Raquel J. Webster
Senior Counsel

August 26, 2016

BY HAND DELIVERY AND ELECTRONIC MAIL

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: Docket 4483 – Wind Energy Development, LLC (WED) and ACP Land, LLC Petition for Dispute Resolution Relating to Interconnection
Update on Tax Issue

Dear Ms. Massaro:

National Grid[1] submits this letter to update the Public Utilities Commission (PUC) and parties in this docket regarding the tax issue involved in the above-referenced matter. Based on the advice of the Company's Tax Department, please note the following:

In June 2016, the Internal Revenue Service (IRS) issued Notice 2016-36 (the New Notice), which addresses the "safe harbor" under Internal Revenue Code Section 118(b) for contributions of property to regulated public utilities. The New Notice generally modifies and supersedes Notice 88-129 and Notice 2001-82 (the Old Notices) and constitutes a change in tax law with respect to these transactions. The New Notice consolidates many requirements of the Old Notices, drops the requirement for a long-term purchase power contract or a long-term interconnection agreement (the Long-Term Agreement Requirement), and makes other substantive changes.

Provided that certain requirements were satisfied, the Old Notices applied the safe harbor to the contribution of equipment interconnecting generator facilities with utility transmission systems. However, there was some technical uncertainty under the Old Notices regarding the treatment of similar distributed energy generation (DG) interconnections with utility distribution systems. In December 2014, the Company's affiliate, Massachusetts Electric Company (MECO), submitted a private letter ruling (PLR) request to the IRS for guidance on this question.[2] That PLR request concerned an interconnection between a stand-alone solar electric generation facility and the distribution system of MECO. In PLR 201619007, the IRS ruled that the transfer of this interconnection was taxable because "there was no direct interconnection between the Facility and an electric transmission system . . . ." See Attachment 2 at p.5 (emphasis added).

[1] The Narragansett Electric Company d/b/a National Grid (National Grid or Company).

[2] National Grid also submitted a PLR request for one of the Wind Energy Development, LLC projects in August of 2015, but the IRS declined to rule on this request due to the New Notice, which was pending at that time.

Section III. A. of the New Notice suggests a possible change in law with respect to the treatment of these DG interconnections:

> This notice consolidates the safe harbor requirements under the Notices and removes the requirement that the generator must have a long-term power purchase contract or long-term interconnection agreement with the utility that constructs the upgrades. Because no long-term power purchase contract or long-term interconnection agreement is required under the new safe harbor, a generator (such as a solar or wind farm) may contribute an intertie to a utility that qualifies under the new safe harbor even if the generator is interconnected with a distribution system, rather than a transmission system, if all of the requirements under section III.C of this notice are met. See Attachment 1 at p. 5 (emphasis added).

In a letter dated July 7, 2016, Seth Handy, Esq. asserts that DG interconnections like those of his clients, Wind Energy Development, LLC and ACP Land, LLC, are exempt from taxation under Section III. A. In that letter, Attorney Handy references conversations he had with Roger Reiner, Esq. of the tax law firm of Troutman Sanders, LLP, supporting this view. See July 7, 2016 letter from Seth Handy, Esq. in this docket at p. 2. Nonetheless, in a letter to Troutman Sander LLP clients dated June 20, 2016 (the Troutman Letter), Howard Cooper, Esq. suggests that the new safe harbor provision may only exempt transmission system upgrades that were required because of a DG interconnection but not the DG interconnection itself. See Attachment 3 at p. 2. While National Grid does not have a final view on this matter, it believes that the Troutman Letter provides a reasonable interpretation of Section III. A, which is strongly supported by the text of the New Notice.

First, the continued focus of the New Notice remains on property used in the transmission of electricity over the utility's transmission system, as reflected in the opening sentence of the New Notice:

> This notice provides a safe harbor for transfers of property from either an electricity generation or cogeneration facility or an energy storage facility to a regulated public utility, used to facilitate the transmission of electricity over the utility's transmission system, to be treated as a contribution to the capital of a corporation under §118(a), and not a contribution in aid of construction (CIAC) under §118(b). Notice 88-129, 1988-2 C.B. 541; Notice 90-60, 1990-2 C.B. 345; and Notice 2001-82, 2001-2 C.B. 619, (collectively, the "Notices") are modified and superseded. See Attachment 1 at p. 1 (emphasis added).

This general statement makes absolutely no reference to "distribution." In fact, the word "distribution" only appears twice in the New Notice with limited discussion: in Section III. A. and in Section II. E. 1.[3]

Second, the IRS discussion of the utility industry changes which prompted the New Notice (found in Section II. E) focuses almost exclusively on the operation of electric transmission systems. Other than a cursory mention in the opening sentence, there is no detailed discussion of distribution systems. This section of the New Notice focuses principally on two transmission operational developments: (1) transmission system upgrades transferred to a regulated utility by a generator interconnecting with the transmission system of a different utility, and (2) transmission system upgrades transferred to a regulated utility by an energy storage provider.[4] See Attachment 1 at pp. 4-5.

Finally, Section III. C. of the New Notice only provides a safe harbor with respect to the contribution of an "intertie" (as defined in Section III. B. of the New Notice) which satisfy the requirements of Section III. C. of the Notice. Unfortunately, the definitional provisions of the New Notice and the conditions for application of the new safe harbor appear to focus exclusively on transmission assets. For example, Section III. B. of the New Notice continues to define that term "intertie" exclusively in terms of transmission equipment:

> An intertie includes new connecting and transmission facilities, or modifications, upgrades, or relocations of a utility's existing transmission network that enable or facilitate the interconnection of a generator with a utility or improve efficiency on the utility's transmission network. See Attachment 1 at p. 5 (emphasis added).

[3] In addition to the text in Section III. A. of the New Notice previously quoted, Section II. E. 1. states: "Since the issuance of the Notices, electricity transmission and distribution systems have evolved and become interlinked so that close coordination of operations within the major U.S. power grids is needed to maintain the various interlinked components." See Attachment 1 at p. 4.

[4] With respect to the first category of transactions, the New Notice indicates that these transfers were taxable under the Old Notices because the generator would typically not enter into a long-term interconnection agreement with a regulated utility with which it did not have an actual interconnection. The New Notice drops the Long-Term Agreement Requirement specifically to bring these transfers under the new safe harbor.

Given the narrow focus of this definition of transmission assets, as the Troutman Letter suggests, it would include transmission system upgrades required as a result of a DG interconnection with a distribution system but may not include equipment used to directly interconnect the generator with the distribution system.[5]

Additionally, the requirements of Section III. C. continue to focus exclusively on the transfer of equipment used in the transmission of electricity:

- Under requirement 4, the intertie has to be used for "transmitting electricity."
- Under requirement 2, ownership of the electricity must remain with the generator "prior to its transmission onto the grid." See Attachment 1 at p. 6.

When strictly read, as the Troutman Letter suggests, only transmission systems upgrades required because of a DG interconnection would meet these requirements but the distribution system equipment would not.

It should also be noted that nowhere in the New Notice is the term "transmission" redefined to include distribution systems. National Grid filed two private letter ruling requests to determine whether the IRS' use of the term "transmission" was sufficiently elastic to also include "distribution." The yery clear answer received in PLR 201619007 was that "transmission" only means "transmission." Given this result, one cannot assume that the term "transmission" in the New Notice includes "distribution" without clear definitional guidance in the text to that effect.

While the position described in the Troutman Letter is a possible interpretation of the Section III. A., National Grid acknowledges that other interpretations of this section are also possible. To resolve the ambiguity, Robert Ermanski, National Grid's Director of Tax Research, spoke with David Selig of the IRS in June 2016. Mr. Selig is the contact person identified in Notice 2016-36 and the IRS contact person for the National Grid PLR 201619007. During that conversation, Mr. Selig, expressed similar views to those which Attorney Handy recounts in his July 7 letter, namely, that DG interconnections like the one described in PLR 201619007, were intended to be covered by the New Notice. Mr. Selig, nonetheless, acknowledged ambiguity in the language of the New Notice and invited National Grid to submit comments by e-mail for consideration. In those comments, Mr. Ermanski specifically requested that the IRS provide written clarification about the application of the New Notice to DG interconnections. See Attachment 5. The Company is awaiting the IRS' response to this request.

[5] The definition of "intertie" in the New Notice is substantially similar to the definition in the Old Notices. Notice 88 129 defines the term "intertie" as follows.:

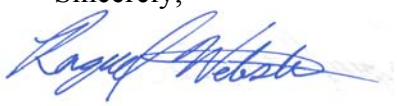
> PURPA and its implementing rules and regulations require that a utility interconnect with a Qualifying Facility for the purpose of allowing the sale of power produced by the Qualifying Facility. A Qualifying Facility must bear the cost of the purchase and installation of any equipment required for the interconnection. This equipment, referred to herein as an "intertie", may include new connecting and transmission facilities, or modifications, upgrades or relocations of a utility's existing transmission network. See Attachment 4 at p. 1.

Assuming that Mr. Selig's comments represent the intent of the drafters of Notice 2016-36, that intent has no legally binding authority -- the text of the New Notice must speak for itself.[6] As previously discussed, a careful analysis of the New Notice next supports the Troutman Letter's conclusion. Nonetheless, National Grid has not made a final determination on this point and is continuing discussions with its tax advisors on this question and will update the Commission as soon as that work is complete.

Ultimately, National Grid's decision must be based on its own best judgment because it will be responsible to pay federal taxes on these transactions. To the extent that National Grid determines that Notice 2016-36 does not apply to DG interconnections to the distribution system, then the resulting tax consequences should continue to be costs that are borne by the interconnecting DG customer.

Thank you for your attention to this matter. If you have any questions, please contact me at 781-907-2121.

Sincerely,



Raquel J. Webster

Enclosures

cc: Docket 4483 Service List
Leo Wold, Esq.
Steve Scialabba, Division

Attachments:

1. Notice 2016-36
2. PLR 201619007
3. The Troutman Letter
4. Notice 88-129
5. The Ermanski Comments
6. IRC Section 6404
7. Rev. Proc. 2016-1

[6] As a matter of sound tax practice, it is important to remember that the oral statements of IRS officials are not binding on the IRS. IRC Section 6404(f) provides relief from penalties for reliance on IRS advice only if that advice is in writing. See Attachment 6 at p. 2. Additionally, the IRS advises taxpayers in Revenue Procedure 2016-1, Section 2.05(2) that these oral statements are not binding on the IRS. See Attachment 7 at p. 4.

Certificate of Service

I hereby certify that a copy of the cover letter and any materials accompanying this certificate was electronically transmitted to the individuals listed below.

The paper copies of this filing are being hand delivered to the Rhode Island Public Utilities Commission and to the Rhode Island Division of Public Utilities and Carriers.

Joanne M. Scanlon

August 26, 2016
Date

Docket No. 4483 – Wind Energy Development LLC & ACP Land, LLC – Petition for Dispute Resolution Relating to Interconnection Service List updated 6/13/16

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1 of 1 DOCUMENT

Notice 2016-36

Transfers of Property to Regulated Public Utilities by Electricity Generators

Notice 2016-36; 2016 IRB LEXIS 383; 2016-25 I.R.B. 1029

June 10, 2016

[*1]

TEXT:

I. PURPOSE

This notice provides a safe harbor for transfers of property from either an electricity generation or cogeneration facility or an energy storage facility to a regulated public utility, used to facilitate the transmission of electricity over the utility's transmission system, to be treated as a contribution to the capital of a corporation under *§ 118 (a)*, and not a contribution in aid of construction (CIAC) under *§ 118 (b)*. *Notice 88-129, 1988-2 C.B. 541*; *Notice 90-60, 1990-2 C.B. 345*; and *Notice 2001-82, 2001-2 C.B. 619*, (collectively, the "Notices") are modified and superseded.

II. BACKGROUND

A. Law and Legislative History

Section 61 (a) of the Internal Revenue Code and *§ 1.61-1 of the Income Tax Regulations* provide that gross income means all income from whatever source derived, unless excluded by law. *Section 118 (a)* provides that in the case of a corporation, gross income does not include any contribution to the capital of the taxpayer. *Section 118 (b)* provides that for purposes of *§ 118 (a)*, except as provided in *§ 118 (c)*, the term "contribution to the capital of taxpayer" does not include any CIAC or any other contribution as a customer or potential customer. *Section 1.118-1* [*2] provides, in part, that *§ 118* also applies to contributions to capital made by persons other than shareholders. For example, the exclusion applies to the value of land or other property contributed to a corporation by a governmental unit or by a civic group for the purpose of enabling the corporation to expand its operating facilities. However, the exclusion does not apply to any money or property transferred to the corporation in consideration for goods or services rendered.

The legislative history to *§ 118* indicates that Congress added the exclusion from gross income for nonshareholder contributions to capital of a corporation to address situations in which such contributions cannot be called gifts because the contributors expect to derive indirect benefits; nor can the contributions be characterized as payments for future services because the anticipated future benefits are too intangible. The legislative history also indicates that the provision was intended to codify the existing law that had developed through court decisions on the subject. H.R. Rep. No. 1337, 83rd Cong., 2d Sess. 17 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 18-19 (1954).

B. Notice 88-129

Notice 88-129, which [*3] was amplified and modified by *Notice 90-60* and *Notice 2001-82*, provided specific guidance with respect to the treatment of transfers of property to regulated public utilities by qualifying small power producers and qualifying cogenerators (collectively, "Qualifying Facilities"), as defined in *section 3 of the Federal Power Act*, as amended by section 201 of the Public Utilities Regulatory Policies Act of 1978 (PURPA).

As explained in *Notice 88-129*, PURPA and the regulations thereunder require a utility to interconnect with a Qualifying Facility for the purpose of allowing the sale of power produced by the Qualifying Facility. These rules require the Qualifying Facility to bear the cost of the purchase and installation of any equipment required for the interconnection ("intertie"). Generally, the utility takes legal title to the intertie, which becomes part of the utility's transmission network. Qualifying Facilities generally sell electricity to utilities pursuant to long term power purchase contracts, and some of these contracts require the Qualifying Facility to construct and install the intertie and transfer it to the utility.

1. Safe harbor

Section 1 of *Notice 88-129* provided a safe [*4] harbor under *§ 118* for certain transfers of interties by a Qualifying Facility to a regulated public utility. Under the safe harbor, when a Qualifying Facility transfers an intertie to a utility exclusively in connection with the sale of electricity by the Qualifying Facility to the utility, the utility would not realize income upon the transfer (a "QF transfer"). The possibility that an intertie may be used to transmit power to a utility that will in turn transmit the power across its transmission network for sale by the Qualifying Facility to another utility ("wheeling") would not cause the contribution of that intertie to be treated as a CIAC includible in income pursuant to *§ 118 (b)*.

Under certain other power purchase contracts, a utility may construct and install an intertie on behalf of a Qualifying Facility, with the Qualifying Facility reimbursing or financing the construction and installation costs. A utility that constructs an intertie in exchange for a cash payment from a Qualifying Facility pursuant to a PURPA contract must recognize income from the construction in the same manner as any other taxpayer constructing similar property under contract. However, subsequent to [*5] the construction of the intertie, the Qualifying Facility will be deemed to transfer the intertie to the utility in a QF transfer that is treated in exactly the same manner as an in-kind QF transfer.

Section 2 of *Notice 88-129* further explained that, in addition to transmitting power from a Qualifying Facility to a utility, an intertie may be used to transmit power from the utility for sale to the Qualifying Facility (a "dual-use intertie"). *Notice 88-129* treated the contribution of a dual-use intertie to a utility as a QF transfer if it satisfied a "5% test." A contribution satisfied the 5% test if, in light of all information available to the utility at the time of transfer, it was reasonably projected that during the ten taxable years of the utility beginning with the taxable year in which the transferred intertie was placed in service, no more than 5% of the projected total power flows over the intertie would flow to the Qualifying Facility. The notice required the projection to be supported, if practicable, by a report from an independent engineer. For purposes of the 5% test, total power flows meant power flows to or from the Qualifying Facility over the intertie and included [*6] power flows to a related party of the Qualifying Facility if the transmission of power to the related party was facilitated by the transfer of the intertie. Concerning the 5% test, the notice provided that transfer of an asset necessary only for sale of power by the utility to the Qualifying Facility was not a QF transfer and constituted a CIAC, even if the asset was used, in part, in connection with the transmission of power to the utility.

Section 3 of the notice provided that a transfer of an intertie by a Qualifying Facility to a utility would not be treated as a QF transfer to the extent the intertie was included in the utility's rate base or if the term of the power purchase contract was less than ten years.

2. Termination of safe harbor

Section 4 of *Notice 88-129* provided that certain events would terminate the safe harbor and require the utility to

recognize income as a consequence of the QF transfer.

Under section 4.A of *Notice 88-129*, if, for each of any three taxable years within any period of five consecutive taxable years, more than 5% of the total power flow over the intertie flowed from a utility to a Qualifying Facility (a "disqualification event"), then the Qualifying [*7] Facility was deemed to have made a transfer to the utility that constituted a CIAC, and a portion of the fair market value of the intertie had to be included in income by the utility.

Section 4.B of *Notice 88-129* provided that, upon the termination of the power purchase contract between a Qualifying Facility and a utility, if the utility obtained or retained ownership (for tax purposes) of the intertie, then the Qualifying Facility was deemed to have made a transfer to the utility that constituted a CIAC as of the first day of the termination. The amount of the CIAC was the fair market value of the intertie, less the amount, if any, paid by the utility to obtain or retain ownership of the property for tax purposes. Absent unusual circumstances, the fair market value of a CIAC was determined under the replacement cost method.

3. Cost recovery

Finally, *Notice 88-129* provided that the cost of property transferred in a QF transfer was required to be capitalized by the Qualified Facility as an intangible asset and recovered as appropriate. Taxpayers were not permitted to currently deduct the total amount of an expenditure that resulted in the creation of an asset having a useful life that [*8] extended substantially beyond the close of the taxable year but were required to capitalize such expenditures as assets and recover the cost of the expenditures over the useful life of the asset in question. *See, e.g., § 1.461-1 (a) (1)* and *(2)*; *Rev. Rul. 70-413, 1970-2 C.B. 103*.

Notice 88-129 did not allow a utility to claim depreciation (or amortization) deductions with respect to property transferred in a QF transfer. However, if property that was the subject of a QF transfer was subsequently transferred or deemed transferred to the utility as a CIAC, the utility was allowed to take depreciation deductions with respect to the property.

C. Notice 90-60

Notice 90-60 amplified and modified *Notice 88-129*. *Notice 90-60* clarified that for purposes of determining the fair market value of a CIAC under section 4.A of *Notice 88-129*, the replacement cost method included taking into account the condition of property deemed transferred as a CIAC in establishing its fair market value. Absent unusual circumstances, the fair market value of used CIAC property was the depreciated replacement cost.

Notice 90-60 also provided that upon the termination under section 4.B of *Notice 88-129* of a power purchase [*9] contract between a Qualifying Facility and a utility, if the utility obtained or retained ownership (for tax purposes) of property transferred in a QF transfer, the Qualifying Facility was deemed to have made a transfer to the utility as of the first day of the termination. *Notice 90-60* modified *Notice 88-129* by providing that a deemed transfer was not treated as a CIAC, except in circumstances indicating an intention by the parties to characterize as a QF transfer a transaction that in substance constitutes a CIAC.

Finally, *Notice 90-60* modified *Notice 88-129* by deleting the requirement that any property that was the subject of a QF transfer be subsequently transferred or deemed transferred to the utility "as a CIAC" for the utility to be allowed to take depreciation deductions with respect to the property.

D. Notice 2001-82

Notice 2001-82 further amplified and modified *Notice 88-129*. *Notice 2001-82* extended the safe harbor provisions of *Notice 88-129* to include transfers of interties from both Qualifying and non-Qualifying Facilities and transfers of interties used exclusively or in part for wheeling electricity. *Notice 2001-82* required that ownership of the wheeled electricity pass [*10] to the purchaser prior to its transmission on the utility's transmission grid. This ownership

requirement was deemed satisfied if title passed at the busbar on the facility's end of the intertie. Further, *Notice 2001-82* provided that a long-term interconnection agreement in lieu of a long-term power purchase contract could be used to satisfy the safe harbor provisions of *Notice 88-129* with respect to wheeling transactions. Finally, *Notice 2001-82* required that a facility capitalize the cost of transferred property as an intangible asset and recover such cost using the straight-line method over a useful life of 20 years.

E. Industry Changes

1. Regional implications of interconnecting to the grid

Since the issuance of the Notices, electricity transmission and distribution systems have evolved and become interlinked so that close coordination of operations within the major U.S. power grids is needed to maintain the various interlinked components.

Utilities across geographic regions interconnect for improved reliability and efficiency. Utilities can draw power from generator reserves in different regions to ensure continuing, reliable power and to diversify their loads. Interconnection also [*11] provides access to cheap bulk energy by allowing utilities to receive power from different sources. Further, through greater coordination, utilities can help one another maintain the frequency of oscillation of alternating current and manage interconnections between utility regions.

In addition, utilities are responsible for maintaining the safety of their systems and planning for future customer needs. A large failure in one part of the grid can cause failures in other parts of the grid. Regional transmission operators (RTOs) measure the available transmission capacity on transmission lines and monitor the activities of parties that use space on power lines. Parties may agree to a transaction involving specific transmission lines that, in theory, are able to handle new capacity. However, the additional power delivered over those lines may overload different transmission lines in another part of the grid, as the physical and the contractual flow of power may differ. When buyers and sellers attempt to send more power over transmission lines than the system can handle, RTOs can activate procedures that enable them to stop the flow of, or in some situations, even cancel, power sales contracts [*12] (collectively, "curtailment").

To avoid curtailment, an electricity generator in one region and a utility in a different region that owns a transmission system that will be affected by power delivered by the generator may enter into an agreement in which the utility constructs upgrades to its transmission system, allowing it to handle the generator's new capacity, and the generator reimburses the utility for the costs of the upgrades. The safe harbor in *Notice 88-129*, as amplified and modified by *Notice 2001-82*, did not apply to such a transfer unless the upgrades were constructed pursuant to a long-term power purchase contract or a long-term interconnection agreement between the generator and the utility that constructed the upgrades. Electricity generators typically do not enter into long-term power purchase contracts with utilities outside of their service areas and do not enter into long-term interconnection agreements with transmission systems that are not located within their connectivity range ("neighboring transmission systems"). Therefore, contributions of transmission system upgrades to neighboring transmission systems would not qualify under the former safe harbor.

2. Energy storage facilities

Most [*13] sections of the U.S. power grid operate at 60 Hz. This is the frequency with which electric current oscillates. The frequency fluctuates from one second to the next as people turn on and off lights, TVs, computers, air conditioners, and other equipment that requires electricity to function. Grid operators try to keep the frequency of the electricity on the grid within a narrow band, from 59.8 to 60.2 Hz, for example. A drop in electricity demand as people turn off equipment causes the frequency to increase. A spike in demand as people turn on equipment causes the frequency to decrease. The fluctuating frequency can cause damage.

Grid frequency is becoming harder to manage as more and more intermittent wind and solar projects connect to the

grid. Batteries and other storage facilities play an important role in managing grid frequency. Standalone batteries connected to the grid can allow the grid to shed electricity and call it back in very short intervals to manage frequency as well as smooth the transition to other energy sources.

III. SAFE HARBOR

A. Explanation of Provisions

This notice provides a new safe harbor in which a transfer of an intertie to a regulated public utility will not [*14] be treated as a CIAC under *§ 118 (b)* or give rise to gross income under *§ 118 (a)*. This notice consolidates the safe harbor requirements under the Notices and removes the requirement that the generator must have a long-term power purchase contract or long-term interconnection agreement with the utility that constructs the upgrades. Because no long-term power purchase contract or long-term interconnection agreement is required under the new safe harbor, a generator (such as a solar or wind farm) may contribute an intertie to a utility that qualifies under the new safe harbor even if the generator is interconnected with a distribution system, rather than a transmission system, if all of the requirements under section III.C of this notice are met. This notice also extends the provisions of the safe harbor to transfers of interties from energy storage facilities to regulated public utilities. The Treasury Department and the Internal Revenue Service (IRS) believe that these modifications will promote reliability and economic efficiency throughout the grid and the development and interconnection of renewable energy resources.

B. Definitions

1. Generator. A generator is an electricity generation [*15] or cogeneration facility or an energy storage facility.

2. Intertie. An intertie includes new connecting and transmission facilities, or modifications, upgrades, or relocations of a utility's existing transmission network that enable or facilitate the interconnection of a generator with a utility or improve efficiency on the utility's transmission network.

3. Dual-use intertie. A dual-use intertie is an intertie that is used to transmit power from a generator to a utility and that may be used to transmit power from the utility for sale to the generator. A dual-use intertie may be used, for example, when a generator relies on the utility as a backup or supplemental power source, either sporadically or on a regular basis. A dual-use intertie includes an intertie that may be used to transmit power from a third party for sale to the generator.

4. Utility. A utility is a regulated public utility.

C. Requirements

A contribution of an intertie, including a dual-use intertie, by a generator to a utility will not be treated as gross income under *§ 118 (a)* or a CIAC under *118 (b)* if all of the following conditions are met:

1. The generator may not purchase electricity from the utility, unless the [*16] purchase satisfies the 5% test.

a. 5% Test. If, in light of all information available to the utility at the time the intertie is contributed, it is reasonably projected that, during the ten taxable years of the utility beginning with the year in which the contributed intertie is placed in service, no more than 5% of the projected total power flows over the intertie will flow to the generator, the 5% test will be satisfied. Such a projection must be supported by appropriate documentation. Total power flows mean power flows to or from the generator over the intertie. Power flows to a generator include power flows to a related party of the generator, if the transmission of power to the related party has been facilitated by the contribution of the intertie. For purposes of the 5% test, power flows in the taxable year in which the transferred property is placed in service may, at the option of the utility, be ignored. Power purchases by the generator from parties other than the utility are not taken into account.

b. Example. A utility and a generator enter into a power purchase contract with a term of twenty years, under which the generator will purchase electricity from the utility. Power [*17] flows from the utility to the generator are expected to comprise 10% of total power flows over the intertie in the first year (the taxable year in which the facility is placed in service), 1% in the second and third years, and 0.5% in each of the fourth through tenth years. Total power flows are projected to be 100 megawatt hours ("MWH") in the first and second years, and 200 MWH in the third through tenth years. The utility excludes the first year of the contract from the projection. Thus, the utility reasonably projects that power flows to the generator will be 0.59% of total power flows over the intertie for the applicable nine-year period ((1% x 100 MWH) + (1% x 200 MWH) + (7 x (0.5% x 200 MWH))/(100 MWH + (8 x 200 MWH)). The purchase of electricity by the generator satisfies the 5% test.

2. In the case of electricity wheeled over the utility's transmission system, ownership of the wheeled electricity remains with the generator prior to its transmission onto the grid. This ownership requirement is deemed to be satisfied if title to electricity wheeled passes to the purchaser at the busbar on the generator's end of the intertie.

3. [*18] The cost of the intertie is not included in the utility's rate base.

4. The intertie will be used for transmitting electricity.

5. The cost of the intertie is capitalized by the generator as an intangible asset and recovered using the straight-line method over a useful life that is treated as 20 years. A utility may not claim depreciation (or amortization) deductions with respect to the intertie. However, if the intertie is subsequently transferred or deemed transferred to the utility, the utility may be allowed to take depreciation deductions with respect to the intertie.

IV. TERMINATION OF SAFE HARBOR

The occurrence of an event specified below will terminate the safe harbor and require the utility to recognize income as a consequence of the contribution of an intertie to a utility by a generator.

A. Proportionate Disqualification

1. General rule.

If, for each of any three taxable years within any period of five consecutive taxable years, more than 5% of the total power flows over the intertie flow from the utility to the generator (a "disqualification event"), then the generator will be deemed to have made a transfer to the utility that constitutes a CIAC under *§ 118 (b)* as of the last [*19] day of the third such year. At the option of the utility, the taxable year in which the property is placed in service shall not be taken into account in determining whether there has been a disqualification event. The amount of the CIAC shall be equal to the percentage of the fair market value of the intertie as of the date of the deemed transfer that reflects the use of the intertie for the purpose of selling power to the generator, as determined by the IRS by taking into account all facts and circumstances. Relevant factors include the use of the intertie since the date it was placed in service and the reasonably anticipated use of the intertie. This proportionate disqualification does not apply to any property necessary for, and used solely to facilitate, the transmission of power by the generator to the utility.

2. Examples.

These principles are illustrated by the following examples.

Example 1. A generator contributes a dual-use intertie to a utility that is a calendar year taxpayer. The utility places the intertie in service in 2010 and reasonably projects that, over the ten taxable years beginning in 2010, power flows over the intertie to the generator will be less than 5% of total [*20] power flows over the intertie. Actual power flows over the intertie to the generator constitute the following percentages of total flows over the intertie: 10% in 2010; 7% in 2011; 6% in 2012; 3% in 2013; 1% in 2014; and 6% in 2015. The utility excludes 2010 (the year in which the intertie

is placed in service) from the determination of whether a disqualification event has occurred. A disqualification event occurs due to power flows in 2015, the third year within the five year period from 2011 to 2015 in which more than 5% of power flows over the intertie flow to the generator. Therefore, the generator is deemed to have made a CIAC transfer to the utility as of December 31, 2015.

Example 2. A contract between a generator and a utility requires the utility to relocate a major transmission line and to construct an intertie to the generator, including protective devices that are necessary and used solely for the delivery of power to the utility. Several years into the contract, the use of the intertie by the utility for delivery of power results in a disqualification event. Payments made for the construction of the protective devices are not subject to proportionate disqualification because [*21] the protection devices were necessary for, and used solely to facilitate, the transmission of power by the generator to the utility. However, because the transmission line is used for the delivery of power over the intertie by the utility to the generator, payments made for the relocation of the transmission lines are subject to proportionate disqualification.

3. Determination of fair market value.

The fair market value of a CIAC generally is determined under the replacement cost method, taking into account the condition of the property deemed transferred as a CIAC. *See Notice 87-82, 1987-2 C.B. 389*. Absent unusual circumstances, the fair market value of used CIAC property will be its depreciated replacement cost (the percentage of the replacement cost that reflects the remaining economic useful life of the property). For example, a trunk line originally cost $100x to install. Ten years later, the replacement cost of the line is $150x, and 60% of its useful life remains. The depreciated replacement cost is $90x (60% of $150x).

B. Termination of Power Purchase Contract

1. General rule.

Upon the termination of a power purchase contract between a generator and a utility, if the utility obtains [*22] or retains ownership (for tax purposes) of the intertie, the generator will be deemed to have transferred the intertie to the utility as of the first day of such termination. Such a deemed transfer will not be treated as a CIAC, except in circumstances that indicate an intention by the parties to characterize a contribution of an intertie as a transaction that in substance constitutes a CIAC. The utility shall include in income the fair market value of the property deemed transferred less the amount, if any, paid by the utility to obtain or retain ownership of the property for tax purposes.

The amount paid by the utility to obtain or retain ownership of the property deemed transferred shall include any "extension allowance" or similar payment by the utility to the generator during the term of the power purchase contract. For this purpose, an extension allowance is a payment to compensate the generator in consideration of the anticipated use of the property by the utility to deliver power to customers other than the generator.

2. Determination of fair market value. The fair market value of the property deemed transferred upon termination (except for any deemed transfer treated as a CIAC) [*23] shall be determined by taking into account all facts and circumstances, including the age and condition of the property and whether the property is needed to serve the utility's customers.

If a utility pays to a generator an amount that is determined upon termination of a power purchase contract to be the fair market value for such property under a procedure or method established or used by the relevant utility commission, such fair market value shall be presumed correct in the absence of substantial contrary evidence. For this purpose, a utility commission may take into account any relevant factors, including payments made in connection with the retention of property by a utility upon the termination of a contract and payments by the utility during the term of the contract (for example, extension allowances).

3. Examples. These principles are illustrated by the following examples:

Example 1. A generator contributes to a utility a circuit breaker that is installed as part of an intertie to protect the utility against damage to its system in the event of a breakdown at the generator. At the termination of the power purchase contract, the utility does not need the circuit breaker to serve [*24] its customers. The fair market value of the circuit breaker is its salvage value (less any cost of removal).

Example 2. Upon the termination of a 20-year power purchase contract, a utility retains ownership of a 50-megawatt trunk line that was transferred by a generator at the commencement of the contract. The utility will not use the trunk line other than to supply power to a 10 megawatt customer who has hooked into the trunk line. The fair market value of the trunk line is the economic value to the utility of a 20-year old 10-megawatt line, taking into account any other characteristics or factors that are relevant.

Example 3. Assume the same facts as Example 2, except that upon termination the local public utility commission requires the utility to pay $10x to the generator, which the commission has determined to be the fair market value of the trunk line. In the absence of substantial contrary evidence, the commission's finding will be presumed correct. The $10x will be treated as the fair market value for federal income tax purposes, and, because the $10x fair market value is offset by the $10x the utility paid to the generator, the utility will not be required to include any amount [*25] in income upon termination.

Example 4. A generator transfers a trunk line to a utility pursuant to a long-term power purchase agreement. The trunk line cost the generator $10x to construct. Three years later, a customer of the utility interconnects into the trunk line, and the local public utility commission requires the utility to pay to the generator an extension allowance of $5x. The following year, another customer of the utility interconnects into the line, and the commission requires another extension allowance of $4x. The commission employs a procedure under which the utility will be required to compensate the generator for the fair market value of property deemed transferred upon termination. When the contract terminates, the commission determines that the utility has, by means of the extension allowances, paid to the generator the fair market value of the property. In the absence of substantial contrary evidence, the commission's finding will be respected, and the utility will not be required to include any amount in income upon termination.

Example 5. A generator transfers a trunk line to a utility pursuant to a 20-year power purchase contract. Upon the termination of the contract, [*26] the utility commission determines the fair market value of the trunk line to be $10x, but does not require the utility to pay this amount to the generator. No presumption of correctness attaches to the utility commission's findings.

V. CHANGE IN METHOD OF ACCOUNTING

A. In General. A change in a utility's treatment of a transfer of an intertie, including a change to or from the safe harbor method of accounting provided in section III of this notice, is a change in method of accounting to which the provisions of *§§ 446* and *481* and the regulations thereunder apply. A utility that wants to change to the methods of accounting described in this notice must use the automatic change procedures in *Rev. Proc. 2015-13, 2015-5 I.R.B. 419*, or its successor.

B. Automatic Change. *Rev. Proc. 2016-29, 2016-21 I.R.B. 880*, is modified to add new section 15.16 to read as follows:

15.16 Transfers of interties under the safe harbor described in Notice 2016-36 (*§ 118*).

(1) Description of change.

(a) Safe harbor applicable. This change applies to a utility that wants to change to the safe harbor method of accounting provided in section III.C of Notice 2016-36, I.R.B. 2016-25, for the treatment under *§ 118* of a [*27] transfer of an intertie, including a dual-use intertie, by a generator to a utility. Under this safe harbor method of accounting, such a transfer will not be treated as gross income under *§ 118 (a)* or a contribution in aid of construction

(CIAC) under

§ 118 (b) if all of the conditions specified in section III.C of Notice 2016-36 are met.

(b) Safe harbor terminates. This change applies to a utility that is using the safe harbor method of accounting provided in section III.C of Notice 2016-36 and is required to terminate that safe harbor method of accounting because of the occurrence of an event specified in section IV of Notice 2016-36. The occurrence of such event will require the utility to recognize income as a consequence of the transfer of an intertie, including a dual-use intertie, to the utility by a generator.

(2) Definitions. For purposes of this section 15.16, the terms "utility," "intertie," "dual-use intertie," and "generator" are defined in section III.B of Notice 2016-36.

(3) Certain eligibility rules inapplicable. The eligibility rules in sections 5.01 (1) (d) and (f) of *Rev. Proc. 2015-13, 2015-5 I.R.B. 419*, do not apply to a utility making a change under this section 15.16.

(4) [*28] Manner of making change.

(a) The change in method of accounting under section 15.16 (1) (a) of this revenue procedure is made with a *§ 481 (a)* adjustment.

(b) The change in method of accounting under section 15.16 (1) (b) of this revenue procedure is made using a cut-off method and applies to a transfer of an intertie, including a dual-use intertie, by a generator to a utility made on or after the beginning of the taxable year in which the safe harbor method of accounting terminates.

(5) Concurrent automatic change. A utility making a change under this section 15.16 for more than one transfer of an intertie, including a dual-use intertie, for the same year of change should file a single Form 3115 for all such transfers. The single Form 3115 must provide a single net *§ 481 (a)* adjustment for all changes under section 15.16 (1) (a) of this revenue procedure.

(6) Designated automatic accounting method change number. The designated automatic accounting method change number for a change to the methods of accounting under this section 15.16 is "226."

(7) Contact information. For further information regarding a change under this section 15.16, contact David Selig at (202) 317-4137 (not a toll-free [*29] call).

VI. EFFECT OF THIS DOCUMENT

This document serves as an "administrative pronouncement" as that term is described in § 1.6661-3 (b) (2) and may be relied upon to the same extent as a revenue ruling or a revenue procedure.

VII. EFFECT ON OTHER DOCUMENTS

Notice 88-129, 1988-2 C.B. 541; *Notice 90-60, 1990-2 C.B. 345*; and *Notice 2001-82, 2001-2 C.B. 619*, are modified and superseded. *Rev. Proc. 2016-29* is modified to include the accounting method changes provided in section V of this Notice in section 15 of *Rev. Proc. 2016-29*.

VIII. EFFECTIVE DATE

This notice applies to transfers of interties meeting all of the requirements under this notice made on or after June 20, 2016. However, taxpayers may choose to rely on this safe harbor for transfers with respect to qualifying transfers made prior to June 20, 2016. The IRS will not issue private letter rulings involving this safe harbor.

IX. DRAFTING INFORMATION

The principal author of this notice is David Selig of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Selig at (202) 317-4137 (not a toll free call).

1 of 1 DOCUMENT

Private Letter Ruling 201619007

PLR 201619007; 2016 PLR LEXIS 75

February 3, 2016

[*1]

SUBJECT MATTER: Contributions to Capital; Contributions for Construction

SUMMARY:

Taxpayer was an electric distributor providing electric distribution services. Taxpayer had an Interconnection Agreement (IA) with Generator regarding Generator's Facility, a solar electric generation plant and Qualifying Facility. Facility sold its output to Entity under a power purchase agreement, which power passed through Taxpayer's Intertie for delivery to Taxpayer's distribution system. Taxpayer sought a ruling that certain payments by Generator to Taxpayer was not an *IRC § 118(b)* contribution in aid of construction (CIAC) and were excludable from gross income as a nonshareholder contribution to capital. Citing *Notice 2001-82* and *Notice 88-129*, the IRS held that the transfer of the Intertie was not subject to those and related rulings as there is no direct interconnection between Facility and Taxpayer's system. Moreover, Generator lacked the requisite motivation to make a nonshareholder contribution to capital because Generator made the contribution in order to sell electricity. That being so, Generator's transfer of the Intertie to Taxpayer was a CIAC per *§ 118(b)* and was not excludable from Taxpayer's gross income as a nonshareholder contribution to capital per *§ 118(a)*.

APPLICABLE SECTIONS:

Section 118 -- Contributions to Capital
Section 118(b) -- Contributions for Construction

Index Number:

UI LIST:

118.01-04

Refer Reply To: CC:PSI:5 - PLR-145294-14

TEXT:

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact: * * *, ID No. * * *
Telephone Number: * * *

Release Date: 5/6/2016

Index Number: 118.01-04

Date: February 3, 2016

Refer Reply To: CC:PSI:5 - PLR-145294-14

In Re: * * *

LEGEND:

Taxpayer = * * *
Corp 1 = * * *
Entity = * * *
Generator = * * *
State = * * *
Town = * * *

Dear * * *:

This letter responds to a request for a ruling dated December 11, 2014, submitted on behalf of Taxpayer by your authorized representative. Taxpayer requested a ruling that certain payments by Generator to Taxpayer do not constitute a contribution in aid of construction under *§ 118(b) of the Internal Revenue Code* and are excludable from gross income as a nonshareholder contribution to capital under *§ 118(a)*. The relevant facts as represented in your submission are set forth below.

Taxpayer is a an electric distribution company providing electric distribution services to approximately * * * customers in * * * cities and towns in State. Its properties consist principally of substations and distribution lines interconnected with transmission lines and other facilities of Corp 1. [*2] Taxpayer entered into an * * * (the "Interconnection Agreement") with Generator with respect to Generator's stand-alone solar electric generation facility (the "Facility") located in Town. All of the electricity generated by the Facility, other than the electricity consumed by the Facility for its operations, is sold to Entity. Following the sale of electricity from the Facility to Entity, the electricity passes through Taxpayer's Intertie and is delivered to Taxpayer's distribution system. There is no direct interconnection between the Facility and any electric transmission system.

The Interconnection Agreement, effective as of * * *, permits Generator to connect the Facility to the electric grid system. The Interconnection Agreement has an indefinite term, but is terminable by either party upon * * * days written notice or upon certain specified events. Pursuant to the Interconnection Agreement, Taxpayer agreed to construct the Taxpayer Intertie (the "Intertie"), which involved: (1) constructing a * * *; (2) removing a * * *; (3) replacing a * * *; (4) upgrading a * * *; and (5) undertaking * * *. The total cost of the Intertie was $* * *, which Generator paid Taxpayer in two equal [*3] payments of $* * * on * * *, and * * *. Taxpayer holds legal title to the Intertie, and the Intertie is a permanent part of Taxpayer's electric distribution system.

The Generator and Entity are parties to a power purchase agreement (the "PPA). The term of the PPA is * * * years, commencing on * * *, which is the effective date of the PPA. Under the PPA, Entity purchases and takes legal title and ownership of all electricity generated by the Facility (not used by the Facility itself), and title and ownership

passes to Entity before it travels through the busbar at the Intertie and onto Taxpayer's distribution line. All of the electricity purchased by Entity under the PPA is delivered through Taxpayer's electric distribution system.

Taxpayer makes the following representations: (1) the Facility is a QF; (2) the Intertie will be used in connection with the distribution of electricity for sale to third parties; (3) the cost of the Intertie will not be included in Taxpayer's rate base; (4) the term of the PPA is * * * years; (5) title and ownership of the electricity generated by the Facility passes from the Generator to Entity at or prior to the busbar on the Facility's end of the Intertie; [*4] (6) Taxpayer will not claim depreciation or amortization deductions with respect to the Intertie; (7) the amount of the interconnection payment will be capitalized by Generator as an intangible asset and amortized over 20 years; (8) no more than 5% of the electricity will flow from Taxpayer over the Intertie during the first ten years beginning on the date on which the Intertie was placed in service; (9) there is no direct interconnection between the Facility and an electric transmission system; and (10) there is a direct interconnection between the Facility and an electric distribution system.

Taxpayer requests a ruling that the amount of the payment by Generator to Taxpayer for the Intertie will not constitute a contribution in aid of construction under *§ 118(b)* and will be excludable from the gross income of Taxpayer as a nonshareholder contribution to capital under *§ 118(a)*.

Section 61(a) and *§ 1.61-1 of the Income Tax Regulations* provide that gross income means all income from whatever source derived, unless excluded by law.

Section 118(a) provides that, in the case of a corporation, gross income does not include any contribution to the capital of the taxpayer.

Section 118(b) provides [*5] that the term "contribution to the capital of taxpayer" does not include any contribution in aid of construction or any other contribution as a customer or potential customer.

Section 1.118-1 of the Income Tax Regulations provides, in part, that *§ 118* also applies to contributions to capital made by persons other than shareholders. For example, the exclusion applies to the value of land or other property contributed to a corporation by a governmental unit or by a civic group for the purpose of enabling the corporation to expand its operating facilities. However, the exclusion does not apply to any money or property transferred to the corporation in consideration for goods or services rendered, or to subsidies paid to induce the taxpayer to limit production.

The legislative history to *§ 118* indicates that the exclusion from gross income for nonshareholder contributions to capital of a corporation was intended to apply to those contributions that are neither gifts, because the contributor expects to derive indirect benefits, nor payments for future services, because the anticipated future benefits are too intangible. The legislative history also indicates that the provision was intended [*6] to codify the existing law that had developed through administrative and court decisions on the subject. H.R. Rep. No. 1337, 83rd Cong., 2d Sess. 17 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 18-19 (1954).

Notice 88-129, 1988-2 C.B. 541, as modified and amended by *Notice 90-60, 1990-2 C.B. 345*, and *Notice 2001-82, 2001-2 C.B. 619*, provides specific guidance with respect to the treatment of transfers of property to regulated public utilities by qualifying small power producers and qualifying cogenerators (collectively, Qualifying Facilities), as defined in section 3 of the Federal Power Act, as amended by *section 201 of PURPA*.

The amendment of *§ 118(b)* by the 1986 Act was intended to require utilities to include in income the value of any CIACs made to encourage the provision of services by a utility to a customer. See H.R. Rep. No. 841, 99th Cong., 2d Sess. 324 (1986). In a CIAC transaction, the purpose of the contribution of property to the utility is to facilitate the sale of power by the utility to a customer. In contrast, the purpose of the contribution by a Qualifying Facility to a utility is to permit the sale of power by the Qualifying Facility to the utility. Accordingly, [*7] the fact that the 1986 amendments to *§ 118(b)* render CIAC transactions taxable to the utility does not require a similar conclusion with respect to transfers from Qualifying Facilities to utilities.

Notice 88-129 provides that with respect to transfers made by a Qualifying Facility to a utility exclusively in connection with the sale of electricity by the Qualifying Facility to the utility, a utility will not realize income upon transfer of interconnection equipment (intertie) by a Qualifying Facility. The possibility that an intertie may be used to transmit power to a utility that will in turn transmit the power across its transmission network for sale by the Qualifying Facility to another utility (wheeling) will not cause the contribution to be treated as a CIAC.

Further, the notice provides that a transfer from a Qualifying Facility to a utility will not be treated as a Qualifying Facility transfer (QF transfer) under this notice to the extent the intertie is included in the utility's rate base. Moreover, a transfer of an intertie to a utility will not be treated as a QF transfer under this notice if the term of the power purchase contract is less than ten years.

The notice also provides [*8] that a utility that constructs an intertie in exchange for a cash payment from a Qualifying Facility pursuant to a PURPA contract will be deemed to construct the property under contract and will recognize income from the construction in the same manner as any other taxpayer constructing similar property under contract. Subsequent to the construction of the property, the Qualifying facility will be deemed to transfer the property to the utility in a QF transfer that will be treated in exactly the same manner as an in-kind QF transfer.

Notice 2001-82 amplifies and modifies *Notice 88-129*. *Notice 2001-82* extends the safe harbor provisions of *Notice 88-129* to include transfers of interties from non-Qualifying Facilities, and transfers of interties used exclusively or in part to transmit power over the utility's transmission grid for sale to consumers or intermediaries (wheeling). The notice requires that ownership of the electricity wheeled passes to the purchaser prior to its transmission on the utility's transmission grid. This ownership requirement is deemed satisfied if title passes at the busbar on the generator's end of the intertie. Further, *Notice 2001-82* provides that a long-term [*9] interconnection agreement in lieu of a long-term power purchase contract may be used to satisfy the safe harbor provisions of *Notice 88-129* in wheeling transactions. Finally, *Notice 2001-82* requires that the generator must capitalize the cost of the property transferred as an intangible asset and recover such cost using the straight-line method over a useful life of 20 years.

The legislative history of *§ 118* provides, in part, as follows:

This *[§ 118*] in effect places in the Code the court decisions on the subject. It deals with cases where a contribution is made to a corporation by a governmental unit, chamber of commerce, or other association of individuals having no proprietary interest in the corporation. In many such cases because the contributor expects to derive indirect benefits, the contribution cannot be called a gift; yet the anticipated future benefits may also be so intangible as to not warrant treating the treating the contribution as a payment for future services.

S. Rep. No. 1622, 83d Cong., 2d Sess. 18-19 (1954).

In *Detroit Edison Co. v. Commissioner, 319 U.S. 98, 63 S. Ct. 902, 87 L. Ed. 1286, 1943 C.B. 1019 (1943)*, the Court held that payments by prospective customers [*10] to an electric utility company to cover the cost of extending the utility's facilities to their homes, were part of the price of service rather than contributions to capital. The case concerned customers' payments to a utility company for the estimated cost of constructing service facilities (primary power lines) that the utility company otherwise was not obligated to provide. The customers intended no contribution to the company's capital.

Later, in *Brown Shoe Co. v. Commissioner, 339 U.S. 583, 70 S. Ct. 820, 94 L. Ed. 1081, 1950-1 C.B. 38 (1950), 1950-1 C.B. 38*, the Court held that money and property contributions by community groups to induce a shoe company to locate or expand its factory operations in the contributing communities were nonshareholder contributions to capital. The Court reasoned that when the motivation of the contributors is to benefit the community at large and the contributors do not anticipate any direct benefit from their contributions, the contributions are nonshareholder contributions to capital. *Id. at 41*.

Finally, in *United States v. Chicago, Burlington & Quincy Railroad Co., 412 U.S. 401, 413, 93 S. Ct. 2169, 37 L.*

Ed. 2d 30 (1973), the Court, in determining [*11] whether a taxpayer was entitled to depreciate the cost of certain facilities that had been funded by the federal government, held that the governmental subsidies were not contributions to the taxpayer's capital. The court recognized that the holding in Detroit Edison Co. had been qualified by its decision in Brown Shoe Co. The Court in Chicago, Burlington & Quincy Railroad Co. found that the distinguishing characteristic between those two cases was the differing purpose motivating the respective transfers. In Brown Shoe Co., the only expectation of the contributors was that such contributions might prove advantageous to the community at large. Thus, in Brown Shoe Co., since the transfers were made with the purpose, not of receiving direct services or recompense, but only of obtaining advantage for the general community, the result was a contribution to capital.

The Court in Chicago, Burlington & Quincy Railroad Co. also stated that there were other characteristics of a nonshareholder contribution to capital implicit in Detroit Edison Co. and Brown Shoe Co. From these two cases, the Court distilled some of the characteristics of a nonshareholder contribution to capital under both the [*12] 1939 and 1954 Codes. First, the payment must become a permanent part of the transferee's working capital structure. Second, it may not be compensation, such as a direct payment for a specific, quantifiable service provided for the transferor by the transferee. Third, it must be bargained for. Fourth, the asset transferred foreseeably must benefit the transferee in an amount commensurate with its value. Fifth, the asset ordinarily, if not always, will be employed in or contribute to the production of additional income and its value assured in that respect.

In the instant case, the transfer of the Intertie is not subject to the guidance set forth in *Notice 88-129*, *Notice 90-60*, and *Notice 2001-82* because there is no direct interconnection between the Facility and an electric transmission system, as contemplated under *Notice 88-129* and *Notice 2001-82*. In addition, we believe that Generator lacked the requisite motivation to make a nonshareholder contribution to capital under *Brown Shoe Co. v. Commissioner*, and *United States v. Chicago Burlington & Quincy Railroad Co*. because the Generator made the contribution in order to sell electricity. Accordingly, based solely on the foregoing analysis [*13] and the representations made by Taxpayer, we rule that the transfer of the Intertie by Generator to Taxpayer is a CIAC under *§ 118(b)* and is not excludable from the gross income of Taxpayer as a nonshareholder contribution to capital under *§ 118(a)*.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the above described facts under any other provision of the Code or regulations.

This ruling is directed only to the taxpayer who requested it. *Section 6110(k)(3) of the Code* provides that it may not be used or cited as precedent.

This ruling is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Nicole Cimino
Senior Technician Reviewer,
Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special
Industries)

Enclosures (2)
Copy of [*14] this letter
Copy for *§ 6110* purposes

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TROUTMAN SANDERS

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June 20, 2016

Ladies and Gentlemen:

On June 13, 2016, I sent to you Notice 2016-36, which provides a new safe harbor in which a transfer of an intertie to a regulated public utility will not be treated as a CIAC under section 118(b) Internal Revenue Code or give rise to gross income under section 118(a). Because of some uncertainty about the language of Notice 2016-36, I called the Internal Revenue Service ("Service") to get their views on what they intended the notice to say.

First, I asked about section III.C.2. of Notice 2016-36. While the second sentence of this section is taken from Notice 2001-82, the first sentence seems to rewrite and change the meaning of the comparable section in Notice 2001-82. The first sentence from Notice 2016-36 says that:

> In the case of electricity wheeled over the utility's transmission system, ownership of the wheeled electricity remains with the generator prior to its transmission onto the grid.

Notice 2001-82 had said:

> This safe harbor only applies to transactions in which … ownership of the electricity wheeled passes to the purchaser prior to its transmission on the utility's transmission grid.

The language in Notice 2001-82 seemed to require that the generator not be a transmission or distribution customer of the utility. It was not clear that the new language maintains that requirement. I was told that the Service did not mean to change this test and so that the requirement that the generator not be a transmission or distribution customer of the generator was maintained.

Also, the new language seems to require that the generator own the power prior to its transmission on the grid. I was told that the Service did not intend this. Nevertheless, the language remains unclear on this point.

Second, the language of Notice 2016-36 was unclear regarding interconnections of generators to distribution lines. Historically, the Service had issued private rulings concluding that interties connecting generation facilities to distribution lines qualified for the safe harbor in Notice 2001-82, but earlier this year, the Service issued a private ruling reaching the opposite conclusion.

TROUTMAN SANDERS

Section III.A. of Notice 2016-36 indicates a favorable treatment of interconnections to distribution lines, saying:

> Because no long-term power purchase contract or long-term interconnection agreement is required under the new safe harbor, a generator (such as a solar or wind farm) may contribute an intertie to a utility that qualifies under the new safe harbor even if the generator is interconnected with a distribution system, rather than a transmission system, if all of the requirements under section III.C of this notice are met.

However, when one looks at the definition of intertie in section III.B.2., an intertie seems to be limited to an interconnection to a transmission facility. Tests 2 and 4 in section III.C. seem to confirm this.

I was told that the safe harbor was only intended to apply to interconnections to transmission lines. The more favorable language above was only intended to cover under the safe harbor upgrades to transmission lines made in connection with a new interconnection to a distribution system, but not the interconnection itself. The Service appears to be of the view that the interconnection to a distribution line itself, including any upgrades to any distribution facilities, is NOT covered by the safe harbor. I have heard that at least one other person has been told the same thing by the Service regarding this issue.

Howard A. Cooper

4 of 4 DOCUMENTS

Notice 88-129

Transfers of Property to Regulated Public Utilities by "Qualifying Facilities."

Notice 88-129; 1988-2 C.B. 541; 1988 IRB LEXIS 3720; 1988-52 I.R.B. 10

July 1988

[*1]

TEXT:

This notice provides guidance with respect to certain payments or transfers of property to regulated public utilities ("utilities") by qualifying small power producers and qualifying cogenerators (collectively "Qualifying Facilities"), as defined in section 3 of the Federal Power Act, as amended by section 201 of the Public Utilities Regulatory Policies Act of 1978 ("PURPA").

BACKGROUND

Notice 87-82, 1987-2 C.B. 389, addressed the Federal tax treatment of contributions in aid of construction ("CIACS") in light of the amendments made to *section 118 of the Internal Revenue Code* ("Code") by section 824 of the Tax Reform Act of 1986 (the "1986 Act"). *Notice 87-82* reserved for separate guidance the treatment of payments or transfers of property made by Qualifying Facilities to utilities in connection with sales of power under PURPA. The Internal Revenue Service has received many inquiries concerning whether, as a result of the 1986 Act, such transfers result in income to utilities. This notice provides guidance with respect to certain types of transfers from Qualifying Facilities to utilities. No inference is intended with respect to other types of transfers.

1. Transfers Exclusively in Connection With the Sale of Electricity by a Qualifying Facility.

PURPA [*2] and its implementing rules and regulations require that a utility interconnect with a Qualifying Facility for the purpose of allowing the sale of power produced by the Qualifying Facility. A Qualifying Facility must bear the cost of the purchase and installation of any equipment required for the interconnection. This equipment, referred to herein as an "intertie," may include new connecting and transmission facilities, or modifications, upgrades or relocations of a utility's existing transmission network. Generally, the utility takes legal title to the intertie, which becomes part of the utility's transmission network. Under standard cost-based rate regulation, utilities may neither earn a profit on sales of power purchased from Qualifying Facilities nor include the cost of interties in rate base.

The amendment of Code *section 118 (b)* by the 1986 Act was intended to require utilities to include in income the value of any contribution in aid of construction made to encourage the provision of services by a utility to a customer. See H.R. Rep. No. 841, 99th Cong., 2d Sess. 324 (1986) (Conference Report). In a CIAC transaction the purpose of the contribution of property to the utility is [*3] to facilitate the sale of power by the utility to a customer. In contrast, the purpose of the contribution by a Qualifying Facility to a utility is to permit the sale of power by the Qualifying Facility

to the utility. Accordingly, the fact that the 1986 amendments to Code *section 118 (b)* render CIAC transactions taxable to the utility does not require a similar conclusion with respect to transfers from Qualifying Facilities to utilities.

Qualifying Facilities generally sell electricity to utilities pursuant to longterm power purchase contracts. Some contracts require the Qualifying Facility to construct and install the intertie, and subsequently transfer the intertie to the utility. With respect to transfers of property made by a Qualifying Facility to a utility exclusively in connection with the sale of electricity by the Qualifying Facility to the utility, a utility will not realize income upon transfer of an intertie by a Qualifying Facility. These nontaxable transfers are referred to herein as "QF transfers." The possibility that an intertie may be used to transmit power to a utility that will in turn transmit the power across its transmission network for sale by the Qualifying [*4] Facility to another utility (i.e., "wheeling") shall not cause the contribution to be treated as a CIAC. A utility takes no basis in property transferred in a QF transfer, thus, for example, a utility shall not be allowed any depreciation (or amortization) deductions with respect to the property transferred in a QF transfer.

Under some power purchase contracts, the utility agrees to construct and install the intertie on behalf of the Qualifying Facility, with the Qualifying Facility agreeing to reimburse or finance the construction and installation costs. A utility that constructs an intertie in exchange for a cash payment from a Qualifying Facility pursuant to a PURPA contract will be deemed to construct the property for the Qualifying Facility under contract and will recognize income from the construction in the same manner as any other taxpayer constructing similar property under contract. See, e.g., Code *section 460*. Subsequent to the construction of the property, the Qualifying Facility will be deemed to transfer the property to the utility in a QF transfer that will be treated in exactly the same manner as an in-kind QF transfer.

2. Other QF Transfers.

In some situations the transfer [*5] of property by a Qualifying Facility to a utility may not be exclusively in connection with the sale of power from the Qualifying Facility to the utility. In addition to transmitting power from the Qualifying Facility to the utility, the intertie may be used to transmit power from the utility for sale to the Qualifying Facility (a "dual-use intertie"). A dual-use intertie may be employed where a Qualifying Facility relies on the utility as a "backup" or supplemental power source, either sporadically or on a regular basis. The transfer of a dual-use intertie may be treated as a QF transfer, as provided in the following paragraph; however, the transfer of an asset necessary only for sale of power by the utility to the Qualifying Facility is not a QF transfer and constitutes a CIAC, even if the asset is used in part in connection with the transmission of power to the utility. Thus, for example, if at the time of a QF transfer a Qualifying Facility transfers an asset necessary only for the sale of power to the Qualifying Facility, the transfer of that asset is not a QF transfer.

The contribution of a dual-use intertie to a utility will be treated as a QF transfer (and, therefore, nontaxable) [*6] if, in light of all information available to the utility at the time of transfer, it is reasonably projected that during the first ten taxable years of the utility, beginning with the year in which the transferred property is placed in service, no more than 5% of the projected total power flows over the intertie will flow to the Qualifying Facility (the "5% test"). Such a projection shall, if practicable, be supported by a report from an independent engineer. Total power flows means power flows to or from the Qualifying Facility over the intertie. For purposes of this notice, power flows to a Qualifying Facility include power flows to a related party of the Qualifying Facility, if the transmission of power to the related party has been facilitated by the transfer of the intertie. Thus, for example, in the case of a modification or relocation of a utility's existing transmission line, power flows to an unrelated third party are ignored. For purposes of the 5% test, power flows in the taxable year in which the transferred property is placed in service may, at the option of the utility, be ignored. For example, suppose a utility and a Qualifying Facility enter into a power purchase contract [*7] with a term of twenty years, and power flow from the utility to the Qualifying Facility is expected to comprise 10% of total power flows in the first year (the taxable year in which the facility is placed in service), 1% in the second and third years, and 0.5% in each of the fourth through tenth years. Total power flows are projected to be 100 megawatt hours ("MWH") in the first and second years, and 200 MWH in the third through tenth years. Assume that the taxpayer excludes the first year of the contract from the projection. Thus, the taxpayer reasonably projects that power flow to the Qualifying Facility will be 0.59% of total power flows over the intertie for the applicable nine-year period ((1% × 100 MWH + 1%

× 200 MWH + 7 × (0.5% × 200 MWH))/(100 MWH + 8 × 200 MWH)). Under the 5% test provided in this notice, the contribution of the intertie to the utility by the Qualifying Facility will be treated as a QF transfer and, therefore, shall be nontaxable.

3. Excluded Transfers.

Certain transfers that would otherwise qualify as QF transfers are excluded from the definition of QF transfers if such transfers are described in this section 3 of this notice. A transfer from a Qualifying [*8] Facility to a utility will not be treated as a QF transfer under this notice to the extent the intertie is included in the utility's rate base. Moreover, a transfer of an intertie to a utility will not be treated as a QF transfer under this notice if the term of the power purchase contract is less than ten years.

4. Termination of Safe Harbor.

The fact that a transfer constitutes a QF transfer under this notice does not establish that a utility will never recognize income attributable to receipt of the transferred property. The occurrence of an event specified below in section 4 (A) or 4 (B) shall terminate the safe harbor and require the utility to recognize income as a consequence of the QF transfer.

(A) *Proportionate Disqualification.* If, for each of any three taxable years within any period of five consecutive taxable years, more than 5% of the total power flows over the intertie flow from the utility to the Qualifying Facility (a "disqualification event"), then the Qualifying Facility will be deemed to have made a transfer to the utility which constitutes a CIAC under *section 118 (b)* as of the last day of the third such year. At the option of the utility, the taxable year in which [*9] the property is placed in service shall not be taken into account in determining whether there has been a disqualification event. The amount of the CIAC shall be that percentage of the fair market value of the intertie as of the date of the deemed transfer which is reflective of the use of the intertie for the purpose of selling power to the Qualifying Facility, determined by the Internal Revenue Service by taking into account all facts and circumstances. Relevant factors include (1) the use of the intertie during the period immediately preceding the disqualification event; (2) the use of the intertie since the date it was placed in service; (3) the reasonably anticipated use of the intertie during the remaining term of the power purchase contract. See section III of *Notice 87-82* for guidance as to the fair market value of a CIAC. For example, suppose a Qualifying Facility contributes an intertie to a utility that is a calendar year taxpayer. The utility places the intertie in service in 1990, and reasonably projects that over the ten taxable years beginning in 1990 power flows over the intertie to the Qualifying Facility will be less than 5% of total power flows over the intertie. [*10] Power flows over the intertie to the Qualifying Facility constitute the following percentages of total flows over the intertie: 10% in 1990; 7% in 1991; 6% in 1992; 3% in 1993; 1% In 1994; and 6% in 1995. The utility excludes 1990 (the year in which the intertie is placed in service) from the determination of whether a disqualification event has occurred. A disqualification event occurs due to power flows in 1995, the third year within the five year period from 1991 to 1995 in which more than 5% of power flows over the intertie flow to the Qualifying Facility. Therefore, the Qualifying Facility is deemed to have made a CIAC transfer to the utility as of December 31, 1995.

Proportionate disqualification does not apply to any property necessary for, and used solely to facilitate, the transmission of power by the Qualifying Facility to the utility. For example, suppose the contract between a Qualifying Facility and a utility requires the utility to relocate a major transmission line and to construct an intertie to the Qualifying

Facility including protective devices which are necessary and used solely for the delivery of power to the utility. Several years into the contract, the use of [*11] the intertie by the utility for delivery of power results in a disqualification event. Payments made for the construction of the protective devices are not subject to proportionate disqualification, while payments made for the relocation of the transmission lines are subject to proportionate disqualification (because the transmission line is used for the delivery of power over the intertie by the utility to the Qualifying Facility).

(B) *Termination of Power Purchase Contract.* Upon the termination of the power purchase contract between a Qualifying Facility and a utility, if the utility obtains or retains ownership (for tax purposes) of property transferred in a QF transfer, the Qualified Facility will be deemed to have made a transfer to the utility which constitutes a CIAC under *section 118 (b)* as of the first day of such termination. The amount of the CIAC shall be the fair market value of the intertie, less the amount, if any, paid by the utility to obtain or retain ownership of the property for tax purposes. Therefore, if the amount paid by the utility is fair market value, the Qualified Facility will not be deemed to have made a CIAC transfer. See Section III of *Notice 87-82* for [*12] guidance as to the fair market value of a CIAC.

5. Notification Requirements.

If for any taxable year power flows to the Qualifying Facility exceed 5% of total power flows over the intertie, then the utility must attach a statement to this effect to its return for such taxable year. If a power supply contract subject to the provisions of this notice terminates, the utility must attach a statement to this effect to its return for the year in which the termination occurs. The notification requirements of this section 5 apply to taxable years ending more than 180 days after December 27, 1988, the date this notice is published in the Bulletin.

6. Cost Recovery of QF Transfer Property.

Sections 1.461-1 (a) (1) and *(2) of the Income Tax Regulations* provide that taxpayers using the cash and accrual methods of accounting, respectively, may not currently deduct the total amount of an expenditure which results in the creation of an asset having a useful life which extends substantially beyond the close of the taxable year. Instead, such taxpayers are required to capitalize such expenditures as assets and recover the cost of the expenditures over the useful life of the asset in question. See, e.g., [*13] *Rev. Rul. 70-413, 1970-2 C.B. 103*. The cost of property transferred in a QF transfer must be capitalized by the Qualified Facility as an intangible asset and recovered as appropriate. Cf. Section VII of *Notice 87-82* (amortization of the cost of a CIAC by the contributor).

A utility may not take depreciation (or amortization) deductions with respect to property transferred in a QF transfer. This rule applies regardless of whether the Qualifying Facility initially transfers intertie property to the utility or whether the Qualifying Facility initially transfers cash followed by a deemed QF transfer to the utility. However, if property which is the subject of a QF transfer is subsequently transferred or deemed transferred to the utility as a CIAC, the utility may be allowed to take depreciation deductions with respect to the property.

This document serves as an "administrative pronouncement" as that term is described in section 1.6661-3 (b) (2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or a revenue procedure.

Ermanski, Robert

From: Ermanski, Robert
Sent: Tuesday, June 28, 2016 4:26 PM
To: david.a.selig@irscounsel.treas.gov
Subject: National Grid and Notice 2016-36

Hi, David – I would like to thank you again for taking time to explain the application of Notice 2016-36 to "distribution" system interconnections like the one which was the subject of the National Grid PLR 201619007. In that ruling, a solar power generator paid for the construction of an interconnection between its facility and National Grid's local "distribution" system. The interconnection is used to permit the transfer of generated electricity to National Grid's distribution system. Title to the power passes to the generator's customer on or before the bus bar on the generator's end of the interconnection. The electricity is never transferred to National Grid's "transmission system."

During the call, you confirmed that Notice 2016-36 was indeed intended to cover transactions of this type. Nonetheless, you acknowledged that the IRS may need to issue additional guidance to make this clearer. National Grid agrees with this assessment. Although reference is made in Section IIIA of Notice 2016-36 to interconnections with "distribution" systems, the continued restrictive use of the term "transmission" in Sections IIIB and IIIC of the notice may cause confusion for taxpayers. In particular, following PLR 201619007, it is clear that the term "transmission" as used in Notices 88-129 and 2001-82 did not include the "distribution" of electricity. Consequently, the continued use of the restrictive term "transmission" in Section IIIB and IIIC of Notice 2016-36 may cause taxpayers to conclude incorrectly that the new safe harbor is only permitted when electricity which passes through a "distribution" system intertie is ultimately delivered to the utility's "transmission" system.

National Grid urges IRS to provide written clear written guidance indicating that:

- The definition of "Intertie" in Section IIIB includes interconnections with "distribution" systems.
- The ownership requirement of Section III(C)(2) also applies to electricity passing through an "Intertie" which is then distributed via a "distribution" system rather than wheeled or transmitted via a "transmission" system
- The requirement of Section III(B)(4) is satisfied if the "Intertie" is used to distribute rather than transmit electricity

As we discussed, the overall framework of Notice 2016-36 envisions a system of taxpayer self-assessment without the need of private letter rulings. For this plan to work effectively, taxpayers need clear and unambiguous guidance on the application of the notice to distribution system interconnections. National Grid urges the IRS to provide this clear guidance.

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1 of 1 DOCUMENT

*** Current through PL 114-219, approved 7/29/16 ***

TITLE 26. INTERNAL REVENUE CODE
SUBTITLE F. PROCEDURE AND ADMINISTRATION
CHAPTER 65. ABATEMENTS, CREDITS, AND REFUNDS
SUBCHAPTER A. PROCEDURE IN GENERAL

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26 USCS § 6404

§ 6404. Abatements.

(a) General rule. The Secretary is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which--
(1) is excessive in amount, or
(2) is assessed after the expiration of the period of limitation properly applicable thereto, or
(3) is erroneously or illegally assessed.

(b) No claim for abatement of income, estate, and gift taxes. No claim for abatement shall be filed by a taxpayer in respect of an assessment of any tax imposed under subtitle A or B [*26 USCS §§ 1* et seq. or *2001* et seq.].

(c) Small tax balances. The Secretary is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary determines under uniform rules prescribed by the Secretary that the administration and collection costs involved would not warrant collection of the amount due.

(d) Assessments attributable to certain mathematical errors by Internal Revenue Service. In the case of an assessment of any tax imposed by chapter 1 [*26 USCS §§ 1* et seq.] attributable in whole or in part to a mathematical error described in section 6213(g)(2)(A) [*26 USCS § 6213(g)(2)(A)*], if the return was prepared by an officer or employee of the Internal Revenue Service acting in his official capacity to provide assistance to taxpayers in the preparation of income tax returns, the Secretary is authorized to abate the assessment of all or any part of any interest on such deficiency for any period ending on or before the 30th day following the date of notice and demand by the Secretary for payment of the deficiency.

(e) Abatement of interest attributable to unreasonable errors and delays by Internal Revenue Service.
(1) In general. In the case of any assessment of interest on --

(A) any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) in performing a ministerial or managerial act, or

(B) any payment of any tax described in section 6212(a) [*26 USCS § 6212(a)*] to the extent that any unreasonable error or delay in such payment is attributable to such an officer or employee being erroneous or dilatory in performing a ministerial or managerial act,

the Secretary may abate the assessment of all or any part of such interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved, and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment.

(2) Interest abated with respect to erroneous refund check. The Secretary shall abate the assessment of all interest on any erroneous refund under section 6602 [*26 USCS § 6602*] until the date demand for repayment is made, unless--

(A) the taxpayer (or a related party) has in any way caused such erroneous refund, or

(B) such erroneous refund exceeds $ 50,000.

(f) Abatement of any penalty or addition to tax attributable to erroneous written advice by the Internal Revenue Service.

(1) In general. The Secretary shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer's or employee's official capacity.

(2) Limitations. Paragraph (1) shall apply only if--

(A) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

(B) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

(3) [Deleted]

(g) Suspension of interest and certain penalties where Secretary fails to contact taxpayer.

(1) Suspension.

(A) In general. In the case of an individual who files a return of tax imposed by subtitle A [*26 USCS §§ 1* et seq.] for a taxable year on or before the due date for the return (including extensions), if the Secretary does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability before the close of the 36-month period beginning on the later of--

(i) the date on which the return is filed; or

(ii) the due date of the return without regard to extensions,

the Secretary shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(B) Separate application. This paragraph shall be applied separately with respect to each item or adjustment.

If, after the return for a taxable year is filed, the taxpayer provides to the Secretary 1 or more signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year, clause (i) shall be applied by substituting the date the last of the documents was provided for the date on which the return is filed.

(2) Exceptions. Paragraph (1) shall not apply to--

(A) any penalty imposed by section 6651 [*26 USCS § 6651*];

(B) any interest, penalty, addition to tax, or additional amount in a case involving fraud;

(C) any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return;

(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement;

(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction with respect to which the requirement of section 6664(d)(2)(A) [*26 USCS § 6664(d)(2)(A)*] is not met and any listed transaction (as defined in 6707A(c) [*26 USCS § 6707A(c)*]); or

(F) any criminal penalty.

(3) Suspension period. For purposes of this subsection, the term "suspension period" means the period--

(A) beginning on the day after the close of the 36-month period under paragraph (1); and

(B) ending on the date which is 21 days after the date on which notice described in paragraph (1)(A) is provided by the Secretary.

(h) Judicial review of request for abatement of interest.

(1) In general. The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(ii) [*26 USCS § 7430(c)(4)(A)(ii)*] to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion, and may order an abatement, if such action is brought--

(A) at any time after the earlier of--

(i) the date of the mailing of the Secretary's final determination not to abate such interest, or

(ii) the date which is 180 days after the date of the filing with the Secretary (in such form as the Secretary may prescribe) of a claim for abatement under this section, and

(B) not later than the date which is 180 days after the date described in subparagraph (A)(i).

(2) Special rules.

(A) Date of mailing. Rules similar to the rules of section 6213 [*26 USCS § 6213*] shall apply for purposes of determining the date of the mailing referred to in paragraph (1).

(B) Relief. Rules similar to the rules of section 6512(b) [*26 USCS § 6512(b)*] shall apply for purposes of this subsection.

(C) Review. An order of the Tax Court under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

(i) Cross reference. For authority to suspend running of interest, etc. by reason of Presidentially declared disaster or terroristic or military action, see section 7508A [*26 USCS § 7508A*].

HISTORY:

(Aug. 16, 1954, ch 736, 68A Stat. 792; Oct. 4, 1976, P.L. 94-455, Title XII, § 1212(a), Title XIX, § 1906(b)(13)(A), 90 Stat. 1712, 1834; Dec. 24, 1980, P.L. 96-589, § 6(b)(2), 94 Stat. 3407; Oct. 22, 1986, P.L. 99-514, Title XV, § 1563(a), 100 Stat. 2762; Nov. 10, 1988, P.L. 100-647, Title I, § 1015(n), Title VI, § 6229(a), 102 Stat. 3572, 3733; July 30, 1996, P.L. 104-168, Title III, §§ 301(a), (b), 302(a), Title VII, § 701(c)(3), 110 Stat. 1457, 1464; July 22, 1998, P.L. 105-206, Title III, §§ 3305(a), 3309(a), 112 Stat. 743, 745; Oct. 21, 1998, P.L. 105-277, Div J, Title IV, § 4003(e)(2), 112 Stat. 2681-909; Jan. 23, 2002, P.L. 107-134, Title I, § 112(d)(1), 115 Stat. 2434; Oct. 22, 2004, P.L. 108-357, Title VIII, Subtitle D, § 903(a)-(c), 118 Stat. 1652; Dec, 21, 2005, P.L. 109-135, Title III, § 303(b)(1), 119 Stat. 2609; May 25, 2007, P.L. 110-28, Title VIII, Subtitle B, Part 2, § 8242(a), 121 Stat. 200; Dec. 19, 2014, P.L. 113-295, Div A, Title II, § 221(a)(111), 128 Stat. 4054.)

(As amended Dec. 18, 2015, P.L. 114-113, Div Q, Title IV, Subtitle B, Part 1, § 421(a), 129 Stat. 3123.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 2015, P.L. 114-113, Sec. 421(b) (applicable to claims for abatement of interest filed with the Secretary after the date of enactment, as provided by Sec. 421(b) of P.L. 114-113, which appears as a note to this section), amended subsec. (h) by substituting "Judicial review" for "Review of denial", and by amending para. (1) by substituting "if such action is brought--" for "if such action is brought within 180 days after the date of the mailing of the Secretary's final determination not to abate such interest." and by adding subparas. (A) and (B).

In 2014, P.L. 113-295, Sec. 221(a)(111) (effective on enactment and subject to savings provisions, as provided by Sec. 221(b) of P.L. 113-295, which appears as a note to Code Sec. 1), amended subsec. (f) by deleting para. (3) which read: "(3) Initial regulations. Within 180 days after the date of the enactment of this subsection, the Secretary shall prescribe such initial regulations as may be necessary to carry out this subsection.".

In 2007, P.L. 110-28, Sec. 8242(a) (applicable to notices provided after 11/25/2007, pursuant to Sec. 8242(b) of P.L. 110-28, which appears as a note to this section), amended subsec. (g) by substituting "36-month period" for "18-month period" in paras. (1)(A) and (3)(A).

In 2005, P.L. 109-135, Sec. 303(b)(1) (applicable to documents provided on or after 12/21/2005, as provided by Sec. 303(b)(2) of P.L. 109-135, which appears as a note to this section), amended subsec. (g)(1) by adding the concluding matter.

In 2004, P.L. 108-357, Sec. 903(a), (b) (applicable to taxable years beginning after 12/31/2003, as provided by Sec. 903(d)(1) of P.L. 108-357, which appears as a note to this section), amended subsec. (g)(1)(A) by substituting "18-month period" for "1-year period (18-month period in the case of taxable years beginning before January 1, 2004)"; amended subsec. (g)(2) by deleting "or" at the end of subpara. (C), redesignating subpara. (D) as subpara. (E), and inserting new subpara. (D); and amended subsec. (g)(3)(A) by substituting "18-month period" for "1-year period (18-month period in the case of taxable years beginning before January 1, 2004)"

--P.L. 108-357, Sec. 903(c) (applicable with respect to interest accruing after 10/3/2004, as provided by Sec. 903(d)(2) of P.L. 108-357, which appears as a note to this section), amended subsec. (g)(2) by deleting "or" at the end of subpara. (D), redesignating subpara. (E) as subpara. (F), and inserting new subpara. (E)

In 2002, P.L. 107-134, Sec. 112(d)(1) (applicable to disasters and terroristic or military actions occurring on or after 9/11/2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after enactment, as provided by Sec. 112(f) of P.L. 107-134, which appears as a note to Code Sec. 6081), deleted subsec. (h) which read:

"(h) Abatement of interest on underpayments by taxpayers in Presidentially declared disaster areas.

"(1) In general. If the Secretary extends for any period the time for filing income tax returns under section 6081 and the time for paying income tax with respect to such returns under section 6161 for any taxpayer located in a Presidentially declared disaster area, the Secretary shall abate for such period the assessment of any interest prescribed under section 6601 on such income tax.

"(2) Presidentially declared disaster area. For purposes of paragraph (1), the term 'Presidentially declared disaster area' means, with respect to any taxpayer, any area which the President has determined warrants assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.";

redesignated subsec. (i) as subsec. (h); and added a new subsec. (i).

In 1998, P.L. 105-277, Div J, Title IV, Sec. 4003(e)(2) (effective as if included in provisions of P.L. 105-34 to which it relates, as provided by Sec. 4003(l) of Div J of P.L. 105-277, which appears as a note to Code Sec. 86), amended subsec. (h) by inserting "Robert T. Stafford" in para. (2).

--P.L. 105-206, Sec. 3305(a) (applicable as provided by Sec. 3305(b) of P.L. 105-206, which appears as a note to this section), redesignated subsec. (g) as subsec. (h); and added new subsec. (g).

--P.L. 105-206, Sec. 3309(a) (effective and applicable as provided by Sec. 3309(b), (c) of P.L. 105-206, which appear as notes to this section), redesignated subsec. (h) as subsec. (i); and added new subsec. (h).

In 1996, P.L. 104-168, Sec. 301(a) (applicable as provided by § 301(c) of such Act, which appears as a note to this section), in subsec. (e), in the heading, substituted "Abatement" for "Assessments" and, in para. (1), in subparas. (A) and (B), inserted "unreasonable" and substituted "in performing a ministerial or managerial act" for "in performing a ministerial act".

--P.L. 104-168, Sec. 302(a) (applicable as provided by § 302(b) of such Act, which appears as a note to this section), added subsec. (g).

--P.L. 104-168, Sec. 701(c)(3) (applicable as provided by § 701(d) of such Act, which appears as a note to this section), in subsec. (g)(1), substituted "section 7430(c)(4)(A)(ii)" for "section 7430(c)(4)(A)(iii)".

In 1988, P.L. 100-647, Sec. 1015(n)(1), added "error or" before "delay" in subpara. (e)(1)(B) . . . Sec. 1015(n)(2), added "erroneous or" before "dilatory" in subpara. (e)(1)(B), effective for interest accruing for deficiencies or payments for tax. yrs. begin. after 12/31/78. For special rules see Sec. 1563(b)(2) of P.L. 99-514, reproduced below.

--P.L. 100-647, Sec. 6229(a), added subsec. (f), effective for advice requested on or after 1/1/89.

In 1986, P.L. 99-514, Sec. 1563(a), added subsec. (e), applicable as provided by Sec. 1563(b) of such Act, which appears as a note to this section.

In 1980, P.L. 96-589, Sec. 6(b)(2), substituted "section 6213(g)(2)(A)" for "section 6213(f)(2)(A)" in subsec. (d), effective as provided by Sec. 7 of such Act, which appears as a note following Code Sec. 108.

In 1976, P.L. 94-455, Sec. 1212(a), added subsec. (d), effective for returns filed for tax. yrs. end. after 10/4/76.

--P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in Code Sec. 6404, effective 2/1/77.

Other provisions:

Application of Oct. 22, 1986 amendment. Act Oct. 22, 1986, P.L. 99-514, Title XV, § 1563(b), 100 Stat. 2762, provides:

"(1) In general. The amendment made by subsection (a) [amending this section] shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after December 31, 1978.

"(2) Statute of limitations. If refund or credit of any amount resulting from the application of the amendment made by subsection (a) is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such amount (to the extent attributable to the application of the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefore is filed before the close of such 1-year period.".

Application of July 30, 1996 amendments to subsec. (e). Act July 30, 1996, P.L. 104-168, Title II, § 301(c), 110 Stat. 1457, provides: "The amendments made by this section [amending subsecs. (e) of this section] shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of the enactment of this Act.".

Application of July 30, 1996 addition of subsec. (g). Act July 30, 1996, P.L. 104-168, Title III, § 301(b), 110 Stat. 1457, provides: "The amendment made by this section [adding subsec. (g) of this section] shall apply to requests for abatement after the date of the enactment of this Act.".

Application of July 30, 1996 amendment of subsec (g)(1). Act July 30, 1996, P.L. 104-168, Title VII, § 701(d), 110 Stat. 1464, provides: "The amendments made by this section [amending *26 USCS §§ 6404(g)(1)*, *6656(c)(1)*, and 7430c)] shall apply in the case of proceedings commenced after the date of the enactment of this Act.".

Application of amendments made by § 3305 of Act July 22, 1998. Act July 22, 1998, P.L. 105-206, Title III,

Subtitle D, § 3305(b), 112 Stat. 743, provides: "The amendments made by this section [redesignating subsec. (g) of this section as subsec. (h) and adding a new subsec. (g)] shall apply to taxable years ending after the date of the enactment of this Act.".

Application of amendments made by § 3309 of Act July 22, 1998. Act July 22, 1998, P.L. 105-206, Title III, Subtitle D, § 3309(b), 112 Stat. 745, provides: "The amendment made by this section [redesignating subsec. (h) of this section as subsec. (i) and adding a new subsec. (h)] shall apply to disasters declared after December 31, 1997, with respect to taxable years beginning after December 31, 1997.".

Emergency designation of § 3309 of Act July 22, 1998; amendments not effective until transmittal of Presidential message. Act July 22, 1998, P.L. 105-206, Title III, Subtitle D, § 3309(c), 112 Stat. 745, provides:

"(1) For the purposes of section 252(e) of the Balanced Budget and Emergency Deficit Control Act [*2 USCS § 902(e)*], Congress designates the provisions of this section [adding subsec. (h) of this section and classified in part as notes to this section] as an emergency requirement.

"(2) The amendments made by subsections (a) and (b) of this section [adding subsec. (h) of this section] shall only take effect upon the transmittal by the President to the Congress of a message designating the provisions of subsections (a) and (b) as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act [*2 USCS § 902(e)*].". [For message of the President dated July 22, 1998, designating the provisions of § 3309(a) and (b) of Act July 22, 1998, P.L. 105-206, as an emergency requirement pursuant to *2 USCS § 902(e)*, see Cong. Rec., vol. 144, p. H6160, Daily Issue.]

Application of Oct. 22, 2004 amendments. Act Oct. 22, 2004, P.L. 108-357, Title VIII, Subtitle D, § 903(d), 118 Stat. 1652; Dec. 21, 2005, P.L. 109-135, Title III, § 303(a)(1), 119 Stat. 2608 (effective as if included in Act Oct. 22, 2004, as provided by § 303(a)(2) of Act Dec. 21, 2005); Dec. 20, 2006, P.L. 109-432, Div A, Title IV, § 426(b)(1), 120 Stat. 2975 (effective as if included in Act Oct. 22, 2004, as provided by § 426(b)(2) of Act Dec. 20, 2006), provides:

"(1) In general. Except as provided in paragraph (2), the amendments made by this section [amending subsec. (g) of this section] shall apply to taxable years beginning after December 31, 2003.

"(2) Exception for reportable or listed transactions.

(A) In general. The amendments made by subsection (c) shall apply with respect to interest accruing after October 3, 2004.

"(B) Special rule for certain listed and reportable transactions.

(i) In general. Except as provided in clauses (ii), (iii), and (iv), the amendments made by subsection (c) shall also apply with respect to interest accruing on or before October 3, 2004.

"(ii) Participants in settlement initiatives. Clause (i) shall not apply to any transaction if, as of January 23, 2006--

"(I) the taxpayer is participating in a settlement initiative described in Internal Revenue Service Announcement 2005-80 with respect to such transaction, or

"(II) the taxpayer has entered into a settlement agreement pursuant to such an initiative.

Subclause (I) shall not apply to any taxpayer if, after January 23, 2006, the taxpayer withdraws from, or terminates, participation in the initiative or the Secretary of the Treasury or the Secretary's delegate determines that a settlement agreement will not be reached pursuant to the initiative within a reasonable period of time.

"(iii) Taxpayers acting in good faith. The Secretary of the Treasury or the Secretary's delegate may except from the application of clause (i) any transaction in which the taxpayer has acted reasonably and in good faith.

"(iv) Closed transactions. Clause (i) shall not apply to a transaction if, as of December 14, 2005--

"(I) the assessment of all Federal income taxes for the taxable year in which the tax liability to which the interest relates arose is prevented by the operation of any law or rule of law, or

"(II) a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the transaction.".

Application of Dec. 21, 2005 amendment. Act Dec. 21, 2005, P.L. 109-135, Title III, § 303(b)(2), 119 Stat. 2609, provides: "The amendment made by this subsection [amending subsec. (g)(1) of this section] shall apply to documents provided on or after the date of the enactment of this Act.".

Application of May 25, 2007 amendments. Act May 25, 2007, P.L. 110-28, Title VIII, Subtitle B, Part 2, § 8242(b), 121 Stat. 200, provides: "The amendments made by this section [amending subsec. (g) of this section] shall apply to notices provided by the Secretary of the Treasury, or his delegate, after the date which is 6 months after the date of the

enactment of this Act.".

Application of Dec. 18, 2015 amendment. Act Dec. 18, 2015, P.L. 114-113, Div Q, Title IV, Subtitle B, Part 1, § 421(b), 129 Stat. 3123, provides: "The amendments made by this section [amending subsec. (h) of this section] shall apply to claims for abatement of interest filed with the Secretary of the Treasury after the date of the enactment of this Act.".

NOTES:

Code of Federal Regulations:

Internal Revenue Service, Department of the Treasury--Procedure and administration, *26 CFR 301.269b-1* et seq.

Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury--Manufacture of tobacco products and cigarette papers and tubes, *27 CFR 40.1* et seq.

Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury--Importation of tobacco products and cigarette papers and tubes, *27 CFR 41.1* et seq.

Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury--Exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax, *27 CFR 44.1* et seq.

Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury--Manufacturers excise taxes-firearms and ammunition, *27 CFR 53.1* et seq.

Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury--Procedure and administration, *27 CFR 70.1* et seq.

This section is referred to in *26 CFR 1.6662-4*, *31.6404(a)-1*, *301.6404-2*, *301.6404-3*, *301.6404-4T*.

Related Statutes & Rules:

Restrictions applicable to deficiencies, petition to *Tax Court, 26* USCS § 6213.

Authority to make credits or refunds, *26 USCS § 6402*.

Limitations on credit or refund, *26 USCS § 6511*.

Action for recovery of erroneous refund, *26 USCS § 7405*.

Civil action for refund, *26 USCS § 7422*.

This section is referred to in *26 USCS §§ 6213*, *6230*.

Research Guide:

Federal Procedure:

5 Administrative Law (Matthew Bender), ch 44, Preclusion of Judicial Review § 44.03.

Am Jur:

35 Am Jur 2d, Federal Tax Enforcement §§ 488, *490-492*, *494*, *616*, *673*.

Federal Taxation:

2 Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 4, Deductions: Taxes and Losses § 4.07.

3 Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 16, Partnerships § 16.01.

5 Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 78, Limitations Periods Applicable to Government Action § 78.04.

5 Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 79, Deficiencies and Tax Court Litigation § 79.04.

5 Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 80, Taxpayer Refunds § 80.02.

5 Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 85, Interest § 85.01.

1 Tax Controversies: Audits, Investigations, Trials (Matthew Bender), ch 2, Appeals Office and Tax Court Procedure §§ 2.01, 2.04.

1 Tax Controversies: Audits, Investigations, Trials (Matthew Bender), ch 3, Assessments and Collection § 3.04.

1 Tax Controversies: Audits, Investigations, Trials (Matthew Bender), ch 15, Civil Penalties §§ 15.01-15.03.

Law Review Articles:

Griffith. TBOR2 compliance plans: from rebuttable presumption to enforcement. 34 J Health L 567, Fall 2001.

Kanter. Income and estate tax relief granted for victims of terrorist attacks. 19 J Tax'n Invest 267, Spring 2002.

Interpretive Notes and Decisions:

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II.CLAIMS FOR ABATEMENT

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I.IN GENERAL 1. Generally

Because abatement of income taxes was authorized when unpaid portion of assessment or any liability in respect thereof was: (1) excessive in amount; (2) assessed after expiration of period of limitation properly applicable thereto; (3) erroneously or illegally assessed, abatement of husband and wife's income taxes was outside IRS's abatement authority; tax liabilities at issue did not fall within one of three categories enumerated in *26 USCS § 6404(a)* and thus were ineligible for abatement. *Range v United States (In re Range) (2002, CA5 Tex) 2002-2 USTC P 50662, 90 AFTR 2d 6409.*

Treas. Reg. § 301.6404-2(a)(1)(i)'s use of definition of "deficiency" found in *26 USCS § 6211* is neither unreasonable nor plainly inconsistent with revenue statutes and, accordingly, must be sustained. *Miller v Commissioner (2002, CA9 Wash) 310 F3d 640, 2002 CDOS 11023, CCH Unemployment Ins Rep P 16800B, 2002-2 USTC P 50759, 90 AFTR 2d 7159.*

Assessment--timely imposed within limitations period and abated in error--may permissibly be reinstated to correct that error even after limitations period for initial assessment has expired where person against whom assessment has been reinstated has failed to show reasonable and detrimental reliance on erroneous abatement. *Becker v IRS (In re Becker) (2005, CA2 NY) 407 F3d 89.*

Letter in which Commissioner advised collector that second assessment replaces all previous assessments did not work abatement of first assessment, since act of abating assessment is formal administrative act following definite pattern prescribed by statute or by administrative regulations and practice; letter was no such formal act. *O. D. Jennings & Co. v Reinecke (1937, ND Ill) 19 F Supp 197, 37-1 USTC P 9263, 19 AFTR 701.*

26 USCS § 6404 applies only to abatement of interest accruing after notice of deficiency has been issued, and does not authorize abatement of interest accruing prior to date of notice of deficiency; IRS does not have authority to abate interest arising prior to date of notice of deficiency where non-filer entered into installment agreement which erroneously stated that it included interest. *Krugman v Commissioner (1999) 112 TC 230.*

I.R.C. § 6404(g) is effective only for tax years ending after July 22, 1998. Hunt v Comm'r (2003) *TC Memo 2003-283, 86 CCH TCM 426.*

IRS disallowed taxpayer's 1982 loss from partnership after tax court issued 1997 decision regarding partnership's claimed research and experimental deductions; *I.R.C. § 6404(g)(1)* did not apply to abate taxpayer's interest on 1982 tax deficiency because taxpayer was seeking abatement of interest on income tax liabilities for taxable year 1982 and § 6404(g)(1) was not effective until tax years ending after July 22, 1998. Hunt v Comm'r (2003) *TC Memo 2003-283, 86 CCH TCM 426.*

Former I.R.C. § 6404(h)(1) was not in effect in 1997 when President declared Hurricane Danny disaster and, because taxpayers elected to claim losses from Hurricane Georges on their 1997 return, casualty from Hurricane Georges was treated as having occurred in 1997; because former § 6404(h)(1) was not in effect during petitioners' tax year at issue, Tax Court lacked jurisdiction to review taxpayers' claim for abatement of interest. Godwin v Comm'r (2003) *TC Memo 2003-289, 86 CCH TCM 451,* affd (2005, CA11) *2005 US App LEXIS 8550.*

For purposes of *26 USCS § 6404* and taxpayers' request for interest abatement, term "attributable to" meant due to, caused by, or generated by. Palihnich v Comm'r (2003) *TC Memo 2003-297, 86 CCH TCM 488.*

Where there is no deficiency, interest abatement under *26 USCS § 6404(e)* is available only pursuant to § 6404(e)(1)(B), which is expressly limited to payment of any tax described in *26 USCS § 6212(a)*; provisions related to employment taxes are not mentioned in § 6212(a). Scanlon White, Inc. v Comm'r (2005) *TC Memo 2005-282, 90 CCH TCM 561.*

IRS is required to abate interest on erroneous refunds where IRS handles returns improperly and makes internal accounting errors causing erroneous refunds to be issued. *Lindstedt v United States (1996, Ct Fed Cl) 96-2 USTC P 50488, 78 AFTR 2d 6211.*

I.R.C. § 6404(h) applies to all abatement provisions under § 6404, including several that are clearly phrased in mandatory terms with meaningful standards, e.g., § 6404(e)(2). *Hinck v United States (2005) 64 Fed Cl 71, 2005-1 USTC P 50270.*

2. Effect of abatement

Abatement of jeopardy assessment against taxpayer's former wife does not release him from payment of tax. *United States v Teitelbaum (1965, CA7 Ill) 342 F2d 672, 65-1 USTC P 9235, 15 AFTR 2d 352,* cert den *(1965) 382 US 831, 15 L Ed 2d 75, 86 S Ct 71.*

Abatement of tax by Commissioner when acting in accordance with his statutory power, results in entire extinguishment of taxpayer's liability, and wipes out assessment. *Sugar Run Coal Mining Co. v United States (1937, ED Pa) 21 F Supp 10, 37-2 USTC P 9465, 20 AFTR 403.*

Where assessments of penalty tax had been mistakenly abated because another party liable therefor had already

paid penalty, abatement could be cancelled and assessment reinstated, although running of statute of limitations precluded new assessment for same tax liability, as long as refund suit brought by party who paid assessments was still pending. *Crompton-Richmond Co. v United States (1970, SD NY) 311 F Supp 1184, 70-1 USTC P 9360, 25 AFTR 2d 1329.*

In case in which district court found that United States had erroneously abated federal tax liability of two taxpayers and ordered refund to taxpayers, United States, in support of its *Fed. R. Civ. P. 59(e)* motion, argued that applicable jurisprudence construed erroneous abatements as ineffectual under *26 USCS § 6211(a)* because abatement resulting from clerical error was not refund based on merits of taxpayer liability and, therefore, did not fit within scope of statute of limitations for reinstatement of abated tax; however, United States had offered no evidence, save testimony of revenue agent, to rebut IRS's determination that erroneous abatement at issue was not product of clerical error. *Fowler v United States (2009, WD La) 2009-2 USTC P 50718, 104 AFTR 2d 6962.*

Reassessment after abatement of original assessment cannot be made after assessment period where jeopardy assessment had been previously canceled. *McCutchen v Comissioner (1929, BTA) 16 BTA 569,* not acq.

3.--Excessive taxes

If Commissioner abates excessive assessment, it ceases to exist or to have any effect thereafter and Commissioner cannot subsequently rescind his actions or restore assessment, but must rather make new assessment unless, of course, statute of limitations has previously expired. *Carlin v United States (1951) 121 Ct Cl 643, 100 F Supp 451, 51-2 USTC P 9465, 41 AFTR 238; Carney Coal Co. v Commissioner (1928, BTA) 10 BTA 1397,* acq in part and not acq, in part; *McCutchen v Comissioner (1929, BTA) 16 BTA 569,* not acq.

Assessment abated under *26 USCS § 6404(a)* for excessiveness in amount is thereby cancelled and cannot be resurrected if internal revenue service later decides that its decision was incorrect. *Crompton-Richmond Co. v United States (1970, SD NY) 311 F Supp 1184, 70-1 USTC P 9360, 25 AFTR 2d 1329.*

Notice of deficiency issued one day prior to date on which statute of limitations would have expired, which fails to compute deficiency and which simply estimates deficiency as $ 100,000, is void where IRS had in its possession all of records necessary to make accurate determination of deficiency; authority under *26 USCS § 6404* to abate excessive tax does not authorize IRS to issue deficiency notice which merely estimates deficiency. *Estate of Weller v United States (1998, SD Tex) 58 F Supp 2d 734, 99-1 USTC P 50420, 83 AFTR 2d 2118.*

Where tax liability was mistakenly removed from Internal Revenue Service computerized database, reinstatement of liability was not assessment (which would have been time-barred), and taxpayer's tax penalty had never been abated; it was ministerial adjustment in nature of bookkeeping. *Simon v United States (2003, MD La) 261 F Supp 2d 567, 2003-1 USTC P 50450, 91 AFTR 2d 2198.*

If Treasury abates assessment as having been erroneous or excessive, effect of such abatement is same as if amount abated had never been assessed and therefore, Treasury cannot thereafter rescind its action but may make new assessment within assessment period. *Wolfe v Commissioner (1930, BTA) 20 BTA 1065,* acq sub nom and acq; *Sokolow v Commissioner (1931, BTA) 22 BTA 349.*

4.--Uncollectible taxes

Notice of abatement for uncollectibility sent to taxpayer is merely inter-departmental bookkeeping entry which does not cancel or annul taxpayer's liability. *Kroyer v United States (1932) 73 Ct Cl 591, 55 F2d 495, 10 AFTR 1092; Carlin v United States (1951) 121 Ct Cl 643, 100 F Supp 451, 51-2 USTC P 9465, 41 AFTR 238; Pioneer Rubber Mills v United States (1935, ND Cal) 10 F Supp 317, 35-1 USTC P 9282, 15 AFTR 1424.*

Even though notice of abatement has been sent to taxpayer, abatement of tax merely for uncollectibility does not

extinguish assessment. *Sugar Run Coal Mining Co. v United States (1937, ED Pa) 21 F Supp 10, 37-2 USTC P 9465, 20 AFTR 403.*

Internal revenue service can revive an assessment abated under *26 USCS § 6404(c)* where the administration and collection costs involved would not warrant collection of the amount due because the abatement of an uncollectible tax, according to Internal Revenue Service Regulations, is not deemed to have cancelled the tax, but in effect excuses its collector's obligation to account for the tax liability. *Crompton-Richmond Co. v United States (1970, SD NY) 311 F Supp 1184, 70-1 USTC P 9360, 25 AFTR 2d 1329.*

II.CLAIMS FOR ABATEMENT

A.In General 5. Generally

Claim in abatement is applicable only to taxes which have been assessed and not yet paid. *Kales v United States (1940, CA6 Mich) 115 F2d 497, 40-2 USTC P 9748, 25 AFTR 1024,* affd *(1941) 314 US 186, 86 L Ed 132, 62 S Ct 214, 41-2 USTC P 9785, 27 AFTR 309* (superseded by statute as stated in *Matrix Funding Corp. v Utah State Tax Comm'n (2002) 2002 UT 47, 447 Utah Adv Rep 7)* and (superseded by statute as stated in *Matrix Funding Corp. v Utah State Tax Comm'n (2002) 2002 UT 85, 52 P3d 1282, 454 Utah Adv Rep 42, 48 UCCRS2d 812).*

IRS properly denied taxpayer's request for abatement of accrued interest under *26 USCS § 6404(e)(1)* because neither *26 USCS § 6231(c)* nor regulations promulgated thereunder created ministerial-task obligation on IRS to notify, and thereby remove from partnership audit, tax matters partner who was under criminal investigation. *Mekulsia v Comm'r (2004, CA6) 389 F3d 601, 2005-1 USTC P 50108, 2004 FED App 402P.*

IRS officer's decision denying taxpayer's request to abate interest was not abuse of discretion where record did not show, and taxpayer did not identify, any specific acts attributable to IRS that would constitute ministerial or managerial acts entitling him to abatement of interest. *Leiter v United States (2004, DC Kan) 2004-1 USTC P 50162, 93 AFTR 2d 793.*

Where IRS partnership audit resulted in denial of taxpayers' claimed partnership losses on their returns and where taxpayers later settled their tax liability, IRS properly denied taxpayers' claim for abatement of interest that was paid as result of settlement because: (1) date of notice for interest abatement claims was date of beginning of partnership-level administrative proceeding, which was not within scope of *26 USCS § 6404(e)*, and (2) taxpayers were not entitled to abatement for remaining time period because criminal investigation of partnership was not commenced by IRS as ministerial act within § 6404(e). *Beall v United States (2004, ED Tex) 335 F Supp 2d 743, 2004-2 USTC P 50380, 94 AFTR 2d 5605.*

While no court has addressed fraud under *26 USCS § 6404(g)(2)(B)*, it is well established that government must prove fraud in other parts of tax code by clear and convincing evidence; government's burden of proof under § 6404(g) is also clear and convincing evidence. *Sala v United States (2007, DC Colo) 2007-1 USTC P 50514, 99 AFTR 2d 2551.*

Taxpayers were entitled to suspension of interest because government's evidence, intended to show that taxpayers' transactions lacked economic substance, was insufficient to enable reasonable fact finder to find fraud by clear and convincing evidence and, therefore, taxpayers did not fit exception of *26 USCS § 6404(g)(2)(B)*. *Sala v United States (2007, DC Colo) 2007-1 USTC P 50514, 99 AFTR 2d 2551.*

Technical compliance with tax law does not render underlying transactions substantive, but it does show that taxpayer lacked intent necessary for fraud pursuant to *26 USCS § 6404(g)(2)(B)*. *Sala v United States (2007, DC Colo) 2007-1 USTC P 50514, 99 AFTR 2d 2551.*

Taxpayer who failed to timely file claims for refund of overpayment of taxes was not allowed to setoff overpayment against his liability for tax, penalties, and interest for subsequent tax years assessed by *IRS. Pransky v IRS*

(In re Pransky) (2004, BC DC NJ) 304 BR 671, 2004-1 USTC P 50195, 93 AFTR 2d 924.

Interest abatement is not required where interest results from IRS litigation strategy which results in delay, and accordingly increases amount of interest, since litigation strategy is not ministerial act but requires exercise of judgment. *Lee v Commissioner (1999) 113 TC 145.*

Interest on deficiency is not abated for period that civil examination proceedings are suspended due to pendency of criminal investigation; provisions of *26 USCS § 6404(e)(1)(A)*, authorizing IRS to abate interest for IRS delay in performing ministerial acts does not authorize abatement of interest for period in which civil examination is suspended pending criminal examination. *Taylor v Comm'r (1999) 113 TC 206,* affd (2001, CA9 Or) *9 Fed Appx 700, 2001-1 USTC P 50441.*

Where IRS agent understated interest owed by taxpayers after audit, taxpayers were not entitled to abatement of interest later assessed by service center because agent misapplied law and error was not made in performance of ministerial act. *Urbano v Comm'r (2004) 122 TC 384.*

Taxpayers were not entitled to abatement of interest under *26 USCS § 6404(e)* for deficiencies based on IRS's' failure to promptly amend *26 CFR § 1.931-1* to reflect 1986 amendment to *26 USCS § 931* which eliminated exclusion of income earned on Johnston Island; argument was unpersuasive because: (1) process of amending regulation involved both IRS and Treasury Department, and because delay could have been caused by Treasury Department, interest abatement under § 6404(e) was not appropriate; and (2) even if delay was attributable to IRS, taxpayers did not show requisite correlation between error or delay attributable to Commissioner of Internal Revenue and specific period of time during which interest should be abated. Young v Comm'r (2009) *TC Memo 2009-24, 97 CCH TCM 1101.*

When Congress first enacted *I.R.C. § 6404(e)* as part of Tax Reform Act of 1986, Pub. L. 99-514, sec. 1563(a), 100 Stat. 2762, it did not intend provision to be used routinely to avoid payment of interest; rather, Congress intended abatement of interest only where failure to do so would be widely perceived as grossly unfair. Bucaro v Comm'r (2009) *TC Memo 2009-247, 98 CCH TCM 388.*

U.S. Tax Court does not read *I.R.C. § 6404* to permit abatement simply because reviewing agent may have made mistake in analyzing or applying relevant law. Bucaro v Comm'r (2009) *TC Memo 2009-247, 98 CCH TCM 388.*

Taxpayer was not eligible for abatement of interest under *26 USCS § 6404(e)* where it did not establish correlation between alleged error or delay by IRS officer or employee and specific period for which interest should be abated as result of that error or delay. O'Brien v Comm'r (Estate of Ball) (2009) *TC Memo 2009-262, 98 CCH TCM 467.*

Only errors or delays occurring after Commissioner of Internal Revenue has initially contacted taxpayer in writing with respect to deficiency are taken into account; abatement of interest for period between date taxpayers filed their return (April 16, 1984) and date IRS contacted them in writing (April 28, 1988) was not permitted under § 6404(e). Larkin v Comm'r (2010) *TC Memo 2010-73, 99 CCH TCM 1310.*

Extensive examination of partnership which results in delays in processing of cases of individual taxpayers who invested in partnership is not considered ministerial act; therefore, delay in processing taxpayers' case could not be considered result of ministerial act. Larkin v Comm'r (2010) *TC Memo 2010-73, 99 CCH TCM 1310.*

Executor of estate was not entitled to abatement of interest under *I.R.C. § 6404(e)*; incorrect advice from IRS employee could not be grounds for abatement because it involved proper application of Federal tax law and was not ministerial act, and executor did not show that IRS employee's error caused him to delay his payment of taxes. Estate of Telesmanich v Comm'r (2011) *TC Memo 2011-181, 102 CCH TCM 114.*

Stipulations and exhibits that pertained to criminal proceedings against tax matters partner were relevant to individual partner's case seeking abatement of interest under *26 USCS § 6404(e)(1)* and thus, court overruled

Commissioner of Internal Revenue's objection. Coleman v Comm'r (2012) *TC Memo 2012-116, 103 CCH TCM 1642.*

Claim for abatement of jeopardy or termination assessment will be given prompt attention by Treasury, with review taking place in regional office. *Rev Proc 78-12 (1978) 1978-1 CB 590.*

Unpublished Opinions

Unpublished: In case in which two federal taxpayers appealed United States Tax Court's order sustaining IRS's proposed levies against them, IRS did not abuse its discretion in refusing to abate interest and penalties on taxpayers' unpaid tax liabilities; tax court properly found that IRS's error in refunding $ 70,000 payment taxpayers allegedly intended to make for 1998 tax year, received in 1999 and credited towards 1999 tax year, was not unreasonable because payment was submitted separately from their request for extension of time to file 1998 tax return. *Sher v Comm'r (2010, CA2) 2010-1 USTC P 50468, 105 AFTR 2d 2952.*

6. Relationship with refund claim

Claim for abatement of income tax, unlike claim for refund, has relation to tax assessed but still unpaid. *United States v Factors & Finance Co. (1933) 288 US 89, 77 L Ed 633, 53 S Ct 287, 3 USTC P 1022, 11 AFTR 1125.*

Fact that Treasury's prior disallowance of abatement claim for same tax and on same grounds indicates that refund claim will likewise be disallowed does not excuse taxpayer from making refund claim. *Ertle v United States (1950) 118 Ct Cl 57, 93 F Supp 619, 50-2 USTC P 9486, 39 AFTR 1201.*

Claim for abatement of excise tax assessments filed at time when Treasury was holding property seized under levy for taxes is sufficient to be claim for refund of amount realized by Treasury on subsequent sale of property. *Import Wholesalers Corp. v United States (1966) 177 Ct Cl 493, 368 F2d 577, 66-2 USTC P 15720, 18 AFTR 2d 6392.*

In declining to strike government's affirmative defense of fraud under *26 USCS § 6404(g)(2)(B)* to taxpayers' refund claim, court found that government's allegations provided taxpayers fair notice of claim and factual basis underlying it and accordingly satisfied *Fed. R. Civ. P. 9(b)*; government alleged that taxpayers searched for vehicle to protect investments from taxation, selected vehicle that they knew or should have known was illegal and then attempted to conceal that from *IRS. Sala v United States (2007, DC Colo) 2007-1 USTC P 50415, 99 AFTR 2d 1709.*

In action in which limited partners contended that IRS miscalculated their tax liabilities for 1992 and, as result, erroneously credited refunds due from other tax years to 1992 taxes, court lacked subject matter jurisdiction to review assessment of limited partners' 1992 tax liability because statutory scheme under *26 USCS §§ 6228(b)*, *6230(c)* and *7422(a)* required taxpayers to file refund claim prior to filing suit for refund; under *26 USCS § 6404(h)*, district court could not order IRS to abate 1992 assessment. *Brooks v United States (2011, ND Cal) 108 AFTR 2d 5660.*

Where IRS never sent taxpayer his refund for 1993, taxpayer did not receive notice that his refund had not been applied to his 1987 and 1989 tax deficiencies, and given numerous misstatements and errors made by IRS as to handling of taxpayer's 1987 and 1989 tax years, taxpayer was entitled to further abatement of interest in addition to abatement he had already received. Wright v Comm'r (2006) *TC Memo 2006-273, 92 CCH TCM 525.*

Taxpayer was not entitled to abatement of interest under *26 USCS § 6404*; although IRS sent taxpayer refund after discovering math error, but later assessed deficiency when it discovered unreported income, taxpayer could not claim any sort of offset against deficiency from his initial overpayment. Baral v Comm'r (2009) *TC Memo 2009-113, 97 CCH TCM 1580.*

Although taxpayers argued that when Commissioner of Internal Revenue issued $ 8,326 refund, he was tacitly admitting that they were entitled to abatement, their refund was result of recomputation of proper amount of interest, not any ministerial error. Larkin v Comm'r (2010) *TC Memo 2010-73, 99 CCH TCM 1310.*

7. Application or request for abatement

Where taxpayer's application for abatement of interest on assessed employment taxes was filed while former version of *26 USCS § 6404* was in effect, but was pending on effective date of amendment providing authority for judicial review of denial by Commissioner of Internal Revenue of abatement requests, amendment applied to taxpayer's application. *Miller v Commissioner (2002, CA9 Wash) 310 F3d 640, 2002 CDOS 11023, CCH Unemployment Ins Rep P 16800B, 2002-2 USTC P 50759, 90 AFTR 2d 7159.*

IRS' acts were not ministerial tasks within meaning of *26 USCS § 6404(e)*; whether and when to issue criminal referral was not ministerial act; further, taxpayers' allegation that IRS returned taxpayer records in disarray was similar to loss of records and should be treated as managerial, rather than ministerial, act. *Beall v United States (2006, CA5 Tex) 467 F3d 864.*

In affirming U.S. Tax Court, appeals court agreed that Commissioner of Internal Revenue lacked authority to abate interest under *26 USCS § 6404(e)* with respect to taxpayer's employment taxes; Commissioner's interpretation of § 6404(e)(1) as limited to taxes described in *26 USCS § 6212(a)* was reasonable, consistent, and entitled to deference. *Scanlon White, Inc. v Comm'r (2006, CA10) 472 F3d 1173, 98 AFTR 2d 8278.*

Any ambiguity in meaning of "deficiency" in *26 USCS § 6404(e)(1)(A)* was resolved by Commissioner of Internal Revenue's regulatory interpretation as promulgated in *Treas. Reg. § 301.6404-2(a)(1)(i)* that term "deficiency" in *26 USCS § 6404(e)(1)* is defined under *26 USCS § 6211(a)*. *Scanlon White, Inc. v Comm'r (2006, CA10) 472 F3d 1173, 98 AFTR 2d 8278.*

Pursuant to *26 USCS § 6404(e)(1)*, any decision to abate interest by IRS officials is discretionary; taxpayers did not establish existence of clear non-discretionary duty on part of defendants as appeared relevant to any request for "explanation" regarding certain tax assessments; therefore taxpayers did not state cognizable claim for relief. *Brewer v Baugh (2005, DC Ariz) 370 F Supp 2d 988.*

Where taxpayers signed I.R.S. Form 870 and thus agreed that Commissioner of Internal Revenue could immediately assess and collect agreed amount, taxpayers were not entitled to interest abatement because they chose not to pay agreed upon tax. Nichols v Comm'r (2007) *TC Memo 2007-5, 93 CCH TCM 657.*

Taxpayers were not entitled to an abatement of interest assessed on their underlying tax liability pursuant to *26 USCS § 6404* because the decision to reduce their tax liability after a court determined that they had insufficient notice under *26 USCS § 6330*, made by an earlier decision of the tax court, was not a managerial or ministerial decision. Kuykendall v Comm'r (2008) *TC Memo 2008-277, 96 CCH TCM 421.*

At collection appeals office hearing, taxpayers did not affirmatively raise as issue their entitlement under *I.R.C. § 6404* and, thus, were precluded from seeking abatement relief. Peterson v Comm'r (2009) *TC Memo 2009-46, 97 CCH TCM 1196.*

It was not abuse of discretion for IRS Commissioner to deny taxpayer's request for abatement of interest on liability from 1982 that taxpayer paid in 2007 because taxpayer did not show that such interest, which generally accrues at rate specified in *26 USCS § 6621* until date of payment per *26 USCS § 6601(a)*, accrued because of any error or delay on part of IRS officer or employee. Yeomans v Comm'r (2009) *TC Memo 2009-216, 98 CCH TCM 57942.*

Commissioner of Internal Revenue did not abuse his discretion by denying claim for abatement of interest under *26 USCS § 6404(e)*, as taxpayer's estate failed to demonstrate that delay in payment of its income tax was result of anything more than its own conduct or that rejection of its claim for abatement was grossly unfair where IRS sent letters to estate on seven occasions reminding it of tax liability and warning estate that it could be subject to lien or levy actions if there was no response; only other action IRS could have taken at that point would have been to initiate collection action, and that was not ministerial activity. O'Brien v Comm'r (Estate of Ball) (2009) *TC Memo 2009-262,*

98 CCH TCM 467.

If petition is filed in response to final partnership administrative adjustment (FPAA), *I.R.C. § 6225(a)(2)* prohibits assessment based on adjustment to partnership items until decision of U.S. Tax Court in partnership's case becomes final; as result, Commissioner of Internal Revenue was prohibited from assessing or collecting any taxes attributable to partnership-item adjustment related to partnership before July 10, 2005; taxpayers' deficiency for 1983 could not be assessed until July 10, 2005 and, accordingly, Commissioner did not abuse his discretion in refusing to abate interest for this period because no tax could be assessed until 90 days after taxpayers received affected items notice of deficiency. Larkin v Comm'r (2010) *TC Memo 2010-73, 99 CCH TCM 1310.*

Because handling of second partnership-level proceeding and processing and supervisory review of Tax Equity and Fiscal Responsibility Act of 1982 closing package were not delayed by ministerial error (Commissioner of Internal Revenue's decision on how to proceed in litigation phase of case necessarily required exercise of judgment and thus could not be ministerial act), Commissioner did not abuse his discretion in failing to abate interest charged to petitioner. Swanson v Comm'r (2010) *TC Memo 2010-131, 99 CCH TCM 1542.*

Where taxpayers did not qualify as real estate professionals, their losses claimed under *26 USCS § 162* and *212* were limited as passive losses under *26 USCS § 469(c)(7)*, and they were liable for ten percent penalty on early retirement distributions under *26 USCS § 72(t)(1)*, and interest thereon was left unabated under *26 USCS § 6404(e)(1)*. Hill v Comm'r (2010) *TC Memo 2010-200, 100 CCH TCM 220.*

Because Commissioner of Internal Revenue did not erroneously impose addition to tax under *26 USCS § 6651(a)(3)*, he did not abuse his discretion in denying interest abatement claim under *26 USCS § 6404(h)*. E.J. Harrison & Sons, Inc. v Comm'r (2011) *TC Memo 2011-157, 102 CCH TCM 13.*

Commissioner of Internal Revenue did not abuse his discretion in denying abatement of interest under *26 USCS § 6404(e)(1)* because (1) his decision on how to proceed in litigation phase of underlying partnership litigation necessarily required exercise of judgment and was not ministerial act; (2) under *26 USCS § 6229(d)*, he could not assess income tax liabilities of individual partners until decision entered in partnership litigation became final; and (3) his decision not to notify taxpayer of tax matters partner's indictment and offer him opportunity to settle required exercise of judgment or discretion and was also not ministerial act. Coleman v Comm'r (2012) *TC Memo 2012-116, 103 CCH TCM 1642.*

Denial by IRS of taxpayer's request for abatement per *26 USCS § 6404* of "hot" rate-based interest that it had imposed under "large corporate underpayment" provision in *26 USCS § 6621(c)(3)(A)* was not abuse of discretion because taxpayer's bare claim that it did not receive required notice of IRS's intent to impose that rate did not overcome presumption that IRS notice, delivered on IRS Form 4340, had been received. JTK Masonry Co. v Comm'r (2012) *TC Memo 2012-175, 103 CCH TCM 1934.*

Taxpayer that had opportunity to challenge its liability for accuracy-related penalties waived that right when it instead agreed to stipulated decision; where evidence in administrative record stated that there were large outstanding loans to shareholders payable to taxpayer, settlement officers did not abuse their discretion by rejecting offers-in-compromise under *26 USCS § 7122(a)*, and interest abatement under *26 USCS § 6404*. A-Valey Eng'rs, Inc. v Comm'r (2012) *TC Memo 2012-199, 104 CCH TCM 69.*

Request for abatement should be made on Form 843, filed with IRS service center where tax return was filed, stating clearly across top "Request for Abatement of Interest Under Rev Proc 87-42;" separate Form 843 should be filed for each tax period for each type of tax, but only one form is required if interest assessment resulted from IRS error or delay in performing single administrative act that affected tax assessment for multiple tax years or types of taxes. *Rev Proc 87-42 (1987) 1987-2 CB 589.*

Unpublished Opinions

Unpublished: Tax court properly denied taxpayers' claim for abatement of interest on unpaid income tax liabilities because: (1) taxpayers had reported their tax liability due so *26 USCS § 6404(e)(1)(A)* did not apply; and (2) their claim failed under § 6404(e)(1)(B) because deciding whether to accept or how to respond to offer in compromise was not procedural act that did not involve exercise of discretion so it was not clear that Internal Revenue Service was erroneous or dilatory in performing ministerial act and also because taxpayers might have contributed to delay in paying their tax liabilities. *Wright v Comm'r (2005, CA5) 125 Fed Appx 547, 95 AFTR 2d 1415.*

Unpublished: Tax court did not err in dismissing taxpayers' claim for interest abatement for tax year 1978, because tax court correctly refused to consider claim under *26 USCS § 6404(a)* since interest was liability in respect of income tax assessment. *Goettee v Comm'r (2006, CA4) 2006 US App LEXIS 19034.*

8. Administrative decision on claim

In light of IRS's admitted failure to credit taxpayer for his withholdings from two tax years, its inability to account credibly for taxpayer's refund for another tax year, and its inability to provide appellate court with record that was clear or clarified, tax court's judgment affirming Commissioner's denial of taxpayer's claim seeking abatement of interest on tax deficiency was vacated. *Wright v Comm'r (2004, CA2) 381 F3d 41, 2004-2 USTC P 50343, 94 AFTR 2d 5538.*

Employer-taxpayer's suit against government, challenging tax deficiency, was properly dismissed because taxpayer's claims lacked legal merit since (1) pursuant to *26 USCS § 3403*, taxpayer was required to pay over payroll taxes to government, and fact that founder of its payroll company had embezzled some of tax money did not relieve taxpayer of its duty to pay full amount of taxes owed; (2) although IRS had authority, under *26 USCS § 6404(e)(1)*, to abate any penalty that taxpayer might owe, it could not abate unpaid tax principal; and (3) although § 6404(e)(1) also allowed for abatement of interest, such abatement was not warranted in taxpayer's case because IRS had not acted unreasonably in waiting to pursue collection action against taxpayer until after criminal case against payroll company founder was concluded, and taxpayer could have minimized interest amount by promptly paying tax deficiency, instead of waiting until IRS began its collection efforts. *Pediatric Affiliates v United States (2007, CA3 NJ) CCH Unemployment Ins Rep P 14018, 99 AFTR 2d 2240.*

Notification by letter that claim for abatement would be rejected at expiration of 30 days, followed by protest within 30 days with request for conference which was granted is not final determination, such determination being made by letter about six months later rejecting protest. *United States ex rel. Dascomb v Board of Tax Appeals (1926, App DC) 56 App DC 392, 16 F2d 337, 1 USTC P 199, 6 AFTR 6405.*

Decision of Commissioner on merits abating tax is res judicata. *Penrose v Skinner (1923, DC Colo) 298 F 335, 1 USTC P 82, 4 AFTR 3958.*

Court lacked subject matter jurisdiction over taxpayer's suit seeking refund of income tax and interest; taxpayer challenged IRS decision not to abate interest allegedly caused by IRS error, and *26 USCS § 6404(i)* granted Tax Court, not district courts, jurisdiction to review abatement decisions. *Whitley v United States (2002, SD Tex) 2002-1 USTC P 50457, 89 AFTR 2d 2644.*

Internal Revenue Service (IRS) was granted summary judgment on taxpayer's abatement of interest claim, under *26 USCS § 6404*, as that section did not authorize district court review of such abatement decisions. *Weiner v United States (2002, SD Tex) 255 F Supp 2d 624,* judgment entered (2002, SD Tex) *255 F Supp 2d 673, 2003-1 USTC P 50191, 91 AFTR 2d 510,* subsequent app, remanded (2004, CA5 Tex) *389 F3d 152, 2005-1 USTC P 50137,* cert den (2005, US) *73 USLW 3685* and (criticized in *Leiter v United States (2004, DC Kan) 2004-1 USTC P 50162, 93 AFTR 2d 793).*

Tax court lacks jurisdiction over abatement of assessment of interest on tax deficiencies until decision with respect to underlying deficiencies becomes final and IRS assesses deficiencies, including interest attributable thereto. 508 *Clinton St. Corp. v Commissioner (1987) 89 TC 352.*

Where record did not establish that taxpayer raised, at IRS's Appeals Office hearing, Commissioner of Internal Revenue's failure to abate interest under *26 USCS § 6404*, tax court would not later consider that matter. *Washington v Comm'r (2003) 120 TC 114.*

Where Tax Court believed that loss of taxpayers' income tax return was ministerial act under applicable version of *26 USCS § 6404(e)(1)* and loss of taxpayers' records or returns did not require exercise of judgment or discretion, taxpayers were able to establish correlation between alleged error or delay by Commissioner of Internal Revenue and specific period for which interest should be abated as result of that error or delay. Palihnich v Comm'r (2003) *TC Memo 2003-297, 86 CCH TCM 488.*

Taxpayers were not entitled to abatement of interest under *26 USCS § 6404* for period of time that was unrelated to Commissioner of Internal Revenue's error and/or delay. Palihnich v Comm'r (2003) *TC Memo 2003-297, 86 CCH TCM 488.*

Decision was entered for Internal Revenue Commissioner in taxpayer's challenge to Commissioner's denial of taxpayer's request for abatement of interest on 1995 income tax liabilities, where taxpayer argued that Commissioner did not notify him of *I.R.C. § 72(t)* additional tax for early distribution in 1995 from qualified retirement plan until 2-1/2 years after his 1995 return was filed, he appeared to rely on *I.R.C. § 6404(e)(1)*, (g)(1); however, (1) taxpayer did not allege ministerial error or delay within meaning of *I.R.C. § 6404(e)*, and evidence did not establish that Commissioner committed ministerial error or delay requiring abatement of interest, and (2) *I.R.C. § 6404(g)* was effective only for tax years ending after July 22, 1998. McElroy v Comm'r (2004) *TC Memo 2004-254, 88 CCH TCM 421.*

Commissioner of Internal Revenue had not abused his discretion in denying taxpayer's claim for abatement of interest because IRS did not have authority under *26 USCS § 6404(e)* to abate interest on employment taxes. Scanlon White, Inc. v Comm'r (2005) *TC Memo 2005-282, 90 CCH TCM 561.*

Commissioner of Internal Revenue's failure to abate interest under *I.R.C. § 6404(e)* was not abuse of discretion because (1) there was no provision under § 6404 that allowed for abatement of interest due to financial hardship and (2) taxpayer did not allege that Commissioner committed any erroneous or dilatory acts requiring abatement of interest. Parker v Comm'r (2006) *TC Memo 2006-43, 91 CCH TCM 884.*

IRS properly denied taxpayers' request for abatement of interest under *26 USCS § 6404* because IRS did not learn of taxpayers' improper deduction until after IRS contacted taxpayers for information were contacted, and none of subsequent adjustments to taxpayers' return constituted ministerial or managerial act within meaning of *26 USCS § 6404(e)*; additionally, advice taxpayers received from IRS employee, whether accurate or not, contained legal or administrative judgment of person giving advice and was not ministerial or managerial act. Guerrero v Comm'r (2006) *TC Memo 2006-201, 92 CCH TCM 288.*

IRS properly denied taxpayers' request for abatement of interest on deficiencies arising from taxpayers' investment in tax shelter partnership where delays in case were not caused by ministerial acts of IRS; for instance, IRS made strategic decision to induce settlements with certain individual members of partnership, which was matter wholly within its discretion, and there was two-year delay which would not have occurred had partnership been properly characterized as TEFRA partnership. Momot v Comm'r (2006) *TC Memo 2006-207, 92 CCH TCM 303.*

Even assuming that IRS officers or employees improperly delayed performing one or more prescribed ministerial acts, significant aspects of any such failure were attributable to taxpayer so as to preclude relief under *26 USCS § 6404(e)*; for instance, it was taxpayer's own fault that he failed to file returns for 1987 through 1991. Kansky v Comm'r (2007) *TC Memo 2007-40, 93 CCH TCM 921.*

Although taxpayer alleged that local office wrongfully "withheld" his records for nearly five years after obtaining them by summons, mere passage of time, however, did not establish erroneous or dilatory ministerial acts by Commissioner of Internal Revenue for purposes of *26 USCS § 6404*. Kansky v Comm'r (2007) *TC Memo 2007-40, 93*

CCH TCM 921.

While IRS won summary judgment on taxpayer's claim pursuant to *26 USCS § 6404(e)* for abatement of interest on deficiency that IRS had declared when taxpayer failed to report proceeds from sale of stock because she had failed to establish any valid basis for abatement thereof, it exercised its discretion in taxpayer's favor and denied motion by IRS for imposition of penalty pursuant to *26 USCS § 6673*. Thomas v Comm'r (2008) *TC Memo 2008-4, 95 CCH TCM 1028.*

Commissioner of Internal Revenue did not abuse his discretion when he found that taxpayer was not entitled under *26 USCS § 6404(e)(1)* to abatement of interest IRS added to taxes it claimed taxpayer owed for tax years 1998, 1999, and 2000; although IRS began its investigation in August 2001, did not assess deficiencies until August 2003, and did not respond to taxpayer's request for abatement until May 2005, taxpayer failed to show that IRS employees or officers committed unreasonable error or delay in performing ministerial or managerial acts, or that there was direct causal link between claimed unreasonable error or delay by IRS and specific period during which interest accrued on his liabilities. Franklin v Comm'r (2008) *TC Memo 2008-13, 95 CCH TCM 1057.*

Tax Court awarded summary judgment to Commissioner of Internal Revenue on claim taxpayer filed under *26 USCS § 6404*, alleging that Commissioner abused his discretion when he refused to abate interest that was imposed on tax deficiency taxpayer owed, because Commissioner showed that IRS employees had not acted erroneously or dilatorily while engaged in ministerial or managerial acts; that said, court found that Commissioner was not entitled to summary judgment on his claim that interest was properly assessed during two other periods because he had not presented evidence showing that those assessments were proper. Jones v Comm'r (2008) *TC Memo 2008-56, 95 CCH TCM 1212.*

Taxpayers were not entitled to abatement of interest where reason for delay in resolving matter was due to taxpayers' failure to petition U.S. Tax Court for redetermination of deficiency; instead, taxpayers requested conference with IRS Office of Appeals after receiving notice of deficiency, and because granting of Appeals conference after issuance of notice of deficiency was within Commissioner of Internal Revenue's discretion, it was therefore not ministerial act. Liems v Comm'r (2008) *TC Memo 2008-121, 95 CCH TCM 1439.*

"Grossly unfair" clause in *26 USCS § 6404* was not liberalization that created subjective equitable standard but simply reiterated general narrowness of relief afforded by statute; even if court accepted "grossly unfair" exception, any request equitable relief was tainted by taxpayer's criminal conviction for tax fraud. Matthews v Comm'r (2008) *TC Memo 2008-126, 95 CCH TCM 1486.*

Suspending civil investigation while criminal investigation proceeded was accepted IRS practice; timing of decision to defer civil proceedings until resolution of criminal aspects required exercise of judgment and was not ministerial act for purposes of abatement of interest under *26 USCS § 6404*. Matthews v Comm'r (2008) *TC Memo 2008-126, 95 CCH TCM 1486.*

Taxpayers were not entitled to abatement of interest under *26 USCS § 6404(e)* where they did not demonstrate that they would have paid their tax liability earlier but for IRS's delay in preparing tax due bill; although taxpayers were waiting for decision on their offer-in-compromise, they did not make any payments during this time. Sher v Comm'r (2009) *TC Memo 2009-86, 97 CCH TCM 1442.*

Commissioner of Internal Revenue properly denied claim for interest netting where taxpayer and her deceased husband's estate had paid full amount of tax assessed, plus accrued interest and penalties, and as result, there was no overpayment for purposes of *26 USCS § 6621(d)*. Mathia v Comm'r (2009) *TC Memo 2009-120, 97 CCH TCM 1611.*

Taxpayer and her deceased husband's estate were not entitled to abatement of interest under *26 USCS § 6404* for delay in issuing partnership's final partnership administrative adjustment for three tax years as decision made by I.R.S. regarding management of Swanton project were not ministerial acts. Mathia v Comm'r (2009) *TC Memo 2009-120, 97*

CCH TCM 1611.

Commissioner abused his discretion in refusing to abate interest for one time period where delay in countersigning decision document was not explained. Mathia v Comm'r (2009) *TC Memo 2009-120, 97 CCH TCM 1611.*

Taxpayer and her deceased husband's estate were not entitled to abatement of interest under *26 USCS § 6404* for time period between date partnership stipulation was signed to alleged date Commissioner of Internal Revenue issued notice of intent to levy where Commissioner had assessed liabilities within one year of court order and decision in partnership litigation becoming final. Mathia v Comm'r (2009) *TC Memo 2009-120, 97 CCH TCM 1611.*

Taxpayers contended that they were induced to file offer-in-compromise (OIC) upon oral advice of IRS call center employee, but were unable to specify name of employee or date of their conversation; in any case, furnishing such oral advice did not constitute erroneous performance of managerial or ministerial act under *Treas. Reg. § 301.6404-2*; they also claimed that IRS committed managerial act that resulted in unreasonable delay by failing to process their OIC from April 2, 2002, through March 4, 2004; however, time IRS took to process their OIC resulted from backlog of OICs based on doubt as to liability, and delay was not unreasonable under circumstances, and, accordingly, they did not show that IRS committed managerial act that led to unreasonable error or delay. Chakoian v Comm'r (2009) *TC Memo 2009-151, 97 CCH TCM 1844.*

Commissioner abused his discretion in refusing to abate interest for number of periods where record showed extended periods during which certain ministerial actions should have taken place but did not; further, record also showed extended periods when Commissioner's employees did not take any action whatsoever; for some of those periods Commissioner had not offered any explanation for inactivity or failure to perform ministerial acts. Bucaro v Comm'r (2009) *TC Memo 2009-247, 98 CCH TCM 388.*

Commissioner of Internal Revenue issued final partnership administrative adjustment (FPAA) for partnership on November 4, 1991; no tax attributable to partnership adjustments to partners' returns could be assessed until after U.S. Tax Court partnership case was commenced by tax matters partner; on December 23, 1991, partnership timely petitioned Tax Court, contesting FPAA adjustments; accordingly, Commissioner did not abuse his discretion in refusing to abate interest for this period because IRS was prohibited from assessing taxpayers' tax liability between November 8 and December 22, 1991, because period provided by *I.R.C. § 6225(a)(1)* had not expired. Larkin v Comm'r (2010) *TC Memo 2010-73, 99 CCH TCM 1310.*

Taxpayer was properly denied abatement of interest under *I.R.C. § 6404* since allegedly erroneous advice by Commissioner of Internal Revenue concerning application of tax law was not ministerial or managerial act, successive overlapping notices of deficiency were not contradictory, and taxpayer failed to show that there were existing credits which would have reduced amount of deficiency. Geiger v Comm'r (2010) *TC Memo 2010-133, 99 CCH TCM 1550.*

IRS abused discretion in denying interest abatement per *26 USCS § 6404* to taxpayers who had accepted IRS Form 4549 audit adjustments that indicated that no interest was being assessed thereon but they were not entitled to abatement for period subsequent to date on which IRS notified them that in fact interest was owed thereon. Hancock v Comm'r (2012) *TC Memo 2012-31, 103 CCH TCM 1175.*

Decision to transfer review of offer in compromise made per *IRC § 7122* by taxpayer who, with his spouse, owed more than $ 400,000 in back taxes, from IRS facility in New Jersey to one in Tennessee as part of systemic modification of manner in which IRS processed such files was general administrative decision within meaning of *Treas. Reg. § 301.6404-2(c)*, not "managerial" decision which could support abatement of interest per *IRC § 6404*, and IRS did not abuse its discretion in denying abatement request that was based on that delay. Paneque v Comm'r (2013) *TC Memo 2013-48, 105 CCH TCM 1301.*

Commissioner of Internal Revenue did not abuse its discretion in failing to abate interest where delay in beginning to process taxpayers' response to settlement offer was properly attributable to Commissioner's prioritization decisions

and there was no delay in preparing settlement documents and mailing them to taxpayers. *Goettee v Comm'r, TC Memo 2003-43, RIA TC Memo P 55049, 85 CCH TCM 867.*

Court had jurisdiction under *26 USCS § 6404(h)(2)(B)* to determine amount of taxpayers' overpayment and jurisdiction to redetermine correct amount of interest on their original underpayments. *Goettee v Comm'r, TC Memo 2003-43, RIA TC Memo P 55049, 85 CCH TCM 867.*

Taxpayer was pass-through partner and not entitled to notice under any special statutory provision; accordingly, failure of Commissioner of Internal Revenue to give such notices to taxpayer was not error that required abatement of interest. *Beagles v Comm'r, TC Memo 2003-67, RIA TC Memo P 55075, 85 CCH TCM 995.*

Unpublished Opinions

Unpublished: Commissioner of Internal Revenue did not abuse his discretion or deny taxpayer equal protection by refusing to grant taxpayer abatement (*26 USCS § 6404(e)(1)(A)*) given to similarly situated taxpayer; petitioner taxpayer made no showing that Commissioner's decision was based on impermissible ground such as race, religion, or desire to prevent exercise of constitutional rights. *Jaffe v Comm'r of Internal Revenue (2006, CA9) 2006 US App LEXIS 8441.*

Unpublished: IRS did not abuse its discretion in refusing to abate interest for vast majority of delay alleged by taxpayers, because, inter alia, delay between decision to extend settlement offer and time when taxpayers actually received offer was result of non-ministerial actions; delay resulted both from administrative decision to not overwhelm limited IRS resources and from strategic preference for offering settlement from position of strength. *Goettee v Comm'r (2006, CA4) 2006 US App LEXIS 19034.*

B.Judicial Review 9. Generally

In most contexts, precisely drawn, detailed statute preempts more general remedies, and U.S. Supreme Court has recognized that when Congress enacts specific remedy when no remedy was previously recognized, or when previous remedies were problematic, remedy provided is generally regarded as exclusive; *26 USCS § 6404(h)* fits bill on both counts because it is precisely drawn, detailed statute that, in single sentence, provides forum for adjudication, limited class of potential plaintiffs, statute of limitations, standard of review, and authorization for judicial relief; also, Congress enacted this provision against backdrop of decisions uniformly rejecting possibility of any review for taxpayers wishing to challenge Secretary of Treasury's *26 USCS § 6404(e)(1)* determination; therefore, despite Congress's failure explicitly to define Tax Court's jurisdiction as exclusive, it quite plain that terms of *26 USCS § 6404(h)*--a"precisely drawn, detailed statute" filling perceived hole in law--control all requests for review of *26 USCS § 6404(e)(1)* determinations, including forum for adjudication. *Hinck v United States (2007, US) 127 S Ct 2011, 20 FLW Fed S 279.*

26 USCS § 6404 does not impose duty on District Director to abate improper assessments, thereby providing basis for taxpayer's summary action challenging Director's refusal to abate allegedly incorrect assessment; its thrust is permissive, not mandatory, and does not provide opportunity for taxpayers to challenge and obtain judicial review on merits of tax assessment against them. *Poretto v Usry (1961, CA5 La) 295 F2d 499, 61-2 USTC P 15372, 8 AFTR 2d 6171,* cert den *(1962) 369 US 810, 7 L Ed 2d 612, 82 S Ct 687.*

Taxpayers cannot maintain action to abate excise taxes and penalties thereon, but are required to resort to ordinary "pay and sue" procedure. *Poretto v Usry (1961, CA5 La) 295 F2d 499, 61-2 USTC P 15372, 8 AFTR 2d 6171,* cert den *(1962) 369 US 810, 7 L Ed 2d 612, 82 S Ct 687.*

26 USCS § 6404(e)(1)(A) requiring IRS to abate interest due to unreasonable errors or delays by IRS is not applicable where IRS suspends civil action during pendency of criminal tax fraud investigation since decision by IRS to defer civil proceedings, and accordingly to continue accrual of interest on deficiency, was delay caused by taxpayer. *Taylor v Comm'r (2001, CA9 Or) 9 Fed Appx 700, 2001-1 USTC P 50441.*

Where taxpayer sought abatement of interest on employment taxes assessed against taxpayer, court of appeals upheld tax court's ruling that *26 USCS § 6404(e)* did not apply to employment taxes; *Treas. Reg. § 301.6404-2(a)(1)* to this effect was not unreasonable or plainly inconsistent with statute, and was thus entitled to deference. *Miller v Commissioner (2002, CA9 Wash) 310 F3d 640, 2002 CDOS 11023, CCH Unemployment Ins Rep P 16800B, 2002-2 USTC P 50759, 90 AFTR 2d 7159.*

IRS denial of request for abatement of interest allegedly attributable to IRS delay is discretionary and not subject to judicial review; fact that taxpayers were notified of appeal rights in form letter notifying them of denial does not mandate judicial review. *Sceili v United States (1994, CA FC) 74 AFTR 2d 6791,* 94 TNT 219-9.

Abatement statute is under its terms discretionary, rather than mandatory, and courts do not have authority to require IRS to abate interest. *Selman v United States (1990, WD Okla) 733 F Supp 1444, 90-2 USTC P 50411, 71A* AFTR 2d 4806, 93 TNT 218-73, affd (1991, CA10 Okla) *941 F2d 1060, 91-2 USTC P 50395, 68 AFTR 2d 5338.*

For requests for abatement made prior to enactment in 1996 of former *26 USCS § 6404(i)*, abatement is discretionary form of relief and is within sole authority of Commissioner and beyond scope of judicial review; interest is not abated where IRS published settlement policy for cases similar to that of taxpayers, but failed to contact taxpayers with respect to settlement on terms outlined in bulletin. *Berger v United States (1999, SD NY) 99-2 USTC P 50833, 84 AFTR 2d 6005.*

Where all prior submissions made to court during conduct of litigation were wrong, then it was more likely than not that statutory mandatory notice sent by IRS to taxpayer was also incorrect; in these circumstances, Government's claims for interest accruing post-August 1984 was abated under *26 USCS § 6404(e)* (applying exclusively to tax years 1979 and forward only); Government, however, was still entitled to actual substantive liability agreed to in Consent Order itself: $ 4,565.62 (for tax) and $ 792.02 (for interest). *United States v Isley (2004, DC NJ) 356 F Supp 2d 391, 94 AFTR 2d 6128.*

Taxpayer was entitled to reasonable litigation costs for failure of Commissioner of Internal Revenue to abate interest due to delay in assessment where Commissioner waited until conclusion of litigation involving tax shelter partnership in which taxpayer was investor even though taxpayer had entered into settlement agreements that resolved issues involving his liability and, thus, his liability was not based on outcome of litigation. *Corson v Comm'r (2004) 123 TC 202.*

Commissioner of IRS did not abuse his discretion in failing to abate assessment of interest where taxpayer, tax return preparer by profession, knew that interest had been accruing and she had received four notices regarding balances in her account, including accrued interest, and her alleged inability to pay was not reason for abatement as it did not involve ministerial act of Commissioner, and there was evidence that contradicted taxpayer's assertion that she lacked ability to pay. Mitchell v Comm'r (2004) *TC Memo 2004-277, 88 CCH TCM 574.*

Although taxpayers argued that there were number of delays and errors throughout protest and appeals process, they failed to identify any specific instances that would have qualified as error or delay in performing ministerial act for purposes of *26 USCS § 6404*; when IRS personnel were deciding how and when to work on cases, based on evaluation of entire caseload and workload priorities, this was managerial, not ministerial, act. Bartelma v Comm'r (2005) *TC Memo 2005-64, 89 CCH TCM 952.*

Taxpayers were not entitled to abatement of interest pursuant to *26 USCS § 6404* where taxpayers were made aware of increasing interest on their liabilities in numerous letters and had ability to pay their liabilities to stop interest from accruing by paying entire amounts due and subsequently requesting refunds in their abatement claims. Bartelma v Comm'r (2005) *TC Memo 2005-64, 89 CCH TCM 952.*

Abatement of interest was not warranted where taxpayer did not allege that interest was attributable to any error or delay by officer or employee of IRS in performing ministerial act. Goblirsch v Comm'r (2005) *TC Memo 2005-78, 89*

CCH TCM 1041.

Taxpayers were not entitled to abatement of interest and penalties pursuant to *26 USCS § 6404* where taxpayers knew that IRS did not receive three 1996 income tax returns they mailed in 1997 yet took no steps to correct this problem; given their past problems with filing income tax returns, taxpayers should not have relied on IRS to notify them that their returns had not been received. Grandelli v Comm'r (2008) *TC Memo 2008-55, 95 CCH TCM 1210.*

If IRS had not sent taxpayers any notification that their 1997 return was delinquent before 2002, this would not have been unreasonable error or delay under *26 USCS § 6404(e)* because that section did not permit abatement of interest regardless of how long IRS took to first contact taxpayer. Grandelli v Comm'r (2008) *TC Memo 2008-55, 95 CCH TCM 1210.*

10. Jurisdiction

Tax Court provides exclusive forum for judicial review of refusal to abate interest under *26 USCS § 6404(e)(1)*. *Hinck v United States (2007, US) 127 S Ct 2011, 20 FLW Fed S 279.*

Although taxpayer contended that it was inequitable to apply interest to unpaid taxes for failure to pay taxes on funds which were wrongfully seized by United States, since seizure of funds deprived taxpayer of funds necessary to pay taxes, appellate court lacked jurisdiction to provide equitable relief in taxpayer's appeal from interpleader action which awarded funds to United States, because taxpayer's recourse was to apply to Secretary of Treasury for abatement of interest under *26 USCS § 6404(e)*. *United States v Ripa (2003, CA2 NY) 323 F3d 73, 2003-1 USTC P 50301, 91 AFTR 2d 1291.*

Pursuant to *26 USCS § 6404(h)(1)*, tax court had jurisdiction over taxpayer's interest abatement and overpayment claims stemming from his failure to file tax returns for 1987 and 1989 because taxpayer had raised interest abatement issue during agency hearing, and he had timely appealed agency's decision. *Wright v Comm'r (2009, CA2) 571 F3d 215, 2009-2 USTC P 50480, 104 AFTR 2d 5226.*

Unlimited discretion granted to IRS under *26 USCS § 6404* does not provide standard for court to use in determining whether or not IRS refusal to refund interest is proper, and accordingly Court of Federal Claims is without jurisdiction to review taxpayer's claim that interest ought not to be paid since deficiency was caused by IRS delay rather than action by taxpayer. *Brahms v United States (1989) 18 Cl Ct 471, 89-2 USTC P 9601, 64 AFTR 2d 5813.*

Court lacked subject matter jurisdiction to review taxpayers' interest abatement claim under *26 USCS § 6404(e)*; in enacting Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996), Congress acknowledged district courts' powerlessness to review abatement decisions and granted that jurisdictional power to tax court alone. *Kraemer v United States (2002, SD Tex) 2002-1 USTC P 50375, 89 AFTR 2d 1796* (criticized in *Beall v United States (2003, CA5 Tex) 336 F3d 419, 2003-2 USTC P 50551, 92 AFTR 2d 5001)* and (criticized in *Leiter v United States (2004, DC Kan) 2004-1 USTC P 50162, 93 AFTR 2d 793).*

Although *26 USCS § 6404* authorizes abatement of interest attributable to unreasonable errors of IRS employees, only U.S. Tax Court has jurisdiction to determine whether Secretary of IRS' failure to abate interest was abuse of discretion under § 6404(h); thus, federal district court lacked jurisdiction to consider corporate chairman of board of director's contention that IRS wrongly sought to recover interest on assessed employment taxes. *Cappetta v United States (2006, ND Ill) 2006-1 USTC P 50174, 97 AFTR 2d 662.*

Taxpayers could not invoke jurisdiction for their district court claim under *26 USCS § 6404* because jurisdiction for such claims belonged exclusively with *United States Tax Court. Kimball v Lucas (2008, DC Idaho) 2008-1 USTC P 50232, 101 AFTR 2d 1319.*

Bankruptcy court did not have jurisdiction under *26 USCS § 6404(h)* to review decision of U.S. Secretary of

Treasury not to abate tax penalty assessed as result of debtor's failure to pay her tax liability for one year; court did have jurisdiction under *11 USCS § 505(a)(1)* to determine whether confirmation of debtor's plan impacted tax obligation and whether IRS was to be estopped from collecting tax penalty. *Followell v United States (In re Gurley) (2005, BC WD Tenn) 335 BR 389, 96 AFTR 2d 7162.*

Court declined to reconsider its holding that it lacked jurisdiction to review Secretary of Treasury's decision not to abate tax penalty; *26 USCS § 6404(a)* gave Secretary discretion whether to abate penalty allegedly imposed illegally, but, while *11 USCS § 505(a)* gave bankruptcy court jurisdiction to review legality of tax-related penalty, court's authority under § 505(a) did not extend to review of assessment of penalty--taxpayer did not argue that U.S. Congress did not have authority to determine that penalty should be imposed for late payment of tax. *Followell v United States (In re Gurley) (2006, BC WD Tenn) 347 BR 312.*

Under former *26 USCS § 6404(i)(1)*, action for review of IRS final determination not to abate interest must be filed not later than 180 days after mailing of IRS final determination, and 180 day period is jurisdictional. *Gati v Commissioner (1999) 113 TC 132.*

Tax Court lacked jurisdiction over taxpayer's 2005 tax year and any possible abatement of interest for that year because any request for abatement, its disallowance, and filing of petition in response thereto had not been shown to exist. Carpentier v Comm'r (2013) *TC Memo 2013-160, 106 CCH TCM 2.*

Based on language and structure of prior version of *I.R.C. § 6404(e)(1)*, as amplified by its legislative history, courts lacked authority to hear cases challenging Secretary of Treasury's refusal to abate interest under that statute. *Hinck v United States (2005) 64 Fed Cl 71, 2005-1 USTC P 50270.*

11.--District court

District Court is barred from exercising jurisdiction over action to compel abatement of interest under Administrative Procedure Act (*5 USCS § 701*), since court lacks capacity to review decision of agency to extent that agency action is committed to agency discretion by law; since neither *26 USCS § 6404* nor regulations issued thereunder provide meaningful standard against which to judge IRS exercise of discretion, IRS failure to abate interest cannot be reviewed by District Court. *Horton Homes, Inc. v United States (1991, CA11 Ga) 936 F2d 548, 91-2 USTC P 50370, 68 AFTR 2d 5334* (superseded by statute as stated in 1900 *M Rest. Assocs. v United States (In re 1900 M Rest. Assocs.) (2005, BC DC Dist Col) 319 BR 302, 44 BCD 58, 2005-1 USTC P 50313).*

In taxpayers' consolidated suits for tax and interest refunds relating to partnership investments, where taxpayers challenged Notice of Final Partnership Administrative Adjustments (FPAA) as time-barred, and where district court lacked jurisdiction to consider taxpayers' FPAA statute of limitations claims, and where interest was improperly assessed against taxpayers under former *26 USCS § 6621(c)*, district court had jurisdiction to consider taxpayers' *26 USCS § 6404(e)* interest abatement claims. *Weiner v United States (2004, CA5 Tex) 389 F3d 152.*

Federal district court does not have jurisdiction of action seeking abatement of unpaid tax assessment. *Etheridge v United States (1962, App DC) 112 US App DC 151, 300 F2d 906, 62-1 USTC P 15398, 9 AFTR 2d 2016.*

District Court lacks jurisdiction to review IRS determination that taxpayers are not entitled to abatement of interest on deficiency since IRS has discretion to abate or not to abate interest. *Horton Homes v United States (1990, MD Ga) 727 F Supp 1450, 90-1 USTC P 50058, 65 AFTR 2d 873,* affd (1991, CA11 Ga) *936 F2d 548, 91-2 USTC P 50370, 68 AFTR 2d 5334* (superseded by statute as stated in 1900 *M Rest. Assocs. v United States (In re 1900 M Rest. Assocs.) (2005, BC DC Dist Col) 319 BR 302, 44 BCD 58, 2005-1 USTC P 50313).*

District court had jurisdiction to review IRS's denial of taxpayer's request to abate interest. *Leiter v United States (2004, DC Kan) 2004-1 USTC P 50162, 93 AFTR 2d 793.*

Taxpayer could not maintain his pro se petition for abatement of his tax liability when he did not comply with requirement of *26 USCS § 6404* that he make his request for abatement to Secretary of Treasury; court dismissed taxpayer's petition with leave to amend to state viable claim. *O'Connor v IRS Dep't of Treasury (2006, DC Hawaii) 97 AFTR 2d 2107.*

District court was without authority to review taxpayer's abatement argument under *26 USCS § 6404* because U.S. Tax Court was exclusive forum to review government's refusal to abate interest. *United States v Gill (2007, MD Fla) 2007-2 USTC P 50610, 100 AFTR 2d 5500.*

Federal district court did not have jurisdiction pursuant to *I.R.C. § 6404* over plaintiffs' claim for refund or recovery of deficiency interest assessment allegedly improperly assessed by IRS because only Tax Court provides exclusive forum for judicial review of refusal to abate interest under § 6404. *Larkin v United States (2011, SD Fla) 2011-2 USTC P 50709, 108 AFTR 2d 7024.*

Unpublished Opinions

Unpublished: District court did not have subject matter jurisdiction over taxpayers' claim under *26 USCS § 6404(e)(1)* for refund of interest paid on their tax liabilities; *26 USCS § 6404(h)* provided tax court with exclusive jurisdiction over such claims. *Shafmaster v United States (2011, DC NH) 2011 DNH 149, 2011-2 USTC P 50649, 108 AFTR 2d 6526.*

Unpublished: Although taxpayers failed to file administrative claim for tax refund as required by *26 USCS § 7422(a)*, court dismissed claim without prejudice because taxpayers may have filed administrative claim after they filed lawsuit, which would possibly permit court to exercise jurisdiction; however, court adopted magistrate's recommendation to dismiss interest refund with prejudice because court lacked jurisdiction when *26 USCS § 6404(h)(1)* required taxpayers to pursue their claim in Tax Court instead of in federal district court. *Chenyao v IRS (2006, DC NJ) 2006 US Dist LEXIS 40937.*

12.--Tax Court

Court of Appeals for Federal Circuit properly upheld order from U.S. Court of Federal Claims, which granted Government's motion to dismiss action by taxpayers seeking review of Internal Revenue Service's (IRS) denial of their request for interest abatement under *26 USCS § 6404(e)(1)*; lower courts properly found that under *26 USCS § 6*404(h), Tax Court provided exclusive forum for judicial review of IRS's refusal to abate interest under *26 USCS § 6404(e)(1)*; *26 USCS § 6404(h)* controlled all requests for review of *26 USCS § 6404(e)(1)* decisions because it was precisely drawn, detailed statute that filled perceived hole in law. *Hinck v United States (2007, US) 127 S Ct 2011, 20 FLW Fed S 279.*

Tax Court lacks jurisdiction to consider taxpayer's interest abatement issue since *26 USCS § 6404(e)* does not operate until after there has been assessment, and prior to an assessment of interest claim for abatement is clearly premature. *Klein v Commissioner (1990, CA11) 899 F2d 1149, 90-1 USTC P 50251, 65 AFTR 2d 1039.*

Prepayment of interest is prerequisite to motion for redetermination of interest by Tax Court since Tax Court lacks authority to review claim for abatement of interest and IRS discretionary decision not to abate interest is not subject to judicial review. *McMullen v Commissioner (1994, CA11) 27 F3d 510, 94-2 USTC P 50467, 74 AFTR 2d 5472, 94 TNT 151-17, 8 FLW Fed C 442.*

In determining estate's net worth for purposes of Tax Court jurisdiction in case involving denial by IRS of taxpayer's request for abatement of interest on deficiency, net worth of estate is as of date of decedent's death, rather than date on which suit was filed. *Estate of Kunze v Commissioner (2000, CA7) 233 F3d 948, 2000-2 USTC P 50848, 2000-2 USTC P 60388, 86 AFTR 2d 6920.*

Phrase "excessive or wrongfully collected" included interest charges that Internal Revenue Service (IRS) abused its discretion in refusing to abate pursuant to *26 USCS § 6404(e)(1)*; charge of interest was not left purely to discretion of IRS, by simple addition of § 6404(h) that granted jurisdiction to U.S. Tax Court to review that decision. *Beall v United States (2003, CA5 Tex) 336 F3d 419, 2003-2 USTC P 50551, 92 AFTR 2d 5001* (criticized in *Ballhaus v IRS (2004, DC Nev) 341 F Supp 2d 1145, 2004-2 USTC P 50400)* and (criticized in *Hinck v United States (2005) 64 Fed Cl 71, 2005-1 USTC P 50270)*.

In case in which taxpayer asked federal appellate court to order Commissioner of IRS to abate interest on his underpayments, that subject was not before U.S. Tax Court and therefore was not before appellate court; taxpayer had to ask for that relief from Commissioner, and if he was dissatisfied with Commissioner's decision he could file separate petition in *U.S. Tax Court. Young Kim v Comm'r (2012, CA7) 679 F3d 623, 2012-1 USTC P 50340, 109 AFTR 2d 2067.*

Where taxpayer appealed U.S. Tax Court's dismissal of her case for lack of jurisdiction, court did not err by applying 30-day time limit in *26 USCS § 6330(d)(1)* for appealing her collection due process (CDP) determinations. Court did not abuse its discretion by denying her time to find lawyer to argue for 180-day limit under *26 USCS § 6404(h)* as she had almost three years after starting her appeal, including two continuances, to find lawyer. *Gray v Comm'r (2013, CA7) 2013-2 USTC P 50444, 112 AFTR 2d 5328.*

Provisions of *26 USCS § 6404(h)* grant U.S. Tax Court exclusive jurisdiction over interest abatement claims, and U.S. Court of Federal Claims thus does not have subject matter jurisdiction to review those claims; because § 6404(h) provides specific procedure for reviewing IRS determinations of interest abatement, specifies that proper forum for those reviews is Tax Court, and grants Tax Court power to issue abatement, Congress intended Tax Court to be sole forum in which denials of interest abatement claims may be challenged. *Hinck v United States (2006, CA FC) 446 F3d 1307.*

Based on language and legislative history of statute, *26 USCS § 6404(h)* grants exclusive subject matter jurisdiction to U.S. Tax Court to review IRS's denials of interest abatement; therefore, U.S. Court of Federal Claims properly dismissed taxpayers' interest abatement claim for lack of subject matter jurisdiction, regardless of fact that § 6404(h) provides no recourse for taxpayers who exceed net worth criteria in *26 USCS § 7430*. *Hinck v United States (2006, CA FC) 446 F3d 1307.*

Tax Court has jurisdiction under 1996 Taxpayer Bill of Rights to determine whether IRS failure to abate interest is abuse of discretion for requests for abatement pending on date of enactment. *Banat v Commissioner (1997) 109 TC 92; White v Commissioner (1997) 109 TC 96.*

Tax Court has jurisdiction over appeal from IRS denial of abatement of interest where one of joint taxpayers asserts innocent spouse defense as affirmative defense to joint and several liability. *Estate of Wenner v Comm'r (2001) 116 TC 284.*

Tax Court generally lacks jurisdiction over issues concerning interest computed under *26 USCS § 6601*, except *26 USCS § 7481(c)* authorizes court to redetermine overpayment of interest if taxpayer timely petitions court to do so, and *26 USCS § 6404(h)* authorizes court to review for abuse of discretion Commissioner of Internal Revenue's refusal to abate interest under *26 USCS § 6404*. *Urbano v Comm'r (2004) 122 TC 384.*

Tax Court had jurisdiction to decide both correctness of IRS' recalculation of interest owed on admitted tax deficiency and taxpayers' request for abatement if interest amount was determined to be correct; court did not read *26 USCS § 6330* as empowering court to decide only whether taxpayers were entitled to abatement of interest, thus remitting them to federal district court lawsuit if they wished to challenge their interest liability on another ground. *Urbano v Comm'r (2004) 122 TC 384.*

Tax Court lacks jurisdiction to abate assessment of interest in case settled by stipulation. Asciutto v Commissioner (1992) *TC Memo 1992-564, RIA TC Memo P 92564, 64 CCH TCM 877,* affd (1994, CA9) *26 F3d 108, 94 CDOS 4539,*

94 Daily Journal DAR 8411, 94-1 USTC P 50291, 74 AFTR 2d 5025, 94 TNT 126-31.

Tax Court lacks jurisdiction to abate interest on deficiencies due to alleged IRS delays in resolving disputes. Newman (1992) *TC Memo 1992-652, RIA TC Memo P 92652, 64 CCH TCM 1265.*

Tax Court has jurisdiction to review IRS denial of abatement request where, although request was filed before effective date of *26 USCS § 6404(g)*, request was pending on such date. Goettee v Comm'r (1997) *TC Memo 1997-454, RIA TC Memo P 97454, 74 CCH TCM 844,* findings of fact/conclusions of law (2003) *TC Memo 2003-43, RIA TC Memo P 55049, 85 CCH TCM 867,* reconsideration den, supp op, findings of fact/conclusions of law (2004) *TC Memo 2004-9, 87 CCH TCM 808.*

Tax court had jurisdiction to order abatement of interest only when Commissioner of Internal Revenue abused his discretion in denying taxpayer's request to abate interest, pursuant to *26 USCS § 6404(h)*; taxpayers successfully showed abuse of discretion and that Commissioner exercised this discretion arbitrarily, capriciously, or without sound basis in fact or law. Harbaugh v Comm'r (2003) *TC Memo 2003-316, 86 CCH TCM 596.*

Court declined to vacate, pursuant to *U.S. Tax Ct. R. 162*, stipulated decision in case that was resolved just before trial; court lacked jurisdiction to abate interest on taxpayer's 1999 deficiency; under *26 USCS § 6404(h)(1)*, court could review failure of Secretary of Treasury to abate interest only after Secretary made final determination not to abate interest, but taxpayer had not demonstrated that Commissioner of Internal Revenue had made final determination with respect to abatement of interest on taxpayer's 1999 deficiency. Brewer v Comm'r (2005) *TC Memo 2005-10, 89 CCH TCM 687.*

Where taxpayers alleged that Commissioner of Internal Revenue committed managerial mistake in requesting that he taxpayers submit IRS Form 433-F, then requesting that they submit IRS Form 433-A, which was substantially longer, these actions did not warrant abatement of interest where Commissioner ultimately decided to proceed based on shorter form, and resulting delay was not longer than one month. Braun v Comm'r (2005) *TC Memo 2005-221, 90 CCH TCM 311.*

Taxpayers were not entitled to abatement of interest pursuant to *26 USCS § 6404* where much of delay was attributable to their handling of their offers in compromise, their request was for abatement of all interest rather than for specific time period as required by § 6404(e), and taxpayers did not demonstrate that they would have paid their tax liabilities earlier but for Commissioner of Internal Revenue's actions. Braun v Comm'r (2005) *TC Memo 2005-221, 90 CCH TCM 311.*

Requisite correlation between error or delay attributable to Commissioner of Internal Revenue and specific period of time was missing where taxpayers requested that all interest with respect to deficiencies be abated; Congress did not intend statute to be used routinely to avoid payment of interest. Braun v Comm'r (2005) *TC Memo 2005-221, 90 CCH TCM 311.*

Neither *26 USCS § 6404(d)* nor any other provision in Internal Revenue Code required IRS to assist taxpayer in preparing his return, and there was no merit to taxpayer's argument that such failure to help him prepare his return amount to constitutional violation. Westcott v Comm'r (2006) *TC Memo 2006-245, 92 CCH TCM 426.*

Taxpayer was not entitled to abatement of interest under *26 USCS § 6404(e)(1)* where he failed to allege any unreasonable error or delay in payment that was attributable to officer or employee of IRS, record indicated that any delay that may have occurred was attributable to taxpayer, and taxpayer had entered into settlement regarding his liabilities, which settlement included stipulation acknowledging that statutory interest would be assessed on both deficiencies and penalties for years at issue. Tan Xuan Bui v Comm'r (2007) *TC Memo 2007-104, 93 CCH TCM 1163.*

Failure of IRS Commissioner to respond to taxpayers' request for interest abatement and Commissioner's Letter 853C refusing to abate late filing penalty, which letter contained no indication that it was intended as notice of final

determination, did not constitute final determination not to abate interest within meaning of *I.R.C. § 6404(h)*; therefore, their petition for redetermination of deficiency was dismissed for lack of jurisdiction in tax court. Ward v Comm'r (2007) *TC Memo 2007-374, 94 CCH TCM 612.*

Delay in distribution of proceeds by bankruptcy trustee was not grounds for abatement of interest under *26 USCS § 6404*. Salazar v Comm'r (2008) *TC Memo 2008-38, 95 CCH TCM 1149.*

Commissioner of Internal Revenue did not abuse his discretion in failing to abate interest under *I.R.C. § 6404(e)* because record contained no evidence that he committed, any erroneous or dilatory acts requiring abatement of interest and extensive examination of partnership which resulted in delays in processing of cases of individual taxpayers who invested in partnership was not considered ministerial act. Kimball v Comm'r (2008) *TC Memo 2008-78, 95 CCH TCM 1306.*

Taxpayers failed to support their interest abatement request under *26 USCS § 6404(e)(1)* with sufficient specificity to preserve issue for United States Tax Court review where taxpayers did not present any information to IRS Office of Appeals during *26 USCS § 6330* hearing to establish that they were entitled to abatement under § 6404(e). Brecht v Comm'r (2008) *TC Memo 2008-213, 96 CCH TCM 148.*

Tax court lacked jurisdiction to review the alleged failure of the Commissioner of Internal Revenue to abate interest under *I.R.C. § 6404(e)* because he did not issue a final determination not to abate interest. MacDonald v Comm'r (2009) *TC Memo 2009-63, 97 CCH TCM 1320.*

Abatement of interest under *26 USCS § 6404* for period during which Commissioner of Internal Revenue delayed in applying final result of test case to taxpayer's case was not warranted; mere passage of time during litigation phase of tax dispute did not establish error or delay in performing ministerial act, and moreover, Commissioner's decision on how to proceed in litigation phase of case required exercise of judgment and was not ministerial act. Corson v Comm'r (2009) *TC Memo 2009-95, 97 CCH TCM 1498.*

Taxpayer's argument that interest should have been abated because Commissioner improperly applied *26 USCS § 6621(c)* 120-percent rate was without merit; taxpayer was involved in tax shelter and Ninth Circuit had upheld application of this rate to tax shelter in question. Corson v Comm'r (2009) *TC Memo 2009-95, 97 CCH TCM 1498.*

Where, in stipulated settlement, taxpayer executed *26 USCS § 6213(d)* waiver, which was recorded as part of decision on October 3, 2000, but notice and demand was not sent until March 5, 2001, IRS Appeals officer failed to apply *26 USCS § 6601(c)*; interest was to be abated from November 2, 2000 (30 days after October 3, 2000) until March 4, 2001. Corson v Comm'r (2009) *TC Memo 2009-95, 97 CCH TCM 1498.*

Court lacked jurisdiction to review taxpayer's *26 USCS § 6404(e)* interest abatement request because taxpayer did not request abatement of interest from Commissioner of Internal Revenue and Commissioner did not issue determination denying abatement request. McDaniel v Comm'r (2009) *TC Memo 2009-137, 97 CCH TCM 1786.*

Commissioner of Internal Revenue was entitled to summary judgment on taxpayer's claim that Commissioner abused his discretion under *I.R.C. § 6404* when he refused to abate all interest IRS assessed, pursuant to *I.R.C. § 6601(a)*, on amounts taxpayer agreed to pay to settle claim that she owed additional tax for 1995 and 1996; although taxpayer asked court to adopt U.S. Court of Appeals for Fourth Circuit's decision in *Hurt v. United States, 1995 U.S. App. LEXIS 33433, 76 A.F.T.R.2d (RIA) 7815,* and to find that IRS erred when it assessed interest because settlement she entered did not require her to pay interest, court refused to apply Hurt because that decision was based on *I.R.C. § 6404(a)* and *§ 6404(a)* was not applicable to taxpayer's case, and because taxpayer advanced no other argument challenging Commissioner's decision, Commissioner was entitled to summary judgment. Kersh v Comm'r (2009) *TC Memo 2009-260, 98 CCH TCM 458.*

Tax Court did not have jurisdiction to consider taxpayers' request for abatement of interest under *26 USCS §*

6404(h), as no final determination letter had been issued; Commissioner of Internal Revenue's failure to act on request for abatement within reasonable time did not constitute final determination for § 6404(h) purposes. Gilmer v Comm'r (2009) *TC Memo 2009-296, 98 CCH TCM 642.*

U.S. Tax Court does not have jurisdiction pursuant to *26 USCS § 6404* to abate *26 USCS § 6621(c)* interest. Swanson v Comm'r (2010) *TC Memo 2010-131, 99 CCH TCM 1542.*

Commissioner of Internal Revenue committed no abuse of discretion in determining that taxpayers were not entitled to abatement of interest pursuant to *IRC § 6404(e)(1)* with respect to deficiencies that stretched back approximately nine years because plain language of statute did not provide any such entitlement in this case; time spent investigating whether to impose civil or criminal fraud penalties, regardless of taxpayer's guilt or innocence, was not ground under § 6404(e) that would allow Commissioner to abate interest. McGaughy v Comm'r (2010) *TC Memo 2010-183, 100 CCH TCM 144.*

IRS's refusal to abate interest as taxpayers requested was not abuse of discretion within meaning of *26 USCS § 6404* because taxpayers' claim that IRS, which audited three tax returns filed by taxpayers and was party to taxpayers' administrative appeal, did not perform "significant work" in connection with proceedings during extended periods of time was belied by evidence. Abumayyaleh v Comm'r (2010) *TC Memo 2010-275, 100 CCH TCM 544.*

U.S. Tax Court lacked jurisdiction to consider merits of demand for abatement of interest on unpaid taxes owed by married couple because no "final determination" of such request within meaning of *26 USCS § 6404(h)(1)* had been issued by Secretary of Treasury; issuance of same was prerequisite to exercise by court of its jurisdiction, and that requirement was not satisfied by taxpayer's showing that Secretary (via IRS Commissioner) had simply failed to respond to abatement request. Snyder v Comm'r (2011) *TC Memo 2011-6, 101 CCH TCM 1017.*

Because taxpayers failed to show that their delay in payment was attributable to officer or employee of IRS being erroneous or dilatory in performing managerial or ministerial act, *I.R.C. § 6404(e)(1)* did not authorize IRS to abate assessment of interest, and IRS did not abuse its discretion by declining to do so. Sandberg v Comm'r (2011) *TC Memo 2011-72, 101 CCH TCM 1332.*

IRS ("IRS") did not abuse its discretion under *I.R.C. § 6404* when it denied taxpayers' request for abatement of interest it assessed while examining federal income tax returns taxpayers filed for 2001, 2002, and 2003; although taxpayers claimed that Revenue Agent's actions caused unreasonable delays while he examined their returns, they failed to show link between delays they alleged and specific period during which interest accrued, and also failed to show that IRS committed type of error or delay that was required to establish that abatement of interest was required under statute. Ibrahim v Comm'r (2011) *TC Memo 2011-215, 102 CCH TCM 240.*

United States Tax Court rejected whistleblower's claim that alleged earlier erroneous advice regarding previous whistleblower claim constituted "penalty" imposed upon him that IRS was required to abate pursuant to *26 USCS § 6404(f)*, as IRS had not assessed penalty against whistleblower; court had no jurisdiction to abate penalty that was not assessed; nor did it have jurisdiction over failure by IRS to abate penalty that was not assessed. Friedland v Comm'r (2011) *TC Memo 2011-217, 102 CCH TCM 247.*

As U.S. Tax Court gives due deference to exercise of discretion by IRS Commissioner per *U.S. Tax Ct. R. 280(b)*, taxpayer bears burden of proof to show abuse of that discretion within meaning of *26 USCS § 6404* and must establish that Commissioner abused his discretion by exercising it arbitrarily, capriciously, or without sound basis in fact or law. Hancock v Comm'r (2012) *TC Memo 2012-31, 103 CCH TCM 1175.*

Tax court lacked jurisdiction per *26 USCS § 7442* to consider whether taxpayer was entitled to abatement of interest per *26 USCS § 6404* on additions to tax that had been imposed for his failure to file return, his failure to pay taxes thereon, and his failure to make estimated payments because he had never made administrative request of IRS for abatement and thus IRS had not issued "final determination," which was prerequisite to tax court review. Hardin v

Comm'r (2012) *TC Memo 2012-162, 103 CCH TCM 1861.*

Tax court refused to consider claims by taxpayer that IRS had abused its discretion when it did not abate interest and penalties per *26 USCS § 6404* because taxpayer failed to raise either such issue in his telephonic collection due process hearings with IRS Appeals Office. Winters v Comm'r (2012) *TC Memo 2012-183, 104 CCH TCM 4.*

Tax court refused to consider claim that interest on tax deficiency was properly abated; in absence of IRS notice of final determination denying abatement per *I.R.C. § 6404*, no petition for review could have been filed and court lacked jurisdiction per § 6404(h)(1) and *U.S. Tax Ct. R. 280*. Rodriguez v Comm'r (2012) *TC Memo 2012-286, 104 CCH TCM 425.*

Tax court refused to consider whether statutory interest that had accrued on married couple's federal tax liability was properly abated under *IRC § 6404(h)* on finding that it lacked jurisdiction given absence of final IRS determination as to whether abatement was proper. Zaklama v Comm'r (2012) *TC Memo 2012-346, 104 CCH TCM 760.*

C.Bonds 13. Generally

Bond, based on valid consideration, gives government cause of action separate and distinct from action to collect taxes, and decision of Board of Tax Appeals [now Tax Court] that there is no deficiency does not bar recovery on bond. *United States v Wyoming Cent. Ass'n (1934, CA10 Wyo) 70 F2d 869, 4 USTC P 1272, 14 AFTR 214.*

If abatement bond is meant to save collector harmless from liability under his bond filed with Treasurer of United States and bond does not contain promise to pay tax, recovery of tax from bond cannot be had without proving damages. *United States v Wyoming Cent. Ass'n (1934, CA10 Wyo) 70 F2d 869, 4 USTC P 1272, 14 AFTR 214.*

Bond given on filing claim in abatement is distinct from taxpayer's primary obligation to pay tax. *Kroyer v United States (1932) 73 Ct Cl 591, 55 F2d 495, 10 AFTR 1092.*

Bond voluntarily given by taxpayer with petition for abatement of tax was voluntary and valid obligation, though such bond is not authorized by statute. *United States v Converse Cooperage Co. (1930, ND Ill) 42 F2d 227, 8 AFTR 11103.*

Tax Court lacks jurisdiction over claim for abatement of interest denied by IRS prior to effective date of amendments to *26 USCS § 6404(g)*; taxpayers cannot come within *26 USCS § 6404(g)* by filing second claim for abatement of interest after effective date of statutory revision. *Yuen v Commissioner (1999) 112 TC 123.*

14. Filing of bond as constituting duress

Where additional tax is assessed within period of limitations, bond given by taxpayer after expiration of such period, in pursuance of claim in abatement, is enforceable, as against claim that bond is given under duress; claim in abatement having been considered and allowed in part. *United States v Root (1933, CA5 Tex) 62 F2d 385, 11 AFTR 1299,* cert den *(1933) 289 US 733, 77 L Ed 1481, 53 S Ct 593.*

Where claim in abatement and bond are filed for reconsideration of tax on its merits, and to delay collection, there is no duress. *United States v Wyoming Cent. Ass'n (1934, CA10 Wyo) 70 F2d 869, 4 USTC P 1272, 14 AFTR 214.*

Abatement bond is not given under duress when taxpayer has alternate right of paying government's demand under protest with further right of refund in case taxpayer prevails in its contention. *United States v Calumet Steel Co. (1934, CA7 Ill) 74 F2d 429, 35-1 USTC P 9023, 14 AFTR 857.*

15. Recovery on bond after expiration of limitations period

Taxpayer is not entitled to recover where he gave bond and claim in abatement after expiration of limitation period

since, moral obligation to pay tax notwithstanding, limitation was held sufficient consideration for bond. *United States v Wyoming Cent. Ass'n (1934, CA10 Wyo) 70 F2d 869, 4 USTC P 1272, 14 AFTR 214.*

Where judgment is rendered in action on abatement bond and taxpayer pays tax after limitations has run against collection, there is no right of refund, bond being substitute for tax obligation, and judgment being conclusive, though bond was given to former collector. *Hilton Lumber Co. v Grissom (1934, CA4 NC) 70 F2d 892, 14 AFTR 222,* cert den *(1934) 293 US 613, 79 L Ed 702, 55 S Ct 143.*

Revenue Procedure 2016-1

Rev. Proc. 2016-1; 2016 IRB LEXIS 29; 2016-1 I.R.B. 1

January 04, 2016

[*1]

APPLICABLE SECTIONS:

26 CFR § 601.201: Rulings and determination letters.

TEXT:

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 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 for a letter ruling request is provided in Appendix B. *See* section 4 of this revenue procedure for information on certain issues outside the scope of this revenue procedure on which advice may be requested under a different 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 [*2] 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; filers of gift, estate, excise,

employment and fiduciary returns; 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*;

(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 (including IRAs), exempt [*3] 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 Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate.

(3) the term "Director" refers to the Director, Field Operations, LB&I; Director, Field Examination, SB/SE; Director, Specialty Examination Policy, SB/SE; Program Manager, Estate & Gift Tax Policy, SB/SE; Program Manager, Employment Tax Policy, SB/SE; Program Manager, Excise Tax Policy, SB/SE; Director, Compliance, W&I; Director, Employee Plans; Director, Employee Plans, Rulings and Agreements; Director, Employee Plans Examinations; Director, Exempt Organizations; Director, Exempt Organizations, Rulings and Agreements; Director, Exempt Organizations Examinations; Director, Federal, State & Local Governments; Director, Tax [*4] 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 and, when appropriate, their representatives. More specifically, the term includes taxexempt organizations, as well as issuers of tax-exempt obligations, mortgage credit certificates, and tax credit bonds.

Updated annually

.02 This revenue procedure is updated annually as the first revenue procedure of the year, but it may be modified, amplified or clarified 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 [*5] 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 [*6] 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, [*7] 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 [*8] by the Field offices are generally 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 [*9] 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, [*10] 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.

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.

(3) Oral guidance is advisory only, and the Service is not bound by it. Oral guidance is advisory only, and the Service is not bound by it, for example, when examining the taxpayer's return.

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

Taxpayers [*11] 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 determination letters from TE/GE, *see Rev. Proc. 2016-4*, *Rev. Proc. 2016-5*, and *Rev. Proc. 2016 - 6*, this Bulletin; *Rev. Proc. 2016-10*, next Bulletin.

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 [*12] 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 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 [*13] 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. (Note that certain issues involving individual retirement accounts (IRAs) are under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. *See* section 4.02, this revenue procedure).

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 outside 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 [*14] 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. 2015-41, 2015-35 I.R.B. 263*.

For competent authority procedures related to bilateral and multilateral advance pricing agreements, *see Rev. Proc. 2015-40, 2015-35 I.R.B. 236*.

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 [*15] 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 Associate Chief Counsel (Tax Exempt and Government Entities)

.07 Issues under the jurisdiction of the Associate Chief Counsel (Tax Exempt and Government Entities) include those that involve the application of employment taxes and taxes on self-employment income, exemption requirements for tax-exempt organizations, tax treatment (including application of the unrelated business income tax) of tax-exempt organizations (including federal, state, local, and Indian tribal governments), [*16] political organizations described in *§ 527*, qualified tuition programs described in *§ 529*, qualified ABLE programs described in *§ 529A*, trusts described in *§ 4947 (a)*, certain excise taxes, disclosure obligations and information return requirements of tax-exempt organizations, employee benefit programs (including executive compensation arrangements, qualified retirement plans, deferred compensation plans, and health and welfare benefit programs) and IRAs, issues integrally related to employee benefit programs and IRAs (such as, for example, the sale of stock to employee stock ownership plans or eligible worker-owned cooperatives under *§ 1042*), and changes in method of accounting associated with employee benefit programs.

Note that certain issues involving exempt organizations, employee plans, and government entities fall under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division of the Internal Revenue Service. *See Rev. Proc. 2016-4*, *Rev. Proc. 2016-5*, and *Rev. Proc. 2016-6*, this Bulletin; and *Rev. Proc. 2016-10*, next Bulletin.

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

Issues involving alcohol, tobacco, and firearms taxes

.01 [*17] 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.

Certain issues involving qualified retirement plans, individual retirement accounts (IRAs), and exempt organizations

.02 The procedures for obtaining certain letter rulings, closing agreements, determination letters, information letters, and oral advice on qualified retirement plans, IRAs, and exempt organizations that are under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division are provided in *Rev. Proc. 2016-4*, this Bulletin. *See also Rev. Proc. 2016-6*, 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)*. *See also Rev. Proc. 2016-5*, this Bulletin, and *Rev. Proc. 2016-10*, next [*18] Bulletin, for the procedures for issuing determination letters on the tax-exempt status of organizations under *§ 501* and *§ 521*, the foundation status of organizations described in *§ 501 (c) (3)* and the foundation status of nonexempt charitable trusts described in *§ 4947 (a) (1)*.

For the user fee requirements applicable to requests under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, *see Rev. Proc. 2016-8*, 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 [*19] 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 procedure in *Rev. Proc. 2013-30, 2013-36 I.R.B. 173*. This procedure is in lieu of the letter ruling process and does not require payment of any user fee. *See* section 3.01 of *Rev. Proc. 2013-30*, 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 *§ 301.9100-1* 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. [*20] Except for certain requests pertaining to applications for recognition of tax exemption under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, a *§ 301.9100-1* request is a letter ruling request. Therefore, the *§ 301.9100-1* request should be submitted pursuant to this revenue procedure. However, a *§ 301.9100-1* request involving recharacterization of an IRA (*see § 1.408A-5, Q&A-6*) should be submitted pursuant to *Rev. Proc. 2016-4*. 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 *§ 301.9100-1* request (other than an election made pursuant to *§ 301.9100-2* and certain requests pertaining to applications for recognition of tax exemption under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division) 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. A *§ 301.9100-1* request must include an affidavit and declaration from the taxpayer and [*21] other parties having knowledge or information about the events that led to the failure to make a valid regulatory election and to the discovery of the failure. See *§§ 301.9100-3 (e) (2)* and *(e) (3)*. In addition, a *§ 301.9100-1* request must include the information required by *§ 301.9100-3 (e) (4)*.

(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 *§ 301.9100-1* 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 *§ 301.9100-1* 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 [*22] filing of a claim for refund under *§ 6511* does not extend the period of limitation 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 limitation 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 7.05 (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 [*23] 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 *§ 301.9100-1* request has been submitted to the Associate office. The examination agent, appeals officer, or attorney is not authorized to deny consideration of a *§ 301.9100-1* 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, 2009-39 I.R.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 [*24] 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, 2009-39 I.R.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 a particular operation of a person, or of a member of a controlled group (within [*25] the meaning of *§ 993 (a) (3)*) that includes that person, or a foreign corporation of which a member of the controlled group is a U.S. shareholder, constitutes participation in or cooperation with an international boycott. The effect of that determination is to deny certain benefits of the foreign tax credit and the deferral of earnings of foreign subsidiaries and domestic international sales corporations (DISCs) to that person. 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 but may indicate in the letter ruling that it expresses no opinion as to the characterization of the [*26] 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, [*27] 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 7.05 (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 7.05 (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 [*28] 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 [*29] or after the return is filed for those transactions.

Letter ruling requests regarding employment status (employer/employee relationship) from Federal agencies and instrumentalities or their workers must be submitted to the Internal Revenue Service at the address set forth on the current Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. If the Federal agency or instrumentality service recipient (the firm) makes the request, the firm will receive any issued letter ruling. A copy will also be sent to any identified workers. If the worker makes the request and the firm has been contacted for information, 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. *See* section 12.04 of this revenue procedure for requests regarding employment status made by taxpayers other than Federal agencies and instrumentalities or their workers.

In procedural and administrative matters

.11 The Associate Chief Counsel (Procedure and Administration) issues letter rulings on matters arising under the Code and related statutes and [*30] regulations that involve the time, place, manner, and procedures for reporting and paying taxes; or 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 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 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, [*31] 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 [*32] 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.

In exempt organizations matters

.14 In exempt organizations matters, the Associate Chief Counsel (Tax Exempt and Government Entities) generally issues letter rulings on proposed transactions or on completed transactions if the letter ruling request is submitted before the return is filed for the year in which the [*33] transaction is completed. The Associate Chief Counsel (Tax Exempt and Government Entities) 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.

See *Rev. Proc. 2016-5*, this Bulletin, and *Rev. Proc. 2016-10*, next Bulletin, for the procedures for issuing determination letters on the tax-exempt status of organizations under *§ 501* and *§ 521*, the foundation status of organizations described in *§ 501 (c) (3)*, and the foundation status of nonexempt charitable trusts described in *§ 4947 (a) (1)*.

In qualified retirement plan and IRA matters

.15 In qualified retirement plan and IRA matters, (other than those listed in *Rev. Proc. 2016 - 4*), the Associate Chief Counsel (Tax Exempt and Government Entities) [*34] will generally issue letter rulings on proposed transactions and on completed transactions either before or after the return is filed, including those involving:

(1) *§§ 72* (other than the computation of the exclusion ratio), *219*, *381 (c) (11)*, *402*, *403 (b)* (except with respect to whether the form of a plan satisfies the requirements of *§ 403 (b)* as provided in *Rev. Proc. 2016 - 4*, this Bulletin), *404*, *408*, *408A*, *412*, *414 (e)*, *511 through 514*, *4971 (b)* and *(g)*, *4972*, *4973*, *4974*, *4978*, *4979*, and *4980*;

(2) Waiver of the minimum funding standard (*see Rev. Proc. 2004-15, 2004-1 C.B. 490*);

(3) 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)*;

(4) Whether a plan amendment is reasonable and provides for only de minimis increases in plan liabilities in accordance with *§§ 401 (a) (33)* and *412 (c) (7) (B) (i) of the Code* (*see Rev. Proc. 79 - 62, 1979-2 C.B. 576*);

(5) With respect to employee stock ownership plans and tax credit employee stock ownership plans, *§§ 409, 1042, 4975 (d) (3)* and *4975 (e) (7)*. Qualification issues arising under these sections are generally within the jurisdiction of Employee Plans Determinations. [*35] However, see *Rev. Proc. 2016-3*, section 4.02 (12);

(6) Abatement of first tier excise taxes under *§ 4962*;

(7) Relief under *§ 301.9100-1* that is not related to Roth IRA recharacterizations; and

(8) Grants of extensions of time other than pursuant to *§ 301.9100-1*.

A request to revoke an election

.16 If a taxpayer is required to file a letter ruling request to obtain consent to revoke an election made on a return, an Associate office will consider the request, even if an examination of the return has begun or the issues in the return are being considered by Appeals or a Federal court. The procedures in this revenue procedure applicable to a *§ 301.9100-1* request apply to a letter ruling request to revoke the election.

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

.17 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 [*36] 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 interest 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 [*37] 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 7.05 of this revenue procedure. In income and gift tax matters, as well as in qualified retirement plan, IRA, and exempt organizations 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 matter involved or for other reasons. *Rev. Proc. 2016-3*, this Bulletin, [*38] and *Rev. Proc. 2016-7*, 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, including due to resource constraints, 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 interest of sound tax administration, issue an information letter calling attention to well-established principles of tax law.

If the Service determines that it is not in the interest of sound tax administration to issue a letter ruling or determination letter due to resource constraints, it will adopt a consistent approach with respect to taxpayers that request a ruling on the same issue. The Service will also consider adding the issue to the no rule list at the first opportunity. *See* sections 2.01 and 3.02 of *Rev. Proc. 2016-3*, this Bulletin.

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. [*39] 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 Service will not rule on the qualification of any transaction under *§ 332, § 351, § 355,* or *§ 1036,* or on whether a transaction constitutes a reorganization within the meaning of *§ 368,* regardless of whether such transaction is part of an integrated transaction (*see* section 3.01 (50) of *Rev. Proc. 2016-3*, this Bulletin). Instead, the Associate Chief Counsel (Corporate) will only issue a letter ruling on significant issues (within the meaning of section 3.01 (50) of *Rev. Proc. 2016-3*) presented in a transaction described in *§ 332, § 351, § 355, § 368,* or *§ 1036*. For example, the Service may rule on significant issues under *§ 1.368-1 (d)* (continuity of business enterprise) and *§ 1.368-1 (e)* (continuity of interest). Letter rulings requested under this section 6.03 are subject to the no-rule policies [*40] of *Rev. Proc. 2016-3*. In addition, the Service will not rule on the tax consequences that result from the application of *§ 332, § 351, § 355, § 368,* or *§ 1036* (including nonrecognition and basis) except to the extent of a significant issue and only to the extent consistent with the no-rule policies of *Rev. Proc. 2016-3*.

Before preparing a letter ruling request under this section involving significant issues presented in a transaction described in *§ 332, § 351, § 355, § 368,* or *§ 1036,* a taxpayer is encouraged to call the Office of Associate Chief Counsel (Corporate) at the telephone number provided in section 10.07 (1) (a) of this revenue procedure to discuss whether the Service will entertain a letter ruling request under this section 6.03. The Service reserves the right to rule on any other aspect of the transaction (including ruling adversely) to the extent the Service believes it is in the best interests of tax administration. *Cf.* section 2.01 of *Rev. Proc. 2016-3*.

Taxpayers may request rulings on one or more significant issues in a single letter ruling request. Letter ruling requests under this section 6.03 must include the following for each significant issue:

(1) A narrative description [*41] of the transaction that puts the issue in context;

(2) A statement identifying the issue;

(3) An analysis of the relevant law, which should set forth the authorities most closely related to the issue and explain why these authorities do not resolve the issue, and an explanation concerning why the issue is significant within the meaning of section 3.01 (50) of *Rev. Proc. 2016-3*;

(4) Information and representations relevant to the issue. Taxpayers should consult other published authorities (*see*, for example, Appendix G of this revenue procedure, which identifies certain checklist and guideline revenue procedures), including those modified by *Rev. Proc. 2013-32, 2013-28 I.R.B. 55* (*e.g.*, *Rev. Proc. 96-30, 1996-1 C.B. 696*), and other authorities (*e.g.*, *Rev. Rul. 73-234, 1973-1 C.B. 180* (applying *§ 355 (b)* to the activities performed by employees of a corporation engaged in a farming business)), to identify information or representations but only to the extent that they relate to the issue; and

(5) The precise ruling(s) requested.

If the Service issues a letter ruling on a significant issue under this revenue procedure, then the letter ruling will state that no opinion is expressed as to any issue [*42] or step not specifically addressed by the letter. In addition, letter rulings issued under this revenue procedure will contain the following (or similar) language:

This letter is issued pursuant to section 6.03 of *Rev. Proc. 2016-1, 2016-1 I.R.B. 1*, regarding one or more significant issues under *§ 332*, *§ 351*, *§ 355*, *§ 368*, or *§ 1036*. The ruling[s] contained in this letter only address[es] one or more discrete legal issues involved in the transaction. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the ruling[s] below.

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 [*43] 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 [*44] 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. 2015-40, 2015-35 I.R.B. 236.* 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 [*45] 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 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.

Ordinarily 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 [*46] 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. 2016-3,* this Bulletin, or *Rev. Proc. 2016-7,* 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 [*47] 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's income is not taxable 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 [*48] 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).

No "comfort" letter rulings

.11 A letter ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decision of a court, revenue rulings, revenue procedures, notices, or other authority published in the Internal Revenue Bulletin (Comfort Ruling). However, except with respect to issues under *§ 332*, *§ 351*, *§ 355*, *§ 368*, or *§ 1036* and the tax consequences resulting from the application of such Code sections (*see generally* section 6.03), the Associate office may, in its discretion, decide to issue a Comfort Ruling if the Associate office is otherwise issuing a letter 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 [*49] 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, [*50] 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 G 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 G of this revenue procedure with a reference (usually to another revenue [*51] 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;

(e) a detailed description of the transaction; and

(f) all other facts relating to the transaction or to the taxpayer's requested tax treatment thereof.

Documents and foreign laws

(2) Copies of all contracts, wills, deeds, agreements, instruments, other documents [*52] **pertinent to the transaction, 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 [*53] 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 [*54] **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, and other documents pertinent to the transaction 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 [*55] 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 under Examination, before Appeals, before a Federal Court, or being Considered by the Pension Benefit Guaranty Corporation, by the Department of Labor, or by the Department of Health and Human Services

(4) Statement regarding whether same issue is in an earlier return and additional information required for § 301.9100 requests. The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, the same issue is addressed in 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*, or any predecessor that-

(a) is currently under examination, before Appeals, or before a Federal court;

(b) was previously under examination, before Appeals, or before a Federal court;

(c) in qualified retirement plan matters, is being considered by the Pension Benefit Guaranty Corporation or the Department of [*56] Labor; or

(d) in health care matters, is being considered by the Department of Labor or the Department of Health and Human Services.

The Service will not ordinarily issue a letter ruling or determination letter if, at the time of the request, the identical issue is under examination or consideration or in litigation. *See* section 6.01 in this revenue procedure. A limited exception to the above rule is made for a § 301.9100 request. *See* section 5.03 in this revenue procedure.

If a § 301.9100 request involves a tax year that is currently under examination, before Appeals, or before a Federal court, the taxpayer must notify the Service, as outlined above. This notification must include the name and telephone number of the examining agent or appeals officer.

Same or similar issue in a request 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 [*57] 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;

(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; or

(e) the taxpayer or a related taxpayer had, or has scheduled, a pre-submission conference involving the same or a similar issue.

If the statement is affirmative for (a), (b), (c), (d), or (e) 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, [*58] 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 [*59] **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 General Indian Legal Activity

Division of Indian Affairs

Office of the Solicitor

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 [*60] 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 presubmission conference prior to submitting the ruling request. *See* section 10.07 of this revenue procedure regarding pre-submission conferences. The taxpayer is strongly encouraged to inform the Service about, and discuss the implications of, any authority believed to be contrary [*61] 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 exist. 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 will generally enable Service personnel to more quickly 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 [*62] 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 the 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, except where a letter ruling or determination letter is open to public inspection under *§ 6104*. 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.

Section 6110 (l) (1) [*63] provides 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*, or any application for exemption under *§ 501 (a)* by an organization forming part of such a plan or 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 [*64] the qualification or status of master and prototype retirement plans; and

(v) The portion of any document issued by the Internal Revenue Service with respect to the qualification or exempt status of a retirement plan or account of a proposed transaction by such plan or account.

(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 [*65] 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 [*66] 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 [*67] 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 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) Authorized representatives.

(a) 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*):

(1) An attorney who is a member in good standing of the bar of the highest court of any state, possession, territory, [*68] 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;

(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;

(3) An enrolled agent is a person who is currently enrolled as an agent 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;

(4) An enrolled actuary is an individual currently enrolled as an actuary by the Joint Board for the Enrollment of Actuaries [*69] 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*;

(5) An enrolled retirement plan agent is an individual currently enrolled as a retirement plan agent who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration as an enrolled retirement plan agent and current authorization to represent the

taxpayer. Practice before the Service as an enrolled retirement plan agent 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. Enrolled [*70] retirement plan agents also are generally permitted to represent taxpayers with respect to IRS forms under the 5300 and 5500 series, which are filed by retirement plans and plans sponsors, but not with respect to actuarial forms and schedules; or

(6) 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.

(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 trustee, receiver, guardian, personal representative, administrator, executor, or regular full-time employee representing [*71] 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 if the individual provides current authorization to represent the taxpayer. *See* section 7.01 (14) of this revenue procedure.

A taxpayer may be required to file a Form 8821, *Tax Information Authorization*, for certain employees not authorized to represent the taxpayer to receive taxpayer information from the Service.

(c) Tax return preparers, including registered tax return preparers, that are 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 10.3 (f) (3)* of Treasury Department Circular No. 230.

(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 [*72] 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 [*73] 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 [*74] 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 multiple issues as explained later under section 7.02 (1) of this revenue procedure;

(b) the taxpayer is requesting deletions other than names, [*75] 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 [*76] 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 in Appendix D, Appendix E, or are listed in section 1 of Appendix G 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) 317-5221 (not a toll-free call) or by accessing this revenue procedure in Internal Revenue Bulletin 2016-1 on the IRS web site at www.irs.gov. Taxpayers can access this revenue procedure on the website by following the "News" link, the "IRS Guidance" link, and the "Internal Revenue Bulletins (after June 2003)" link to obtain Internal Revenue Bulletin 2016-1. A copy of this checklist may be used.

Additional procedural information required with request

.02

Multiple issues

(1) To request separate [*77] **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 interest 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. *See* section 15.06 (3) regarding whether a single user fee will be charged.

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 [*78] the original to the taxpayer. The Service will not send the original letter ruling or determination letter to the taxpayer's representative.

At the taxpayer's request, the Service will send one copy of the letter ruling or determination letter to up to two authorized representatives. At the discretion of the Service, the Service may provide a copy of the letter ruling or

determination letter to up to two authorized representatives, even though the taxpayer did not request that the Service send a copy of notices and communications to the taxpayer's representatives. Taxpayers that use Form 2848, *Power of Attorney and Declaration of Representative*, to designate representatives, may request that copies of notices and communications be sent to the representatives listed at Line 2 by checking the corresponding box on Line 2. Taxpayers may use Line 5 of Form 2848 to advise the Service that a copy of the letter ruling or determination letter should not be sent to the taxpayer's representative(s). If no box is checked on Line 2 and the taxpayer does not indicate otherwise on Line 5, the Service may in its discretion provide a copy of the letter ruling or determination letter to up to two authorized [*79] representatives.

"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 [*80] with requests for permission to change accounting methods or periods, applications for recognition of exempt status under *§ 501 (a)* or *§ 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.

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 [*81] 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 [*82] 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 request 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 [*83] 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 G 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.

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

(5) To request the receipt of 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 [*84] 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 such a request will only be respected prospectively with respect to documents generated after it is received, and must be received 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 [*85] 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.

Additional information required in letter ruling requests involving welfare benefit funds (including voluntary employees' beneficiary associations (VEBAs))

.03

Requests for letter rulings on the tax consequences of a proposed transaction involving a welfare benefit fund

(1) Requests for letter rulings on the tax consequences of a proposed transaction involving a welfare benefit fund. If a letter ruling is sought on the tax consequences to both the welfare benefit fund and an employer that contributed to the fund, each taxpayer (the fund and each contributing employer) must submit a separate letter ruling request and pay the applicable user fee listed in Appendix A of this revenue procedure.

Code sections to consider

(2) Code sections to consider. In addition to any other applicable Code sections, taxpayers should consider whether there are tax consequences under the following Code sections-

(a) For taxpayers that are VEBAs. VEBAs requesting a letter ruling on a proposed transaction involving the use or transfer of VEBA assets should [*86] consider the tax consequences under *§§ 501 (c) (9)*, *505*, *511*, and *512*, and should also include with the request a copy of the VEBA's most recent letter addressing its status under *§ 501 (c) (9)*.

(b) For taxpayers that are contributing employers. Contributing employers requesting a letter ruling on a proposed transaction involving the disposition of fund assets should consider the tax consequences under *§§ 61*, *111*, *419*, *419A*, and *4976*.

(i) Special considerations for *§ 4976* rulings.

(A) Tax Benefit Rule. A contributing employer that deducted contributions to a welfare benefit fund and requests a letter ruling as to the tax consequences under *§ 4976* must either (1) address why no amount should be included in income under the tax benefit rule, or (2) represent that it is including in income amounts that are subject to the tax benefit rule.

(B) Standing. In the case of a trade association (an organization described in *§ 501 (c) (6)*) that sponsors a welfare benefit fund, the association does not have standing to request a ruling under *§ 4976* on behalf of employers who contributed to the fund. However, a trade association generally has standing to request a ruling under *§ 4976* on its own behalf [*87] as an employer if the trade association contributed to the fund and the fund provided benefits to the trade association's own employees.

(C) Additional use of welfare benefit fund assets or transfer of assets between two or more welfare benefit funds. If the proposed transaction involves either an additional use of welfare benefit fund assets (for example, providing benefits to a new group of employees or providing a new type of benefit) or a transfer of assets between or among two or more welfare benefit funds, the application should state whether the employer has an obligation, in the current or any future year, to provide the benefits. For situations in which a use or transfer of assets would involve assets or benefits subject to one or more collective bargaining agreements, the application should include a copy of each applicable collective bargaining agreement. For a transfer of assets, the application should also address whether the welfare benefit funds could be merged.

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

.04

Request for letter ruling

(1) Request for letter ruling. Original letter ruling requests must be sent to the appropriate Associate office. [*88] The packages should be marked RULING REQUEST SUBMISSION.

(a) If a private delivery service is not used, 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 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.

Request for determination letter

(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

Large Business and International Division

PreFiling and Technical Guidance

SE:LB:PFTG, Mint Building

1111 Constitution [*89] **Ave., NW**

LB&I:PFTG:IR 1135

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 F of this revenue procedure.

(c) For a determination letter under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, *see Rev. Proc. 2016 - 4*, *Rev. Proc. 2016-5*, and *Rev. Proc. 2016 - 6*, this Bulletin; and *Rev. Proc. 2016-10*, next Bulletin.

Pending letter ruling requests

.05

Circumstances under which the taxpayer with a pending letter ruling request must notify the Associate office

(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 [*90] 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;

(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*;

(e) in qualified retirement plan matters, the issue is being considered by the Pension Benefit Guaranty Corporation or the Department of Labor; or

(f) in health care matters, the issue is being considered by the Department of Labor or the Department of Health and Human Services.

Taxpayer must notify the Associate office if a return is filed and must attach the request to the return

(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 [*91] office that the return has been filed. The taxpayer must also attach a copy of the letter ruling request (Form 3115, if for a non-automatic change in method of accounting) 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 7.05 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 7.05, the term "return" includes an original return, amended return, or claim [*92] for refund.

When to attach letter ruling or determination letter to return

.06 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 7.06, the term "return" includes an original return, amended return, or claim for refund.

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

.07 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

.08

In General

(1) [*93] **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.

Notification of appropriate Service official

(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 (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 [*94] may give the Service official its views on the issues in the request for consideration in any later examination of the return. This section 7.08 (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 7.08 (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 7.08 (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 [*95] 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 [*96] 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 [*97] 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.

Determines if transaction can be modified to obtain favorable letter ruling

.03 If less than a fully favorable letter ruling is indicated, [*98] 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.

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) [*99] **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 may 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 [*100] during the initial contact, must be furnished within 21 calendar days from the date the Associate office makes the request.

Extension of reply period if justified and approved

(2) Extension of reply period if justified and approved. 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 [*101] 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 may request that the Associate office request additional information by fax. *See* section 7.02 (5) of [*102] this revenue procedure. Taxpayers may also 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 penalties of 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 9.08 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 [*103] **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, advises the taxpayer of conclusions and, if the Associate office will rule adversely, offers 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 [*104] 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 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 [*105] 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

Substantially identical letter rulings

(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 will generally be [*106] issued for each entity with a common member or sponsor, or for each member of a common entity.

Related § 301.9100 letter rulings

(2) Related § 301.9100 letter rulings.

(a) For a § 301.9100 letter ruling request for an extension of time to file a Form 3115 qualifying under section 15.07 (4) for the user fee provided in paragraph (A) (5) (d) of Appendix A of this revenue procedure for an identical change in method of accounting, the Associate office generally will issue a single letter on behalf of all applicants on Form 3115 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 is the subject of the request. *See generally* section 5.03 of this revenue procedure.

Sends a copy of the letter ruling to appropriate Service official

.09 The Associate office will [*107] 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. 2015-13, 2015-5 I.R.B. 419* (or any successor), as clarified and modified by *Rev. Proc. 2015-33, 2015-24 I.R.B. 1067*, or other automatic change request procedures.

A request for a change in method of accounting under *Rev. Proc. 2015-13* or other automatic change request procedures is a type of request for a letter ruling. *See* section 2.01 of this revenue procedure.

Automatic and nonautomatic change in method of accounting requests

.01

Automatic change in method of accounting under Rev. Proc. 2015-13 (or any successor), or other automatic change

request procedures

(1) 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 [*108] 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, the change is an automatic change for the requested year of the change, and the taxpayer is eligible to make 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. In general, a taxpayer requests an automatic change by filing a current Form 3115, *Application for Change in Method of Accounting*.

An application filed under the automatic change procedures in *Rev. Proc. 2015-13* (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 [*109] request. No user fee is required for a change made under an automatic change request procedure.

Non-automatic change in method of accounting

(2) Non-automatic change in method of accounting. If a change in method of accounting may not be made under an automatic change request procedure, the taxpayer may request a non-automatic letter ruling by filing a current Form 3115, *Application for Change in Accounting Method*, under the non-automatic change procedures in *Rev. Proc. 2015-13* (or any successor), and this revenue procedure. A Form 3115 filed under *Rev. Proc. 2015-13* (or any successor) and this revenue procedure for a non-automatic change request is hereinafter referred to as a "non-automatic Form 3115." A taxpayer filing a non-automatic 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 a non-automatic 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 [*110] 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 of *Rev. Proc. 2015-14, 2015-5 I.R.B. 450* (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 [*111] **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 *Rev. Proc. 2015-13* (or any successor), and, if applicable, the 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 and of the taxpayer's trade(s) or business(es), the taxpayer's present and proposed method for the item being changed, information regarding whether the taxpayer has claimed any federal tax credit relating to the cost 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 net § 481 (a) adjustment, along with an explanation of [*112] the methodology used to determine the adjustment, sufficient to demonstrate that the net § 481 (a) adjustment is computed correctly.

For a non-automatic Form 3115 or an automatic change request specified in the instructions for line 16 of the Form 3115, the taxpayer must also include a full explanation of the legal basis and relevant authorities supporting the proposed method, and a detailed and complete description of the facts and explanation of how the law applies to the taxpayer's situation.

For a non-automatic Form 3115, the taxpayer must also include a statement of the applicant's reasons for the proposed change, copies of all documents related to the proposed change, and a discussion of whether the law related to the request is uncertain or inadequately addresses the issue.

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 [*113] 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 a non-automatic 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 exist, the Associate office may request submission of contrary authorities or a statement that none exist. 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 a non-automatic Form 3115. Original documents should not be submitted because [*114] 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. 2015-13* (or any successor).

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 [*115] **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 [*116] or former affiliated group of which the taxpayer is or was a member within the meaning of *§ 1504* or a predecessor currently have pending any request (including any concurrently filed request) for a letter ruling, a change in method of accounting, or 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 a non-automatic 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 [*117] 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 to receive a copy of the taxpayer's change in method of accounting letter ruling and other related correspondence. If the taxpayer wishes to authorize a corporation, firm, organization, [*118] or partnership to receive the correspondence, an individual, identified by either name or title, must be specified on the Form 8821. 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 3115, and 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 who has personal knowledge of the facts of, and authority to bind the taxpayer in, such matters. For example, an officer must sign on behalf [*119] 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 6.02 (8) of *Rev. Proc. 2015-13* (or its successor). 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 [*120] 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 non-automatic Forms 3115 in order of the date received. A taxpayer with a compelling need to have a non-automatic 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 [*121] 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 [*122] Associate office. *See* section 11.03 (1) of *Rev. Proc. 2015-13* (or its successor), and sections 10.01 and 10.02 of this revenue procedure.

Addresses to which to send Forms 3115

.05 Addresses to which to send Forms 3115. Submit the original Form 3115, in the case of a non-automatic Form 3115, or the copy of the Form 3115, in the case of an automatic change request, as follows:

(1) Non-automatic Form 3115.

(a) Associate office mailing address if private delivery service is not used. If a private delivery service is not used, a taxpayer, including an exempt organization, must send the original completed Form 3115 and the required user fee to:

Internal Revenue Service

Attn: CC:PA:LPD:DRU

P.O. Box 7604

Benjamin Franklin

Station Washington, DC 20044

(b) Mailing address if private delivery service is used. If a private delivery service is used, a taxpayer, including an exempt organization, must send the original completed Form 3115 and the required user fee to:

Internal Revenue Service

Attn: CC:PA:LPD:DRU

Room 5336

1111 Constitution Ave., NW

Washington, DC 20224

(c) Address if hand-delivered to the IRS Courier's desk. For taxpayers, including an exempt organization, the original completed Form 3115 and the [*123] required user fee 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 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

(2) Automatic change request. If the automatic change request procedure requires a taxpayer to file a duplicate copy of the completed Form 3115 for an automatic change request, send the duplicate copy of the automatic change request Form 3115 to:

Internal Revenue Service

201 West Rivercenter Blvd.

PIN Team Mail Stop 97

Covington, KY 41011-1424

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 A non-automatic 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 [*124] controlled, the Form 3115 is forwarded to the appropriate Associate office for assignment and processing.

Additional information

.08

Reply period

(1) Reply period.

(a) Non-automatic Form 3115 - 21-day rule. In general, for a non-automatic 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 [*125] 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) Non-automatic Form 3115. For a non-automatic 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 [*126] 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 for additional information. 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,** [*127] **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 included in additional 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 may request that the Associate office request additional information by fax. *See* section 9.04 (3) of this revenue procedure.

Taxpayers may also submit additional information by fax as soon as the information is available. The Associate office representative who requests additional information can provide a telephone [*128] 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 to an Associate office

(6) Address to which to send additional information to an Associate office.

(a) Address if private delivery service is 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 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 [*129] **delivery service is used**. For a request for a change in method of accounting, 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

Failure to timely submit additional information to an Associate office

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

(a) Non-automatic Form 3115. In the case of a non-automatic 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 change request 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 [*130] **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 a non-automatic 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 [*131] For a non-automatic 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 [*132] is granted. Ordinarily, the user fee required for a non-automatic Form 3115 will not be refunded for a Form 3115 that is withdrawn.

Non-automatic Form 3115 may be withdrawn or Associate office may decline to issue a change in method of accounting letter ruling

.12

In general

(1) In general. A taxpayer may withdraw a non-automatic 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.

Notification of appropriate Service official

(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 [*133] and the Coordinator of the Methods of Accounting and Timing Issue Practice Group, 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*.

Refund of user fee

(3) Refund of user fee. Ordinarily, the user fee will not be returned for a non-automatic 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 non-automatic Form 3115

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

Service is not bound by informal opinion

.14 The Service will not be bound by any informal opinion [*134] 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 a non-automatic 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 applicants on the Form 3115 that are the subject of the request.

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 a non-automatic 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 [*135] 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 *Treas. Reg. § 1.481-4 (b)*. The signed Consent Agreement copy of the letter ruling must be returned to the Associate office within 45 calendar days of the date of the letter ruling. In addition, a copy of the signed Consent Agreement generally must be attached to the taxpayer's income tax return for the year of change. *See* section 11.03 (2) (a) of *Rev. Proc. 2015-13* (or successor). 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 letter ruling has been received and the Consent Agreement has been signed and returned, the copy of the signed Consent [*136] 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 a non-automatic Form 3115, a taxpayer has secured the consent of the Commissioner when the taxpayer 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 and otherwise complies with *Rev. Proc. 2015-13* (or successor).

A taxpayer that timely files a non-automatic Form 3115 and takes the requested change in method of accounting into account in its federal income tax return for the year of change (and any subsequent taxable year) prior to receiving a letter ruling granting consent for that change has made a change in method of accounting without obtaining the consent of the Commissioner as required by *§ 446 (e)* (an "unauthorized change"). As provided in section 12.02 of *Rev. Proc. 2015-13* (or successor), the Director may determine [*137] when a change is not made in compliance with all applicable provisions of *Rev. Proc. 2015-13* (or successor) and may deny the unauthorized change. However, the Commissioner's consent, issued subsequent to the requested year of change, applies back to the year of change (and any subsequent taxable year) as of the date of the letter ruling granting consent for that change if the taxpayer timely signs and returns the Consent Agreement copy and implements the change in accordance with all applicable provisions of *Rev. Proc. 2015-13* (or successor) and section 11 of this revenue procedure. If the Commissioner does not grant consent under *Rev. Proc. 2015-13* (or successor) for the change in method of accounting taken into account by the taxpayer, the taxpayer is subject to any interest, penalties, or other adjustments resulting from improper implementation of the change. *See § 446 (f)*. A taxpayer who timely files a non-automatic Form 3115 and takes the requested change into account in the taxpayer's Federal income tax return for the year of change (and any subsequent taxable year), prior to receiving the letter ruling granting permission for the requested change, may nevertheless rely on the [*138] 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 7, 8, 10, 11, and 12 of *Rev. Proc. 2015-13* (or its successor).

A qualifying taxpayer complying timely with an automatic change request procedure may rely on the consent of the Commissioner as provided in [*139] the automatic change request procedure to change the taxpayer's method of accounting, subject to certain conditions and limitations. *See generally* sections 7, 8, 10, 11, and 12 of *Rev. Proc. 2015-13* (or its successor). An Associate office may review a Form 3115 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 11 of *Rev. Proc. 2015-13* (or its successor). Further, the Field office that has jurisdiction over the taxpayer's return may review the Form 3115. *See* section 12 of *Rev. Proc. 2015-13* (or its successor).

Change in method of accounting letter ruling does 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 non-automatic Form 3115 in situations in which it would not be in the best interest of sound tax administration to permit the requested change or it would not clearly reflect income. In [*140] 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 11.02 of *Rev. Proc. 2015-13* (or its successor).

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. 2015-13, 2015-5 I.R.B. 419* (or any successor). *Rev. Proc. 2015-13* applies to the changes in method of accounting described in *Rev. Proc. 2015-14, 2015-5 I.R.B. 450* (or any successor).

(2) The following automatic change request procedures, which require a completed Form 3115, 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) [*141] (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. 2015-13, 2015-5 I.R.B. 419* (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 [*142] 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 G for the list of revenue procedures for automatic changes in accounting period.

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

.23 In addition to this section 9, the following sections of this revenue procedure apply to automatic change requests and non-automatic change requests:

1 (purpose of *Rev. Proc. 2016-1*);

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 [*143] 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 Associate Chief Counsel (Tax Exempt and Government Entities));

5.03 (2) (period of limitation when filing a request for extensions of time for making an election or for other relief under *§ 301.9100-1*);

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 [*144] (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);

7.05 (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);

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. 2016-1*);

17 (effect of *Rev. Proc. 2016-1* on other documents);

18 (effective date of this revenue procedure);

Appendix A (schedule of user fees); and

Appendix G (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 [*145] 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 [*146] 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 [*147] 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. [*148] 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 [*149] 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 presubmission conference

.07 Sometimes it will be advantageous to both the Associate office and the taxpayer to hold a conference before the taxpayer [*150] 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 presubmission 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 [*151] 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) [*152] prior to scheduling the pre-submission conference.

The request must 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 7.04 of this revenue procedure.

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

(a) (202) 317-7700 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Corporate);

(b) (202) 317-3900 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Financial Institutions and Products);

(c) (202) 317-7002 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Income Tax and Accounting);

(d) (202) 317-3800 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (International);

(e) (202) 317-3100 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel [*153] (Passthroughs and Special Industries);

(f) (202) 317-3400 (not a toll-free call) for matters under the jurisdiction of the Office of Associate Chief Counsel (Procedure and Administration); or

(g) (202) 317-6000 (not a toll-free call) for matters under the jurisdiction of the Office of 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 [*154] **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 presubmission 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 [*155] 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)*. However, shareholders and security holders of a corporation may rely on a letter ruling issued to the corporation for the limited purpose of determining the proper treatment of directly related tax items. For example, a letter ruling issued to a corporation with respect to the reorganization of that corporation may be relied upon by the corporation's shareholders in determining their basis in the stock of the corporation following the reorganization. *See also* section 11.06 (3) of this revenue procedure.

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 [*156] 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. 2016-2*, this Bulletin, relating to requests for technical advice will be followed. *See* section 13.02 of *Rev. Proc. 2016-2*, 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 [*157] 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 limitation 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 [*158] 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 [*159] 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. [*160] 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 to the taxpayer with retroactive effect, the letter to the taxpayer 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 [*161] 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 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 [*162] 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 [*163] 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.

A taxpayer to whom a letter ruling has been issued by the Commissioner, Tax Exempt and Government Entities may request that the Office of Associate Chief Counsel, Tax Exempt and Government Entities limit the retroactive effect of any revocation or modification of the letter ruling. *See Rev. Proc. 2016 - 4*, § 13.10, [*164] this bulletin.

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 [*165] 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. 2016-2*, 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, [*166] 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 [*167] 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. 2015-40, 2015-35 I.R.B. 236*.

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 [*168] 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.

All determination letter requests regarding employment status (employer/employee relationship) made by taxpayers that are not Federal agencies and instrumentalities or their workers, must be submitted to the Internal Revenue Service at the address set forth on the current Form SS-8, [*169] *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*.

If the service recipient (the firm) requests the determination regarding employment status, the firm will receive any determination letter issued. A copy will also be sent to any workers identified in the request. If the worker makes the request and the firm has been contacted for information, both the worker and the firm will receive any issued determination letter. The determination letter will apply to any individuals engaged by the firm under substantially similar circumstances. *See* section 5.10 of this revenue procedure for requests regarding employment status made by

Federal agencies and instrumentalities or their workers.

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 [*170] 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. 2016-2*, this Bulletin.

The preceding paragraph does not apply to SS-8 requests under section 12.04. If a taxpayer disagrees with a determination of employment status made in response to an SS-8 request, the taxpayer may request that the SS-8 Program reconsider the determination letter if the taxpayer has additional information concerning the relationship that was not part of the original submission or the taxpayer can identify facts that were part of the original submission that the taxpayer thinks were not fully considered.

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 [*171] 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. 2016-2*, 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 [*172] 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. 2016-2*, 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. 2016-2*, 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 [*173] 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 [*174] 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 [*175] 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 or 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 or subcategory 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 non-automatic 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, 2009-3 I.R.B. 324* [*176] (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. 2013-30, 2013-36 I.R.B. 173* (*see* section 5.02 of this revenue procedure);

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

(5) requests for harassment campaign letter rulings under *Section 6104 (d) (4)*;

(6) request for Neighborhood Land Use Rule letter rulings under [*177] *Section 514 (b) (3)*;

(7) information letters; or

(8) late elections under *§ 338* that qualify under the automatic provisions in sections 3, 4, and 5 of *Rev. Proc. 2003-33, 2003-1 C.B. 803*.

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 3.05 [*178] of *Rev. Proc. 2015-41, 2015-35 I.R.B. 263*; or

(2) requests for letter rulings, determination letters, etc. under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division (which no longer include changes in method of accounting), *see Rev. Proc. 2016 - 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. 2016 - 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 [*179] 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. So long as the issues all relate to a single transaction, a request that the Service address one or more of the issues in a separate ruling will not result in an additional fee.

(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 [*180] 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.

(6) Requests made by married taxpayers who file jointly. A married couple filing a joint return may jointly request a single letter ruling and pay a single user fee if the issues arise from a joint activity or if the spouses would otherwise qualify for substantially identical letter rulings. If a spouse desires a ruling to be individually issued to him or her, a separate fee must be paid for each individual [*181] request. *But see* section 15.07 of this revenue procedure (providing a reduced user fee for substantially identical letter rulings or substantially identical changes in method of accounting).

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 non-automatic 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. 2016-1*";

(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, [*182] 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 [*183] 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.

The reduced fee for substantially identical letter rulings is applicable to taxpayers requesting closing agreements as described in section 2.02 of this revenue procedure, assuming they meet the requirements described above for letter rulings.

(3) Substantially identical plans under *§ 25 (c) (2) (B)*. The user fee provided in paragraph (A) (5) (c) 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 [*184] plan.

(4) Identical changes in method of accounting and related § 301.9100 letter rulings. A common parent of a consolidated group, or other taxpayer, is eligible for the user fees provided in paragraphs (A) (5) (b) and (d) of Appendix A of this revenue procedure when requesting 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 of the following in any combination-

(a) members of that consolidated group;

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

(c) partnerships that are wholly-owned within that consolidated group; or

(d) controlled foreign corporations (CFCs) and noncontrolled § 902 corporations (10/50 corporations) that do not engage in a trade or business within the United States where (i) all controlling U.S. shareholders of the CFCs and all majority domestic corporate shareholders of the 10/50 corporations, as applicable, are members [*185] of that consolidated group; or (ii) the taxpayer is the sole controlling U.S. shareholder of the CFCs or the sole domestic corporate shareholder of that 10/50 corporation.

To qualify as an identical change in method of accounting, the multiple entities wholly owned or controlled by a consolidated group or other taxpayer, or separate and distinct trades or businesses (that is, the 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 [*186] 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. If the request is on behalf of eligible partnerships, the common parent must attach a statement that "[a]ll partnerships to which the request relates are wholly-owned by members of the common parent's consolidated group."

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 [*187] 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 [*188] from the Service Center, it will notify the taxpayer that the fee is due. Taxpayers must not send cash.

User fees for Statement of Value requests submitted pursuant to *Rev. Proc. 96-15* must be paid by direct debit from a checking or savings account through www.pay.gov. Payment confirmations are provided through the , www.pay.gov portal and should be submitted with the Statement of Value request. Art Appraisal Services will not consider a Statement of Value request complete, and will hold the request in suspense, until the correct user fee is paid through the , www.pay.gov website. Additional information about Statement of Value requests can be found at , www.irs.gov/Individuals/Art-Appraisal-Services. Information on payment submission can be found under Frequently Asked Questions at , www.pay.gov.

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 [*189] 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, [*190] 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 [*191] 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 [*192] 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) [*193] 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 [*194] 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 (2) (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 (2) (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 7.04 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 [*195] *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 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)

Associate Chief Counsel (Tax Exempt and Government Entities) letter ruling requests

Deputy Associate Chief Counsel ( )

(Complete parenthetical by using the applicable designation "Employee Benefits" or "Exempt Organizations/Employment Tax/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 [*196] appropriate SB/SE official listed in Appendix F

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. 2015-1?

Editorial changes have been made throughout.

Section 5.16 was added to address letter ruling requests to revoke certain elections made on a return.

Section 7.03 was added to provide additional instructions for letter ruling requests involving welfare benefit funds (including voluntary employees' beneficiary associations (VEBAs)).

Section 9.05 was updated to reflect a new address to send the duplicate copy of the Form 3115 for an automatic change in method of accounting; new addresses for exempt organizations to send the Form 3115; and that exempt organizations filing a Form 3115 for a non-automatic change in method of accounting are subject to the user fees in Appendix A of this revenue procedure.

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

.01 [*197] *Rev. Proc. 2015-1, 2015-1 I.R.B. 1* is superseded.

.02 *Rev. Proc. 2015-13, 2015-5 I.R.B. 419,* is modified as follows:

(a) "Covington, KY" is substituted for "Ogden, UT" each place it appears in *Rev. Proc. 2015-13*;

(b) "Duplicate copy" is substituted for "Ogden copy" or "Ogden" each place it appears in *Rev. Proc. 2015-13*; and

(c) "(Duplicate copy)" is substituted for "(Ogden copy)" each place it appears in *Rev. Proc. 2015-13*;

.03 *Rev. Proc. 96-15, 1996-3 I.R.B. 41,* as modified by *Ann. 2001-22, 2001-11 I.R.B. 895,* is modified as to the method of payment of user fees for a Statement of Value request.

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

This revenue procedure is effective January 4, 2016.

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 [*198] revenue procedure are in sections 5.06, 6.03, 7.01, 7.02, 7.03, 7.04, 7.05, 7.07, 7.08, 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, Appendix D, Appendix E, and Appendix G (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 and tax exempt organizations.

The estimated total annual reporting and/or recordkeeping burden is 316,020 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 to 200 hours, depending on individual circumstances, with an estimated average burden of 80 hours. The estimated number of respondents and/or recordkeepers is 3,956.

The estimated annual frequency of [*199] 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 Laura Leigh Bates 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 Ken Cohen or Jean R. Broderick at (202) 317-7700 (not a toll-free call),

(2) the Associate Chief Counsel (Financial Institutions and Products), contact James Polfer at (202) 317-4556 (not a toll-free call),

(3) the Associate Chief Counsel (Income Tax and Accounting), contact R. Matthew Kelley at (202) 317-7002 (not a toll-free call),

(4) the Associate Chief Counsel (Passthroughs and Special Industries), contact Leta Wolfe at (202) 317-5260 (not a toll-free call),

(5) the Associate Chief Counsel (Procedure and Administration), contact Charles A. Hall at (202) 317-3400 (not a toll-free call),

(6) the Associate [*200] Chief Counsel (Tax Exempt and Government Entities), contact Michael B. Blumenfeld at (202) 317-6000 (not a toll-free call), or

(7) the Associate Chief Counsel (International), contact Nancy Galib at (202) 317-3800 (not a toll-free call).

For further information regarding user fees, contact the Docket, Records, and User Fee Branch at (202) 317-5221 (not a toll-free call).

For further information regarding determination letters:

SBSE and WI taxpayers should contact the offices listed in Appendix F of this Revenue Procedure;

LB&I taxpayers should contact Melanie Perrin in the Office of Pre-Filing and Technical Guidance, LB&I, at (202) 317-3157 (not a toll-free call);

TE/GE taxpayers should also refer to *Revenue Procedures 2016 - 4*, *2016-5* and *2016 - 6*, this bulletin, and *2016-10*, next bulletin.

ATTACHMENTS:

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, 2015*
(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. 2016-1, 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 3.05 of Rev. Proc. 2015-41, 2015-35 I.R.B. 263.
(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. 2016-1, this revenue procedure, 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 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) of this appendix)	$4,200
(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) of this appendix)	$4,200
(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) of this appendix)	$3,700
(b) Changes in Methods of Accounting	
(i) Non-automatic Form 3115, *Application for Change in Accounting Method* (except as provided in paragraph (A) (4) (a) or (b), or (5) (b) of this appendix)	$8,600
(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)	$9,100
NOTE: Effective February 3, 2016, the user fees provided in paragraph (A) (3) (b) of this appendix apply to exempt organizations filing a Form 3115 for a non-automatic change in method of accounting. 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 G of Rev. Proc. 2016-1, this revenue procedure, for the list of automatic change request procedures published and/or in effect as of December 31, 2015.	
(c) (i) Letter ruling request for relief under § 301.9100-3 $9,800	$9,800
(ii) All other letter ruling requests (including 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)	$28,300
(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)	
(e) A request for a Foreign Insurance Excise Tax Waiver Agreement	$8,000

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 for a

request involving a personal, exempt organization, governmental entity, or business tax issue is provided in the following situations if person provides the certification described in paragraph (B) (1) of this appendix:

(a) Request involves a tax issue from a person with gross income (as determined under paragraphs (B) (2), (3), (4), and (5) of this appendix) of less than $250,000 — $2,200

(b) Request involves a tax issue from a person with gross income (as determined under paragraphs (B) (2), (3), (4), and (5) of this appendix) of less than $1 million and $250,000 or more. — $6,500

(5) User fee for substantially identical letter ruling requests, identical changes in method of accounting, or plans from issuing authorities under § 25 (c) (2) (B). If the requirements of section 15.07 of Rev. Proc. 2016-1, 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 $28,300 fee or reduced fee, as applicable, has been paid for the first letter ruling request — $2,700

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.	
(b) Identical change in method of accounting requested on a single Form 3115, *Application for Change in Accounting Method*, as provided in section 15.07 (4). Fee for each additional applicant seeking the identical change in method of accounting on the same Form 3115 after the $8,600 fee or reduced fee, as applicable, has been paid for the first applicant.	$180
(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. NOTE: The fee charged for the first letter ruling is the highest fee applicable to any of the entities.	$1,500
(d) Extension of time requested to file Form 3115, *Application for Change in Accounting Method*, for an identical change in method of accounting as provided in section 15.07 (4). Fee for each additional or each additional applicant seeking the identical extension of time under § 301.9100-3 to file a single Form 3115 for the identical change in method of accounting after the $9,100 fee or reduced fee, as applicable, has been paid for the first applicant. 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.	$180
(6) User fee for information letter requests.	$0
(7) User fee for pre-filing agreements	$50,000

(8) Tax treaty limitation of benefits. See Rev. Proc. 2015-40, 2015-35 I.R.B. 236 for procedures for requesting competent authority assistance under tax treaties.	$27,500
(9) Statement of Value. See Rev. Proc. 96-15 for procedures for requesting a statement of value.	
(a) Effective February 3, 2016:	
(i) User fee for a case with 1-3 items	$5,700
(ii) Cost per each additional item beyond 3	$290

(B) [*201] *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), (3), (4), and (5) of this appendix, as applicable, 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) (2), (3), (4), and (5) of this appendix, as applicable, 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 [*202] (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 2014 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, [*203] taking into account any additions required to be made to total income described in this paragraph (B) (2) (a), is less than $250,000 (or less than $1,000,000 for the paragraph (A) (4) (b) fee to apply). 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 2014 Form 1040NR, *U.S. Nonresident Alien* [*204] *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 (or less than $1,000,000 for the paragraph (A) (4) (b) fee to apply). In this case, the executor or administrator of the decedent's estate or the grantor must provide the certification required under paragraph (B) (1) [*205] 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) Partnerships with a Form 1065 filing requirement and corporations (foreign and domestic), "gross income" is equal to "total income" as reported on their last Federal 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 tax return, plus any interest income not subject to tax under *§ 103* (interest on state and local bonds) for that period. Partnerships with a Form 1065 filing requirement [*206] should also include "gross rents" reported on Form 8825 at line 2, as well as the income amounts reported on Schedule K Form 1065 at lines 3a, 5, 6a, 7, 8, 9a, 10, and 11 from the same Federal tax return described in the preceding sentence to calculate "gross income" for the purpose of applying the reduced user fee in paragraph (A) (4) of this Appendix. If a partnership is not required to file or a corporation is not subject to tax, "total income" and "cost of goods sold" are the amounts that the partnership or corporation would have reported on the Federal tax return if the partnership had been required to file or the corporation had been subject to tax.

"Cost of goods sold" and "total income" are line items on Federal tax returns. For example, if the 2014 Form 1065, *U.S. Return of Partnership Income*, is the most recent 12-month taxable year return filed by a 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 2014 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 [*207] the amounts entered on lines 2 and 11, respectively.

If, at the time the request is filed, a partnership or corporation subject to tax has not filed a Federal tax return for a full taxable year, the reduced user fee in paragraph (A) (4) (a) or (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), or (c), of this appendix, as applicable) is less than $250,000 for purposes of paragraph (A) (4) (a) or $1 million for purposes of paragraph (A) (4) (b) 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.

(4) Gross income for a request involving an exempt organization or governmental entity. For purposes of the reduced user fees provided in paragraphs (A) (4) (a) and (b) of this appendix of-

(a) 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 [*208] agreement is filed.

(b) 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.

(5) Special rules for determining gross income. For purposes of paragraphs (B) (2), (3) and (4) 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 [*209] **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 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) (4) (a) of this appendix) of the applicants must be combined.

APPENDIX B

SAMPLE FORMAT FOR A LETTER RULING REQUESTING

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 [*210] 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, Procedure and Administration, or 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. 2016-1*, this revenue procedure. Hereafter, all references are to *Rev. Proc. 2016-1* 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 [*211] 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 the language 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 [*212] 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 2016-1* 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 [*213] 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. [Provide the statement required by section 7.01 (5) (e) regarding whether the taxpayer or a related taxpayer had, or has scheduled, a pre-submission conference involving the same or a similar issue.]

g. [If the letter ruling [*214] 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.]

h. [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.]

i. [If the taxpayer determines that there are no contrary authorities, a statement in the request to this effect should be included. *See* section 7.01 (9).]

j. [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).]

k. [If the taxpayer is requesting [*215] 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).]

l. [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).]

m. [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. 2016-1* 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 [*216] 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 [*217] 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 Associate Chief Counsel (Tax Exempt and Government Entities)? *See* section 3 of Rev. Proc. 2016-1, this revenue procedure. For issues under the jurisdiction of other offices, *see* section 4 of Rev. Proc. 2016-1. (Hereafter, all references are to Rev. Proc. 2016-1

unless otherwise noted.)

Yes No — 2. Have you read Rev. Proc. 2016-1, Rev. Proc. 2016-3, and Rev. Proc. 2016-7, this bulletin, 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 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 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) 317-5221 (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) 317-3800 (not a toll-free call).

Yes No N/A — 4. If the request involves a retirement plan qualification matter under § 401 (a), § 409, or § 4975 (e) (7), have you demonstrated that the request satisfies

	the three criteria in section 4.02 of Rev. Proc. 2016-3, this Bulletin, for a ruling?
Yes No N/A Page	5. 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	6. Are you requesting the letter ruling on a hypothetical situation or question? *See* section 6.12.
Yes No	7. Are you requesting the letter ruling on alternative plans of a proposed transaction? *See* section 6.12.
Yes No	8. Are you requesting the letter ruling for only part of an integrated transaction?
Yes No Page	9. Are you requesting a letter ruling under the jurisdiction of Associate Chief Counsel (Corporate) on a significant issue (within the meaning of section 3.01 (50) of Rev. Proc. 2016-3, this Bulletin) with respect to a transaction described in § 332, § 351, § 355, or § 1036 or a reorganization within the meaning of § 368? *See* section 6.03.
Yes No	10. 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	11. Are you requesting the letter ruling for a foreign government or its political subdivision? *See* section 6.07.
Yes No Page	12. Have you included a complete statement of all the facts relevant to the transaction? *See* section 7.01 (1).
Yes No N/A	13. 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	14. 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 15. 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 16. Have you included the required statement regarding
Page 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 17. Have you included the required statement regarding
Page 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 18. Have you included the required statement regarding
Page 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 19. Have you included the required statement regarding
Page 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 20. Have you included the required statement regarding
Page 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
Page
21. Have you included the required statement regarding whether the taxpayer or a related taxpayer had, or has scheduled, a pre-submission conference involving the same or a similar issue? *See* section 7.01 (5) (e).

Yes No N/A
Page
22. 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
23. 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
Page
24. Have you included the required statement of relevant authorities in support of your views?
See section 7.01 (8).

Yes No
Page
25. 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
Page
26. 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 — 27. 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 — 28. 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 — 29. Have you included the deletion statement required by § 6110 and placed it on the top of the letter ruling request as required by section 7.01 (11) (b)?

Yes No Page — 30. Have you (or your authorized representative) signed and dated the request? *See* section 7.01 (12).

Yes No N/A — 31. 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 — 32. Have you signed, dated, and included the penalties of perjury statement in the format required by section 7.01 (15)?

Yes No N/A — 33. Are you submitting your request in duplicate if necessary? *See* section 7.01 (16).

Yes No Page — 34. 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 — 35. 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 — 36. 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 37. 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 38. If you want your letter ruling request to be
Page 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? *See* section 7.02 (4) of this revenue procedure.

Yes No 39. If you are requesting a copy of any document
Page 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 40. If you want to have a conference on the issues
Page involved in the request, have you included a request for conference in the letter ruling request? *See* section 7.02 (6).

Yes No 41. 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 42. If your request involves a personal, exempt
Page organization, governmental entity, or business-related 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 43. If your request involves a personal, exempt
Page organization, governmental entity, or 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 44. If you qualify for the user fee for substantially

Page	identical letter rulings, have you included the required information? *See* section 15.07 (2) and paragraph (A) (5) (a) of Appendix A.
Yes No Page	45. 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	46. 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 G, 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	47. 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 Page	48. 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, 2009-39 I.R.B. 439? *See* section 5.03 (5) of this revenue procedure.
Yes No N/A Page	49. If you are requesting relief under § 301.9100, and your request involves a year that is currently under examination or with appeals, have you included the required notification, which also provides the name and telephone number of the examining agent or appeals officer? *See* section 7.01 (4) of this revenue procedure.
Yes No	50. If you are requesting relief under § 301.9100, have you included the affidavit(s) and declaration(s) required by § 301.9100-3 (e)? See § 5.03 (1) of

this revenue procedure.

Yes No 51. If you are requesting relief under § 301.9100-3, and the period of limitations on assessment under § 6501 (a) will expire for any year affected by the requested relief before the anticipated receipt of a letter ruling, have you secured consent under § 6501 (c) (4) to extend the period of limitations on assessment for the year(s) at issue? See § 5.03 (2) of this revenue procedure.

Yes No 52. 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 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 [*218] or Authority

Date

APPENDIX D

ADDITIONAL CHECKLIST FOR GOVERNMENT PICK-UP PLAN RULING REQUESTS

In order to assist Associate Chief Counsel (Tax Exempt and Government Entities) in processing a ruling request involving government pick-up plans, in addition to the items in Appendix C 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 [*219] order to assist Associate Chief Counsel (Tax Exempt and Government Entities) in processing a church

plan ruling request, in addition to the items in Appendix C, 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, if not a church or convention or association of churches, is controlled by, or associated with, the named church or convention or association of churches. For example, the board of directors of the sponsoring organization may be made up of members of the named church, or 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 a 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 request 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 8. Is the composition of the committee stated?

Page

Yes No N/A 9. Did the plan sponsor provide a written notice to interested

Page persons that a letter ruling under § 414 (e) of the Code on behalf of a church plan will be submitted to the IRS? (See Rev. Proc. 2011-44).

Yes No N/A 10. Does the ruling request include a copy of the notice?

Page

APPENDIX F

LIST OF SMALL BUSINESS/SELF-EMPLOYED OPERATING DIVISION (SB/SE) OFFICES TO WHICH TO SEND REQUESTS FOR DETERMINATION LETTERS

SB/SE [*220] and W&I taxpayers should send requests for determination letters under this *Rev. Proc. 2016-1* 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:

Program Manager, Estate & Gift Tax Policy

Internal Revenue Service

SE:S:E:HQ:SEP:E&GP

6340 Variel

Woodland Hills, CA 91367

EMPLOYMENT TAXES

Requests for determination letters regarding employment tax (except for requests for determination of worker status made on Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, which should be sent to the address in the Form instructions) should be sent to:

Program Manager, Employment Tax Policy

Internal Revenue Service

Attn: SE:S:E:HQ:SEP

c/o Director, Specialty Examination Policy

5000 Ellin Road, C9-400

Lanham, MD [*221] **20706**

EXCISE TAXES

Requests for determination letters regarding excise taxes should be sent to:

Program Manager, Excise Tax Policy

Internal Revenue Service

Attn: SE:S:E:HQ:SEP

c/o Director, Specialty Examination Policy

5000 Ellin Road, C9-400

Lanham, MD 20706

APPENDIX G

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 [*222] 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. 2016-3*, this bulletin), *Rev. Proc. 84 - 42, 1984-1 C.B. 521* (superseded, in part, as to no-rule areas by *Rev. Proc. 2016-3*, 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. 2016-3*, which states that the Service will not issue a letter ruling as to whether a transaction constitutes a reorganization within the meaning of *§ 368*. However, the Service will issue a letter ruling addressing significant issues [*223] (within the meaning of section 3.01 of *Rev. Proc. 2016-3*) presented in a reorganization within the meaning of *§ 368*. The information and representations described in these revenue procedures should be included in a letter ruling request only to the extent that they relate to the significant issues with respect to which the letter ruling is requested. *See* section 6.03 (4).

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

See section 3.01 of *Rev. Proc. 2016-3*, this Bulletin, which states that the Service will not issue a letter ruling on whether a corporate distribution qualifies for nonrecognition treatment under *§ 332*. However, the Service will issue a letter ruling addressing significant issues (within the meaning of section 3.01 of *Rev. Proc. 2016-3*) presented in a transaction described in *§ 332*. The information and representations described in *Rev. Proc. 90-52, 1990-2 C.B. 626*, [*224] should be included in a letter ruling request only to the extent that they relate to the significant issues with respect to which the letter ruling is requested. *See* section 6.03 (4).

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

See section 3.01 of *Rev. Proc. 2016-3*, this Bulletin, which states that the Service will not issue a letter ruling on whether certain transfers to controlled corporations qualify for nonrecognition treatment under *§ 351*. However, the Service will issue a letter ruling addressing significant issues (within the meaning of section 3.01 of *Rev. Proc. 2016-3*) presented in a transaction described in *§ 351*. The information and representations described in *Rev. Proc. 83-59, 1983-2 C.B. 575*, should be included in a letter ruling request only to the extent that they relate to the significant issues with respect to which [*225] the letter ruling is requested. *See* section 6.03 (4).

355 Checklist questionnaire

See section 3.01 of *Rev. Proc. 2016-3*, this Bulletin, which states that the Service will not issue a letter ruling on whether certain distributions of controlled corporation stock qualify for nonrecognition treatment under *§ 355*. However, the Service will issue a letter ruling addressing significant issues (within the meaning of section 3.01 of *Rev. Proc. 2016-3*) presented in a transaction described in *§ 355*. The information and representations described in *Rev. Proc. 96-30, 1996-1 C.B. 696*, should be included in a letter ruling request only to the extent that they relate to the significant issues with respect to which the letter ruling is requested. *See* section 6.03 (4).

368 (a) (1) (E) Checklist questionnaire

See section 3.01 of *Rev. Proc. 2016-3*, this Bulletin, which states that the Service will not issue a letter ruling as to whether a transaction constitutes a reorganization, including a recapitalization within the meaning of *§ 368 (a) (1) (E)* (or a transaction that qualifies under *§ 1036*). However, the Service will issue a letter ruling addressing significant issues (within the meaning of section 3.01 [*226] of *Rev. Proc. 2016-3*) presented in a transaction described in *§ 368 (a) (1) (E)* (or in a transaction described in *§ 1036*). The information and representations described in *Rev. Proc. 81-60, 1981-2 C.B. 680*, should be included in a letter ruling request only to the extent that they relate to the significant issues. *See* section 6.03 (4).

412, 4971 (b) Additional tax (on failure to meet minimum funding standards)

Rev. Proc. 81-44, 1981-2 C.B. 618, provides guidance for requesting a waiver of the 100 percent tax imposed under *§ 4971 (b)* on a pension plan that fails to meet the minimum funding standards of *§ 412*.

412 (d) Minimum funding standards

Rev. Proc. 2004-15, 2004-1 C.B. 490, provides guidance for requesting a waiver of the minimum funding standards.

412 (c) (7) (B) Minimum funding standards-restrictions on plan amendments

Rev. Proc. 79 - 62, 1979-2 C.B. 576 provides guidance for requesting a determination that a plan amendment is reasonable and provides for only de minimis increases in plan liabilities in accordance with former *§ 412 (f) (2) (A)* (now *§ 412 (c) (7) (B) (i)*).

412 (d) (2) Minimum funding standards-certain retroactive plan amendments

Rev. Proc. 94 - 42, 1994-1 C.B. 717, sets [*227] forth procedures under which a plan sponsor may file notice with and obtain approval for a retroactive amendment described in *§ 412 (d) (2)* (formerly *§ 412 (c) (8)*) and *§ 302 (d) (2)* of the Employee Retirement Income Security Act of 1974 (ERISA) that reduces prior accrued benefits.

414 (e) Church plans

Rev. Proc. 2011-44, 2011-39 I.R.B. 445 provides supplemental procedures for requesting a ruling relating to church plans under *section 414 (e)*. This revenue procedure provides that plan participants and other interested persons must receive a notice when a letter ruling is requested and a copy of the notice must be submitted as part of the ruling request. It also provides procedures for the Service to receive and consider comments about the ruling request from interested persons. *See* Appendix E.

414 (r) Qualified separate lines of business-administrative scrutiny

Rev. Proc. 93-41, 1993-2 C.B. 536, sets forth procedures relating to the issuance of an administrative scrutiny determination, which is a determination by the Service as to whether a separate line of business satisfies the requirement of administrative scrutiny, within the meaning of *§ 1.414 (r)-6*, for the testing year.

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. 2015-40, 2015-35 I.R.B. 236, [*228] and *Rev. Proc. 2015-41, 2015-35 I.R.B. 263*.

521 Appeal procedure with regard to adverse determination letters and revocation or modification of exemption letter rulings and determination letters

Rev. Proc. 2016-5, this Bulletin.

817 (h) Closing agreement for inadvertent failures of variable contracts

Rev. Proc. 2008 - 41, 2008-2 C.B. 155.

860 Self Determination of Deficiency Dividend

Rev. Proc. 2009-28, 2009-20 I.R.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. 2013-30, 2013-36 I.R.B. 173.

1362 (b) (5) and 301.7701-3 Automatic extensions of time for late S corporation election and late corporate entity classification

Rev. Proc. 2013-30, 2013-36 I.R.B. 173.

1.1502-13 (e) (3) Consent to treat intercompany transactions on a separate entity basis and revocation of this consent

Rev. Proc. 2009-31, 2009-27 I.R.B. 107.

1.1502-75 (b) Consent to Be Included in a Consolidated Income Tax return

Rev. Proc. 2014-24, 2014-13 I.R.B. 879, [*229] provides a determination that certain subsidiary corporations are treated as if they had filed a Form 1122, *Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*, even though they failed to do so. This revenue procedure also informs taxpayers who do not qualify for the automatic determination of the procedure for requesting such determination.

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 [*230] 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. 169, 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, 2009-39 I.R.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*, [*231] and *Rev. Proc. 2016-1*, 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. 2013-30, 2013-36 I.R.B. 173.

301.9100-3 Extension of time to make entity classification election

Rev. Proc. 2009 - 41, 2009-39 I.R.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, 2008-2 C.B. 143.

7704 (g) Revocation of election

Notice 98-3, 1998-1 C.B. 333.

SUBJECT MATTERS

REVENUE [*232] *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. 2016-1*, 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), 7.04, 7.05, 7.07, 7.08, 8.01, 8.03, 8.04, 8.05, 8.06, 10, 11, 15, 17, 18, Appendix A, and Appendix G 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. 2016-1*, this revenue procedure, sections 2.05, 3.3 , 7, 8, and 10.05; and *Rev. Proc. 2016-3*, this Bulletin, section 3.01.

Estate, gift, and generation-skipping transfer tax issues

Rev. Proc. 91-14, 1991-1 C.B. 482 [*233] (checklist questionnaire).

Intercompany transactions; election not to defer gain or loss

Rev. Proc. 2009-31, 2009-27 I.R.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 [*234] (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. 97-13, 1997-1 C.B. 632, as modified by *Rev. Proc. 2001-39, 2001-2 C.B. 38* and amplified by *Notice 2014 - 67, 2014 - 46 I.R.B. 822* (management contracts); and *Rev. Proc. 2007-47, 2007-2 C.B. 108* [*235] (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, 2009-14 I.R.B. 749; *Rev. Proc. 2011-58, 2011-50 I.R.B. 849* (modifies *Rev. Proc. 2009-20*).

167 and 168 Primary use of certain cable network assets described in asset class 48.42 of Rev. Proc. 87-56, 1987-2 C.B. 674

Section 9 of *Rev. Proc. 2015-12, 2015-2 I.R.B. 266*.

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 system operator

Section 8 of *Rev. Proc. 2015-12, 2015-2 I.R.B. 266*.

168 Recovery periods of certain tangible assets used by wireless telecommunication carriers

Rev. Proc. 2011-22, 2011-18 I.R.B. 737

263, 471 Treatment of rotable spare parts as inventory or depreciable property

Rev. Proc. 2007-48, 2007-2 C.B. 110

263 Safe harbor methods for track structure expenditures

Rev. Proc. 2002-65, 2002-2 C.B. 700; [*236] *Rev. Proc. 2001-46, 2001-2 C.B. 263*.

263 Determination whether expenditures to maintain, replace or improve wireline network assets must be capitalized

Rev. Proc. 2011-27, 2011-18 I.R.B. 740.

263 Determination whether expenditures to maintain, replace or improve wireless network assets must be capitalized

Rev. Proc. 2011-28, 2011-18 I.R.B. 743.

263 Allocating success-based fees paid in business acquisitions or reorganizations

Rev. Proc. 2011-29, 2011-18 I.R.B. 746.

263 Electric trade and distribution property assets

Rev. Proc. 2011-43, 2011-37 I.R.B. 326.

263A Safe harbor methods for certain motor vehicle dealerships

Rev. Proc. 2010 - 44, 2010 - 49 I.R.B. 811.

280A Safe harbor method to determine the amount of deductible expenses attributable to certain business use of a residence

Rev. Proc. 2013-13, 2013-6 I.R.B. 478.

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.

448 Nonaccrual-experience method-book safe harbor method

Rev. Proc. 2011-46, 2011-42 I.R.B. 518.

451 Safe harbor for capital cost reduction payments

Rev. Proc. 2002-36, 2002-1 C.B. 993

451 Treatment of gift cards issued to customers in exchange for returned merchandise

Rev. Proc. 2011-17, 2011-5 I.R.B. 441.

451 Safe harbor for certain minors' trusts established under the Indian Gaming Regulatory Act (U.S.C. §§ 2701-2721)

Rev. Proc. 2011-56, 2011-49 I.R.B. 834.

461 Safe harbor method for payroll tax liabilities for compensation

Rev. Proc. 2008-25, 2008-1 C.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, 2008-2 C.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, [*237] 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.

860H Transfers of ownership interests in Financial Asset Securitization Investment Trusts

Rev. Proc. 2001-12, 2001-1 C.B. 335.

1031 (a) Qualification as a qualified exchange accommodation arrangement

Rev. Proc. 2000-37, 2000-2 C.B. 308, as modified [*238] 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.

1272 (a) (6) Proportional method of accounting for original issue discount on pools of credit card receivables

Rev. Proc. 2013-26, 2013-22 I.R.B. 1160.

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. 2013-30, 2013-36 I.R.B. 173.

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 [*239] For requests for an automatic change in accounting period, refer to the following automatic change revenue procedures.

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.