

Rev. Proc. 96-4

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

This revenue procedure explains how the Internal Revenue Service gives guidance to taxpayers on issues under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations). It explains the kinds of guidance and the manner in which guidance is requested by taxpayers and provided by the Service. A sample format of a request for a letter ruling is provided in Appendix A.

SECTION 2. WHAT CHANGES HAVE BEEN MADE TO REV. PROC. 95-4?

.01 Section 3.07 is amended to require that taxpayers provide a daytime telephone number in their request for an information letter.

.02 Section 5.04 is revised to state that Rev. Proc. 95-52, 1995-51 I.R.B. 14, restates and extends the closing agreement program for defined contribution plans that purchased guaranteed investment contracts (GICs) or group annuity contracts (GACs) from troubled life insurance companies for an indefinite period. Rev. Proc. 95-52 modifies and supersedes the procedures set forth in Rev. Proc. 92-16, 1992-1 C.B. 673 (as modified by Rev. Proc. 94-19, 1994-1 C.B. 605).

.03 Section 6.01 is amended to add subsection (6) which provides a more detailed listing of the areas under the jurisdiction of Exempt Organizations.

.04 Section 6.02(1) is revised to add §§ 419 and 419A of the Code to areas in which the national office issues letter rulings.

.05 Section 6.02(2) is revised to clarify that Rev. Proc. 91-41 applies only to a waiver of the minimum funding standard, and changes in funding methods and actuarial assumptions under § 412(c)(5) of the Code are added. Reference to changes in the plan year under § 412 has been deleted from this section since that subject is covered in section 6.02(4).

.06 Section 6.02(3) is added to state that a letter ruling can be requested for a determination that a plan amendment is reasonable and provides for only de minimis increases in plan liabilities in accordance with §§ 401(a)(33) and 412(f)(2)(A) of the Code.

.07 A second paragraph is added to section 7.02 clarifying what a ruling issued by the national office would cover in situations involving continuing transactions.

.08 Section 8.06 has been deleted since the Service now provides some guidance on § 404(k) of the Code.

.09 Section 9.02(11) is amended to add Enrolled Actuary as an authorized representative.

.10 Sections 9.02(9), (10), (12), and (13) are amended to clarify that a stamped signature by the taxpayer or the authorized representative is not permitted when signing a deletions statement, requesting a ruling or determination letter, signing the power of attorney, or signing a penalties of perjury statement.

.11 Section 9.02(13) is amended to provide that a taxpayer who submits additional factual information on several occasions for a request for a letter ruling or determination letter may provide one penalties of perjury declaration subsequent to all submissions that refers to all submissions.

.12 Section 9.02(14) is amended to provide that if two or more taxpayers are parties to a transaction and each requests a letter ruling, each taxpayer must satisfy the rules of the revenue procedure and additional user fees may apply.

.13 Section 9.02(15) is amended to provide that if more than one issue is presented in the letter ruling request, the taxpayer is encouraged to submit additional copies of the request.

.14 Section 10.03 is amended to add references to Rev. Proc. 94-42, 1994-1 C.B. 717, Rev. Proc. 81-44, 1981-2 C.B. 618, Rev. Proc. 79-62, 1979-2 C.B. 576, Rev. Proc. 79-61, 1979-2 C.B. 575, and Rev. Proc. 78-37, 1978-2 C.B. 540, which provide guidance on actuarial issues.

.15 Section 11.04(3) has been amended to add reference to an extension of the 30-day period to submit information after an initial contact under section 11.03.

.16 Section 11.13 is amended to clarify the format of the wordprocessing disk for taxpayers submitting a draft of their letter ruling to the national office.

.17 A new section 11.14 is added stating that, generally before a letter ruling is issued, the branch representative will advise the taxpayer of the Service's final conclusions and, if the Service will rule adversely, offers the taxpayer the opportunity to withdraw the letter ruling request.

.18 The first line of the paragraph following section 12.03(4) has been amended to add a clause advising taxpayers of a change in procedures.

.19 Rev. Proc. 96-6, [insert #], this Bulletin, supersedes Rev. Proc. 93-39, 1993-2 C.B. 513 (with the exception of section 12 relating to modifications to Rev. Proc. 93-12, 1993-1 C.B. 479, and section 13 relating to the extended reliance period) where Rev. Proc. 93-39 is cited in the following sections of this revenue procedure: 3.04; 3.05; 3.06; 5.01; 5.02; 5.03; 6.03; 7.03; 7.08; and 10.03(8). Rev. Proc. 93-9 is superseded by Rev. Proc. 93-39 with the exception of section 4 relating to master and prototype and regional prototype plans.

SECTION 3. IN WHAT FORM IS GUIDANCE PROVIDED BY THE ASSISTANT COMMISSIONER (EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS)?

In general

.01 The Service provides guidance in the form of letter rulings, closing agreements, determination letters, opinion letters, notification letters, information letters, revenue rulings, and oral advice.

Letter ruling

.02 A "letter ruling" is a written statement issued to a taxpayer by the Service's national office that interprets and applies the tax laws or any nontax laws applicable to employee benefit plans and exempt organizations to the taxpayer's specific set of facts. Once issued, a letter ruling may be revoked or modified for any number of reasons, as explained in section 12 of this revenue procedure, unless it is accompanied by a "closing agreement."

Closing agreement

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

A closing agreement prepared in an office under the responsibility of the Assistant Commissioner (Employee Plans and Exempt Organizations) may be based on a ruling that has been signed by the Commissioner or the Commissioner's delegate that says that a closing agreement will be entered into on the basis of the ruling letter.

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

If, in a single case, a closing agreement is requested for each person in a class of taxpayers, separate agreements are entered into only if the class consists of 25 or fewer taxpayers. However, if the issue and holding are identical for the class and there

are more than 25 taxpayers in the class, a “mass closing agreement” will be entered into with the taxpayer who is authorized by the others to represent the class.

In appropriate cases, a closing agreement may be made with sponsors of national office master and prototype plans and sponsors of regional prototype plans.

Rev. Proc. 94-16, 1994-1 C.B. 576, establishes a voluntary closing agreement program for employee plans matters. The revenue procedure contains a formula for determining monetary sanctions and limits the sanction for employers who voluntarily enter the program.

Key district directors have authority to enter into a closing agreement on employee plans matters, notwithstanding the delegation of authority to the Commissioner’s delegate.

Determination letter

.04 A “determination letter” is a written statement issued by a key district director that applies the principles and precedents previously announced by the national office to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in the statute, a tax treaty, or the regulations, or based on a conclusion in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin that specifically answers the questions presented.

District directors of key district offices issue determination letters involving §§ 401, 403(a), 409, and 4975(e)(7) of the Code as provided in Rev. Proc. 96-6, page [insert #], this Bulletin, Rev. Proc. 93-10, 1993-1 C.B. 476, Rev. Proc. 93-12, 1993-1 C.B. 479, and Rev. Proc. 93-39, 1993-2 C.B. 513 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure).

Opinion letter

.05 An “opinion letter” is a written statement issued by the national office to a sponsoring organization as to the acceptability (for purposes of §§ 401 and 501(a) of the Code) of the form of a master or prototype plan and any related trust or custodial account under §§ 401, 403(a), and 501(a) of the Code, or as to the conformance of a prototype trust, custodial account, or individual annuity with the requirements of § 408(a), (b), or (k), as applicable. *See* Rev. Proc. 89-9, 1989-1 C.B. 780, as modified by Rev. Proc. 90-21, 1990-1 C.B. 499, Rev. Proc. 92-41, 1992-1 C.B. 870, Rev. Proc. 93-12, Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure), and supplemented by Rev. Proc. 93-10. *See also* Rev. Proc. 91-44, 1991-2 C.B. 733, and Rev. Proc. 92-38, 1992-1 C.B. 859.

Notification letter

.06 A “notification letter” is a written statement issued by the national office or a key district office, upon request, as to the acceptability (for purposes of §§ 401 and 501(a) of the Code) of the form of a regional prototype plan and any related trust or custodial account. *See* Rev. Proc. 89-13, 1989-1 C.B. 801, as modified by Rev. Proc. 90-21, Rev. Proc. 92-41, Rev. Proc. 93-12, Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure), and supplemented by Rev. Proc. 93-10.

Information letter

.07 An “information letter” is a statement issued either by the national office or by a key district director. It calls attention to a well-established interpretation or principle of tax law (including a tax treaty) without applying it to a specific set of facts. To the extent resources permit, an information letter may be issued if the taxpayer’s inquiry indicates a need for general information or if the taxpayer’s request does not meet the requirements of this revenue procedure and the Service thinks general information will help the taxpayer. The taxpayer should provide a daytime telephone number with the taxpayer’s request for an information letter. An information letter is advisory only and has no binding effect on the Service.

Revenue ruling

.08 A “revenue ruling” is an interpretation by the Service that has been published in the Internal Revenue Bulletin. It is the conclusion of the Service on how the law is applied to a specific set of facts. Revenue rulings are issued only by the national office and are published for the information and guidance of taxpayers, Service personnel, and other interested parties.

Because each revenue ruling represents the conclusion of the Service regarding the application of law to the entire statement of facts involved, taxpayers, Service personnel, and other concerned parties are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. They should consider the effect of subsequent legislation, regulations, court decisions, revenue rulings, notices, and announcements. *See* Rev. Proc. 89-14, 1989-1

C.B. 814, which states the objectives of and standards for the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

Oral guidance

.09

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

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

(2) Discussion possible on substantive issues.

At the discretion of the Service, and as time permits, substantive issues may also be discussed. However, such a discussion will not be binding on the Service, and cannot be relied on as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Substantive tax issues involving the taxpayer that are under examination, in appeals, or in litigation will not be discussed by Service employees not directly involved in the examination, appeal, or litigation of the issues unless the discussion is coordinated with those Service employees who are directly involved in the examination, appeal, or litigation of the issues. The taxpayer or the taxpayer's representative ordinarily will be asked whether the oral request for guidance or information relates to a matter pending before another office of the Service.

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

A taxpayer may seek oral technical guidance from a taxpayer service representative in a key district office or service center when preparing a return or report. Oral guidance is advisory only, and the Service is not bound to recognize it, for example, in the examination of the taxpayer's return.

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

Nonbank trustee requests

.10 In order to receive approval to act as a nonbank custodian of plans qualified under § 401(a) of the Code or accounts described in § 403(b)(7) of the Code, and as a nonbank trustee or nonbank custodian for individual retirement arrangements (IRAs) established under § 408(a), (b), or (h), a written application must be filed that demonstrates how the applicant complies with the requirements of § 1.401-12(n)(3) through (6) of the Income Tax Regulations.

The Service must have clear and convincing proof in its files that the requirements of the regulations are met. If there is a requirement that the applicant feels is not applicable, the application must provide clear and convincing proof that such requirement is not germane to the manner in which the applicant will administer any trust. *See* § 1.401-12(n)(7) of the regulations.

The completed application should be sent to:

Internal Revenue Service
Assistant Commissioner (Employee Plans and Exempt Organizations)
Attention: CP:E:EP:T
P.O. Box 14073, Ben Franklin Station
Washington, DC 20044

Section 6.01(4) of Revenue Procedure 96-8, page 190, this Bulletin, imposes a user's fee for anyone applying for approval to become a nonbank trustee or custodian.

SECTION 4. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN GUIDANCE UNDER THIS PROCEDURE?

Taxpayers may request letter rulings, information letters and closing agreements on issues within the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) under this revenue procedure. The national office issues letter rulings to answer written inquiries of individuals and organizations about their status

for tax purposes and the tax effects of their acts or transactions when appropriate in the interest of sound tax administration.

Taxpayers also may request determination letters within the jurisdiction of the appropriate key district director that relate to Code sections under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations). *See* Rev. Proc. 96-6, this Bulletin.

SECTION 5. ON WHAT ISSUES MUST WRITTEN GUIDANCE BE REQUESTED UNDER DIFFERENT PROCEDURES?

Determination letters

.01 The procedures for obtaining determination letters involving §§ 401, 403(a), 409, and 4975(e)(7) of the Code, and the status for exemption of any related trusts or custodial accounts under § 501(a) are contained in Rev. Proc. 96-6, this Bulletin, Rev. Proc. 93-10, Rev. Proc. 93-12, and Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure).

Master and prototype plans

.02 The procedures for obtaining opinion letters for master and prototype plans and any related trusts or custodial accounts under §§ 401(a), 403(a) and 501(a) are contained in Rev. Proc. 89-9, as modified by Rev. Proc. 90-21, Rev. Proc. 92-41, Rev. Proc. 93-12, Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure), and supplemented by Rev. Proc. 93-10. The procedures for obtaining opinion letters for prototype trusts, custodial accounts or annuities under § 408(a) or (b) are contained in Rev. Proc. 87-50, as modified by Rev. Proc. 92-38. The procedures for obtaining opinion letters for prototype trusts under § 408(k) are contained in Rev. Proc. 87-50, as modified by Rev. Proc. 91-44.

Regional prototype plans

.03 The procedures for obtaining notification letters for regional prototype plans under § 401(a) and any related trust or custodial account under § 501, are contained in Rev. Proc. 89-13, as modified by Rev. Proc. 90-21, Rev. Proc. 92-41, Rev. Proc. 93-12, Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure), and supplemented by Rev. Proc. 93-10.

Closing agreement program for defined contribution plans that purchased GICs or GACs

.04 Rev. Proc. 95-52, 1995-51 I.R.B. 14, restates and extends the closing agreement program for defined contribution plans that purchased guaranteed investment contracts (GICs) or group annuity contracts (GACs) from troubled life insurance companies for an indefinite period. Rev. Proc. 95-52 modifies and supersedes the procedures set forth in Rev. Proc. 92-16, 1992-1 C.B. 673 (as modified by Rev. Proc. 94-19, 1994-1 C.B. 605).

Voluntary Compliance Resolution Program

.05 The procedures for obtaining corrections of operational qualification plan defects under the Voluntary Compliance Resolution (VCR) Program are contained in Rev. Proc. 94-62, 1994-2 C.B. 778.

Chief Counsel

.06 The procedures for obtaining rulings, closing agreements, and information letters on issues within the jurisdiction of the Chief Counsel are contained in Rev. Proc. 96-1, this Bulletin, including tax issues involving interpreting or applying the federal tax laws and income tax treaties relating to international transactions.

Alcohol, tobacco, and firearms taxes

.07 The procedures for obtaining letter rulings, etc., that apply to federal alcohol, tobacco, and firearms taxes under subtitle E of the Internal Revenue Code are under the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms. (*See* 26 C.F.R. § 601.328 (1995)).

SECTION 6. UNDER WHAT CIRCUMSTANCES DOES THE NATIONAL OFFICE ISSUE LETTER RULINGS?

In exempt organizations matters

.01 In exempt organizations matters, the national office issues letter rulings on proposed transactions and on completed transactions if the request is submitted before the return is filed for the year in which the transaction that is the subject of the request was completed. The national office issues letter rulings involving:

- (1) Organizations exempt from tax under § 501, including private foundations;
- (2) Organizations described in § 170(b)(1)(A) (except clause (v));

- (3) Political organizations described in § 527;
- (4) Trusts described in § 4947(a);
- (5) Welfare benefit plans described in § 4976; and
- (6) Other matters including issues under §§ 501 through 514, 4911, 4912, 4940 through 4948, 4955, 6033, 6104, 6113, and 6115.

In employee plans matters

.02 In employee plans matters, the national office issues letter rulings on proposed transactions and on completed transactions either before or after the return is filed. The national office issues letter rulings involving:

- (1) §§ 72, 101(d), 219, 381(c)(11), 402, 403(b), 404, 412, 414(d), 414(e), 419, 419A, 511 through 514, 4971, 4972, 4973, 4974, 4978, 4979, 4980, and 4980A;
- (2) Waiver of the minimum funding standard (*See* Rev. Proc. 94–41, 1994–1 C.B. 711), and changes in funding methods and actuarial assumptions under § 412(c)(5);
- (3) Whether a plan amendment is reasonable and provides for only de minimis increases in plan liabilities in accordance with §§ 401(a)(33) and 412(f)(2)(A) of the Code (*See* Rev. Proc. 79–62, 1979–2 C.B. 576);
- (4) A change in the plan year of an employee retirement plan and the trust year of a tax-exempt employees’ trust (*See* Rev. Proc. 87–27, 1987–1 C.B. 769);
- (5) The tax consequences of prohibited transactions under §§ 503 and 4975;
- (6) Whether individual retirement accounts established by employers or associations of employees meet the requirements of § 408(c) (*See* Rev. Proc. 87–50, as modified by Rev. Proc. 91–44 and Rev. Proc. 92–38);
- (7) With respect to employee stock ownership plans and tax credit employee stock ownership plans, §§ 409(l), 409(m), and 4975(d)(3). Other subsections of §§ 409 and 4975(e)(7) involve qualification issues within the jurisdiction of the key district offices.
- (8) Where the Assistant Commissioner (Employee Plans and Exempt Organizations) has authority to grant extensions of certain periods of time within which the taxpayer must perform certain transactions (for example, the 90-day period for reinvesting in employer securities under § 1.46–8(e)(10) of the regulations), the taxpayer’s request for an extension of such time period must be postmarked (or received, if hand delivered to the national office) no later than the expiration of the original time period. Thus, for example, a request for an extension of the 90-day period under § 1.46–8(e)(10) must be made before the expiration of this period. However, see section 6.04 with respect to elections under § 301.9100–1 of the Procedure and Administration Regulations.

In qualifications matters

.03 The national office ordinarily will not issue letter rulings on matters involving a plan’s qualified status under §§ 401 through 420 and § 4975(e)(7). These matters are generally handled by the key district offices’ determination letter program as provided in Rev. Proc. 96–6, this Bulletin, Rev. Proc. 93–10, Rev. Proc. 93–12, and Rev. Proc. 93–39 (as superseded in part by Rev. Proc. 96–6; see section 2.19 of this revenue procedure). Although the national office will not ordinarily issue rulings on matters involving plan qualification, rulings may be issued where, (1) the taxpayer has demonstrated to the Service’s satisfaction that the qualification issue involved is unique and requires immediate guidance, (2) as a practical matter, it is not likely that such issue will be addressed through the determination letter process, and (3) the Service determines that it is in the interest of good tax administration to provide guidance to the taxpayer with respect to such qualification issue.

Request for an extension of time for making an election or for other relief under § 301.9100–1 of the Procedure and Administration Regulations

.04 The national office will consider a request for an extension of time for making an election or other application for relief under § 301.9100–1 of the Procedure and Administration Regulations even if submitted after the return covering the issue presented in the § 301.9100–1 request has been filed and even if submitted after an examination of the return has begun or after the issues in the return are being considered by an appeals office. In such a case, the national office will notify the field office that has examination jurisdiction over the taxpayer’s return.

Except for those requests pertaining to applications for recognition of exemption, § 301.9100–1 requests, even those submitted after the examination of the taxpayer’s

return has begun, are letter ruling requests and therefore should be submitted pursuant to this revenue procedure, and require payment of the applicable user fee, referenced in section 9.02(14) of this revenue procedure. In addition, the taxpayer must submit the information required by Rev. Proc. 92-85, 1992-2 C.B. 490 (as modified by Rev. Proc. 96-1, this Bulletin, and Rev. Proc. 93-28, 1993-2 C.B. 344).

However, an election made pursuant to section 4 of Rev. Proc. 92-85, pertaining to an automatic extension of time under § 301.9100-1 of the Procedure and Administration Regulations, is not a letter ruling and does not require payment of any user fee.

Issuance of a letter ruling before the adoption of regulations

.05 Unless the issue is covered by section 8 of this procedure, a letter ruling may be issued before the adoption of regulations (either temporary or final) that interpret the provisions of any act under the following conditions:

Answer is clear or is reasonably certain

(1) If the letter ruling request presents an issue for which the answer seems clear by applying the statute to the facts or for which the answer seems reasonably certain but not entirely free from doubt, a letter ruling will be issued.

Answer is not reasonably certain

(2) The Service will consider all letter ruling requests and use its best efforts to issue a letter ruling even if the answer does not seem reasonably certain where the issuance of a letter ruling is in the best interest of tax administration.

Issue cannot be readily resolved before regulations are issued

(3) A letter ruling will not be issued if the letter ruling request presents an issue that cannot be readily resolved before regulations are issued.

Issues in prior return

.06 The national office ordinarily does not issue rulings if, at the time the ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period, and that issue—

(1) is being examined by a key district director,

(2) is being considered by an appeals office,

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

(4) has been examined by a key district director or considered by an appeals office, and the statutory period of limitation has not expired for either assessment or filing a claim for a refund or a closing agreement covering the issue of liability has not been entered into by a key district director or by an appeals office.

If a return dealing with an issue for a particular year is filed while a request for a ruling on that issue is pending, the national office will issue the ruling unless it is notified by the taxpayer that an examination of that issue or the identical issue on an earlier year's return has been started by a key district director. *See* section 9.05. However, even if an examination has begun, the national office ordinarily will issue the letter ruling if the key district director agrees, by memorandum, to permit the ruling to be issued.

Generally not to business associations or groups

.07 The national office does not issue letter rulings to business, trade, or industrial associations or to similar groups concerning the application of the tax laws to members of the group. But groups and associations may submit suggestions of generic issues that would be appropriately addressed in revenue rulings. *See* Rev. Proc. 89-14, which states objectives of and standards for the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

The national office, however, may issue letter rulings to groups or associations on their own tax status or liability if the request meets the requirements of this revenue procedure.

Generally not to foreign governments

.08 The national office does not issue letter rulings to foreign governments or their political subdivisions about the U.S. tax effects of their laws. Also, the national office does not issue letter rulings on a matter involving the federal tax consequences of any proposed federal, state, local, municipal, or foreign legislation.

However, the national office may issue letter rulings to foreign governments or their political subdivisions on their own tax status or liability under U.S. law if the request meets the requirements of this revenue procedure. In addition, the national office may provide general information in response to an inquiry.

SECTION 7. UNDER WHAT CIRCUMSTANCES DO KEY DISTRICT DIRECTORS ISSUE DETERMINATION LETTERS?

Circumstances under which letters are issued by the key district director

.01 Key district directors issue determination letters only if the question presented is specifically answered by a statute, tax treaty, or regulation, or by a conclusion stated in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin.

In general

.02 In employee plans and exempt organizations matters, key district directors issue determination letters in response to taxpayers' written requests on completed transactions that affect returns over which they have examination jurisdiction. However, see section 12.08 of this revenue procedure. A determination letter usually is not issued for a question concerning a return to be filed by the taxpayer if the same question is involved in a return under examination.

In situations involving continuing transactions, such as whether an ongoing activity is an unrelated trade or business, the national office would issue a ruling covering future tax periods and periods for which a return had not yet been filed.

Key district directors do not issue determination letters on the tax consequences of proposed transactions, except as provided in sections 7.03 and 7.04 below.

In employee plans matters

.03 In employee plans matters, key district directors issue determination letters on the qualified status of employee plans under §§ 401, 403(a), 409 and 4975(e)(7), and the exempt status of any related trust under § 501. *See* Rev. Proc. 96-6, this Bulletin, Rev. Proc. 93-10, Rev. Proc. 93-12, and Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure).

In exempt organizations matters

.04 In exempt organizations matters, the key district directors issue determination letters involving:

(1) Qualification for exempt status of organizations described in §§ 501 and 521 to the extent provided in Rev. Proc. 90-27, 1990-1 C.B. 514;

(2) Classification of private foundation status as provided in Rev. Proc. 76-34, 1976-2 C.B. 656;

(3) Recognition of unusual grants to certain organizations under §§ 170(b)(1)(A)(vi) and 509(a)(2);

(4) Requests for relief under § 301.9100-1 of the Procedure and Administration Regulations in connection with applications for recognition of exemption; and

(5) Advance approval under § 4945 of organizations' grant making procedures whose determination letter requests or applications disclose (or who have otherwise properly disclosed) a grant program or plans to conduct such a program. If questions arise regarding grant-making procedures that cannot be resolved on the basis of law, regulations, a clearly applicable revenue ruling, or other published precedent, the key district director will forward the matter to the national office for technical advice.

Circumstances under which letters are not issued by the key district director

.05 A key district director will not issue a determination letter in response to any request if—

(1) it appears that the taxpayer has directed a similar inquiry to the national office;

(2) the same issue involving the same taxpayer or a related taxpayer is pending in a case in litigation or before an appeals office;

(3) the determination letter is requested by an industry, trade association, or similar group on behalf of individual taxpayers within the group (other than subordinate organizations covered by a group exemption letter); or

(4) the request involves an industry-wide problem.

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

Requests involving returns already filed

.06 A request received by a key district director on a question concerning a return that is under examination, will be, in general, considered in connection with the examination of the return. If a response is made to the request before the return is examined, it will be considered a tentative finding in any later examination of that return.

Attach a copy of determination letter to taxpayer's return

.07 A taxpayer who, before filing a return, receives a determination letter about any transaction that has been consummated and that is relevant to the return being filed should attach a copy of the determination letter to the return when it is filed.

Review of determination letters

.08 Determination letters issued under sections 7.02 through 7.04 of this revenue procedure are not reviewed by the national office before they are issued. If a taxpayer believes that a determination letter of this type is in error, the taxpayer may ask the key district director to reconsider the matter or to request technical advice from the national office as explained in Rev. Proc. 96-5, also in this Bulletin.

(1) In employee plans matters, the procedures for review of determination letters relating to the qualification of employee plans involving §§ 401 and 403(a) of the Code are provided in Rev. Proc. 96-6, Rev. Proc. 93-10, Rev. Proc. 93-12, and Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure).

(2) In exempt organizations matters, the procedures for the review of determination letters relating to the exemption from federal income tax of certain organizations under §§ 501 and 521 of the Code are provided in Rev. Proc. 90-27.

SEC. 8. UNDER WHAT CIRCUMSTANCES DOES THE SERVICE HAVE DISCRETION TO ISSUE LETTER RULINGS AND DETERMINATION LETTERS?

Ordinarily not in certain areas because of factual nature of the problem

.01 The Service ordinarily will not issue a letter ruling or determination letter in certain areas because of the factual nature of the problem involved or because of other reasons. The Service may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case.

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

Not on alternative plans or hypothetical situations

.02 A letter ruling or a determination letter will not be issued on alternative plans or on proposed transactions or on hypothetical situations.

Ordinarily not on part of an integrated transaction

.03 The national office ordinarily will not issue a letter ruling on only part of an integrated transaction.

Law requires ruling letter

.04 The national office will issue rulings on prospective or future transactions if the law or regulations require a determination of the effect of a proposed transaction for tax purposes.

Issues under consideration by PBGC or DOL

.05 A ruling or determination letter relating to an issue that is being considered by the Pension Benefit Guaranty Corporation (PBGC) or the Department of Labor (DOL), and involves the same taxpayer, shall be issued at the discretion of the Service.

Cafeteria plans

.06 The Service does not issue ruling letters or determination letters on whether a cafeteria plan satisfies the requirements of § 125 of the Code. *See also* Rev. Proc. 96-3, also in this Bulletin, for areas under the jurisdiction of the Associate Chief Counsel (Domestic) involving cafeteria plans in which advance rulings or determination letters will not be issued.

Determination letters

.07 *See* section 3.02 of Rev. Proc. 96-6 for employee plans matters on which determination letters will not be issued.

Domicile in a foreign jurisdiction

.08

(1) The Service is ordinarily unwilling to rule in situations where a taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(2) The provisions of subsection 8.08(1) above shall not apply if the taxpayer or affected related party (a) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (b) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

SECTION 9. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING LETTER RULINGS AND DETERMINATION LETTERS?

In general

.01 This section explains the general instructions for requesting letter rulings and determination letters on all matters. Requests for letter rulings and determination letters require the payment of the applicable user fee discussed in section 9.02(14) of this revenue procedure.

Specific and additional instructions also apply to requests for letter rulings and determination letters on certain matters. Those matters are listed in section 10 of this revenue procedure followed by a reference (usually to another revenue procedure) where more information can be obtained.

Certain information required in all requests

.02

Facts

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

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

(b) the location of the key district office that has or will have examination jurisdiction over the return (not the service center where the return is filed);

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

(d) a detailed description of the transaction.

The Service will usually not rule on only one step of a larger integrated transaction. See section 8.03 of this revenue procedure. However, if such a letter ruling is requested, the facts, circumstances, true copies of relevant documents, etc., relating to the entire transaction must be submitted.

Documents

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

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

Analysis of material facts

(3) Analysis of material facts. All material facts in documents must be included rather than merely incorporated by reference, in the taxpayer's initial request or in supplemental letters. These facts must be accompanied by an analysis of their bearing on the issue or issues, specifying the provisions that apply.

Same issue in an earlier return

(4) Statement regarding whether same issue is in an earlier return. The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, the same issue is in an earlier return of the taxpayer (or in a return for any year of a related taxpayer within the meaning of § 267, or of a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504).

If the statement is affirmative, it must specify whether the issue—

- (a) is being examined by a key district director;
- (b) has been examined and if so, whether or not the statutory period of limitations has expired for either assessing tax or filing a claim for refund or credit of tax;
- (c) has been examined and if so, whether or not a closing agreement covering the issue or liability has been entered into by a key district director;
- (d) is being considered by an appeals office in connection with a return from an earlier period;
- (e) has been considered by an appeals office in connection with a return from an earlier period and if so, whether or not the statutory period of limitations has expired for either assessing tax or filing a claim for refund or credit of tax;
- (f) has been considered by an appeals office in connection with a return from an earlier period and whether or not a closing agreement covering the issue or liability has been entered into by an appeals office;
- (g) is pending in litigation in a case involving the taxpayer or a related taxpayer; or
- (h) in employee plans matters, is being considered by the Pension Benefit Guaranty Corporation or the Department of Labor.

Same or similar issue previously submitted

(5) Statement regarding whether same or similar issue was previously ruled on or requested. The request must also state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives—

- (a) the Service previously ruled on the same or similar issue for the taxpayer (or a related taxpayer within the meaning of § 267, or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) or a predecessor; or
- (b) the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted the same or similar issue to the Service but withdrew it before a letter ruling or determination letter was issued.

If the same or a similar issue was previously submitted, the statement must give the date the request was submitted, withdrawn, or ruled on, and other details of the Service's consideration of the issue.

Statement of authorities supporting taxpayer's views

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

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

Statement of authorities contrary to taxpayer's views

(7) Statement of contrary authorities. The taxpayer is also encouraged to inform the Service about, and discuss the implications of, any authority believed to be contrary to the position advanced, such as legislation (or pending legislation), tax treaties, court decisions, regulations, 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 would be helpful. If the taxpayer does not

furnish either contrary authority or a statement that none exists, the Service in complex cases or those presenting difficult or novel issues may request submission of contrary authorities or a statement that none exists. Failure to comply with this request may result in the Service's refusal to issue a letter ruling or determination letter.

Identifying and discussing contrary authorities will generally enable Service personnel to understand the issue and relevant authorities more quickly. When Service personnel receive the request, they will have before them the taxpayer's thinking on the effect and applicability of contrary authorities. This information should make research easier and lead to earlier action by the Service. If the taxpayer does not disclose and distinguish significant contrary authorities, the Service may need to request additional information, which will delay action on the request.

Statement identifying pending legislation

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

Deletions statement required by § 6110

(9) Statement identifying information to be deleted from copy of letter ruling or determination letter for public inspection. The text of certain letter rulings and determination letters is open to public inspection under § 6110. The Service makes deletions from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), a request for a letter ruling or determination letter must be accompanied by a statement indicating the deletions desired ("deletions statement"). If the deletions statement is not submitted with the request, a Service representative will tell the taxpayer that the request will be closed if the Service does not receive the deletions statement within 30 calendar days. *See* section 11.03 of this revenue procedure.

Format of deletions statement

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

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

Location of deletions statement

(b) The deletions statement must not appear in the request, but instead must be made in a separate document and placed on top of the request for a letter ruling or determination letter.

Signature

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

Additional information

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

Taxpayer may protest deletions not made

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

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

(f) After receiving the notice under § 6110(f)(1) of intention to disclose, but within 60 calendar days after the date of notice, the taxpayer may send a request for delay of public inspection under either § 6110(g)(3) or (4). The request for delay must be sent to the Service office indicated on the notice of intention to disclose. A request for delay under § 6110(g)(3) must contain the date on which it is expected that the underlying transaction will be completed. The request for delay under § 6110(g)(4) must contain a statement from which the Commissioner of Internal Revenue may determine that there are good reasons for the delay.

Section 6110(k)(1) states that § 6110 disclosure provisions do not apply to any matter to which § 6104 applies. Therefore, letter rulings, determination letters, technical advice memoranda, and related background file documents dealing with the following matters (covered by § 6104) are not subject to § 6110 disclosure provisions—

(i) An application for exemption under § 501(a) as an organization described in § 501(c) or (d), or any application filed with respect to the qualification of a pension, profit-sharing or stock bonus plan, or an individual retirement account, whether the plan or account has more than 25 or less than 26 participants, or any application for exemption under § 501(a) by an organization forming part of such a plan or account;

(ii) Any document issued by the Internal Revenue Service in which the qualification or exempt status of an organization, plan, or account is granted, denied, or revoked or the portion of any document in which technical advice with respect thereto is given to a key district director;

(iii) Any application filed and any document issued by the Internal Revenue Service with respect to the qualification or status of national office master and prototype plans and regional prototype plans;

(iv) The portion of any document issued by the Internal Revenue Service with respect to the qualification or exempt status of an organization, plan, or account, of a proposed transaction by such organizations, plan, or account; and

(v) Any document issued by the Internal Revenue Service in which is discussed the status of an organization under § 509(a) or § 4942(j)(3), other than one issued to a nonexempt charitable trust described in § 4947(a)(1). This includes documents discussing the termination of private foundation status under § 507.

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

(11) Authorized representatives. To sign the request or to appear before the Service in connection with the request, the representative must be:

(a) An attorney who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an attorney and current authorization to represent the taxpayer;

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

(c) An enrolled agent who is a person, other than an attorney or certified public accountant, that is currently enrolled to practice before the Service and is not currently under suspension or disbarment from practice before the Service, including a person enrolled to practice only for employee plans matters. He or she must file a written declaration with the Service showing current enrollment and authorization to represent the taxpayer. Either the enrollment number or the expiration date of the enrollment

Taxpayer may request delay of public inspection

Signature on request

Authorized representatives

Attorney

Certified public accountant

Enrolled agent

card must be included in the declaration. For the rules on who may practice before the Service, see Treasury Department Circular No. 230 (31 C.F.R. part 10 (1995));

Enrolled actuary

(d) An enrolled actuary who is a person enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 and qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an enrolled actuary and current authorization to represent the taxpayer. Practice as an enrolled actuary is limited to representation with respect to issues involving the following statutory provisions: §§ 401, 403(a), 404, 405, 412, 413, 414, 4971, 6057, 6058, 6059, 6652(e), 6652(f), 6692, 7805(b), and 29 U.S.C. 1083;

Sponsor of regional prototype plan

(e) Certain individuals, partnerships or corporations may sponsor regional prototype plans according to the procedures of Rev. Proc. 89-13. *See* section 4 of Rev. Proc. 89-13; or

A person with a "Letter of Authorization"

(f) Any other person, including a foreign representative who has received a "Letter of Authorization" from the Director of Practice under section 10.7(d) of Treasury Department Circular No. 230. A person may make a written request for a "Letter of Authorization" to: Office of Director of Practice, HR:DP, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224. Section 10.7(d) of Circular No. 230 authorizes the Commissioner to allow an individual who is not otherwise eligible to practice before the Service to represent another person in a particular matter.

Employee, general partner, bona fide officer, administrator, trustee, etc.

The above requirements do not apply to a regular full-time employee representing his or her employer, to a general partner representing his or her partnership, to a bona fide officer representing his or her corporation, association, or organized group, or to a trustee, receiver, guardian, personal representative, administrator, or executor representing a trust, receivership, guardianship, or estate. A preparer of a return (other than a person referred to in paragraph (a), (b), (c), (d), (e), or (f) of this section 9.02(11)) who is not a full-time employee, general partner, a bona fide officer, or an administrator, trustee, etc., may not represent a taxpayer in connection with a letter ruling, determination letter or a technical advice request. *See* section 10.7(c) of Treasury Department Circular No. 230.

Foreign representative

A foreign representative (other than a person referred to in paragraph (a), (b), (c), (d), (e) or (f) of this section 9.02(11)) is not authorized to practice before the Service and, therefore, must withdraw from representing a taxpayer in a request for a letter ruling or a determination letter. In this situation, the nonresident alien or foreign entity must submit the request for a letter ruling or a determination letter on the individual's or entity's own behalf or through a person referred to in paragraph (a), (b), (c), (d), (e) or (f) of this section 9.02(11).

Power of attorney and declaration of representative

(12) Power of attorney and declaration of representative. Any authorized representative, whether or not enrolled to practice, must also comply with the conference and practice requirements of the Statement of Procedural Rules (26 C.F.R. § 601.501-509 (1995)), which provide the rules for representing a taxpayer before the Service.

It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used to provide the representative's authorization (Part I of Form 2848, Power of Attorney) and the representative's qualification (Part II of Form 2848, Declaration of Representative). The name of the person signing Part I of Form 2848 should also be typed or printed on this form. A stamped signature is not permitted. For additional information regarding the power of attorney form, see section 9.03(2) of this revenue procedure.

For the requirement regarding compliance with Treasury Department Circular No. 230, see section 9.09 of this revenue procedure.

Penalties of perjury statement

(13) Penalties of perjury statement. A request for a letter ruling or determination letter and any factual information or change in the ruling request submitted at a later time must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the

requested letter ruling or determination letter are true, correct, and complete." A taxpayer who submits additional factual information on several occasions may provide one declaration subsequent to all submissions that refers to all submissions.

Signature by taxpayer

The declaration must be signed and dated by the taxpayer, not the taxpayer's representative. A stamped signature is not permitted. The person who signs for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts, and whose duties are not limited to obtaining a letter ruling or determination letter from the Service. If the corporate taxpayer is a member of an affiliated group filing consolidated returns, a penalties of perjury statement must also be signed and submitted by an officer of the common parent of the group.

The person signing for a trust or partnership must be a trustee or general partner who has personal knowledge of the facts.

Applicable user fee

(14) Applicable user fee. Section 10511 of the Revenue Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330-382, 1330-446, enacted December 22, 1987, as amended by § 11319 of the Omnibus Budget Reconciliation Act of 1990, 1991-2 C.B. 481, 511, enacted November 5, 1990, and by § 743 of the Uruguay Round Agreements Act, 1995-1 C.B. 230, 239, enacted December 8, 1994, requires taxpayers to pay user fees for requests for rulings, opinion letters, determination letters, and similar requests. Rev. Proc. 96-8, page 00, this Bulletin, contains the schedule of fees for each type of request under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) and provides guidance for administering the user fee requirements. If two or more taxpayers are parties to a transaction and each requests a letter ruling, each taxpayer must satisfy the rules herein and additional user fees may apply.

Number of copies of request to be submitted

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

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

(a) the taxpayer is requesting separate letter rulings or determination letters on different issues as explained later under section 9.03(1) of this revenue procedure;

(b) the taxpayer is requesting deletions other than names, addresses, and identifying numbers, as explained in section 9.02(9) of this revenue procedure; or

(c) a closing agreement (as defined in section 3.03 of this revenue procedure) is being requested on the issue presented.

Sample of a letter ruling request

(16) Sample format for a letter ruling request. To assist a taxpayer or the taxpayer's representative in preparing a letter ruling request, a sample format for a letter ruling request is provided in Appendix A. This format is not required to be used by the taxpayer or the taxpayer's representative. If the letter ruling request is not identical or similar to the format in Appendix A, the different format will neither defer consideration of the letter ruling request nor be cause for returning the request to the taxpayer or taxpayer's representative.

Checklist

(17) Checklist for letter ruling requests. The Service will be able to respond more quickly to a taxpayer's letter ruling request if it is carefully prepared and complete. The checklist in Appendix B of this revenue procedure is designed to assist taxpayers in preparing a request by reminding them of the essential information and documents to be furnished with the request. The checklist in Appendix B must be completed to the extent required by the instructions in the checklist, signed and dated by the taxpayer or the taxpayer's representative, and placed on top of the letter ruling request. A photocopy of the checklist in this revenue procedure may be used.

Additional information required in certain circumstances

.03

Multiple issues

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

ruling is needed sooner than another), the Service will usually comply with the request unless it is not feasible or not in the best interests of the Service to do so. A taxpayer who wants separate letter rulings on multiple issues should make this clear in the request and submit two copies of the request.

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

Power of attorney

(2) To designate recipient of original or copy of letter ruling or determination letter. Unless the power of attorney provides otherwise, the Service will send the original of the letter ruling or determination letter to the taxpayer and a copy of the letter ruling or determination letter to the taxpayer's representative. It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used to provide the representative's authorization. *See* section 9.02(12) of this revenue procedure.

Copies of letter ruling or determination letter sent to multiple representatives

(a) To have copies sent to multiple representatives. When a taxpayer has more than one representative, the Service will send the copy of the letter ruling or determination letter to the first representative named on the most recent power of attorney. If the taxpayer wants an additional copy of the letter ruling or determination letter sent to the second representative listed in the power of attorney, the taxpayer must check the appropriate box on Form 2848. If this form is not used, the taxpayer must state in the power of attorney that a copy of the letter ruling or determination letter is to be sent to the second representative listed in the power of attorney. Copies of the letter ruling or determination letter, however, will be sent to no more than two representatives.

Original of letter ruling or determination letter sent to taxpayer's representative

(b) To have original sent to taxpayer's representative. A taxpayer may request that the original of the letter ruling or determination letter be sent to the taxpayer's representative. In this case, a copy of the letter ruling or determination letter will be sent to the taxpayer.

If the taxpayer wants the original of the letter ruling or determination letter sent to the taxpayer's representative, the taxpayer must check the appropriate box on Form 2848. If this form is not used, the taxpayer must state in the power of attorney that the original of the letter ruling or determination letter is to be sent to the taxpayer's representative. When a taxpayer has more than one representative, the Service will send the original of the letter ruling or determination letter to the first representative named in the most recent power of attorney.

No copy of letter ruling or determination letter sent to taxpayer's representative

(c) To have no copy sent to taxpayer's representative. If a taxpayer does not want a copy of the letter ruling or determination letter sent to any representative, the taxpayer must check the appropriate box on Form 2848. If this form is not used, the taxpayer must state in the power of attorney that a copy of the letter ruling or determination letter is not to be sent to any representative.

Expeditious handling

(3) To request expeditious handling. The Service processes requests for letter rulings and determination letters in order of the date received, and as expeditiously as possible. A taxpayer who has a compelling need to have a request processed ahead of the regular order must request expeditious handling. The request must be made in writing, preferably in a separate letter with, or soon after filing, the request for the letter ruling or determination letter. The request must explain the need for expeditious handling.

If the request for expeditious handling is not made in a separate letter, then the letter in which the letter ruling or determination letter request is made should say, at the top of the first page: "**Expeditious Handling Is Requested. See page ____ of this letter.**"

A request for expeditious handling will not be forwarded to a rulings branch for action until the check or money order for the user fee in the correct amount is received.

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

transaction will not be a sufficient reason to process a request out of order. Accordingly, the Service urges taxpayers to submit their requests well in advance of the contemplated transaction.

Facsimile (fax) transmission

(4) To receive a letter ruling or determination letter or submit a request for a letter ruling by facsimile transmission. Letter rulings and determination letters ordinarily are not sent by facsimile (fax) transmission. However, if the taxpayer requests, a copy of a letter ruling or determination letter may be faxed to the taxpayer or the taxpayer's authorized representative.

A request to fax a copy of the letter ruling or determination letter to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original letter ruling or determination letter request or prior to the approval of the letter ruling or determination letter. The request must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the letter ruling is to be faxed.

In addition, because of the nature of fax transmission, a statement containing a waiver of any disclosure violations resulting from the fax transmission must accompany the request. Nevertheless, the national office will take certain precautions to protect confidential information. For example, the national office will use a cover sheet that identifies the intended recipient of the fax and the number of pages transmitted. The cover sheet, if possible, will not identify the specific taxpayer by name, and it will be the first page covering the letter ruling being faxed.

Original letter ruling requests sent by fax are discouraged because such requests must be treated in the same manner as requests by letter. For example, the faxed letter ruling request will not be forwarded to the rulings branch for action until the check for the user fee is received.

Requesting a conference

(5) To request a conference. A taxpayer who wants to have a conference on the issues involved should indicate this in writing when, or soon after, filing the request. *See also* sections 11.05, 11.06, and 12.09(2) of this revenue procedure.

Address to send the request

.04

Requests for letter rulings

(1) Requests for letter rulings should be sent to the following offices (as appropriate):

Employee Plans Division

Internal Revenue Service
Assistant Commissioner (EP/EO)
Attention: CP:E:EP:T
P.O. Box 14073, Ben Franklin Station
Washington, D.C. 20044

Exempt Organizations Division

Internal Revenue Service
Assistant Commissioner (EP/EO)
Attention: CP:E:EO:P:2
P.O. Box 120, Ben Franklin Station
Washington, D.C. 20044

Requests may also be hand delivered to Room 6052, 1111 Constitution Avenue, N.W., Washington, DC between 8:30 a.m. and 4:00 p.m. on work days. After working hours, they may be hand delivered to the drop box at the 12th Street entrance of the same building.

Requests for information letters

(2) Requests for information letters on either exempt organizations matters or employee plans matters should be sent to the Employee Plans Technical Branches or the Exempt Organizations Technical Branches (as appropriate):

Internal Revenue Service
1111 Constitution Avenue, N.W.
Attention: CP:E:EO:P:2, Room 6052
Washington, DC 20224

Requests for determination letters

(3) Requests for determination letters should be sent to the IRS key district director whose office has or will have examination jurisdiction over the taxpayer's return. For fees required with determination letter requests, see section 6.08 of Rev. Proc. 96-8, this Bulletin.

Pending letter ruling requests

.05

Must notify national office if examination of issue begins, consideration by PBGC or DOL starts, or legislation is introduced

The taxpayer must notify the national office if, after the letter ruling request is filed but before a letter ruling is issued, the taxpayer knows that—

- (1) an examination of the issue or the identical issue on an earlier year's return has been started by a key district director;
- (2) in employee plans matters, the issue is being considered by the Pension Benefit Guaranty Corporation or the Department of Labor; or
- (3) legislation that may affect the transaction is introduced (*see* section 9.02(8) of this revenue procedure).

Must notify national office if return is filed and must attach request to return

In addition, if the taxpayer files a return before a letter ruling is received from the national office concerning the issue, the taxpayer must notify the national office that the return has been filed. The taxpayer must also attach a copy of the letter ruling request to the return to alert the key district office and thereby avoid premature district action on the issue.

When to attach letter ruling to return

.06 A taxpayer who receives a letter ruling before filing a return about any transaction that is relevant to the return being filed must attach a copy of the letter ruling to the return when it is filed.

How to check on status of request

.07 The taxpayer or the taxpayer's authorized representative may obtain information regarding the status of a request by calling the person whose name and telephone number are shown on the acknowledgement of receipt of the request.

Request may be withdrawn or the national office may decline to issue ruling

.08 If a taxpayer withdraws a request for a letter ruling or if the national office declines to issue a letter ruling, the national office will notify the appropriate key district director and may give its views on the issues in the request to the appropriate key district director to consider in any later examination of the return. The taxpayer may withdraw a request for a letter ruling or determination letter at any time before the letter ruling or determination letter is signed by the Service. Correspondence and exhibits related to a request that is withdrawn or related to a letter ruling request for which the national office declines to issue a letter ruling will not be returned to the taxpayer (*see* section 9.02(2) of this revenue procedure). The user fee will not be returned for a request that is withdrawn. In appropriate cases, the Service may publish its conclusions in a revenue ruling or revenue procedure.

A request for a ruling will not be suspended in the national office at the request of a taxpayer.

Compliance with Treasury Department Circular No. 230

.09 The taxpayer's authorized representative, whether or not enrolled, must comply with Treasury Department Circular No. 230, which provides the rules for practice before the Service. In those situations when the national office believes that the taxpayer's representative is not in compliance with Circular No. 230, the national office will bring the matter to the attention of the Director of Practice.

For the requirement regarding compliance with the conference and practice requirements, see section 9.02(12) of this revenue procedure.

SECTION 10. WHAT SPECIFIC, ADDITIONAL PROCEDURES APPLY TO CERTAIN REQUESTS?

In general

.01 Specific revenue procedures supplement the general instructions for requests explained in section 9 of this revenue procedure and apply to requests for letter rulings or determination letters regarding the Code sections and matters listed in this section.

Exempt Organizations

.02 If the request is for the qualification of an organization for exemption from federal income tax under § 501 or 521, see Rev. Proc. 72-5, 1972-1 C.B. 709, regarding religious and apostolic organizations; Rev. Proc. 80-27, 1980-1 C.B. 677, concerning group exemptions; and Rev. Proc. 90-27 1990-1 C.B. 514, regarding applications for recognition of exemption.

Employee Plans

.03

(1) For requests to obtain approval for a retroactive amendment described in § 412(c)(8) of the Code and § 302(c)(8) of the Employee Retirement Income Security Act of 1974 (ERISA) that reduces accrued benefits, see Rev. Proc. 94-42, 1994-1 C.B. 717.

(2) For requests for a waiver of the minimum funding standard, see Rev. Proc. 94-41, 1994-1 C.B. 711.

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

(4) For requests for a determination that a plan amendment is reasonable and provides for only de minimis increases in plan liabilities in accordance with §§ 401(a)(33) and 412(f)(2)(A) of the Code, see Rev. Proc. 79-62, 1979-2 C.B. 576.

(5) For requests to obtain approval for an extension of an amortization period of any unfunded liability in accordance with § 412(e) of the Code, see Rev. Proc. 79-61, 1979-2 C.B. 575.

(6) For requests by administrators or sponsors of a defined benefit plan to obtain approval for a change in funding method, see Rev. Proc. 78-37, 1978-2 C.B. 540.

(7) For requests for the return to the employer of certain nondeductible contributions, see Rev. Proc. 90-49, 1990-2 C.B. 620.

(8) For requests for determination letters for plans under §§ 401, 403(a), 409, and 4975(e)(7) of the Code, and for the exempt status of any related trust under § 501, see Rev. Proc. 96-6, Rev. Proc. 93-10, Rev. Proc. 93-12, and Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure).

SECTION 11. HOW DOES THE NATIONAL OFFICE HANDLE LETTER RULING REQUESTS?

In general

.01 The national office will issue letter rulings on the matters and under the circumstances explained in sections 4 and 6 of this revenue procedure and in the manner explained in this section.

Is not bound by informal opinion expressed

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

Tells taxpayer if request lacks essential information during initial contact

.03 If a request for a letter ruling or determination letter does not comply with all the provisions of this revenue procedure, the request will be acknowledged and the Service representative will tell the taxpayer during the initial contact which requirements have not been met.

Information must be submitted within 30 calendar days

If the request lacks essential information, which may include additional information needed to satisfy the procedural requirements of this revenue procedure, as well as substantive changes to transactions or documents needed from the taxpayer, the branch representative will tell the taxpayer during the initial contact that the request will be closed if the Service does not receive the information within 30 calendar days. See section 11.04 of this revenue procedure for instructions on submissions of additional information.

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. However, the taxpayer must pay another user fee before the case can be reopened.

Letter ruling request mistakenly sent to key district director

A request for a letter ruling sent to the key district director that does not comply with the provisions of this revenue procedure will be returned by the key district director so that the taxpayer can make corrections before sending it to the national office.

Requires prompt submission of additional information requested after initial contact

.04 Material facts furnished to the Service by telephone or fax, or orally at a conference, must be promptly confirmed by letter to the Service with a declaration that the information is provided under penalties of perjury in the form described in section 9.02(13) of this revenue procedure. This confirmation and any additional information requested by the Service that is not part of the information requested during the initial contact must be furnished within 21 calendar days to be considered part of the request.

Encourage use of fax

(1) To facilitate prompt action on letter ruling requests, taxpayers are encouraged to submit additional information by fax as soon as the information is available. The Service representative who requests additional information can provide a telephone number to which the information can be faxed. A copy of this information and a signed perjury statement, however, must be mailed or delivered to the Service.

Address to send additional information

(2) Additional information should be sent to the same address as the original letter ruling request. *See* section 9.04. However, the additional information should include the name, office symbols, and room number of the Service representative who requested the information and the taxpayer's name and the case control number (which the Service representative can provide).

30-day or 21-day period may be extended if justified and approved

(3) An extension of the 30-day period under section 11.03 or the 21-day period under section 11.04, will be granted only if justified in writing by the taxpayer and approved by the branch chief or group manager of the group to which the case is assigned. A request for extension should be submitted before the end of the 30-day or 21-day period. If unusual circumstances close to the end of the 30-day or 21-day period make a written request impractical, the taxpayer should notify the national office within the 30-day or 21-day period that there is a problem and that the written request for extension will be coming soon. The taxpayer will be told promptly, and later in writing, of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

If taxpayer does not submit additional information

(4) If the taxpayer does not follow the instructions for submitting additional information or requesting an extension within the time provided, a letter ruling will be issued on the basis of the information on hand, or, if appropriate, no letter ruling will be issued. When the Service decides not to issue a letter ruling because essential information is lacking, the case will be closed and the taxpayer notified in writing. **If the Service receives the information after the letter ruling request is closed, the request may be reopened and treated as a new request. However, the taxpayer must pay another user fee before the case can be reopened.**

Schedules a conference if requested by taxpayer

.05 A taxpayer may request a conference regarding a letter ruling request. Normally, a conference is scheduled only when the national office considers it to be helpful in deciding the case or when an adverse decision is indicated. If conferences are being arranged for more than one request for a letter ruling involving the same taxpayer, they will be scheduled so as to cause the least inconvenience to the taxpayer. As stated in section 9.03(5) of this revenue procedure, a taxpayer who wants to have a conference on the issue or issues involved should indicate this in writing when, or soon after, filing the request.

If a conference has been requested, the taxpayer will be notified by telephone, if possible, of the time and place of the conference, which must then be held within 21 calendar days after this contact. Instructions for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Service's approval or denial of the request for extension are the same as those explained in section 11.04 of this revenue procedure regarding providing additional information.

Permits taxpayer one conference of right

.06 A taxpayer is entitled, as a matter of right, to only one conference in the national office, except as explained under section 11.09 of this revenue procedure. This conference normally will be held at the branch level and will be attended by a person who, at the time of the conference, has the authority to sign the ruling letter in his or her own name or for the 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. However, at the request of the taxpayer, the conference of right may be held earlier.

No taxpayer has a right to appeal the action of a branch to the division director or to any other official of the Service. But see section 11.09 of this revenue procedure for situations in which the Service may offer additional conferences.

Disallows verbatim recording of conferences

.07 Since 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

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

May offer additional conferences

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

The limit on the number of conferences to which a taxpayer is entitled does not prevent the Service from offering additional conferences, including conferences with an official higher than the branch level, if the Service decides they are needed. Such 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 Service determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

Requires written confirmation of information presented at conference

.10 The taxpayer should furnish to the national 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. *See* section 11.04 of this revenue procedure for instructions on submission of additional information. If the additional information is not received within that time, a ruling will be issued on the basis of the information on hand or, if appropriate, no ruling will be issued.

Procedures for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Service's approval or denial of the requested extension are the same as those stated in section 11.04 of this revenue procedure regarding submitting additional information.

May schedule pre-submission conference

.11 Sometimes it is advantageous to both the Service and the taxpayer to hold a conference before the taxpayer submits the letter ruling request to discuss substantive or procedural issues relating to a proposed transaction. Such conferences are held only when the taxpayer actually intends to make a request and only on a time-available basis. Generally, the taxpayer will be asked to provide a draft of the letter ruling request or other detailed written description of the proposed transaction before the pre-submission conference.

Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b). A letter ruling request submitted following a pre-submission conference will not necessarily be assigned to the branch that held the pre-submission conference.

May, under limited circumstances, schedule a conference to be held by telephone

.12 A taxpayer may request that their conference of right be held by telephone. This may occur, for example, where a taxpayer wants a conference of right but believes that the issue involved does not warrant incurring the expense of traveling to Washington, DC. If a taxpayer makes such a request, the branch chief or group manager will decide if it is appropriate in the particular case to hold the conference of right by telephone. If the request is approved by the branch chief or group manager, the taxpayer will be advised when to call the Service representatives (not a toll-free call).

May request draft of proposed letter ruling at the completion of the ruling process

.13 To accelerate issuance of letter rulings, in appropriate cases near the completion of the ruling process, the Service representative may request that the taxpayer or the taxpayer's representative submit a proposed draft of the letter ruling on the basis of

discussions of the issues. The taxpayer, however, is not required to prepare a draft letter ruling in order to receive a letter ruling.

The format of the submission should be discussed with the Service representative who requests the draft letter ruling. The representative usually can provide a sample format of a letter ruling and will discuss the facts, analysis, and letter ruling language to include.

Taxpayer may also submit draft on a word processing disk

In addition to a typed draft, taxpayers are encouraged to submit this draft on a disk in either Word Perfect 5.1 or ASCII. The typed draft will become part of the permanent files of the national office, and the word processing disk will not be returned. If the Service representative requesting the draft letter ruling cannot answer specific questions about the format of the word processing disk, the questions can be directed to Alan Pipkin at (202) 622-8400 (Employee Plans), or Wayne Hardesty at (202) 622-7644 (Exempt Organizations) (not toll-free calls).

The proposed letter ruling (both typed draft and word processing disk) should be sent to the same address as any additional information and contain in the transmittal the information that should be included with any additional information (for example, a penalties of perjury statement is required). *See* section 11.04 of this revenue procedure.

Advises the taxpayer of final conclusions and, if the Service will rule adversely, offers the taxpayer the opportunity to withdraw the letter ruling request

.14 Generally, before the letter ruling is issued, the branch representative will inform the taxpayer or the taxpayer's authorized representative of the Service's final conclusions. If the Service is going to rule adversely, the taxpayer will be offered the opportunity to withdraw the letter ruling request. If the taxpayer or the taxpayer's representative does not promptly notify the branch representative of a decision to withdraw the ruling request, the adverse letter will be issued. The user fee will not be refunded for a letter ruling request that is withdrawn. *See* section 10 of Rev. Proc. 96-8, this Bulletin.

SECTION 12. WHAT EFFECT WILL A LETTER RULING HAVE?

May be relied on subject to limitations

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

Will not apply to another taxpayer

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

Will be used by a key district director in examining the taxpayer's return

.03 When determining a taxpayer's liability, the key district director must ascertain whether—

- (1) the conclusions stated in the letter ruling are properly reflected in the return;
- (2) the representations upon which the letter ruling was based reflected an accurate statement of the material facts;
- (3) the transaction was carried out substantially as proposed; and
- (4) there has been any change in the law that applies to the period during which the transaction or continuing series of transactions were consummated.

If, when determining the liability, the key district director finds that a letter ruling should be revoked or modified, unless a waiver is obtained from the national office, the findings and recommendations of the key district director will be forwarded to the national office for consideration before further action is taken by the key district director. Such a referral to the national office will be treated as a request for technical advice and the procedures of Rev. Proc. 96-5 will be followed. Otherwise, the letter ruling is to be applied by the key district office in its determination of the taxpayer's liability. Appropriate coordination with the national office will be undertaken if any field official having jurisdiction over a return or other matter proposes to reach a conclusion contrary to a letter ruling previously issued to the taxpayer.

May be revoked or modified if found to be in error

.04 Unless it was part of a closing agreement as described in section 3.03 of this revenue procedure, a letter ruling found to be in error or not in accord with the current views of the Service may be revoked or modified. If a letter ruling is revoked or modified, the revocation or modification applies to all years open under the statute of limitations unless the Service uses its discretionary authority under § 7805(b) to limit the retroactive effect of the revocation or modification.

A letter ruling may be revoked or modified due to—

- (1) a notice to the taxpayer to whom the letter ruling was issued;
- (2) the enactment of legislation or ratification of a tax treaty;
- (3) a decision of the United States Supreme Court;
- (4) the issuance of temporary or final regulations; or

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

Consistent with these provisions, if a letter ruling relates to a continuing action or a series of actions, it ordinarily will be applied until any one of the events described above occurs or until it is specifically withdrawn. Publication of a notice of proposed rulemaking will not affect the application of any letter ruling issued under the procedures in this revenue procedure.

Not generally revoked or modified retroactively

.05 Except in rare or unusual circumstances, the revocation or modification of a letter ruling will not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling provided that—

- (1) there has been no misstatement or omission of material facts;
- (2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling was based;
- (3) there has been no change in the applicable law;
- (4) the letter ruling was originally issued for a proposed transaction; and

(5) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment. For example, the tax liability of each employee covered by a ruling relating to a qualified plan of an employer is directly involved in such ruling. However, the tax liability of a member of an industry is not directly involved in a letter ruling issued to another member and, therefore, the holding in a revocation or modification of a letter ruling to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not extend to one client the non-retroactive application of a revocation or modification of a letter ruling previously issued to another client.

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

Retroactive effect of revocation or modification applied only to a particular transaction

.06 A letter ruling issued on a particular transaction represents a holding of the Service on that transaction only. It will not apply to a similar transaction in the same year or any other year. And, except in unusual circumstances, the application of that letter ruling to the transaction will not be affected by the later issuance of regulations (either temporary or final), if conditions (1) through (5) in section 12.05 of this revenue procedure are met.

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

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

.07 If a letter ruling is issued covering a continuing action or series of actions, and the letter ruling is later found to be in error or no longer in accord with the position of the Service, the Assistant Commissioner (Employee Plans and Exempt Organizations) ordinarily will limit the retroactive effect of the revocation or modification to a date that is not earlier than that on which the letter ruling is revoked or modified.

May be retroactively revoked or modified when transaction is completed without reliance on the letter ruling

.08 A taxpayer is not protected against retroactive revocation or modification of a letter ruling involving a completed transaction other than those described in section 12.07 of this revenue procedure, because the taxpayer did not enter into the transaction relying on a letter ruling.

Taxpayer may request that retroactivity be limited

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

A taxpayer to whom a letter ruling or determination letter has been issued may request that the Assistant Commissioner (Employee Plans and Exempt Organizations) limit the retroactive effect of any revocation or modification of the letter ruling or determination letter.

Format of request

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

A request to limit the retroactive effect of the revocation or modification of a letter ruling must be in the general form of, and meet the general requirements for, a letter ruling request. These requirements are given in section 9 of this revenue procedure. Specifically, the request must also—

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

(b) state the relief sought;

(c) explain the reasons and arguments in support of the relief requested (including a discussion of the five items listed in section 12.05 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request.

A request that the Service limit the retroactive effect of a revocation or modification of a letter ruling may be made in the form of a separate request for a letter ruling when, for example, a revenue ruling has the effect of revoking or modifying a letter ruling previously issued to the taxpayer, or when the Service notifies the taxpayer of a change in position that will have the effect of revoking or modifying the letter ruling. However, when notice is given by the key district director during an examination of the taxpayer's return or by the chief, appeals office, during consideration of the taxpayer's return before an appeals office, a request to limit retroactive effect must be made in the form of a request for technical advice as explained in section 18 of Rev. Proc. 96-5, 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.

Consideration of relief under § 7805(b) will be included as one of the taxpayer's steps in exhausting administrative remedies only if the taxpayer has requested such relief in the manner described in this revenue procedure. If the taxpayer does not complete the applicable steps, the taxpayer will not have exhausted the taxpayer's administrative remedies as required by § 7428(b)(2) and § 7476(b)(3) and will, thus, be precluded from seeking a declaratory judgment under § 7428 or § 7476. Where the taxpayer has requested § 7805(b) relief, the taxpayer's administrative remedies will not be considered exhausted until the national office has had a reasonable time to act upon the request.

Request for conference

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

A taxpayer who requests the application of § 7805(b) in a separate letter ruling request has the right to a conference in the national office as explained in sections 11.05, 11.06, 11.07, 11.08 and 11.09 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 11.06 of this revenue procedure. If the request for the application of § 7805(b) relief is made as part of a pending letter ruling request after a conference has been held on the substantive issue and the Service determines that there is justification for having delayed the request, the taxpayer is entitled to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue only.

SECTION 13. WHAT EFFECT WILL A DETERMINATION LETTER HAVE?

Has same effect as a letter ruling

.01 A determination letter issued by a key district director has the same effect as a letter ruling issued to a taxpayer under section 12 of this revenue procedure.

If a key district director proposes to reach a conclusion contrary to that expressed in a determination letter, he or she need not refer the matter to the national office as is required for a letter ruling found to be in error. However, the key district director must refer the matter to the national office if the key district director desires to have the revocation or modification of the determination letter limited under § 7805(b).

.02 A key district director does not have authority under § 7805(b) to limit the revocation or modification of the determination letter. Therefore, if a key district director 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 key district director who issued the determination letter to seek technical advice from the national office. *See* section 18 of Rev. Proc. 96-5, this Bulletin.

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

Format of request

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

A taxpayer's request to limit the retroactive effect of the revocation or modification of the determination letter must be in the form of, and meet the general requirements for, a technical advice request. *See* section 17.06 of Rev. Proc. 96-5, 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 the five items listed in section 12.05 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request.

Request for conference

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

When technical advice is requested regarding the application of § 7805(b), the taxpayer has the right to a conference in the national office to the same extent as does any taxpayer who is the subject of a technical advice request. *See* section 10 of Rev. Proc. 96-5, this Bulletin.

Exhaustion of administrative remedies

(3) Taxpayer steps in exhausting administrative remedies.

Consideration of relief under § 7805(b) will be included as one of the taxpayer's steps in exhausting administrative remedies only if the taxpayer has requested such relief in the manner described in this revenue procedure. If the taxpayer does not complete the applicable steps, the taxpayer will not have exhausted the taxpayer's administrative remedies as required by § 7428(b)(2) and § 7476(b)(3) and will, thus, be precluded from seeking a declaratory judgment under § 7428 or § 7476. Where the taxpayer has requested § 7805(b) relief, the taxpayer's administrative remedies will not be considered exhausted until the national office has had a reasonable time to act upon the request.

SECTION 14. UNDER WHAT CIRCUMSTANCES ARE MATTERS REFERRED BETWEEN A KEY DISTRICT OFFICE AND THE NATIONAL OFFICE?

Requests for determination letters

.01 Requests for determination letters received by key district directors that, under the provisions of this revenue procedure, may not be issued by a key district office, will be forwarded to the national office for reply. The key district office will notify the taxpayer that the matter has been referred.

Key district directors will also refer to the national office any request for a determination letter that in their judgement should have the attention of the national office.

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 the national office. The key district office will notify the taxpayer that the Service will not issue a letter ruling or a determination letter on the issue. *See* section 8 of this revenue procedure for a description of no-rule areas.

Requests for letter rulings

.03 Requests for letter rulings received by the national office that, under section 6 of this revenue procedure, may not be acted upon by the national office will be forwarded to the key district office that has examination jurisdiction over the taxpayer's return. The taxpayer will be notified of this action. If the request is on an issue or in an area of the type discussed in section 8 of this revenue procedure, and the Service decides not to issue a letter ruling or an information letter, the national office will notify the taxpayer and will then forward the request to the appropriate key district office for association with the related return.

Rev. Proc. 95-4 is superseded.

SEC. 15. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

This revenue procedure is effective January, 2, 1996.

SEC. 16. EFFECTIVE DATE

DRAFTING INFORMATION

The principal authors of this revenue procedure are Dave Flavin of the Exempt Organizations Division and Lynette McCleary of the Employee Plans Division. For further information regarding how this revenue procedure applies to employee plan matters, contact the Employee Plans Division telephone assistance service between the hours of 1:30 and 4:00 p.m., Eastern Time, Monday through Thursday, on (202) 622-6074/75 (not a toll-free call). Mrs. McCleary's telephone number is (202) 622-6214 (not a toll-free call). For exempt organization matters, please contact Mr. Flavin at (202) 622-7922 (not a toll-free call).

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APPENDIX A

SAMPLE FORMAT FOR A LETTER RULING REQUEST

(Insert the date of request)

Internal Revenue Service
Assistant Commissioner (EP/EO)
Attention: CP:E:EP:T
P.O. Box 14073
Ben Franklin Station
Washington, DC 20044

Dear Sir or Madam:

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

[If the taxpayer is requesting expeditious handling, the letter ruling request must contain a statement to that effect. This statement must explain the need for expeditious handling. See section 9.03(3).]

A. STATEMENT OF FACTS

1. Taxpayer Information

[Provide the statements required by sections 9.02(1)(a), (b), (c), and (d) of Rev. Proc. 96–4, 1996–1 I.R.B. **[insert page #]**. (Hereafter, all references are to Rev. Proc. 96–4 unless otherwise noted.)]

For example, a taxpayer that maintains a qualified employee retirement plan and files an annual Form 5500 series of returns may include the following statement to satisfy sections 9.02(1)(a), (b), (c), and (d):

The Taxpayer is a construction company with principal offices located at 100 Whatever Drive, Wherever, Maryland 12345, and its telephone number is (123) 456-7890. The Taxpayer’s federal employer identification number is 00–1234567. The Taxpayer uses the Form 5500 series of returns on a calendar year basis to report its qualified employee retirement plan and trust.

The key district director of Internal Revenue for the Baltimore, Maryland district has audit jurisdiction over the Taxpayer’s Federal tax returns.

2. Detailed Description of the Transaction.

[The ruling request must contain a complete statement of the facts relating to the transaction that is the subject of the letter ruling request. This statement must include a detailed description of the transaction, including material facts in any accompanying documents, and the business reasons for the transaction. See sections 9.02(1)(c), 9.02(1)(d), and 9.02(2).]

B. RULING REQUESTED

[The ruling request should contain a concise statement of the ruling requested by the taxpayer.]

C. STATEMENT OF LAW

[The ruling request must contain a statement of the law in support of the taxpayer’s views or conclusion, including any authorities believed to be contrary to the position advanced in the ruling request. This statement must also identify any pending legislation that may affect the proposed transaction. See sections 9.02(6), 9.02(7), and 9.02(8).]

D. ANALYSIS

[The ruling request must contain a discussion of the facts and an analysis of the law. See sections 9.02(3), 9.02(6), 9.02(7), and 9.02(8).]

E. CONCLUSION

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

F. PROCEDURAL MATTERS

1. Rev. Proc. 96–4 Statements

- a. [The statement required by section 9.02(4).]
- b. [The statement required by section 9.02(5).]
- c. [The statement required by section 9.02(6) regarding whether the law in connection with the letter ruling request is uncertain and whether the issue is adequately addressed by relevant authorities.]
- d. [The statement required by section 9.02(7) when the taxpayer determines that there are no contrary authorities.]
- e. [If the taxpayer wants to have a conference on the issues involved in the letter ruling request, the ruling request should contain a statement to that effect. See section 9.03(5).]
- f. [If the taxpayer is requesting the letter ruling to be issued by fax, the ruling request should contain a statement to that effect. This statement must also contain a waiver of any disclosure violations resulting from the fax transmission. See section 9.03(4).]
- g. [If the taxpayer is requesting separate letter rulings on multiple issues, the letter ruling request should contain a statement to that effect. See section 9.03(1).]

2. Administrative

- a. A Power of Attorney is enclosed. [See sections 9.02(12) and 9.03(2).]
- b. The deletions statement and checklist required by Rev. Proc. 96-4 are enclosed. [See sections 9.02(9) and 9.02(17).]
- c. The required user fee is enclosed. [See section 9.02(14).]

Very truly yours,

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

By:

Signature _____
Date

Typed or printed name of
person signing request

DECLARATION: [See section 9.02(13).]

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested letter ruling are true, correct, and complete.

(Insert the name of the taxpayer)

By:

Signature _____
Title _____
Date

Typed or printed name of
person signing declaration

- Yes No N/A 11. Have you submitted with the request true copies of all wills, deeds, plan documents, and other documents relevant to the transaction, and labelled and attached them in alphabetical sequence? See section 9.02(2).
- Yes No
Page — 12. Have you included, rather than merely by reference, all material facts from the documents in the request? Are they accompanied by an analysis of their bearing on the issues that specifies the document provisions that apply? See section 9.02(3).
- Yes No
Page — 13. Have you included the required statement regarding whether the same issue in the letter ruling request is in an earlier return of the taxpayer or in a return for any year of a related taxpayer? See section 9.02(4).
- Yes No
Page — 14. Have you included the required statement regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor? See section 9.02(5).
- Yes No
Page — 15. Have you included the required statement regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted the same or similar issue but withdrew it before the letter ruling was issued? See section 9.02(5).
- Yes No
Page — 16. Have you included the required statement regarding whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities? See section 9.02(6).
- Yes No
Pages — 17. Have you included the required statement of relevant authorities in support of your views? See section 9.02(6).
- Yes No N/A
Pages — 18. Does your request discuss the implications of any legislation, tax treaties, court decisions, regulations, notices, revenue rulings, or revenue procedures you determined to be contrary to the position advanced? See section 9.02(7), which states that taxpayers are encouraged to inform the Service of such authorities.
- Yes No N/A
Page — 19. If you determined that there are no contrary authorities, have you included a statement to this effect in your request? See section 9.02(7).
- Yes No N/A
Page — 20. Have you included in your request a statement identifying any pending legislation that may affect the proposed transaction? See section 9.02(8).
- Yes No 21. Is the request accompanied by the deletions statement required by § 6110? See section 9.02(9).
- Yes No N/A
Page — 22. Have you (or your authorized representative) signed and dated the request? See section 9.02(10).
- Yes No N/A 23. If the request is signed by your representative, or if your representative will appear before the Service in connection with the request, is the request accompanied by a properly prepared and signed power of attorney with the signatory's name typed or printed? See section 9.02(12).
- Yes No N/A
Page — 24. Have you included, signed and dated, the penalties of perjury statement in the form required by section 9.02(13)?
- Yes No N/A 25. Have you included the correct user fee with the request and made your check or money order payable to the Internal Revenue Service? See section 9.02(14) and Rev. Proc. 96-8, page [insert #], this Bulletin, for the correct amount and additional information on user fees.
- Yes No N/A 26. Are you submitting your request in duplicate if necessary? See section 9.02(15).
- Yes No N/A
Pages — 27. If you are requesting separate letter rulings on different issues involving one factual situation, have you included a statement to that effect in each request? See section 9.03(1).
- Yes No N/A 28. If you want the original of the ruling to be sent to a representative, does the power of attorney contain a statement to that effect? See section 9.03(2).
- Yes No N/A 29. If you do not want a copy of the letter ruling to be sent to any representative, does the power of attorney contain a statement to that effect? See section 9.03(2).
- Yes No N/A
Page — 30. If you have more than one representative, have you designated whether the second representative listed on the power of attorney is to receive a copy of the letter ruling? See section 9.03(2).
- Yes No N/A 31. If you want your letter ruling request to be processed ahead of the regular order or by a specific date, have you requested expeditious handling in the form required by section 9.03(3) and stated a compelling need for such action in the request?
- Yes No N/A
Page — 32. If you are requesting that a copy of the letter ruling be issued by facsimile (fax) transmission, have you included a statement containing a waiver of any disclosure violations resulting from the fax transmission? See section 9.03(4).

- Yes No N/A
Page ___ 33. If you want to have a conference on the issues involved in the request, have you included a request for conference in the ruling request? See section 9.03(5).
- Yes No N/A 34. If your request is covered by any of the guideline revenue procedures or other special requirements listed in section 10 of Rev. Proc. 96-4, have you complied with all of the requirements of the applicable revenue procedure?
- Yes No N/A
Page ___ 35. If you are requesting relief under § 7805(b) (regarding retroactive effect), have you complied with all of the requirements in section 12.09?
- Yes No N/A 36. Have you addressed your request to the appropriate office listed in section 9.04? Improperly addressed requests may be delayed (sometimes for over a week) in reaching the appropriate office for initial processing.

Signature

Title or authority

Date

Typed or printed name of
person signing checklist