. Proc. 91–44, 1991–2 C.B. 733; Rev. Proc. 92–38, 1992–1 C.B. 859; Rev. Proc. 97–29, 1997–1 C.B. 689; Rev. Proc. 98–59, 1998–2 C.B. 727; Rev. Proc. 2002–10, 2002–1 C.B. 401, and Rev. Proc. 2010–48, 2010–50, I.R.B. 828, as modified by Rev. Proc. 2011–8, page 237, this Bulletin.

Information letter

.06 An "information letter" is a statement issued either by the Director, Employee Plans Rulings and Agreements or the Director, Exempt Organizations Rulings and Agreements. It calls attention to a well-established interpretation or principle of tax law (including a tax treaty) without applying it to a specific set of facts. To the extent resources permit, an information letter may be issued if the taxpayer's inquiry indicates a need for general information or if the taxpayer's request does not meet the requirements of this revenue procedure and the Service thinks general information will help the taxpayer. The taxpayer should provide a daytime telephone number with the taxpayer's request for an information letter. Requests for information letters should be sent to the address stated in section 9.04(2) of this revenue procedure. The requirements of section 9.02 of this revenue procedure are not applicable to information letters. An information letter is advisory only and has no binding effect on the Service.

Revenue ruling

.07 A "revenue ruling" is an interpretation by the Service that has been published in the Internal Revenue Bulletin. It is the conclusion of the Service on how the law is applied to a specific set of facts. Revenue rulings are published for the information and guidance of taxpayers, Service personnel, and other interested parties.

Because each revenue ruling represents the conclusion of the Service regarding the application of law to the entire statement of facts involved, taxpayers, Service personnel, and other concerned parties 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, revenue rulings, notices, and announcements. *See* Rev. Proc. 89–14, 1989–1 C.B. 814, which states the objectives of and standards for the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

Oral guidance

.08

(1) No oral rulings and no written rulings in response to oral requests.

The Service does not orally issue letter rulings or determination letters, nor does it issue letter rulings or determination letters in response to oral requests from taxpayers. However, Service employees ordinarily will discuss with taxpayers or their representatives inquiries regarding whether the Service will rule on particular issues and questions relating to procedural matters about submitting requests for letter rulings, determination letters, and requests for recognition of exempt status for a particular organization.

(2) Discussion possible on substantive issues.

At the discretion of the Service, and as time permits, substantive issues may also be discussed. However, such a discussion will not be binding on the Service, and cannot be relied on as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Substantive tax issues involving the taxpayer that are under examination, in appeals, or in litigation will not be discussed by Service employees not directly involved in the examination, appeal, or litigation of the issues unless the discussion is coordinated with those Service employees who are directly involved in the examination, appeal, or litigation of the issues. The taxpayer or the taxpayer's representative ordinarily will be asked whether the oral request for guidance or information relates to a matter pending before another office of the Service.

If a tax issue is not under examination, in appeals, or in litigation, the tax issue may be discussed even though the issue is affected by a nontax issue pending in litigation.

A taxpayer may seek oral technical guidance from a taxpayer service representative at the TE/GE call site when preparing a return or report. Oral guidance is advisory only, and the Service is not bound to recognize it, for example, in the examination of the taxpayer's return.

The Service does not respond to letters seeking to confirm the substance of oral discussions, and the absence of a response to such a letter is not confirmation of the substance of the letter.

Nonbank trustee requests

.09 In order to receive approval to act as a nonbank custodian of plans qualified under § 401(a) or accounts described in § 403(b)(7), and as a nonbank trustee or nonbank custodian for individual retirement arrangements (IRAs) established under § 408(a), (b), or (h), or for a Coverdell educational savings account established under § 530 or an Archer medical savings account established under § 220, or a Health Savings Account under § 223, a written application must be filed that demonstrates how the applicant complies with the requirements of § 1.408–2(e)(2) through (5) of the Income Tax Regulations.

The Service must have clear and convincing proof in its files that the requirements of the regulations are met. If there is a requirement that the applicant feels is not applicable, the application must provide clear and convincing proof that such requirement is not germane to the manner in which the applicant will administer any trust or custodial account. *See* § 1.408–2(e)(6).

The completed application should be sent to:

Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, DC 20038

Section 6.01(8) of Rev. Proc. 2011–8 imposes a user's fee for anyone applying for approval to become a nonbank trustee or custodian.

Compliance Statement

.10 A "compliance statement" is a binding written agreement between the Service and a taxpayer with respect to certain retirement plan failures identified by a taxpayer in a voluntary submission under the Voluntary Correction Program of the EPCRS (see Rev. Proc. 2008–50). The compliance statement addresses the failures identified in the VCP submission, the terms of correction, including any revision of administrative procedures, and the time period within which proposed corrections must be implemented. A compliance statement is conditioned on (i) there being no misstatement or omission of material facts in connection with the submission, and (ii) the implementation of the specific corrections and satisfaction of any other conditions in the compliance statement. *See* Rev. Proc. 2008–50.

Advisory letter

.11 An "advisory letter" is a written statement issued by the Service to a VS practitioner or VS mass submitter as to the acceptability of the form of a specimen plan and any related trust or custodial account under § 401(a) or § 403(a). *See* Rev. Proc. 2005–16, 2005–1 C.B. 674.

SECTION 4. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN GUIDANCE UNDER THIS PROCEDURE?

Taxpayers may request letter rulings, information letters and closing agreements on issues within the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division under this revenue procedure. The Service issues letter rulings to answer written inquiries of individuals and organizations about their status for tax purposes and the tax effects of their acts or transactions when appropriate in the interest of sound tax administration.

Taxpayers also may request determination letters that relate to Code sections under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. *See* Rev. Proc. 2011–6, this Bulletin.

SECTION 5. ON WHAT ISSUES MUST WRITTEN GUIDANCE BE REQUESTED UNDER DIFFERENT PROCEDURES?

Determination letters

.01 The procedures for obtaining determination letters involving §§ 401, 403(a), 409, and 4975(e)(7), and the status for exemption of any related trusts or custodial accounts under § 501(a) are contained in Rev. Proc. 2011–6, this Bulletin.

Master and prototype plans and volume submitter plans

.02 The procedures for obtaining opinion letters for master and prototype plans and any related trusts or custodial accounts under §§ 401(a), 403(a) and 501(a) and advisory letters for volume submitter plans are contained in Rev. Proc. 2005–16. The procedures for obtaining opinion letters for prototype trusts, custodial accounts or annuities under § 408(a), (b), (k) or (p) or 408A, are contained in Rev. Proc. 87–50; Rev. Proc. 91–44; Rev. Proc. 92–38; Rev. Proc. 97–29; Rev. Proc. 98–59; Rev. Proc. 2002–10, and Rev. Proc. 2010–48, as modified by Rev. Proc. 2011–8.

Closing agreement program for defined contribution plans that purchased GICs or GACs

.03 Rev. Proc. 95–52, 1995–1 C.B. 439, restates and extends for an indefinite period the closing agreement program for defined contribution plans that purchased guaranteed investment contracts (GICs) or group annuity contracts (GACs) from troubled life insurance companies.

Employee Plans Compliance Resolution System

.04 The procedures for obtaining compliance statements, etc., for certain failures of plans qualified under § 401(a), § 403(b) plans, SEPs and § 457 plans under the Employee Plans Compliance Resolution System (EPCRS) are contained in Rev. Proc. 2008–50.

Chief Counsel

.05 The procedures for obtaining rulings, closing agreements, and information letters on issues within the jurisdiction of the Chief Counsel are contained in Rev. Proc. 2011–1, page 1, this Bulletin, including tax issues involving interpreting or applying the federal tax laws and income tax treaties relating to international transactions.

Alcohol, tobacco, and firearms taxes

.06 The procedures for obtaining letter rulings, etc., that apply to federal alcohol, tobacco, and firearms taxes under subtitle E of the Internal Revenue Code are under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau within the Treasury Department.

SECTION 6. UNDER WHAT CIRCUMSTANCES DOES TE/GE ISSUE LETTER RULINGS?

In exempt organizations matters

.01 In exempt organizations matters, the Exempt Organizations Technical Office issues letter rulings on proposed transactions and on completed transactions if the request is submitted before the return is filed for the year in which the transaction that is the subject of the request was completed. Exempt Organizations Technical issues letter rulings involving:

(1) Organizations exempt from tax under § 501, including private foundations;

(2) Organizations described in § 170(b)(1)(A) (except clause (v));

(3) Political organizations described in § 527;

(4) Qualified tuition programs described in § 529 other than state run programs;

(5) Trusts described in § 4947(a);

(6) Other matters including issues under §§ 501 through 514, 4911, 4912, 4940 through 4948, 4955, 4958, 4976, 6033, 6104, 6113, and 6115;

(7) Harassment campaign rulings described in § 6104(d).

In employee plans matters

.02 In employee plans matters, the Employee Plans Technical Office issues letter rulings on proposed transactions and on completed transactions either before or after the return is filed. Employee Plans Technical issues letter rulings involving:

(1) §§ 72, 101(d), 219, 381(c)(11), 402, 403(b) (except with respect to whether the form of a plan satisfies the requirements of § 403(b) as noted in Ann. 2009–89), 404, 408, 408A, 412, 414(e), 419, 419A, 511 through 514, 4971, 4972, 4973, 4974, 4978, 4979, and 4980;

(2) Waiver of the minimum funding standard (*See* Rev. Proc. 2004–15, 2004–1 C.B. 490), and changes in funding methods and actuarial assumptions under §§ 412, 430 or 431;

(3) Waiver of the liquidity shortfall (as that term is defined in § 412(m)(5)) excise tax under § 4971(f)(4);

(4) Waiver under § 4980F(c)(4) of all or part of the excise tax imposed for failure to satisfy the notice requirements described in § 4980F(e);

(5) Whether a plan amendment is reasonable and provides for only *de minimis* increases in plan liabilities in accordance with §§ 401(a)(33) and 412(f)(2)(A) of the Code (*See* Rev. Proc. 79–62, 1979–2 C.B. 576);

(6) A change in the plan year of an employee retirement plan and the trust year of a tax-exempt employees' trust (*See* Rev. Proc. 87–27, 1987–1 C.B. 769);

(7) The tax consequences of prohibited transactions under §§503 and 4975;

(8) Whether individual retirement accounts established by employers or associations of employees meet the requirements of § 408(c). (*See* Rev. Proc. 87 50; Rev. Proc. 92–38; Rev. Proc. 98–59; Rev. Proc. 2002–10, and Rev. Proc. 2010–48, as modified by Rev. Proc. 2011–8);

(9) With respect to employee stock ownership plans and tax credit employee stock ownership plans, §§ 409(l), 409(m), and 4975(d)(3). Other subsections of §§ 409 and 4975(e)(7) involve qualification issues within the jurisdiction of EP Determinations.

(10) Where the Commissioner, Tax Exempt and Government Entities Division has authority to grant extensions of certain periods of time within which the taxpayer must perform certain transactions (for example, the 90-day period for reinvesting in employer securities under § 1.46–8(e)(10) of the regulations), the taxpayer's request for an extension of such time period must be postmarked (or received, if hand delivered to the headquarters office) no later than the expiration of the original time period. Thus, for example, a request for an extension of the 90-day period under § 1.46–8(e)(10) must be made before the expiration of this period. However, see section 6.04 below with respect to elections under § 301.9100–1 of the Procedure and Administration Regulations.

In qualifications matters

.03 The Employee Plans Technical office ordinarily will not issue letter rulings on matters involving a plan's qualified status under §§ 401 through 420 and § 4975(e)(7). These matters are generally handled by the Employee Plans Determinations program as provided in Rev. Proc. 2011–6, this Bulletin, Rev. Proc. 93–10 and Rev. Proc. 93–12. Although the Employee Plans Technical office will not ordinarily issue rulings on matters involving plan qualification, a ruling may be issued where, (1) the taxpayer has demonstrated to the Service's satisfaction that the qualification issue involved is unique and requires immediate guidance, (2) as a practical matter, it is not likely that such issue will be addressed through the determination letter process, and (3) the Service determines that it is in the interest of good tax administration to provide guidance to the taxpayer with respect to such qualification issue.

Request for extension of time for making an election or for other relief under § 301.9100–1 of the Procedure and Administration Regulations

.04 Employee Plans Technical or Exempt Organizations Technical will consider a request for an extension of time for making an election or other application for relief under § 301.9100–1 of the Procedure and Administration Regulations even if submitted after the return covering the issue presented in the § 301.9100–1 request has been filed and even if submitted after an examination of the return has begun or after the issues in the return are being considered by an appeals office or a federal court. In such a case, EP or EO Technical will notify the Director, EP or EO Examinations.

Except for those requests pertaining to applications for recognition of exemption, § 301.9100–1 requests, even those submitted after the examination of the taxpayer's return has begun, are letter ruling requests and therefore should be submitted pursuant to this revenue procedure, and require payment of the applicable user fee, referenced in section 9.02(14) of this revenue procedure. In addition, the taxpayer must include the information required by § 301.9100–3(e).

However, an election made pursuant to § 301.9100–2 is not a letter ruling and does not require payment of any user fee. *See* § 301.9100–2(d). Such an election pertains to an automatic extension of time under § 301.9100–1.

Issuance of a letter ruling before the issuance of a regulation or other published guidance

.05 Unless the issue is covered by section 8 of this procedure, a letter ruling may be issued before the issuance of a temporary or final regulation or other published guidance that interprets the provisions of any act under the following conditions:

(1) Answer is clear or is reasonably certain. If the letter ruling request presents an issue for which the answer seems clear by applying the statute to the facts or for which the answer seems reasonably certain but not entirely free from doubt, a letter ruling will be issued.

(2) Answer is not reasonably certain. The Service will consider all letter ruling requests and use its best efforts to issue a letter ruling even if the answer does not seem reasonably certain where the issuance of a letter ruling is in the best interest of tax administration.

(3) Issue cannot be readily resolved before a regulation or any other published guidance is issued. A letter ruling will not be issued if the letter ruling request presents an issue that cannot be readily resolved before a regulation or any other published guidance is issued.

Issues in prior return

.06 The Service ordinarily does not issue rulings if, at the time the ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period, and that issue—

(1) is being examined by the Director, EP or EO Examinations,

(2) is being considered by an appeals office,

(3) is pending in litigation in a case involving the taxpayer or related taxpayer, or

(4) has been examined by the Director, EP or EO Examinations or considered by an appeals office, and the statutory period of limitation has not expired for either assessment or filing a claim for a refund or a closing agreement covering the issue of liability has not been entered into by the Director, EP or EO Rulings and Agreements or by an appeals office.

If a return dealing with an issue for a particular year is filed while a request for a ruling on that issue is pending, EP or EO Technical will issue the ruling unless it is notified by the taxpayer that an examination of that issue or the identical issue on an earlier year's return has been started by the Director, EP or EO Examinations. *See* section 9.05. However, even if an examination has begun, EP or EO Technical ordinarily will issue the letter ruling if the Director, EP or EO Examinations agrees, by memorandum, to permit the ruling to be issued.

Generally not to business associations or groups

.07 EP or EO Technical does not issue letter rulings to business, trade, or industrial associations or to similar groups concerning the application of the tax laws to members of the group. But groups and associations may submit suggestions of generic issues that would be appropriately addressed in revenue rulings. *See* Rev. Proc. 89–14, which states objectives of, and standards for, the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

EP or EO Technical, however, may issue letter rulings to groups or associations on their own tax status or liability if the request meets the requirements of this revenue procedure.

Generally not to foreign governments

.08 EP or EO Technical does not issue letter rulings to foreign governments or their political subdivisions about the U.S. tax effects of their laws. However, EP or EO Technical may issue letter rulings to foreign governments or their political subdivisions on their own tax status or liability under U.S. law if the request meets the requirements of this revenue procedure.

Generally not on federal tax consequences of proposed legislation

.09 EP or EO Technical does not issue letter rulings on a matter involving the federal tax consequences of any proposed federal, state, local, municipal, or foreign legislation. EP or EO Technical, however, may provide general information in response to an inquiry.

Not on certain matters under § 53.4958–6 of the Foundation and Similar Excise Taxes Regulations

.10 EO Technical does not issue letter rulings as to whether a compensation or property transaction satisfies the rebuttable presumption that the transaction is not an excess benefit transaction as described in § 53.4958–6 of the Foundation and Similar Excise Taxes Regulations.

Not on stock options

.11 EP Technical does not issue letter rulings on the income tax (including unrelated business income tax) or excise tax consequences of the contribution of stock options to, or their subsequent exercise from, plans described in Part I of Subchapter D of Subtitle A of the Code.

Generally not on EO joint venture with a for-profit organization

.12 With the exception of when the issue is present in an initial application for recognition of exemption, EO Technical does not issue letter rulings as to whether a joint venture with a for-profit organization affects an organization's exempt status or results in unrelated business income.

Not on qualification of state run programs under § 529

.13 EO Technical will not issue letter rulings as to whether a state run tuition program qualifies under § 529.

Not on UBIT issues involving certain investments of a charitable lead trust

.14 EO Technical will not issue letter rulings pertaining to unrelated business income tax issues arising when charitable lead trust assets are invested with charitable organizations.

Not on issues under § 4965

.15 The Service will not issue letter rulings under § 4965, as added by section 516 of the Tax Increase Prevention and Reconciliation Act of 2005, before the issuance of temporary or final regulations or other published guidance that interprets the provision.

Not on issues under § 4966 or § 4967

.16 EO Technical will not issue letter rulings under § 4966 or § 4967, as added by section 1231 of the Pension Protection Act of 2006, before the issuance of temporary or final regulations or other published guidance that interprets these provisions.

Not on issues under § 507, § 4941 or § 4945

.17 EO Technical will not issue letter rulings under § 507, § 4941 or § 4945 pertaining to the tax consequences of the termination of a charitable remainder trust (as defined in § 664) before the end of the trust term as defined in the trust's governing instrument in a transaction in which the trust beneficiaries receive their actuarial shares of the value of the trust assets.

Generally not to partnerships or limited liability Companies

.18 EO Technical will not issue letter rulings to a partnership, limited liability company or other similar entity unless such entity may be liable for tax imposed by Chapter 42 of the Internal Revenue Code.

EO Technical may, however, issue letter rulings to a partner or member of a partnership or limited liability company if the request meets the requirements of this revenue procedure and the partner or member is under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

Not on Self-Dealing Issues Involving the Issuance of a Promissory Note by a Disqualified Person During the Administration of an Estate or Trust

.19 EO Technical will not issue letter rulings pertaining to the exception to § 4941 for transactions during the administration of an estate or trust set forth in Treas. Reg. § 53.4941(d)–1(b)(3) in cases in which a disqualified person issues a promissory note in exchange for property of an estate or trust.

SECTION 7. UNDER WHAT CIRCUMSTANCES DOES EP OR EO DETERMINATIONS ISSUE DETERMINATION LETTERS?

Circumstances under which determination letters are issued

.01 Employee Plans or Exempt Organizations Determinations issues determination letters only if the question presented is specifically answered by a statute, tax treaty, or regulation, or by a conclusion stated in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin.

In general

.02 In employee plans and exempt organizations matters, the EP or EO Determinations office issues determination letters in response to taxpayers' written requests on completed transactions. However, see section 13.08 of this revenue procedure. A determination letter usually is not issued for a question concerning a return to be filed by the taxpayer if the same question is involved in a return under examination.

In situations involving continuing transactions, such as whether an ongoing activity is an unrelated trade or business, EP or EO Technical would issue a ruling covering future tax periods and periods for which a return had not yet been filed.

EP or EO Determinations does not issue determination letters on the tax consequences of proposed transactions, except as provided in sections 7.03 and 7.04 below.

Under no circumstances will EP or EO Determinations issue a determination letter unless it is clearly shown that the request concerns a return that has been filed or is required to be filed.

In employee plans matters

.03 In employee plans matters, the Employee Plans Determinations office issues determination letters on the qualified status of employee plans under §§ 401, 403(a), 409 and 4975(e)(7), and the exempt status of any related trust under § 501. *See* Rev. Proc. 2010–6, this Bulletin.

In exempt organizations matters

.04 In exempt organizations matters, the Exempt Organizations Determinations office issues determination letters involving:

(1) Initial qualification for exempt status of organizations described in §§ 501 and 521 to the extent provided in Rev. Proc. 2011–9, the next Bulletin;

(2) Updated exempt status letter to reflect changes to an organization's name or address, or to replace a lost exempt status letter, but not to approve or disapprove any completed transaction or the effect of changes in activities on exempt status, except in the situations specifically listed in paragraphs (3) through (12) below;

(3) Classification of private foundation status as provided in 2011–10, the next Bulletin;

(4) Reclassification of private foundation status, including operating foundation status described in § 4942(j)(3) and exempt operating foundation status described in § 4940(d), as provided in Rev. Proc. 2011–10, the next Bulletin;

(5) Recognition of unusual grants to certain organizations under §§ 170(b)(1)(A)(vi) and 509(a)(2);

(6) Requests for relief under § 301.9100–1 of the Procedure and Administration Regulations in connection with applications for recognition of exemption;

(7) Terminations of private foundation status under § 507(b)(1)(B);

(8) Request for a determination that a public charity described in § 509(a)(3) is described in § 509(a)(3)(i), (ii), or (iii), including whether or not a Type III supporting organization is functionally integrated. *See* Rev. Proc. 2011–10, the next Bulletin;

(9) Advance approval of certain set-asides described in § 4942(g)(2);

(10) Advance approval under § 4945 of organizations' grant making procedures;

(11) Advance approval of voter registration activities described in § 4945(f); and

(12) Whether an organization is exempt from filing annual information returns under § 6033 as provided in Treas. Reg. § 1.6033–2(g)(1) and Rev. Procs. 95–48, 1995–2 C.B. 418, and 96–10, 1996–1 C.B. 577.

Circumstances under which determination letters are not issued

.05 EP or EO Determinations will not issue a determination letter in response to any request if—

(1) it appears that the taxpayer has directed a similar inquiry to EP or EO Technical;

(2) the same issue involving the same taxpayer or a related taxpayer is pending in a case in litigation or before an appeals office;

(3) the determination letter is requested by an industry, trade association, or similar group on behalf of individual taxpayers within the group (other than subordinate organizations covered by a group exemption letter); or

(4) the request involves an industry-wide problem.

Requests involving returns already filed

.06 A request received by the Service on a question concerning a return that is under examination, will be, in general, considered in connection with the examination of the return. If a response is made to the request before the return is examined, it will be considered a tentative finding in any later examination of that return.

Attach a copy of determination letter to taxpayer's return

.07 A taxpayer who, before filing a return, receives a determination letter about any transaction that has been consummated and that is relevant to the return being filed should attach a copy of the determination letter to the return when it is filed.

Review of determination letters

.08 Determination letters issued under sections 7.02 through 7.04 of this revenue procedure are not generally reviewed by EP or EO Technical before they are issued. If a taxpayer believes that a determination letter of this type is in error, the taxpayer may ask EP or EO Determinations to reconsider the matter or to request technical advice from EP or EO Technical as explained in Rev. Proc. 2011–5, page 167, this Bulletin.

(1) In employee plans matters, the procedures for review of determination letters relating to the qualification of employee plans involving §§ 401 and 403(a) are provided in Rev. Proc. 2011–6.

(2) In exempt organizations matters, the procedures for the review of determination letters relating to the exemption from federal income tax of certain organizations under §§ 501 and 521 are provided in Rev. Proc. 2011–9.

SECTION 8. UNDER WHAT CIRCUMSTANCES DOES THE SERVICE HAVE DISCRETION TO ISSUE LETTER RULINGS AND DETERMINATION LETTERS?

Ordinarily not in certain areas because of factual nature of the problem

.01 The Service ordinarily will not issue a letter ruling or determination letter in certain areas because of the factual nature of the problem involved or because of other reasons. The Service may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case.

No "comfort" letter rulings

.02 No letter ruling will be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decision of a court of appropriate jurisdiction, revenue ruling, revenue procedure, notice or other authority published in the Internal Revenue Bulletin. Instead of issuing a letter ruling, the Service may, when it is considered appropriate and in the best interests of the Service, issue an information letter calling attention to well-established principles of tax law.

Not on alternative plans or hypothetical situations

.03 A letter ruling or a determination letter will not be issued on alternative plans of proposed transactions or on hypothetical situations.

Ordinarily not on part of an integrated transaction

.04 The Service ordinarily will not issue a letter ruling on only part of an integrated transaction. If, however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Before preparing the letter ruling request, a taxpayer should call the office having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether the Service will issue a letter ruling on part of the transaction.

Not on partial terminations of employee plans

.05 The Service will not issue a letter ruling on the partial termination of an employee plan. Determination letters involving the partial termination of an employee plan may be issued.

Law requires ruling letter

.06 The Service will issue rulings on prospective or future transactions if the law or regulations require a determination of the effect of a proposed transaction for tax purposes.

Issues under consideration by PBGC or DOL

.07 A letter ruling or determination letter relating to an issue that is being considered by the Pension Benefit Guaranty Corporation (PBGC) or the Department of Labor (DOL), and involves the same taxpayer, shall be issued at the discretion of the Service.

Cafeteria plans

.08 The Service does not issue letter rulings or determination letters on whether a cafeteria plan satisfies the requirements of § 125. *See also* Rev. Proc. 2011–3, also in this Bulletin, for areas under the jurisdiction of the Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities) involving cafeteria plans in which advance rulings or determination letters will not be issued.

Determination letters

.09 *See* section 3.02 of Rev. Proc. 2011–6 for employee plans matters on which determination letters will not be issued.

Domicile in a foreign jurisdiction

.10

(1) The Service is ordinarily unwilling to rule in situations where a taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(2) The provisions of subsection 8.10(1) above shall not apply if the taxpayer or affected related party (a) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (b) waives all claims to protection of bank and commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

Employee Stock Ownership Plans

.11

(1) The Service does not issue a letter ruling on whether or not the renewal, extension or refinancing of an exempt loan satisfies the requirements of § 4975(d)(3) of the Internal Revenue Code.

(2) The Service does not issue a letter ruling on whether the pre-payment of ESOP loans satisfies the requirements of § 4975(d)(3) other than with respect to plan termination.

Governmental Plans

.12 The Service does not issue a letter ruling on whether or not a plan is a governmental plan under § 414(d).

SECTION 9. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING LETTER RULINGS AND DETERMINATION LETTERS?

In general

.01 This section explains the general instructions for requesting letter rulings and determination letters on all matters. Requests for letter rulings and determination letters require the payment of the applicable user fee discussed in section 9.02(14) of this revenue procedure.

Specific and additional instructions also apply to requests for letter rulings and determination letters on certain matters. Those matters are listed in section 10 of this revenue procedure followed by a reference (usually to another revenue procedure) where more information can be obtained.

Certain information required in all requests

.02

Facts

(1) Complete statement of facts and other information. Each request for a letter ruling or a determination letter must contain a complete statement of all facts relating to the transaction. These facts include—

(a) names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties. (The term "all interested parties" does not mean all shareholders of a widely held corporation requesting a letter ruling relating to a reorganization, or all employees where a large number may be involved.);

(b) a complete statement of the business reasons for the transaction; and

(c) a detailed description of the transaction.

The Service will usually not rule on only one step of a larger integrated transaction. *See* section 8.04 of this revenue procedure. However, if such a letter ruling is requested, the facts, circumstances, true copies of relevant documents, etc., relating to the entire transaction must be submitted.

Documents

(2) Copies of all contracts, wills, deeds, agreements, instruments, plan documents, and other documents. True copies of all contracts, wills, deeds, agreements, instruments, plan documents, trust documents, proposed disclaimers, and other documents pertinent to the transaction must be submitted with the request.

Each document, other than the request, should be labeled alphabetically and attached to the request in alphabetical order. Original documents, such as contracts, wills, etc., should not be submitted because they become part of the Service's file and will not be returned.

Analysis of material facts

(3) Analysis of material facts. All material facts in documents must be included rather than merely incorporated by reference, in the taxpayer's initial request or in supplemental letters. These facts must be accompanied by an analysis of their bearing on the issue or issues, specifying the provisions that apply.

Same issue in an earlier return

(4) Statement regarding whether same issue is in an earlier return. The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, the same issue is in an earlier return of the taxpayer (or in a return for any year of a related taxpayer within the meaning of § 267, or of a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504).

If the statement is affirmative, it must specify whether the issue—

(a) is being examined by the Service;

(b) has been examined and if so, whether or not the statutory period of limitations has expired for either assessing tax or filing a claim for refund or credit of tax;

(c) has been examined and if so, whether or not a closing agreement covering the issue or liability has been entered into by the Service;

(d) is being considered by an appeals office in connection with a return from an earlier period;

(e) has been considered by an appeals office in connection with a return from an earlier period and if so, whether or not the statutory period of limitations has expired for either assessing tax or filing a claim for refund or credit of tax;

(f) has been considered by an appeals office in connection with a return from an earlier period and whether or not a closing agreement covering the issue or liability has been entered into by an appeals office;

(g) is pending in litigation in a case involving the taxpayer or a related taxpayer; or

(h) in employee plans matters, is being considered by the Pension Benefit Guaranty Corporation or the Department of Labor.

Same or similar issue previously submitted or currently pending

(5) Statement regarding whether same or similar issue was previously ruled on or requested, or is currently pending. The request must also state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives—

(a) the Service previously ruled on the same or similar issue for the taxpayer (or a related taxpayer within the meaning of § 267, or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) or a predecessor;

(b) the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted the same or similar issue to the Service but withdrew the request before a letter ruling or determination letter was issued;

(c) the taxpayer, a related taxpayer, or a predecessor previously submitted a request involving the same or a similar issue that is currently pending with the Service; or

(d) at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request involving the same or a similar issue to the Service.

If the statement is affirmative for (a), (b), (c), or (d) of this section 9.02(5), the statement must give the date the request was submitted, the date the request was withdrawn or ruled on, if applicable, and other details of the Service's consideration of the issue.

Statement of authorities supporting taxpayer's views

(6) Statement of supporting authorities. If the taxpayer advocates a particular conclusion, an explanation of the grounds for that conclusion and the relevant authorities to support it must also be included. Even if not advocating a particular tax treatment of a proposed transaction, the taxpayer must still furnish views on the tax results of the proposed transaction and a statement of relevant authorities to support those views.

In all events, the request must include a statement of whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities.

Statement of authorities contrary to taxpayer's views

(7) Statement of contrary authorities. The taxpayer is also encouraged to inform the Service about, and discuss the implications of, any authority believed to be contrary to the position advanced, such as legislation (or pending legislation), tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices or announcements. If the taxpayer determines that there are no contrary authorities, a statement in the request to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Service in complex cases or those presenting difficult or novel issues may request submission

of contrary authorities or a statement that none exists. Failure to comply with this request may result in the Service's refusal to issue a letter ruling or determination letter.

Identifying and discussing contrary authorities will generally enable Service personnel to understand the issue and relevant authorities more quickly. When Service personnel receive the request, they will have before them the taxpayer's thinking on the effect and applicability of contrary authorities. This information should make research easier and lead to earlier action by the Service. If the taxpayer does not disclose and distinguish significant contrary authorities, the Service may need to request additional information, which will delay action on the request.

Statement identifying pending legislation

(8) Statement identifying pending legislation. At the time of filing the request, the taxpayer must identify any pending legislation that may affect the proposed transaction. In addition, if applicable legislation is introduced after the request is filed but before a letter ruling or determination letter is issued, the taxpayer must notify the Service.

Deletions statement required by § 6110

(9) Statement identifying information to be deleted from copy of letter ruling or determination letter for public inspection. The text of certain letter rulings and determination letters is open to public inspection under § 6110. The Service makes deletions from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), a request for a letter ruling or determination letter must be accompanied by a statement indicating the deletions desired ("deletions statement"). If the deletions statement is not submitted with the request, a Service representative will tell the taxpayer that the request will be closed if the Service does not receive the deletions statement within 30 calendar days. *See* section 11.03 of this revenue procedure.

(a) Format of deletions statement. A taxpayer who wants only names, addresses, and identifying numbers to be deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletions statement must be accompanied by a copy of the request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletions statement must indicate the statutory basis under § 6110(c) for each proposed deletion.

If the taxpayer decides to ask for additional deletions before the letter ruling or determination letter is issued, additional deletions statements may be submitted.

(b) Location of deletions statement. The deletions statement must not appear in the request, but instead must be made in a separate document and placed on top of the request for a letter ruling or determination letter.

(c) Signature. The deletions statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped or faxed signature is not permitted.

(d) Additional information. The taxpayer should follow the same procedures above to propose deletions from any additional information submitted after the initial request. An additional deletions statement, however, is not required with each submission of additional information if the taxpayer's initial deletions statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information.

(e) Taxpayer may protest deletions not made. After receiving from the Service the notice under § 6110(f)(1) of intention to disclose the letter ruling or determination letter (including a copy of the version proposed to be open to public inspection and notation of third-party communications under § 6110(d)), the taxpayer may protest the disclosure of certain information in the letter ruling or determination letter. The taxpayer must send a written statement within 20 calendar days to the Service office indicated on the notice of intention to disclose. The statement must identify those deletions that the Service has not made and that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the letter ruling or determination letter and bracket the deletions proposed that have not been made by the Service. Generally, the Service will not consider deleting any material that the taxpayer did not propose to be deleted before the letter ruling or determination letter was issued.

Within 20 calendar days after the Service receives the response to the notice under § 6110(f)(1), the Service will mail to the taxpayer its final administrative conclusion regarding the deletions to be made. The taxpayer does not have the right to a conference to resolve any disagreements concerning material to be deleted from the text of the letter ruling or determination letter. However, these matters may be taken up at any conference that is otherwise scheduled regarding the request.

(f) Taxpayer may request delay of public inspection. After receiving the notice under § 6110(f)(1) of intention to disclose, but within 60 calendar days after the date of notice, the taxpayer may send a request for delay of public inspection under either § 6110(g)(3) or (4). The request for delay must be sent to the Service office indicated on the notice of intention to disclose. A request for delay under § 6110(g)(3) must contain the date on which it is expected that the underlying transaction will be completed. The request for delay under § 6110(g)(4) must contain a statement from which the Commissioner of Internal Revenue may determine that there are good reasons for the delay.

Section 6110(l)(1) states that § 6110 disclosure provisions do not apply to any matter to which § 6104 applies. Therefore, letter rulings, determination letters, technical advice memoranda, and related background file documents dealing with the following matters (covered by § 6104) are not subject to § 6110 disclosure provisions—

(i) An approved application for exemption under § 501(a) as an organization described in § 501(c) or (d), or notice of status as a political organization under § 527, together with any papers submitted in support of such application or notice;

(ii) An application for exemption under § 501(a) with respect to the qualification of a pension, profit-sharing or stock bonus plan, or an individual retirement account described in § 408 or § 408A , whether the plan or account has more than 25 or less than 26 participants, or any application for exemption under § 501(a) by an organization forming part of such a plan or an account;

(iii) Any document issued by the Internal Revenue Service in which the qualification or exempt status of a plan or account is granted, denied, or revoked or the portion of any document in which technical advice with respect thereto is given;

(iv) Any application filed and any document issued by the Internal Revenue Service with respect to the qualification or status of EP master and prototype plans; and

(v) The portion of any document issued by the Internal Revenue Service with respect to the qualification or exempt status of a plan or account of a proposed transaction by such plan, or account.

Signature on request

(10) Signature by taxpayer or authorized representative. The request for a letter ruling or determination letter must be signed and dated by the taxpayer or the taxpayer's authorized representative. Neither a stamped signature nor a faxed signature is permitted. Special rules apply in the case of a request for a determination letter made by filing Form 1023; please see the instructions to that Form for who may sign the application on behalf of an organization.

Authorized representatives

(11) Authorized representatives. To sign the request or to appear before the Service in connection with the request, the representative must be:

Attorney

(a) 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 is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an attorney and current authorization to represent the taxpayer;

Certified public accountant

(b) A certified public accountant who is qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the

Service showing current qualification as a certified public accountant and current authorization to represent the taxpayer;

Enrolled agent

(c) An enrolled agent who is a person, other than an attorney or certified public accountant, that is currently enrolled to practice before the Service and is not currently under suspension or disbarment from practice before the Service, including a person enrolled to practice only for employee plans matters. He or she must file a written declaration with the Service showing current enrollment and authorization to represent the taxpayer. Either the enrollment number or the expiration date of the enrollment card must be included in the declaration. For the rules on who may practice before the Service, see Treasury Department Circular No. 230;

Enrolled actuary

(d) An enrolled actuary who is a person enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 and qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an enrolled actuary and current authorization to represent the taxpayer. Practice as an enrolled actuary is limited to representation with respect to issues involving the following statutory provisions: §§ 401, 403(a), 404, 412, 413, 414, 4971, 6057, 6058, 6059, 6652(d), 6652(e), 6692, 7805(b), and 29 U.S.C. 1083;

Enrolled Retirement Plan Agent

(e) An enrolled retirement plan agent (ERPA) is an individual who has earned the privilege to practice before the Service. The ERPA program is established under Circular 230 of the U.S. Department of the Treasury and is administered by the Office of Professional Responsibility (the "OPR"). The Director of the OPR may grant enrollment as an ERPA to an applicant who demonstrates special competence in qualified retirement plan matters (by either passing a written examination or by virtue of past service and technical experience with the Service) and who has not engaged in any conduct that would justify the censure, suspension or disbarment of the practitioner. An ERPA must apply for enrollment with the Service, have been issued an enrollment card and satisfy renewal and continuing education requirements.

Practice as an ERPA is limited to representation with respect to issues involving the following programs: Employee Plans Determination Letter program; Employee Plans Compliance Resolution System; and Employee Plans Master and Prototype and Volume Submitter program. In addition, ERPAs are generally permitted to represent taxpayers with respect to Form 5300 series and Form 5500 filings, but not with respect to actuarial forms or schedules. For eligibility, application and enrollment information, see §§ 10.4, 10.5 and 10.6 of Circular 230;

A person with a "Letter of Authorization"

(f) Any other person, including a foreign representative who has received a "Letter of Authorization" from the Director, Office of Professional Responsibility under section 10.7(d) of Treasury Department Circular No. 230. A person may make a written request for a "Letter of Authorization" to: Office of Director, Office of Professional Responsibility, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224. Section 10.7(d) of Circular No. 230 authorizes the Commissioner to allow an individual who is not otherwise eligible to practice before the Service to represent another person in a particular matter. For additional information, see section 9.02(12) below;

Employee, general partner, bona fide officer, administrator, trustee, etc.

(g) The above requirements do not apply to a regular full-time employee representing his or her employer, to a general partner representing his or her partnership, to a bona fide officer representing his or her corporation, association, or organized group, to a trustee, receiver, guardian, personal representative, administrator, or executor representing a trust, receivership, guardianship, or estate, or to an individual representing his or her immediate family. A preparer of a return (other than a person referred to in paragraph (a), (b), (c), (d) or (e) of this section 9.02(11)) who is not a full-time employee, general partner, a bona fide officer, an administrator, trustee, etc., or an individual representing his or her immediate family may not represent a taxpayer in connection with a letter ruling, determination letter or a technical advice request. *See* section 10.7(c) of Treasury Department Circular No. 230;

Foreign representative

(h) A foreign representative (other than a person referred to in paragraph (a), (b), (c), (d) or (e) of this section 9.02(11)) is not authorized to practice before the Service and, therefore,

must withdraw from representing a taxpayer in a request for a letter ruling or a determination letter. In this situation, the nonresident alien or foreign entity must submit the request for a letter ruling or a determination letter on the individual's or entity's own behalf or through a person referred to in paragraph (a), (b), (c), (d) or (e) of this section 9.02(11).

Power of attorney and declaration of representative

(12) Power of attorney and declaration of representative. Any authorized representative, whether or not enrolled to practice, must also comply with the conference and practice requirements of the Statement of Procedural Rules (26 C.F.R. § 601.501–601.509 (2005)), which provide the rules for representing a taxpayer before the Service. In addition, an unenrolled preparer must file a Form 8821 (Rev. August 2008), *Tax Information Authorization*, for certain limited employee plans matters.

Form 2848 (Rev. June 2008), *Power of Attorney and Declaration of Representative*, must be used to provide the representative's authorization (Part I of Form 2848, *Power of Attorney*) and the representative's qualification (Part II of Form 2848, *Declaration of Representative*). The name of the person signing Part I of Form 2848 should also be typed or printed on this form. A stamped signature is not permitted. An original, a copy, or a facsimile transmission (fax) of the power of attorney is acceptable so long as its authenticity is not reasonably disputed. For additional information regarding the power of attorney form, see section 9.03(2) of this revenue procedure.

For the requirement regarding compliance with Treasury Department Circular No. 230, see section 9.09 of this revenue procedure.

Penalties of perjury statement

(13) Penalties of perjury statement.

(a) Format of penalties of perjury statement. A request for a letter ruling or determination letter and any change in the request submitted at a later time must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and, to the best of my knowledge and belief, the request or the modification contains all the relevant facts relating to the request, and such facts are true, correct, and complete."** See section 11.04 of this revenue procedure for the penalties of perjury statement applicable for submissions of additional information.

(b) Signature by taxpayer. The declaration must be signed and dated by the taxpayer, not the taxpayer's representative. Neither a stamped signature nor a faxed signature is permitted.

The person who signs for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts, and whose duties are not limited to obtaining a letter ruling or determination letter from the Service. If the corporate taxpayer is a member of an affiliated group filing consolidated returns, a penalties of perjury statement must also be signed and submitted by an officer of the common parent of the group.

The person signing for a trust, a state law partnership, or a limited liability company must be, respectively, a trustee, general partner, or member-manager who has personal knowledge of the facts.

Applicable user fee

(14) Applicable user fee. Section 7528 of the Code, as added by section 202 of the Temporary Assistance for Needy Families Block Grant Program and made permanent by section 8244 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, requires taxpayers to pay user fees for requests for rulings, opinion letters, determination letters, and similar requests. Rev. Proc. 2011–8 contains the schedule of fees for each type of request under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division and provides guidance for administering the user fee requirements. If two or more taxpayers are parties to a transaction and each requests a letter ruling, each taxpayer must satisfy the rules herein and additional user fees may apply.

Number of copies of request to be submitted

(15) Number of copies of request to be submitted. Generally a taxpayer needs only to submit one copy of the request for a letter ruling or determination letter. If, however, more

than one issue is presented in the letter ruling request, the taxpayer is encouraged to submit additional copies of the request.

Further, two copies of the request for a letter ruling or determination letter are required if—

(a) the taxpayer is requesting separate letter rulings or determination letters on different issues as explained later under section 9.03(1) of this revenue procedure;

(b) the taxpayer is requesting deletions other than names, addresses, and identifying numbers, as explained in section 9.02(9) of this revenue procedure. (One copy is the request for the letter ruling or determination letter and the second copy is the deleted version of such request.); or

(c) a closing agreement (as defined in section 3.03 of this revenue procedure) is being requested on the issue presented.

Sample of a letter ruling request

(16) Sample format for a letter ruling request. To assist a taxpayer or the taxpayer's representative in preparing a letter ruling request, a sample format for a letter ruling request is provided in Appendix A. This format is not required to be used by the taxpayer or the taxpayer's representative. If the letter ruling request is not identical or similar to the format in Appendix A, the different format will neither defer consideration of the letter ruling request nor be cause for returning the request to the taxpayer or taxpayer's representative.

Checklist

(17) Checklist for letter ruling requests. The Service will be able to respond more quickly to a taxpayer's letter ruling request if it is carefully prepared and complete. The checklist in Appendix B of this revenue procedure is designed to assist taxpayers in preparing a request by reminding them of the essential information and documents to be furnished with the request. The checklist in Appendix B must be completed to the extent required by the instructions in the checklist, signed and dated by the taxpayer or the taxpayer's representative, and placed on top of the letter ruling request. If the checklist in Appendix B is not received, a group representative will ask the taxpayer or the taxpayer's representative to submit the checklist, which may delay action on the letter ruling request. A photocopy of this checklist may be used.

Additional information required in certain circumstances

.03

Multiple issues

(1) To request separate letter rulings for multiple issues in a single situation. If more than one issue is presented in a request for a letter ruling, the Service generally will issue a single ruling letter covering all the issues. However, if the taxpayer requests separate letter rulings on any of the issues (because, for example, one letter ruling is needed sooner than another), the Service will usually comply with the request unless it is not feasible or not in the best interests of the Service to do so. A taxpayer who wants separate letter rulings on multiple issues should make this clear in the request and submit two copies of the request. Additional checklists are solely for the specific issues designated.

In issuing each letter ruling, the Service will state that it has issued separate letter rulings or that requests for other letter rulings are pending.

Power of attorney

(2) Recipient of original letter ruling or determination letter. The Service will send the original of the letter ruling or determination letter to the taxpayer and a copy of the letter ruling or determination letter to the taxpayer's representative. In this case, the letter ruling or determination letter is addressed to the taxpayer. A Form 2848, *Power of Attorney and Declaration of Representative* (Rev. June 2008), must be used to provide the representative's authorization except in certain employee plans matters. *See* section 9.02(12) of this revenue procedure.

Copies of letter ruling or determination letter sent to multiple representatives

(a) To have copies sent to multiple representatives. When a taxpayer has more than one representative, the Service will send the copy of the letter ruling or determination letter to the first representative named on the most recent power of attorney. If the taxpayer wants an additional copy of the letter ruling or determination letter sent to the second representative

listed in the power of attorney, the taxpayer must check the appropriate box on Form 2848. If this form is not used, the taxpayer must state in the power of attorney that a copy of the letter ruling or determination letter is to be sent to the second representative listed in the power of attorney. Copies of the letter ruling or determination letter, however, will be sent to no more than two representatives.

Copy of letter ruling or determination letter sent to taxpayer's representative

(b) To have copy sent to taxpayer's representative.

A copy of the letter ruling or determination letter will be sent to the taxpayer's representative.

If the taxpayer wants a copy of the letter ruling or determination letter sent to the taxpayer's second representative, the taxpayer must check the appropriate box on Form 2848.

No copy of letter ruling or determination letter sent to taxpayer's representative

(c) To have no copy sent to taxpayer's representative. If a taxpayer does not want a copy of the letter ruling or determination letter sent to any representative, the taxpayer must check the appropriate box on Form 2848.

Expedited handling

(3) To request expedited handling. The Service ordinarily processes requests for letter rulings and determination letters in order of the date received. Expedited handling means that a request is processed ahead of the regular order. Expedited handling is granted only in rare and unusual cases, both out of fairness to other taxpayers and because the Service seeks to process all requests as expeditiously as possible and to give appropriate deference to normal business exigencies in all cases not involving expedited handling.

A taxpayer who has a compelling need to have a request processed ahead of the regular order may request expedited handling. This request must explain in detail the need for expedited handling. The request must be made in writing, preferably in a separate letter with, or soon after filing, the request for the letter ruling or determination letter. If the request is not made in a separate letter, then the letter in which the letter ruling or determination letter request is made should say, at the top of the first page: **"Expedited Handling Is Requested. See page ___ of this letter."**

A request for expedited handling will not be forwarded to the appropriate group for action until the check or money order for the user fee in the correct amount is received.

Whether the request will be granted is within the Service's discretion. The Service may grant a request when a factor outside a taxpayer's control creates a real business need to obtain a letter ruling or determination letter before a certain time in order to avoid serious business consequences. Examples include situations in which a court or governmental agency has imposed a specific deadline for the completion of a transaction, or a transaction must be completed expeditiously to avoid an imminent business emergency (such as the hostile takeover of a corporate taxpayer), provided that the taxpayer can demonstrate that the deadline or business emergency, and the need for expedited handling, resulted from circumstances that could not reasonably have been anticipated or controlled by the taxpayer. To qualify for expedited handling in such situations, the taxpayer must also demonstrate that the taxpayer submitted the request as promptly as possible after becoming aware of the deadline or emergency. The extent to which the letter ruling or determination letter complies with all of the applicable requirements of this revenue procedure, and fully and clearly presents the issues, is a factor in determining whether expedited treatment will be granted. When the Service agrees to process a request out of order, it cannot give assurance that any letter ruling or determination letter will be processed by the time requested. The scheduling of a closing date for a transaction or a meeting of the board of directors or shareholders of a corporation, without regard for the time it may take to obtain a letter ruling or determination letter, will not be considered a sufficient reason to process a request ahead of its regular order. Also, the possible effect of fluctuation in the market price of stocks on a transaction will not be considered a sufficient reason to process a request out of order.

Because most requests for letter rulings and determination letters cannot be processed ahead of their regular order, the Service urges all taxpayers to submit their requests well in advance

of the contemplated transaction. In addition, in order to facilitate prompt action on letter ruling requests taxpayers are encouraged to ensure that their initial submissions comply with all of the requirements of this revenue procedure (including the requirements of other applicable guidelines set forth in section 10 of this revenue procedure), and to provide any additional information requested by the Service promptly.

Facsimile transmission (fax)

(4) To receive a letter ruling or submit a request for a letter ruling by facsimile transmission (fax).

(a) To receive a letter ruling by fax. A letter ruling ordinarily is not sent by fax. However, if the taxpayer requests, a copy of a letter ruling may be faxed to the taxpayer or the taxpayer's authorized representative. A letter ruling, however, is not issued until the ruling is mailed. *See* § 301.6110–2(h).

A request to fax a copy of the letter ruling to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original letter ruling request or prior to the approval of the letter ruling. The request must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the letter ruling is to be faxed.

The Service will take certain precautions to protect confidential information. For example, the Service will use a cover sheet that identifies the intended recipient of the fax and the number of pages transmitted. The cover sheet, if possible, will not identify the specific taxpayer by name, and it will be the first page covering the letter ruling being faxed.

(b) To submit a request for a letter ruling by fax. Original letter ruling requests sent by fax are discouraged because such requests must be treated in the same manner as requests by letter. For example, the faxed letter ruling request will not be forwarded to the applicable office for action until the check for the user fee is received.

Requesting a conference

(5) To request a conference. A taxpayer who wants to have a conference on the issues involved should indicate this in writing when, or soon after, filing the request. *See also* sections 12.01, 12.02, and 13.09(2) of this revenue procedure.

Address to send the request

.04

Requests for letter rulings

(1) Requests for letter rulings should be sent to the following offices (as appropriate):

Internal Revenue Service
Attention: EP Letter Rulings
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

Internal Revenue Service
Attention: EO Letter Rulings
P.O. Box 27720
McPherson Station
Washington, D.C. 20038

Hand delivered requests must be marked RULING REQUEST SUBMISSION. The delivery should be made between the hours of 8:30 a.m. and 4:00 p.m.; where a receipt will be given:

Courier's Desk
Internal Revenue Service
Attention: SE:T:EP:RA or SE:T:EO:RA
1111 Constitution Avenue, N.W. — PE
Washington, D.C. 20224

Requests for information letters

(2) Requests for information letters on either employee plans matters or exempt organizations matters should be sent to Employee Plans or Exempt Organizations (as appropriate):

Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA or SE:T:EO:RA
1111 Constitution Avenue, N.W. — PE
Washington, D.C. 20224

Requests for determination letters

(3) Requests for EP determination letters and EO determination letters that are subject to a user fee should be sent to:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012–0192

Requests for EO determination letters that are not subject to a user fee should be sent to:

Internal Revenue Service
P.O. Box 2508
Rm. 4024
Cincinnati, OH 45201

For fees required with determination letter requests, see section 6 of Rev. Proc. 2011–8.

Pending letter ruling requests

.05

(1) Circumstances under which the taxpayer must notify EP or EO Technical. The taxpayer must notify EP or EO Technical if, after the letter ruling request is filed but before a letter ruling is issued, the taxpayer knows that—

(a) an examination of the issue or the identical issue on an earlier year's return has been started by an EP or EO Examinations office;

(b) in employee plans matters, the issue is being considered by the Pension Benefit Guaranty Corporation or the Department of Labor; or

(c) legislation that may affect the transaction has been introduced (*see* section 9.02(8) of this revenue procedure).

(2) Taxpayer must notify EP or EO Technical if return is filed and must attach request to return. If the taxpayer files a return before a letter ruling is received from EP or EO Technical concerning the issue, the taxpayer must notify EP or EO Technical that the return has been filed. The taxpayer must also attach a copy of the letter ruling request to the return to alert the EP or EO Examinations office and thereby avoid premature EP or EO Examinations office action on the issue.

When to attach letter ruling to return

.06 A taxpayer who receives a letter ruling before filing a return about any transaction that is relevant to the return being filed must attach a copy of the letter ruling to the return when it is filed.

How to check on status of request

.07 The taxpayer or the taxpayer's authorized representative may obtain information regarding the status of a request by calling the person whose name and telephone number are shown on the acknowledgement of receipt of the request.

Request may be withdrawn or EP or EO Technical may decline to issue letter ruling

.08

(1) In general. A taxpayer may withdraw a request for a letter ruling or determination letter at any time before the letter ruling or determination letter is signed by the Service. Correspondence and exhibits related to a request that is withdrawn or related to a letter ruling request for which the Service declines to issue a letter ruling will not be returned to the taxpayer. *See* section 9.02(2) of this revenue procedure. In appropriate cases, the Service may publish its conclusions in a revenue ruling or revenue procedure.

A request for a letter ruling will not be suspended in EP or EO Technical at the request of a taxpayer.

(2) Notification of Director, EP or EO Examinations. If a taxpayer withdraws a request for a letter ruling or if EP or EO Technical declines to issue a letter ruling, EP or EO Technical will notify the Director, EP or EO Examinations and may give its views on the issues in the request to the Director, EP or EO Examinations to consider in any later examination of the return.

(3) Refunds of user fee. The user fee will not be returned for a letter ruling request that is withdrawn. If the Service declines to issue a letter ruling on all of the issues in the request, the user fee will be returned. If the Service, however, issues a letter ruling on some, but not all, of the issues, the user fee will not be returned. *See* section 10 of Rev. Proc. 2011–8 for additional information regarding refunds of user fees.

Compliance with Treasury Department Circular No. 230

.09 The taxpayer's authorized representative, whether or not enrolled, must comply with Treasury Department Circular No. 230, which provides the rules for practice before the Service. In those situations when EP or EO Technical believes that the taxpayer's representative is not in compliance with Circular No. 230, EP or EO Technical will bring the matter to the attention of the Director, Office of Professional Responsibility.

For the requirement regarding compliance with the conference and practice requirements, see section 9.02(12) of this revenue procedure.

SECTION 10. WHAT SPECIFIC, ADDITIONAL PROCEDURES APPLY TO CERTAIN REQUESTS?

In general

.01 Specific revenue procedures supplement the general instructions for requests explained in section 9 of this revenue procedure and apply to requests for letter rulings or determination letters regarding the Code sections and matters listed in this section.

Exempt Organizations

.02 If the request is for the qualification of an organization for exemption from federal income tax under § 501 or 521, see Rev. Proc. 72–5, 1972–1 C.B. 709, regarding religious and apostolic organizations; Rev. Proc. 80–27, 1980–1 C.B. 677, concerning group exemptions; and Rev. Proc. 2011–9, regarding applications for recognition of exemption, determinations for which § 7428 applies, and conference protest and appeal rights.

Employee Plans

.03

(1) For requests to obtain approval for a retroactive amendment described in § 412(c)(8) of the Code and section 302(c)(8) of the Employee Retirement Income Security Act of 1974 (ERISA) that reduces accrued benefits, see Rev. Proc. 94–42, 1994–1 C.B. 717.

(2) For requests for a waiver of the minimum funding standard, see Rev. Proc. 2004–15.

(3) For requests for a waiver of the 100 percent tax imposed under § 4971(b) of the Code on a pension plan that fails to meet the minimum funding standards of § 412, see Rev. Proc. 81–44, 1981–2 C.B. 618.

(4) For requests for a determination that a plan amendment is reasonable and provides for only *de minimis* increases in plan liabilities in accordance with §§ 401(a)(33) and 412(f)(2)(A), see Rev. Proc. 79–62, 1979–2 C.B. 576.

(5) For requests to obtain approval for an extension of an amortization period of any unfunded liability in accordance with §§ 431(d) of the Code and 304(d) of ERISA, see Rev. Proc. 2010–52, 2010–52 I.R.B. 927.

(6) For requests by administrators or sponsors of a defined benefit plan to obtain approval for a change in funding method, see Rev. Proc. 2000–41, 2000–2 C.B. 371.

(7) For requests for the return to the employer of certain nondeductible contributions, see Rev. Proc. 90–49, 1990–2 C.B. 620 (as modified by Rev. Proc. 2011–8).

(8) For requests for determination letters for plans under §§ 401, 403(a), 409, and 4975(e)(7), and for the exempt status of any related trust under § 501, see Rev. Proc. 2011–6, Rev. Proc. 93–10 and Rev. Proc. 93–12.

SECTION 11. HOW DOES EP OR EO TECHNICAL HANDLE LETTER RULING REQUESTS?

In general

.01 The Service will issue letter rulings on the matters and under the circumstances explained in sections 4 and 6 of this revenue procedure and in the manner explained in this section and section 13 of this revenue procedure.

Is not bound by informal opinion expressed

.02 The Service will not be bound by the informal opinion expressed by the group representative or any other authorized Service representative under this procedure, and such an opinion cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Tells taxpayer if request lacks essential information during initial contact

.03 If a request for a letter ruling or determination letter does not comply with all the provisions of this revenue procedure, the request will be acknowledged and the Service representative will tell the taxpayer during the initial contact which requirements have not been met.

Information must be submitted within 30 calendar days

If the request lacks essential information, which may include additional information needed to satisfy the procedural requirements of this revenue procedure, as well as substantive changes to transactions or documents needed from the taxpayer, the Service representative will tell the taxpayer during the initial contact that the request will be closed if the Service does not receive the information within 30 calendar days unless an extension of time is granted. *See* section 11.04 of this revenue procedure for information on extension of time and instructions on submissions of additional information.

Letter ruling request mistakenly sent to EP or EO Determinations Processing

A request for a letter ruling sent to EP/EO Determinations Processing that does not comply with the provisions of this revenue procedure will be returned by EP/EO Determinations Processing so that the taxpayer can make corrections before sending it to EP or EO Technical.

Requires prompt submission of additional information requested after initial contact

.04 Material facts furnished to the Service by telephone or fax, or orally at a conference, must be promptly confirmed by letter to the Service. This confirmation and any additional information requested by the Service that is not part of the information requested during the initial contact must be furnished within 21 calendar days to be considered part of the request.

Additional information submitted to the Service must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete."** This declaration must be signed in accordance with the requirements in section 9.02(13)(b) of this revenue procedure. A taxpayer who submits additional factual information on several occasions may provide one declaration subsequent to all submissions that refers to all submissions.

Encourage use of fax

(1) To facilitate prompt action on letter ruling requests, taxpayers are encouraged to submit additional information by fax as soon as the information is available. The Service representative who requests additional information can provide a telephone number to which the information can be faxed. A copy of this information and a signed perjury statement, however, must be mailed or delivered to the Service.

Address to send additional information

(2) Additional information should be sent to the same address as the original letter ruling request. *See* section 9.04. However, the additional information should include the name, office symbols, and room number of the Service representative who requested the information and the taxpayer's name and the case control number (which the Service representative can provide).

Number of copies of additional information to be submitted

(3) Generally, a taxpayer needs only to submit one copy of the additional information. However, in appropriate cases, the Service may request additional copies of the information.

30-day or 21-day period may be extended if justified and approved

(4) An extension of the 30-day period under section 11.03 or the 21-day period under section 11.04, will be granted only if justified in writing by the taxpayer and approved by the manager of the group to which the case is assigned. A request for extension should be submitted before the end of the 30-day or 21-day period. If unusual circumstances close to the end of the 30-day or 21-day period make a written request impractical, the taxpayer should notify the Service within the 30-day or 21-day period that there is a problem and that the written request for extension will be coming soon. The taxpayer will be told promptly, and later in writing, of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

If taxpayer does not submit additional information

(5) If the taxpayer does not follow the instructions for submitting additional information or requesting an extension within the time provided, a letter ruling will be issued on the basis of the information on hand, or, if appropriate, no letter ruling will be issued. When the Service decides not to issue a letter ruling because essential information is lacking, the case will be closed and the taxpayer notified in writing. If the Service receives the information after the letter ruling request is closed, the request may be reopened and treated as a new request. However, the taxpayer may be required to pay another user fee before the case can be reopened.

Near the completion of the ruling process, advises taxpayer of conclusions and, if the Service will rule adversely, offers the taxpayer the opportunity to withdraw the letter ruling request

.05 Generally, after the conference of right is held before the letter ruling is issued, the Service representative will inform the taxpayer or the taxpayer's authorized representative of the Service's final conclusions. If the Service is going to rule adversely, the taxpayer will be offered the opportunity to withdraw the letter ruling request. If the taxpayer or the taxpayer's representative does not promptly notify the Service representative of a decision to withdraw the ruling request, the adverse letter will be issued. The user fee will not be refunded for a letter ruling request that is withdrawn. *See* section 10 of Rev. Proc. 2011–8.

May request draft of proposed letter ruling near the completion of the ruling process

.06 To accelerate issuance of letter rulings, in appropriate cases near the completion of the ruling process, the Service representative may request that the taxpayer or the taxpayer's representative submit a proposed draft of the letter ruling on the basis of discussions of the issues. The taxpayer, however, is not required to prepare a draft letter ruling in order to receive a letter ruling.

The format of the submission should be discussed with the Service representative who requests the draft letter ruling. The representative usually can provide a sample format of a letter ruling and will discuss the facts, analysis, and letter ruling language to be included.

Taxpayer may also submit draft on a word processing disk

In addition to a typed draft, taxpayers are encouraged to submit this draft on a disk or CD Rom in Rich Text Format. The typed draft will become part of the permanent files of the Service, and the word processing disk will not be returned. If the Service representative requesting the draft letter ruling cannot answer specific questions about the format of the word processing disk, the questions can be directed to Frances Sloan at (202) 283–9626 (Employee Plans), or Matthew Giuliano at (202) 283–8917 (Exempt Organizations) (not toll-free calls).

The proposed letter ruling (both typed draft and word processing disk) should be sent to the same address as any additional information and contain in the transmittal the information that should be included with any additional information (for example, a penalties of perjury statement is required). *See* section 11.04 of this revenue procedure.

SECTION 12. HOW ARE CONFERENCES SCHEDULED?

Schedules a conference if requested by taxpayer

.01 A taxpayer may request a conference regarding a letter ruling request. Normally, a conference is scheduled only when the Service considers it to be helpful in deciding the case or when an adverse decision is indicated. If conferences are being arranged for more than one request for a letter ruling involving the same taxpayer, they will be scheduled so as to cause the least inconvenience to the taxpayer. As stated in section 9.03(5) of this revenue procedure,

a taxpayer who wants to have a conference on the issue or issues involved should indicate this in writing when, or soon after, filing the request.

If a conference has been requested, the taxpayer will be notified by telephone, if possible, of the time and place of the conference, which must then be held within 21 calendar days after this contact. Instructions for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Service's approval or denial of the request for extension are the same as those explained in section 11.04 of this revenue procedure regarding providing additional information.

Permits taxpayer one conference of right

.02 A taxpayer is entitled, as a matter of right, to only one conference, except as explained under section 12.05 of this revenue procedure. This conference normally will be held at the group level and will be attended by a person who, at the time of the conference, has the authority to sign the ruling letter in his or her own name or for the group manager.

When more than one group has taken an adverse position on an issue in a letter ruling request, or when the position ultimately adopted by one group will affect that adopted by another, a representative from each group with the authority to sign in his or her own name or for the group manager will attend the conference. If more than one subject is to be discussed at the conference, the discussion will constitute a conference on each subject.

To have a thorough and informed discussion of the issues, the conference usually will be held after the group has had an opportunity to study the case. However, at the request of the taxpayer, the conference of right may be held earlier.

No taxpayer has a right to appeal the action of a group to any other official of the Service. But see section 12.05 of this revenue procedure for situations in which the Service may offer additional conferences.

Disallows verbatim recording of conferences

.03 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Makes tentative recommendations on substantive issues

.04 The senior Service representative present at the conference ensures that the taxpayer has the opportunity to present views on all the issues in question. A Service representative explains the Service's tentative decision on the substantive issues and the reasons for that decision. If the taxpayer asks the Service to limit the retroactive effect of any letter ruling or limit the revocation or modification of a prior letter ruling, a Service representative will discuss the recommendation concerning this issue and the reasons for the recommendation. The Service representatives will not make a commitment regarding the conclusion that the Service will finally adopt.

May offer additional conferences

.05 The Service will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed, but on a new issue, or on the same issue but on different grounds from those discussed at the first conference. There is no right to another conference when a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limit on the number of conferences to which a taxpayer is entitled does not prevent the Service from offering additional conferences, including conferences with an official higher than the group level, if the Service decides they are needed. Such conferences are not offered as a matter of course simply because the group has reached an adverse decision. In general, conferences with higher level officials are offered only if the Service determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

Requires written confirmation of information presented at conference

.06 The taxpayer should furnish to the Service any additional data, reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but not previously or adequately presented in writing. The taxpayer must furnish the additional information within 21 calendar days from the date of the conference. *See* section 11.04 of this revenue procedure

for instructions on submission of additional information. If the additional information is not received within that time, a ruling will be issued on the basis of the information on hand or, if appropriate, no ruling will be issued.

Procedures for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Service's approval or denial of the requested extension are the same as those stated in section 11.04 of this revenue procedure regarding submitting additional information.

May schedule a pre-submission conference

.07 Sometimes it will be advantageous to both the Service and the taxpayer to hold a conference before the taxpayer submits the letter ruling request to discuss substantive or procedural issues relating to a proposed transaction. These conferences are held only if the identity of the taxpayer is provided to the Service, only if the taxpayer actually intends to make a request, only if the request involves a matter on which a letter ruling is ordinarily issued, and only at the discretion of the Service and as time permits. For example, a pre-submission conference will not be held on an income tax issue if, at the time the pre-submission conference is requested, the identical issue is involved in the taxpayer's return for an earlier period and that issue is being examined. *See* section 6 of this revenue procedure. Generally, the taxpayer will be asked to provide before the pre-submission conference a statement of whether the issue is an issue on which a letter ruling is ordinarily issued and a draft of the letter ruling request or other detailed written statement of the proposed transaction, issue, and legal analysis. If the taxpayer's representative will attend the pre-submission conference, a power of attorney form is required. A Form 2848, *Power of Attorney and Declaration of Representative*, must be used to provide the representative's authorization.

Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b). A letter ruling request submitted following a pre-submission conference will not necessarily be assigned to the group that held the pre-submission conference.

Under limited circumstances, may schedule a conference to be held by telephone

.08 A taxpayer may request that their conference of right be held by telephone. This request may occur, for example, when a taxpayer wants a conference of right but believes that the issue involved does not warrant incurring the expense of traveling to Washington, DC. If a taxpayer makes such a request, the group manager will decide if it is appropriate in the particular case to hold the conference of right by telephone. If the request is approved by the group manager, the taxpayer will be advised when to call the Service representatives (not a toll-free call).

Conference rules for EO determination letters not subject to § 7428 or § 501 or § 521

.09 The procedures for requesting a conference for determination letters that are not subject to § 7428 or § 501 or § 521 are the same as described in this section, except that generally conferences will be held by telephone.

SECTION 13. WHAT EFFECT WILL A LETTER RULING HAVE?

May be relied on subject to limitations

.01 A taxpayer ordinarily may rely on a letter ruling received from the Service subject to the conditions and limitations described in this section.

Will not apply to another taxpayer

.02 A taxpayer may not rely on a letter ruling issued to another taxpayer. *See* § 6110(k)(3).

Will be used by the Director, EP or EO Examinations in examining the taxpayer's return

.03 When determining a taxpayer's liability, the Director, EP or EO Examinations must ascertain whether—

(1) the conclusions stated in the letter ruling are properly reflected in the return;

(2) the representations upon which the letter ruling was based reflected an accurate statement of the material facts;

(3) the transaction was carried out substantially as proposed; and

(4) there has been any change in the law that applies to the period during which the transaction or continuing series of transactions were consummated.

If, when determining the liability, the Director, EP Examinations finds that a letter ruling should be revoked or modified, unless a waiver is obtained from EP Technical, the findings and recommendations of the Director, EP Examinations will be forwarded to EP Technical for consideration before further action is taken by the Director, EP Examinations. Such a referral to EP Technical will be treated as a request for technical advice and the procedures of Rev. Proc. 2011–5 will be followed. Otherwise, the letter ruling is to be applied by the Director, EP Examinations in determining the taxpayer's liability. Appropriate coordination with EP Technical will be undertaken if any field official having jurisdiction over a return or other matter proposes to reach a conclusion contrary to a letter ruling previously issued to the taxpayer.

In certain exempt organizations cases, section 4.04 of Rev. Proc. 2011–5 provides that a request for a TAM is mandatory.

May be revoked or modified if found to be in error

.04 Unless it was part of a closing agreement as described in section 3.03 of this revenue procedure, a letter ruling found to be in error or not in accord with the current views of the Service may be revoked or modified. If a letter ruling is revoked or modified, the revocation or modification applies to all years open under the statute of limitations unless the Service uses its discretionary authority under § 7805(b) to limit the retroactive effect of the revocation or modification.

A letter ruling may be revoked or modified due to—

(1) a notice to the taxpayer to whom the letter ruling was issued;

(2) the enactment of legislation or ratification of a tax treaty;

(3) a decision of the United States Supreme Court;

(4) the issuance of temporary or final regulations; or

(5) the issuance of a revenue ruling, revenue procedure, notice, or other statement published in the Internal Revenue Bulletin.

Consistent with these provisions, if a letter ruling relates to a continuing action or a series of actions, it ordinarily will be applied until any one of the events described above occurs or until it is specifically withdrawn.

Publication of a notice of proposed rulemaking will not affect the application of any letter ruling issued under this revenue procedure.

Not generally revoked or modified retroactively

.05 Except in rare or unusual circumstances, the revocation or modification of a letter ruling will not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling provided that—

(1) there has been no misstatement or omission of material facts;

(2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling was based;

(3) there has been no change in the applicable law;

(4) the letter ruling was originally issued for a proposed transaction; and

(5) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment. For example, the tax liability of each employee covered by a ruling relating to a qualified plan of an employer is directly involved in such ruling. However, the tax liability of a member of an industry is not directly involved in a letter ruling issued to another member and, therefore, the holding in a revocation or modification of a letter ruling to one member

of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not extend to one client the non-retroactive application of a revocation or modification of a letter ruling previously issued to another client.

If a letter ruling is revoked or modified by letter with retroactive effect, the letter will, except in fraud cases, state the grounds on which the letter ruling is being revoked or modified and explain the reasons why it is being revoked or modified retroactively.

Retroactive effect of revocation or modification applied only to a particular transaction

.06 A letter ruling issued on a particular transaction represents a holding of the Service on that transaction only. It will not apply to a similar transaction in the same year or any other year. And, except in unusual circumstances, the application of that letter ruling to the transaction will not be affected by the later issuance of regulations (either temporary or final), if conditions (1) through (5) in section 13.05 of this revenue procedure are met.

However, if a letter ruling on a transaction is later found to be in error or no longer in accord with the position of the Service, it will not protect a similar transaction of the taxpayer in the same year or later year.

Retroactive effect of revocation or modification applied to a continuing action or series of actions

.07 If a letter ruling is issued covering a continuing action or series of actions and the letter ruling is later found to be in error or no longer in accord with the position of the Service, the Commissioner, Tax Exempt and Government Entities Division, ordinarily will limit the retroactive effect of the revocation or modification to a date that is not earlier than that on which the letter ruling is revoked or modified.

May be retroactively revoked or modified when transaction is completed without reliance on the letter ruling

.08 A taxpayer is not protected against retroactive revocation or modification of a letter ruling involving a completed transaction other than those described in section 13.07 of this revenue procedure, because the taxpayer did not enter into the transaction relying on a letter ruling.

Taxpayer may request that retroactivity be limited

.09 Under § 7805(b), the Service may prescribe any extent to which a revocation or modification of a letter ruling or determination letter will be applied without retroactive effect.

A taxpayer to whom a letter ruling or determination letter has been issued may request that the Commissioner, Tax Exempt and Government Entities Division, limit the retroactive effect of any revocation or modification of the letter ruling or determination letter.

Format of request

(1) Request for relief under § 7805(b) must be made in required format.

A request to limit the retroactive effect of the revocation or modification of a letter ruling must be in the general form of, and meet the general requirements for, a letter ruling request. These requirements are given in section 9 of this revenue procedure. Specifically, the request must also—

(a) state that it is being made under § 7805(b);

(b) state the relief sought;

(c) explain the reasons and arguments in support of the relief requested (including a discussion of the five items listed in section 13.05 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request. A request that the Service limit the retroactive effect of a revocation or modification of a letter ruling may be made in the form of a separate request for a letter ruling when, for example, a revenue ruling has the effect of revoking or modifying a letter ruling previously issued to the taxpayer, or when the Service notifies the taxpayer of a change in position that will have the effect of revoking or modifying the letter ruling. However, when notice is given by the Director, EP or EO Examinations during an examination of the taxpayer's return or by an Appeals Area Director, or the Appeals Area Director, LB&I, during consideration of the taxpayer's return before an appeals office, a request to limit retroactive effect must be made in the form of a request for technical advice as explained in section 19 of Rev. Proc. 2011–5.

When germane to a pending letter ruling request, a request to limit the retroactive effect of a revocation or modification of a letter ruling may be made as part of the request for the letter ruling, either initially or at any time before the letter ruling is issued. When a letter ruling that concerns a continuing transaction is revoked or modified by, for example, a subsequent revenue ruling, a request to limit retroactive effect must be made before the examination of the return that contains the transaction that is the subject of the letter ruling request.

Consideration of relief under § 7805(b) will be included as one of the taxpayer's steps in exhausting administrative remedies only if the taxpayer has requested such relief in the manner described in this revenue procedure. If the taxpayer does not complete the applicable steps, the taxpayer will not have exhausted the taxpayer's administrative remedies as required by § 7428(b)(2) and § 7476(b)(3) and will, thus, be precluded from seeking a declaratory judgment under § 7428 or § 7476. Where the taxpayer has requested § 7805(b) relief, the taxpayer's administrative remedies will not be considered exhausted until the Service has had a reasonable time to act upon the request.

Request for conference

(2) Taxpayer may request a conference on application of § 7805(b).

A taxpayer who requests the application of § 7805(b) in a separate letter ruling request has the right to a conference in EP or EO Technical as explained in sections 12.01, 12.02, 12.03, 12.04 and 12.05 of this revenue procedure. If the request is made initially as part of a pending letter ruling request or is made before the conference of right is held on the substantive issues, the § 7805(b) issue will be discussed at the taxpayer's one conference of right as explained in section 12.02 of this revenue procedure. If the request for the application of § 7805(b) relief is made as part of a pending letter ruling request after a conference has been held on the substantive issue and the Service determines that there is justification for having delayed the request, the taxpayer is entitled to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue only.

SECTION 14. WHAT EFFECT WILL A DETERMINATION LETTER HAVE?

Has same effect as a letter ruling

.01 A determination letter issued by EP or EO Determinations has the same effect as a letter ruling issued to a taxpayer under section 13 of this revenue procedure.

If the Director, EP or EO Examinations proposes to reach a conclusion contrary to that expressed in a determination letter, he or she need not refer the matter to EP or EO Technical. However, the Director, EP or EO Examinations must refer the matter to EP or EO Technical if the Director, EP or EO Examinations desires to have the revocation or modification of the determination letter limited under § 7805(b).

Taxpayer may request that retroactive effect of revocation or modification be limited

.02 The Director, EP or EO Examinations does not have authority under § 7805(b) to limit the revocation or modification of the determination letter. Therefore, if the Director, EP or EO Examinations proposes to revoke or modify a determination letter, the taxpayer may request limitation of the retroactive effect of the revocation or modification by asking EP or EO Determinations to seek technical advice from EP or EO Technical. *See* section 19 of Rev. Proc. 2011–5.

Format of request

(1) Request for relief under § 7805(b) must be made in required format.

A taxpayer's request to limit the retroactive effect of the revocation or modification of the determination letter must be in the form of, and meet the general requirements for, a technical advice request. *See* section 18.06 of Rev. Proc. 2011–5. The request must also—

(a) state that it is being made under § 7805(b);

(b) state the relief sought;

(c) explain the reasons and arguments in support of the relief sought (including a discussion of the five items listed in section 13.05 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request.

Request for conference

(2) Taxpayer may request a conference on application of § 7805(b).

When technical advice is requested regarding the application of § 7805(b), the taxpayer has the right to a conference in EP or EO Technical to the same extent as does any taxpayer who is the subject of a technical advice request. *See* section 11 of Rev. Proc. 2011–5.

Exhaustion of administrative remedies

(3) Taxpayer steps in exhausting administrative remedies.

Consideration of relief under § 7805(b) will be included as one of the taxpayer's steps in exhausting administrative remedies only if the taxpayer has requested such relief in the manner described in this revenue procedure. If the taxpayer does not complete the applicable steps, the taxpayer will not have exhausted the taxpayer's administrative remedies as required by § 7428(b)(2) and § 7476(b)(3) and will, thus, be precluded from seeking a declaratory judgment under § 7428 or § 7476. Where the taxpayer has requested § 7805(b) relief, the taxpayer's administrative remedies will not be considered exhausted until the Service has had a reasonable time to act upon the request.

SECTION 15. UNDER WHAT CIRCUMSTANCES ARE MATTERS REFERRED BETWEEN DETERMINATIONS AND TECHNICAL?

Requests for determination letters

.01 Requests for determination letters received by EP or EO Determinations that, under the provisions of this revenue procedure, may not be issued by EP or EO Determinations, will be forwarded to EP or EO Technical for reply. EP Determinations or EO Technical will notify the taxpayer that the matter has been referred.

EP or EO Determinations will also refer to EP or EO Technical any request for a determination letter that in its judgment should have the attention of EP or EO Technical.

No-rule areas

.02 If the request involves an issue on which the Service will not issue a letter ruling or determination letter, the request will not be forwarded to EP or EO Technical. EP or EO Determinations will notify the taxpayer that the Service will not issue a letter ruling or a determination letter on the issue. See section 8 of this revenue procedure for a description of no-rule areas.

Requests for letter rulings

.03 Requests for letter rulings received by EP or EO Technical that, under section 6 of this revenue procedure, may not be acted upon by EP or EO Technical will be forwarded to the Director, EP or EO Examinations. The taxpayer will be notified of this action. If the request is on an issue or in an area of the type discussed in section 8 of this revenue procedure, and the Service decides not to issue a letter ruling or an information letter, EP or EO Technical will notify the taxpayer and will then forward the request to the Director, EP or EO Examinations for association with the related return.

SECTION 16. WHAT ARE THE GENERAL PROCEDURES APPLICABLE TO INFORMATION LETTERS ISSUED BY THE HEADQUARTERS OFFICE?

Will be made available to the public

.01 Information letters that are issued by the headquarters office to members of the public will be made available to the public. These documents provide general statements of well-defined law without applying them to a specific set of facts. See section 3.06 of this revenue

procedure. Information letters that are issued by the field, however, will not be made available to the public.

The following documents also will not be available for public inspection as part of this process:

(1) letters that merely transmit Service publications or other publicly available material, without significant legal discussion;

(2) responses to taxpayer or third party contacts that are inquiries with respect to a pending request for a letter ruling, technical advice memorandum, or Chief Counsel Advice (whose public inspection is subject to § 6110); and

(3) responses to taxpayer or third party communications with respect to any investigation, audit, litigation, or other enforcement action.

Deletions made under the Freedom of Information Act

.02 Before any information letter is made available to the public, the headquarters office will delete any name, address, and other identifying information as appropriate under the Freedom of Information Act ("FOIA") (for example, FOIA personal privacy exemption of 5 U.S.C. § 552(b)(6) and tax details exempt pursuant to § 6103, as incorporated into FOIA by 5 U.S.C. § 552(b)(3). Because information letters do not constitute written determinations (including Chief Counsel Advice) as defined in § 6110, these documents are not subject to public inspection under § 6110.

Effect of information letters

.03 Information letters are advisory only and have no binding effect on the Service. See section 3.06 of this revenue procedure. If the headquarters office issues an information letter in response to a request for a letter ruling that does not meet the requirements of this revenue procedure, the information letter is not a substitute for a letter ruling.

SECTION 17. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

Rev. Proc. 2010–4 is superseded.

SECTION 18. EFFECTIVE DATE

This revenue procedure is effective January 3, 2011.

SECTION 19. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 7.07, 9.02, 9.03, 9.04, 9.05, 9.06, 10.02, 10.03, 11.03, 11.04(1)-(5), 11.06, 12.01, 12.06, 12.07, 13.09(1), 14.02(1), and in Appendices B, C, D and E. This information is required to evaluate and process the request for a letter ruling or determination letter. In addition, this information will be used to help the Service delete certain information from the text of the letter ruling or determination letter before it is made available for public inspection, as required by § 6110. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 12,650 hours.

The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 16 hours, depending on individual circumstances and the type of request involved, with an estimated average burden of 6.01 hours. The estimated number of respondents and/or recordkeepers is 2,103.

The estimated annual frequency of responses is one request per applicant, except that a taxpayer requesting a letter ruling may also request a presubmission conference.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Denise Y. Bowen of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding how this revenue procedure applies to employee plans and exempt organizations matters, contact the Exempt Organizations and Employee Plans Customer Assistance Center at 877–829–5500. For employee plans matters, Ms. Bowen can be emailed at *RetirementPlanQuestions@irs.gov*. For exempt organizations matters, Mr. Matthew Giuliano can be emailed at *tege.eo.ra@irs.gov*. Please put "Question about Rev. Proc. 2011–4" in the subject line.

INDEX

— additional information . . . . . sec. 9.02(9), 9.03, 11.03, 11.04

— closing agreement . . . . . sec. 3.03, 6.06(4), 9.02(4), 9.02(15), 13.04

— conference . . . . . sec. 9.02(9), 9.03(5), 12.01–.09, 13.09(2), 14.02(2)

— disclose . . . . . sec. 9.02(9)

— exempt organization . . . . . sec. 6.01

— expedited handling . . . . . sec. 9.03(3)

— extension . . . . . sec. 6.02, 6.04, 11.04, 12.01, 12.06

— fax . . . . . sec. 9.03(4), 11.04

— fee . . . . . sec. 9.02(14), 11.04(5)

— hand delivered . . . . . 9.04(1)

— information letter . . . . . sec. 3.06, 8.01, 15.03

— no rule . . . . . sec. 8, 15.02

— perjury statement . . . . . sec. 9.02(13), 11.04, 11.06

— power of attorney . . . . . sec. 9.02(12), 9.03(2)

— reliance . . . . . sec. 3.09, 11.02, 12.07, 13, 14

— representatives . . . . . sec. 3.09, 9.02(10)-(11), 9.03(2)

— retroactive . . . . . sec. 11.02, 12.04, 12.07, 13, 14

— revenue ruling . . . . . sec. 3.07, 13.04, 13.09(1)

— section 6110 . . . . . sec. 9.02(9), 13.02

— status . . . . . sec. 9.07

— technical advice . . . . . sec. 7.08, 13.03, 13.09(1), 14

— telephone . . . . . sec. 9.02(1), 11.04, 12.01, 12.08

— where to send . . . . . sec. 9.04

— withdraw . . . . . sec. 9.08

APPENDIX A

SAMPLE FORMAT FOR A LETTER RULING REQUEST

(*Insert the date of request*)

Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

Dear Sir or Madam:

(*Insert the name of the taxpayer*) (the "Taxpayer") requests a ruling on the proper treatment of (*insert the subject matter of the letter ruling request*) under § (*insert the number*) of the Internal Revenue Code.

[*If the taxpayer is requesting expedited handling, the letter ruling request must contain a statement to that effect. This statement must explain the need for expeditious handling. See section 9.03(3).*]

A. STATEMENT OF FACTS

1. Taxpayer Information

[Provide the statements required by sections 9.02(1)(a), (b), and (c) of Rev. Proc. 2011–4, 2011–1 I.R.B. 123. (Hereafter, all references are to Rev. Proc. 2011–4 unless otherwise noted.)]

For example, a taxpayer that maintains a qualified employee retirement plan and files an annual Form 5500 series of returns may include the following statement to satisfy sections 9.02(1)(a), (b), and (c):

The Taxpayer is a construction company with principal offices located at 100 Whatever Drive, Wherever, Maryland 12345, and its telephone number is (123) 456–7890. The Taxpayer's federal employer identification number is 00–1234567. The Taxpayer uses the Form 5500 series of returns on a calendar year basis to report its qualified employee retirement plan and trust.

2. Detailed Description of the Transaction.

[The ruling request must contain a complete statement of the facts relating to the transaction that is the subject of the letter ruling request. This statement must include a detailed description of the transaction, including material facts in any accompanying documents, and the business reasons for the transaction. See sections 9.02(1)(b), 9.02(1)(c), and 9.02(2).]

B. RULING REQUESTED

[The ruling request should contain a concise statement of the ruling requested by the taxpayer.]

C. STATEMENT OF LAW

[The ruling request must contain a statement of the law in support of the taxpayer's views or conclusion, including any authorities believed to be contrary to the position advanced in the ruling request. This statement must also identify any pending legislation that may affect the proposed transaction. See sections 9.02(6), 9.02(7), and 9.02(8).]

D. ANALYSIS

[The ruling request must contain a discussion of the facts and an analysis of the law. See sections 9.02(3), 9.02(6), 9.02(7), and 9.02(8).]

E. CONCLUSION

[The ruling request should contain a statement of the taxpayer's conclusion on the ruling requested.]

F. PROCEDURAL MATTERS

1. Rev. Proc. 2011–4 statements

a. [The statement required by section 9.02(4).]

b. [The statement required by section 9.02(5).]

c. [The statement required by section 9.02(6) regarding whether the law in connection with the letter ruling request is uncertain and whether the issue is adequately addressed by relevant authorities.]

d. [The statement required by section 9.02(7) when the taxpayer determines that there are no contrary authorities.]

e. [If the taxpayer wants to have a conference on the issues involved in the letter ruling request, the ruling request should contain a statement to that effect. See section 9.03(5).]

f. [If the taxpayer is requesting the letter ruling to be issued by fax, the ruling request should contain a statement to that effect. See section 9.03(4).]

g. [If the taxpayer is requesting separate letter rulings on multiple issues, the letter ruling request should contain a statement to that effect. See section 9.03(1).]

2. Administrative

a. A Power of Attorney is enclosed. [See sections 9.02(12) and 9.03(2).]

b. The deletions statement and checklist required by Rev. Proc. 2011–4 are enclosed. [See sections 9.02(9) and 9.02(17).]

c. The required user fee is enclosed. [See section 9.02(14).]

Very truly yours,

(*Insert the name of the taxpayer or the taxpayer's authorized representative*)

By:

_____ _____

Signature Date

Typed or printed name
of person signing request

DECLARATION: [See section 9.02(13).]

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 request contains all the relevant facts relating to the request and such facts are true, correct, and complete.

(*Insert the name of the taxpayer*)

By:

_____ _____ _____

Signature Title Date

_____

Typed or printed name of
person signing declaration

APPENDIX B

CHECKLIST
IS YOUR RULING REQUEST COMPLETE?

INSTRUCTIONS

The Service will be able to respond more quickly to your letter ruling request if it is carefully prepared and complete. To ensure that your request is in order, use this checklist. Complete the four items of information requested before the checklist. Answer each question by circling "Yes," "No," or "N/A." When a question contains a place for a page number, insert the page number (or numbers) of the request that gives the information called for by a yes answer to a question. **Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.**

If you are an authorized representative submitting a request for a taxpayer, you must include a completed checklist with the request, or the request will either be returned to you or substantive consideration of it will be deferred until a completed checklist is submitted. **If you are a taxpayer preparing your own request without professional assistance, an incomplete checklist will not be cause for returning your request or deferring substantive consideration of the request.** However, you should still complete as much of the checklist as possible and submit it with your request.

TAXPAYER'S NAME _____

TAXPAYER'S I.D. No. _____

ATTORNEY/P.O.A. _____

PRIMARY CODE SECTION _____

CIRCLE ONE	ITEM
Yes No N/A	1. Does your request involve an issue under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division? See section 5 of Rev. Proc. 2011–4, 2011–1 I.R.B. 123, for issues under the jurisdiction of other offices. (Hereafter, all references are to Rev. Proc. 2011–4 unless otherwise noted.)
Yes No N/A	2. If your request involves a matter on which letter rulings are not ordinarily issued, have you given compelling reasons to justify the issuance of a private letter ruling? Before preparing your request, you may want to call the office responsible for substantive interpretations of the principal Internal Revenue Code section on which you are seeking a letter ruling to discuss the likelihood of an exception. The appropriate office to call for this information may be obtained by calling (202) 283–9660 (Employee Plans matters), or (202) 283–0289 (Exempt Organizations matters) (not toll-free calls).
Yes No N/A Page ____	3. If the request involves an employee plans qualification matter under § 401(a), § 409, or § 4975(e)(7), have you demonstrated that the request satisfies the three criteria in section 6.03 for a headquarters office ruling?
Yes No N/A Page ____	4. If the request deals with a completed transaction, have you filed the return for the year in which the transaction was completed? See sections 6.01 and 6.02.
Yes No	5. Are you requesting a letter ruling on a hypothetical situation or question? See section 8.03.
Yes No	6. Are you requesting a letter ruling on alternative plans of a proposed transaction? See section 8.03.
Yes No	7. Are you requesting the letter ruling for only part of an integrated transaction? See section 8.04.
Yes No	8. Have you submitted another letter ruling request for the transaction covered by this request?
Yes No	9. Are you requesting the letter ruling for a business, trade, industrial association, or similar group concerning the application of tax law to its members? See section 6.07.

Yes No Pages ____	10. Have you included a complete statement of all the facts relevant to the transaction? See section 9.02(1).
Yes No N/A	11. Have you submitted with the request true copies of all wills, deeds, plan documents, and other documents relevant to the transaction, and labeled and attached them in alphabetical sequence? See section 9.02(2).
Yes No Page ____	12. Have you included, rather than merely by reference, all material facts from the documents in the request? Are they accompanied by an analysis of their bearing on the issues that specifies the document provisions that apply? See section 9.02(3).
Yes No Page ____	13. Have you included the required statement regarding whether the same issue in the letter ruling request is in an earlier return of the taxpayer or in a return for any year of a related taxpayer? See section 9.02(4).
Yes No Page ____	14. Have you included the required statement regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor? See section 9.02(5).
Yes No Page ____	15. Have you included the required statement regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted the same or similar issue but withdrew it before the letter ruling was issued? See section 9.02(5).
Yes No Page ____	16. Have you included the required statement regarding whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities? See section 9.02(6).
Yes No Pages ____	17. Have you included the required statement of relevant authorities in support of your views? See section 9.02(6).
Yes No N/A Pages ____	18. Does your request discuss the implications of any legislation, tax treaties, court decisions, regulations, notices, revenue rulings, or revenue procedures you determined to be contrary to the position advanced? See section 9.02(7), which states that taxpayers are encouraged to inform the Service of such authorities.
Yes No N/A Page ____	19. If you determined that there are no contrary authorities, have you included a statement to this effect in your request? See section 9.02(7).
Yes No N/A Page ____	20. Have you included in your request a statement identifying any pending legislation that may affect the proposed transaction? See section 9.02(8).
Yes No	21. Is the request accompanied by the deletions statement required by § 6110? See section 9.02(9).
Yes No N/A Page ____	22. Have you (or your authorized representative) signed and dated the request. See section 9.02(10)?
Yes No N/A	23. If the request is signed by your representative, or if your representative will appear before the Service in connection with the request, is the request accompanied by a properly prepared and signed power of attorney with the signatory's name typed or printed? See section 9.02(12).
Yes No N/A Page ____	24. Have you included, signed and dated, the penalties of perjury statement in Page the form required by section 9.02(13)?
Yes No N/A	25. Have you included the correct user fee with the request and made your check or money order payable to the United States Treasury? See section 9.02(14) and Rev. Proc. 2011–8, page 237, this Bulletin for the correct amount and additional information on user fees.
Yes No N/A	26. Are you submitting your request in duplicate if necessary? See section 9.02(15).
Yes No N/A Pages ____	27. If you are requesting separate letter rulings on different issues involving one factual situation, have you included a statement to that effect in each request? See section 9.03(1).
Yes No N/A	28. If you do not want a copy of the letter ruling to be sent to any representative, does the power of attorney contain a statement to that effect? See section 9.03(2).
Yes No N/A Page ____	29. If you have more than one representative, have you designated whether the second representative listed on the power of attorney is to receive a copy of the letter ruling? See section 9.03(2).

Yes No N/A	30. If you want your letter ruling request to be processed ahead of the regular order or by a specific date, have you requested expedited handling in the form required by section 9.03(3) and stated a compelling need for such action in the request?
Yes No N/A Page ____	31. If you want to have a conference on the issues involved in the request, have you included a request for conference in the ruling request? See section 9.03(5).
Yes No N/A	32. If your request is covered by any of the guideline revenue procedures or other special requirements listed in section 10 of Rev. Proc. 2011–4, have you complied with all of the requirements of the applicable revenue procedure?
Yes No N/A Page ____	33. If you are requesting relief under § 7805(b) (regarding retroactive effect), have you complied with all of the requirements in section 13.09?
Yes No N/A	34. Have you addressed your request to the appropriate office listed in section 9.04? Improperly addressed requests may be delayed (sometimes for over a week) in reaching the appropriate office for initial processing.

_____	_____	_____
Signature	Title or authority	Date

_____

Typed or printed name of
person signing checklist

APPENDIX C

Additional Checklist for Roth IRA Recharacterization Ruling Requests

In order to assist EP Technical in processing a ruling request involving a Roth IRA recharacterization, in addition to the items in Appendix B, please check the following list.

Yes No N/A Page ____	1. Did you include the name(s) of trustee and/or custodian of the traditional individual retirement account (IRA) (generally, a financial institution)?
Yes No N/A Page ____	2. Is each IRA identification number present?
Yes No N/A Page ____	3. If the ruling request involves Roth conversions both of a husband and wife, is the necessary information with respect to each IRA of each party present? Note: as long as husband and wife file a joint federal Form 1040, the Service can issue one ruling covering both parties. Furthermore, if a joint federal income tax return has been filed for the year or years in question, the Service only requires one user fee even if both husband and wife had failed conversions.
Yes No N/A Page ____	4. If there was one or more attempted conversions, are the applicable dates on which the attempted IRA conversion(s) occurred included?
Yes No N/A Page ____	5. If the reason that a conversion failed is that the taxpayer or related taxpayers relied upon advice of a tax professional such as a CPA, an attorney, or an enrolled actuary, is the name and occupation of that adviser included?
Yes No N/A Page ____	6. Is certification that the taxpayer or taxpayers timely filed the relevant federal tax return(s) present?
Yes No N/A Page ____	7. Is there a short statement of facts with respect to the conversion? For example, if the ruling request involves a conversion attempted in 1998, there should be a statement of the facts that includes a representation of why the due date(s) found in Announcement 99–57 and Announcement 99–104 were not met.
Yes No N/A Page ____	8. If the taxpayer recharacterized his/her Roth IRA to a traditional IRA prior to submitting a request for § 9100 relief, are the date(s) of the recharacterization(s), name(s) of trustees and/or custodians, and the identification numbers of the traditional IRA(s) present?
Yes No N/A Page ____	9. Does the request include the type of contribution (*i.e.*, regular or conversion) and amount of the contribution being recharacterized?

APPENDIX D

Additional Checklist for Government Pick-Up Plan Ruling Requests

In order to assist EP Technical in processing a ruling request involving government pick-up plans, in addition to the items in Appendix B please check the following list.

Yes No N/A Page ____	1. Is the plan qualified under § 401(a) of the Code? (Evidence of qualification or representation that the plan is qualified.)
Yes No N/A Page ____	2. Is the organization that established the plan a State or political subdivision thereof, or any agency or instrumentality of the foregoing? An example of this would be a representation that the organization that has established the plan is a political subdivision or municipality of the State.
Yes No N/A Page ____	3. Is there specific information regarding who are the eligible participants?
Yes No N/A Page ____	4. Are the contributions that are the subject of the ruling request mandatory employee contributions? These contributions must be for a specified dollar amount or a specific percentage of the participant's compensation and the dollar amount or percentage of compensation cannot be subject to change.
Yes No N/A Page ____	5. Does the plan provide that the participants do not have the election to opt in and/or out of the plan?
Yes No N/A Page ____	6. Are copies of the enacting legislation providing that the contributions although designated as employee contributions are being paid by the employer in lieu of contributions by the employee included?
Yes No N/A Page ____	7. Are copies of the specific enabling authorization that provides the employee must not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the plan included? For example, a resolution, ordinance, plan provision, or collective bargaining agreement could specify this information.

APPENDIX E

Additional Checklist for Church Plan Ruling Requests

In order to assist EP Technical in processing a church plan ruling request, in addition to the items in Appendix B, please check the following list.

Yes No N/A Page ____	1. Is there specific information showing that the submission is on behalf of a plan established by a named church or convention or association of churches? The information must show how the sponsoring organization is controlled by, or associated with, the named church or convention or association of churches. For example, the sponsoring organization might be listed in the church's official directory of related organizations whose mission is to further the objectives of the church. In order to be considered associated with a church or convention or association of churches, the organization must share common religious bonds and convictions with that church or convention or association of churches.
Yes No N/A Page ____	2. Is there specific information showing that the organization that has established the plan is a tax-exempt organization as described in § 501 of the Code?
Yes No N/A Page ____	3. Is there representation that the plan for which the ruling is being requested is qualified under § 401(a) of the Code or meets the requirements of § 403(b) of the Code?
Yes No N/A Page ____	4. Does the ruling clearly state who are the eligible participants and the name of the employer of these eligible participants?
Yes No N/A Page ____	5. Is there a representation that none of the eligible participants are or can be considered employed in connection with one or more unrelated trades or businesses within the meaning of § 513 of the Code?
Yes No N/A Page ____	6. Is there a representation that all of the eligible participants are or will be employed by the named church or convention or association of churches, and will not include employees of for-profit entities? An example of an eligible employee includes a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry.
Yes No N/A Page ____	7. Is there specific information showing an existing plan committee whose principal purpose or function is the administration or funding of the plan. This committee must be controlled by or associated with the named church or convention or association of churches?
Yes No N/A Page ____	8. Is the composition of the committee stated?
	9. [RESERVED]

Rev. Proc. 2011–5

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SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

.01 This revenue procedure explains when and how Employee Plans Technical or Exempt Organizations Technical issue technical advice memoranda (TAMs) to an Employee Plans (EP) Examinations Area manager, an Exempt Organizations (EO) Examinations Area manager, an Employee Plans (EP) Determinations manager, an Exempt Organizations (EO) Determinations manager, or an Appeals Area Director in the employee plans areas (including actuarial matters) and exempt organizations areas. It also explains the rights a taxpayer has when an EP or

EO Examinations Area manager, an EP or EO Determinations manager, or an Appeals Area Director requests a TAM regarding a tax matter. Similarly, this revenue procedure may be used by another Operating Division of the Service involved in an examination where EP Technical does not have audit jurisdiction but has interpretive jurisdiction as enumerated in section 6.02 of Rev. Proc. 2011–4, page 123 of this Bulletin.

.02 Although taxpayer participation during all stages of the process is preferred, it is not required in order to request technical advice.

SECTION 2. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2010–5?

This revenue procedure is a general update of Rev. Proc. 2010–5, 2010–1 I.R.B. 165, which contains the general procedures for technical advice requests for matters within the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

Section 3 is modified to provide that the term "taxpayer" includes tax exempt entities such as governmental units which issue federally subsidized bonds such as tax exempt bonds, tax credit bonds or build America bonds and refers to Rev. Proc. 2011–2 for TAMs involving such matters.

Section 10.05 is revised to require the Appeals field office to send an electronic copy (no paper copy to follow) to the TAM Coordinator in the Office of Tax Policy and Valuation.

Section 12.04 is revised to refer to the Appeals Director, TPP (Exam).

Section 16.14 is revised to provide that replies to requests for TAMs from the Appeals Area Director are routed back to the appropriate Appeals Area Director.

SECTION 3. WHAT IS THE DEFINITION OF TECHNICAL ADVICE?

"Technical advice" means advice or guidance in the form of a memorandum furnished by the Employee Plans Technical or Exempt Organizations Technical office, (hereinafter referred to as "EP or EO Technical"), upon the request of an EP or EO Examinations Area manager, an EP or EO Determinations manager or an Appeals Area Director submitted in accordance with the provisions of this revenue procedure in response to any technical or procedural question that develops during any proceeding on the interpretation and proper application of tax law, tax treaties, regulations, revenue rulings, notices or other precedents published by the headquarters office to a specific set of facts. (The references in this revenue procedure to an Appeals Area Director or an appeals office include, when appropriate, an Appeals Area Director, LMSB, a Deputy Appeals Area Director, LMSB, a Deputy Appeals Area Director, an Appeals Team Manager and include in employee plans matters another Operating Division of the Service described in the last sentence of section 1.01 above.) Such proceedings include (1) the examination of a taxpayer's return, (2) consideration of a taxpayer's claim for refund or credit, (3) a taxpayer's request for a determination letter, (4) any other matter involving a specific taxpayer under the jurisdiction of EP or EO Examinations, EP or EO Determinations, or an appeals office or (5) processing and considering nondocketed cases of a taxpayer in an appeals office. However, they do not include cases in which the issue in the case is in a docketed case for any year.

For purposes of TAMs, the term "taxpayer" includes all persons subject to any provision of the Internal Revenue Code (including tax-exempt entities such as governmental units which issue federally subsidized bonds such as tax-exempt bonds, tax credit bonds or build America bonds), and when appropriate, their representatives. However, the instructions and the provisions of this revenue procedure do not apply to requests for TAMs involving any matter pertaining to federally subsidized bonds such as tax-exempt bonds, tax credit bonds or build America bonds, or to § 457 plans maintained by state or local governments or tax-exempt organizations or to mortgage credit certificates. Instead, in those instances the procedures under Rev. Proc. 2011-2, page 90, this Bulletin must be followed.

TAMs help Service personnel resolve complex issues and help establish and maintain consistent holdings throughout the Internal Revenue Service. An EP or EO Examinations, an EP or EO Determinations or an appeals office may raise an issue in any tax period, even though technical advice may have been requested and furnished for the same or similar issue for another tax period.

Technical advice does not include oral or written legal advice furnished to the EP or EO Examinations or the EP or EO Determinations or the appeals office, other than advice furnished pursuant to this revenue procedure. In accordance with section 12.01 of this revenue procedure, a taxpayer's request for referral of an issue to the headquarters office for technical advice will not be denied merely because EP or EO Technical has already provided legal advice, other than advice furnished pursuant to this revenue procedure, to the EP or EO Examinations or the EP or EO Determinations or the appeals office on the matter.

Although taxpayer participation during all stages of the process is preferred, generally, it is not required in order to request a TAM.

SECTION 4. ON WHAT ISSUES MAY OR MUST TAMs BE REQUESTED UNDER THIS PROCEDURE?

Issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division

.01 Generally, the instructions of this revenue procedure apply to requests for TAMs on any issue under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

Farmers' cooperatives

.02 If an EP or EO Examinations, an EP or EO Determinations, an appeals office or a taxpayer requests technical advice on a determination letter under § 521 of the Code, the procedures under this revenue procedure, Rev. Proc. 2011–9, the next Bulletin, as well as § 601.201(n) of the Statement of Procedural Rules (26 CFR § 601.201(n) (2007)), must be followed.

Basis for requesting TAMs

.03 Requests for TAMs are encouraged on any technical or procedural questions arising in connection with any case of the type described in section 3 at any stage of the proceedings in an EP or EO Examinations, an EP or EO Determinations or an appeals office case that cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other published precedent.

Areas of mandatory technical advice

.04 Requests for § 7805(b) relief are mandatory TAMs with respect to all exempt organizations and employee plans matters.

Regarding exempt organizations matters, EO Examinations, EO Determinations and appeals offices are required to request a TAM on their exempt organization cases concerning qualification for exemption or foundation status for which there is no published precedent or for which there is reason to believe that non-uniformity exists. (Exemption application cases handled in EO Technical in accordance with Rev. Proc. 72–5, 1972–1 C.B. 709, Rev. Proc. 80–27, 1980–1 C.B. 677, or Rev. Proc. 2011–9, are not covered by this provision.) A request for a TAM is not required if the Director, EO Examinations proposes to revoke or modify (1) a letter ruling found to be in error or not in accord with the current views of the Service, or (2) a letter recognizing tax-exempt status issued by the headquarters office.

Regarding employee plans matters, a request for a TAM is required in cases concerning (1) proposed adverse or proposed revocation letters on collectively-bargained plans, (2) plans for which the Service is proposing to issue a revocation letter because of certain fiduciary actions that violate the exclusive benefit rule of § 401(a) of the Code and are subject to Part 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93–406, 1974–3 C.B. 1, 43, or (3) amendments to defined contribution plans pursuant to Rev. Proc. 2004–15, 2004–1 C.B. 490, in connection with a waiver of the minimum funding standard and a request for a determination letter. *See* section 15 of Rev. Proc. 2011–6, page 195, this Bulletin, and section 3.04 of Rev. Proc. 2004–15, 2004–1 C.B. 490.

Basis for requests by EO Determinations

.05 The circumstances in which EO Determinations should seek Technical Advice in the course of processing applications for tax exemption are described in Revenue Procedure 2011–9, sections 5.03, 5.04, and 9.02. Technical Advice may also be requested by EO Determinations in connection with requests for determination letters where no pending

application for tax exemption is involved. For a listing of these determination letters, see Revenue Procedure 2011–4, this Bulletin, section 7.04, except (1), (2), and (6).

SECTION 5. ON WHAT ISSUES MUST TAMS BE REQUESTED UNDER DIFFERENT PROCEDURES?

Matters (other than farmers' cooperatives) under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International) the Associate Chief Counsel (Passthroughs & Special Industries), the Division Counsel/Associate Chief Counsel (TE/GE), and the Associate Chief Counsel (Procedure & Administration)

.01 All procedures for obtaining TAMs on issues (other than farmers' cooperatives) under the interpretive jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), or the Division Counsel/Associate Chief Counsel (TE/GE), and on certain issues under the jurisdiction of the Associate Chief Counsel (Procedure & Administration), including any matter pertaining to (1) tax-exempt bonds or mortgage credit certificates, (2) deferred compensation plans under § 457, (3) § 526 of the Code (shipowners' protection and indemnity associations), (4) § 528 (certain homeowners' associations), (5) Indian tribal governments, (6) federal, state or local governments, and (7) issues involving the interpretation or application of the federal income tax laws and income tax treaties relating to international transactions are contained in Rev. Proc. 2011–2.

Alcohol, tobacco, and firearms taxes

.02 The procedures for obtaining a TAM specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are currently under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau within the Treasury Department.

Excise taxes

.03 A TAM regarding excise taxes (other than excise taxes imposed under Chapters 41, 42 and 43 of the Code), and employment taxes that employee plans and exempt organizations are subject to, is set forth in Rev. Proc. 2011–2.

SECTION 6. MAY TAM UNDER § 301.9100–1 BE REQUESTED DURING THE COURSE OF AN EXAMINATION?

A § 301.9100–1 request is a letter ruling request

.01 Except with regard to exemption application matters involving §§ 505(c) and 508, a request for an extension of time for making an election or other application for relief under § 301.9100–1 of the Procedure and Administration Regulations is not a request for a TAM; instead, the request is submitted as a letter ruling request even if the request is submitted after the examination of the taxpayer's return has begun or after the issues in the return are being considered by an appeals office or a federal court. Therefore, a § 301.9100–1 request should be submitted pursuant to Rev. Proc. 2011–4, page 123, this Bulletin (including the payment of the applicable user fee listed in section 6 of Rev. Proc. 2011–8).

Statute of limitations

.02 The running of any applicable period of limitations is not suspended for the period during which a § 301.9100–1 request has been filed. *See* § 301.9100–3(d)(2). If the period of limitations on an assessment under § 6501(a) for the taxable year in which an election should have been made, or any taxable year that would have been affected by the election had it been timely made, will expire before receipt of a § 301.9100–1 letter ruling, the Service ordinarily will not issue a § 301.9100–1 ruling. *See* § 301.9100–3(c)(1)(ii). Therefore, the taxpayer must secure a consent under § 6501(c)(4) to extend the period of limitations on assessment. Note that the filing of a protective claim for refund under § 6511 does not extend the period of limitations on assessment. If § 301.9100–1 relief is granted, the Service may require the taxpayer to consent to an extension of the period of limitations for assessment. *See* § 301.9100–3(d)(2).

Address to send a § 301.9100–1 request

.03 Requests made under § 301.9100–1, pursuant to Rev. Proc. 2011–4, together with the appropriate user fee, must be submitted to the Internal Revenue Service by the taxpayer and addressed as follows:

Requests involving employee plans matters:

Internal Revenue Service
Commissioner, Tax Exempt and Government Entities
Attn: SE:T:EP:RA
P. O. Box 27063
McPherson Station
Washington, DC 20038

Requests involving exempt organization matters:

Internal Revenue Service
Commissioner, Tax Exempt and Government Entities
Attn: SE:T:EO:RA
P. O. Box 27720
McPherson Station
Washington, DC 20038

A § 301.9100–1 request may also be hand delivered between the hours of 8:30 a.m. and 4:00 p.m. where a receipt will be given at the Courier's Desk. In each instance, the package should be marked RULING REQUEST SUBMISSION. *See* Rev. Proc. 2011–8 for the appropriate user fee. Deliver to:

Courier's Desk
Internal Revenue Service
Attn: SE:T:EP:RA or SE:T:EO:RA
1111 Constitution Avenue, N.W. — PE
Washington, DC 20224

If return is being examined or considered by an appeals office or a federal court, the taxpayer must notify EP or EO Technical who will notify the EP or EO Examinations Area manager, Appeals Area Director or government counsel

.04 If the taxpayer's return for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made is being examined by EP or EO Examinations or the issues in the return are being considered by an appeals office or a federal court, the taxpayer must notify EP or EO Technical. *See*, § 301.9100–3(e)(4)(i) and section 6.04 of Rev. Proc. 2011–4. EP or EO Technical will notify the appropriate EP or EO Examinations Area manager or Appeals Area Director or government counsel considering the return that a request for § 301.9100–1 relief has been submitted. The EP or EO specialist, appeals officer or government counsel is not authorized to deny consideration of a request for § 301.9100–1 relief. The letter ruling will be mailed to the taxpayer and a copy will be sent to the appropriate EP or EO Examinations Area manager, or Appeals Area Director or government counsel.

SECTION 7. WHO IS RESPONSIBLE FOR REQUESTING TAMs?

EP or EO Examinations Area manager or EP or EO Determinations manager or Appeals Area Director determines whether to request the advice

.01 The EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director determines whether to request a TAM on an issue. Each request must be submitted through proper channels and signed by a person who is authorized to sign for the EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director. The mandatory technical advice described in section 4.04(3) of this revenue procedure, for cases concerning amendments to defined contribution plans in connection with a waiver of the minimum funding standard and a request for a determination letter, is treated as if it had been a request for technical advice submitted by the EP Determinations manager. *See* section 15 of Rev. Proc. 2011–6 and section 3.04 of Rev. Proc. 2004–15 for the procedural rules applicable to this particular mandatory technical advice.

Taxpayer may ask that issue be referred for TAM

.02 While a case is under the jurisdiction of EP or EO Examinations, EP or EO Determinations, or an Appeals Area Director, a taxpayer may request that an issue be referred to the EP or EO Technical office for a TAM.

SECTION 8. WHEN SHOULD A TAM BE REQUESTED?

Uniformity of position lacking

.01 A TAM should be requested when there is a lack of uniformity regarding the disposition of an issue or when an issue is unusual or complex enough to warrant consideration by EP or EO Technical.

When can a TAM be requested

.02 Generally, except as provided in section 1.01, the provisions of this revenue procedure apply only to a case under the jurisdiction of EP or EO Examinations, EP or EO Determinations or an Appeals Area Director. A TAM may also be requested on issues considered in a prior appeals disposition, not based on mutual concessions for the same tax period of the same taxpayer, if the appeals office that had the case concurs in the request.

(1) EP or EO Examinations or EP or EO Determinations may not request a TAM on an issue if an appeals office is currently considering an identical issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or an affiliated group of which the taxpayer is also a member within the meaning of § 1504).

(2) A case remains under the jurisdiction of EP or EO Examinations or EP or EO Determinations even though an appeals office has the identical issue under consideration in the case of another taxpayer (not related within the meaning of § 267 or § 1504) in an entirely different transaction. With respect to the same taxpayer or the same transaction, when the issue is under the jurisdiction of an appeals office, and the applicability of more than one kind of federal tax is dependent upon the resolution of that issue, EP or EO Examinations or EP or EO Determinations may not request a TAM on the applicability of any of the taxes involved.

(3) EP or EO Examinations or EP or EO Determinations or an Appeals Area Director, also may not request a TAM on an issue if the same issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) is in a docketed case for the same taxpayer (or for a related taxpayer or a member of an affiliated group of which the taxpayer is also a member) for any taxable year.

At the earliest possible stage

.03 Once an issue is identified, all requests for a TAM should be made at the earliest possible stage in the proceeding. The fact that the issue is raised late in the examination, determination or appeals process should not influence, however, EP or EO Examinations', EP or EO Determinations' or an Appeals Area Director's, decision to request a TAM.

SECTION 9. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED?

Pre-submission conference generally is permitted when a request for TAM is likely and all parties agree to request the conference

.01 In an effort to promote expeditious processing of requests for a TAM, EP or EO Technical generally will discuss the issue(s) with the EP or EO Examinations or the EP or EO Determinations or the appeals office and the taxpayer prior to the time any request for technical advice is formally submitted to EP or EO Technical. In all cases, other than mandatory TAMs which are described in section 4.04, a pre-submission conference is mandatory.

A request for a pre-submission conference should be made, however, only after the EP or EO Examinations or the EP or EO Determinations or the appeals office determines that it will likely request a TAM.

If the request for a TAM will involve more than one function, representatives from each function involved must participate in the pre-submission conference.

Purpose of pre-submission conference

.02 A pre-submission conference is intended to facilitate agreement between the parties as to the appropriate scope of the request for a TAM or any collateral issues that either should

or should not be included in the request for a TAM, and any other substantive or procedural considerations that will allow EP or EO Technical to provide the parties with a TAM as expeditiously as possible.

A pre-submission conference is not intended to create an alternate procedure for determining the merits of the substantive positions advocated by the EP or EO Examinations or the EP or EO Determinations or the appeals office or by the taxpayer. Rather, the conference is intended only to facilitate the overall process.

Request for pre-submission conference must be submitted in writing by the EP or EO Examinations or the EP or EO Determinations or the appeals office

.03 A request for a pre-submission conference must be submitted in writing by the EP or EO Examinations or the EP or EO Determinations or the appeals office. The request should identify the office expected to have jurisdiction over the request for a TAM. The request should include a brief explanation of the primary issue so that an assignment to the appropriate group can be made.

Group will contact the EP or EO Examinations or the EP or EO Determinations or the appeals office to arrange the pre-submission conference

.04 Within 5 working days after it receives the request, the group assigned responsibility for conducting the pre-submission conference will contact the EP or EO Examinations or the EP or EO Determinations or the appeals office to arrange a mutually convenient time for the parties to meet (generally by telephone) in the EP or EO Technical office. The conference generally should be held within 30 calendar days after the EP or EO Examinations or the EP or EO Determinations or the appeals office is contacted. The EP or EO Examinations or the EP or EO Determinations or the appeals office will be responsible for coordinating with the taxpayer as well as with any other Service personnel whose attendance the EP or EO Examinations or the EP or EO Determinations or the appeals office believes would be appropriate.

Pre-submission conference generally held by telephone

.05 Generally, pre-submission conferences for TAMs are held by telephone with EP or EO Technical unless the parties specifically request that the conference be held in person.

Certain information required to be submitted to EP or EO Technical prior to the pre-submission conference

.06 At least 10 working days before the scheduled pre-submission conference, the EP or EO Examinations or the EP or EO Determinations or the appeals office and the taxpayer should submit to EP or EO Technical a statement of the pertinent facts (including any facts in dispute), a statement of the issues that the parties would like to discuss, and any legal analysis, authorities, or background documents that the parties believe would facilitate EP or EO Technical's understanding of the issues to be discussed at the conference. The legal analysis provided for the pre-submission conference need not be as fully developed as the analysis that ultimately will accompany the request for a TAM, but it should allow EP or EO Technical to become reasonably informed regarding the subject matter of the conference prior to the meeting. The EP or EO Examinations or the EP or EO Determinations or the appeals office or the taxpayer should ensure that the EP or EO Technical office receives a copy of any required power of attorney, on Form 2848, *Power of Attorney and Declaration of Representative*.

Manner of submitting pre-submission materials

.07 The pre-submission materials must be submitted electronically. In order to obtain the protection of taxpayer information offered by the Service's Intranet "firewall," the pre-submission materials must be electronically transmitted by the Service office assigned to the request.

To the extent that supporting materials cannot be submitted electronically, such materials should be sent by fax or by express mail or private delivery service to the tax law specialist or actuary in Headquarters assigned to the request. In such cases, the appropriate provisions of section 10.05 should be followed.

Pre-submission conference may not be taped

.08 Because pre-submission conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Discussion of substantive issues is not binding on the Service

.09 Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

SECTION 10. WHAT MUST BE INCLUDED IN THE REQUEST FOR A TAM?

Statement of issues, facts, law, and arguments

.01 Whether initiated by the taxpayer or by an EP or EO Examinations or an EP or EO Determinations or an appeals office, a request for a TAM must include the facts and the issues for which the TAM is requested, and a written statement that clearly sets forth the applicable law and the arguments in support of both the Service's and the taxpayer's positions on the issue or issues.

Taxpayer must submit statement if the taxpayer initiates request for a TAM

(1) If the taxpayer initiates the request for a TAM, the taxpayer must submit to the EP or EO specialist or appeals office, at the time the taxpayer initiates the request, a written statement—

(a) stating the facts and the issues;

(b) explaining the taxpayer's position;

(c) discussing any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, or any other authority supporting the taxpayer's position; and

(d) stating the reasons for requesting technical advice.

If the EP or EO specialist or the appeals office determines that a TAM will be requested, the taxpayer's statement will be forwarded to EP or EO Technical with the request for the TAM.

Taxpayer is encouraged to submit statement if Service initiates request for a TAM

(2) If the request for a TAM is initiated by an EP or EO Examinations office or by an EP or EO Determinations office or by an appeals office, the taxpayer is encouraged to submit the written statement described in section 10.01(1) of this revenue procedure. If the taxpayer's statement is received after the request for the TAM has been forwarded to EP or EO Technical, the statement will be forwarded to EP or EO Technical for association with the TAM.

Statement of authorities contrary to taxpayer's position

(3) Whether the request for a TAM is initiated by the taxpayer or by an EP or EO Examinations office or by an EP or EO Determinations office or by an appeals office, the taxpayer is encouraged to comment on any legislation, tax treaties, regulations, revenue rulings, revenue procedures, or court decisions contrary to the taxpayer's position. If the taxpayer determines that there are no contrary authorities, a statement to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Service, in complex cases or those presenting difficult or novel issues, may request submission of contrary authorities or a statement that none exists.

General provisions of §§ 6104 and 6110

.02 Generally, § 6104(a)(1)(B) provides that an application filed with respect to: (1) the qualification of a pension, profit-sharing, or stock bonus plan under § 401(a) or § 403(a) or an individual retirement arrangement under § 408(a) or § 408(b) will be open to public inspection pursuant to regulations as will (2) any application filed for an exemption from tax under § 501(a) of an organization forming part of a plan or account described above. Generally, § 6110(a) provides that except as provided otherwise, written determinations (defined in § 6110(b)(1) as rulings, determination letters, technical advice memorandums and Chief Counsel advice) and any related background file document will be open to public inspection pursuant to regulations.

Application of § 6104

.03 The requirements for submitting statements and other materials or proposed deletions in TAMs before public inspection is allowed do not apply to requests for any documents to the extent § 6104 applies.

Statement identifying information to be deleted from public inspection

.04 The text of a TAM subject to § 6110(a) may be open to public inspection. The Service deletes certain information from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), the taxpayer must provide a statement indicating the deletions desired ("deletions statement"). If the taxpayer does not submit the deletions statement, the Service will follow the procedures in section 11.06 of this revenue procedure.

A taxpayer who wants only names, addresses, and identifying numbers deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletions statement must be accompanied by a copy of the TAM request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletions statement must indicate the statutory basis, under § 6110(c) for each proposed deletion.

The taxpayer may submit additional deletions statements before the TAM is issued.

The deletions statement must not appear in the request for a TAM but, instead, must be made in a separate document.

The deletions statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or a faxed signature is not permitted.

The taxpayer should follow these same procedures to propose deletions from any additional information submitted after the initial request for a TAM. An additional deletions statement, however, is not required with each submission of additional information if the taxpayer's initial deletions statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants the same information deleted from the additional information.

Transmittal Form 5565, *Request for Technical Advice — EP/EO*

.05 The EP or EO Examinations or the EP or EO Determinations or the appeals office (including another Operating Division of the Service involved in an examination where EP Technical does not have audit jurisdiction but has interpretive jurisdiction as enumerated in section 6.02 of Rev. Proc. 2011–4) should use Form 5565, *Request for Technical Advice — EP/EO*, for transmitting a request for technical advice to EP or EO Technical.

The appropriate office of the Service must submit electronically, the Form 5565 for a TAM request to *Donzel.H.Littlejohn@irs.gov* for EP matters and *tege.eo.ra@irs.gov* for EO matters. To the extent feasible, the accompanying documents should be submitted to the same e-mail address (followed by a hard copy if requested by the assigned group). *See* section 9.07 for additional information.

The applicable office should submit additional documents that are not available in electronic form by fax to 202–283–9654 for EP matters and 202–283–8858 for EO matters or by express mail or private delivery service to the address below.

Whenever possible, all documents should contain the case number and name of the tax law specialist or actuary assigned to the pre-submission conference for the TAM request. Documents that are being sent in hardcopy should be sent on the business day before the day that the request for a TAM is submitted via e-mail, so as not to delay the process. It is anticipated that most, if not all, such documents will be identified during the pre-submission conference.

The field and the taxpayer are encouraged to provide electronic versions of a proposed TAM containing the taxpayer's deletions and legends for EP Technical's or EO Technical's use.

Address to send requests from EP or EO Examinations or EP or EO Determinations offices or another Operating Division

Employee Plans
Internal Revenue Service
Attn: SE:T:EP:RA
1111 Constitution Ave., NW — PE
Washington, DC 20224

Exempt Organizations
Internal Revenue Service
Attn: SE:T:EO:RA
1111 Constitution Ave., NW — PE
Washington, DC 20224

If a request is from an Appeals office and is within EP/EO's jurisdiction, the field office must send the request for a TAM to one of the above offices with an electronic copy (no paper copy to follow) to the TAM Coordinator in the Office of Tax Policy & Valuation.

Power of attorney

.06 Any authorized representative, as described in section 9.02 of Rev. Proc. 2011–4, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230, as revised, and with the conference and practice requirements of the Statement of Procedural Rules (26 CFR part 601). A Form 2848, *Power of Attorney and Declaration of Representative*, must be used with regard to requests for a TAM under this revenue procedure. An original, a copy or a fax transmission of the power of attorney is acceptable so long as its authenticity is not reasonably disputed.

SECTION 11. HOW ARE REQUESTS HANDLED?

Taxpayer notified

.01 Regardless of whether the taxpayer or the Service initiates the request for a TAM, the EP or EO Examinations or the EP or EO Determinations or the appeals office: (1) will notify the taxpayer that the TAM is being requested; and (2) at or before the time the request is submitted to EP or EO Technical, will give to the taxpayer a copy of the arguments that are being provided to EP or EO Technical in support of its position.

If the EP or EO specialist or appeals office initiates the request for a TAM, he or she will give to the taxpayer a copy of the statement of the pertinent facts and the issues proposed for submission to EP or EO Technical.

This section 11.01 does not apply to a TAM described in section 11.07 of this revenue procedure.

Consider whether published guidance is appropriate

.02 Whenever the assigned reviewer suspects that general guidance should be published regarding the issue presented, the reviewer will notify the Manager, Technical who in turn will notify the Manager, Technical Guidance and Quality Assurance. The Manager, Technical Guidance and Quality Assurance will then determine if the issue meets publication standards. In general, except where policy issues and concerns regarding proper administration of the tax laws require otherwise, the TAM will be issued in advance of published guidance.

Conference offered

.03 When notifying the taxpayer that technical advice is being requested, the EP or EO specialist or appeals office will also tell the taxpayer about the right to a conference in EP or EO Technical if an adverse decision is indicated and will ask the taxpayer whether such a conference is desired.

If the taxpayer disagrees with the Service's statement of facts

.04 If the EP or EO specialist or appeals office initiates the request for a TAM, the taxpayer has 10 calendar days after receiving the statement of facts and specific issues to submit to that specialist or office a written statement specifying any disagreement on the facts and issues. A taxpayer who needs more than 10 calendar days must justify, in writing, the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director.

After receiving the taxpayer's statement of the areas of disagreement, every effort should be made to reach agreement on the facts and the specific points at issue before the matter is referred to EP or EO Technical. If an agreement cannot be reached, the EP or EO Examinations or the EP or EO Determinations or the appeals office will notify the taxpayer in writing. Within 10 calendar days after receiving the written notice, the taxpayer may submit a statement of the taxpayer's understanding of the facts and the specific points at issue. A taxpayer who needs more than 10 calendar days to prepare the statement of understanding must justify, in writing, the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director. Both the statements of the taxpayer and the EP or EO Examinations or EP or EO Determinations or appeals office will be forwarded to EP or EO Technical with the request for a TAM.

When EP or EO Examinations or EP or EO Determinations or the Appeals Area Director and the taxpayer cannot agree on the material facts and the request for a TAM does not involve the issue of whether a letter ruling or determination letter should be modified or revoked, EP

or EO Technical, at its discretion, may refuse to provide technical advice. If EP or EO Technical chooses to issue the TAM, it will base its advice on the facts provided by the EP or EO Examinations or EP or EO Determinations or appeals office.

If a request for a TAM involves the issue of whether a letter ruling or determination letter should be modified or revoked, EP or EO Technical will issue the TAM.

If the Service disagrees with the taxpayer's statement of facts

.05 If the taxpayer initiates the action to request a TAM, and the taxpayer's statement of the facts and issues is not wholly acceptable to the EP or EO Examinations or the EP or EO Determinations or the appeals office, the Service will notify the taxpayer in writing of the areas of disagreement. The taxpayer has 10 calendar days after receiving the written notice to reply to it. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager, or the EP or EO Determinations manager or the Appeals Area Director.

If an agreement cannot be reached, both the statements of the taxpayer and the EP or EO Examinations office or the EP or EO Determinations office or appeals office will be forwarded to EP or EO Technical with the request for a TAM. When the disagreement involves material facts essential to the preliminary assessment of the case, the EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director may refuse to refer a taxpayer initiated request for the TAM to EP or EO Technical.

If EP or EO Examinations or EP or EO Determinations or an Appeals Area Director submits a case involving a disagreement of material facts, EP or EO Technical, at its discretion, may refuse to provide the TAM. If EP or EO Technical chooses to issue the TAM, it will base its advice on the facts provided by the EP or EO Examinations or the EP or EO Determinations or the appeals office.

If the taxpayer has not submitted the required deletions statement

.06 When the EP or EO Examinations or the EP or EO Determinations or the appeals office initiates the request for a TAM, the taxpayer has 10 calendar days after receiving the statement of facts and issues to be submitted to EP or EO Technical to provide the deletions statement required under § 6110 if public inspection is permitted pursuant to § 6110 (*see* section 10.05 of this revenue procedure). In such a case, if the taxpayer does not submit the deletions statement, the EP or EO Examinations or the EP or EO Determinations or the appeals office, will tell the taxpayer that the statement is required.

When the taxpayer initiates the request for a TAM and does not submit with the request a deletions statement as required by § 6110, EP or EO Examinations or EP or EO Determinations or the Appeals Area Director will ask the taxpayer to submit the statement. If EP or EO Examinations or EP or EO Determinations or the Appeals Area Director does not receive the deletions statement within 10 calendar days after asking the taxpayer for it, EP or EO Examinations or EP or EO Determinations or the Appeals Area Director may decline to submit the request for the TAM.

However, if the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director decides to request a TAM, whether initiated by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office or by the taxpayer, in a case in which the taxpayer has not submitted the deletions statement, EP or EO Technical will make those deletions that the Commissioner of Internal Revenue determines are required by § 6110(c).

Criminal or civil fraud cases

.07 The provisions of this section (about referring issues upon the taxpayer's request, obtaining the taxpayer's statement of the areas of disagreement, telling the taxpayer about the referral of issues, giving the taxpayer a copy of the arguments submitted, submitting proposed deletions, and granting conferences in EP or EO Technical) do not apply to a TAM described in § 6110(g)(5)(A) that involves a matter that is the subject of or is otherwise closely related to a criminal or civil fraud investigation, or a jeopardy or termination assessment.

In these cases, a copy of the TAM is given to the taxpayer after all proceedings in the investigations or assessments are complete, but before the Service mails the notice of intention

to disclose the TAM under § 6110(f)(1). The taxpayer may then provide the statement of proposed deletions to EP or EO Technical.

SECTION 12. HOW DOES A TAXPAYER APPEAL AN EP OR EO MANAGER'S OR AN APPEALS AREA DIRECTOR'S DECISION NOT TO SEEK TECHNICAL ADVICE?

Taxpayer notified of decision not to seek a TAM

.01 If the EP or EO specialist's or the appeal's referral of an issue to EP or EO Technical for a TAM is not warranted, the EP or EO specialist or the appeals office will tell the taxpayer. A taxpayer's request for such a referral will not be denied merely because EP or EO Technical provided legal advice, other than advice furnished pursuant to this revenue procedure, to the EP or EO Examinations or the EP or EO Determinations or appeals office on the matter.

Taxpayer may request review of decision not to seek a TAM

.02 The taxpayer may request review of the decision of the EP or EO specialist or the appeals office not to request a TAM in all instances. To do so, the taxpayer must submit to that specialist or office, within 10 calendar days after being told of the decision, a written statement of the facts, law, and arguments on the issue and the reasons why the taxpayer believes the matter should be referred to EP or EO Technical for a TAM. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the appropriate appeals office.

EP or EO Examinations Area manager or EP or EO Determinations manager or Appeals Area Director determines whether technical advice will be sought

.03 The EP or EO specialist or the appeals office submits the taxpayer's statement through proper channels to the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director along with the EP or EO specialist's or the appeals office's statement of why the issue should not be referred to EP or EO Technical. The manager or chief determines, on the basis of the statements, whether a TAM will be requested.

If the manager or chief determines that a TAM is not warranted and proposes to deny the request, the taxpayer is told in writing about the determination. In the letter to the taxpayer, the manager or chief states the reasons for the proposed denial (except in unusual situations when doing so would be prejudicial to the best interests of the Government). The taxpayer has 10 calendar days after receiving the letter to notify the manager or chief of agreement or disagreement with the proposed denial.

Manager or area director's decision may be reviewed but not appealed

.04 The taxpayer may not appeal the decision of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director not to request a TAM from EP or EO Technical. However, if the taxpayer does not agree with the proposed denial, all data on the issue for which the TAM has been sought, including the taxpayer's written request and statements, will be submitted to the Commissioner, Tax Exempt and Government Entities Division or the Appeals Director Tax Policy & Procedure (Exam), as appropriate.

The Commissioner, Tax Exempt and Government Entities Division through the Director, Employee Plans, or the Director, Exempt Organizations or, if appropriate, the Appeals Director Tax Policy & Procedure (Exam) will review the proposed denial solely on the basis of the written record, and no conference will be held with the taxpayer or the taxpayer's representative. The appropriate Director or his or her representative may consult with EP or EO Technical and the Office of Chief Counsel, if necessary, and will notify the EP or EO Examinations or the EP or EO Determinations or the appeals office within 45 calendar days of receiving all the data regarding the request for a TAM whether the proposed denial is approved or disapproved. The EP or EO Examinations or the EP or EO Determinations or appeals office will then notify the taxpayer.

While the matter is being reviewed, the EP or EO Examinations office or the EP or EO Determinations office or the appeals office suspends action on the issue (except when the delay would prejudice the Government's interest).

The provisions of this revenue procedure regarding review of the proposed denial of a request for a TAM continue to be applicable in those situations in which the authority normally exercised by the EP or EO Examinations Area manager, the EP or EO Determinations manager, or the Appeals Area Director has been delegated to another official.

SECTION 13. HOW ARE REQUESTS FOR TAMS WITHDRAWN?

Taxpayer notified

.01 Once a request for a TAM has been sent to EP or EO Technical, only an EP or EO Examinations Area manager, an EP or EO Determinations manager or the Appeals Area Director may withdraw that request for the TAM. He or she may ask to withdraw a request at any time before the responding transmittal memorandum transmitting the TAM is signed.

The EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director as appropriate, must notify the taxpayer in writing of an intent to withdraw the request for the TAM except—

(1) when the period of limitations on assessment is about to expire and the taxpayer has declined to sign a consent to extend the period, or

(2) when such notification would be prejudicial to the best interests of the Government.

If the taxpayer does not agree that the request for a TAM should be withdrawn, the procedures in section 12 of this revenue procedure must be followed.

EP or EO Technical may provide views

.02 When a request for a TAM is withdrawn, EP or EO Technical may send its views to the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director when acknowledging the withdrawal request. In an appeals case, acknowledgment of the withdrawal request should be sent to the appropriate appeals office, through the Director, Technical Services, C:AP. In appropriate cases, the subject matter may be published as a revenue ruling or as a revenue procedure.

SECTION 14. HOW ARE CONFERENCES SCHEDULED?

If requested, offered to the taxpayer when adverse TAM proposed

.01 If, after the TAM is analyzed, it appears that a TAM adverse to the taxpayer will be given, and if a conference has been requested, the taxpayer will be informed, by telephone if possible, of the time and place of the conference.

Timeline

.02 The conference for a TAM must be held within 21 calendar days after the taxpayer is contacted.

If conferences are being arranged for more than one request for a TAM for the same taxpayer, they will be scheduled to cause the least inconvenience to the taxpayer. If considered appropriate, EP or EO Technical will notify the EP or EO specialist or the appeals office of the scheduled conference and will offer the EP or EO specialist or the appeals officer the opportunity to attend the conference. The Commissioner, Tax Exempt and Government Entities Division, the Chief, Appeals, the EP or EO Examinations Area manager, the EP or EO Determinations manager, or the Appeals Area Director may designate other Service representatives to participate in the conference in lieu of, or in addition to, the EP or EO specialist or the appeals officer.

21-day period may be extended if justified and approved

.03 An extension of the 21-day period will be granted only if the taxpayer justifies it in writing, and the group manager (or his or her delegate) of the office to which the case is assigned approves it. No extension will be granted without the approval of the group manager (or his or her delegate). The taxpayer (or an authorized representative) must notify the EP Specialist or the EO Specialist or the appeals office of the request for an extension. Except in rare and unusual circumstances, EP or EO Technical will not agree to an extension of more than 10 working days beyond the end of the 21-day period.

The taxpayer's request for an extension must be submitted before the end of the 21-day period, and should be submitted sufficiently before the end of this period to allow EP or EO Technical to consider, and either approve or deny, the request before the end of the 21-day period. If unusual circumstances near the end of the period make a timely written request impractical, the taxpayer (or an authorized representative) should orally inform the assigned tax law specialist or actuary before the end of the period about the problem and about the forthcoming written request for an extension. The written request for an extension must be submitted to EP or EO Technical promptly after the oral request. The taxpayer will be told promptly (and later in writing) of the approval or denial of the requested extension.

Denial of extension cannot be appealed

.04 There is no right to appeal the denial of a request for an extension of a TAM. If EP or EO Technical is not advised of problems with meeting the 21-day period, or if the written request is not sent promptly after EP or EO Technical is notified of problems with meeting the 21-day period, the TAM will be processed on the basis of the existing record.

Entitled to one conference of right

.05 A taxpayer is entitled by right to only one conference in EP or EO Technical except as provided in section 14.09 of this revenue procedure. This conference is normally held at the group level in EP Technical or EO Technical, whichever is appropriate. It is attended by a person who has authority to sign the transmittal memorandum discussed in section 16.13 on behalf of the group manager.

When more than one group has taken an adverse position on an issue in the request, or when the position ultimately adopted by one group will affect another group's determination, a representative from each group with authority to sign for the group manager will attend the conference. If more than one subject is discussed at the conference, the discussion constitutes the conference of right for each subject discussed.

To have a thorough and informed discussion of the issues, the conference usually is held after the group has had an opportunity to study the case. However, the taxpayer may request that the conference of right be held earlier in the consideration of the case than the Service would ordinarily designate.

The taxpayer has no right to appeal the action of a group to any other Service official. But see section 14.09 for situations in which the Service may offer additional conferences.

Conference may not be taped

.06 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Conference may be delayed to address a request for relief under § 7805(b)

.07 In the event of a tentative adverse determination, the taxpayer may request in writing a delay of the conference so that the taxpayer can prepare and submit a brief requesting relief under § 7805(b) (discussed in section 19 of this revenue procedure). The group manager (or his or her delegate) of the office to which the case is assigned will determine whether to grant or deny the request for delaying the conference. If such request is granted, the Service will schedule a conference on the tentatively adverse position and the § 7805(b) relief request within 10 days of receiving the taxpayer's § 7805(b) request. *See*, section 19.06 of this revenue procedure for the conference procedures if the § 7805(b) request is made after the conference on the substantive issues has been held.

Service makes tentative recommendations

.08 The senior Service representative at the conference ensures that the taxpayer has full opportunity to present views on all the issues in question. The Service representatives explain the tentative decision on the substantive issues.

If the taxpayer requests relief under § 7805(b) (regarding limitation of retroactive effect), the Service representatives will discuss the tentative recommendation concerning the request for relief and the reason(s) for the tentative recommendation.

No commitment will be made as to the conclusion that the Service will finally adopt regarding any issue, including the outcome of the § 7805(b) request for relief.

Additional conferences may be offered

.09 The Service will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed on a new issue or on the same issue but on grounds different from those discussed at the first conference.

When a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, the taxpayer has no right to another conference if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limitation on the number of conferences to which a taxpayer is entitled does not prevent EP or EO Technical from inviting a taxpayer to attend additional conferences, including conferences with an official higher than the group level, if EP or EO Technical personnel think they are necessary. Such conferences are not offered as a matter of course simply because the group has reached an adverse decision. In general, conferences with higher level officials are offered only if the Service determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

In accordance with section 14.02 of this revenue procedure, the EP or EO specialist or the appeals office may be offered the opportunity to participate in any additional taxpayer's conference, including a conference with an official higher than the group level. Section 14.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

Additional information submitted after the conference

.10 After the conference, the taxpayer must furnish to EP or EO Technical, whichever is applicable, any additional data, lines of reasoning, precedents, etc., that the taxpayer proposed and discussed at the conference but did not previously or adequately present in writing. This additional information must be submitted by letter with a penalties of perjury statement in the form described in section 16.10 of this revenue procedure.

For TAMs the taxpayer must also send a copy of the additional information to the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director for comment. Any comments on additional information by Service personnel must be furnished promptly to the appropriate group in EP or EO Technical. If the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director does not have any comments, he or she must notify the group representative promptly.

If the additional information has a significant impact on the facts in the request for a TAM, EP or EO Technical will ask EP or EO Examinations or EP or EO Determinations or the Appeals Area Director for comments on the facts contained in the additional information submitted. The EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director will give the additional information prompt attention.

If the additional information is not received from the taxpayer within 21 calendar days, the TAM will be issued on the basis of the existing record.

An extension of the 21-day period for TAMs may be granted only if the taxpayer justifies it in writing, and the group manager (or his or her delegate) of the office to which the case is assigned approves the extension. Such extension will not be routinely granted. The procedures for requesting an extension of the 21-day period and notifying the taxpayer of the Service's decision are the same as those in sections 14.03 and 14.04 of this revenue procedure.

Normally held by telephone

.11 The conference will be conducted by telephone, unless the taxpayer or the field requests that the conference be held in person. The taxpayer will be advised when to call the Service representatives (not a toll-free call). In no event will the conference be delayed to provide an in-person conference rather than a telephone conference.

In accordance with section 14.02 of this revenue procedure, the EP or EO specialist or appeals office will be offered the opportunity to participate in the telephone conference. Section 14.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

SECTION 15. HOW IS STATUS OF REQUEST OBTAINED?

Taxpayer or taxpayer's representative may request status from EP or EO Examinations or EP or EO Determinations or appeals office

.01 The taxpayer or the taxpayer's representative may obtain information on the status of the request for a TAM by contacting the EP or EO Examinations office or the EP or EO Determinations office or the appeals office that requested the TAM. *See* section 16.08 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer's representative. *See* section 17.03 of this revenue procedure regarding discussions of the contents of the TAM with the taxpayer or the taxpayer's representative.

EP or EO Technical will give status updates to the EP or EO Examinations or EP or EO Determinations or Appeals Area Director

.02 The group representative or manager to whom the TAM request is assigned will give status updates on the request once a month to the EP or EO Examination Area manager or the EP or EO Determinations manager or the Appeals Area Director. In addition, an EP or EO Examinations Area manager or an EP or EO Determinations manager or an Appeals Area Director may get current information on the status of the request for a TAM by calling the person whose name and telephone number are shown on acknowledgment of receipt of the request for the TAM.

See section 16.09 of this revenue procedure about discussing the final conclusions with the EP or EO Examinations office or the EP or EO Determinations office or the appeals office. Further, the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director will be notified at the time the TAM is mailed.

SECTION 16. HOW DOES EP OR EO TECHNICAL PREPARE THE TAM?

Delegates authority to group managers

.01 The authority to issue a TAM on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division has largely been delegated to the managers of the Employee Plans Rulings & Agreements Technical and Actuarial groups, and the Technical Guidance and Quality Assurance group (collectively referred to as "EP Technical"); and of the Exempt Organizations Rulings & Agreements Technical groups and the Technical Guidance and Quality Assurance group (collectively referred to as "EO Technical").

Determines whether request has been properly made

.02 A request for a TAM generally is given priority and processed expeditiously. As soon as the request for a TAM is assigned, the technical employee analyzes the file to see whether it meets all of the requirements of sections 7, 8, and 10 of this revenue procedure.

However, if the request does not comply with the requirements of section 10.04 of this revenue procedure relating to the deletions statement, the Service will follow the procedure in section 11.06 of this revenue procedure.

Contacts the EP or EO Examinations or EP or EO Determinations or appeals office to discuss issues

.03 Upon receipt of a request for a TAM, a representative of the group assigned the TAM will telephone the EP or EO Examinations office or the EP or EO Determinations office or the appeals office to acknowledge receipt of the TAM and to establish a point of contact. Within 21 calendar days from the receipt of a TAM, the tax law specialist or actuary should contact the EP or EO specialist or appeals office to discuss the procedural and substantive issues in the request that come within the group's jurisdiction.

Informs the EP or EO Examinations or EP or EO Determinations or appeals office if any matters in the request have been referred to another group or office

.04 If the technical advice request concerns matters within the jurisdiction of more than one group or office, a representative of the group that received the original technical advice request generally informs the EP or EO Examinations office or the EP or EO Determinations office or the appeals office within 21 calendar days of receiving the request that—

(1) the matters within the jurisdiction of another group or office have been referred to the other group or office for consideration, and

(2) a representative of the other group or office will contact the EP or EO Examinations office or the EP or EO Determinations office or the appeals office about the referral of the

technical advice request within 21 calendar days after receiving it in accordance with section 16.03 above.

Informs the EP or EO Examinations or EP or EO Determinations or appeals office if additional information is needed

.05 The group representative will inform the EP or EO Examinations office or the EP or EO Determinations office or the appeals office that the case is being returned if substantial additional information is required to resolve an issue. Cases also should be returned for additional information when significant unresolved factual variances exist between the statement of facts submitted by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office and the taxpayer. They should also be returned if major procedural problems cannot be resolved by telephone. The EP or EO Examinations office or the EP or EO Determinations office or the appeals office should promptly notify the taxpayer of the decision to return the case for further factual development or other reasons.

If only minor procedural deficiencies exist, the group will request the additional information in the most expeditious manner without returning the case.

Informs the EP or EO Examinations or EP or EO Determinations or appeals office of the tentative conclusion

.06 If all necessary information has been provided, the group representative informs the EP or EO Examinations office or the EP or EO Determinations office or the appeals office within 21-calendar days after receiving the information for a TAM of his or her tentative conclusion.

If a tentative conclusion has not been reached, gives date estimated for tentative conclusion

.07 If a tentative conclusion has not been reached because of the complexity of the issue, the group representative informs the EP or EO Examinations office or the EP or EO Determinations office or the appeals office of the estimated date the tentative conclusion will be made.

Advises the EP or EO Examinations or EP or EO Determinations or appeals office that preliminary conclusion not final

.08 Because the group representative's tentative conclusion may change during the preparation and review of the TAM, the tentative conclusion should not be considered final. Therefore, neither the group representative nor the EP or EO Examinations office or the EP or EO Determinations or the appeals office should advise the taxpayer or the taxpayer's representative of the tentative conclusion before the scheduling of the adverse conference or between the scheduling and the commencement of the adverse conference.

Advises the EP or EO Examinations or EP or EO Determinations or appeals office of final conclusions

.09 In all cases, the group representative should inform the EP or EO specialist or appeals office of EP or EO Technical's final conclusions. The EP or EO specialist or the appeals office should be offered the opportunity to discuss the issues and EP or EO Technical's final conclusions before the TAM is issued.

If needed, requests additional information

.10 If, following the initial contact referenced in section 16.03 of this revenue procedure, it is determined, after discussion with the appropriate group manager or reviewer, that additional information is needed, a group representative will obtain the additional information from the taxpayer, the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director in the most expeditious manner possible. Any additional information requested from the taxpayer by EP or EO Technical must be submitted by letter, accompanied by a penalties of perjury statement, within 21 calendar days after the request for information is made.

Request for additional information by fax

(1) To facilitate prompt action on TAM requests, the Service may request any additional information from the taxpayer by fax.

A request to fax a copy of additional information to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original TAM request or prior to the mailing of the request for additional information. The request to fax additional information must contain the fax number of the taxpayer or the taxpayer's authorized representative to and from whom the document is to be faxed.

Because of the unsecured nature of a fax transmission, the Service will take certain precautions to protect confidential information. For example, the Service will use a cover sheet that identifies the intended recipient of the fax and the number of pages transmitted, that does not identify the taxpayer by name or tax identifying number and that contains a statement prohibiting unauthorized disclosure of the document if a recipient of the faxed document is not the

intended recipient of the fax. Also, for example, the cover sheet should be faxed in an order in which it will become the first page covering the faxed document.

Penalties of perjury statement

(2) Additional information submitted to EP or EO Technical must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information and such facts are true, correct, and complete."** This declaration must be signed and dated by the taxpayer, not the taxpayer's representative. A stamped signature or a faxed signature is not permitted.

(3) A written request for an extension of time to submit additional information must be received by EP or EO Technical within the 21-day period, giving compelling facts and circumstances to justify the proposed extension. The group manager (or his or her delegate) of the office to which the case is assigned will determine whether to grant or deny the request for an extension. Except in rare and unusual circumstances, EP or EO Technical will not agree to an extension of more than 10 working days beyond the end of the 21-day period. There is no right to appeal the denial of a request for an extension.

(4) If EP or EO Technical does not receive the additional information within 21 calendar days, plus any extensions granted by the appropriate group manager (or his or her delegate), EP or EO Technical will process the TAM based on the existing record.

Requests taxpayer to send additional information to the EP or EO Technical and a copy to the EP or EO Examinations or EP or EO Determinations or Appeals Area Director

.11 Whether or not requested by the Service, any additional information submitted by the taxpayer should be sent to the headquarters office. Generally, the taxpayer needs only to submit the original of the additional information to EP or EO Technical. However, in appropriate cases, EP or EO Technical may request additional copies of the information.

Also, the taxpayer must send a copy to the EP or EO Examinations office, the EP or EO Determinations office, or the Appeals Area Director, as appropriate, for comment. Any comments must be furnished promptly to the appropriate group in EP or EO Technical. If the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director does not have any comments, he or she must notify the group representative promptly.

Informs the taxpayer when requested deletions will not be made

.12 Generally, before replying to the request for a TAM, EP or EO Technical informs the taxpayer orally or in writing of the material likely to appear in the TAM that the taxpayer proposed be deleted but that the Service has determined should not be deleted.

If so informed, the taxpayer may submit within 10 calendar days any further information or other arguments supporting the taxpayer's proposed deletions.

The Service will attempt to resolve all disagreements about proposed deletions before EP or EO Technical replies to the request for a TAM. However, the taxpayer does not have the right to a conference to resolve any disagreements about material to be deleted from the text of the TAM. These matters, however, may be considered at any conference otherwise scheduled for the request.

Prepares reply in two parts

.13 EP or EO Technical's reply to a TAM request is in two parts. Each part identifies the taxpayer by name, address, identification number, and year or years involved.

The first part of the reply is a transmittal memorandum. In unusual cases, it is a way of giving the EP or EO Examinations office or the EP or EO Determinations office or the appeals office administrative or other information that under the nondisclosure statutes or for other reasons may not be discussed with the taxpayer.

The second part is the TAM, which contains—

(1) a statement of the issues;

(2) a statement of the facts pertinent to the issues;

(3) a statement of the pertinent law, tax treaties, regulations, revenue rulings, and other precedents published in the Internal Revenue Bulletin, and court decisions;

(4) a discussion of the rationale underlying the conclusions reached by EP or EO Technical; and

(5) the conclusions of EP or EO Technical.

The conclusions give direct answers, whenever possible, to the specific issues raised by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office. However, EP or EO Technical is not bound by the precise statement of the issues as submitted by the taxpayer or by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office and may reframe the issues to be answered in the TAM. The discussion in the TAM of the issues will be in sufficient detail so that the EP or EO Examinations or EP or EO Determinations or appeals officials will understand the reasoning underlying the conclusion.

Accompanying a TAM subject to § 6110, is a notice under § 6110(f)(1) of intention to disclose the TAM (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

Routes replies to appropriate office

.14 Replies to requests for TAMs from EO Examinations Area managers and EO Determinations managers are addressed to:

Internal Revenue Service
Attn: EO Mandatory Review
MC 4920 DAL
1100 Commerce Street
Dallas, TX 75242

The EO Mandatory Review Staff will ensure that copies are forwarded to the EO Examinations Area manager or the EO Determinations manager.

Replies to requests for TAMs from EP Examinations Area managers as well as replies to all requests for TAMs from other Operating Divisions of the Service involved in an examination where EP Technical does not have audit jurisdiction but has interpretive jurisdiction as enumerated in section 6.02 of Rev. Proc. 2011–4, are addressed to:

Internal Revenue Service
Attn: EP Special Review — Room 1550
SE:T:EP:E:PR:SR:Technical Advice Coordinator
P. O. Box 13163
Baltimore, MD 21203

The EP Special Review Staff will ensure that copies are forwarded to the applicable manager.

Replies to requests for TAMs from EP Determinations managers, are addressed to:

Internal Revenue Service
Attn: EP Determinations Quality Assurance
P. O. Box 2508
Cincinnati, OH 45201

Replies to requests for TAMs from the Appeals Area Director are routed back to the appropriate Appeals Area Director.

SECTION 17. HOW DOES AN EP OR EO EXAMINATIONS OR EP OR EO DETERMINATIONS OR AN APPEALS OFFICE USE THE TAMs?

Generally applies advice in processing the taxpayer's case

.01 The EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director must process the taxpayer's case on the basis of the conclusions in the TAM unless—

(1) the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director decides that the conclusions reached by EP or EO Technical in a TAM should be reconsidered (the reconsideration process may include a conference held with the EP or EO specialist or appeals office that requested the TAM and the tax law specialist or actuary who drafted the TAM), or

(2) the Appeals Area Director in the case of a TAM unfavorable to the taxpayer, decides to settle the issue in the usual manner under existing authority.

Subject to a request for reconsideration of the conclusions in a TAM, EP or EO Examinations or EP or EO Determinations must follow the conclusions in a TAM as to all issues and the Appeals Area Director must follow the conclusions in a TAM on issues of an organization's/plan's status or qualification. Thus, if the TAM received by EP or EO Examinations or EP or EO Determinations concerns an organization's/plan's status or qualification, the organization/plan has no appeal to the appeals office on those specific issues.

Reconsideration

.02 The EP or EO Area Examinations office or the EP or EO Determinations office or the Appeals Area Director has 30 calendar days after receipt of a TAM to either formally request reconsideration or give the adopted TAM to the taxpayer. Requests for TAM reconsideration must describe with specificity the errors in the TAM analysis and conclusions. Requests for reconsideration should not reargue points raised in the initial request, but should instead focus on points that the TAM overlooked or misconstrued in the arguments by the EP or EO Area Examinations office or the EP or EO Determinations office or the Appeals Area Director in support of their request. The Headquarters office may request further submissions from the field or the taxpayer, but the parties should make no additional submissions in the absence of such a request.

If the field does not request reconsideration of a TAM, the TAM will take effect when the field provides a copy of the adopted TAM to the taxpayer, or at the end of the 30-day period following the issuance of the TAM to the field.

Discussion with the taxpayer

.03 EP or EO Technical will not discuss the contents of the TAM with the taxpayer or the taxpayer's representative until the taxpayer has been given a copy by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office

Gives copy to the taxpayer

.04 The EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director only after adopting the TAM, gives the taxpayer (1) a copy of the TAM described in section 16.13, and (2) the notice under § 6110(f)(1) of intention to disclose the TAM (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

This requirement does not apply to a TAM involving a criminal or civil fraud investigation, or a jeopardy or termination assessment, as described in section 11.07 of this revenue procedure, or documents to which § 6104 (document open to public inspection) applies as described in section 10.03.

Taxpayer may protest deletions not made

.05 After receiving the notice under § 6110(f)(1) of intention to disclose the TAM, the taxpayer may protest the disclosure of certain information in it. The taxpayer must submit a written statement within 20 calendar days identifying those deletions not made by the Service that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version

of the TAM proposed to be open to public inspection with brackets around deletions proposed by the taxpayer that have not been made by EP or EO Technical.

Generally, EP or EO Technical considers only the deletion of material that the taxpayer has proposed be deleted or other deletions as required under § 6110(c) before the EP or EO Technical reply is sent to the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director. Within 20 calendar days after it receives the taxpayer's response to the notice under § 6110(f)(1), EP or EO Technical must mail the taxpayer its final administrative conclusion about the deletions to be made.

When no copy is given to the taxpayer

.06 If EP or EO Technical tells the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director that a copy of the TAM should not be given to the taxpayer and the taxpayer requests a copy, the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director will tell the taxpayer that no copy will be given.

SECTION 18. WHAT IS THE EFFECT OF A TAM?

Applies only to the taxpayer for whom TAM was requested

.01 A taxpayer may not rely on a TAM issued by the Service for another taxpayer.

Usually applies retroactively

.02 Except when stated otherwise, a holding in a TAM is applied retroactively, unless the Commissioner, Tax Exempt and Government Entities Division exercises discretionary authority under § 7805(b) to limit the retroactive effect of the holding. Section 18.06 below lists the criteria necessary for granting § 7805(b) relief, and section 18 of this revenue procedure describes the effect of § 7805(b) relief.

Generally applied retroactively to modify or revoke prior TAM

.03 A holding that modifies or revokes a holding in a prior TAM is applied retroactively, with one exception. If the new holding is less favorable to the taxpayer than the earlier one, it generally is not applied to the period when the taxpayer relied on the prior holding in situations involving continuing transactions.

Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked

.04 If a TAM relates to a continuing action or a series of actions, ordinarily it is applied until specifically withdrawn or until the conclusion is modified or revoked by enactment of legislation, ratification of a tax treaty, a decision of the United States Supreme Court, or the issuance of regulations (temporary or final), a revenue ruling, or other statement published in the Internal Revenue Bulletin. Publication of a notice of proposed rulemaking does not affect the application of a TAM.

Applies to continuing action or series of actions until material facts change

.05 A taxpayer is not protected against retroactive modification or revocation of a TAM involving a continuing action or a series of actions occurring after the material facts on which the TAM is based have changed.

Does not apply retroactively under certain conditions

.06 Generally, a TAM that modifies or revokes a letter ruling or another TAM or a determination letter is not applied retroactively either to the taxpayer to whom or for whom the letter ruling or TAM or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling or TAM or determination letter if—

(1) there has been no misstatement or omission of material facts;

(2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling or TAM or determination letter was based;

(3) there has been no change in the applicable law;

(4) in the case of a letter ruling, it was originally issued on a prospective or proposed transaction; and

(5) the taxpayer directly involved in the letter ruling or TAM or determination letter acted in good faith in relying on the letter ruling or TAM or determination letter, and the retroactive

modification or revocation would be to the taxpayer's detriment. For example, the tax liability of each employee covered by a letter ruling or TAM or determination letter relating to a pension plan of an employer is directly involved in the letter ruling or TAM or determination letter. However, the tax liability of members of an industry is not directly involved in a letter ruling or TAM or determination letter issued to one of the members, and the holding in a modification or revocation of a letter ruling or TAM or determination letter to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not obtain the nonretroactive application to one client of a modification or revocation of a letter ruling or TAM or determination letter previously issued to another client.

When a letter ruling or determination letter to a taxpayer or a TAM involving a taxpayer is modified or revoked with retroactive effect, the notice to the taxpayer, except in fraud cases, sets forth the grounds on which the modification or revocation is being made and the reason why the modification or revocation is being applied retroactively.

In order for a TAM that modifies or revokes a letter ruling or another TAM or a determination letter not to be applied retroactively either to the taxpayer to whom or for whom the letter ruling, TAM or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling, TAM or determination letter, such taxpayer generally must request relief under § 7805(b) in the manner described in section 19 below.

SECTION 19. HOW MAY RETROACTIVE EFFECT BE LIMITED?

Commissioner has discretionary authority under § 7805(b)

.01 Under § 7805(b) the Commissioner or the Commissioner's delegate has the discretion to prescribe the extent, if any, to which a TAM will be applied without retroactive effect.

Taxpayer may request Commissioner to exercise authority

.02 A taxpayer who has received a TAM or for whom a TAM request is pending may request that the Commissioner, Tax Exempt and Government Entities Division, the Commissioner of Internal Revenue's delegate, exercise the discretionary authority under § 7805(b) to limit the retroactive effect of any holding stated in the TAM, which may still be pending, which must have been issued, or to limit the retroactive effect of any subsequent modification or revocation of a TAM.

Form of request to limit retroactivity—before an examination

.03 When a TAM that concerns a continuing transaction is modified or revoked by, for example, a subsequent revenue ruling or final regulations, a request to limit the retroactive effect of the modification or revocation of the TAM must be made in the form of a request for a letter ruling if submitted before examination of the return that contains the transaction that is the subject of the request for the letter ruling. *See* Rev. Proc. 2011–4.

Form of request to limit retroactivity—during course of an examination

.04 When, during the course of an examination of a taxpayer's return by EP or EO Examinations or consideration by the Appeals Area Director, a taxpayer is informed that EP or EO Examinations or the Appeals Area Director recommends that a TAM be modified or revoked, a request to limit the retroactive application of the modification or revocation of the TAM must itself be made in the form of a request for a TAM. *See* sections 7, 8 and 10 of this revenue procedure and sections 19.07 and 19.08 below.

The taxpayer must also submit a statement that the request is being made pursuant to § 7805(b). This statement must also indicate the relief requested and give the reasons and arguments in support of the relief requested. It must also be accompanied by any documents bearing on the request. The explanation should discuss the five items listed in section 18.06 of this revenue procedure as they relate to the taxpayer's situation.

The taxpayer's request, including the statement that the request is being made pursuant to § 7805(b), must be forwarded by EP or EO Examinations or the Appeals Area Director to EP or EO Technical for consideration.

Form of request to limit retroactivity—technical advice that does not modify or revoke prior memorandum

.05 A request to limit the retroactive effect of a holding in a TAM that does not modify or revoke a TAM may be made as part of that TAM request, either initially, or at any time before the TAM is issued by EP or EO Technical. In such a case, the taxpayer must also submit a statement in support of the application of § 7805(b), as described in section 19.04 above.

Taxpayer's right to a conference

.06 When a request for a TAM concerns only the application of § 7805(b), the taxpayer has the right to a conference in EP or EO Technical in accordance with the provisions of section 14 of this revenue procedure.

If the request for application of § 7805(b) is included in the request for a TAM on the substantive issues or is made before the conference of right on the substantive issues, the § 7805(b) issues will be discussed at the taxpayer's one conference of right.

If the request for the application of § 7805(b) is made as part of a pending TAM request after a conference has been held on the substantive issues, and the Service determines that there is justification for having delayed the request, then the taxpayer will have the right to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue.

Exhaustion of administrative remedies — employee plans determination letter requests

.07 Where the applicant has requested EP Determinations to seek a TAM on the applicability of § 7805(b) relief to a qualification issue under § 401(a) pursuant to a determination letter request, the applicant's administrative remedies will not be considered exhausted until EP Technical has a reasonable time to act on the request for a TAM. *See* section 20 of Rev. Proc. 2011–6.

Exhaustion of administrative remedies — exempt organization matters

.08 Where a TAM has been requested pursuant to an exempt organization's request for § 7805(b) relief from the retroactive application of an adverse determination within the meaning of § 7428(a)(1), the exempt organization's administrative remedies will not be considered exhausted, within the meaning of § 7428(b)(2), until EO Technical has a reasonable time to act on the request for a TAM.

SECTION 20. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

Rev. Proc. 2010–5 is superseded.

SECTION 21. EFFECTIVE DATE

This revenue procedure is effective January 3, 2011.

SECTION 22. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 6.03, 9, 10.01, 10.05, 11.04, 11.05, 11.06, 12.02, 12.03, 13.01, 14.03, 14.10, 16.10, 16.12, 17.05, 19.03, 19.04, and 19.05. This information is required to evaluate and process the request for a TAM. In addition, this information will be used to help the Service delete certain information from the text of the TAM before it is made available for public inspection, as required by § 6110. The collections of information are required to obtain a TAM. The likely respondents are businesses or other for-profit institutions and not-for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 1,950 hours.

The estimated annual burden per respondent/recordkeeper varies from 4 hours to 60 hours, depending on individual circumstances, with an estimated average of 19.5 hours. The estimated number of respondents and/or recordkeepers is 100.

The estimated annual frequency of responses is one request per applicant.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Yaguo Zhang of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding how this revenue procedure applies to employee plans matters, please contact the Employee Plans Customer Assistance Service at 877–829–5500 (a toll-free number) between the hours of 8:30 am and 4:30 pm Eastern time, Monday through Friday. In the alternative, please e-mail Mr. Zhang at *RetirementPlanQuestions@irs.gov*. For exempt organizations matters, please email Mr. Jacob T. Clauson at *tege.eo.ra@irs.gov*. Please put "Question about Rev. Proc. 2011–5" in the subject line.

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SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

Purpose of revenue procedure

.01 This revenue procedure sets forth the procedures of the various offices of the Internal Revenue Service for issuing determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans (ESOPs) under §§ 401, 403(a), 409 and 4975(e)(7) of the Internal Revenue Code of 1986, and the status for exemption of any related trusts or custodial accounts under § 501(a). Also see Rev. Proc. 2007–44, 2007–2 C.B. 54, which contains a description of the determination letter program, including when to submit a request for a determination letter within the 5-year and 6-year staggered remedial amendment cycles, that apply to individually designed and pre-approved plans.

Organization of revenue procedure

.02 Part I of this revenue procedure contains instructions for requesting determination letters for various types of plans and transactions. Part II contains procedures for providing notice to interested parties and for interested parties to comment on determination letter requests. Part III contains procedures concerning the processing of determination letter requests and describes the effect of a determination letter.

SECTION 2. WHAT CHANGES HAVE BEEN MADE TO THIS PROCEDURE?

In general

.01 This revenue procedure is a general update of Rev. Proc. 2010–6, 2010–1 I.R.B. 193, which contains the Service's general procedures for employee plans determination letter requests.

Other changes

.02 In addition to minor revisions, such as updating references, the following changes have been made:

(1) Section 2.03 is revised to reference the 2010 Cumulative List, Notice 2010–90, 2010–52 I.R.B. 909.

(2) Section 3.01(1)(g) and 7.07 are added to provide that the Service will consider § 414(x) in issuing determination letters for individually designed plans that consist of a defined benefit plan and a qualified cash or deferred arrangement. A § 414(x) combined plan sponsor must submit 2 Form 5300s and 2 user fees.

(3) Section 3.02(1) is revised to include § 415(m) to the list of areas in which determination letters will not be issued.

(4) Section 3.03 is revised to reference the second submission period for Cycle A individually designed plans and defined contribution plans that are master and prototype (M&P) or volume submitter (VS) plans.

(5) Section 6.05 is revised to indicate that Courier 10 point font should be used when preparing an application, in order for the documents to be properly scanned.

(6) Section 6.18 is revised to clarify that the Service will determine whether applications for plans submitted together will be worked simultaneously.

(7) Section 7.03 is revised to reference the second submission period for Cycle A individually designed plans and defined contribution plans that are master and prototype (M&P) or volume submitter (VS) plans and to clarify that, generally, an application and user fee will be returned if an off-cycle application is not reviewed before the beginning of the on-cycle period.

(8) Section 7.04 is revised to eliminate the requirement that the applicant submit any amendments that are adopted and/or proposed after the date of the determination letter application and before the Service issues the determination letter.

(9) Section 7.06 is revised to clarify the application procedure and to provide that when a controlled group election has been made for multiple plans to be on the same cycle, the Service will determine whether these applications will be worked simultaneously.

(10) Section 9.02(2) is revised to provide that a request for a determination letter must include the Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request*.

(11) Section 9.02(2)(f)(iii) regarding GUST is deleted.

(12) Section 9.02(5) regarding practitioners filing determination letter requests on behalf of employers adopting substantially similar plans who need a determination letter to have reliance or who otherwise desire a determination letter is deleted.

(13) Section 9.04 is revised to provide that a request for a determination letter must include Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request*; Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans*; and Form 8905, *Certification of Intent to Adopt a Pre-approved Plan*, in addition to the other listed requirements.

(14) Section 9.07 is revised to reflect the 2-year window for adopting employers of defined benefit pre-approved plans.

(15) Section 11 is revised to provide that the Service will not issue determination letters with respect to amendments only.

(16) Section 12.04(3) is revised to reference the preceding 5 or 6-year remedial amendment cycle rather than the preceding "three plan years."

(17) Section 12.07 is revised to provide that the Service has the discretion to request copies of interim amendments while reviewing an application for a determination letter in connection with plan termination.

(18) Section 13 regarding group trusts is revised to include Rev. Rul. 2011–1.

(19) The effective date in Section 23 is revised to coincide with the beginning of Cycle A (February 1, 2011).

(20) The Appendix addresses § 420 transfers, however, the Service is not updating the Appendix for § 420(e)(5) or § 420(f), as amended by PPA '06, pending the inclusion of these PPA '06 changes in a future Cumulative List.

Other guidance

.03 Other guidance affecting this revenue procedure:

Rev. Proc. 2005–16, 2005–1 C.B. 674, describes the procedures for the "pre-approval" of plans under the master and prototype (M&P) program and the volume submitter (VS) program. Rev. Proc. 2007–44 describes a new system of remedial amendment cycles that applies to pre-approved plans and individually designed plans, and the deadlines to submit applications for opinion, advisory and determination letters. The Service issues a Cumulative List every year identifying changes affecting plan qualification requirements to be used by plans

whose remedial amendment cycle begins in the month of February following the publication of the Cumulative List. The 2010 Cumulative List is contained in Notice 2010–90, 2010–52 I.R.B. 909. Revenue Procedure 2008–56, 2008–2 C.B. 826, modifies Rev. Proc. 2007–44 with respect to certain restrictions that apply to the issuance of opinion and advisory letters for new pre-approved plans. Announcement 2010–20, 2010–15 I.R.B. 551 provides information with respect to the issuance of opinion and advisory letters, and the opening of the EGTRRA determination letter program for pre-approved defined benefit plans.

PART I. PROCEDURES FOR DETERMINATION LETTER REQUESTS

SECTION 3. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN GUIDANCE UNDER THIS PROCEDURE?

Types of requests

.01 Determination letters may be requested on completed and proposed transactions as set forth in the table below:

	TYPE OF REQUEST	FORMS	REV. PROC. SECTION
1.	**Initial Qualification, etc.**		
a.	Individually-Designed Plans (including collectively bargained plans)	5300, Schedule Q (optional)	7
b.	ESOPs	5300, 5309 Schedule Q (optional)	7
c.	Adoptions of Master & Prototype Plans	5307, Schedule Q (optional)	9
d.	Adoptions of Volume Submitter Plans	5307, Schedule Q (optional)	9
e.	Multiple Employer Plans	5300, Schedule Q (optional)	10
f.	Group Trusts	Cover letter	13
g.	§ 414(x) Combined Plans	Two 5300s	7
2.	**Termination**		
a.	In general	5310, 6088 Schedule Q (optional)	12
b.	Multiemployer plan covered by PBGC insurance	5300, 6088, Schedule Q (optional)	12

Note: Form 5310–A, Notice of Plan Merger or Consolidation, Spinoff or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, generally must be filed not less than 30 days before the merger, consolidation or transfer of assets and liabilities. The filing of Form 5310–A will not result in the issuance of a determination letter.

3.	**Special Procedures**		
a.	Affiliated Service Group Status (§ 414(m)), Leased Employees (§ 414(n))	5300, Schedule Q (optional)	14
b.	Minimum Funding Waiver	5300, Schedule Q (optional)	15
c.	Section 401(h) Determination Letters	5300, Schedule Q (optional)	16

	TYPE OF REQUEST	FORMS	REV. PROC. SECTION
d.	Section 420 Determination Letters Including Other Matters Under § 401(a)	5300, Schedule Q (optional), Cover letter, Checklist	16
e.	Section 420 Determination Letters Excluding Other Matters Under § 401(a)	Cover letter, Checklist	16

Areas in which determination letters will not be issued

.02 Determination letters issued in accordance with this revenue procedure do not include determinations on the following issues within the jurisdiction of the Commissioner, TE/GE:

(1) Issues involving §§ 72, 79, 105, 125, 127, 129, 402, 403 (other than 403(a)), 404, 409(l), 409(m), 412, 415(m), 457, 511 through 515, and 4975 (other than 4975(e)(7)), unless these determination letters are authorized under section 7 of Rev. Proc. 2011–4, page 123, this Bulletin.

(2) Plans or plan amendments for which automatic approval is granted pursuant to section 19.01 of Rev. Proc. 2005–16.

(3) Plan amendments described below (these amendments will, to the extent provided, be deemed not to alter the qualified status of a plan under § 401(a)).

(a) An amendment solely to permit a trust forming part of a plan to participate in a pooled fund arrangement described in Rev. Rul. 81–100, 1981–1 C.B. 326, as clarified and modified by Rev. Rul. 2004–67, 2004–2 C.B. 28;

(b) An amendment that merely adjusts the maximum limitations under § 415 to reflect annual cost-of-living increases under § 415(d), other than an amendment that adds an automatic cost-of-living adjustment provision to the plan; and

(c) An amendment solely to include language pursuant to § 403(c)(2) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) concerning the reversion of employer contributions made as a result of mistake of fact.

(4) This section applies to determination letter requests with respect to plans that combine an ESOP (as defined in § 4975(e)(7) of the Code) with retiree medical benefit features described in § 401(h) (HSOPs).

(a) In general, determination letters will not be issued with respect to plans that combine an ESOP with an HSOP with respect to:

(i) whether the requirements of § 4975(e)(7) are satisfied;

(ii) whether the requirements of § 401(h) are satisfied; or

(iii) whether the combination of an ESOP with an HSOP in a plan adversely affects its qualification under § 401(a).

(b) A plan is considered to combine an ESOP with an HSOP if it contains ESOP provisions and § 401(h) provisions.

(c) However, an arrangement will not be considered covered by section 3.02(4) of this revenue procedure if, under the provisions of the plan, the following conditions are satisfied:

(i) No individual accounts are maintained in the § 401(h) account (except as required by § 401(h)(6));

(ii) No employer securities are held in the § 401(h) account;

(iii) The § 401(h) account does not contain the proceeds (directly or otherwise) of an exempt loan as defined in § 54.4975–7(b)(1)(iii) of the Pension Excise Tax Regulations; and

(iv) The amount of actual contributions to provide § 401(h) benefits (when added to actual contributions for life insurance protection under the plan) does not exceed 25 percent of the sum of: (1) the amount of cash contributions actually allocated to participants' accounts in the plan and (2) the amount of cash contributions used to repay principal with respect to the exempt loan, both determined on an aggregate basis since the inception of the § 401(h) arrangement.

Submission period for applications

.03 The Service will accept applications for determination letters for the second Cycle A submission period from February 1, 2011 to January 31, 2012. The Service will also accept opinion and advisory letter applications for defined contribution plans that are master and prototype (M&P) or volume submitter (VS) plans beginning on February 1, 2011. The Service's review will take into account the qualification requirements of the Code as amended by PPA, and other items identified on the 2010 Cumulative List in Notice 2010–90.

The cycles commence in different years for different plans within a staggered five-year period, so not all individually designed plans will have the same cycle or submission period. Further, the submission periods for pre-approved defined contribution and defined benefit plans are different than those that apply to individually designed plans. See Rev. Proc. 2005–16 and Rev. Proc. 2007–44 for details.

SECTION 4. ON WHAT ISSUES MUST WRITTEN GUIDANCE BE REQUESTED UNDER DIFFERENT PROCEDURES?

TE/GE

.01 Other procedures for obtaining rulings, determination letters, opinion letters, etc., on matters within the jurisdiction of the Commissioner, TE/GE are contained in the following revenue procedures:

(1) Employee Plans Technical (EP Technical) letter rulings, information letters, etc.: See Rev. Proc. 2011–4, page 123, this Bulletin.

(2) M&P and VS plans: See Notice 2001–42, 2001–2 C.B. 70, Notice 2001–57, 2001–2 C.B. 279, Rev. Proc. 2004–25, 2004–1 C.B. 791, Rev. Proc. 2005–16, Rev. Proc. 2007–44 (as modified by Rev. Proc. 2008–56, 2008–2 C.B. 826 and Rev. Proc. 2009–36, 2009–2 C.B. 304), Notice 2007–3, 2007–1 C.B. 255, and Notice 2010–90.

(3) Technical advice requests: See Rev. Proc. 2011–5, page 167, this Bulletin.

Chief Counsel's revenue procedure

.02 For the procedures for obtaining letter rulings, determination letters, etc., on matters within the jurisdiction of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), or within the jurisdiction of other offices of Chief Counsel, see Rev. Proc. 2011–1, page 1, this Bulletin.

SECTION 5. WHAT IS THE GENERAL SCOPE OF A DETERMINATION LETTER?

Scope of this section

.01 This section delineates, generally, the scope of an employee plan determination letter. It identifies certain qualification requirements, relating to nondiscrimination, that are considered by the Service in its review of a plan only at the election of the applicant. This section also identifies certain qualification requirements that are not considered by the Service in its review of a plan and with respect to which determination letters do not provide reliance. This section applies to all determination letters other than letters relating to the qualified status of group trusts; and certain letters relating solely to the requirements of § 420, regarding the transfer of assets in a defined benefit plan to a health benefit account described in § 401(h). For additional information pertaining to the scope of reliance on a determination letter, see sections 8, 9 and 21 of this revenue procedure, and section 19 of Rev. Proc. 2005–16.

Scope of determination letters

.02 In general, employee plans are reviewed by the Service for compliance with the form requirements (that is, those plan provisions that are required as a condition of qualification under § 401(a)). In addition, as described below, certain nondiscrimination requirements are considered if the applicant specifically requests that they be considered. For terminating plans, the requirements are those that apply as of the date of termination. See Rev. Proc. 2007–44 for further details on the scope of the Service's review of determination letter applications.

Nondiscrimination in amount requirement

.03 Unless the applicant elects otherwise, a plan will not be reviewed for, and a determination letter may not be relied on with respect to, whether a plan satisfies one of the safe harbors or the general test for nondiscrimination in amount of contributions or benefits requirements under § 1.401(a)(4)–1(b)(2) of the Income Tax Regulations.

Minimum coverage and § 401(a)(26) participation requirements

.04 Unless the applicant elects otherwise, a plan will not be reviewed for, and a determination letter may not be relied on with respect to, the minimum coverage requirements of § 410(b). If the applicant demonstrates that the plan satisfies the coverage requirements of § 410(b), the determination letter may also be relied on with respect to the participation requirements of § 401(a)(26).

Nondiscriminatory current availability requirement

.05 If the applicant demonstrates that the plan satisfies the coverage requirements of § 410(b), the determination letter may also be relied on as to whether the plan satisfies the nondiscriminatory current availability requirements of § 1.401(a)(4)–4(b) with respect to those benefits, rights, and features that are currently available (within the meaning of § 1.401(a)(4)–4(b)(2)) to all employees in the plan's coverage group. The plan's coverage group consists of those employees who are treated as currently benefiting under the plan (within the meaning of § 1.410(b)–3(a)) for purposes of demonstrating that the plan satisfies the minimum coverage requirements of § 410(b). Applications will not be reviewed as to, and determination letters may not be relied on with respect to, whether the plan satisfies the requirements of § 1.401(a)(4)–4(b) with respect to any benefit, right, or feature other than the ones described above, except those that are specified by the applicant and for which the applicant has provided information relevant to the determination.

Other nondiscrimination requirements

.06 An applicant may also ask that the review of its plan consider certain other nondiscrimination requirements which are described in Schedule Q (Form 5300), such as whether a definition of compensation satisfies § 414(s).

Reliance conditioned on retention of information

.07 A favorable determination letter may be relied on with respect to whether a plan satisfies a coverage or nondiscrimination requirement only if the application, demonstrations and other information submitted to the Service in support of a favorable determination is retained by the applicant.

Effective availability requirement

.08 In no event will any plan be reviewed to determine, and a determination letter may not be relied on with respect to, whether any benefit, right, or feature under the plan satisfies the effective availability requirement of § 1.401(a)(4)–4(c).

Other limits on scope of determination letter

.09 Determination letters may generally be relied on with respect to whether the timing of a plan amendment (or series of amendments) satisfies the nondiscrimination requirements of § 1.401(a)(4)–5(a) of the regulations, unless the plan amendment is part of a pattern of amendments that significantly discriminates in favor of highly compensated employees. A favorable determination letter does not provide reliance for purposes of § 404 and § 412 with respect to whether an interest rate (or any other actuarial assumption) is reasonable. Furthermore, a favorable determination letter will not constitute a determination with respect to the use of the substantiation guidelines contained in Rev. Proc. 93–42, 1993–2 C.B. 540, *e.g.*, a determination letter will not consider whether data submitted with an application is substantiation quality. Lastly, a favorable determination letter will not constitute a determination with respect to whether any requirements of § 414(r), relating to whether an employer is operating qualified separate lines of business, are satisfied. However, if an employer is relying on § 414(r) to satisfy the minimum coverage or § 401(a)(26) participation requirements, and the applicant so requests, a determination letter will take into account whether the plan satisfies the nondiscriminatory classification test of § 410(b)(5)(B). In this case, if the requirements of § 410(b)

or § 401(a)(26) are to be applied on an employer-wide basis under the special rules for employer-wide plans, a determination letter will take into account whether the requirements of the applicable special rule set forth in § 1.414(r)–1(c)(2)(ii) or § 1.414(r)–1(c)(3)(ii) are met.

Publication 794

.10 Publication 794, *Favorable Determination Letter*, contains other information regarding the scope of a determination letter, including the requirement that all information submitted with the application be retained as a condition of reliance. In addition, the specific terms of each letter may further define its scope and the extent to which it may be relied upon.

SECTION 6. WHAT IS THE GENERAL PROCEDURE FOR REQUESTING DETERMINATION LETTERS?

Scope

.01 This section contains procedures that are generally applicable to all determination letter requests. Additional procedures for specific requests are contained in sections 7 through 16.

Qualified trusteed plans

.02 A trust created or organized in the United States and forming part of a pension, profit-sharing, stock bonus or annuity plan of an employer for the exclusive benefit of its employees or their beneficiaries that meets the requirements of § 401 is a qualified trust and is exempt from federal income tax under § 501(a) unless the exemption is denied under § 502, relating to feeder organizations, or § 503, relating to prohibited transactions, if, in the latter case, the plan is one described in § 503(a)(1)(B).

Qualified nontrusteed annuity plans

.03 A nontrusteed annuity plan that meets the applicable requirements of § 401 and other additional requirements as provided under § 403(a) and § 404(a)(2), (relating to deductions of employer contributions for the purchase of retirement annuities), qualifies for the special tax treatment under § 404(a)(2), and the other sections of the Code, if the additional provisions of such other sections are also met.

Complete information required

.04 An applicant requesting a determination letter must file the material required by this revenue procedure with the Employee Plans Determinations manager (EP Determinations) at the address in section 6.17. The filing of the application, when accompanied by all information and documents required by this revenue procedure, will generally serve to provide the Service with the information required to make the requested determination. However, in making the determination, the Service may require the submission of additional information. Information submitted to the Service in connection with an application for determination may be subject to public inspection to the extent provided by § 6104. The applicant should include Employee Plans Compliance Resolution System documentation, if any, (*e.g.*, closing agreement or compliance statement) with the determination letter application.

Complete copy of plan and trust instrument required

.05 Except in the case of applications involving master and prototype plans filed on Form 5307 or determination letters for volume submitter plans under section 9.02(2)(e), a complete copy of the plan and trust instrument is required to be included with the determination letter application. All changes made to the most recently approved version of the plan may be, but are not required to be, redlined or highlighted. The determination letter application must also include a copy of the signed and dated timely required interim and other plan amendments made to the date of the application, as provided in section 7.04 (even if these amendments are dated earlier than a previous determination letter issued with respect to the plan) to show that the conditions for eligibility for the applicable remedial amendment period is satisfied. Also see sections 7.03 and 7.04 for what must be included with applications involving plan amendments.

In order for documents to be properly scanned, documents submitted should not be stapled or bound and the Courier 10 point font should be used when preparing the application.

Section 9 of Rev. Proc. 2011–4 applies

.06 Section 9 of Rev. Proc. 2011–4 is generally applicable to requests for determination letters under this revenue procedure.

Separate application for each single § 414(l) plan

.07 A separate application is required for each single plan within the meaning of § 414(l). This requirement does not pertain to applications regarding the qualified status of group trusts.

Coverage and nondiscrimination requirements

.08 An applicant may request that the plan be reviewed to determine that the ratio percentage test of § 410(b)(1) is satisfied or that the plan satisfies one of the design-based safe harbors under § 401(a)(4) by completing the appropriate elective lines on Form 5300 or Form 5307. Schedule Q (Form 5300) may be filed with the application to request consideration of the general test under § 401(a)(4), the average benefit test of § 410(b)(2), or any of the other requirements described on Schedule Q. The applicant must include with the application form the material and demonstrations called for in the instructions to Form 5300 or Form 5307, and, if applicable, Schedule Q.

Prior letters

.09 If the plan has received a favorable determination letter in the past, the application must include a copy of the latest determination letter, if available. If the letter is not available, an explanation must be included with the application, and the employer must include a copy of the prior plan or adoption agreement, including the opinion or advisory letter, if applicable.

User fees

.10 The appropriate user fee, if applicable, must be paid according to the procedures of Rev. Proc. 2011–8, page 237, this Bulletin. Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request, must accompany each determination letter request*. If the criteria for the user fee exemption are met in accordance with Notice 2003–49, 2003–2 C.B. 294, the certification on Form 8717 must be signed. Stamped signatures are not acceptable.

Interested party notification and comment

.11 Before filing an application, the applicant requesting a determination letter must satisfy the requirements of section 3001(a) of ERISA, and § 7476(b)(2) of the Code and the regulations thereunder, which provide that an applicant requesting a determination letter on the qualified status of certain retirement plans must notify interested parties of such application. The general rules of the Service with respect to notifying interested parties of requests for determination letters relating to the qualification of plans involving §§ 401 and 403(a) are set out below in sections 17 and 18 of this revenue procedure.

Contrary authority must be distinguished

.12 If the application for determination involves an issue where contrary authorities exist, failure to disclose or distinguish such significant contrary authorities may result in requests for additional information, which will delay action on the application.

Employer/employee relationship

.13 The Service ordinarily does not make determinations regarding the existence of an employer-employee relationship as part of its determination on the qualification of a plan, but relies on the applicant's representations or assumptions, stated or implicit, regarding the existence of such a relationship. The Service will, however, make a determination regarding the existence of an employer-employee relationship when so requested by the applicant. In such cases, the application with respect to the qualification of the plan should be filed in accordance with the provisions of this revenue procedure, contain the information and documents in the instructions to the application, and be accompanied by a completed Form SS–8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, and any information and copies of documents the organization deems appropriate to establish its status. The Service may, in addition, require further information that it considers necessary to determine the employment status of the individuals involved or the qualification of the plan. After the employer-employee relationships have been determined, EP Determinations may issue a determination letter as to the qualification of the plan.

Incomplete applications returned

.14 If an applicant requesting a determination letter does not comply with all the required provisions of this revenue procedure, EP Determinations, in its discretion, may return the application and point out to the applicant those provisions which have not been met. The failure to provide information required by an application, including any supplemental information required by the instructions for the application, may result in the application being returned to the applicant as incomplete. The request may also be returned pursuant to Rev. Proc. 2011–8 if the correct user fee is not attached. If such a request is returned to the applicant, the 270 day period described in § 7476(b)(3) will not begin to run until such time as the provisions of this section have been satisfied. Applications must be submitted with the current version of a

form. If an application is not submitted with the current version of a form, the application will be returned.

Effect of failure to disclose material fact

.15 The Service may determine, based on the application form, the extent of review of the plan document. A failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance.

Data requirements

.16 The applicant is responsible for the accuracy of any factual representations and conclusions contained in the application. In some circumstances, applicants may not be able to use precise data in preparing demonstrations or schedules that may be required to be submitted with the application. Therefore, the use of estimated data in these demonstrations and schedules is not prohibited. In addition, the data used may be for a prior plan year, provided the following conditions are satisfied: (1) the data is the most recent data available, (2) there is no misstatement or omission of material fact with respect to such prior year's data, (3) there has been no material change in the facts (including a change in the benefits provided under the plan and employee demographics) since such prior plan year, (4) the same data is used throughout the application, (5) the data is relevant to the operational effect of the plan provisions that are under review, and (6) the applicant clearly discloses that prior year's data is being submitted with the application. The use of estimated or prior year's data is not a misrepresentation of material fact. A determination letter that is based on estimated or prior year's data, however, may not be relied upon to the extent that such data does not satisfy the substantiation guidelines in Rev. Proc. 93–42. Regardless of whether the data is actual or estimated, or whether it is for the current or a prior year, data that is presented in a determination letter application must reflect any changes in the law that are considered by the Service in its determination of the plan's qualified status.

Where to file requests

.17 Requests for determination letters are to be addressed to EP Determinations at the following address:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012–0192

Requests shipped by Express Mail or a delivery service should be sent to:

Internal Revenue Service
201 West Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, KY 41011

Determination letter applications will not be accepted via fax.

Submission of related plans

.18 If applications for two or more plans of the same employer are submitted together, each application should include a cover letter that identifies the name of the employer and the plan numbers and employer identification numbers of all the related plans submitted together. The Service will determine whether these applications will be worked simultaneously.

Withdrawal of requests

.19 The applicant's request for a determination letter may be withdrawn by a written request at any time prior to the issuance of a final adverse determination letter. If an appeal to a proposed adverse determination letter is filed, a request for a determination letter may be withdrawn at any time prior to the forwarding of the proposed adverse action to the Chief, Appeals Office. In the case of a withdrawal, the Service will not issue a determination of any type. A failure to issue a determination letter as a result of a withdrawal will not be considered a failure of the Secretary or his delegate to make a determination within the meaning of § 7476. However, the Service may consider the information submitted in connection with the

withdrawn request in a subsequent examination. Generally, the user fee will not be refunded if the application is withdrawn.

Right to status conference

.20 An applicant for a determination letter has the right to a have a conference with the EP Determinations Manager concerning the status of the application if the application has been pending at least 270 days. The status conference may be by phone or in person, as mutually agreed upon. During the conference, any issues relevant to the processing of the application may be addressed, but the conference will not involve substantive discussion of technical issues. No tape, stenographic, or other verbatim recording of a status conference may be made by any party. Subsequent status conferences may also be requested if at least 90 days have passed since the last preceding status conference.

How to request status conference

.21 A request for a status conference with the EP Determinations Manager is to be made in writing and is to be sent to the specialist assigned to review the application or, if the applicant does not know who is reviewing the application, to the EP Determinations Manager at the address in section 6.17. If, pursuant to section 15, the application for a determination letter has been submitted to Employee Plans Technical (EP Technical) together with a request for a waiver of minimum funding, the request for a status conference should be sent to the address in section 15.03. In this case, the right to a status conference will be with the EP Technical Manager or designee.

SECTION 7. INITIAL QUALIFICATION, ETC.

Scope

.01 This section 7 contains the procedures for requesting determination letters for individually-designed defined contribution and defined benefit plans including employee stock ownership plans in the following circumstances:

(1) Initial qualification.

(2) Amendment.

(3) Restatement of plan.

(4) Qualification of a plan in the event of a partial termination.

(5) Change in scope of determination letter. This means that the applicant has previously received a favorable determination letter for the plan and now wishes to modify the scope of the letter, for example, by requesting the Service to review the plan for certain nondiscrimination requirements that were not within the scope of the earlier letter.

(6) Other circumstances (excluding plan termination) such as a change in the demographics of the employer or a change in the method of testing the plan that was used in a demonstration submitted in support of an earlier application.

Forms

.02 A determination letter request for the items listed in section 7.01 is made by filing the appropriate form according to the instructions to the form and any prevailing revenue procedures, notices, and announcements.

(1) Form 5300, *Application for Determination for Employee Benefit Plan*, must be filed to request a determination letter for individually designed plans, including collectively bargained plans.

(2) Form 5309, *Application for Determination of Employee Stock Ownership Plan*, must be filed as an attachment with a Form 5300, in order to request a determination whether the plan is an ESOP under § 409 or § 4975(e)(7).

(3) Schedule Q, (Form 5300), *Elective Determination Requests*, may be filed as an attachment with Form 5300.

(4) Form 8905, *Certification of Intent to Adopt a Pre-approved Plan*, executed before the end of the employer's 5-year remedial amendment cycle as determined under Part III of Rev. Proc. 2007–44, if applicable.

Timing

.03 All determination letter submissions must be submitted timely under the procedures set forth in Rev. Proc. 2007–44. The timing of the submission period for any particular individually designed plan within staggered remedial amendment cycles will depend on the plan's particular cycle. The second submission period for Cycle A individually designed plans will begin February 1, 2011 and will end on January 31, 2012. The Service will also accept opinion and advisory letter applications for M&P and VS defined contribution pre-approved plans beginning on February 1, 2011. See, Rev. Proc. 2007–44 for details. Generally, an off-cycle application will not be reviewed until all on-cycle plans have been reviewed and processed. Section 14.02, (1)–(3) of Rev. Proc. 2007–44 lists the types of applications that may be submitted off-cycle and given the same priority as on cycle applications.

Applicants are reminded that an off-cycle application will not be converted to an on-cycle application once the on-cycle submission period begins if the off-cycle application has not been processed. Generally, if an off-cycle application is not reviewed before the beginning of the on-cycle period, the application will be returned with the user fee since the determination letter would be expired if issued.

Application must include copy of plan and amendments

.04 Because a plan amendment may affect other portions of a plan so as to cause plan disqualification, a determination letter issued on such an amendment to a plan will express an opinion on the entire plan, as amended. Therefore, the determination letter application must include a copy of the plan and trust instrument plus all plan amendments made since the last determination letter application to the date of the application. The application must also include a statement explaining how any amendments made since the last determination letter application affect the plan or any other plan maintained by the employer. *See*, Rev. Proc. 2007–44 for the scope of the Service's review with respect to a particular determination letter application.

In general, except when a prior law verification is required, a determination letter may not be relied upon for any period preceding the beginning of the remedial amendment cycle for which the letter is issued. Thus, for example, if an application for a determination letter includes a plan amendment that was effective before the beginning of the plan's current remedial amendment cycle, the determination letter may not be relied upon with respect to the effect of the amendment for the period preceding the beginning of the cycle.

Restatements required

.05 Individually designed plans must be restated when they are submitted for determination letter applications. For this purpose, submission of a working copy of the plan in a restated format will suffice. Where a working copy is submitted with executed amendments integrated into the working copy, all such amendments must also be separately submitted. The Service considers a working copy as a document that incorporates all previously executed amendments into one restated document. The intended purpose of a working copy in a restated format is only for ease of review and plan administration and it is not a document that is intended to be adopted. The Service reserves the right to make a determination as to whether the working copy is in a restated format that will facilitate the review of the plan.

Controlled groups, etc.

.06 For a controlled group of corporations as defined in § 414(b), trades or businesses under common control as defined in § 414(c), an affiliated service group within the meaning of § 414(m), and entities utilizing the services of leased employees within the meaning of § 414(n), the coverage items on the application forms referred to in this revenue procedure must be completed as though the controlled group, commonly controlled trades or businesses, affiliated service group, etc., constitutes a single entity. Leased employees within the meaning of § 414(n) must be included as employees of the recipient entity (except in the case of a safe-harbor plan described in § 414(n)(5)). See sections 9 through 11 of Rev. Proc. 2007–44 for a discussion of the five-year remedial amendment cycle that applies in certain special circumstances, including the cycle that applies to plans maintained by multiple members of a controlled group and to plans maintained by employers that are members of an affiliated service group under § 414(m).

If, pursuant to Rev. Proc. 2007–44, an election has been made for related entities (as described under section 10 of that revenue procedure) to be on the same cycle, each application should include a cover letter that identifies the name of each member of the controlled group and/or employer within the affiliated service group, and the plan numbers and employer identification numbers of all the related plans submitted together. When a controlled group election has been made for multiple plans to be on the same cycle, the Service will determine whether these applications will be worked simultaneously.

§ 414(x) Combined plans

.07 The Service will consider § 414(x) in issuing determination letters for individually designed plans that consist of a defined benefit plan and a qualified cash or deferred arrangement. A § 414(x) combined plan sponsor must submit two Form 5300s and two applicable user fees.

SECTION 8. EMPLOYER RELIANCE ON M&P AND VOLUME SUBMITTER PLANS

Scope

.01 The conditions under which, and the extent to which, adopting employers of M&P and volume submitter plans may rely on favorable opinion or advisory letters without having to request individual determination letters are set forth in section 19 of Rev. Proc. 2005–16. Rev. Proc. 2005–16 describes the requirements that apply to M&P and volume submitter plans and the procedures for requesting opinion letters and advisory letters on M&P and volume submitter plans. Section 9 of this revenue procedure describes the procedures for requesting determination letters on M&P and volume submitter plans for adopting employers who need to obtain a determination letter in order to have reliance or who otherwise wish to obtain a determination letter, for example to expand the scope of reliance.

Reliance equivalent to determination letter

.02 If an employer can rely on a favorable opinion or advisory letter pursuant to section 19 of Rev. Proc. 2005–16, the opinion or advisory letter shall be equivalent to a favorable determination letter. For example, the favorable opinion or advisory letter shall be treated as a favorable determination letter for purposes of section 21 of this revenue procedure, regarding the effect of a determination letter, and section 5.01(4) of Rev. Proc. 2008–50, 2008–35 I.R.B. 464, regarding the definition of "favorable letter" for purposes of the Employee Plans Compliance Resolution System.

SECTION 9. DETERMINATION LETTER FILING PROCEDURES FOR M&P AND VOLUME SUBMITTER PLANS

Scope

.01 This section contains procedures for requesting determination letters for adopting employers of volume submitter plans and M&P plans.

Determination letter for adoption of volume submitter plan

.02 An application for a determination letter for an employer's adoption of an approved volume submitter plan, that is filed on Form 5307 generally need not include the plan's EGTRRA good faith amendments that were adopted prior to the adoption of the EGTRRA-restated plan, if applicable, or any interim plan amendments, regardless of when adopted, unless the plan is a volume submitter plan that does not authorize the practitioner to amend on behalf of the adopting employer. The Service may, however request evidence of adoption of good faith and interim amendments during the course of its review of a particular plan. With respect to determination letters for adopting employers of volume submitter plans:

(1) An application for a determination letter for an employer's adoption of an approved volume submitter plan must be sent to the address provided in section 6.17.

(2) The application for a determination letter must include the following:

(a) Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request*;

(b) Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans* (Schedule Q is optional);

(c) Form 2848, *Power of Attorney and Declaration of Representative*, or other written authorization allowing the volume submitter practitioner to act as a representative of the employer with respect to the request for a determination letter;

(d) Form 8905, *Certification of Intent to Adopt a Pre-approved Plan*, executed before the end of the employer's 5-year remedial amendment cycle as determined under Part III of Rev. Proc. 2007–44, if

(e) A copy of the advisory letter for the practitioner's volume submitter specimen plan;

(f) A copy of the plan and trust instrument or, if the employer has made no changes to the specimen plan and trust other than completing options permitted under the adoption agreement, a copy of the completed adoption agreement;

(g) A written representation (signature optional) made by the volume submitter practitioner which:

(i) states whether the plan and trust instrument are word-for-word identical to the approved specimen plan;

(ii) if the plan and trust are not word-for-word identical to the approved specimen plan, explains how the plan and trust instrument differ from the approved specimen plan, describing the location, nature and effect of each deviation from the language of the approved specimen plan; and

(h) A copy of the plan's latest favorable determination letter, if applicable;

(i) Applications filed on Form 5307 for volume submitter plans that do not authorize the practitioner to amend on behalf of the adopting employer must include the plan's EGTRRA good faith amendments, if applicable, and any interim amendments that were adopted for qualification changes on the applicable Cumulative List used in reviewing and approving the underlying volume submitter plan; and

(j) Any other information or material that may be required by the Service.

(3) Deviations from the language of the approved specimen plan will be evaluated based on the extent and complexities of the changes. If the changes are determined not to be compatible with the volume submitter program, the Service may require the applicant to file Form 5300 and pay the higher user fee. *See also*, Rev. Proc. 2007–44, section 19.

(4) An employer will not be treated as having adopted a volume submitter plan if the employer has signed or otherwise adopted the plan prior to the date on the volume submitter specimen plan's advisory letter. In this case, the determination letter application for the employer's plan may not be filed on Form 5307 and will not be eligible for a reduced user fee. A determination letter application for a volume submitter plan must be based on the approved volume submitter specimen plan with any applicable modifications. *See* section 19.03 in Rev. Proc. 2005–16.

Determination letter for adoption of M&P plan

.03 Form 5307 must be filed to request a determination letter for the adoption of an M&P plan by an adopting employer. Schedule Q may be filed as an attachment to Form 5307. An application for a determination letter that is filed on Form 5307 generally need not include the plan's EGTRRA good faith amendments, if applicable, or any interim plan amendments, regardless of when adopted. The Service may, however request evidence of adoption of good faith and interim amendments during the course of its review of a particular plan.

Required information

.04 The determination letter request must include the following:

(1) Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request*;

(2) Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans*;

(3) Form 8905, *Certification of Intent to Adopt a Pre-approved Plan*, executed before the end of the employer's 5-year remedial amendment cycle as determined under Part III of Rev. Proc. 2007–44, if applicable;

(4) An adoption agreement showing which elections the employer is making with respect to the elective provisions contained in the plan;

(5) A copy of the plan's most recent opinion letter; and

(6) In the case of a determination letter request for an M&P plan that uses a separate trust or custodial account, a copy of the employer's trust or custodial account document. This information is necessary in order to verify that the trustee executed the document.

Amended plan is treated as an individually-designed plan

.05 Except to the extent provided in section 5.02 and 19.03 of Rev. Proc. 2005–16, an employer that amends any provision of an M&P plan or its adoption agreement (other than to choose among the options offered by the sponsor if the plan permits or contemplates such options), or an employer that chooses to discontinue participation in such a plan as amended by its sponsor and does not substitute another approved plan referred to in this section is considered to have adopted an individually-designed plan. The requirements stated in this revenue procedure relating to the issuance of determination letters for individually-designed plans will then apply to such plan. Also see section 19.01 of Rev. Proc. 2007–44.

Requests made prior to the issuance of opinion letter

.06 An application submitted by an employer with respect to an M&P plan will be treated as an application for an individually-designed plan if it is executed prior to the time the M&P plan is approved. Also see sections 5.11 and 19.03 of Rev. Proc. 2005–16 regarding the requirement that adopting employers sign new adoption agreements when M&P plans are restated.

Adopting employers of pre-approved plans

.07 In accordance with Part IV of Rev. Proc. 2007–44, adopting employers of M&P plans and volume submitter plans have a six-year remedial amendment cycle. The Service's announced deadline for an adopting employer to adopt the approved M&P or volume submitter plan will be the end of the plan's remedial amendment cycle with respect to all disqualifying provisions for which the remedial amendment period would otherwise end during the cycle. An adopting employer of a M&P plan or a volume submitter plan who must obtain a determination letter for reliance or who desires a determination letter for additional reliance must not submit such determination letter application until the Service's announced deadline for employers to adopt a pre-approved plan and, if necessary, file a determination letter application, as described in Part IV of Rev. Proc. 2007–44. See section 17 of Rev. Proc. 2007–44 for the eligibility requirements that must be satisfied in order to be considered an adopting employer of a M&P plan or a volume submitter plan and thus eligible for the six-year remedial amendment cycle. The Service began accepting applications for individual determination letters for EGTRRA-approved M&P and volume submitter defined benefit plans starting May 1, 2010. An adopting employer whose plan is eligible for the six-year remedial amendment cycle under section 17 of Rev. Proc. 2007–44 and that adopts an EGTRRA-approved M&P or volume submitter defined benefit plan by April 30, 2012, will have adopted the plan within the employer's six-year remedial amendment cycle.

Affiliated service groups, leased employees, and partial terminations

.08 An application for a determination letter on a pre-approved plan that is required to file Form 5300 only because the plan requests a determination regarding affiliated service group status, leased employees or partial terminations, will be reviewed on the basis of the Cumulative List that was used to review the underlying pre-approved plan.

SECTION 10. MULTIPLE EMPLOYER PLANS

Scope

.01 This section contains procedures for applications filed with respect to plans described in § 413(c). A plan is not described in § 413(c) if all the employers maintaining the plan are members of the same controlled group or affiliated service group under § 414(b), (c) or (m).

Options to file for the plan only or for both the plan and employers maintaining the plan

.02 A determination letter applicant for a multiple employer plan can request either (1) a letter for the plan in the name of the controlling member or (2) a letter for the plan in the name of the controlling member and a letter for each employer maintaining the plan with respect to whom a separate Form 5300 is filed.

(1) An applicant requesting a letter for the plan submits one Form 5300 application for the plan in the name of the controlling member, omitting the optional minimum coverage questions and Schedule Q and either including or omitting the design-based safe harbor questions. The user fee for a single employer plan will apply. An employer maintaining a multiple employer plan can rely on a favorable determination letter issued for the plan without having to request its own determination letter except with respect to the requirements of §§ 401(a)(4), 401(a)(26), 401(l), 410(b) and 414(s), and, if the employer maintains or has ever maintained another plan, §§ 415 and 416.

(2) An applicant requesting a letter for the plan and an employer must submit the filing required in (1) above as well as a separate Form 5300 application, completed through line 8, and, if applicable, a completed adoption agreement, for each employer requesting a separate letter. Each employer may elect to respond to the Form 5300 questions regarding minimum coverage and design-based safe harbors and to file Schedule Q to request a determination on the average benefit test, the general test or any other nondiscrimination requirement addressed by the Schedule Q. The user fee for the application will be determined under the user fee schedules for multiple employer plans in section 6.05 of Rev. Proc. 2011–8, treating the entire application as a general test or average benefit test application if any employer requests a determination on either of these tests.

(3) Rules similar to the rules in section 19 of Rev. Proc. 2005–16 also apply in the case of an employer maintaining a multiple employer plan. See also Rev. Proc. 2007–44, including section 10. An application for a determination letter on a volume submitter plan that is required to file Form 5300 only because the plan is a multiple employer plan will be reviewed on the basis of the Cumulative List that was used to review the underlying volume submitter plan.

Where to file

.03 The complete application, including all Forms 5300 (and, if applicable, adoption agreements) for employers maintaining the plan who request separate letters must be filed as one package submission with EP Determinations. The application is to be sent to the address in section 6.17.

Determination letter sent to each employer who files Form 5300

.04 The Service will mail a determination letter to each employer maintaining the plan for whom a separate Form 5300 has been filed.

Addition of employers

.05 An employer may continue to rely on a favorable determination letter after another employer commences participation in the plan, regardless of whether the first employer's reliance is based on its own letter or the letter issued for the plan and regardless of whether an application for a determination letter for the new employer is filed. An application for a determination letter that takes into account the addition of such other employer should include a completed Form 5300 for the plan in the name of the controlling member on the Form 5300 filed pursuant to section 10.02 above, and a supplemental Form 5300 and optional Schedule Q (and, if applicable, adoption agreement) for each new employer who desires a separate determination letter. The Service will send the determination letter only to the applicant and the new employers. However, a new employer that joins a multiple employer plan after the existing multiple employer plan was timely submitted in Cycle B (the applicable cycle as described in section 10 of Rev. Proc. 2007–44), will be subject to the rules under Rev. Proc. 2007–44, including the off-cycle filing rules under section 14 of that revenue procedure.

SECTION 11. AMENDMENTS

The Service will not issue determination letters with respect to amendments only. The Service will issue determination letters with respect to the plan, including amendments to the plan. See, section 7.04 and Rev. Proc. 2007–44.

SECTION 12. TERMINATION OR DISCONTINUANCE OF CONTRIBUTIONS; NOTICE OF MERGERS, CONSOLIDATIONS, ETC.

Scope

.01 This section contains procedures for requesting determination letters involving plan termination or discontinuance of contributions. This section also contains procedures regarding required notice of merger, consolidation, or transfer of assets or liabilities.

Forms

.02 Required Forms

(1) Form 5310, *Application for Determination for Terminating Plan*, is filed by plans other than multiemployer plans covered by the insurance program of the Pension Benefit Guaranty Corporation (PBGC).

(2) Form 5300, *Application for Determination of Employee Benefit Pla*n, is filed in the case of a multiemployer plan covered by PBGC insurance.

(3) Schedule Q, *Elective Determination Requests*, may be filed as an attachment to Form 5310 or Form 5300.

(4) Form 6088, *Distributable Benefits from Employee Pension Benefit Plans*, is also required of a sponsor or plan administrator of a defined benefit plan or an underfunded defined contribution plan who files only an application for a determination letter regarding plan termination. For collectively bargained plans, a Form 6088 is required only if the plan benefits employees who are not collectively bargained employees within the meaning of § 1.410(b)–6(d). A separate Form 6088 is required for each employer employing such employees.

(5) Form 5310–A, *Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business*, if required, generally must be filed not later than 30 days before merger, consolidation or transfer of assets and liabilities. The filing of Form 5310–A will not result in the issuance of a determination letter.

(6) Form 8905, *Certification of Intent to Adopt a Pre-approved Plan*, executed before the end of the employer's 5-year remedial amendment cycle as determined under Part III of Rev. Proc. 2007–44.

Supplemental information

.03 The application for a determination letter involving plan termination must also include any supplemental information or schedules required by the forms or form instructions. For example, the application must include copies of all records of actions taken to terminate the plan (such as a resolution of the board of directors) and a schedule providing certain information regarding employees who separated from vesting service with less than 100% vesting.

Required demonstration of nondiscrimination requirements

.04 An applicant requesting a determination letter upon termination may not decline to elect that the plan be reviewed for the minimum coverage requirements or the nondiscrimination in amount requirement, as otherwise permitted, unless the following conditions are satisfied:

(1) With respect to the coverage requirements, in the year of termination the plan must use the average benefit test and the plan must have received a prior favorable determination letter that considered whether the plan satisfied the requirements of the test;

(2) With respect to the nondiscrimination in amount requirement, in the year of termination the plan must use either a nondesign-based safe harbor or the general test for nondiscrimination in amount and the plan must have received a prior favorable determination letter that considered whether the plan satisfied the requirements of either a nondesign-based safe harbor or the general test;

(3) The favorable determination letter was issued during the immediately preceding 5 or 6-year remedial amendment cycle; and

(4) There has been no material change in the facts (including benefits provided under the plan and employee demographics) or law upon which the determination was based.

If these conditions are satisfied, but the prior determination letter does not state that the average benefit test, general test or nondesign-based safe harbor (as applicable) was considered, the applicant must include a copy of the prior submission in order to decline to have the test or safe harbor considered in the review of the application for determination on plan termination.

Compliance with Title IV of ERISA

.05 In the case of plans subject to Title IV of ERISA, a favorable determination letter issued in connection with a plan's termination is conditioned on approval that the termination is a valid termination under Title IV of ERISA. Notification by PBGC that a plan may not be terminated will be treated as a material change of fact.

Termination prior to time for amending for change in law

.06 A plan that terminates after the effective date of a change in law, but prior to the date that amendments are otherwise required, must be amended to comply with the applicable provisions of law from the date on which such provisions become effective with respect to the plan. Because such a terminated plan would no longer be in existence by the required amendment date and therefore could not be amended on that date, such plan must be amended in connection with the plan termination to comply with those provisions of law that become effective with respect to the plan on or before the date of plan termination. (Such amendments include any amendments made after the date of plan termination that were required in order to obtain a favorable determination letter.) In addition, annuity contracts distributed from such terminated plans also must meet all the applicable provisions of any change in law. See also section 8 of Rev. Proc. 2007–44.

Restatement not required for terminating plan

.07 A terminating plan generally does not have to be restated. However, see section 7.05 and .06 above. The Service has the discretion to request copies of interim amendments during its review of a terminating plan.

SECTION 13. GROUP TRUSTS

Scope

.01 This section provides special procedures for requesting a determination letter on the qualified status of a group trust under Rev. Rul. 81–100, as clarified and modified by Rev. Rul 2004–67. Revenue Ruling 2011–1, 2011–2 I.R.B. January 10, 2011, modified Rev. Ruls. 81–100 and 2004–67.

Required information

.02 A request for a determination letter on the status of a group trust as described in Rev. Rul. 81–100 is made by submitting a written request demonstrating how the group trust satisfies the five criteria listed in Rev. Rul. 81–100, together with the trust instrument and related documents. Rev. Rul. 2004–67 extends the ability to participate in group trusts to eligible governmental plans under § 457(b) and clarifies the ability of certain individual retirement accounts under § 408 to participate. Rev. Rul. 2011–1 extends the ability to participate in group trusts to custodial accounts under § 403(b)(7), retirement income accounts under § 403(b)(9), and governmental retiree benefit plans under § 401(a)(24). There are two model amendments in Rev. Rul. 2011–1. Amendment 1 is for a group trust that received a determination letter from the Service prior to January 10, 2011, that the group trust satisfies Rev. Rul. 81–100, but that does not satisfy the separate account requirement of paragraph (6) of the Holding of Rev. Rul. 2011–1. Amendment 2 is for a group trust that received a determination letter from the Service prior to January 10, 2011, that the group trust satisfies Rev. Rul. 81–100, and that intends to permit custodial accounts under § 403(b)(7), retirement income accounts under § 403(b)(9), or § 401(a)(24) governmental retirement plans to participate in the group trust. Form 5316, *Application for Group or Pooled Trust Ruling*, is being developed and will be available soon for group trust submissions.

SECTION 14. AFFILIATED SERVICE GROUPS; LEASED EMPLOYEES

Scope

.01 This section provides procedures for determination letter requests on affiliated service group status under § 414(m), and the effect of leased employees on a plan's qualified status.

Types of requests under § 414(m) and § 414(n)

.02 In accordance with section 7.01, an employer that is subject to § 414(m) or (n) may request a determination letter under the following circumstances: (1) with respect to the initial qualification of its plan, (2) on a plan amendment, and (3) in certain other circumstances (for example, where there has been a change in membership in the affiliated service group or where the employer did not previously have reliance). In any of these circumstances, the plan that is submitted with the application must be restated to reflect the Cumulative List in effect when the application is filed, unless the plan is a pre-approved plan.

Employer must request the determination under § 414(m) or § 414(n)

.03 Generally, a determination letter will cover § 414(m) or § 414(n) only if the employer requests such determination, and submits with the determination letter application the information specified in section 14.09 or section 14.10 below.

Forms

.04 Form 5300 (with Schedule Q optional) is submitted for a request on affiliated service group status or leased employee status. Form 5307 cannot be used for this purpose.

Employer is responsible for determining status under § 414(m) and § 414(n)

.05 An employer is responsible for determining at any particular time whether it is a member of an affiliated service group and, if so, whether its plan(s) continues to meet the requirements of § 401(a) after the effective date of § 414(m), including § 414(m)(5). An employer or plan administrator is also responsible for taking action relative to the employer's qualified plan if that employer becomes, or ceases to be, a member of an affiliated service group. An employer that is the recipient of services of leased employees within the meaning of § 414(n) is also responsible for determining at any particular time whether a leased employee is deemed to be an employee of the recipient for qualified plan purposes.

Omission of material fact

.06 Failure to properly indicate that there is or may be an affiliated service group and to provide the information specified in section 14.09 of this revenue procedure, or failure to properly indicate that an employer is utilizing the services of leased employees and to provide the information specified in section 14.10, is an omission of a material fact. The failure of the employer to follow the procedures in this section will result in the employer being unable to rely on any favorable determination letter concerning the effect of § 414(m) or § 414(n) on the qualified status of the plan.

Service will indicate whether § 414(m) or § 414(n) was considered

.07 If the Service considers whether the plan of an employer satisfies the requirements of § 414(m) or § 414(n), the determination letter issued to the employer will state that questions arising under § 414(m) or § 414(n) have been considered, and that the plan satisfies qualification requirements relating to that section. Absent such a statement pertaining to § 414(m) or § 414(n), a determination letter does not apply to any qualification issue arising by reason of such provisions.

Pre-approved plans

.08 An employer that has adopted a pre-approved plan and wants a determination as to the effect of § 414(m) or § 414(n) on the qualified status of its plan must attach the information required by section 14.09 or section 14.10 of this revenue procedure to Form 5300 and submit the information, Form 5300, and any other materials necessary to make a determination. When an employer requests a determination regarding affiliated service group status or leased employees, the plan will be reviewed on the basis of the Cumulative List that was used to review the underlying pre-approved plan.

Required information for § 414(m) determination

.09 A determination letter issued with respect to a plan's qualification under § 401(a), 403(a), or 4975(e)(7) will be a determination as to the effect of § 414(m) upon the plan's qualified status only if the application includes:

(1) A description of the nature of the business of the employer, specifically whether it is a service organization or an organization whose principal business is the performance of management functions for another organization, including the reasons therefor;

(2) The identification of other members (or possible members) of the affiliated service group;

(3) A description of the business of each member (or possible member) of the affiliated service group, describing the type of organization (corporation, partnership, etc.) and indicating whether the member is a service organization or an organization whose principal business is the performance of management functions for the other group member(s);

(4) The ownership interests between the employer and the members (or possible members) of the affiliated service group (including ownership interests as described in § 414(m)(2)(B)(ii) or § 414(m)(6)(B));

(5) A description of services performed for the employer by the members (or possible members) of the affiliated service group, or *vice versa* (including the percentage of each member's (or possible member's) gross receipts and service receipts provided by such services, if available, and data as to whether such services are a significant portion of the member's business) and whether, as of December 13, 1980, it was not unusual for the services to be performed by employees of organizations in that service field in the United States;

(6) A description of how the employer and the members (or possible members) of the affiliated service group associate in performing services for other parties;

(7) In the case of a management organization under § 414(m)(5):

(a) A description of the management functions, if any, performed by the employer for the member(s) (or possible member(s)) of the affiliated service group, or received by the employer from any other members (or possible members) of the group (including data explaining whether the management functions are performed on a regular and continuous basis) and whether or not it is unusual for such management functions to be performed by employees of organizations in the employer's business field in the United States;

(b) If management functions are performed by the employer for the member (or possible members) of the affiliated service group, a description of what part of the employer's business constitutes the performance of management functions for the member (or possible member) of the group (including the percentage of gross receipts derived from management activities as compared to the gross receipts from other activities);

(8) A brief description of any other plan(s) maintained by the members (or possible members) of the affiliated service group, if such other plan(s) is designated as a unit for qualification purposes with the plan for which a determination letter has been requested;

(9) A description of how the plan(s) satisfies the coverage requirements of § 410(b) if the members (or possible members) of the affiliated service group are considered part of an affiliated service group with the employer;

(10) A copy of any ruling issued by the headquarters office on whether the employer is an affiliated service group; a copy of any prior determination letter that considered the effect of § 414(m) on the qualified status of the employer's plan; and, if known, a copy of any such ruling or determination letter issued to any other member (or possible member) of the same affiliated service group, accompanied by a statement as to whether the facts upon which the ruling or determination letter was based have changed.

Required information for § 414(n) determination

.10 Unless the plan provides that all leased employees within the meaning of § 414(n)(2) are treated as common law employees for all purposes under the plan, a determination letter issued with respect to the plan's qualification under § 401(a), 403(a), or 4975(e)(7) will be a determination as to the effect of § 414(n) upon the plan's qualified status only if the application includes:

(1) A description of the nature of the business of the recipient organization;

(2) A copy of the relevant leasing agreement(s);

(3) A description of the function of all leased employees within the trade or business of the recipient organization (including data as to whether all leased employees are performing services on a substantially full-time basis);

(4) A description of facts and circumstances relevant to a determination of whether such leased employees' services are performed under primary direction or control by the recipient organization (including whether the leased employees are required to comply with instructions of the recipient about when, where, and how to perform the services, whether the services must be performed by particular persons, whether the leased employees are subject to the supervision of the recipient, and whether the leased employees must perform services in the order or sequence set by the recipient); and

(5) If the recipient organization is relying on any qualified plan(s) maintained by the employee leasing organization for purposes of qualification of the recipient organization's plan, a description of such plan(s) (including a description of the contributions or benefits provided for all leased employees which are attributable to services performed for the recipient organization, plan eligibility, and vesting).

SECTION 15. WAIVER OF MINIMUM FUNDING

Scope

.01 This section provides procedures with respect to defined contribution plans for requesting a waiver of the minimum funding standard account and requesting a determination letter on any plan amendment required for the waiver.

Applicability of Rev. Proc. 2004–15

.02 The procedures in Rev. Proc. 2004–15, 2004–1 C.B. 490, apply to the request for a waiver of the minimum funding requirement. Section 2 of that revenue procedure contains the procedures for obtaining waivers of the minimum funding standards in the instance of defined benefit plans. In order to provide maximum flexibility in requesting a waiver for a defined contribution pension plan, section 3 of the revenue procedure contains three alternative methods as described more fully in Rev. Proc. 2004–15.

Waiver request submitted to EP Technical

.03 The first two alternatives involve (1) a waiver ruling only, without submission of a plan amendment, and (2) a waiver ruling only, with submission of a plan amendment. Under these first two procedures, requests for waivers must be submitted to:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

In both cases, the applicant must satisfy the requirements of section 2 of Rev. Proc. 2004–15, other than the parts applicable only to defined benefit plans.

If a plan amendment is not submitted or is not already part of a plan, the Service will supply an amendment which will, if adopted, satisfy section 3 of Rev. Rul. 78–223, 1978–1 C.B. 125. The waiver will be conditioned upon the plan being amended by adoption of that amendment, within a reasonable period of time, and will contain a caveat stating that the ruling is not a ruling as to the effect the plan provision may have on the qualified status of the plan. The applicant may request reconsideration within 60 days of the date of the letter if the amendment is inappropriate, by submitting a letter to the above address.

If the request for the waiver is submitted along with a plan amendment, the plan provisions necessary to satisfy section 3 of Rev. Rul. 78–223 must be included. All waivers issued pursuant to this alternative will contain a caveat indicating that the ruling is not a ruling as to the effect any plan provision may have on the qualified status of the plan.

Waiver and determination letter request submitted to EP Technical

.04 The third alternative is a request for a waiver ruling and a determination letter request. Both requests must be submitted by the applicant to EP Technical where it will be treated as if it had been submitted as a request for technical advice from the Determinations Manager. The request must:

(1) satisfy all the procedural requirements of 3.03 of Rev. Proc. 2004–15;

(2) include a completed Form 5300 and all necessary documents, plan amendments and information required by the Form 5300 and Rev. Proc. 2004–15 for approval;

(3) indicate which Area Office has audit jurisdiction over the return; and

(4) submit the user fee for both requests to EP Technical.

In addition, the procedures for notice and comment by interested parties, contained in sections 17, 18 and 19 of this revenue procedure, and the notice and comment procedures provided in section 2.02 of Rev. Proc. 2004–15 must be satisfied. Comments will be forwarded to the Determinations Office that is considering the determination letter request for the plan amendments.

Handling of the request

.05 The waiver request described in section 15.04 above will be handled by EP Technical as follows:

(1) The waiver request and supporting documents will be forwarded to EP Technical, SE:T:EP:RA:T, which will treat the request as a technical advice on the qualification issue with respect to the plan provisions necessary to satisfy section 3 of Rev. Rul. 78–223.

(2) The appropriate Determinations Office will be notified of the request. In order not to delay the processing of the request, all materials relating to the determination letter request will be forwarded by EP Technical to the Determinations Manager for consideration while the technical advice request is completed.

(3) EP Technical will consider both issues. If a waiver is to be granted and if EP Technical believes that qualification of the plan is not adversely affected by the plan amendment, the mandatory technical advice memorandum will be issued to the Determinations Manager. The Determinations Manager must decide within 10 working days from the date of the technical advice memorandum either to furnish the applicant with the technical advice memorandum and with a favorable advance determination letter, or to ask for reconsideration of the technical advice memorandum. This request must be in writing. An initial written notice of intent to make this request may be submitted within 10 working days of the date of the technical advice memorandum and followed by a written request within 30 working days from the date of such written notice. If the Determinations Manager does not ask for reconsideration of the technical advice memorandum within 10 working days, EP Technical will issue the waiver ruling. This ruling will not contain the caveat described in section 3.02 of Rev. Proc. 2004–15.

When waiver request should be submitted

.06 In the case of a plan other than a multiemployer plan, all waiver requests must be submitted to the Service no later than the 15th day of the third month following the close of the plan year for which the waiver is requested. The Service may not extend this statutory deadline. A request for a waiver with respect to a multiemployer plan generally must be submitted no later than the close of the plan year following the plan year for which the waiver is requested.

In seeking a waiver with respect to a plan year that has not yet ended, the applicant may have difficulty in furnishing sufficient current evidence in support of the request. For this reason it is generally advisable that such advance request be submitted no earlier than 180 days prior to the end of the plan year for which the waiver is requested.

SECTION 16. SECTION 401(h) AND § 420 DETERMINATION LETTERS

Scope

.01 This section provides procedures for requesting determination letters (i) with respect to whether the requirements of § 401(h) are satisfied in a plan with retiree medical benefit features and (ii) on plan language that permits, pursuant to § 420, the transfer of assets in a defined benefit plan to a health benefit account described in § 401(h).

Required information for § 401(h) determination

.02 EP Determinations will issue a determination letter that considers whether the requirements of § 401(h) are satisfied in a plan with retiree medical benefit features only if the plan sponsor's application includes, in addition to the application forms and any other material required by this revenue procedure, a cover letter that requests consideration of § 401(h). The cover letter must specifically state that consideration is being requested with regard to § 401(h) in addition to other matters under § 401(a) and must specifically state the location of plan provisions that satisfy the requirements of § 401(h). Part I of the checklist in the Appendix of this revenue procedure may be used to identify the location of relevant plan provisions.

Required information for § 420 determination

.03 EP Determinations will consider the qualified status of certain plan language designed to comply with § 420 only if the plan sponsor requests such consideration in a cover letter. The cover letter must specifically state (i) whether consideration is being requested only with regard to § 420, or (ii) whether consideration is being requested with regard to § 420 in addition to other matters under § 401(a). (If consideration of other matters under § 401(a) is being requested, the application forms and other material required by this revenue procedure must also be submitted.) The cover letter must specifically state the location of plan provisions that satisfy each of the following requirements. Parts I and II of the checklist in the Appendix of this revenue procedure may be used to identify the location of relevant plan provisions.

(1) The plan must include a health benefits account as described in § 401(h).

(2) The plan must provide that transfers shall be limited to transfers of "excess assets" as defined in § 420(e)(2).

(3) The plan must provide that only one transfer may be made in a taxable year. However, for purposes of determining whether the rule in the preceding sentence is met, a plan may provide that a transfer will not be taken into account if it is a transfer that:

(a) Is made after the close of the taxable year preceding the employer's first taxable year beginning after December 31, 1990, and before the earlier of (i) the due date (including extensions) for the filing of the return of tax for such preceding year, or (ii) the date such return is filed; and

(b) Does not exceed the expenditures of the employer for qualified current retiree health liabilities for such preceding taxable year.

(4) The plan must provide that the amount transferred shall not exceed the amount which is reasonably estimated to be the amount the employer will pay out (whether directly or through reimbursement) of the health benefit account during the taxable year of the transfer for "qualified current retiree health liabilities," as defined in § 420(e)(1).

(5) The plan must provide that no transfer will be made after December 31, 2013.

(6) The plan must provide that any assets transferred, and any income allocable to such assets, shall be used only to pay qualified current retiree health liabilities for the taxable year of transfer.

(7) The plan must provide that any amounts transferred to a health benefits account (and income attributable to such amounts) which are not used to pay qualified current retiree health liabilities shall be transferred back to the defined benefit portion of the plan.

(8) The plan must provide that the amounts paid out of a health benefits account will be treated as paid first out of transferred assets and income attributable to those assets.

(9) The plan must provide that the accrued pension benefits for participants and beneficiaries must become nonforfeitable as if the plan had terminated immediately prior to the transfer (or in the case of a participant who separated during the 1-year period ending on the date of transfer immediately before such separation). In the case of a transfer described in § 420(b)(4) that relates to a prior year, the plan must provide that the accrued benefit of a participant who separated from service during the taxable year to which such transfer relates will be recomputed and treated as nonforfeitable immediately before such separation.

(10) The plan must provide that a transfer will be permitted only if each group health plan or arrangement under which health benefits are provided contains provisions satisfying § 420(c)(3). The plan must define "applicable employer cost", "cost maintenance period", and "benefit maintenance period", as applicable, consistent with § 420(c)(3), as amended. If applicable, the provisions of the plan must also reflect the transition rule in § 535(c)(2) of the Tax Relief Extension Act of 1999 (TREA '99). The plan may provide that § 420(c)(3) is satisfied separately with respect to individuals eligible for benefits under Title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible.

(11) The plan must provide that transferred assets cannot be used for key employees (as defined in § 416(i)(1)).

PART II. INTERESTED PARTY NOTICE AND COMMENT

SECTION 17. WHAT RIGHTS TO NOTICE AND COMMENT DO INTERESTED PARTIES HAVE?

Rights of interested parties

.01 Persons who qualify as interested parties under § 1.7476–1(b), have the following rights:

(1) To receive notice, in accordance with section 18 below, that an application for an advance determination will be filed regarding the qualification of plans described in §§ 401, 403(a), 409 and/or 4975(e)(7);

(2) To submit written comments with respect to the qualification of such plans to the Service;

(3) To request the Department of Labor to submit a comment to the Service on behalf of the interested parties; and

(4) To submit written comments to the Service on matters with respect to which the Department of Labor was requested to comment but declined.

Comments by interested parties

.02 Comments submitted by interested parties must be received by EP Determinations by the 45th day after the day on which the application for determination is received by EP Determinations. (However, see sections 17.03 and 17.04 for filing deadlines where the Department of Labor has been requested to comment.) Such comments must be in writing, signed by the interested parties or by an authorized representative of such parties (as provided in section 9.02(11) of Rev. Proc. 2011–4), addressed to EP Determinations at the address in section 6.17, and contain the following information:

(1) The names of the interested parties making the comments;

(2) The name and taxpayer identification number of the applicant for a determination;

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

(4) Whether the parties submitting the comment are:

(a) Employees eligible to participate under the plan,

(b) Employees with accrued benefits under the plan, or former employees with vested benefits under the plan,

(c) Beneficiaries of deceased former employees who are eligible to receive or are currently receiving benefits under the plan,

(d) Employees not eligible to participate under the plan.

(5) The specific matters raised by the interested parties on the question of whether the plan meets the requirements for qualification involving §§ 401 and 403(a), and how such matters relate to the interests of the parties making the comment; and

(6) The address of the interested party submitting the comment (or if a comment is submitted jointly by more than one party, the name and address of a designated representative) to which all correspondence, including a notice of the Service's final determination with respect to qualification, should be sent. (The address designated for notice by the Service will also be used by the Department of Labor in communicating with the parties submitting a request for comment.) The designated representative may be one of the interested parties submitting the comment or an authorized representative. If two or more interested parties submit a single comment and one person is not designated in the comment as the representative for receipt of correspondence, a notice of determination mailed to any interested party who submitted the comment shall be notice to all the interested parties who submitted the comment for purposes of § 7476(b)(5) of the Code.

Requests for DOL to submit comments

.03 A request to the Department of Labor to submit to EP Determinations a comment pursuant to section 3001(b)(2) of ERISA must be made in accordance with the following procedures.

(1) The request must be received by the Department of Labor by the 25th day after the day the application for determination is received by EP Determinations. However, if the parties requesting the Department to submit a comment wish to preserve the right to comment to EP Determinations in the event the Department declines to comment, the request must be received by the Department by the 15th day after the day the application for determination is received by EP Determinations.

(2) The request to the Department of Labor to submit a comment to EP Determinations must:

(a) Be in writing;

(b) Be signed as provided in section 17.02 above;

(c) Contain the names of the interested parties requesting the Department to comment and the address of the interested party or designated representative to whom all correspondence with respect to the request should be sent. See also section 17.02(6) above;

(d) Contain the information prescribed in section 17.02(2), (3), (4), (5) and (6) above;

(e) Indicate that the application was or will be submitted to EP Determinations at the address in section 6.17;

(f) Contain a statement of the specific matters upon which the Department's comment is sought, as well as how such matters relate to the interested parties making the request; and

(g) Be addressed as follows:

Deputy Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Attention: 3001 Comment Request

Right to comment if DOL declines to comment

.04 If a request described in 17.03 is made and the Department of Labor notifies the interested parties making the request that it declines to comment on a matter concerning qualification of the plan which was raised in the request, the parties submitting the request may still submit a comment to EP Determinations on such matter. The comment must be received by the later of the 45th day after the day the application for determination is received by EP Determinations or the 15th day after the day on which notification is given by the Department that it declines to submit a comment on such matter. (See section 17.07 for the date of notification.) In no event may the comment be received later than the 60th day after the day the application for determination was received. Such a comment must comply with the requirements of section 17.02 and include a statement that the comment is being submitted on matters raised in a request to the Department upon which the Department declined to comment.

Confidentiality of comments

.05 For rules regarding the confidentiality of contents of written comments submitted by interested parties to the Service pursuant to section 17.02 or 17.04, see § 601.201(o)(5) of the Statement of Procedural Rules.

Availability of comments

.06 For rules regarding the availability to the applicant of copies of all comments on the application submitted pursuant to section 17.01(1), (2), (3) and (4) of this revenue procedure, see § 601.201(o)(5) of the Statement of Procedural Rules.

When comments are deemed made

.07 An application for an advance determination, a comment to EP Determinations, or a request to the Department of Labor shall be deemed made when it is received by EP Determinations, or the Department. Notification by the Department that it declines to comment shall be deemed given when it is received by the interested party or designated representative. The notice described in section 18.01 below shall be deemed given when it is posted or sent to the person in the manner described in § 1.7476–2. In the case of an application, comment, request, notification, or notice that is sent by mail or a private delivery service that has been designated under § 7502(f), the date as of which it shall be deemed received will be determined under § 7502. However, if such an application, comment, request, notification, or notice is not received within a reasonable period from the date determined under § 7502, the immediately preceding sentence shall not apply.

SECTION 18. WHAT ARE THE GENERAL RULES FOR NOTICE TO INTERESTED PARTIES?

Notice to interested parties

.01 Notice that an application for an advance determination regarding the qualification of a plan that is described in §§ 401, 403(a), 409 and 4975(e)(7) and that is subject to § 410 is to be made must be given to all interested parties in the manner prescribed in § 1.7476–2(c) and in accordance with the requirements of this section. A notice to interested parties is deemed to be provided in a manner that satisfies § 1.7476–2(c) if the notice is delivered using an electronic medium under a system that satisfies the requirements of § 1.402(f)–1 Q&A–5.

Time when notice must be given

.02 Notice must be given not less than 10 days nor more than 24 days prior to the day the application for a determination is made. If, however, an application is returned to the applicant for failure to adequately satisfy the notification requirements 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 subsection would not be met.

Content of notice

.03 The notice referred to in section 18.01 shall contain the following information:

(1) 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);

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

(3) The name and taxpayer identification number of the applicant for a determination;

(4) That an application for a determination as to the qualified status of the plan is to be made to the Service at the address in section 6.17, and stating whether the application relates to an initial qualification, a plan amendment, termination, or a partial termination;

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

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

(7) A statement that any person to whom the notice is addressed is entitled to submit, or request the Department of Labor to submit, to EP Determinations, a comment on the question of whether the plan meets the requirements of § 401 or 403(a); that two or more such persons may join in a single comment or request; and that if such persons request the Department of Labor to submit a comment and the Department of Labor declines to do so with respect to one or more matters raised in the request, the persons may still submit a comment to EP Determinations with respect to the matters on which the Department declines to comment. The Pension Benefit Guaranty Corporation (PBGC) may also submit comments. In every instance where there is either a final adverse termination or a distress termination, the Service formally notifies the PBGC for comments;

(8) The specific dates by which a comment to EP Determinations or a request to the Department of Labor must be received in order to preserve the right of comment (see section 17 above);

(9) The number of interested parties needed in order for the Department of Labor to comment; and

(10) Except to the extent that the additional informational material required to be made available by sections 18.05 through 18.09 are included in the notice, a description of a reasonable procedure whereby such additional informational material will be available to interested parties (see section 18.04). (Examples of notices setting forth the above information, in a case in which the additional information required by sections 18.05 through 18.09 will be made available at places accessible to the interested parties, are set forth in the Exhibit attached to this revenue procedure.)

Procedures for making information available to interested parties

.04 The procedure referred to in section 18.03(10), whereby the additional informational material required by sections 18.05 through 18.09 will (to the extent not included in the 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 by using a method of delivery or a combination thereof that is reasonably calculated to ensure that all interested parties will have access to the materials, provided such procedure is immediately available to all interested parties, 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: 1) the filing of a pleading commencing a declaratory judgment action under § 7476 with respect to the qualification of the plan; or 2) the 92nd day after the day the notice of final determination is mailed to the applicant. Reasonable charges to interested parties for copying and/or mailing such additional informational material are permissible.

Information to be available to interested parties

.05 Unless provided in the notice, or unless section 18.06 applies, there shall be made available to interested parties under a procedure described in section 18.04:

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

(2) The application for determination.

Special rules if there are less than 26 participants

.06 If there would be less than 26 participants in the plan, as described in the application (including, as participants, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving benefits under the plan, and employees who would be eligible to participate upon making mandatory employee contributions, if any), then in lieu of making the materials described in section 18.05 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:

(1) A description of the plan's requirements respecting eligibility for participation and benefits and the plan's benefit formula;

(2) A description of the provisions providing for nonforfeitable benefits;

(3) A description of the circumstances which may result in ineligibility, or denial or loss of benefits;

(4) A description of the source of financing of the plan and the identity of any organization through which benefits are provided;

(5) A description of any optional forms of benefits described in § 411(d)(6) which have been reduced or eliminated by plan amendment; and

(6) Any coverage schedule or other demonstration submitted with the application to show that the plan meets the requirements of §§ 401(a)(4) and 410(b).

However, once an interested party or designated representative receives a notice of final determination, the applicant must, upon request, make available to such interested party (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 described in § 6104(a)(1)(D) should not be included

.07 Information of the type described in § 6104(a)(1)(D) should not be included in the application, plan, or related trust agreement submitted to the Service. Accordingly, such information should not be included in any of the material required by section 18.05 or 18.06 to be available to interested parties.

Availability of additional information to interested parties

.08 Unless provided in the notice, there shall be made available to interested parties under a procedure described in section 18.04, any additional document dealing with the application which is submitted by or for the applicant to the Service, or furnished by the 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, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving 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 § 6104(a)(1)(C) and (D) which may be contained in such additional documents.

Availability of notice to interested parties

.09 Unless provided in the notice, there shall be made available to all interested parties under a procedure described in section 18.04 the material described in sections 17.02 through 17.07 above.

PART III. PROCESSING DETERMINATION LETTER REQUESTS

SECTION 19. HOW DOES THE SERVICE HANDLE DETERMINATION LETTER REQUESTS

Oral advice

.01 Oral advice.

(1) The Service does not issue determination letters on oral requests. However, personnel in EP Determinations ordinarily will discuss with taxpayers or their representatives inquiries regarding: substantive tax issues; whether the Service will issue a determination letter on particular issues; and questions relating to procedural matters about submitting determination letter requests. Any discussion of substantive issues will be at the discretion of the Service on a time available basis, will not be binding on the Service, and cannot be relied upon as a basis of obtaining retroactive relief under the provisions of § 7805(b). A taxpayer may seek oral technical assistance from a taxpayer service representative when preparing a return or report, under established procedures. Oral advice is advisory only, and the Service is not bound to recognize it in the examination of the taxpayer's return.

(2) The advice or assistance furnished, whether requested by personal appearance, telephone, or correspondence will be limited to general procedures, or will direct the inquirer to source material, such as pertinent Code provisions, regulations, revenue procedures, and revenue rulings that may aid the inquirer in resolving the question or problem.

Conferences

.02 EP Determinations may grant a conference upon written request from a taxpayer or his representative, provided the request shows that a substantive plan, amendment, etc., has been developed for submission to the Service, but that special problems or issues are involved, and EP Determinations concludes that a conference would be warranted in the interest of facilitating review and determination when the plan, etc., is formally submitted. See section 6.21 and 6.22 regarding the right to a status conference on applications pending for at least 270 days.

Determination letter based solely on administrative record

.03 Administrative Record

(1) In the case of a request for a determination letter, the determination of EP Determinations or the appeals office on the qualification or non-qualification of the retirement plan shall be based solely upon the facts contained in the administrative record. The 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 made by the applicant during the proceedings within the Service;

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

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

(d) All written comments submitted to the Service pursuant to sections 17.01(2), (3), and (4) above, and all correspondence relating to comments submitted between the Service and persons (including PBGC and the Department of Labor) submitting comments pursuant to sections 17.01(2), (3), and (4) above; and

(e) In any case in which the Service makes an investigation regarding the facts as represented or alleged by the applicant in the request for determination or in comments submitted pursuant to sections 17.01(2), (3), and (4) above, a copy of the official report of such investigation.

(2) 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 Service with respect to the application for determination; or

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

(3) 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 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 EP Determinations or the appeals office.

Notice of final determination

.04 In the case of final determination, the notice of final determination:

(1) Shall be the letter issued by EP Determinations or the appeals office which states that the applicant's plan satisfies the qualification requirements of the Code. The favorable determination letter will be sent by certified or registered mail where either an interested party, the Department of Labor, or the PBGC has commented on the application for determination.

(2) Shall be the letter issued, by certified or registered mail, by EP Determinations or the appeals office subsequent to a letter of proposed determination, stating that the applicant's plan fails to satisfy the qualification requirements of the Code.

Issuance of the notice of final determination

.05 EP Determinations or the appeals office will send the notice of final determination to the applicant, to the interested parties who have previously submitted comments on the application to the Service (or to the persons designated by them to receive such notice), to the Department of Labor in the case of a comment submitted by the Department, and to PBGC if it has filed a comment.

SECTION 20. EXHAUSTION OF ADMINISTRATIVE REMEDIES

In general

.01 For purposes of § 7476(b)(3), a petitioner shall be deemed to have exhausted the administrative remedies available within the Service upon the completion of the steps described in sections 20.02, 20.03, 20.04, or 20.05 subject, however, to sections 20.06 and 20.07. If applicants, interested parties, or the PBGC do not complete the applicable steps described below, they will not have exhausted their respective available administrative remedies as required by § 7476(b)(3) and will, thus, be precluded from seeking declaratory judgment under § 7476 except to the extent that section 20.05 or 20.08 applies.

Steps for exhausting administrative remedies

.02 In the case of an applicant, with respect to any matter relating to the qualification of a plan, the steps referred to in section 20.01 are:

(1) Filing a completed application with EP Determinations pursuant to this revenue procedure;

(2) Complying with the requirements pertaining to notice to interested parties as set forth in this revenue procedure and § 1.7476–2 of the regulations; and,

(3) Appealing to the appropriate appeals office pursuant to paragraph 601.201(o)(6) of the Statement of Procedural Rules, in the event a notice of proposed adverse determination is issued by EP Determinations.

Applicant's request for § 7805(b) relief

.03 Consideration of relief under § 7805(b) will be included as one of the applicant's steps in exhausting administrative remedies only if the applicant requests EP Determinations to seek technical advice from EP Technical on the applicability of such relief. The applicant's request must be made in writing according to the procedures for requesting technical advice (*see* section 19 of Rev. Proc. 2011–5).

Interested parties

.04 In the case of an interested party or the PBGC, the steps referred to in section 20.01 are, with respect to any matter relating to the qualification of the plan, submitting to EP Determinations a comment raising such matter in accordance with section 17.01(2) above, or requesting the Department of Labor to submit to EP Determinations a comment with respect to such matter in accordance with section 17.01(3) and, if the Department of Labor declines to comment, submitting the comment in accordance with section 17.01(4) above, so that it may be considered by the Service through the administrative process.

Deemed exhaustion of administrative remedies

.05 An applicant, an interested party, or the PBGC shall in no event be deemed to have exhausted administrative remedies prior to the earlier of:

(1) The completion of those steps applicable to each as set forth in sections 20.01, 20.02, 20.03 or 20.04, which constitute their administrative remedies; or,

(2) The expiration of the 270-day period described in § 7476(b)(3), which period shall be extended in a case where there has not been a completion of all the steps referred to in section 20.02 and the Service has proceeded with due diligence in processing the application for determination.

Service must act on appeal

.06 The step described in section 20.02(3) will not be considered completed until the Service has had a reasonable time to act upon the appeal.

Service must act on § 7805(b) request

.07 Where the applicant has requested EP Determinations to seek technical advice on the applicability of § 7805(b) relief, the applicant's administrative remedies will not be considered exhausted until EP Technical has had a reasonable time to act upon the request for technical advice.

Effect of technical advice request

.08 The step described in section 20.02(3) will not be available or necessary with respect to any issue on which technical advice has been obtained from EP Technical.

SECTION 21. WHAT EFFECT WILL AN EMPLOYEE PLAN DETERMINATION LETTER HAVE?

Scope of reliance on determination letter

.01 A determination letter issued pursuant to this revenue procedure contains only the opinion of the Service as to the qualification of the particular plan involving the provisions of §§ 401 and 403(a) and the status of a related trust, if any, under § 501(a). Such a determination letter is based on the facts and demonstrations presented to the Service in connection with the application for the determination letter and may not be relied upon after a change in material fact or the effective date of a change in law, except as provided. The Service may determine, based on the application form, the extent of review of the plan document. Failure to disclose a material fact or misrepresentation of a material fact may adversely affect the reliance that would otherwise be obtained through the issuance by the Service of a favorable determination letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance. Applicants are advised to retain copies of all demonstrations and supporting data submitted with their applications. Failure to do so may limit the scope of reliance.

Sections 13 and 14 of Rev. Proc. 2011–4 applicable

.02 Except as otherwise provided in this section, determination letters are governed, generally, by the provisions of sections 13 and 14 of Rev. Proc. 2011–4.

Effect of subsequent publication of revenue ruling, etc.

.03 The prior qualification of a plan as adopted by an employer will not be considered to be adversely affected by the publication of a revenue ruling, a revenue procedure, or an administrative pronouncement within the meaning of § 1.6661–3(b)(2) of the regulations where:

(1) The plan was the subject of a favorable determination letter and the request for that letter contained no misstatement or omission of material facts;

(2) The facts subsequently developed are not materially different from the facts on which the determination letter was based;

(3) There has been no change in the applicable law; and

(4) The employer that established the plan acted in good faith in reliance on the determination letter.

However, all such plans must be amended to comply with the published guidance for subsequent years, in accordance with the rules set forth in Rev. Proc. 2007–44. See, in particular, Part II of that revenue procedure.

Determination letter does not apply to taxability issues

.04 While a favorable determination letter may serve as a basis for determining deductions for employer contributions thereunder, it is not to be taken as an indication that contributions are necessarily deductible as made. This latter determination can be made only upon an examination of the employer's tax return, in accordance with the limitations, and subject to the conditions of, § 404.

SECTION 22. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2010–6 is superseded.

SECTION 23. EFFECTIVE DATE

This revenue procedure is effective February 1, 2011.

SECTION 24. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 6.05, 6.16, 6.18, 6.19, 6.20, 7.04, 13, 14, 15, 16, 19.02, and 21.04. This information is required to determine plan qualification. This information will be used to determine whether a plan is entitled to favorable tax treatment. The collections of information are mandatory. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 163,186 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 hour to 40 hours, depending on individual circumstances, with an estimated average of 2.02 hours. The estimated number of respondents and/or recordkeepers is 80,763.

The estimated annual frequency of responses (used for reporting requirements only) is once every three years.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Angelique Carrington of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number) or Ms. Carrington at *RetirementPlanQuestions@irs.gov*.

EXHIBIT: SAMPLE NOTICE TO INTERESTED PARTIES

The Exhibit set forth below, may be used to satisfy the requirements of section 18 of this revenue procedure.

EXHIBIT: SAMPLE NOTICE TO INTERESTED PARTIES

1. Notice To: _____ [describe class or classes of interested parties]

An application is to be made to the Internal Revenue Service for an advance determination on the qualification of the following employee pension benefit plan:

2. _____

   (name of plan)

3. _____

   (plan number)

4. _____

   (name and address of applicant)

5. _____

   (applicant EIN)

6. _____

   (name and address of plan administrator)

7. The application will be filed on _____ for an advance determination as to whether the plan meets the qualification requirements of § 401 or 403(a) of the Internal Revenue Code of 1986, with respect to the plan's _____ [initial qualification, amendment, termination, or partial termination].

   The application will be filed with:

   EP Determinations
   Internal Revenue Service
   P.O. Box 12192
   Covington, KY 41012–0192

8. The employees eligible to participate under the plan are:

9. The Internal Revenue Service _____ [has/has not] previously issued a determination letter with respect to the qualification of this plan.

RIGHTS OF INTERESTED PARTIES

10. You have the right to submit to EP Determinations, at the above address, either individually or jointly with other interested parties, your comments as to whether this plan meets the qualification requirements of the Internal Revenue Code.

    You may instead, individually or jointly with other interested parties, request the Department of Labor to submit, on your behalf, comments to EP Determinations regarding qualification of the plan. If the Department declines to comment on all or some of the matters you raise, you may, individually, or jointly if your request was made to the Department jointly, submit your comments on these matters directly to EP Determinations.

REQUESTS FOR COMMENTS BY THE DEPARTMENT OF LABOR

11. The Department of Labor may not comment on behalf of interested parties unless requested to do so by the lesser of 10 employees or 10 percent of the employees who qualify as interested parties. The number of persons needed for the Department to comment with respect to this plan is _____. If you request the Department to comment, your request must be in writing and must specify the matters upon which comments are requested, and must also include:

(1) the information contained in items 2 through 5 of this Notice; and

(2) the number of persons needed for the Department to comment.

A request to the Department to comment should be addressed as follows:

Deputy Assistant Secretary
Employee Benefits Security Administration
ATTN: 3001 Comment Request
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

COMMENTS TO THE INTERNAL REVENUE SERVICE

12. Comments submitted by you to EP Determinations must be in writing and received by it by _____. However, if there are matters that you request the Department of Labor to comment upon on your behalf, and the Department declines, you may submit comments on these matters to EP Determinations to be received by it within 15 days from the time the Department notifies you that it will not comment on a particular matter, or by _____, whichever is later, but not after _____. A request to the Department to comment on your behalf must be received by it by _____ if you wish to preserve your right to comment on a matter upon which the Department declines to comment, or by _____ if you wish to waive that right.

ADDITIONAL INFORMATION

13. 13. Detailed instructions regarding the requirements for notification of interested parties may be found in sections 17 and 18 of Rev. Proc. 2011–6. Additional information concerning this application (including, where applicable, an updated copy of the plan and related trust; the application for determination; any additional documents dealing with the application that have submitted to the Service; and copies of section 17 of Rev. Proc. 2011–6 are available at _____ during the hours of _____ for inspection and copying. (There is a nominal charge for copying and/or mailing.)

APPENDIX

Checklist As part of a § 401(h) or § 420 determination letter request described in section 16 of this revenue procedure the following checklist may be completed and attached to the determination letter request. If the request relates to § 401(h) but not to § 420, complete Part I only. If the request relates to § 420, complete Parts I and II.

PART I

		CIRCLE	*SECTION*
1.	Does the Plan contain a medical benefits account within the meaning of § 401(h) of the Code? If the medical benefits account is a new provision, items "a" through "h" should be completed.	Yes No	
a.	Does the medical benefits account specify the medical benefits that will be available and contain provisions for determining the amount that will be paid?	Yes No	_____
b.	Does the medical benefits account specify who will benefit?	Yes No	_____
c.	Does the medical benefits account indicate that such benefits, when added to any life insurance protection in the Plan, will be subordinate to retirement benefits? (This requirement will not be satisfied unless the amount of actual contributions to provide § 401(h) benefits (when added to actual contributions for life insurance protection under the Plan) does not exceed 25 percent of the total actual contributions to the Plan (other than contributions to fund past service credits), determined on an aggregate basis since the inception of the § 401(h) arrangement.)	Yes No	_____
d.	Does the medical benefits account maintain separate accounts with respect to contributions to key employees (as defined in § 416(i)(1) of the Code) to fund such benefits?	Yes No	_____
e.	Does the medical benefits account state that amounts contributed must be reasonable and ascertainable?	Yes No	_____
f.	Does the medical benefits account provide for the impossibility of diversion prior to satisfaction of liabilities (other than item "7" below)?	Yes No	_____
g.	Does the medical benefits account provide for reversion upon satisfaction of all liabilities (other than item "7" below)?	Yes No	_____
h.	Does the medical benefits account provide that forfeitures must be applied as soon as possible to reduce employer contributions to fund the medical benefits?	Yes No	_____

PART II

2.	Does the Plan limit transfers to "Excess Assets" as defined in § 420(e)(2) of the Code?	Yes No	_____

3. Does the Plan provide that only one transfer may be made in a taxable year (except with regard to transfers relating to prior years pursuant to § 420(b)(4) of the Code)? Yes No _____

4. Does the Plan provide that the amount transferred shall not exceed the amount reasonably estimated to be paid for qualified current retiree health liabilities? Yes No _____

5. Does the Plan provide that no transfer will be made after December 31, 2013? Yes No _____

6. Does the Plan provide that transferred assets and income attributable to such assets shall be used only to pay qualified current retiree health liabilities for the taxable year of transfer? Yes No _____

7. Does the Plan provide that any amounts transferred (plus income) that are not used to pay qualified current retiree health liabilities shall be transferred back to the defined benefit portion of the Plan? Yes No _____

8. Does the Plan provide that amounts paid out of a health benefits account will be treated as paid first out of transferred assets and income attributable to those assets? Yes No _____

9. Does the Plan provide that participants' accrued benefits become nonforfeitable on a termination basis (i) immediately prior to transfer, or (ii) in the case of a participant who separated within 1 year before the transfer, immediately before such separation? Yes No _____

10. In the case of transfers described in § 420(b)(4) of the Code relating to 1990, does the Plan provide that benefits will be recomputed and become nonforfeitable for participants who separated from service in such prior year as described in § 420(c)(2)? Yes No _____

11. Does the Plan provide that transfers will be permitted only if each group health plan or arrangement contains provisions satisfying § 420(c)(3) of the Code, as amended? Yes No _____

12. Does the Plan define "applicable employer cost", "cost maintenance period" and "benefit maintenance period", as needed, consistently with § 420(c)(3) of the Code, as amended? Yes No _____

13. Do the Plan's provisions reflect the transition rule in section 535(c)(2) of TREA'99, if applicable? Yes No _____

14. Does the Plan provide that transferred assets cannot be used for key employees? Yes No _____

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2011–7

SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 This revenue procedure updates Rev. Proc. 2010–7, 2010–1 I.R.B. 231, by providing a current list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (International) relating to matters on which the Internal Revenue Service will not issue letter rulings or determination letters.

.02 Changes

(1) Section 4.01(4) is modified to include the following: Whether a payment constitutes portfolio interest under Sec. 871(h) or whether an obligation qualifies for any of the components of portfolio interest such as being in registered form.

SECTION 2. BACKGROUND AND SCOPE OF APPLICATION

.01 Background

In the interest of sound tax administration, the Service answers inquiries from individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions before the filing of returns or reports that are required by the Internal Revenue Code. There are, however, areas where the Service will not issue letter rulings or determination letters, either because the issues are inherently factual or for other reasons. These areas are set forth in sections 3 and 4 of this revenue procedure.

Section 3 lists areas in which letter rulings and determination letters will not be issued under any circumstances.

Section 4 lists areas in which they will not ordinarily be issued; in these areas, unique and compelling reasons may justify issuing a letter ruling or determination letter. A taxpayer who plans to request a letter ruling or determination letter in an area described in Section 4 should contact (by telephone or in writing) the Office of Associate Chief Counsel (International) (hereinafter "the Office") prior to making such request and discuss with the Office the unique and compelling reasons that the taxpayer believes justify issuing such letter ruling or determination letter. While not required, a written submission is encouraged since it will enable Office personnel to arrive more quickly at an understanding of the unique facts of each case. A taxpayer who contacts the Office by telephone may be requested to provide a written submission. The Service may provide a general information letter in response to inquiries in areas on either list. These lists are not all-inclusive. Future revenue procedures may add or delete items. The Service may also decline to rule on an individual case for reasons peculiar to that case, and such decision will not be announced in the Internal Revenue Bulletin.

.02 Scope of Application

This revenue procedure does not preclude the submission of requests for technical advice to the Office from other offices of the Service.

SECTION 3. AREAS IN WHICH RULING OR DETERMINATION LETTERS WILL NOT BE ISSUED

.01 Specific Questions and Problems

(1) Section 861.—Income from Sources Within the United States.—A method for determining the source of a pension payment to a nonresident alien individual from a trust under a defined benefit plan that is qualified under § 401(a) if the proposed method is inconsistent with §§ 4.01, 4.02, and 4.03 of Rev. Proc. 2004–37, 2004–1 C.B. 1099.

(2) Section 862.—Income from Sources Without the United States.—A method for determining the source of a pension payment to a nonresident alien individual from a trust under a defined benefit plan that is qualified under § 401(a) if the proposed method is inconsistent with §§ 4.01, 4.02, and 4.03 of Rev. Proc. 2004–37, 2004–1 C.B. 1099.

(3) Section 871(g).—Special Rules for Original Issue Discount.—Whether a debt instrument having original issue discount within the meaning of § 1273 is not an original issue discount obligation within the meaning of § 871(g)(1)(B)(i) when the instrument is payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

(4) Section 894.—Income Affected by Treaty.—Whether a person that is a resident of a foreign country and derives income from the United States is entitled to benefits under the United States income tax treaty with that foreign country pursuant to the limitation on benefits article. However, the Service may rule regarding the legal interpretation of a particular provision within the relevant limitation on benefits article.

(5) Section 954.—Foreign Base Company Income.—The effective rate of tax that a foreign country will impose on income.

(6) Section 7701(b).—Definition of Resident Alien and Nonresident Alien.—Whether an alien individual is a nonresident of the United States, including whether the individual has met the requirements of the substantial presence test or exceptions to the substantial presence test. However, the Service may rule regarding the legal interpretation of a particular provision of § 7701(b) or the regulations thereunder.

.02 General Areas.

(1) The prospective application of the estate tax to the property or the estate of a living person, except that rulings may be issued on any international issues in a ruling request accepted pursuant to § 5.06 of Rev. Proc. 2011–1.

(2) Whether reasonable cause exists under Subtitle F (Procedure and Administration) of the Code.

(3) Whether a proposed transaction would subject a taxpayer to criminal penalties.

(4) Any area where the ruling request does not comply with the requirements of Rev. Proc. 2011–1.

(5) Any area where the same issue is the subject of the taxpayer's pending request for competent authority assistance under a United States tax treaty.

(6) A "comfort" ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decisions of a court, tax treaties, revenue rulings, or revenue procedures absent extraordinary circumstances (*e.g.*, a request for a ruling required by a governmental regulatory authority in order to effectuate the transaction.)

(7) Any frivolous issue, as that term is defined in § 6.10 of Rev. Proc. 2011–1.

SECTION 4. AREAS IN WHICH RULING OR DETERMINATION LETTERS WILL NOT ORDINARILY BE ISSUED

.01 Specific Questions and Problems

(1) Section 367(a).—Transfers of Property from the United States.—Whether an oil or gas working interest is transferred from the United States for use in the active conduct of a trade or business for purposes of § 367(a)(3); and whether any other property is so transferred, where the determination requires extensive factual inquiry.

(2) Section 367(b).—Other Transfers.—Whether a foreign corporation is considered a corporation for purposes of any nonrecognition provision listed in § 367(b), and related issues, unless the ruling request presents a significant legal issue or subchapter C rulings are requested in the context of reorganizations or liquidations involving foreign corporations.

(3) Section 864.—Definitions and Special Rules.—Whether a taxpayer is engaged in a trade or business within the United States, and whether income is effectively connected with the conduct of a trade or business within the United States; whether an instrument is a security as defined in § 1.864–2(c)(2); whether a taxpayer effects transactions in the United States in stocks or securities under § 1.864–2(c)(2); whether an instrument or item is a commodity as defined in § 1.864–2(d)(3); and for purposes of § 1.864–2(d)(1) and (2), whether a commodity is of a kind customarily dealt in on an organized commodity exchange, and whether a transaction is of a kind customarily consummated at such place.

(4) Section 871.—Tax on Nonresident Alien Individuals.— Whether a payment constitutes portfolio interest under Sec. 871(h); whether an obligation qualifies for any of the components of portfolio interest such as being in registered form; and whether the income earned on contracts that do not qualify as annuities or life insurance contracts because of the limitations imposed by § 72(s) and § 7702(a) is portfolio interest as defined in § 871(h); .

(5) Section 881.—Tax on Income of Foreign Corporations Not Connected with United States Business.—Whether the income earned on contracts that do not qualify as annuities or life insurance contracts because of the limitations imposed by § 72(s) and § 7702(a) is portfolio interest as defined in § 881(c).

(6) Section 892.—Income of Foreign Governments and of International Organizations.—Whether income derived by foreign governments and international organizations from sources within the United States is excluded from gross income and exempt from taxation and any underlying issue related to that determination.

(7) Section 893.—Compensation of Employees of Foreign Governments and International Organizations.—Whether wages, fees, or salary of an employee of a foreign government or of an international organization received as compensation for official services to such government or international organization is excluded from gross income and exempt from taxation and any underlying issue related to that determination.

(8) Section 894.—Income Affected by Treaty.—Whether the income received by an individual in respect of services rendered to a foreign government or a political subdivision or a local authority thereof is exempt from federal income tax or withholding under any of the United States income tax treaties which contain provisions applicable to such individuals.

(9) Section 894.—Income Affected by Treaty.—Whether a taxpayer has a permanent establishment in the United States for purposes of any United States income tax treaty and whether income is attributable to a permanent establishment in the United States.

(10) Section 894.—Income Affected by Treaty.—Whether certain persons will be considered liable to tax under the laws of a foreign country for purposes of determining if such persons are residents within the meaning of any United States income tax treaty. But see Rev. Rul. 2000–59, 2000–2 C.B. 593.

(11) Section 894.—Income Affected by Treaty.—Whether the income received by a nonresident alien student or trainee for services performed for a university or other educational institution is exempt from federal income tax or withholding under any of the United States income tax treaties which contain provisions applicable to such nonresident alien students or trainees.

(12) Section 894.—Income Affected by Treaty.—Whether the income received by a nonresident alien performing research or teaching as personal services for a university, hospital or other research institution is exempt from federal income tax or withholding under any of the United States income tax treaties which contain provisions applicable to such nonresident alien teachers or researchers.

(13) Section 894.—Income Affected by Treaty.—Whether a foreign recipient of payments made by a United States person is ineligible to receive the benefits of a United States tax treaty under the principles of Rev. Rul. 89–110, 1989–2 C.B. 275.

(14) Section 894.—Income Affected by Treaty.—Whether a recipient of payments is or has been a resident of a country for purposes of any United States tax treaty. Pursuant to § 1.884–5(f), however, the Service may rule whether a corporation representing that it is a resident of a country is a qualified resident thereof for purposes of § 884.

(15) Section 894.—Income Affected by Treaty.—Whether an entity is treated as fiscally transparent by a foreign jurisdiction for purposes of § 894(c) and the regulations thereunder.

(16) Section 901.—Taxes of Foreign Countries and of Possessions of United States.—Whether a foreign levy meets the requirements of a creditable tax under § 901.

(17) Section 901.—Taxes of Foreign Countries and of Possessions of United States.—Whether a person claiming a credit has established, based on all of the relevant facts and circumstances, the amount (if any) paid by a dual capacity taxpayer under a qualifying levy that is not paid in exchange for a specific economic benefit. See § 1.901–2A(c)(2).

(18) Section 903.—Credit for Taxes in Lieu of Income, Etc., Taxes.—Whether a foreign levy meets the requirements of a creditable tax under § 903

(19) Sections 927(a) (Repealed), 936(h)(5), 943(a)(Repealed), 954(d), 993(c).—Manufactured Product.—Whether a product is manufactured or produced for purposes of § 927(a) (Repealed), § 936(h)(5), § 943(a) (Repealed), § 954(d), and § 993(c).

(20) Section 936.—Puerto Rico and Possession Tax Credit.—What constitutes a substantial line of business.

(21) Section 937.—Definition of *Bona Fide* Resident.—Whether an individual is a *bona fide* resident of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands. However, the Service may rule regarding the legal interpretation of a particular provision of § 937(a) or the regulations thereunder.

(22) Section 956.—Investment of Earnings in United States Property.—Whether a pledge of the stock of a controlled foreign corporation is an indirect pledge of the assets of that corporation. See § 1.956–2(c)(2).

(23) Section 985.—Functional Currency.—Whether a currency is the functional currency of a qualified business unit.

(24) Section 989(a).—Qualified Business Unit.—Whether a unit of the taxpayer's trade or business is a qualified business unit.

(25) Section 1058.—Transfers of Securities under Certain Agreements.—Whether the amount of any payment described in § 1058(b)(2) or the amount of any other payment made in connection with a transfer of securities described in § 1058 is from sources within or without the United States; the character of such amounts; and whether the amounts constitute a particular kind of income for purposes of any United States income tax treaty.

(26) Section 1503(d).—Dual Consolidated Loss.—Whether the income tax laws of a foreign country would deny any opportunity for the foreign use of a dual consolidated loss in the year in which the dual consolidated loss is incurred under § 1.1503(d)–3(e)(1); whether no possibility of foreign use exists under § 1.1503(d)–6(c)(1); whether an event presumptively constitutes a triggering event under § 1.1503(d)–6(e)(1)(i)–(ix); whether the presumption of a triggering event is rebutted under § 1.1503(d)–6(e)(2); and whether a domestic use agreement terminates under § 1.1503(d)–6(j)(1). The Service will also not ordinarily rule on the corresponding provisions of prior regulations under section 1503(d).

(27) Section 2501.—Imposition of Tax.—Whether a partnership interest is intangible property for purposes of § 2501(a)(2) (dealing with transfers of intangible property by a nonresident not a citizen of the United States).

(28) Section 7701.—Definitions.—Whether an estate or trust is a foreign estate or trust for federal income tax purposes.

(29) Section 7701.—Definitions.—Whether an intermediate entity is a conduit entity under § 1.881–3(a)(4); whether a transaction is a financing transaction under § 1.881–3(a)(ii); whether the participation of an intermediate entity in a financing arrangement is pursuant to a tax avoidance plan under § 1.881–3(b); whether an intermediate entity performs significant financing activities under § 1.881–3(b)(3)(ii); whether an unrelated intermediate entity would not have participated in a financing arrangement on substantially the same terms under § 1.881–3(c).

(30) Section 7874.—Expatriated Entities and their Foreign Parents.—Whether, after the acquisition, the expanded affiliated group has substantial business activities in the foreign country in which, or under the law of which, the acquiring foreign entity is created or organized, when compared to the total business activities of the expanded affiliated group.

.02 General Areas

(1) Whether a taxpayer has a business purpose for a transaction or arrangement.

(2) Whether a taxpayer uses a correct North American Industry Classification System (NAICS) code or Standard Industrial Classification (SIC) code.

(3) Any transaction or series of transactions that is designed to achieve a different tax consequence or classification under U.S. tax law (including tax treaties) and the tax law of a foreign country, where the results of that different tax consequence or classification are inconsistent with the purposes of U.S. tax law (including tax treaties).

(4)(a) Situations where a taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal tax investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(b) The provisions of subsection 4.02(4)(a) above shall not apply if the taxpayer or affected related party (i) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (ii) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

(5) The federal tax consequences of proposed federal, state, local, municipal, or foreign legislation.

(6)(a) Situations involving the interpretation of foreign law or foreign documents. The interpretation of a foreign law or foreign document means making a judgment about the import or effect of the foreign law or document that goes beyond its plain meaning.

(b) The Service, at its discretion, may consider rulings that involve the interpretation of foreign laws or foreign documents. In these cases, the Service may request information in addition to that listed in §§ 7.01(2)(b) and (c) of Revenue Procedure 2009–1, including a discussion of the implications of any authority believed to interpret the foreign law or foreign document, such as pending legislation, treaties, court decisions, notices or administrative decisions.

SECTION 5. EFFECT ON OTHER REVENUE PROCEDURE

Rev. Proc. 2010–7 is superseded.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective January 3, 2011.

SECTION 7. DRAFTING INFORMATION

This revenue procedure was compiled by Willard W. Yates of the Office of

Associate Chief Counsel (International). For further information about this revenue procedure, please contact Mr. Yates at (202) 622–3164 (not a toll-free number).

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SECTION 1. PURPOSE

This revenue procedure provides guidance for complying with the user fee program of the Internal Revenue Service as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division; and requests for administrative scrutiny determinations under Rev. Proc. 93–41, 1993–2 C.B. 536.

SECTION 2. CHANGES

.01 *In general.* This revenue procedure is a general update of Rev. Proc. 2010–8, 2010–1 I.R.B. 234.

.02 Changed "lead" to "mass submitter" in sections 6.04(2) and 6.04(3).

.03 Changed the fees in sections 6.03(2) and 6.04(1)(b) to $9,500.

.04 Updated user fee amounts for various employee plan user fees. The following fee changes have been made:

(a) Changed $1,000 to $2,500 in section 6.05(1)(a)

(b) Changed $1,000 to $2,000 in section 6.05(1)(b)

(c) Changed $1,500 to $3,000 in section 6.05(1)(d)(i) and (ii) and $10,000 to $15,000 in section 6.05(1)(d)(iii) and (iv)

(d) Changed $1,500 to $3,000 in section 6.05(1)(e)(i) and (ii) and $10,000 to $15,000 in section 6.05(1)(e)(iii) and (iv)

(e) Changed $1,800 to $4,500 in section 6.05(2)(a)

(f) Changed $1,800 to $4,000 in 6.05 (2)(b)

(g) Changed $1,000 to $1,800 in section 6.05(2)(c)

(h) Changed $2,300 to $5,000 in section 6.05(2)(d)(i) and (ii) and $15,000 to $25,000 in section 6.05(2)(d)(iii) and (iv)

(i) Changed $2,300 to $5,000 in section 6.05(e)(i) and (ii) and $15,000 to $25,000 in section 6.05(e)(iii) and (iv)

(j) Changed $750 to $1,000 in section 6.05(3).

.05 Sections 6.06, 6.08 and 7.02 have been updated to reflect that requests for changes in accounting method or period are now handled by EO Determinations, and those requests should be sent to the Internal Revenue Service Center in Covington, Kentucky.

.06 The references in 6.07 and 6.08 to application fees after Cyber Assistant availability have been removed because the Service does not expect Cyber Assistant (a Web-based software program designed to assist organizations in preparing their application for recognition of exemption under § 501(c)(3) of the Internal Revenue Code (Form 1023)) to become available in 2011.

.07 The law requires the Service to regularly review and adjust its fees. When setting fees, the Service is required to look at the number of cases and the actual time and costs of processing the cases, plus other cost accounting data. Because of systems limitations, certain types of determinations were provided free of charge that would have otherwise merited a user fee. These included, for example, certain determinations under Chapter 42 of the Internal Revenue Code that were previously private letter rulings under the jurisdiction of EO Technical. The following types of requests postmarked after the effective date of this revenue procedure will now require a user fee: advance approval of § 4942(g)(2) set asides, advance approval of § 4945 grant making procedures, advance approval of § 4945(f) voter registration activities, § 6033 annual information return filing requirements, determination of unusual grants to certain organizations under §§ 170(b)(1)(A)(vi) and 509(a)(2), reclassification of foundation status, including § 4942(j)(3) operating foundation status and § 4940(d) exempt operating foundation status, supporting organization type I, II or III (including whether functionally integrated) classifications under § 509(a)(3), and § 507 terminations of private foundations.

.08 Updated section 7.02 to reflect that requests for determination letters submitted with Form 8940 should be sent to the Internal Revenue Service's Covington, KY P.O. Box.

.09 Section 13 is revised to change the effective date of this revenue procedure to February 1, 2011 except for certain Exempt Organization user fees, effective January 3, 2011.

.10 Section B of the Appendix is revised to reflect that Rev. Proc 87–50, 1987–2 C.B. 647 and Rev. Proc. 98–59, 1998–2 C.B. 727 are modified by Rev. Proc. 2010–48, 2010–50 I.R.B. 828.

.11 Section D of the Appendix is revised to reflect that Rev. Proc 2011–9, the next Bulletin, sets forth revised procedures with regard to applications for recognition of exemption from federal income tax under §§ 501 and 521.

SECTION 3. BACKGROUND

.01 *Legislation authorizing user fees.* Section 7528 was added to the Code by section 202 of the Temporary Assistance for Needy Families Block Grant Program, Pub. L. No. 108–89, and was made permanent by section 8244 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110–28. Section 7528 of the Code directs the Secretary of the Treasury or delegate (the "Secretary") to establish a program requiring the payment of user fees for requests to the Service for letter rulings, opinion letters, determination letters, and similar requests. The fees charged under the program (1) are to vary according to categories or subcategories established by the Secretary; (2) are to be determined after taking into account the average time for, and difficulty of, complying with requests in each category and subcategory; and (3) are payable in advance. Section 7528(b)(3) directs the Secretary to provide for exemptions and reduced fees under the program as the Secretary determines to be appropriate, but the average fee applicable to each category may not be less than the amount specified in § 7528.

.02 *Related revenue procedures.* The various revenue procedures that require payment of a user fee, or an administrative scrutiny determination user fee are described in the appendix to this revenue procedure.

SECTION 4. SCOPE

.01 *Requests to which user fees apply.* In general, user fees apply to all requests

for letter rulings, opinion letters, determination letters, and advisory letters submitted by or on behalf of taxpayers, sponsoring organizations or other entities as described in this revenue procedure. Further, administrative scrutiny determination user fees, described in Rev. Proc. 93–41, are collected through the user fee program described in this revenue procedure. Requests to which a user fee or an administrative scrutiny determination user fee is applicable must be accompanied by the appropriate fee as determined from the fee schedule set forth in section 6 of this revenue procedure. The fee may be refunded in limited circumstances as set forth in section 10.

.02 *Requests and other actions that do not require the payment of a user fee.* Actions which do not require the payment of a user fee include the following:

(1) Requests for information letters as defined in Rev. Proc. 2011–4, page 123, this Bulletin.

(2) Elections pertaining to automatic extensions of time under § 301.9100–1 of the Procedure and Administration regulations.

(3) Use of forms which are not to be filed with the Service. For example, no user fee is required in connection with the use of Form 5305, *Traditional Individual Retirement Trust Account*, or Form 5305–A, *Traditional Individual Retirement Custodial Account*, in order to adopt an individual retirement account under § 408(a).

(4) In general, plan amendments whereby sponsors amend their plans by adopting, word-for-word, the model language contained in a revenue procedure which states that the amendment should not be submitted to the Service and that the Service will not issue new opinion, advisory, ruling or determination letters for plans that are amended solely to add the model language.

(5) Change in accounting period or accounting method permitted by a published revenue procedure that permits an automatic change without prior approval of the Commissioner.

(6) *Compliance and Correction Fees.* Compliance fees and compliance correction fees under the Employee Plans Compliance Resolution System are not described in this procedure because they are compliance fees or compliance correction fees and not user fees. For further guidance, please see Rev. Proc. 2008–50, 2008–35 I.R.B. 464.

.03 *Exemptions from the user fee requirements.* The following exemptions apply to the user fee requirements. These are the only exemptions that apply:

(1) Departments, agencies, or instrumentalities of the United States that certify that they are seeking a letter ruling, determination letter, opinion letter or similar letter on behalf of a program or activity funded by federal appropriations. The fact that a user fee is not charged has no bearing on whether an applicant is treated as an agency or instrumentality of the United States for purposes of any provision of the Code except for § 7528.

(2) Requests as to whether a worker is an employee for federal employment taxes and federal income tax withholding purposes (chapters 21, 22, 23, 23A, and 24 of subtitle C of the Code) submitted on Form SS–8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, or its equivalent. Such a request may be submitted in connection with an application for a determination on the qualification of a plan when it is necessary to determine whether an employer-employee relationship exists. See section 6.13 of Rev. Proc. 2011–6, page 195, this Bulletin. In that case, although no user fee applies to the request submitted on Form SS–8, the applicable user fee must be paid in connection with the application for determination on the plan's qualification.

SECTION 5. DEFINITIONS

The following terms used in this revenue procedure are defined in the pertinent revenue procedures referred to below, which are described in the appendix:

Administrative scrutiny determination	Rev. Proc. 93–41
Adoption agreement	Rev. Proc. 2005–16
Advisory letter	Rev. Procs. 2005–16, 2011–6
Basic plan document	Rev. Proc. 2005–16
Determination letter	Rev. Proc. 2011–9
Dual-purpose IRA	Rev. Procs. 98–59, 2010–48
Group exemption letter	Rev. Proc. 80–27
Information letter	Rev. Proc. 2011–4
Letter ruling	Rev. Proc. 2011–4
Mass submitter	Rev. Procs. 87–50, 2005–16
Mass submitter plan	Rev. Proc. 2005–16
Master plan	Rev. Proc. 2005–16
Minor modification	Rev. Procs. 87–50, 2005–16

Opinion letter	Rev. Procs. 2005–16, 2011–4
Prototype plan	Rev. Proc. 2005–16
Roth IRA	Rev. Procs. 98–59, 2010–48
SIMPLE IRA	Rev. Proc. 97–29
SIMPLE IRA Plan	Rev. Proc. 97–29
Plan Sponsor	Rev. Proc. 2005–16
Sponsoring organization	Rev. Procs. 87–50, Rev. Proc. 2005–16
Staggered Remedial Amendment Period	Rev. Proc. 2007–44
Substitute mortality table	Rev. Proc. 2007–37
Volume submitter lead specimen plan	Rev. Proc. 2005–16
Volume submitter plan	Rev. Proc. 2005–16
Volume submitter specimen plan	Rev. Proc. 2005–16
Word-for-word identical adoption	Rev. Procs. 87–50, 2005–16

SECTION 6. FEE SCHEDULE

The amount of the user fee payable with respect to each category or subcategory of submission is as set forth in the following schedule.

CATEGORY	
EMPLOYEE PLANS USER FEES	
.01 *Letter ruling requests.*	
(1) Computation of exclusion for annuitant under § 72	$1,000
(2) Change in plan year (Form 5308)	$1,000
(3) Five-Year Automatic Extension of the Amortization Period	$1,000
Note: No user fee is required if the requested change is permitted to be made pursuant to the procedure for automatic approval set forth in Rev. Proc. 87–27, 1987–1 C.B. 769. In such a case, Form 5308 should not be submitted to the Service.	
(4) Certain waivers of 60-day rollover period	
(a) Rollover less than $50,000	$500
(b) Rollover equal to or greater than $50,000 and less than $100,000	$1,500
(c) Rollover equal to or greater than $100,000	$3,000
(5) Change in funding method	$4,000
(6) Letter ruling under Rev. Proc. 90–49, 1990–2 C.B. 620	$4,000
(7) Change in accounting method	$4,000
(8) Request for administrative exemptions for participant-directed transactions that are in compliance with the regulations under § 404(c) of ERISA	$4,000
(9) Letter ruling request on Roth IRA Recharacterization	$4,000
(10) Approval to become a nonbank trustee (see § 1.408–2(e) of the Income Tax Regulations)	$20,000

(11) Any letter ruling under § 419 or § 419A	$14,500
(12) Substitute mortality table under Rev. Proc. 2007–37	$14,500
(13) Waiver of minimum funding standard or excise tax of $1,000,000 or more (§ 412(d), 4971(b) or 4971(f))	$14,500
(14) All other letter rulings, etc., including:	$10,000
(a) Administrative scrutiny determinations with respect to separate lines of business (for each separate line or lines of 5 or less)	
(b) Individually designed simplified employee pension (SEP)	
(c) Waiver of minimum funding standard or excise tax of less than $1,000,000 (§ 412(d), 4971(b) or 4971(f))	

.02 *Opinion letters on prototype individual retirement accounts and/or annuities, SEPs, SIMPLE IRAs, SIMPLE IRA Plans, Roth IRAs and dual purpose IRAs.*

(1) Prototype IRA, SEP, SIMPLE IRA, SIMPLE IRA Plan, or Roth IRA, per plan document, new or amended	$3,000
(2) Sponsoring organization's word-for-word identical adoption of mass submitter's prototype IRA, SEP, SIMPLE IRA, SIMPLE IRA Plan, or Roth IRA, per plan document or an amendment thereof	$200

Note: If a mass submitter submits, in any 12-month period ending January 31, more than 300 applications on behalf of word-for-word adopters of prototype IRAs or prototype dual purpose IRAs with respect to a particular plan document, only the first 300 such applications will be subject to the fee; no fee will apply to those in excess of the first 300 such applications submitted within the 12-month period.

(3) Sponsoring organization's minor modification of a mass submitter's prototype IRA, SEP, SIMPLE IRA, dual purpose IRA, SIMPLE IRA Plan, or Roth IRA, per plan document	$750
(4) Opinion letters on dual-purpose, per plan document new or amended	$4,500
(5) Assumption of sponsorship of an approved prototype IRA or SEP, without any amendment to the plan document by a new entity as evidenced by a change of an employer identification number	$200

.03 *Opinion letters on master and prototype plans.*

(1) Mass submitter M & P plan, per basic plan document, new or amended, with one adoption agreement	$12,000
(2) Nonmass submission (new or amended) by M & P sponsor, per adoption agreement	$9,500
(3) Mass submitter M & P plan, per each additional adoption agreement	$1,000
(4) Sponsor's minor modification of M & P mass submitter's plan document, per adoption agreement	$1,000
(5) M & P mass submitter's request for an advisory letter with respect to the addition of optional provisions following issuance of a favorable opinion letter (see section 12.03(1)(c) of Rev. Proc. 2005–16), per basic plan document (regardless of the number of adoption agreements)	$1,000
(6) M & P mass submitter's addition of new adoption agreements after the basic plan document and associated adoption agreements have been approved, per adoption agreement	$1,000

Note 1: Mass submitters that are sponsors in their own right are liable for this fee.

Note 2: If a mass submitter submits, in any 12-month period ending January 31, more than 300 applications on behalf of word-for-word adopters with respect to a particular adoption agreement, only the first 300 such applications will be subject to the fee; no fee will apply to those in excess of the first 300 such applications submitted within the 12-month period.

(7) Sponsor's word-for-word identical adoption of M & P mass submitter's basic plan document (or an amendment thereof), per adoption agreement	$300
(8) Assumption of sponsorship of an approved M & P plan, without any amendment to the plan document, by a new entity, as evidenced by a change of employer identification number, per basic plan document	$300
(9) Mass submitter or sponsor per trust document in excess of 10	$1,000

.04 *Advisory letters on volume submitter plans.*

(1) Volume submitter specimen plan (non mass submitter)	
(a) with no or one adoption agreement	$12,000
(b) per additional adoption agreement	$9,500
(2) Volume submitter mass submitter specimen plan	
(a) with no or one adoption agreement	$12,000
(b) per each additional adoption agreement	$1,000
(3) Volume submitter specimen plan that is word-for-word identical to a mass submitter specimen plan	$300
(4) Assumption of sponsorship of an approved volume submitter plan, without any amendment to the plan document, by a new entity, as evidenced by a change of employer identification number, per basic plan document	$300

.05 *Determination letters*

(1) If the plan is intended to satisfy a design-based or nondesign-based safe harbor, or if the applicant is not electing to receive a determination with respect to any of the general tests, and the applicant is not electing to receive a determination with respect to the average benefit test:

(a) Form 5300 *(Application for Determination for Employee Benefit Plan)*	$2,500
(b) Form 5310 *(Application for Determination for Terminating Plan)*	$2,000
(c) Form 5307 *(Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans)*	$300
(d) Multiple employer plans (Form 5300):	
(i) 2 to 10 Forms 5300	$3,000
(ii) 11 to 99 Forms 5300	$3,000
(iii) 100 to 499 Forms 5300	$15,000
(iv) Over 499 Forms 5300	$15,000

Note: In the case of a multiple employer plan that is adopted by other employers after the initial submission, the fee would be the same as in paragraph (1) above.

(e) Multiple employer plans (Form 5310):

(i) 2 to 10 employers	$3,000
(ii) 11 to 99 employers	$3,000
(iii) 100 to 499 employers	$15,000
(iv) Over 499 employers	$15,000

(2) If the applicant is electing to receive a determination with respect to the average benefit test and/or any of the general tests:

(a) Form 5300 (*Application for Determination for Employee Benefit Plan*)	$4,500
(b) Form 5310 (*Application for Determination for Terminating Plan*)	$4,000
(c) Form 5307 (*Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans*)	$1,800

(d) Multiple employer plans (Form 5300):

(i) 2 to 10 Forms 5300	$5,000
(ii) 11 to 99 Forms 5300	$5,000
(iii) 100 to 499 Forms 5300	$25,000
(iv) Over 499 Forms 5300	$25,000

Note: In the case of a multiple employer plan that is adopted by other employers after the initial submission, the fee would be the same as in paragraph (2) above.

(e) Multiple employer plans (Form 5310):

(i) 2 to 10 employers	$5,000
(ii) 11 to 99 employers	$5,000
(iii) 100 to 499 employers	$25,000
(iv) Over 499 employers	$25,000

(3) Group trusts contemplated by Rev. Rul. 81–100, 1981–1 C.B. 326, Rev. Rul. 2004–67, 2004–2 C.B. 28 and Rev. Rul. 2011–1, 2011–2 I.R.B. Form 5316 is being developed and will be available soon for group trust submissions. $1,000

EXEMPT ORGANIZATIONS USER FEES

.06 *Letter rulings*.

(1) Request for approval of a qualified subsidiary related to a § 501(c)(25) organization.	$2,250
(2) All other letter rulings	$10,000

.07 *Determination letters and requests for group exemption letters*

(1) Application (whether an initial application or an application for reinstatement) for exemption under § 501 or § 521 from organizations (other than pension, profit-sharing, and stock bonus plans described in § 401) that have had annual gross receipts averaging not more than $10,000 during the preceding four years, or new organizations that anticipate gross receipts averaging not more than $10,000 during the first four years.	$400

Note: Organizations seeking this reduced fee must sign a certification with their application that the receipts are or will be not more than the indicated amounts.

(2) Application (whether an initial application or an application for reinstatement) for exemption from organizations otherwise described in paragraph (1) of this section 6.07 whose actual or anticipated gross receipts exceed the $10,000 average annually. $850

Note: If an organization that is already recognized as exempt under § 501(c) seeks reclassification under another subparagraph of § 501(c), a new user fee will be charged whether or not a new application is required. An additional fee applies to organizations that seek recognition of exemption under § 501(c)(4) (unless requested at the time of the § 501(c)(3) application) for a period for which they do not qualify for exemption under § 501(c)(3) because their application was filed late and they do not qualify for relief under § 301.9100–1.

(3) Group Exemption letters $3,000

Note: An additional user fee under (1) or (2) above is also required when a central organization submits an initial application for exemption with its request for a group exemption letter.

(4) Canadian registered charities None

In accordance with the income tax treaty between the United States and Canada, Canadian registered charities are automatically recognized as exempt under § 501(c)(3) without filing an application for exemption. For details, see Notice 99–47, 1999–2 C.B. 391. Therefore, no user fee is required when a Canadian registered charity submits all or part of a Form 1023 or other written request to be listed in Publication 78, or for a determination on its private foundation status.

.08 *Summary of exempt organization fees*

This table summarizes the various types of exempt organization issues, indicates the office of jurisdiction for each type, and lists the applicable user fee. Reduced user fees may be applicable in certain instances.

ISSUE	TECHNICAL OFFICE	USER FEE
Qualified subsidiaries of § 501(c)(25) organizations		$2,250
Section 514(b)(3) Neighborhood Land Use Rule		None
Section 4943(c)(7) extensions of disposal period		$10,000
Section 6104(d)(4) harassment campaign letter		None
Rulings		

ISSUE	DETERMINATIONS OFFICE	USER FEE
Accounting method changes (Form 3115)		$275
Note: No user fee is charged if the method described in Rev. Proc. 2002–9, 2002–1 C.B. 327, is used. Taxpayers complying timely with Rev. Proc. 2002–9 will be deemed to have obtained the consent of the Commissioner of the Internal Revenue to change their method of accounting		
Accounting period changes (Form 1128)		$350
Note: No user fee is charged if the procedure described in Rev. Proc. 85–58, 1985–2 C.B. 740, is used by timely filing the appropriate information return, or if the procedure described in Rev. Proc. 76–10, 1976–1 C.B. 548, for organizations with group exemptions is followed.		
Application (whether an initial application or application for reinstatement) for recognition of exemption		$850
Reduced user fee for organizations described in section 6.07(1)		$400
Group exemption letters		$3,000
Confirmation of exemption (to replace lost exempt status letter, and to reflect name and address changes)		None
Reclassification of private foundation status, including operating foundation status described in § 4942(j)(3) and exempt operating foundation status described in § 4840(d), or for a determination that a public charity is described in § 509(a)(3)(i), (ii), or (iii), including whether or not a Type III supporting organization is functionally integrated.		$400
Regulations § 301.9100 relief in connection with applications for recognition of exemption		None
Section 507 terminations – advance ruling under § 507(b)(1)(B) and notice under § 507(a)(1) or 507(b)(1)(B)		$400
Section 4942(g)(2) set asides – advance approval		$1000
Section 4945 advance approval of organization's grant making procedures		$1000
Section 4945(f) advance approval of voter registration activities		$1000
Section 6033 annual information return filing requirements		$400
Unusual grants to certain organizations under §§ 170(b)(1)(A)(vi) and 509(a)(2)		$400

SECTION 7. MAILING ADDRESS FOR REQUESTING LETTER RULINGS, DETERMINATION LETTERS, ETC.

.01 *Matters handled by EP or EO Technical.* Requests should be mailed to the appropriate address set forth in this section 7.01.

(1) *Employee plans letter rulings under Rev. Procs. 79–62, 87–50, 90–49, 94–42, 2000–41, 2004–15, 2004–44, 2007–37, or 2011–4*:

Internal Revenue Service
Attention: EP Letter Rulings
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

(2) *Employee plan opinion letters under Rev. Procs. 87–50, 97–29, 98–59 and 2010–48*:

Internal Revenue Service
Attention: EP Opinion Letters
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

(3) *Employee plans administrative scrutiny determinations under Rev. Proc. 93–41*:

Internal Revenue Service
Attention: Administrative Scrutiny
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

(4) *Exempt organizations letter rulings*:

Internal Revenue Service
Attention: EO Letter Rulings
P.O. Box 27720
McPherson Station
Washington, D.C. 20038

Note: Hand delivered requests must be marked RULING REQUEST SUBMISSION. The delivery should be made to the following address between the hours of 8:30 a.m. and 4:00 p.m.; where a receipt will be given:

Courier's Desk
Internal Revenue Service
Attention: SE:T:EP [or SE:T:EO]
1111 Constitution Avenue, N.W. — PE
Washington, D.C. 20224

.02 *Matters handled by EP or EO Determinations Office*. The following types of requests and applications are handled by the EP or EO Determinations Office and should be sent to the Internal Revenue Service Center in Covington, Kentucky, at the address shown below: requests for determination letters on the qualified status of employee plans under §§ 401, 403(a), or 409, and the exempt status of any related trust under § 501; applications for recognition of tax exemption on Form 1023, Form 1024 and Form 1028; requests for determination letters submitted with Form 8940; requests for changes in accounting method or period; and other applications for recognition of qualification or exemption. The address is:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012–0192

The following types of requests and applications are handled by the EP Determinations Office and should be sent to the Internal Revenue Service at the address shown below: requests for master and prototype opinion letters and for volume submitter advisory letters on the form of pre-approved employee plans under § 401 or 403(a) and the exempt status of any related trust under § 501. The address is:

Internal Revenue Service
P.O. Box 2508
Rm. 5106
Cincinnati, OH 45201

Determinations and requests not subject to a user fee are handled by the EO Determinations Office and should be sent to the Internal Revenue Service at the address shown below:

Internal Revenue Service
P.O. Box 2508
Rm. 4024
Cincinnati, OH 45201

Applications shipped by Express Mail or a delivery service for all of the above except for pre-approved employee plans should be sent to:

Internal Revenue Service
201 West Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, KY 41011

Applications shipped by Express Mail or a delivery service for pre-approved employee plans should be sent to:

Internal Revenue Service
550 Main Street
Room 5106
Cincinnati, OH 45202

SECTION 8. REQUESTS INVOLVING MULTIPLE OFFICES, FEE CATEGORIES, ISSUES, TRANSACTIONS, OR ENTITIES

.01 *Requests involving several offices*. If a request dealing with only one transaction involves more than one of the offices within Headquarters (for example, one issue is under the jurisdiction of the Associate Chief Counsel (Income Tax & Accounting) and another issue is under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division), only one fee applies, namely the highest fee that otherwise would apply to each of the offices involved. See Rev. Proc. 2011–1, this Bulletin, for the user fees applicable to issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), the Associate Chief Counsel (International) or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

.02 *Requests involving several fee categories*. If a request dealing with only one transaction involves more than one fee category, only one fee applies, namely the highest fee that otherwise would apply to each of the categories involved.

.03 *Requests involving several issues*. If a request dealing with only one transaction involves several issues, or a request for a change in accounting method dealing with only one item or sub-method of accounting involves several issues, or a request for a

change in accounting period dealing with only one item involves several issues, the request is treated as one request. Therefore, only one fee applies, namely the fee that applies to the particular category or subcategory involved. The addition of a new issue relating to the same transaction will not result in an additional fee, unless the issue places the transaction in a higher fee category.

.04 *Requests involving several unrelated transactions*. If a request involves several unrelated transactions, or a request for a change in accounting method involves several unrelated items or sub-methods of accounting, or a request for a change in accounting period involves several unrelated items, each transaction or item is treated as a separate request. As a result, a separate fee will apply for each unrelated transaction or item. An additional fee will apply if the request is changed by the addition of an unrelated transaction or item not contained in the initial submission.

.05 *Requests for separate letter rulings for several entities*. Each entity involved in a transaction (for example, an exempt hospital reorganization) that desires a separate letter ruling in its own name must pay a separate fee regardless of whether the transaction or transactions may be viewed as related.

SECTION 9. PAYMENT OF FEE

.01 *Method of payment*. Each request to the Service for a letter ruling, determination letter, opinion letter, etc., must be accompanied by a check or money order, payable to the United States Treasury, in the appropriate amount. Taxpayers should not send cash.

.02 *Transmittal forms*. Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request*, and Form 8718, *User Fee for Exempt Organization Determination Letter Request*, are intended to be used as attachments to certain determination letter, opinion letter and advisory letter applications. Space is reserved for the attachment of the applicable user fee check or money order. No similar form has been designed to be used in connection with requests for letter rulings or administrative scrutiny determinations.

.03 *Effect of nonpayment or payment of incorrect amount*.

It will be the general practice of the Service that:

(1) The respective offices within the Service that are responsible for issuing letter rulings, determination letters, etc., will exercise discretion in deciding whether to immediately return submissions that are not accompanied by a properly completed check or money order or that are accompanied by a check or money order for less than the correct amount. In those instances where the submission is not immediately returned, the requester will be contacted and given a reasonable amount of time to submit the proper fee. If the proper fee is not received within a reasonable amount of time, the entire submission will then be returned. However, the respective offices of the Service, in their discretion, may defer substantive consideration of a submission until proper payment has been received.

(2) An application for a determination letter will not be returned merely because Form 8717 or Form 8718 was not attached.

(3) The return of a submission to the requester may adversely affect substantive rights if the submission is not perfected and resubmitted to the Service within 30 days of the date of the cover letter returning the submission. Examples of this are: (a) where an application for a determination letter is submitted prior to the expiration of the remedial amendment period under § 401(b) and is returned because no user fee was attached, the submission will be timely if it is resubmitted by the expiration of the remedial amendment period or, if later, within 30 days after the application was returned; and (b) where an application for exemption under § 501(c)(3) is submitted before expiration of the period provided by § 1.508–1(a)(2) and is returned because no user fee was attached, the submission will be timely if it is resubmitted before expiration of the period provided by § 1.508–1(a)(2) or within 30 days, whichever is later.

(4) If a check or money order is for more than the correct amount, the submission will be accepted and the amount of the excess payment will be returned to the requester.

SECTION 10. REFUNDS

.01 *General rule*. In general, the fee will not be refunded unless the Service declines to rule or make a determination on all issues for which a ruling or determination letter is requested.

.02 *Examples*.

(1) The following situations are examples in which the fee will not be refunded:

(a) The request for a letter ruling, determination letter, etc., is withdrawn at any time subsequent to its receipt by the Service, unless the only reason for withdrawal is that the Service has advised the requester that a higher user fee than was sent with the request is applicable and the requester is unwilling to pay the higher fee. For example, no fee will be refunded where the taxpayer has been advised that a proposed adverse ruling is contemplated and subsequently withdraws its submission.

(b) The request is procedurally deficient, although accompanied by the proper fee or an overpayment, and it is not timely perfected. When there is a failure to timely perfect the request, the case will be considered closed and the failure to perfect will be treated as a withdrawal for purposes of this revenue procedure. An exemption application that is not substantially complete is considered a procedurally deficient request for a letter ruling or a determination letter on exempt status.

(c) In the case of a request for a letter ruling, if the case has been closed by the Service because essential information has not been submitted timely, the request may be reopened and treated as a new request, but the requester must pay another user fee before the case can be reopened. See, section 11.04(5) of Rev. Proc. 2011–4, page 123, this Bulletin.

(d) A letter ruling, determination letter, etc., is revoked in whole or in part at the initiative of the Service. The fee paid at the time the original letter ruling, determination letter, etc., was requested will not be refunded.

(e) The request contains several issues and the Service rules on some, but not all, of the issues. The highest fee applicable to the issues on which the Service rules will not be refunded.

(f) The requester asserts that a letter ruling the requester received covering a single issue is erroneous or not responsive (other than an issue on which the Service

has declined to rule) and requests reconsideration. The Service, upon reconsideration, does not agree that the letter ruling is erroneous or is not responsive. The fee accompanying the request for reconsideration will not be refunded.

(g) The situation is the same as described in subparagraph (f) of this section 10.02(1) except that the letter ruling covered several unrelated transactions. The Service, upon reconsideration, does not agree with the requester that the letter ruling is erroneous or is not responsive for all of the transactions, but does agree that it is erroneous as to one transaction. The fee accompanying the request for reconsideration will not be refunded except to the extent applicable to the transaction for which the Service agrees the letter ruling was in error.

(h) The request is for a supplemental letter ruling, determination letter, etc., concerning a change in facts (whether significant or not) relating to the transaction on which the Service ruled.

(i) The request is for reconsideration of an adverse or partially adverse letter ruling or a final adverse determination letter, and the taxpayer submits arguments and authorities not submitted before the original letter ruling or determination letter was issued.

(2) The following situations are examples in which the user fee will be refunded:

(a) In a situation to which section 10.02(1)(i) of this revenue procedure does not apply, the taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or is not responsive (other than an issue on which the Service declined to rule) and requests reconsideration. Upon reconsideration, the Service agrees that the letter ruling is erroneous or is not responsive. The fee accompanying the taxpayer's request for reconsideration will be refunded.

(b) In a situation to which section 10.02(1)(i) of this revenue procedure does not apply, the requester requests a supplemental letter ruling, determination letter, etc., to correct a mistake that the Service agrees it made in the original letter ruling, determination letter, etc., such as a mistake in the statement of facts or in the citation of a Code section. Once the Service agrees that it made a mistake, the fee accompanying the request for the supplemental letter ruling, determination letter, etc., will be refunded.

(c) The taxpayer requests and is granted relief under § 7805(b) in connection with the revocation in whole or in part, of a previously issued letter ruling, determination letter, etc. The fee accompanying the request for relief will be refunded.

(d) In a situation to which section 10.02(1)(e) of this revenue procedure applies, the requester requests reconsideration of the Service's decision not to rule on an issue. Once the Service agrees to rule on the issue, the fee accompanying the request for reconsideration will be refunded.

SECTION 11. REQUEST FOR RECONSIDERATION OF USER FEE

A taxpayer that believes the user fee charged by the Service for its request for a letter ruling, determination letter, etc., is either not applicable or incorrect and wishes to receive a refund of all or part of the amount paid (see section 10 of this revenue procedure) may request reconsideration and, if desired, the opportunity for an oral discussion by sending a letter to the Internal Revenue Service at the applicable Post Office Box or other address given in section 7. Both the incoming envelope and the letter requesting such reconsideration should be prominently marked "USER FEE RECONSIDERATION REQUEST." No user fee is required for these requests. The request should be marked for the attention of:

If the matter involves primarily:	*Mark for the attention of:*
Employee plans letter ruling requests and all other employee plans matters handled by EP Technical	Employee Plans Technical
Exempt organizations letter ruling requests	Exempt Organizations Technical
Employee plans determination letter requests and opinion letter and advisory letter requests pursuant to Rev. Proc. 2005–16	Manager, EP Determinations Quality Assurance
Exempt organizations determination letter requests	Manager, EO Determinations Quality Assurance

SECTION 12. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2010–8 is superseded.

SECTION 13. EFFECTIVE DATE

This revenue procedure is generally effective February 1, 2011. The Exempt Organization User Fees set forth in sections 6.06, 6.07 and 6.08 are effective January 3, 2011.

SECTION 14. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in section 6.07. This information is required to substantiate that a taxpayer or an exempt organization seeking to pay a reduced user fee with respect to a request for a determination letter is entitled to pay the reduced fee; to identify the user fee category and corresponding fee required to be paid with respect to determination letter requests; to request reconsideration of the user fee

charged by the Service and, in connection with such a request, to indicate whether an oral discussion is desired. This information will be used to enable the Service to determine whether the taxpayer or exempt organization is entitled to pay a reduced user fee, to ascertain whether reconsideration of the user fee is being requested and, if it is being requested, whether an oral discussion is requested. The collections of information are voluntary, to obtain a benefit. The likely respondents are individuals, businesses or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The estimated total annual reporting and/or recordkeeping burden is 300 hours.

The estimated annual burden per respondent/recordkeeper varies from one hour to ten hours, depending on individual circumstances, with an estimated average of three hours. The estimated number of respondents and/or recordkeepers is 90 (requests for reduced fees) and 10 (requests for reconsideration of fee).

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Kathleen Herrmann of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding employee plans matters in this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service 877–829–5500 (a toll-free number) between the hours of 8:30 a.m. and 4:30 p.m., Eastern time, Monday through Friday. For employee plans matters, please e-mail Ms. Herrmann at *RetirementPlanQuestions@irs.gov*. For exempt organization matters, please e-mail Mr. Jacob T. Clauson at *tege.eo.ra@irs.gov*. Please put "Question about Rev. Proc. 2011–8" in the subject line.

APPENDIX

Following is a list of revenue procedures requiring payment of a user fee or an administrative scrutiny determination user fee.

A. *Procedures applicable to both Employee Plans and Exempt Organizations*

Rev. Proc. 2011–4, this Bulletin, provides procedures for issuing letter rulings, information letters, etc., on matters relating to matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

B. *Procedures applicable to Employee Plans matters other than actuarial matters*

Rev. Proc. 75–26, 1975–1 C.B. 722, sets forth the general procedures of the Internal Revenue Service for the processing of applications for exemption under § 4975(c)(2).

Rev. Proc. 87–50, 1987–2 C.B. 647, as modified by Rev. Proc. 91–44, Rev. Proc. 92–38, Rev. Proc. 2002–10, 2002–1 C.B. 401, and Rev. Proc 2010–48, 2010–50 I.R.B. 828 sets forth the procedures of the Service relating to the issuance of rulings and opinion letters with respect to the establishment of individual retirement accounts and annuities (IRAs) under § 408, the entitlement to exemption of related trusts or custodial accounts under § 408(e), and the acceptability of the form of prototype simplified employee pension (SEP) agreements under §§ 408(k) and 415.

Rev. Proc. 92–24, 1992–1 C.B. 739, provides procedures for requesting determination letters on the effect on a plan's qualified status under § 401(a) of the Code of plan language that permits, pursuant to § 420, the transfer of assets in a defined benefit plan to a health benefits account described in § 401(h).

Rev. Proc. 92–38, 1992–1 C.B. 859, provides notice that individual retirement arrangement trusts, custodial account agreements, and annuity contracts must be amended to provide for the required distribution rules in § 408(a)(6) or (b)(3) of the Code. In addition, Rev. Proc. 92–38 modifies the guidance in Rev. Proc. 87–50 with regard to opinion letters issued to sponsoring organizations, including mass submitters and sponsors of prototype IRAs.

Rev. Proc. 93–41, 1993–2 C.B. 536, sets forth the procedures of the Service relating to the issuance of an administrative scrutiny determination as to whether a separate line of business satisfies the requirement of administrative scrutiny within the meaning of § 1.414(r)–6.

Rev. Proc. 97–29, 1997–1 C.B. 698, describes model amendments for SIMPLE IRAs; guidance to drafters of prototype SIMPLE IRAs on obtaining opinion letters; permissive amendments to sponsors of nonSIMPLE IRAs; the opening of a prototype program for SIMPLE IRA Plans; and transitional relief for users of SIMPLE IRAs and SIMPLE IRA Plans that have not been approved by the Service.

Rev. Proc. 98–59, 1998–2 C.B. 727, as modified by Rev. Proc. 2010–48, 2010–50 I.R.B. 828 provides guidance on obtaining opinion letters to drafters of prototype Roth IRAs, and provides transitional relief for users of Roth IRAs that have not been approved by the Internal Revenue Service.

Rev. Proc. 2003–16, 2003–1 C.B. 359, sets forth guidelines for the implementation of the provision for a waiver of the 60-day rollover period described in section 644 of EGTRRA.

Rev. Proc. 2005–16, 2005–1 C.B. 674, revises and combines the Service's master and prototype (M&P) and volume submitter program into a unified program for the pre-approval of pension, profit-sharing and annuity plans.

Rev. Proc. 2011–6, this Bulletin, provides procedures for issuing determination letters on the qualified status of employee plans under §§ 401(a), 403(a), 409, and 4975(e)(7).

C. *Procedures applicable to Employee Plans actuarial matters*

Rev. Proc. 79–62, 1979–2 C.B. 576, outlines the procedure by which a plan sponsor or administrator may request a determination that a plan amendment is reasonable and provides for only *de minimis* increases in plan liabilities in accordance with § 412(f)(2)(A) of the Code and § 304(b)(2)(A) of ERISA.

Rev. Proc. 90–49, 1990–2 C.B. 620, modifies and replaces Rev. Proc. 89–35, 1989–1 C.B. 917, in order to extend the effective date to contributions made for plan

years beginning after December 31, 1989, to change the deadline for requesting rulings under the revenue procedure, to revise the information requirements for a ruling request made under the revenue procedure, to furnish a worksheet for actuarial computations, and to provide a special rule under which certain *de minimis* nondeductible employer contributions to a qualified defined benefit plan may be returned to the taxpayer without a formal ruling or disallowance from the Service.

Rev. Proc. 94–42, 1994–1 C.B. 717, sets forth a procedure for obtaining approval of an amendment to a qualified plan that, under § 412(c)(8), reduces the accrued benefits of plan participants.

Rev. Proc. 2000–41, 2000–2, C.B. 371, sets forth the procedure by which a plan administrator or plan sponsor may obtain approval of the Secretary of the Treasury for a change in funding method as provided by § 412(c)(5) of the Code and section 302(c)(5) of ERISA.

Rev. Proc. 2004–15, 2004–1 C.B. 490, sets forth procedures for requesting waivers of the minimum funding standard described in § 412(d) and the issuance of such waivers by the office of the Director, Employee Plans, Tax Exempt and Government Entities Division.

Rev. Proc. 2004–44, 2004–2 C.B. 134, outlines the procedure by which a plan administrator or plan sponsor may request and obtain approval for an extension of an amortization period in accordance with § 412(e) of the Code and section 304(a) of ERISA.

Rev. Proc. 2007–37, 2007–1 C.B. 1433, provides guidelines for requesting letter rulings for substitute mortality tables for certain defined benefit plans as a result of section 102 and 112 of the Pension Protection Act of 2006.

D. *Procedures applicable to Exempt Organizations matters only*

Rev. Proc. 80–27, 1980–1 C.B. 677, as modified by Rev. Proc. 96–40, 1996–2 C.B. 301, provides procedures under which recognition of exemption from federal income tax under § 501(c) may be obtained on a group basis for subordinate organizations affiliated with and under the general supervision or control of a central organization. This procedure relieves each of the subordinates covered by a group exemption letter from filing its own application for recognition of exemption.

Rev. Proc. 2011–9, the next Bulletin, sets forth revised procedures with regard to applications for recognition of exemption from federal income tax under §§ 501 and 521.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D. —Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2010–27 through 2010–52 is in Internal Revenue Bulletin 2010–52, dated December 27, 2010.

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