

Rev. Proc. 98-2

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

This revenue procedure explains when and how the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), and the Associate Chief Counsel (International) give technical advice to a district director or a chief, appeals office. It also explains the rights a taxpayer has when a district director or a chief, appeals office, requests technical advice regarding a tax matter.

Description of terms used in this revenue procedure

For purposes of this revenue procedure—

(1) any reference to district director or district office includes their respective offices or, when appropriate, the Assistant Commissioner (International) or the director of an Internal Revenue Service Center;

(2) any reference to chief, appeals office, includes, when appropriate, the assistant regional director of appeals (large case);

(3) any reference to chief, examination division, includes, when appropriate, the chief, employee plans/exempt organizations division;

(4) any reference to appeals officer includes, when appropriate, the team chief;

(5) the term “taxpayer” includes all persons subject to any provision of the Internal Revenue Code (including issuers of § 103 obligations) and, when appropriate, their representatives; and

(6) the term “national office” refers to the Office of Associate Chief Counsel (Domestic), the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Office of Associate Chief Counsel (Enforcement Litigation), or the Office of Associate Chief Counsel (International), as appropriate.

Updated annually

The revenue procedure is updated annually as the second revenue procedure of the year, but may be modified or amplified during the year.

SECTION 2. WHAT IS TECHNICAL ADVICE?

“Technical advice” means advice or guidance in the form of a memorandum furnished by the national office upon the request of a district director or a chief, appeals office, submitted in accordance with the provisions of this revenue procedure, in response to any technical or procedural question that develops during any proceeding on the interpretation and proper application of tax law, tax treaties, regulations, revenue rulings, notices, or other precedents published by the national office to a specific set of facts. Such proceedings include: (1) the examination of a taxpayer’s return; (2) the consideration of a taxpayer’s claim for refund or credit; (3) any matter under examination or in appeals pertaining to tax-exempt bonds or mortgage credit certificates; and (4) any other matter involving a specific taxpayer under the jurisdiction of the chief, examination division, or the chief, appeals office. They also include processing and considering nondocketed cases in an appeals office but do not include cases in which the issue in the case is in a docketed case for any taxable year. If, however, a case is docketed for an estate tax issue of a taxpayer while a request for technical advice on the same issue of the same taxpayer is pending, the national office may issue the technical advice memorandum if the

appropriate appeals officer and government counsel agree, by memorandum, to the issuance of the technical advice memorandum.

Technical advice helps Internal Revenue Service personnel close cases and also helps establish and maintain consistent holdings throughout the Service. A district director or a chief, appeals office, may raise an issue in any tax period, even though technical advice may have been asked and furnished for the same or similar issue for another tax period.

Technical advice does not include legal advice furnished to the district or appeals office in writing or orally, other than advice furnished pursuant to this revenue procedure. In accordance with section 11.01 of this revenue procedure, a taxpayer's request for referral of an issue to the national office for technical advice will not be denied merely because the national office has provided legal advice, other than advice furnished pursuant to this revenue procedure, to the district or appeals office on the matter.

SECTION 3. ON WHAT ISSUES MAY TECHNICAL ADVICE BE REQUESTED UNDER THIS PROCEDURE?

Issues under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International)

Issues involving shipowners' protection and indemnity associations and certain homeowners associations

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

Alcohol, tobacco, and firearms taxes

Employee plans and exempt organizations

Farmers' cooperatives

SECTION 5. MAY TECHNICAL ADVICE BE REQUESTED FOR A § 301.9100 REQUEST MADE DURING THE COURSE OF

.01 The instructions of this revenue procedure apply to requests for technical advice on any issue under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), or the Associate Chief Counsel (International), and on certain issues under the jurisdiction of the Associate Chief Counsel (Enforcement Litigation). See section 3 of Rev. Proc. 98-1, this Bulletin, for a description of the principal subject matters of jurisdiction.

.02 The jurisdiction of the Associate Chief Counsel (Domestic) extends to issuing technical advice under § 526 (shipowners' protection and indemnity associations) and § 528 (certain homeowners associations).

.01 The procedures for obtaining technical advice specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are under the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms.

.02 The procedures for obtaining technical advice specifically on issues under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) are found in Rev. Proc. 98-5, this Bulletin. However, the procedures under Rev. Proc. 98-2 (this revenue procedure) must be followed for obtaining technical advice on issues pertaining to tax-exempt bonds and mortgage credit certificates.

.03 Even though the Associate Chief Counsel (Domestic) has jurisdiction for issuing technical advice under § 521, the procedures under Rev. Proc. 98-5 and Rev. Proc. 90-27, 1990-1 C.B. 514, as well as § 601.201(n) of the Statement of Procedural Rules (26 C.F.R. § 601.201(n) (1997)), must be followed.

AN EXAMINATION?

A § 301.9100 request is a letter ruling request

.01 A request for an extension of time for making an election or other application for relief under § 301.9100–3 of the Procedure and Administration Regulations is a letter ruling request even if the request is submitted after the examination of the taxpayer’s return has begun or after the issues in the return are being considered by an appeals office or a federal court. Therefore, a § 301.9100 request should be submitted pursuant to Rev. Proc. 98–1 (including the payment of the applicable user fee listed in Appendix A of Rev. Proc. 98–1). *See* section 5.02 of Rev. Proc. 98-1.

Statute of limitations

.02 The running of any applicable period of limitations is not suspended for the period during which a § 301.9100 request has been filed. *See* § 301.9100–3(d)(2). If the period of limitations on assessment under § 6501(a) for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made will expire before receipt of a § 301.9100 letter ruling, the Service ordinarily will not issue a § 301.9100 ruling. *See* § 301.9100–3(c)(1)(ii). Therefore, the taxpayer must secure a consent under § 6501(c)(4) to extend the period of limitations on assessment. Note that the filing of a claim for refund under § 6511 does not extend the period of limitations on assessment. If § 301.9100 relief is granted, the Service may require the taxpayer to consent to an extension of the period of limitations on assessment. *See* § 301.9100–3(d)(2).

Address to send a § 301.9100 request

.03 Pursuant to section 8.03(1) of Rev. Proc. 98–1, a § 301.9100 request, together with the appropriate user fee, must be submitted by the taxpayer to the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International), as appropriate. The package should be marked: RULING REQUEST SUBMISSION. *See* Appendix A of Rev. Proc. 98–1 for the appropriate user fee.

(a) A § 301.9100 request should be sent to the following address:

**Internal Revenue Service
Attn: CC:DOM:CORP:T
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044**

However, if a private delivery service is used, the address is:

**Internal Revenue Service
Attn: CC:DOM:CORP:T
1111 Constitution Avenue, N.W.
Washington, DC 20224**

(b) A § 301.9100 request may also be hand delivered:

(i) To the drop box at the 12th Street entrance of 1111 Constitution Avenue, N.W., Washington, DC. No receipt will be given at the drop box; or

(ii) Between the hours of 8:15 a.m. and 5:00 p.m. to:

**Courier’s Desk
Internal Revenue Service
Attn: CC:DOM:CORP:T
1111 Constitution Avenue, N.W.
Washington, DC**

A receipt will be given at the courier’s desk.

If the return is being examined or considered by an appeals office or a federal court, the taxpayer must notify the national office and the national office will notify the district director, appeals officer, or government counsel

.04 If the taxpayer's return for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made is being examined by a district office or considered by an appeals office or a federal court, the taxpayer must notify the national office. *See* § 301.9100-3(e)(4)(i) and section 5.02(3) of Rev. Proc. 98-1. The national office will notify the appropriate district director, appeals officer, or government counsel that a § 301.9100 request has been submitted to the national office. The examining officer, appeals officer, or government counsel is not authorized to deny consideration of a § 301.9100 request. The letter ruling will be mailed to the taxpayer and a copy will be sent to the appropriate district director, appeals officer, or government counsel.

SECTION 6. WHO IS RESPONSIBLE FOR REQUESTING TECHNICAL ADVICE?

District director or chief, appeals office, determines whether to request technical advice

.01 The district director or chief, appeals office, determines whether to request technical advice on any issue being considered. Each request must be submitted through channels and signed by a person who is authorized to sign for the district director or chief, appeals office.

Taxpayer may ask that issue be referred for an technical advice

.02 While a case is under the jurisdiction of a district director or chief, appeals office, a taxpayer may request in writing or orally to the examining officer or appeals officer that an issue be referred to the national office for technical advice.

SECTION 7. WHEN SHOULD TECHNICAL ADVICE BE REQUESTED?

Uniformity of position lacking

.01 Technical advice should be requested when there is a lack of uniformity regarding the disposition of an issue or when an issue is unusual or complex enough to warrant consideration by the national office.

When technical advice can be requested

.02 The provisions of this revenue procedure apply only to a case under the jurisdiction of a district director or chief, appeals office. Technical advice may also be requested on issues considered in a prior appeals disposition, not based on mutual concessions for the same tax period of the same taxpayer, if the appeals office that had the case concurs in the request.

A district director may not request technical advice on an issue if an appeals office is currently considering an identical issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) unless the appeals officer agrees, by memorandum, to the submission of the request for technical advice. A case remains under the jurisdiction of the district director even though an appeals office has the identical issue under consideration in the case of another taxpayer (not related within the meaning of § 267 or § 1504) in an entirely different transaction. With respect to the same taxpayer or the same transaction, when the issue is under the jurisdiction of an appeals office and the applicability of more than one kind of federal tax is dependent upon the resolution of that issue, a district director may not request technical advice on the applicability of any of the taxes involved unless the appeals officer agrees, by memorandum, to the submission of the request for technical advice.

A district director or chief, appeals office, also may not request technical advice on an issue if the same issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) is in a docketed case for the same taxpayer (or for a related taxpayer or a member of an affiliated group of which the taxpayer is also a member) for any taxable year. If, however, a case is docketed for an estate tax issue of a taxpayer while a request for

technical advice on the same issue of the same taxpayer is pending, the national office may issue the technical advice memorandum if the appropriate appeals officer and government counsel agree, by memorandum, to the issuance of the technical advice memorandum.

At the earliest possible stage

.03 Once an issue is identified, all requests for technical advice should be made at the earliest possible stage in any proceeding. The fact that the issue is raised late in the examination or appeals process should not influence, however, the district or appeals office's decision to request technical advice.

SECTION 8. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED?

Pre-submission conference generally is permitted when district or appeals office likely will request technical advice and all parties agree to request the conference

.01 In an effort to promote expeditious processing of requests for technical advice, the national office generally will meet with the district or appeals office and the taxpayer prior to the time a request for technical advice is submitted to the national office. In cases involving very complex issues, the district or appeals office and the taxpayer are encouraged to request a pre-submission conference. A request for a pre-submission conference should be made, however, only after the district or appeals office determines that it likely will request technical advice and only after all parties agree that a pre-submission conference should be requested.

Purpose of a pre-submission conference

.02 A pre-submission conference is intended to facilitate agreement between the parties as to the appropriate scope of the request for technical advice, the factual information to be included in the request for technical advice, any collateral issues that either should or should not be included in the request for technical advice, and any other substantive or procedural considerations that will allow the national office to provide the parties with technical advice as expeditiously as possible.

A pre-submission conference is not intended to create an alternative procedure for determining the merits of the substantive positions advocated by the district or appeals office or by the taxpayer. The conference is intended only to facilitate the overall technical advice process.

Request for a pre-submission conference must be submitted in writing by the district or appeals office

.03 A request for a pre-submission conference must be submitted in writing by the district or appeals office. The request should identify the associate or assistant chief counsel office expected to have jurisdiction over the request for technical advice. The request should include a brief explanation of the primary issue so that an assignment to the appropriate branch can be made. Coordination with district counsel is strongly encouraged. If the request involves a designated issue or industry under the Industry Specialization Program, coordination with the issue or industry specialist is also strongly encouraged.

An original and one copy of the request should be submitted to the appropriate address listed in section 9.03 of this revenue procedure.

Branch will contact the district or appeals office to arrange the pre-submission conference

.04 Within 5 working days after it receives the request, the branch assigned responsibility for conducting the pre-submission conference will contact the district or appeals office to arrange a mutually convenient time for the parties to meet in the national office. The district or appeals office will be responsible for coordinating with the taxpayer as well as with any other Service personnel whose attendance the district or appeals office believes would be appropriate.

Pre-submission conference generally held in person

.05 Pre-submission conferences generally will be held in person in the national office. However, if the district or appeals office personnel or the taxpayer is unable to attend the conference, the conference may be conducted by telephone.

Certain information required to be submitted to the national office prior to the pre-submission conference

.06 At least 10 working days before the scheduled pre-submission conference, the district or appeals office and the taxpayer should submit to the national office a statement of the pertinent facts (including any facts in dispute), a statement of the issues that the parties would like to discuss, and any legal analysis, authorities, or background documents

that the parties believe would facilitate the national office's understanding of the issues to be discussed at the conference. The legal analysis provided for the pre-submission conference need not be as fully developed as the analysis that ultimately will accompany the request for technical advice, but it should allow the national office to become reasonably informed regarding the subject matter of the conference prior to the meeting. The district or appeals office or the taxpayer should ensure that the national office receives a copy of any required power of attorney, preferably on Form 2848, Power of Attorney and Declaration of Representative.

Pre-submission conference may not be taped

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

Discussion of substantive issues is not binding on the Service

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

SECTION 9. WHAT MUST BE INCLUDED IN THE REQUEST FOR TECHNICAL ADVICE?

Statement of issues, facts, law, and arguments

.01 Whether initiated by the taxpayer or by a district or appeals office, a request for technical advice must include the facts and the issues for which technical advice is requested and also a written statement clearly stating the applicable law and the arguments in support of both the Service's and the taxpayer's positions on the issue or issues.

(1) Taxpayer must submit statement if taxpayer initiates request for technical advice. If the taxpayer initiates the request for technical advice, the taxpayer must submit to the examining officer or appeals officer, at the time the taxpayer initiates the request, a written statement—

- (a) stating the facts and the issues;
- (b) explaining the taxpayer's position;
- (c) discussing any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, or any other authority supporting the taxpayer's position; and
- (d) stating the reasons for requesting technical advice.

If the examining officer or appeals officer determines that technical advice will be requested, the taxpayer's statement will be forwarded to the national office with the request for technical advice.

(2) Taxpayer is encouraged to submit statement if Service initiates request for technical advice. If the request for technical advice is initiated by a district or appeals office, the taxpayer is encouraged to submit the written statement described in section 9.01(1) of this revenue procedure. If the taxpayer submits this statement, it will be forwarded to the national office with the request for technical advice. If the taxpayer's statement is received after the request for technical advice has been forwarded to the national office, the statement will be forwarded to the national office for association with the technical advice request.

(3) Statement of authorities contrary to taxpayer's position. Whether the request for technical advice is initiated by the taxpayer or by a district or appeals office, the taxpayer is also encouraged to comment on any legislation (or pending legislation), tax treaties, regulations, revenue rulings, revenue procedures, or court decisions contrary to the taxpayer's position. If the taxpayer determines that there are no contrary authorities, a statement to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a

statement that none exists, the Service, in complex cases or those presenting difficult or novel issues, may request submission of contrary authorities or a statement that none exists.

Statement identifying information to be deleted from public inspection

.02 The text of a technical advice memorandum is open to public inspection under § 6110(a). The Service deletes certain information from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), the taxpayer must provide a statement indicating the deletions desired (“deletions statement”). If the taxpayer does not submit the deletions statement, the Service will follow the procedures in section 10.05 of this revenue procedure.

A taxpayer who wants only names, addresses, and identifying numbers deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletions statement must be accompanied by a copy of the technical advice 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 technical advice memorandum is issued, additional deletions statements may be submitted.

The deletions statement must not appear in the request for technical advice but, instead, must be made in a separate document.

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

The taxpayer should follow these same procedures to propose deletions from any additional information submitted after the initial request for technical advice. 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.

Transmittal Form 4463, Request for Technical Advice

.03 The district or appeals office should use Form 4463, Request for Technical Advice, for transmitting a request for technical advice to the national office using the addresses listed below.

Address to send requests from district offices

**Internal Revenue Service
Attn: CC:DOM:CORP:T
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044**

Address to send requests from appeals offices

**Internal Revenue Service
Attn: C:AP:FS
Box 68
901 D Street, S.W.
Washington, DC 20024**

Number of copies of request to be submitted

.04 The district or appeals office must submit: (1) two copies of the request for technical advice to the national office; and (2) one copy of the request for technical advice to the issue or industry specialist if the request involves a designated issue or industry under the Industry Specialization Program.

Power of attorney

.05 Any authorized representative, as described in section 8.01(11) of Rev. Proc. 98–1, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230 (31 C.F.R. part 10 (1997)) and with the conference and practice requirements of the Statement of Procedural Rules (26 C.F.R. § 601.501–601.509 (1997)). It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used with regard to requests for technical advice under this revenue procedure.

SECTION 10. HOW ARE REQUESTS HANDLED?

Taxpayer notified

.01 Regardless of whether the taxpayer or the Service initiates the request for technical advice, the district or appeals office: (1) will notify the taxpayer that technical advice is being requested; and (2) at or before the time the request is submitted to the national office, will give to the taxpayer a copy of the arguments that were provided to the national office in support of the Service's position.

If the examining officer or appeals officer initiates the request for technical advice, he or she will give to the taxpayer a copy of the statement of the pertinent facts and the issues proposed for submission to the national office.

This section 10.01 does not apply to a technical advice memorandum described in section 10.07 of this revenue procedure.

Conference offered

.02 When notifying the taxpayer that technical advice is being requested, the examining officer or appeals officer will also tell the taxpayer about the right to a conference in the national office if an adverse decision is indicated and will ask the taxpayer whether such a conference is desired.

If the taxpayer disagrees with the Service's statement of facts

.03 If the examining officer or appeals officer initiates the request for technical advice, the taxpayer has 10 calendar days after receiving the statement of facts and specific issues to submit to that officer a written statement specifying any disagreement on the facts and issues. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the chief, examination division, or the chief, appeals office.

After receiving the taxpayer's statement of the areas of disagreement, every effort should be made to reach an agreement on the facts and the specific points at issue before the matter is referred to the national office. If an agreement cannot be reached, the district or appeals office will notify the taxpayer in writing. Within 10 calendar days after receiving the written notice, the taxpayer may submit a statement of the taxpayer's understanding of the facts and the specific points at issue. A taxpayer who needs more than 10 calendar days to prepare the statement of understanding must justify in writing the request for an extension of time. The extension is subject to the approval of the chief, examination division, or the chief, appeals office. Both the statements of the taxpayer and the district or appeals office will be forwarded to the national office with the request for technical advice.

When the district director or the chief, appeals office, and the taxpayer cannot agree on the material facts and the request for technical advice does not involve the issue of whether a letter ruling should be modified or revoked, the national office, at its discretion, may refuse to provide technical advice. If the national office chooses to issue technical advice, the national office will base its advice on the facts provided by the district or appeals office.

If a request for technical advice involves the issue of whether a letter ruling should be modified or revoked, the national office will issue technical advice.

If the Service disagrees with the taxpayer's statement of facts

.04 If the taxpayer initiates the request for technical advice and the taxpayer's statement of the facts and issues is not wholly acceptable to the district or appeals office, the Service will notify the taxpayer in writing of the areas of disagreement. The taxpayer has 10 calendar days after receiving the written notice to reply to it. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the chief, examination division, or the chief, appeals office.

If an agreement cannot be reached, both the statements of the taxpayer and the district or appeals office will be forwarded to the national office with the request for technical advice. When the disagreement involves material facts essential to the preliminary assessment of the case, the district director or the chief, appeals office, may refuse to refer a taxpayer initiated request for technical advice to the national office.

If the district director or the chief, appeals office, submits a case involving a disagreement of the material facts, the national office, at its discretion, may refuse to provide technical advice. If the national office chooses to issue technical advice, the national office will base its advice on the facts provided by the district or appeals office.

If the taxpayer has not submitted the required deletions statement

.05 When the district or appeals office initiates the request for technical advice, the taxpayer has 10 calendar days after receiving the statement of facts and issues to be submitted to the national office to provide the deletions statement required under § 6110(c). See section 9.02 of this revenue procedure. If the taxpayer does not submit the deletions statement, the district director or the chief, appeals office, will tell the taxpayer that the statement is required.

When the taxpayer initiates the request for technical advice and does not submit a deletions statement with the request, the district director or the chief, appeals office, will ask the taxpayer to submit the statement. If the district director or the chief, appeals office, does not receive the deletions statement within 10 calendar days after asking the taxpayer for it, the district director or the chief, appeals office, may decline to submit the request for technical advice.

However, if the district director or the chief, appeals office, decides to request technical advice, whether initiated by the district or appeals office or by the taxpayer, in a case in which the taxpayer has not submitted the deletions statement, the national office will make those deletions that the Commissioner of Internal Revenue determines are required by § 6110(c).

Section 6104 of the Internal Revenue Code (Applications for exemption and letter rulings issued to certain exempt organizations open to public inspection)

.06 The requirements for submitting statements and other materials or proposed deletions in technical advice memorandums before public inspection is allowed do not apply to requests for any documents to the extent that § 6104 applies.

Criminal or civil fraud cases

.07 The provisions of this section (about referring issues upon the taxpayer's request, telling the taxpayer about the referral of issues, giving the taxpayer a copy of the arguments submitted, submitting proposed deletions, and granting conferences in the national office) do not apply to a technical advice memorandum described in § 6110(g)(5)(A) that involves a matter that is the subject of or is otherwise closely related to a criminal or civil fraud investigation, or a jeopardy or termination assessment.

In these cases, a copy of the technical advice memorandum is given to the taxpayer after all proceedings in the investigations or assessments are complete, but before the Commissioner mails the notice of intention to disclose the technical advice memorandum under § 6110(f)(1). The taxpayer may then provide the statement of proposed deletions to the national office.

SECTION 11. HOW DOES A TAXPAYER APPEAL A DISTRICT DIRECTOR'S OR CHIEF'S, APPEALS OFFICE, DECISION NOT TO SEEK TECHNICAL ADVICE?

Taxpayer notified of decision not to seek technical advice

.01 If the examining officer or appeals officer concludes that a taxpayer's request for referral of an issue to the national office for technical advice does not warrant referral, the examining officer or appeals officer will tell the taxpayer. A taxpayer's request for such a referral will not be denied merely because the national office provided legal advice, other than advice furnished pursuant to this revenue procedure, to the district or appeals office on the matter.

Taxpayer may appeal decision not to seek technical advice

.02 The taxpayer may appeal the decision of the examining officer or appeals officer not to request technical advice. To do so, the taxpayer must submit to that officer, within 10 calendar days after being told of the decision, a written statement of the facts, law, and arguments on the issue and the reasons why the taxpayer believes the matter should be referred to the national office for technical advice. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the chief, examination division, or the chief, appeals office.

Chief, examination division, or chief, appeals office, determines whether technical advice will be sought

.03 The examining officer or appeals officer submits the taxpayer's statement through channels to the chief, examination division, or the chief, appeals office, along with the examining officer's or appeals officer's statement of why the issue should not be referred to the national office. The chief determines on the basis of the statements whether technical advice will be requested.

If the chief determines that technical advice is not warranted and proposes to deny the request, the taxpayer is told in writing about the determination. In the letter to the taxpayer, the chief states the reasons for the proposed denial (except in unusual situations when doing so would be prejudicial to the best interests of the Government). The taxpayer has 10 calendar days after receiving the letter to notify the chief of agreement or disagreement with the proposed denial.

Chief's decision may be reviewed but not appealed

.04 The taxpayer may not appeal the decision of the chief, examination division, or the chief, appeals office, not to request technical advice from the national office. However, if the taxpayer does not agree with the proposed denial, all data on the issue for which technical advice has been sought, including the taxpayer's written request and statements, will be submitted to the Assistant Commissioner (Examination), the Assistant Commissioner (International), or the National Director of Appeals, as appropriate.

The Assistant Commissioner (Examination), the Assistant Commissioner (International), or the National Director of Appeals, as appropriate, will review the proposed denial solely on the basis of the written record, and no conference will be held with the taxpayer or the taxpayer's representative. The Assistant Commissioner (Examination), the Assistant Commissioner (International), or the National Director of Appeals may consult with the national office, if necessary, and will notify the district office or appeals office within 45 calendar days of receiving all the data regarding the request for technical advice whether the proposed denial is approved or disapproved. The district office or appeals office will then notify the taxpayer.

While the matter is being reviewed, the district office or appeals office suspends action on the issue (except when the delay would prejudice the Government's interest).

The provisions of this revenue procedure in regard to review of the proposed denial of a request for technical advice continue to be applicable in those situations in which the authority normally exercised by the district director or chief, appeals office, has been delegated to another official.

SECTION 12. HOW ARE REQUESTS FOR TECHNICAL ADVICE WITHDRAWN?

Taxpayer notified

.01 Once a request for technical advice has been sent to the national office, only a district director or a chief, appeals office, may withdraw a request for technical advice. He or she may ask to withdraw a request at any time before the responding transmittal memorandum for the technical advice is signed.

The district director or the chief, appeals office, as appropriate, must notify the taxpayer in writing of an intent to withdraw the request for technical advice except—

(1) when the period of limitations on assessment is about to expire and the taxpayer has declined to sign a consent to extend the period; or

(2) when such notification would be prejudicial to the best interests of the Government.

If the taxpayer does not agree that the request for technical advice should be withdrawn, the procedures in section 11 of this revenue procedure must be followed.

**National office may
provide views**

.02 When a request for technical advice is withdrawn, the national office may send its views to the district director or the chief, appeals office, when acknowledging the withdrawal request. In an appeals case, acknowledgment of the withdrawal request should be sent to the appropriate appeals office, through the National Director of Appeals, C:AP:FS. In appropriate cases, the subject matter may be published as a revenue ruling or as a revenue procedure.

**SECTION 13. HOW ARE
CONFERENCES
SCHEDULED?**

**If requested, offered to the
taxpayer when adverse
technical advice proposed**

.01 If, after the technical advice request is analyzed, it appears that technical advice adverse to the taxpayer will be given, and if a conference has been requested, the taxpayer will be informed, by telephone if possible, of the time and place of the conference.

**Normally held within 21 days
of contact with the taxpayer**

.02 The conference must be held within 21 calendar days after the taxpayer is contacted. If conferences are being arranged for more than one request for technical advice for the same taxpayer, they will be scheduled to cause the least inconvenience to the taxpayer. The national office will notify the examining officer or appeals officer of the scheduled conference and will offer the examining officer or appeals officer the opportunity to attend the conference. The Assistant Commissioner (Examination), the Assistant Commissioner (International), the National Director of Appeals, the district director, or the chief, appeals office, may designate other Service representatives to attend the conference in lieu of, or in addition to, the examining officer or appeals officer.

**21-day period will be
extended if justified
and approved**

.03 An extension of the 21-day period will be granted only if the taxpayer justifies it in writing and the assistant chief counsel of the office to which the case is assigned approves the request. No extension will be granted without the approval of the assistant chief counsel. Except in rare and unusual circumstances, the national office will not agree to an extension of more than 10 working days beyond the end of the 21-day period.

The taxpayer's request for extension must be submitted before the end of the 21-day period, and should be submitted sufficiently before the end of this period to allow the national office to consider, and either approve or deny, the request before the end of the 21-day period. If unusual circumstances near the end of the 21-day period make a timely written request impractical, the national office should be told orally before the end of the period about the problem. The written request for extension must be submitted to the national office promptly after the oral request. The taxpayer will be told promptly (and later in writing) of the approval or denial of a requested extension.

**Denial of extension
cannot be appealed**

.04 There is no right to appeal the denial of a request for extension. If the national office is not advised of problems with meeting the 21-day period or if the written request is not sent promptly after the national office is notified of problems with meeting the 21-day period, the case will be processed on the basis of the existing record.

**Entitled to one
conference of right**

.05 A taxpayer is entitled by right to only one conference in the national office unless one of the circumstances discussed in section 13.09 of this revenue procedure exists. This conference is normally held at the branch level. It is attended by a person who has authority to sign the transmittal memorandum (discussed in section 15.14 of this revenue procedure) on behalf of the branch chief.

When more than one branch has taken an adverse position on an issue in the request or when the position ultimately adopted by one branch will affect another branch's determination, a representative from each branch with authority to sign for the branch chief will at-

tend the conference. If more than one subject is discussed at the conference, the discussion constitutes a conference for each subject.

To have a thorough and informed discussion of the issues, the conference usually is held after the branch has had an opportunity to study the case. However, the taxpayer may request that the conference of right be held earlier in the consideration of the case than the Service would ordinarily designate.

The taxpayer has no right to appeal the action of a branch to an assistant chief counsel or to any other Service official. But see section 13.09 of this revenue procedure for situations in which the Service may offer additional conferences.

Conference may not be taped

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

If requested and approved, conference will be delayed to address a request for relief under § 7805(b)

.07 In the event of a tentatively adverse determination, the taxpayer may request, in writing, a delay of the conference so that the taxpayer can prepare and submit a brief requesting relief under § 7805(b) (discussed in section 18 of this revenue procedure). The assistant chief counsel of the office to which the case is assigned will determine whether to grant or deny the request for delaying the conference. If such request is granted, the Service will schedule a conference on the tentatively adverse decision and the § 7805(b) relief request within 10 days of receiving the taxpayer's § 7805(b) request. There is no right to appeal the denial of a request for delaying the conference. See section 18.04 of this revenue procedure for the conference procedures if the § 7805(b) request is made after the conference on the substantive issues has been held.

Service makes tentative recommendations

.08 The senior Service representative at the conference ensures that the taxpayer has full opportunity to present views on all the issues in question. The Service representatives explain the tentative decision on the substantive issues and the reasons for it.

If the taxpayer requests relief under § 7805(b) (regarding limitation of retroactive effect), the Service representatives will discuss the tentative recommendation concerning the request for relief and the reason for the tentative recommendation.

No commitment will be made as to the conclusion that the Service will finally adopt regarding the outcome of the § 7805(b) issue or on any other issue discussed.

Additional conferences may be offered

.09 The Service will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed on a new issue or on the same issue but on grounds different from those discussed at the first conference.

When a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, the taxpayer has no right to another conference if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limitation on the number of conferences to which a taxpayer is entitled does not prevent the national office from inviting a taxpayer to attend additional conferences, including conferences with an official higher than the branch level, if national office personnel think they are necessary. 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.

In accordance with section 13.02 of this revenue procedure, the examining officer or appeals officer will be offered the opportunity to participate in any additional taxpayer's conference, including a conference with an official higher than the branch level. Section 13.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

**Additional information
submitted after the conference**

.10 Within 21 calendar days after the conference, the taxpayer must furnish to the national office any additional data, lines of reasoning, precedents, etc., that the taxpayer proposed and discussed at the conference but did not previously or adequately present in writing. This additional information must be submitted by letter with a penalties of perjury statement in the form described in section 15.11(1) of this revenue procedure.

The taxpayer must also send a copy of the additional information to the district director or the chief, appeals office, for comment. Any comments by the district director or the chief, appeals office, must be furnished promptly to the appropriate branch in the national office. If the district director or the chief, appeals office, does not have any comments, he or she must notify the branch representative promptly.

If the additional information would have a significant impact on the facts in the request for technical advice, the national office will ask the district director or the chief, appeals office, for comment on the facts contained in the additional information submitted. The district director or the chief, appeals office, will give the additional information prompt attention.

If the additional information is not received within 21 calendar days, the technical advice memorandum will be issued on the basis of the existing record.

An extension of the 21-day period may be granted only if the taxpayer justifies it in writing and the assistant chief counsel of the office to which the case is assigned approves the extension. Such extension will not be routinely granted. The procedures for requesting an extension of the 21-day period and notifying the taxpayer of the Service's decision are the same as those in sections 13.03 and 13.04 of this revenue procedure.

**Under limited circumstances,
may schedule a conference
to be held by telephone**

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

In accordance with section 13.02 of this revenue procedure, the examining officer or appeals officer will be offered the opportunity to participate in the telephone conference. Section 13.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

**SECTION 14. HOW IS
STATUS OF REQUEST
OBTAINED?**

**Taxpayer or the taxpayer's
representative may request
status from the district
or appeals office**

.01 The taxpayer or the taxpayer's representative may obtain information on the status of the request for technical advice by contacting the district or appeals office that requested the technical advice. See section 15.09 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer or the taxpayer's representative. See section 16.02 of this revenue procedure regarding discussions of the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative.

**National office will give
status updates to the district
director or chief, appeals office**

.02 The branch representative or branch chief assigned to the technical advice request will give status updates on the request once a month to the district director or chief, appeals office. In addition, a district director or a chief, appeals office, may get current information on the status of the request for technical advice by calling the person whose name and telephone number are shown on the acknowledgement of receipt of the request for technical advice.

See section 15.10 of this revenue procedure about discussing the final conclusions with the district or appeals office. Further, the district director or the chief, appeals office, will be notified at the time the technical advice memorandum is mailed.

SECTION 15. HOW DOES THE NATIONAL OFFICE PREPARE THE TECHNICAL ADVICE MEMORANDUM?

Delegates authority to branch chiefs

.01 The authority to issue technical advice on issues under the jurisdiction of the Associate Chief Counsel (Domestic) has largely been delegated to the branch chiefs in the offices of the Assistant Chief Counsel (Corporate), the Assistant Chief Counsel (Financial Institutions and Products), the Assistant Chief Counsel (Income Tax and Accounting), and the Assistant Chief Counsel (Passthroughs and Special Industries).

The branch chiefs in the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations) and in the Office of Associate Chief Counsel (International) have largely been delegated the authority to issue technical advice on issues under their jurisdiction.

The authority to issue technical advice on issues under the jurisdiction of the Associate Chief Counsel (Enforcement Litigation) has largely been delegated to the branch chiefs in the office of the Assistant Chief Counsel (General Litigation).

Determines whether request has been properly made

.02 A request for technical advice generally is given priority and processed expeditiously. As soon as the request for technical advice is assigned, the branch representative analyzes the file to see whether it meets all requirements of sections 6, 7, and 9 of this revenue procedure.

However, if the request does not comply with the requirements of section 9.02 of this revenue procedure relating to the deletions statement, the Service will follow the procedure in the last paragraph of section 10.05 of this revenue procedure.

Contacts the district or appeals office to discuss issues

.03 Usually, within 21 calendar days after the branch receives the request for technical advice, a representative of the branch telephones the district or appeals office to discuss the procedural and substantive issues in the request that come within the branch's jurisdiction.

Informs the district or appeals office if any matters in the request have been referred to another branch or office

.04 If the technical advice request concerns matters within the jurisdiction of more than one branch or office, a representative of the branch that received the original technical advice request informs the district or appeals office within 21 calendar days of receiving the request that—

(1) the matters within the jurisdiction of another branch or office have been referred to the other branch or office for consideration; and

(2) a representative of the other branch or office will contact the district or appeals office about the technical advice request within 21 calendar days after receiving it in accordance with section 15.03 of this revenue procedure.

Informs the district or appeals office if additional information is needed

.05 The branch representative will inform the district or appeals office that the case is being returned if substantial additional information is required to resolve an issue. Cases should be returned for additional information when significant unresolved factual variances exist between the statement of facts submitted by the district or appeals office and the taxpayer. Cases should also be returned if major procedural problems cannot be resolved by telephone.

If only minor procedural deficiencies exist, the branch representative will request the additional information in the most expeditious manner without returning the case. Within 21 calendar days after receiving the information requested, the branch representative will no-

tify the district or appeals office of the tentative conclusion and an estimated date by which the technical advice memorandum will be mailed, or an estimated date when a tentative conclusion will be made.

Informs the district or appeals office of the tentative conclusion

.06 If all necessary information has been provided, the branch representative informs the district or appeals office of the tentative conclusion and the estimated date that the technical advice memorandum will be mailed.

If a tentative conclusion has not been reached, gives date estimated for tentative conclusion

.07 If a tentative conclusion has not been reached because of the complexity of the issue, the branch representative informs the district or appeals office of the estimated date the tentative conclusion will be made.

Advises the district or appeals office if tentative conclusion is changed

.08 Because the branch representative's tentative conclusion may change during the preparation and review of the technical advice memorandum, the tentative conclusion should not be considered final. If the tentative conclusion is changed, the branch representative will inform the district or appeals office.

Generally does not discuss the tentative conclusion with the taxpayer

.09 Neither the national office nor the district or appeals office should advise the taxpayer or the taxpayer's representative of the tentative conclusion during consideration of the request for technical advice. However, in order to afford taxpayers an appropriate opportunity to prepare and present their position, the taxpayer or the taxpayer's representative should be told the tentative conclusion when scheduling the adverse conference, at the adverse conference, or in any discussion between the scheduling and commencement of the adverse conference. See section 16.02 of this revenue procedure regarding discussions of the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative.

Advises the district or appeals office of final conclusions

.10 In all cases, the branch representative will inform the examining officer or appeals officer of the national office's final conclusions. The examining officer or appeals officer will be offered the opportunity to discuss the issues and the national office's final conclusions before the technical advice memorandum is issued.

If needed, requests additional information

.11 If, following the initial contact referenced in section 15.03 of this revenue procedure, it is determined, after discussion with the branch chief or reviewer, that additional information is needed, a branch representative will obtain the additional information from the taxpayer or from the district director or the chief, appeals office, in the most expeditious manner possible. Any additional information requested from the taxpayer by the national office must be submitted by letter with a penalties of perjury statement within 21 calendar days after the request for information is made.

(1) Penalties of perjury statement. Additional information submitted to the national office must be accompanied by the following declaration: **“Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.”** This declaration must be signed and dated by the taxpayer, not the taxpayer's representative. A stamped signature is not permitted.

(2) 21-day period will be extended if justified and approved. A written request for an extension of time to submit additional information must be received by the national office within the 21-day period, giving compelling facts and circumstances to justify the proposed extension. The assistant chief counsel of the office to which the case is assigned will determine whether to grant or deny the request for an extension of the 21-day period. No extension will be granted without the approval of the assistant chief counsel. Except in rare and unusual circumstances, the national office will not agree to an extension of more than 10 working days beyond the end of the 21-day period. There is no right to appeal the denial of a request for extension.

(3) If the taxpayer does not submit additional information. If the national office does not receive the additional information within the 21-day period, plus any extensions granted by the assistant chief counsel, the national office will issue the technical advice memorandum based on the existing record.

Requests taxpayer to send additional information to the national office and a copy to the district director or chief, appeals office

.12 Whether or not requested by the Service, any additional information submitted by the taxpayer should be sent to the national office. Generally, the taxpayer needs only to submit one copy of the additional information to the national office. However, in appropriate cases, the national office may request additional copies of the information.

Also, the taxpayer must send a copy to the district director or the chief, appeals office, for comment. Any comments by the district director or the chief, appeals office, must be furnished promptly to the appropriate branch in the national office. If the district director or the chief, appeals office, does not have any comments, he or she must notify the branch representative promptly.

Informs the taxpayer when requested deletions will not be made

.13 Generally, before replying to the request for technical advice, the national office informs the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum that the taxpayer proposed be deleted but that the Service has determined should not be deleted.

If so informed, the taxpayer may submit within 10 calendar days any further information or arguments supporting the taxpayer's proposed deletions.

The Service attempts, if possible, to resolve all disagreements about proposed deletions before the national office replies to the request for technical advice. However, the taxpayer does not have the right to a conference to resolve any disagreements about material to be deleted from the text of the technical advice memorandum. These matters, however, may be considered at any conference otherwise scheduled for the request. See section 16.04 of this revenue procedure for the procedures to protest the disclosure of information in the technical advice memorandum.

Prepares reply in two parts

.14 The replies to technical advice requests are in two parts. Each part identifies the taxpayer by name, address, identification number, and year or years involved.

The first part of the reply is a transmittal memorandum (Form M-6000). In unusual cases, it is a way of giving the district or appeals office administrative or other information that under the nondisclosure statutes or for other reasons may not be discussed with the taxpayer.

The second part is the technical advice memorandum, which contains—

- (1) a statement of the issues;
- (2) a statement of the facts pertinent to the issues;
- (3) a statement of the pertinent law, tax treaties, regulations, revenue rulings, and other precedents published in the Internal Revenue Bulletin, and court decisions;
- (4) a discussion of the rationale supporting the conclusions reached by the national office; and
- (5) the conclusions of the national office. The conclusions give direct answers, whenever possible, to the specific issues raised by the district or appeals office. However, the national office is not bound by the precise statement of the issues as submitted by the taxpayer or by the district or appeals office and may reframe the issues to be answered in the technical advice memorandum. The discussion of the issues will be in sufficient detail so that the district or appeals officials will understand the reasoning underlying the conclusion.

Accompanying the technical advice memorandum is a notice under § 6110(f)(1) of intention to disclose a technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

Routes replies to appropriate office

.15 Replies to requests for technical advice are addressed to the district director or the chief, appeals office. Replies to requests from appeals should be routed to the appropriate appeals office through the National Director of Appeals, C:AP:FS.

SECTION 16. HOW DOES A DISTRICT OR APPEALS OFFICE USE THE TECHNICAL ADVICE?

Generally applies advice in processing the taxpayer's case

.01 The district director or the chief, appeals office, must process the taxpayer's case on the basis of the conclusions in the technical advice memorandum unless—

(1) the district director or the chief, appeals office, decides that the conclusions reached by the national office in a technical advice memorandum should be reconsidered;

(2) in the case of technical advice unfavorable to the taxpayer, the chief, appeals office, decides to settle the issue under existing authority; or

(3) in the case of technical advice unfavorable to a Coordinated Examination Program taxpayer on a coordinated issue within the Industry Specialization Program or International Field Assistance Specialization Program on which appeals has coordinated issue papers containing settlement guidelines or positions, the examination case manager decides to settle the issue under the settlement authority delegated in Delegation Order No. 247, 1996-1 C.B. 356.

Except as provided in paragraph (1), (2), or (3) of this section 16.01, the conclusions in a technical advice memorandum involving a § 103 obligation and the issuer of this obligation must be treated by the district director or the chief, appeals office, as applying to the issuer and any holder of the obligation, unless the holder initiates a request for technical advice on the same issue addressed in the technical advice memorandum involving the issuer, and the national office issues a technical advice memorandum involving that issue and that holder.

Discussion with the taxpayer

.02 The national office will not discuss the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative until the taxpayer has been given a copy by the district or appeals office. See section 15.09 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer or the taxpayer's representative.

Gives copy to the taxpayer

.03 The district director or the chief, appeals office, only after adopting the technical advice, gives the taxpayer—

(1) a copy of the technical advice memorandum described in section 15.14 of this revenue procedure; and

(2) the notice under § 6110(f)(1) of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

This requirement does not apply to a technical advice memorandum involving a criminal or civil fraud investigation, or a jeopardy or termination assessment, as described in section 10.07 of this revenue procedure.

Taxpayer may protest deletions not made

.04 After receiving the notice under § 6110(f)(1) of intention to disclose the technical advice memorandum, the taxpayer may protest the disclosure of certain information in it. The taxpayer must submit a written statement within 20 calendar days identifying those

deletions not made by the Service that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection with brackets around the deletions proposed by the taxpayer that have not been made by the national office.

Generally, the national office considers only the deletion of material that the taxpayer has proposed be deleted or other deletions as required under § 6110(c) before the national office reply is sent to the district director or the chief, appeals office. Within 20 calendar days after it receives the taxpayer's response to the notice under § 6110(f)(1), the national office must mail to the taxpayer its final administrative conclusion about the deletions to be made.

When no copy is given to the taxpayer

.05 If the national office tells the district director or the chief, appeals office, that a copy of the technical advice memorandum should not be given to the taxpayer and the taxpayer requests a copy, the district director or the chief, appeals office, will tell the taxpayer that no copy will be given.

SECTION 17. WHAT IS THE EFFECT OF TECHNICAL ADVICE?

Applies only to the taxpayer for whom technical advice was requested

.01 A taxpayer may not rely on a technical advice memorandum issued by the Service for another taxpayer. *See* § 6110(j)(3).

Usually applies retroactively

.02 Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied retroactively.

Moreover, because technical advice, as described in section 2 of this revenue procedure, is issued only on closed transactions, a holding that is adverse to the taxpayer is also applied retroactively, unless the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International), as appropriate, exercises the discretionary authority under § 7805(b) to limit the retroactive effect of the holding.

Generally applied retroactively to modify or revoke prior technical advice

.03 A holding that modifies or revokes a holding in a prior technical advice memorandum is applied retroactively, with one exception. If the new holding is less favorable to the taxpayer than the earlier one, it generally is not applied to the period when the taxpayer relied on the prior holding in situations involving continuing transactions.

Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked

.04 If a technical advice memorandum relates to a continuing action or a series of actions, ordinarily it is applied until specifically withdrawn or until the conclusion is modified or revoked by the enactment of legislation, the ratification of a tax treaty, a decision of the United States Supreme Court, or the issuance of regulations (temporary or final), a revenue ruling, or other statement published in the Internal Revenue Bulletin. Publication of a notice of proposed rulemaking does not affect the application of a technical advice memorandum.

Applies to continuing action or series of actions until material facts change

.05 A taxpayer is not protected against retroactive modification or revocation of a technical advice memorandum involving a continuing action or a series of actions occurring after the material facts on which the technical advice memorandum is based have changed.

Does not apply retroactively under certain conditions

.06 Generally, a technical advice memorandum that modifies or revokes a letter ruling or another technical advice memorandum is not applied retroactively either to the taxpayer to whom or for whom the letter ruling or technical advice memorandum was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling or technical advice memorandum if—

- (1) there has been no misstatement or omission of material facts;

(2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling or technical advice memorandum was based;

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

(4) in the case of a letter ruling, it was originally issued on a prospective or proposed transaction; and

(5) the taxpayer directly involved in the letter ruling or technical advice memorandum acted in good faith in relying on the letter ruling or technical advice memorandum, and the retroactive modification or revocation would be to the taxpayer's detriment. For example, the tax liability of each shareholder is directly involved in a letter ruling or technical advice memorandum on the reorganization of a corporation. However, the tax liability of a member of an industry is not directly involved in a letter ruling or technical advice memorandum issued to another member and, therefore, the holding in a modification or revocation of a letter ruling or technical advice memorandum to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not obtain the nonretroactive application to one client of a modification or revocation of a letter ruling or technical advice memorandum previously issued to another client.

When a letter ruling to a taxpayer or a technical advice memorandum involving a taxpayer is modified or revoked with retroactive effect, the notice to the taxpayer, except in fraud cases, sets forth the grounds on which the modification or revocation is being made and the reason why the modification or revocation is being applied retroactively.

SECTION 18. HOW MAY RETROACTIVE EFFECT BE LIMITED?

Taxpayer may request that retroactivity be limited

.01 Under § 7805(b), the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International), as the Commissioner's delegate, may prescribe the extent, if any, to which a technical advice memorandum will be applied without retroactive effect.

A taxpayer for whom a technical advice memorandum was issued or for whom a technical advice request is pending may request that the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International), as appropriate, limit the retroactive effect of any holding in the technical advice memorandum or of any subsequent modification or revocation of the technical advice memorandum.

When germane to a pending technical advice request, a taxpayer should request to limit the retroactive effect of the holding of the technical advice memorandum early during the consideration of the technical advice request by the national office. This § 7805(b) request should be made initially as part of that pending technical advice request. The national office, however, will consider a § 7805(b) request to limit the retroactive effect of the holding if the request is made at a later time.

Form of request to limit retroactivity—continuing transaction before examination of return

.02 When a technical advice memorandum that concerns a continuing transaction is modified or revoked by, for example, issuance of a subsequent revenue ruling, or temporary or final regulation, a request to limit the retroactive effect of the modification or revocation of the technical advice memorandum must be made in the form of a request for a letter ruling if the request is submitted before an examination of the return pertaining to the transaction that is the subject of the request for the letter ruling. The requirements for a letter ruling request are given in sections 8 and 12.11 of Rev. Proc. 98-1.

Form of request to limit retroactivity—in all other cases

.03 In all other cases during the course of an examination of a taxpayer's return by the district director or during consideration of the taxpayer's return by the chief, appeals office (including when the taxpayer is informed that the district director or the chief, appeals

office, will recommend that a technical advice memorandum, letter ruling, or determination letter previously issued to, or with regard to, the taxpayer be modified or revoked), a taxpayer's request to limit retroactivity must be made in the form of a request for technical advice.

The request must meet the general requirements of a technical advice request, which are given in sections 6, 7, and 9 of this revenue procedure. The request must also—

- (1) state that it is being made under § 7805(b);
- (2) state the relief sought;
- (3) explain the reasons and arguments in support of the relief sought (including a discussion of the five items listed in section 17.06 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and
- (4) include any documents bearing on the request.

The taxpayer's request, including the statement that the request is being made under § 7805(b), must be submitted to the district director or the chief, appeals office, who must then forward the request to the national office for consideration.

Taxpayer's right to a conference

.04 When a request for technical advice concerns only the application of § 7805(b), the taxpayer has the right to a conference in the national office in accordance with the provisions of section 13 of this revenue procedure. In accordance with section 13.02 of this revenue procedure, the examining officer or appeals officer will be offered the opportunity to attend the conference on the § 7805(b) issue. Section 13.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

If the request for application of § 7805(b) is included in the request for technical advice on the substantive issues or is made before the conference of right on the substantive issues, the § 7805(b) issues will be discussed at the taxpayer's one conference of right.

If the request for the application of § 7805(b) is made as part of a pending technical advice request after a conference has been held on the substantive issues and the Service determines that there is justification for having delayed the request, then the taxpayer will have the right to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue only.

SECTION 19. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 97-2?

.01 This revenue procedure has been expanded to include the pre-submission conference procedures in Rev. Proc. 97-21, 1997-1 C.B. 651. Accordingly, sections 8 through 20 of Rev. Proc. 97-2 are redesignated as sections 9 through 21 in this revenue procedure, and the pre-submission conference procedures are provided in new section 8. These procedures are the same as in Rev. Proc. 97-21, except for the provision stating that no tape, stenographic, or other verbatim recording of the conference may be made by any party.

.02 Section 5.03 is amended to reflect the address to send a § 301.9100 letter ruling request if a private delivery service is used.

.03 Section 5.03 also is amended to reflect the national office's existing practice of allowing the hand-delivery of a § 301.9100 letter ruling request to the courier's desk of the Service.

.04 Section 7.02 is amended to provide that if the appeals officer agrees, by memorandum, to the submission of the request for technical advice, the district director may request technical advice on the same issue of the same taxpayer (or related taxpayer) pending before the appeals office, including the applicability of any of the federal taxes involved when more than one kind of federal tax is dependent on the resolution of that issue.

.05 Section 16.01 is amended to provide that the conclusions in a technical advice memorandum involving a § 103 obligation and the issuer of this obligation generally must be treated by the district director or the chief, appeals office, as applying to the issuer and any holder of the obligation, unless the holder initiates a request for technical advice on the same issue addressed in the technical advice memorandum involving the issuer, and the national office issues a technical advice memorandum involving that issue and that holder.

SECTION 20. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

.01 Rev. Proc. 97-2, 1997-1 C.B. 486, as amplified by Rev. Proc. 97-21, 1997-1 C.B. 651, is superseded.

.02 Rev. Proc. 97-21, 1997-1 C.B. 651, is modified, and, as modified, is superseded.

SECTION 21. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?

This revenue procedure is effective January 12, 1998.

DRAFTING INFORMATION

The principal author of this revenue procedure is David Selig of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure for matters under the jurisdiction of—

(1) the Associate Chief Counsel (Domestic) or the Associate Chief Counsel (Employee Benefits and Exempt Organizations), contact Mr. Selig at (202) 622-3040 (not a toll-free call);

(2) the Associate Chief Counsel (International), contact Gerard Traficanti at (202) 874-4360 (not a toll-free call);

(3) the Associate Chief Counsel (Enforcement Litigation), contact Alan C. Levine at (202) 622-3610 (not a toll-free call);

(4) the Assistant Commissioner (Examination), contact Susan Blake at (202) 622-3664 (not a toll-free call); or

(5) the National Director of Appeals, contact Pam Robinson at (202) 401-4169 (not a toll-free call).

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