

**TABLE OF CONTENTS**

**SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?** p. 86

**SECTION 2. WHAT IS TECHNICAL ADVICE?** p. 88

**SECTION 3. ON WHAT ISSUES MAY TECHNICAL ADVICE BE REQUESTED UNDER THIS PROCEDURE?** p. 88

- .01 Issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)
- .02 Issues involving shipowners' protection and indemnity associations and certain homeowners associations

**SECTION 4. ON WHAT ISSUES MUST TECHNICAL ADVICE BE REQUESTED UNDER DIFFERENT PROCEDURES?** p. 89

- .01 Alcohol, tobacco, and firearms taxes
- .02 Tax exempt and government entities
- .03 Farmers' cooperatives

**SECTION 5. MAY TECHNICAL ADVICE BE REQUESTED UNDER § 301.9100 DURING THE COURSE OF AN EXAMINATION?** p. 89

- .01 A § 301.9100 request is a letter ruling request
- .02 Period of limitation
- .03 Address to send a § 301.9100 request
- .04 If the return is being examined by a field office or considered by an area office or a federal court, the taxpayer must notify the national office and the national office will notify the director, appeals officer, or government counsel

**SECTION 6. WHO IS RESPONSIBLE FOR REQUESTING TECHNICAL ADVICE?** p. 90

- .01 Director or area director, appeals, determines whether to request technical advice
- .02 Taxpayer may ask that issue be referred for technical advice

**SECTION 7. WHEN SHOULD TECHNICAL ADVICE BE REQUESTED?**

**p. 91**

- .01 Uniformity of position lacking or unusual or complex issue
- .02 When technical advice can be requested
- .03 At the earliest possible stage

**SECTION 8. WHEN SHOULD TECHNICAL ADVICE NOT BE REQUESTED?**

**p. 91**

- .01 Technical advice will not be issued on frivolous issues
- .02 A director may not request technical advice on an identical issue of the same taxpayer that an area office is considering

**SECTION 9. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED?**

**p. 92**

- .01 Pre-submission conference generally is permitted when the field or area office likely will request technical advice and all parties agree to request the conference
- .02 Purpose of a pre-submission conference
- .03 Request for a pre-submission conference must be submitted in writing by the field or area office
- .04 Branch will contact the field or area office to arrange the pre-submission conference
- .05 Pre-submission conference generally held in person
- .06 Certain information required to be submitted to the national office prior to the pre-submission conference
- .07 Pre-submission conference may not be taped
- .08 Discussion of substantive issues is not binding on the Service

**SECTION 10. WHAT MUST BE INCLUDED IN THE REQUEST FOR TECHNICAL ADVICE?**

**p. 93**

- .01 Statement of issues, facts, law, and arguments; submission of relevant foreign laws and documents in a language other than English; and statement regarding interpretation of an income or estate tax treaty
- .02 Statement identifying information to be deleted from public inspection
- .03 Transmittal Form 4463, Request for Technical Advice
- .04 Number of copies of request to be submitted
- .05 Power of attorney

**SECTION 11. HOW ARE REQUESTS HANDLED?**

**p. 97**

- .01 Taxpayer notified
- .02 Conference offered
- .03 If the taxpayer disagrees with the Service's statement of facts
- .04 If the Service disagrees with the taxpayer's statement of facts

- .05 If the interpretation of a foreign law or foreign document is a material fact
- .06 If the taxpayer has not submitted the required deletions statement
- .07 Section 6104 of the Internal Revenue Code (Applications for exemption and letter rulings issued to certain exempt organizations open to public inspection)
- .08 Criminal or civil fraud cases

**SECTION 12. HOW DOES A TAXPAYER APPEAL A DIRECTOR'S OR AREA DIRECTOR, APPEALS', DECISION NOT TO SEEK TECHNICAL ADVICE?**

**p. 99**

- .01 Taxpayer notified of decision not to seek technical advice
- .02 Taxpayer may appeal decision not to seek technical advice
- .03 Territory manager or area director, appeals, determines whether technical advice will be sought
- .04 Territory manager's or area director, appeals', decision may be reviewed but not appealed
- .05 Special procedures applicable to appeals regarding frivolous issues

**SECTION 13. HOW ARE REQUESTS FOR TECHNICAL ADVICE WITHDRAWN?**

**p. 101**

- .01 Taxpayer notified
- .02 National office may provide views

**SECTION 14. HOW ARE CONFERENCES SCHEDULED?**

**p. 102**

- .01 If requested, offered to the taxpayer when adverse technical advice proposed
- .02 Normally held within 21 days of contact with the taxpayer
- .03 21-day period will be extended if justified and approved
- .04 Denial of extension cannot be appealed
- .05 Entitled to one conference of right
- .06 Conference may not be taped
- .07 If requested and approved, conference will be delayed to address a request for relief under § 7805(b)
- .08 Service makes tentative recommendations
- .09 Additional conferences may be offered
- .10 Additional information submitted after the conference
- .11 Under limited circumstances, may schedule a conference to be held by telephone

**SECTION 15. HOW IS STATUS OF REQUEST OBTAINED?**

**p. 104**

- .01 Taxpayer or the taxpayer's representative may request status from the field or area office
- .02 National office will give status updates to the director or area director, appeals

**SECTION 16. HOW DOES THE NATIONAL OFFICE PREPARE THE TECHNICAL ADVICE MEMORANDUM?**

**p. 105**

- .01 Delegates authority to branch chiefs
- .02 Determines whether request has been properly made
- .03 Contacts the field or area office to discuss issues
- .04 Informs the field or area office if any matters in the request have been referred to another branch or office
- .05 Informs the field or area office if additional information is needed
- .06 Informs the field or area office of the tentative conclusion
- .07 If a tentative conclusion has not been reached, gives date estimated for tentative conclusion
- .08 Advises the field or area office if tentative conclusion is changed
- .09 Generally does not discuss the tentative conclusion with the taxpayer
- .10 Advises the field or area office of final conclusions
- .11 If needed, requests additional information
- .12 Requests taxpayer to send additional information to the national office and a copy to the director or area director, appeals
- .13 Informs the taxpayer when requested deletions will not be made
- .14 Prepares reply in two parts
- .15 Routes replies to appropriate office
- .16 Sends a copy of reply to appropriate division counsel

**SECTION 17. HOW DOES A FIELD OR AREA OFFICE USE THE TECHNICAL ADVICE?**

**p. 108**

- .01 Generally applies advice in processing the taxpayer's case
- .02 Discussion with the taxpayer
- .03 Gives copy to the taxpayer
- .04 Taxpayer may protest deletions not made
- .05 When no copy is given to the taxpayer

**SECTION 18. WHAT IS THE EFFECT OF TECHNICAL ADVICE?**

**p. 110**

- .01 Applies only to the taxpayer for whom technical advice was requested
- .02 Usually applies retroactively
- .03 Generally applied retroactively to modify or revoke prior technical advice
- .04 Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked
- .05 Applies to continuing action or series of actions until material facts change
- .06 Does not apply retroactively under certain conditions

**SECTION 19. HOW MAY RETROACTIVE EFFECT BE LIMITED?**

**p. 111**

- .01 Taxpayer may request that retroactivity be limited
- .02 Form of request to limit retroactivity — continuing transaction before examination of return
- .03 Form of request to limit retroactivity — in all other cases
- .04 Taxpayer's right to a conference

**SECTION 20. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2001-2?**

**p. 112**

**SECTION 21. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?**

**p. 113**

**SECTION 22. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?**

**p. 113**

**DRAFTING INFORMATION**

**p. 113**

**INDEX**

**p. 114**

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

This revenue procedure explains when and how the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) give technical advice to a director or an area director, appeals. It also explains the rights a taxpayer has when a director or an area director, appeals, requests technical advice regarding a tax matter.

## **Operating divisions of the Internal Revenue Service**

The Internal Revenue Service includes four operating divisions that are responsible for meeting the needs of the taxpayers they serve. These operating divisions are:

(1) Large and Mid-Size Business Division (LMSB), which generally serves corporations, S corporations, and partnerships with assets in excess of \$10 million;

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

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

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

## **Description of terms used in this revenue procedure**

For purposes of this revenue procedure—

(1) any reference to director or field office refers to the Director, Field Operations, LMSB, the Area Director, Field Compliance, SB/SE, or the Director, Compliance, W&I, as appropriate, and their respective offices or, when appropriate, the Director, International, LMSB, the Director, Employee Plans Examinations, the Director, Exempt Organizations Examinations, the Director, Federal, State & Local Governments, the Director, Tax Exempt Bonds, or the Director, Indian Tribal Governments, and their respective offices;

(2) any reference to area director, appeals, refers to the Area Director, Appeals LMSB, or the Area Director, Appeals SB/SE-TE/GE, as appropriate;

(3) any reference to territory manager refers to a territory manager, LMSB, a territory manager, compliance, SB/SE, or the Director, Compliance, W&I, as appropriate, and, includes, when appropriate, the Employee Plans Examinations Area manager, the Exempt Organizations Examinations Area manager, the Employee Plans Determinations manager, the Exempt Organizations Determinations manager, the group manager, Federal, State & Local Governments, the manager, field operations, Tax Exempt Bonds, or the group manager, Indian Tribal Governments;

(4) any reference to area office refers to Appeals LMSB Area Office or Appeals SB/SE-TE/GE Area Office, as appropriate;

(5) any reference to appeals officer includes, when appropriate, the appeals team case leader;

(6) 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

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

**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 director or an area director, appeals, 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 territory manager or the area director, appeals. They also include processing and considering nondocketed cases in an area 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 Service personnel close cases and also helps establish and maintain consistent holdings throughout the Service. A director or an area director, appeals, 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 field or area office in writing or orally, other than advice furnished pursuant to this revenue procedure. In accordance with section 12.01 of this revenue procedure, a taxpayer’s request for referral of an issue to the 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 field or area 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 (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)**

**.01** The instructions of this revenue procedure apply to requests for technical advice on any issue under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), and on certain issues under the jurisdiction of the Associate Chief Counsel (Procedure and Administration). See section 3 of Rev. Proc. 2002-1, this Bulletin, for a description of the principal subject matters of jurisdiction.

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

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

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

**Alcohol, tobacco, and firearms taxes**

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

**Tax exempt and government entities**

**.02** The procedures for obtaining technical advice specifically on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, are found in Rev. Proc. 2002-5, this Bulletin. However, the procedures under Rev. Proc. 2002-2 (this revenue procedure) must be followed for obtaining technical advice on issues pertaining to tax-exempt bonds, Indian tribal governments, federal, state, or local governments, mortgage credit certificates, and deferred compensation plans under § 457.

**Farmers' cooperatives**

**.03** Even though the Associate Chief Counsel (Passthroughs & Special Industries) has jurisdiction for issuing technical advice under § 521, the procedures under Rev. Proc. 2002-5 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) (2001)), must be followed.

**SECTION 5. MAY TECHNICAL ADVICE BE REQUESTED UNDER § 301.9100 DURING THE COURSE OF 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 area office or a federal court. Therefore, a § 301.9100 request should be submitted pursuant to Rev. Proc. 2002-1 (including the payment of the applicable user fee listed in Appendix A of Rev. Proc. 2002-1). *See* section 5.02 of Rev. Proc. 2002-1.

**Period of limitation**

**.02** The running of any applicable period of limitation 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 limitation 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 limitation on assessment. Note that the filing of a claim for refund under § 6511 does not extend the period of limitation on assessment. If § 301.9100 relief is granted, the Service may require the taxpayer to consent to an extension of the period of limitation 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. 2002-1, a § 301.9100 request, together with the appropriate user fee, must be submitted by the taxpayer to the Associate Chief

Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate. The package should be marked: RULING REQUEST SUBMISSION. See Appendix A of Rev. Proc. 2002-1 for the appropriate user fee.

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

**Internal Revenue Service  
Attn: CC:PA:T  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044**

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

**Internal Revenue Service  
Attn: CC:PA:T, Room 6561  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224**

- (2) A § 301.9100 request may also be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. to the courier's desk at the loading dock entrance of 1111 Constitution Avenue, N.W., Washington, D.C. A receipt will be given at the courier's desk. The package should be addressed to:

**Courier's Desk  
Internal Revenue Service  
Attn: CC:PA:T, Room 6561  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224**

**If the return is being examined by a field office or considered by an area office or a federal court, the taxpayer must notify the national office and the national office will notify the 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 field office or considered by an area 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. 2002-1. The national office will notify the appropriate 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 Service official in the operating division that has examination jurisdiction of the taxpayer's tax return, the appeals officer, or the government counsel.

## **SECTION 6. WHO IS RESPONSIBLE FOR REQUESTING TECHNICAL ADVICE?**

**Director or area director, appeals, determines whether to request technical advice**

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

**Taxpayer may ask that issue be referred for technical advice**

**.02** While a case is under the jurisdiction of a director or area director, appeals, 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 or unusual or complex issue**

**.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 director or an area director, appeals. 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 area office that had the case concurs in the request.

### **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 field or area office's decision to request technical advice.

## **SECTION 8. WHEN SHOULD TECHNICAL ADVICE NOT BE REQUESTED?**

### **Technical advice will not be issued on frivolous issues**

**.01 Technical advice will not be issued on frivolous issues.** A referral of technical advice on frivolous issues should not be forwarded to the national office. For purposes of this revenue procedure, a "frivolous issue" is one without basis in fact or law, or that espouses a position which has been held by the courts to be frivolous or groundless. Examples of frivolous or groundless issues include, but are not limited to:

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

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

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

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

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

(6) claims that taxes apply only to federal employees; only to residents of Puerto Rico, Guam, the U.S. Virgin Islands, the District of Columbia, or "federal enclaves"; or that the Internal Revenue Code imposes taxes on U.S. citizens and residents only on income derived from foreign based activities;

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

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

**A director may not request technical advice on an identical issue of the same taxpayer that an area office is considering**

**.02** A director may not request technical advice on an issue if an area 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). A case remains under the jurisdiction of the director even though an area 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 area office and the applicability of more than one kind of federal tax is dependent upon the resolution of that issue, a director may not request technical advice on the applicability of any of the taxes involved.

A director or an area director, appeals, 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.

**SECTION 9. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED?**

**Pre-submission conference generally is permitted when the field or area 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 field or area 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 field or area 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 field or area office determines that it likely will request technical advice and only after the field or area office and the taxpayer 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 field or area 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 field or area office**

**.03** A request for a pre-submission conference must be submitted in writing by the field or area office. The request should identify the associate or assistant chief counsel office, as appropriate, 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 division counsel is strongly encouraged or, if the issue is under the jurisdiction of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), coordination with that office's

local counsel is strongly encouraged. If the request involves a designated issue or industry under the Office of Pre-Filing and Technical Guidance, LMSB, coordination with the technical advisor is also strongly encouraged.

An original and one copy of the request should be submitted to the appropriate address listed in section 10.03 of this revenue procedure.

**Branch will contact the field or area 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 field or area office to arrange a mutually convenient time for the parties to meet in the national office. The conference generally should be held within 30 calendar days after the field or area office is contacted. The field or area office will be responsible for coordinating with the taxpayer as well as with any other Service personnel whose attendance the field or area 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 field or area 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 field or area 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 field or area 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 10. WHAT MUST BE INCLUDED IN THE REQUEST FOR TECHNICAL ADVICE?**

**Statement of issues, facts, law, and arguments; submission of relevant foreign laws and documents in a language other than English; and statement regarding interpretation of an income or estate tax treaty**

**.01** Whether initiated by the taxpayer or by a field or area office, a request for technical advice must include the facts and the issues for which technical advice is requested; 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; the information required in sections 10.01(4) and 10.01(5) of this revenue procedure with respect to the submission of relevant foreign laws and documents in a language other than English, if applicable; and the written statement required in section 10.01(6) of this revenue procedure with respect to the interpretation of a substantive provision of an income or estate tax treaty, if applicable.

To facilitate prompt action on technical advice requests, the taxpayer is encouraged to request that if the Service requests additional information from the taxpayer, the Service does so by fax. The procedures for requesting such document to be faxed are the same as those in section 16.11(1) of this revenue procedure.

**(1) If taxpayer initiates request for technical advice, taxpayer must submit written statement, copy of relevant foreign laws, and certified English translations of documents in a language other than English.** 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) a written statement—
  - (i) stating the facts and the issues;
  - (ii) explaining the taxpayer’s position;
  - (iii) 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
  - (iv) stating the reasons for requesting technical advice;
- (b) the information required in sections 10.01(4) and 10.01(5) of this revenue procedure with respect to the submission of a copy of relevant foreign laws and certified English translations of documents in a language other than English, if applicable; and
- (c) the written statement required in section 10.01(6) of this revenue procedure with respect to the interpretation of a substantive provision of an income or estate tax treaty, if applicable.

If the examining officer or appeals officer determines that technical advice will be requested, the taxpayer’s statement, including the information required in sections 10.01(4), 10.01(5), and 10.01(6) of this revenue procedure, will be forwarded to the national office with the request for technical advice.

**(2) If the Service initiates request for technical advice, taxpayer is encouraged to submit written statement, copy of relevant foreign laws, and certified English translations of documents in a language other than English.** If the request for technical advice is initiated by a field or area office, the taxpayer is encouraged to submit a written statement explaining the taxpayer’s position and discussing relevant statutory provisions, court decisions, regulations, revenue rulings, revenue procedures, notices or any other authority supporting the taxpayer’s position. If the taxpayer chooses to submit this statement and information, the taxpayer and the field or area office should determine a mutually agreed date for the submission of the taxpayer’s statement and information so that it will be forwarded to the national office with the request for technical advice. Section 11.03 applies with respect to any disagreements with the Service’s statement of facts and issues.

If the request for technical advice is forwarded to the national office without the taxpayer’s statement and information and if the taxpayer chooses to submit the statement and information, the taxpayer must submit the statement and information to the national office within 21 calendar days after the request for technical advice has been forwarded. The taxpayer must also send a copy of the statement and information to the director or the area director, appeals. The procedures for requesting an extension of the 21-day period and receiving approval of such extension are the same as those in section 16.11(3) of this revenue procedure. If the national office does not receive the taxpayer’s statement and information within the 21-day period, plus extensions granted by the associate or assistant

chief counsel, as appropriate, the national office, at its discretion, may base its advice on the facts provided by the field or area office.

**(3) Statement of authorities contrary to taxpayer's position.** Whether the request for technical advice is initiated by the taxpayer or by a field or area 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.

**(4) Relevant parts of all foreign laws.** Whether initiated by the taxpayer or by a field or area office, a request for technical advice, and other statements forwarded to the national office with the request, must include a copy of the relevant parts of all foreign laws, including statutes, regulations, administrative pronouncements, and any other relevant legal authority. The documents submitted must be in the official language of the country involved and must be copied from an official publication of the foreign government or another widely available, generally accepted publication. If English is not the official language of the country involved, the submission must also include a copy of an English language version of the relevant parts of all foreign laws. This translation must be: (a) from an official publication of the foreign government or another widely available, generally accepted publication; or (b) a certified English translation submitted in accordance with section 10.01(5) of this revenue procedure.

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

The taxpayer and the field or area office are encouraged to inform the national office about and discuss the implications of any authority believed to interpret the foreign law, such as pending legislation, treaties, court decisions, notices, or administrative decisions. But see section 11.05 of this revenue procedure, stating that the national office may refuse to provide technical advice if the interpretation of a foreign law or foreign document is a material fact.

**(5) Standards for acceptability of submissions of documents in a language other than English and certified English translations of laws in a language other than English.** Whether initiated by the taxpayer or by a field or area office, a request for technical advice, and other statements forwarded to the national office with the request, must include an accurate and complete certified English translation of the relevant parts of all contracts, wills, deeds, agreements, instruments, trust documents, proposed disclaimers, or other documents in a language other than English. If the taxpayer or the field or area office chooses to submit certified English translations of foreign laws, those translations must be based on an official publication of the foreign government or another widely available, generally accepted publication. In either case, the translation must be that of a qualified translator and must be attested to by the translator. The attestation must contain: (a) a statement that the translation submitted is a true and accurate translation of the foreign language document or law; (b) a statement as to the attestant's qualifications as a translator and as to that attestant's qualifications and knowledge regarding income tax matters; and (c) the attestant's name and address.

**(6) Statement regarding interpretation of a substantive provision of an income or estate tax treaty.** Whether initiated by the taxpayer or by a field or area office, a request for technical advice involving the interpretation of a substantive provision of an income or estate tax treaty must include a written statement regarding whether—

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

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

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

**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 11.06 of this revenue procedure.

A taxpayer who wants only names, addresses, and identifying numbers deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletions statement must be accompanied by a copy of the 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 field or area 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 field offices**

The field office should send the request to:

**Internal Revenue Service  
Attn: CC:PA:T  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044**

**Address to send requests from area offices**

The area office may send the request to either:

**Office of LMSB Operations C:AP:LMSB  
Office of the National Chief Appeals C:AP  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224; or**

**Office of LMSB Operations C:AP:LMSB  
Office of the National Chief Appeals C:AP  
Internal Revenue Service  
Franklin Court Building—East Court  
1099 14th Street, N.W.—4th Floor  
Washington, D.C. 20005**

**Number of copies of request to be submitted**

**.04** The field or area office must submit three copies of the request for technical advice to the address in section 10.03 of this revenue procedure with two copies being designated for the national office.

Also, the field or area office must send: (1) one copy of the request for technical advice to the technical advisor if the request involves a designated issue or industry under the Office of Pre-Filing and Technical Guidance, LMSB; and (2) one copy of the request for technical advice to the division counsel of the operating division that has jurisdiction of the taxpayer's tax return.

**Power of attorney**

**.05** Any authorized representative, as described in section 8.01(13) of Rev. Proc. 2002-1, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230 (31 C.F.R. part 10 (2001)) and with the conference and practice requirements of the Statement of Procedural Rules (26 C.F.R. § 601.501-601.509 (2001)). 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. An original, a copy, or a fax transmission of the power of attorney is acceptable so long as its authenticity is not reasonably disputed.

**SECTION 11. HOW ARE REQUESTS HANDLED?**

**Taxpayer notified**

**.01** Regardless of whether the taxpayer or the Service initiates the request for technical advice, the field or area 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 are being 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 11.01 does not apply to a technical advice memorandum described in section 11.08 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 territory manager or the area director, appeals.

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 field or area 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 territory manager or the area director, appeals. Both the statements of the taxpayer and the field or area office will be forwarded to the national office with the request for technical advice.

When the director or the area director, appeals, 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 field or area 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 field or area 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 territory manager or the area director, appeals.

If an agreement cannot be reached, both the statements of the taxpayer and the field or area 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 director or the area director, appeals, may refuse to refer a taxpayer initiated request for technical advice to the national office.

If the director or the area director, appeals, 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 field or area office.

**If the interpretation of a foreign law or foreign document is a material fact**

.05 If the interpretation of a foreign law or foreign document is a material fact, the national office, at its discretion, may refuse to provide technical advice. This section 11.05 applies whether or not the field or area office and the taxpayer dispute the interpretation of a foreign law or foreign document. The interpretation of a foreign law or foreign document means making a judgment about the import or effect of the foreign law or document that goes beyond its plain meaning.

**If the taxpayer has not submitted the required deletions statement**

.06 When the field or area 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 10.02 of this revenue procedure. If the taxpayer does not submit the deletions statement, the director or the area director, appeals, 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 director or the area director, appeals, will ask the taxpayer to submit the statement. If the director or the area director, appeals, does not receive the deletions statement within 10 calendar days after asking the taxpayer for it, the director or the area director, appeals, may decline to submit the request for technical advice.

However, if the director or the area director, appeals, decides to request technical advice, whether initiated by the field or area 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).

**.07** 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.

**.08** 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 6104 of the Internal Revenue Code (Applications for exemption and letter rulings issued to certain exempt organizations open to public inspection)**

**Criminal or civil fraud cases**

**SECTION 12. HOW DOES A TAXPAYER APPEAL A DIRECTOR'S OR AREA DIRECTOR, APPEALS', 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 field or area 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 territory manager or the area director, appeals.

**Territory manager or area director, appeals, determines whether technical advice will be sought**

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

If the territory manager or the area director, appeals, 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 territory manager or the area director, appeals, 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 territory manager or the area director, appeals, of agreement or disagreement with the proposed denial.

**Territory manager's or area director, appeals', decision may be reviewed but not appealed**

.04 The taxpayer may not appeal the decision of the territory manager or the area director, appeals, 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 Industry Director, LMSB; the Area Director, SB/SE; the Director, Compliance, W&I; the Director, International, LMSB; the Director, Federal, State & Local Governments; the Director, Tax Exempt Bonds; the Director, Indian Tribal Governments; the Director, Appeals LMSB Operating Unit or the Director, Appeals SBSE Operating Unit, as appropriate.

The Industry Director, LMSB; the Area Director, SB/SE; the Director, Compliance, W&I; the Director, International, LMSB; the Director, Federal, State & Local Governments; the Director, Tax Exempt Bonds; the Director, Indian Tribal Governments; the Director, Appeals LMSB Operating Unit or the Director, Appeals SBSE Operating Unit, 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 Industry Director, LMSB; the Area Director, SB/SE; the Director, Compliance, W&I; the Director, International, LMSB; the Director, Federal, State & Local Governments; the Director, Tax Exempt Bonds; the Director, Indian Tribal Governments; the Director, Appeals LMSB Operating Unit or the Director, Appeals SBSE Operating Unit, as appropriate, may consult with the national office, if necessary, and will notify the field office or area 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 field office or area office will then notify the taxpayer.

While the matter is being reviewed, the field office or area 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 director or the area director, appeals, has been delegated to another official.

## **Special procedures applicable to appeals regarding frivolous issues**

**.05** If the request for technical advice concerns a “frivolous issue,” as described in section 8.01 of this revenue procedure, technical advice will not be given, and the examining officer or appeals officer will deny the taxpayer’s request for referral. The taxpayer may appeal the decision of the examining officer or appeals officer; however, if the territory manager or the area director, appeals, determines that no technical advice will be sought, an expedited review procedure will be followed.

This expedited review procedure will consist of the following:

(1) the territory manager or the area director, appeals, will inform the appropriate official described in section 12.04 of this revenue procedure (the Industry Director, LMSB; the Area Director, SB/SE; the Director, Compliance, W&I; the Director, International, LMSB; the Director, Federal, State, and Local Governments; the Director, Tax Exempt Bonds; the Director, Indian Tribal Governments; the Director, Appeals LMSB Operating Unit or the Director, Appeals SBSE Operating Unit) of the request for review and the basis for the denial, but will not forward the taxpayer’s written request and statements, unless requested to do so by the official;

(2) the field office or area office will not suspend action on the issue;

(3) within 15 days, the official will notify the territory manager or area director, appeals, whether the proposed denial is approved or disapproved. The official may also determine that the expedited process is not warranted and request all of the information supplied by the taxpayer and allow suspension of action on the item while the denial is reviewed; and

(4) the field office or area office will then notify the taxpayer of the result of the review of the denial.

## **SECTION 13. 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 director or an area director, appeals, 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 director or the area director, appeals, as appropriate, must notify the taxpayer in writing of an intent to withdraw the request for technical advice except—

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

(2) when the 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 12 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 director or the area director, appeals, when acknowledging the withdrawal request. This memorandum may constitute Chief Counsel Advice, as defined in § 6110(i), subject to disclosure under § 6110. In an appeals case, acknowledgment of the withdrawal request should be sent to the appropriate area office, through the Chief, Appeals, C:AP:LMSB. In appropriate cases, the subject matter may be published as a revenue ruling or as a revenue procedure.

## **SECTION 14. HOW ARE CONFERENCES SCHEDULED?**

**If requested, offered to the taxpayer when adverse 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 Industry Director, LMSB; the Director of Compliance, Field Operations, SB/SE; the Director, Compliance, W&I; the Director, International, LMSB; the Director, Federal, State & Local Governments; the Director, Tax Exempt Bonds; the Director, Indian Tribal Governments; the Chief, Appeals; the director; or the area director, appeals, 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 associate or assistant chief counsel, as appropriate, of the office to which the case is assigned approves the request. No extension will be granted without the approval of the associate or assistant chief counsel, as appropriate. 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 14.09 of this revenue procedure exists. This conference is normally held at the branch level and is attended by a person who has authority to sign the transmittal memorandum (discussed in section 16.14 of this revenue procedure) in his or her own name or 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 in his or her own name or for the branch chief will attend 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 associate or assistant chief counsel, as appropriate, or to any other Service official. But see section 14.09 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) (regarding limitation of retroactive effect, discussed in section 19 of this revenue procedure). The associate or assistant chief counsel, as appropriate, 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 19.04 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), 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 14.02 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 14.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

## **Additional information submitted after the conference**

**.10** 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 16.11(2) of this revenue procedure.

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

If the additional information has a significant impact on the facts in the request for technical advice, the national office will ask the director or the area director, appeals, for comment on the facts contained in the additional information submitted. The director or the area director, appeals, 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 associate or assistant chief counsel, as appropriate, of the office to which the case is assigned approves the extension. Such extension will not be routinely granted. The procedures for requesting an extension of the 21-day period and notifying the taxpayer of the Service's decision are the same as those in sections 14.03 and 14.04 of this revenue procedure.

## **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, D.C. 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 14.02 of this revenue procedure, the examining officer or appeals officer will be offered the opportunity to participate in the telephone conference. Section 14.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

## **SECTION 15. HOW IS STATUS OF REQUEST OBTAINED?**

### **Taxpayer or the taxpayer's representative may request status from the field or area office**

**.01** The taxpayer or the taxpayer's representative may obtain information on the status of the request for technical advice by contacting the field or area office that requested the technical advice. See section 16.09 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer or the taxpayer's representative. See section 17.02 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 director or area director, appeals**

**.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 director or the area director, appeals. In addition, a director or an area director, appeals, 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 acknowledgment of receipt of the request for technical advice.

See section 16.10 of this revenue procedure about discussing the final conclusions with the field or area office. Further, the director or the area director, appeals, will be notified at the time the technical advice memorandum is mailed.

## **SECTION 16. HOW DOES THE NATIONAL OFFICE PREPARE THE TECHNICAL ADVICE MEMORANDUM?**

### **Delegates authority to branch chiefs**

**.01** The branch chiefs in the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions & Products), the Office of Associate Chief Counsel (Income Tax & Accounting), the Office of Associate Chief Counsel (International), the Office of Associate Chief Counsel (Passthroughs & Special Industries), the Office of Associate Chief Counsel (Procedure and Administration), and the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) have largely been delegated the authority to issue technical advice on issues under their jurisdiction.

### **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 10 of this revenue procedure.

However, if the request does not comply with the requirements of section 10.02 of this revenue procedure relating to the deletions statement, the Service will follow the procedure in the last paragraph of section 11.06 of this revenue procedure.

### **Contacts the field or area 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 field or area office to discuss the procedural and substantive issues in the request that come within the branch's jurisdiction.

### **Informs the field or area 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 field or area 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 field or area office about the technical advice request within 21 calendar days after receiving it in accordance with section 16.03 of this revenue procedure.

### **Informs the field or area office if additional information is needed**

**.05** The branch representative will inform the field or area 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 field or area office and the taxpayer. Cases should also be returned if major procedural problems cannot be resolved by telephone. The field or area office should promptly notify the taxpayer of the decision to return the case for further factual development or other reasons.

If only minor procedural deficiencies exist, the 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

notify the field or area 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 field or area office of the tentative conclusion**

**.06** If all necessary information has been provided, the branch representative informs the field or area 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 field or area office of the estimated date the tentative conclusion will be made.

**Advises the field or area 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 field or area office.

**Generally does not discuss the tentative conclusion with the taxpayer**

**.09** Neither the national office nor the field or area 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 17.02 of this revenue procedure regarding discussions of the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative.

**Advises the field or area 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 16.03 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 director or the area director, appeals, 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) Request to receive a request for additional information by fax.** To facilitate prompt action on technical advice requests, the taxpayer is encouraged to request that if the Service requests additional information from the taxpayer, the Service does so by fax.

A request to fax a copy of the request for additional information to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original technical advice request or prior to the mailing of the request for additional information. The request to fax must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the document is to be faxed.

Because of the unsecured nature of a fax transmission, the Service will take certain precautions to protect confidential information. For example, the Service will use a cover sheet that identifies the intended recipient of the fax and the number of pages transmitted, that does not identify the taxpayer by name or identifying number, and that contains a

statement prohibiting unauthorized disclosure of the document if a recipient of the faxed document is not the intended recipient of the fax. Also, for example, the cover sheet should be faxed in an order in which it will become the first page covering the faxed document.

(2) **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.

(3) **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 associate or assistant chief counsel, as appropriate, 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 associate or assistant chief counsel, as appropriate. 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.

(4) **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 associate or assistant chief counsel, as appropriate, the national office will issue the technical advice memorandum based on the existing record.

.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 the original 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 of the additional information to the director or the area director, appeals, for comment. Any comments by the director or the area director, appeals, must be furnished promptly to the appropriate branch in the national office. If the director or the area director, appeals, does not have any comments, he or she must notify the branch representative promptly.

.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 17.04 of this revenue procedure for the procedures to protest the disclosure of information in the technical advice memorandum.

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

**Informs the taxpayer when requested deletions will not be made**

## **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 field or area office strategic advice that need not be discussed with the taxpayer. If the transmittal memorandum provides more than the fact that the technical advice memorandum is attached or the case is returned for further development, the transmittal memorandum may constitute Chief Counsel Advice, as defined in § 6110(i)(1), subject to disclosure under § 6110.

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

- (1) a statement of the issues;
- (2) the conclusions of the national office;
- (3) a statement of the facts pertinent to the issues;
- (4) a statement of the pertinent law, tax treaties, regulations, revenue rulings, and other precedents published in the Internal Revenue Bulletin, and court decisions; and
- (5) a discussion of the rationale supporting the conclusions reached by the national office.

The conclusions give direct answers, whenever possible, to the specific issues raised by the field or area office. However, the national office is not bound by the precise statement of the issues as submitted by the taxpayer or by the field or area 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 field 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 director (see paragraph 1 of description of terms used in section 1 of this revenue procedure) or the area director, appeals. A copy of the reply to a request from LMSB should be mailed simultaneously to the field personnel who requested it under the signature authority of the director. Replies to requests from appeals should be routed to the appropriate area office through the Chief, Appeals, C:AP:LMSB.

## **Sends a copy of reply to appropriate division counsel**

**.16** The national office will send a copy of the reply to the request for technical advice to the division counsel of the operating division that has jurisdiction of the taxpayer's tax return.

## **SECTION 17. HOW DOES A FIELD OR AREA OFFICE USE THE TECHNICAL ADVICE?**

### **Generally applies advice in processing the taxpayer's case**

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

- (1) the director or the area director, appeals, decides that the conclusions reached by the national office in a technical advice memorandum should be reconsidered and requests

a reconsideration. The reconsideration process may include a meeting held by the field participants who requested technical advice and the national office participants who prepared the memorandum;

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

(3) in the case of technical advice unfavorable to a Coordinated Industry Case (formerly Coordinated Examination Program) taxpayer on a coordinated issue within the Office of Pre-Filing and Technical Guidance, LMSB, on which appeals has coordinated issue papers containing settlement guidelines or positions, the team 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 17.01, the conclusions in a technical advice memorandum involving a § 103 obligation and the issuer of this obligation must be treated by the director or the area director, appeals, 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 of the technical advice memorandum by the field or area office. See section 16.09 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 director or the area director, appeals, only after adopting the technical advice, gives the taxpayer—

(1) a copy of the technical advice memorandum described in section 16.14 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)).

The director or appeals officer has 30 calendar days after receipt of a technical advice memorandum to either formally request reconsideration or give the adopted technical advice memorandum to the taxpayer. The director or appeals officer must notify the national office when the technical advice memorandum is given to the taxpayer.

These requirements do not apply to a technical advice memorandum involving a criminal or civil fraud investigation, or a jeopardy or termination assessment, as described in section 11.08 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 director or the area director, appeals. 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.

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

**When no copy is given to the taxpayer**

## **SECTION 18. 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(k)(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 (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), 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 19. HOW MAY RETROACTIVE EFFECT BE LIMITED?**

### **Taxpayer may request that retroactivity be limited**

**.01** Under § 7805(b), the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), 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 (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), 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 regulations, 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. 2002-1.

**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 director or during consideration of the taxpayer's return by the area director, appeals (including when the taxpayer is informed that the director or the area director, appeals, 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 10 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 18.06 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 director or the area director, appeals, 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 14 of this revenue procedure. In accordance with section 14.02 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 14.02 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 20. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2001-2?**

**.01** Section 1 is amended to reflect the current descriptions of the LMSB and SB/SE divisions.

**.02** Section 5.03(2) is amended to reflect the current operating hours of the courier's desk.

**.03** Section 8 is added to state when technical advice should not be issued, including on frivolous issues, and all the subsequent sections are renumbered.

**.04** Section 10.04 is amended to require the field or area office to submit three copies of the request for technical advice.

**.05** Section 12.05 is added to set forth special procedures applicable to appeals regarding frivolous issues.

**.06** Section 16.15 is amended to provide that with respect to a request for technical advice from LMSB, a copy of the reply to this request should be mailed, at the same time the reply is mailed to the director, to the field personnel who requested the request under the signature authority of the director.

**.07** Section 17.01(1) is amended to reflect the Service's existing practice regarding the reconsideration process.

**.08** Section 17.03 is amended to provide that (1) the director or appeals officer has 30 calendar days after receipt of a technical advice memorandum to either formally request reconsideration or give the adopted technical advice memorandum to the taxpayer; and (2) the director or appeals office must notify the national office when the technical advice memorandum is given to the taxpayer. However, these requirements do not apply to a technical advice memorandum involving a criminal or civil fraud investigation, or a jeopardy or termination assessment.

Rev. Proc. 2001-2, 2001-1 I.R.B. 79, as modified by Rev. Proc. 2001-41, 2001-33 I.R.B. 173, is superseded.

## **SECTION 21. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?**

## **SECTION 22. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?**

This revenue procedure is effective January 7, 2002.

## **DRAFTING INFORMATION**

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

(1) the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), contact George Bowden or Henry Schneiderman at (202) 622-3400 (not a toll-free call);

(2) the Associate Chief Counsel (International), contact Gerard Traficanti at (202) 622-3619 (not a toll-free call);

(3) the Commissioner (Large and Mid-Size Business Division), contact Nicholas Donadio at (202) 283-8408 (not a toll-free call);

(4) the Commissioner (Small Business and Self-Employed Division), contact John Brueggeman at (336) 378-2821 (not a toll-free call);

(5) the Commissioner (Wage and Investment Division), contact Hugh Barrett at (404) 338-9903; or

(6) the Chief, Appeals, contact Thomas R. Roley at (202) 694-1822 (not a toll-free call).

# INDEX

References are to sections in Rev. Proc. 2002–2

## **Additional Information**

— procedure for submission .....	16.05, 16.11, 16.12
after conference .....	14.10
— proposed deletions under § 6110 .....	10.02
— to receive request for additional information by fax .....	10.01, 16.11(1)

## **Conferences**

— offered .....	11.02, 14.01
after conference of right .....	14.09
exceptions .....	11.08, 12.04, 16.13
— pre-submission conferences .....	9
— scheduling .....	14
request to limit retroactivity .....	14.07, 19.04
telephone conferences .....	14.11

## **Definitions**

— area office .....	1
— area director, appeals .....	1
— director .....	1
— field office .....	1
— national office .....	1
— taxpayer .....	1
— technical advice .....	2
— territory manager .....	1

## **Discussions with Taxpayers**

— technical advice memorandum .....	17.02
— technical advice request .....	16.09

## **Employee Plans and Exempt Organizations**

— application of § 6104 .....	11.07
— jurisdiction of Commissioner, Tax Exempt and Government Entities Division .....	4.02

# INDEX

References are to sections in Rev. Proc. 2002-2 (Continued)

## Extension of Time

— to appeal decision not to request technical advice .....	12.02
— to disagree with statement of facts in technical advice request .....	11.03, 11.04
— to schedule conference .....	14.03, 14.04
— to submit additional information .....	14.10, 16.11
— to submit taxpayer’s initial statement of facts and arguments after technical advice request forwarded to national office .....	10.01(2)

## Foreign laws and documents

— required with technical advice request .....	10.01(4), 10.01(5)
certified English translations .....	10.01(4), 10.01(5)
— effect if interpretation is a material fact .....	11.05

## Penalties of Perjury Statement

— form .....	16.11(2)
— required with additional information .....	14.10, 16.11
— signature requirements .....	16.11(2)

<b>Power of Attorney</b> .....	10.05
--------------------------------	-------

<b>Pre-submission Conferences</b> .....	9
---	---

## Public Disclosure Under § 6110

— deletion statement required .....	10.02, 11.08
exception when § 6104 applies .....	11.07
failure to submit .....	11.06, 16.02
signature requirements .....	10.02
— notice of intention to disclose .....	16.14, 17.03
protesting deletions not made .....	16.13, 17.04

## Retroactive Effect

— in general .....	18.02–18.06
on letter ruling .....	18.06
— request to limit retroactivity .....	19
format of request .....	19.02, 19.03
scheduling conference .....	14.07, 19.04

## Revenue Rulings

— effect on a continuing transaction .....	18.04
request to limit retroactivity .....	19.02

# INDEX

References are to sections in Rev. Proc. 2002-2 (Continued)

<b>Section 301.9100 Relief</b> .....	5
<b>Status of Technical Advice Request</b>	
— to field or area office .....	15.02, 16.06, 16.08, 16.10
— to taxpayer .....	15.01, 16.09
<b>Where to Send</b>	
— additional information .....	14.10, 16.12
— taxpayer’s initial statement of facts and arguments after technical advice request forwarded to national office .....	10.01(2)
— technical advice request from area office .....	10.03
— technical advice request from field office .....	10.03
<b>Withdrawal of Technical Advice Request</b> .....	13