

**Rev. Proc. 2003-2**

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

This revenue procedure explains when and how the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) issue technical advice memoranda (TAM) and technical expedited advice memoranda (TEAM) 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 a TAM or TEAM 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 an 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 an accompanying Schedule C, E, or F, or Form 2106 or Form 2106–EZ; and
- (4) Tax Exempt and Government Entities Division (TE/GE), which generally serves three distinct taxpayer segments: employee plans, exempt organizations, and government entities.

**Updated annually**

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

**SECTION 2. DEFINITIONS**

For purposes of this revenue procedure—

- (1) any reference to “director” refers to the Director, Field Operations, LMSB for the taxpayer’s industry, the Territory Manager, 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 Or-

ganizations 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;

(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 the Appeals Area Office;

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

(6) the term “taxpayer” includes any person subject to any provision of the Internal Revenue Code (including an issuer of § 103 obligations) and, when appropriate, their representatives;

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

(8) the term “field” refers to field counsel, exam, or appeals personnel; and

(9) the term “field counsel” refers to any attorney with the Office of Chief Counsel who is not part of the national office or Division Counsel Headquarters.

### **SECTION 3. WHAT IS THE DIFFERENCE BETWEEN TECHNICAL ADVICE AND TECHNICAL EXPEDITED ADVICE?**

“Technical advice” means advice or guidance in the form of a memorandum (hereinafter referred to as a TAM) 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, tax credit 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 docketed cases in which the issue involves the taxpayer (or a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) for any taxable year. If a case is docketed for an estate tax issue for a taxpayer while a request for a TAM on the same issue for the same taxpayer is pending, the national office may issue the TAM only if the appropriate appeals officer and government counsel agree, by memorandum, to the issuance of the TAM.

“Technical expedited advice” means technical advice issued in an expedited manner (hereinafter referred to as a TEAM). Subject to agreement among the taxpayer, field or area office, and the national office, any issue eligible for a TAM can be submitted for TEAM treatment. A TEAM has several characteristics that are different from a TAM, including the following: a mandatory pre-submission conference involving the taxpayer (section 11.01), (except in two situations where taxpayer concurrence is not required for TEAM procedures); in the event of a tentatively adverse conclusion to the taxpayer or the field, a conference of right will be offered to the taxpayer and the field (section 19.01); and once the conference of right is held,

no further conferences will be offered (section 19.04). The procedures associated with the issuance of a TEAM help expedite certain aspects of the TAM process and eliminate some of the requirements that may delay or frustrate the TAM process.

TAMs and TEAMS help Service personnel close cases and also help establish and maintain consistent technical positions throughout the Service. A director or an area director, appeals may raise an issue in any tax period, even though a TAM or TEAM may have been requested and furnished for the same or similar issue for another tax period.

Neither TAMs nor TEAMS include oral or written legal advice furnished to the field or area office, other than advice furnished pursuant to this revenue procedure. In accordance with section 16.02 of this revenue procedure, a taxpayer's request for referral of an issue to the national office for a TAM or a TEAM will not be denied merely because the national office has already provided legal advice, other than advice furnished pursuant to this revenue procedure, to the field or area office on the matter.

#### **SECTION 4. ON WHAT ISSUES MAY TAMs OR TEAMs BE REQUESTED UNDER THIS PROCEDURE?**

**Issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)**

**.01** This revenue procedure applies to requests for TAMs or TEAMS on any issue under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), 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. 2003–1, this Bulletin, for a description of the principal subject matters of each office.

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

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

#### **SECTION 5. ON WHAT ISSUES MUST TAMs OR TEAMs 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 currently under the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms. The Homeland Security Act of 2002, Pub. L. No. 107–296, provides for the transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice and for the creation of a Tax and Trade Bureau to take over the Bureau of Alcohol, Tobacco and Firearms functions that are not transferred to the Department of Justice.

**Tax exempt and government entities**

**.02** The procedures for obtaining a TAM or a TEAM specifically on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, are found in Rev. Proc. 2003–5, this Bulletin. The procedures under Rev. Proc. 2003–2 (this revenue

procedure) must be followed to obtain a TAM or a TEAM 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 and Special Industries) has jurisdiction for issuing TAMs and TEAMS under § 521, the procedures under Rev. Proc. 2003-5 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) (2002)), must be followed.

## **SECTION 6. MAY A TAM OR A TEAM 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. 2003-1 (including the payment of the applicable user fee listed in Appendix A of Rev. Proc. 2003-1). *See* section 5.02 of Rev. Proc. 2003-1.

### **Period of limitations**

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

### **Address to send a § 301.9100 request**

**.03** Pursuant to section 8.03(1) of Rev. Proc. 2003-1, 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 and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate. The package should be marked: RULING REQUEST SUBMISSION. *See* Appendix A of Rev. Proc. 2003-1 for the appropriate user fee.

(1) A § 301.9100 request generally 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**

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 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. 20044**

**If the return is being examined by a director or considered by an area office or a federal court, the taxpayer must notify the director, appeals officer, or government counsel that it requested relief under § 301.9100, and must notify the national office of that person's name and telephone number**

**.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 director or considered by an area office or a federal court, the taxpayer must notify the director, appeals officer, or government counsel that it requested relief under § 301.9100. *See* § 301.9100-3(e)(4)(i) and section 5.02(3) of Rev. Proc. 2003-1. The taxpayer must also notify the national office of the name and telephone number of the person or office examining or considering the return. 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 (or the taxpayer's representative) 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 7. WHO IS RESPONSIBLE FOR REQUESTING A TAM?**

Section 8 of this revenue procedure discusses who must request a TEAM.

**Director or area director, appeals determines whether to request a TAM**

**.01** The director or area director, appeals determines whether to request a TAM on an issue being considered. Requests generally originate with the examining officer or appeals officer assigned to the case and are submitted through the supervisory chain to the director or area director, appeals. Each request must be signed by the director or area director, appeals, or by someone with the delegated authority to sign for the director or area director, appeals.

**Taxpayer may ask that an issue be referred for a TAM**

**.02** While a case is under the jurisdiction of a director or area director, appeals, a taxpayer may request that an issue be referred to the national office for a TAM. The request may be oral or written and should be directed to the examining officer or appeals officer.

## **SECTION 8. WHO IS RESPONSIBLE FOR REQUESTING A TEAM?**

The parties responsible for requesting a TAM are discussed above in section 7 of this revenue procedure.

**Approval required**

**.01** A request for a TEAM can originate with the taxpayer, exam or appeals personnel, or field counsel. All requests for a TEAM must be submitted through the supervisory chain for exam or appeals and must be approved by the director or equivalent official in the respective operating divisions or by the area director, appeals (or by an official authorized to act on their behalf) before submission to the national office.

**Taxpayer initiated request**

**.02** While a case is under the jurisdiction of a director or area director, appeals, a taxpayer may request that an issue be referred to the national office for a TAM. The request may be oral or written and should be directed to the examining officer or appeals officer.

**Field counsel initiated request**

**.03** Exam or appeals personnel can request advice from field counsel on issues involved in cases under their jurisdiction. If, during the discussion of an issue with an examining agent or appeals officer, field counsel believes that an issue warrants consideration as a TEAM,

a written or oral request to the examining agent or appeals officer that the issue be referred to the national office for a TEAM may be made.

### **Resolution of conflicts over requests for a TEAM**

**.04** If, after considering a request that an issue be submitted for a TEAM, the examining agent or appeals officer disagrees with the request, the taxpayer or the field counsel may request reconsideration of the denial through the appropriate supervisory chain.

## **SECTION 9. WHEN SHOULD A TAM OR A TEAM BE REQUESTED?**

### **Uniformity of position lacking or unusual or complex issue**

**.01** A TAM or a TEAM 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 a TAM or a TEAM 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. A TAM or a TEAM 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 a TAM or a TEAM 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 the field or area office's decision to request a TAM or a TEAM.

### **Taxpayer participation not required**

**.04** Although taxpayer participation during all stages of the process is preferred, it is not required in order to request technical advice. In the event that a taxpayer chooses not to participate in a request for a TEAM, the request will usually be treated as a request for a TAM. (See section 11.02 of this revenue procedure, which provides that all parties must agree that the TEAM procedures are appropriate, with two exceptions.)

## **SECTION 10. WHEN SHOULD A TAM OR A TEAM NOT BE REQUESTED?**

### **TAMs and TEAMS will not be issued on frivolous issues**

**.01** 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 §§ 861 through 865 or any other provision of 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”;

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

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

**A director may not request a TAM or a TEAM on an identical issue for the same taxpayer that an area office is currently considering**

**.02** 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 a 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 a TAM or a TEAM on the applicability of any of the taxes involved.

A director or an area director, appeals may not request a TAM or a TEAM 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 involving 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 a case is docketed for an estate tax issue of a taxpayer while a request for a TAM or a TEAM on the same issue of the same taxpayer is pending, the national office may issue the TAM or the TEAM if the appropriate appeals officer and government counsel agree, by memorandum, to the issuance of the TAM or the TEAM.

**SECTION 11. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED?**

**Pre-submission conferences are required when it is likely the field or area office will request a TEAM and encouraged for all TAM requests**

**.01** In an effort to promote expeditious processing of a request for a TAM or a TEAM, the national office will confer with the field or area office and the taxpayer prior to the time a request for a TAM or a TEAM is submitted to the national office at the office’s or the taxpayer’s request. To facilitate prompt action on a request for a TAM, the taxpayer is encouraged to request a pre-submission conference. In all cases where a TEAM will be requested, a pre-submission conference involving the taxpayer and the field or area office is mandatory (except for two situations where taxpayer agreement is not a prerequisite for a TEAM, see section 11.02 of this revenue procedure). A request for a pre-submission conference should be made only after the field or area office determines that it likely will request a TAM or a TEAM. If the request for a TAM or a TEAM will include issues requiring the involvement of more than one Associate Chief Counsel office, representatives from each Associate Chief Counsel office involved must participate in the pre-submission conference.

**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 a TAM or a TEAM, the factual information and documents to be included in the request, any collateral issues that either should or should not be included in the request, and any other substantive or procedural considerations that will allow the national office to provide the parties with a TAM or a TEAM as expeditiously as possible.

During the pre-submission conference, the parties should determine whether the issue(s) are appropriate for a TEAM. The parties should discuss the framing of the issue(s), what back-

ground information and documents are required and when the request for TAM or TEAM will be submitted to the national office. Where more than one Associate Chief Counsel office will be involved in responding to a proposed TEAM, each must agree that the request is suitable for TEAM procedures and that the necessary coordination can be provided within the TEAM time frames.

If the parties do not agree that the TEAM procedures are appropriate, then the request will be processed subject to the procedures in this revenue procedure for a TAM, except that taxpayer agreement is not required for the following:

(1) consideration of whether a letter ruling should be revoked or modified because the field or area office has determined that there are material differences from the controlling facts on which the original ruling was based. Per section 12.03 of Rev. Proc. 2003-1 (this Bulletin), such requests will be subject to the TEAM procedures;

(2) as described in section 14.08 of this revenue procedure, TAMs and TEAMS related to criminal or civil fraud cases or jeopardy or termination assessments.

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 TAM or TEAM 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 for a TAM or a TEAM must be submitted in writing by the field or area office. The request should identify the Associate Chief Counsel office expected to have jurisdiction over the request for a TAM or a TEAM. The request should include a brief explanation of the primary issue so that an assignment to the appropriate branch can be made. The field or area office is strongly encouraged to coordinate with field counsel regarding TAM pre-submission conferences (coordination with field counsel is required for TEAM pre-submission conferences). If the request involves a designated issue or an industry issue under the Office of Pre-Filing and Technical Guidance, LMSB, the field office is strongly encouraged to coordinate with the technical advisor. If the request is from Appeals and involves a coordinated issue or emerging issue under the Appeals Industry Specialization Program (ISP) or Appeals Coordinated Issue (ACI) Program, the area office must coordinate with the Appeals ISP/ACI Coordinator.

To request a pre-submission conference for a TAM, an original and one copy of the request should be submitted to the appropriate address listed in section 12.03 of this revenue procedure.

To request a pre-submission conference for a TEAM, the request must be made by FAX to the Technical Services Staff at **202-622-3501** and must be confirmed in writing by the director or area director, appeals. The receipt of the FAX will be confirmed by the national office within one working day.

**Branch will contact the field or area office to arrange the pre-submission conference**

**.04** If a TAM is requested, 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 participate in the conference. 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 participation the field or area office believes would be appropriate.

If a TEAM is requested, the branch assigned responsibility for conducting the pre-submission conference will contact the field within 5 calendar days of receiving the request to schedule the conference. The conference will be held within 15 calendar days of the assigned branch's call to the field.

**Pre-submission conferences for TAMs and TEAMS generally conducted by telephone**

**.05** Generally, pre-submission conferences for TAMs and TEAMS will be held by telephone, unless the parties specifically request a meeting in person. In no event will a request for an in-person pre-submission conference on a TEAM be allowed to delay the conference beyond the 15-day period set forth above in section 11.04 of this revenue procedure.

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

.06 Prior to 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 a TAM or a TEAM, but it should allow the national office to become reasonably informed regarding the subject matter prior to the conference. 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*.

If the pre-submission conference pertains to a request for a TAM, the pre-submission materials must be received by the assigned branch at least 10 working days prior to the conference.

If the pre-submission conference pertains to a request for a TEAM, the pre-submission materials must be received by the assigned branch no later than 5 calendar days before the conference. Failure to timely submit pre-submission materials will result in the case being processed as a TAM rather than a TEAM.

**Manner of submitting pre-submission materials**

.07 If the pre-submission conference pertains to a request for a TAM, the pre-submission materials should be submitted to the appropriate address listed in section 12.03 of this revenue procedure. Alternatively, the field or area office may work with field counsel to submit the required materials via e-mail to the national office as described below. Submission of materials electronically by field counsel will ensure the protection of taxpayer information.

If the pre-submission conference pertains to a request for a TEAM, in order to obtain the protection of taxpayer information offered by the Chief Counsel Intranet "firewall," the pre-submission materials must be electronically transmitted by field counsel to the national office attorney assigned to the request for a TEAM. To the extent that supporting materials cannot reasonably be submitted electronically, such materials should be sent by FAX or by express mail or private delivery service to the national office attorney assigned to the request to avoid any delays in regular mail.

**Pre-submission conference may not be taped**

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

**Discussion of substantive issues is not binding on the Service**

.09 Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service 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 12. WHAT MUST BE INCLUDED IN THE REQUEST FOR A TAM?**

In general, the requirements in this section also apply in preparing a TEAM request except for the modifications set forth below in section 13 of this revenue procedure.

**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 a TAM or a TEAM must include the facts and the issues for which 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 12.01(4) and 12.01(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 12.01(6) of this revenue procedure with respect to the interpretation of a substantive provision of an income or estate tax treaty, if applicable.

If there is no agreement on the facts, the taxpayer's set of facts must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined**

**this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.”** This declaration must be signed in accordance with the requirements in section 8.01(15)(b) of Rev. Proc. 2003–1.

To facilitate prompt action on TAM and TEAM requests, the taxpayer is encouraged to request that, if the Service requests additional information from the taxpayer, the Service do so by telephone or fax.

**(1) If taxpayer initiates the request for a TAM or a TEAM, 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 a TAM or a TEAM, 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 12.01(4) and 12.01(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 12.01(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 a TAM or a TEAM will be requested, the taxpayer’s statement, including the information required in sections 12.01(4), 12.01(5), and 12.01(6) of this revenue procedure, will be forwarded to the national office with the request for a TAM or a TEAM.

**(2) If the Service initiates the request for a TAM or a TEAM, 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 a TAM or a TEAM 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 a TAM or a TEAM. Section 14.03 applies with respect to any disagreements with the Service’s statement of facts and issues.

If the request for a TAM is forwarded to the national office without the taxpayer’s statement and information, the field or area office must inform the taxpayer of the date on which the request for a TAM was forwarded to the national office. 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 a TAM 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 21.11(3) of this revenue procedure. If the national office does not receive the taxpayer’s statement and information within the 21-day period, plus any extensions granted by the associate chief counsel, the national office, at its discretion, may base its advice on the facts provided by the field or area office. (Because taxpayer agreement is required for most TEAMS, a TEAM request should not be submitted without the taxpayer’s statement and information.)

If the request for a TAM is prepared without cooperation on the part of the taxpayer, the national office will nonetheless process the request, as neither factual agreement nor par-

ticipation by the taxpayer are required. As discussed in section 11.02 of this revenue procedure, with two exceptions, if the request for a TEAM is prepared without cooperation on the part of the taxpayer, the request will be treated as a request for a TAM.

**(3) Statement of authorities contrary to taxpayer's position.** Whether the request for a TAM or a TEAM 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 a TAM or a TEAM, 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. The 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 12.01(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 of the implications of any authority believed to interpret the foreign law, such as pending legislation, treaties, court decisions, notices, or administrative decisions. But under section 14.05 of this revenue procedure, the national office may refuse to provide a TAM or a TEAM 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 a TAM or a TEAM, 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 federal 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 a TAM or a TEAM 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 recommending information to be deleted from public inspection**

**.02** The text of TAMs and TEAMs are 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 14.06 of this revenue procedure.

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

The taxpayer may submit additional deletions statements before the TAM or TEAM is issued.

The deletions statement must not appear in the request for a TAM or a TEAM 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 the same procedures to propose deletions from any additional information submitted after the initial request for a TAM or a TEAM. An additional deletions statement 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 submitting a request for a TAM or a TEAM to the national office. The Form 4463 and accompanying documents for a TAM request should be submitted to the national office using the addresses listed below. Section 13.02 of this revenue procedure sets forth the procedures for submitting a request for a TEAM to the national office.

**Address to send requests from directors**

The director should send the request to:

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

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**

**Address to send requests from area director, appeals**

The area director, appeals should send the request to:

**Office of Director, Appeals Field Technical Services C:AP  
Office of the National Chief Appeals  
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 a TAM to the address in section 12.03 of this revenue procedure with two copies being designated for the national office.

Also, the field or area office must send one copy of the request for a TAM or a TEAM 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. 2003-1, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230 (31 C.F.R. part 10 (2002)) and with the conference and practice requirements of the Statement of Procedural Rules (26 C.F.R. §§ 601.501-601.509 (2002)). It is preferred that Form 2848, *Power of Attorney and Declaration of Representative*, be used with regard to requests for a TAM or a TEAM 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 13. WHAT MUST BE INCLUDED IN THE REQUEST FOR A TEAM?**

In general, the same procedures set forth above in section 12 should be used for preparing a TEAM request that are used for preparing a TAM request, with the following modifications:

**Factual statements**

**.01** The field, with the assistance of field counsel, will prepare a factual statement. The taxpayer will have 10 calendar days to respond to the field's statement. If the taxpayer and the field disagree over the statement, the parties will have 10 calendar days to attempt to resolve the disagreements. Within 5 calendar days of the expiration of the 10-day period or the day that factual agreement is reached, whichever is earliest, the TEAM request will be forwarded to the national office. If there is no agreement on the facts, both sets of facts will be forwarded to the national office. The field, with the assistance of field counsel, will prepare a memorandum for the national office highlighting the material factual differences, and provide a copy to the taxpayer. This memorandum will be forwarded with the initial request for a TEAM.

If there is no agreement on the facts, the taxpayer's set of facts must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete."** This declaration must be signed in accordance with the requirements in section 8.01(15)(b) of Rev. Proc. 2003-1.

**Submission of documents**

**.02** To the extent feasible, documents must be electronically transmitted by field counsel (followed by hard copy upon the request of the assigned branch of the national office) to the **CRU:TEAM** e-mail address. Additional or supporting documents that are not available in electronic form should be sent by FAX to 202-622-3501 or by express mail or private delivery service to the following address to avoid any delays in regular mail:

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

Whenever possible, all documents should contain the case number and name of the national office attorney assigned to the TEAM request. Documents that are being sent in hard-copy should be sent on or before the day that the request for TEAM is submitted via e-mail, so as not to delay the TEAM process. It is anticipated that most, if not all, such documents will be identified during the pre-submission conference.

The field and the taxpayer are encouraged to provide electronic versions of a proposed TEAM containing the taxpayer's deletions and legends for the national office's use.

## **SECTION 14. HOW ARE REQUESTS FOR TAMs HANDLED?**

In general, the procedures set forth in this section are applicable to TEAMs as well as TAMs except for the modifications set forth in sections 13.01 and 15 of this revenue procedure.

### **Taxpayer notified**

**.01** Regardless of whether the taxpayer or the Service initiates the request for a TAM or a TEAM, the field or area office: (1) will notify the taxpayer that a TAM or a TEAM 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 a TAM or a TEAM, 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 14.01 does not apply to a TAM or a TEAM described in section 14.08 of this revenue procedure.

### **Conference offered**

**.02** When notifying the taxpayer that a TAM or a TEAM is being requested, the examining officer or appeals officer will also tell the taxpayer about the right to a conference with 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 a TAM or a TEAM, 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, the field or area office should make every effort 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. As discussed in section 12.01 of this revenue procedure, the taxpayer's set of facts must be accompanied by a penalties of perjury statement. 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. If there is no agreement on the facts, both sets of facts will be forwarded to the national office. The field, with the assistance of field counsel, will prepare a memorandum for the national office highlighting the material factual differences, and provide a copy to the taxpayer. The memorandum highlighting the factual differences will be included in the initial request for a TAM or TEAM. The national office will, as discussed below in section 21.14 of this revenue procedure, issue a TAM or a TEAM on each set of facts.

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

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

**.04** If the taxpayer initiates the request for a TAM or a TEAM 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. 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 there is no agreement on the facts, both sets of facts will be forwarded to the national office. If there is no agreement on the facts, the taxpayer's set of facts must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete."** This declaration must be signed in accordance with the requirements in section 8.01(15)(b) of Rev. Proc. 2003-1. The field, with the assistance of field counsel, will prepare a memorandum for the national office highlighting the material factual differences, and provide a copy to the taxpayer. This memorandum will be forwarded with the initial request for a TAM or TEAM. The national office will, as discussed below in section 21.14 of this revenue procedure, issue a TAM or a TEAM on each set of facts.

**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 issue a TAM or a TEAM. This section 14.05 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 a TAM or a TEAM, 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 12.02 of this revenue procedure. If the taxpayer does not submit the deletions statement, the director or the area director, appeals will advise the taxpayer that the statement is required.

When the taxpayer initiates the request for a TAM or a TEAM 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 a TAM or a TEAM.

If the director or the area director, appeals decides to request a TAM or a TEAM, 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).

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

**.07** The public inspection provisions of § 6110, including taxpayer notification and deletion processes, do not apply to any document to which § 6104 applies.

**Criminal or civil fraud cases**

**.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 TAM or a TEAM described in § 6110(g)(5)(A) that involves a matter that is the subject of or is otherwise closely related to a criminal or civil fraud investigation, or a jeopardy or termination assessment.

In these cases, a copy of the TAM or a TEAM 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 TAM or the TEAM under § 6110(f)(1). The taxpayer may then provide the statement of proposed deletions to the national office.

### **Consider whether published general guidance is appropriate**

.09 If, at the outset, the assigned reviewer in the national office determines that general guidance should be published regarding the issue presented, the reviewer will immediately notify the Associate Chief Counsel. The reviewer will attempt to make this determination and recommendation as soon as possible, which may occur during the pre-submission conference. The criteria for this determination should include whether the issue has a broad application to similarly situated taxpayers or an industry, or resolution of the issue is important to a clear understanding of the tax laws. If the Associate Chief Counsel, in consultation with Division Counsel and the Operating Division, agrees that general guidance is desirable, an expedited guidance project will be initiated. The Associate Chief Counsel, in consultation with Division Counsel and the Operating Division, also will determine the appropriate resolution of the TAM or TEAM request, *i.e.*, whether it may be issued in advance of the general guidance project or must await the publication of guidance. In general, except where policy issues and concerns regarding proper administration of the tax laws require otherwise, the TAM or TEAM will be issued in advance of the published guidance.

### **SECTION 15. HOW ARE REQUESTS FOR TEAMS HANDLED?**

In general, the same procedures set forth above in section 14 should be used for handling a TEAM request that are used for handling a TAM request, with the following modifications:

Within 5 calendar days after the assigned branch in the national office receives the TEAM request, the assigned attorney in the national office will contact the field and the field counsel to confirm the receipt of the request for advice.

The assigned national office attorney and reviewer should also evaluate the issue(s) presented in the TEAM request to confirm that the issue(s) is appropriate for the TEAM procedures. If the reviewer has reservations about whether the TEAM procedures should apply, the reviewer should discuss those reservations with the Associate Chief Counsel with jurisdiction. If, notwithstanding the pre-submission discussion, the Associate Chief Counsel with jurisdiction concludes that the issue is too complex, or is otherwise impractical to resolve in the 60-day time frame provided below, the Associate Chief Counsel with jurisdiction must submit a memorandum to the Chief Counsel requesting that the case be excluded from the TEAM procedures and be treated as a TAM in accordance with the TAM procedures set forth in this revenue procedure. The Associate Chief Counsel must discuss the request to exclude the case from the TEAM procedures with both the field and the taxpayer and reflect their views in the memorandum to the Chief Counsel. A memorandum to the Chief Counsel is not required if the parties agree during the pre-submission conference that the TEAM procedures are not appropriate.

The national office will attempt to issue all TEAMS to the field within 60 calendar days of receipt, provided that the field and the taxpayer submit all required information in a timely manner. The national office will provide the field with the TEAM at the earliest possible date (whether the proposed TEAM is favorable or adverse, in whole or in part, to the taxpayer). The national office will not advise the taxpayer of a proposed or final conclusion until the national office has considered a request for reconsideration under section 22.03 of this revenue procedure or, if no reconsideration is requested, after the expiration of the 30-day period to request reconsideration, whichever occurs later.

### **SECTION 16. HOW DOES A TAXPAYER APPEAL A DECISION REGARDING WHETHER TO SEEK A TAM OR TEAM?**

**Taxpayer cannot appeal decision to seek a TAM or a TEAM**

.01 As discussed in section 9.04 of this revenue procedure, if a director or area director, appeals requests a TAM, taxpayer cooperation is not required. Thus, if a taxpayer does not want an issue to be referred to the national office for a TAM, the taxpayer cannot appeal the decision to seek a TAM.

As discussed in section 11.02 of this revenue procedure, except for two situations, if a director or area director, appeals requests a TEAM, the field or area office, the taxpayer and the national office must all agree that the TEAM procedures are appropriate. Thus, in general, if a taxpayer does not want an issue to be referred to the national office for a TEAM, the request for advice will be treated as a request for a TAM for which taxpayer agreement is not required.

**Taxpayer notified of decision not to seek a TAM or a TEAM**

.02 If the examining officer or appeals officer concludes that a taxpayer's request for referral of an issue to the national office for a TAM or a TEAM 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 a TAM or a TEAM**

.03 The taxpayer may appeal the decision of the examining officer or appeals officer not to request a TAM or a TEAM. 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 a TAM or a TEAM. 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 TAM or TEAM will be sought**

.04 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 a TAM or a TEAM will be requested.

If the territory manager or the area director, appeals determines that a TAM or a TEAM 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**

.05 The taxpayer may not appeal the decision of the territory manager or the area director, appeals not to request a TAM or a TEAM. If the taxpayer does not agree with the proposed denial, all data on the issue for which a TAM or a TEAM 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; or the Director, Appeals Field Technical Services, 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; or the Director, Appeals Field Technical Services, 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 Director, 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; or the Director, Appeals Field Technical Services, as appropriate, may consult with

the national office, if necessary, and will notify the director or area office within 45 calendar days of receiving all the data regarding the request for a TAM or a TEAM whether the proposed denial is approved or disapproved. The director or area office will then notify the taxpayer.

While the matter is being reviewed, the director or area office will suspend 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 a TAM or a TEAM 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**

**.06** If the request for a TAM or a TEAM concerns a "frivolous issue," as described in section 10.01 of this revenue procedure, a TAM or a TEAM 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. If the territory manager or the area director, appeals determines that no TAM or TEAM 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 16.05 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; or the Director, Appeals Field Technical Services) 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 director or area office will not suspend action on the issue;

(3) within 15 calendar 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 director or area office will notify the taxpayer of the result of the review of the denial.

## **SECTION 17. HOW ARE REQUESTS FOR TAMs AND TEAMs WITHDRAWN?**

### **Taxpayer notified**

**.01** Once a request for a TAM or a TEAM has been sent to the national office, only a director or an area director, appeals may withdraw the request. He or she may ask to withdraw a request at any time before the responding transmittal memorandum for the TAM or TEAM 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 a TAM or a TEAM except—

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

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

If the taxpayer does not agree that the request for a TAM or a TEAM should be withdrawn, the procedures in section 16 of this revenue procedure must be followed.

**National office may provide views**

.02 When a request for a TAM or a TEAM 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 public inspection under § 6110. In an appeals case, acknowledgment of the withdrawal request should be sent to the appropriate area office, through the Director, Appeals Field Technical Services, C:AP. In appropriate cases, the subject matter may be published as a revenue ruling or as a revenue procedure.

**SECTION 18. HOW ARE CONFERENCES FOR TAMs SCHEDULED?**

In general, the requirements in this section apply in scheduling a TEAM conference, except for the modifications set forth below in section 19 of this revenue procedure.

**If requested, offered to the taxpayer when adverse TAM proposed**

.01 If, after the TAM or TEAM request is analyzed, it appears that a TAM or TEAM 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 calendar days of contact with the taxpayer**

.02 The conference for a TAM must be held within 21 calendar days after the taxpayer is contacted. See section 19.01 of this revenue procedure for the timing of a conference for a TEAM. If conferences are being arranged for more than one request for a TAM or a TEAM 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 participate in the conference. The Industry Director, LMSB; the Director, Field Compliance, 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 Field Technical Services; or the area director, appeals may designate other Service representatives to participate in 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 in the case of a TAM will be granted only if the taxpayer justifies it in writing and the associate chief counsel of the office to which the case is assigned approves the request. No extension will be granted without the approval of the associate chief counsel. Except in rare and unusual circumstances, the national office will not agree to an extension of more than 10 working days beyond the end of the 21-day period.

The taxpayer's request for extension must be submitted before the end of the 21-day period, and should be submitted sufficiently before the end of this period to allow the national office to consider, and either approve or deny, the request before the end of the 21-day period. If unusual circumstances near the end of the 21-day period make a timely written request impractical, the national office should be told orally before the end of the period about the problem. The written request for extension must be submitted to the national office promptly after the oral request. The taxpayer will be told promptly by telephone (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 with the national office unless one of the circumstances discussed in section 18.09 of this revenue procedure exists. This conference is normally held at the branch level and a person who has authority to sign the transmittal memorandum (discussed in section 21.14 of this revenue procedure) in his or her own name or on behalf of the branch chief will participate.

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 determina-

tion, a representative from each branch with authority to sign in his or her own name or for the branch chief will participate in the conference. If more than one subject is discussed at the conference, the discussion will constitute a conference for each subject.

To have a thorough and informed discussion of the issues, the conference usually will be held after the branch has had an opportunity to study the case. 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 chief counsel, or to any other Service official. But see section 18.09 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 24 of this revenue procedure). The associate chief counsel of the office to which the case is assigned will determine whether to grant or deny the request for delaying the conference. If such request is granted, the Service will schedule a conference on the tentatively adverse decision and the § 7805(b) relief request within 10 calendar days of receiving the taxpayer's § 7805(b) request. There is no right to appeal the denial of a request to delay the conference. See section 24.04 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.

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** In the case of a TAM, 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. In the case of a TEAM, once the conference of right is held, no further conferences will be offered.

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 participate in 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 18.02 of this revenue procedure, exam or appeals personnel will be offered the opportunity to participate in any additional taxpayer conference, includ-

ing a conference with an official higher than the branch level. Section 18.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

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

**.10** In the case of a TAM, 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 21.11(2) of this revenue procedure. See section 19.05 of this revenue procedure for the procedures for submitting additional information after a TEAM conference.

For TAMs and TEAMS, 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 a TAM or a TEAM, 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.

In the case of a TAM, if the additional information is not received within 21 calendar days, the TAM will be issued on the basis of the existing record. As discussed in section 19.05 of this revenue procedure, in the case of a TEAM, if the additional information is not received within 15 calendar days, the TEAM will be issued on the basis of the existing record.

An extension of the 21-day period for TAMs may be granted only if the taxpayer justifies it in writing and the associate chief counsel of the office to which the case is assigned approves the extension. Such extension will not be routinely granted. The procedures for requesting an extension of the 21-day period and notifying the taxpayer of the Service's decision are the same as those in section 18.03 of this revenue procedure. As discussed in section 19.05 of this revenue procedure, there is no extension of the 15-day period for TEAMS.

### **May schedule a conference to be held by telephone**

**.11** Taxpayers may request that their TAM 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 the request is approved, the taxpayer will be advised when to call the Service representatives (not a toll-free call). As discussed in section 19.02 of this revenue procedure, TEAM conferences of right are normally conducted by telephone.

In accordance with section 18.02 of this revenue procedure, the examining officer or appeals officer will be offered the opportunity to participate in the TAM or TEAM telephone conference. Section 18.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

## **SECTION 19. HOW ARE CONFERENCES FOR TEAMS SCHEDULED?**

### **Held within 30 calendar days of receipt of request**

In general, the procedures set forth in section 18 of this revenue procedure regarding conferences for TAMs apply to conferences for TEAMS, with the following modifications:

**.01** Within 20 calendar days of receipt of the TEAM request, or, if later, within 5 calendar days after receiving additional information requested pursuant to section 21.11 of this revenue procedure, the assigned branch in the national office will analyze the facts and offer the taxpayer and the field a conference of right, which will be scheduled for a date within 10 calendar days of the date of the offer for the conference. No extension of the 10-day period will be allowed.

**Normally conducted by telephone**

**.02** The conference will be conducted by telephone, unless the taxpayer or the field requests that the conference be held in-person. In no event will the conference be delayed to provide an in-person conference rather than a telephone conference.

**Held at the branch level**

**.03** The conference will be held at the branch level and an individual with the authority to sign the transmittal memorandum (discussed in section 21.14 of this revenue procedure) in his or her own name or on behalf of the branch chief will participate.

**No additional conferences are offered**

**.04** Once the conference of right is held, no further conferences will be offered.

**Additional information submitted after the conference**

**.05** Following the conference, the taxpayer and the field will have 15 calendar days to provide any supplemental materials. No extension of the 15-day period will be allowed. The TEAM will be issued no later than 15 calendar days after the expiration of the 15-day period for supplemental materials.

If the taxpayer provides any supplemental materials, the materials must be accompanied by the following declaration: **“Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.”** This declaration must be signed in accordance with the requirements in section 8.01(15)(b) of Rev. Proc. 2003–1.

## **SECTION 20. HOW IS STATUS OF TAM OR TEAM REQUEST OBTAINED?**

**Taxpayer or the taxpayer’s authorized representative may request status of a TAM or a TEAM from the field or area office**

**.01** The taxpayer or the taxpayer’s authorized representative may obtain information on the status of the request for a TAM or a TEAM by contacting the field or area office that requested the advice. *See* section 21.09 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer or the taxpayer’s representative. *See* section 22.02 of this revenue procedure regarding discussions of the contents of the TAM or TEAM with the taxpayer or the taxpayer’s representative.

**National office will give status reports on TAMs and TEAMS to the director or area director, appeals**

**.02** The branch representative or reviewer assigned to the TAM or TEAM 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 a TAM or a TEAM by calling the national office attorney or reviewer assigned to the request for a TAM or a TEAM.

*See* section 21.10 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 TAM or the TEAM is mailed.

## **SECTION 21. HOW DOES THE NATIONAL OFFICE PREPARE THE TAM OR THE TEAM?**

**Delegates authority to branch chiefs and other reviewers**

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

**Determines whether request has been properly made**

**.02** A request for a TAM or a TEAM generally is given priority and processed expeditiously. As soon as the request for a TAM or a TEAM is assigned, the branch representative analyzes the file to see whether it meets all requirements of sections 7, 8, 9, and 12 of this revenue procedure.

If the request does not comply with the requirements of section 12.02 of this revenue procedure relating to the deletions statement, the Service will follow the procedure in the last paragraph of section 14.06 of this revenue procedure.

**Contacts the field or area office to discuss issues**

**.03** Usually, within 21 calendar days after the assigned branch of the national office receives the request for a TAM, a representative of the branch contacts the field or area office to discuss the procedural and substantive issues in the request that come within the branch's jurisdiction. In the case of a TEAM, a representative of the assigned branch of the national office telephones the field or area office within 5 calendar days after the branch receives the request for a TEAM.

**Informs the field or area office if any matters in the request have been referred to another branch or office**

**.04** If the TAM request concerns matters within the jurisdiction of more than one branch or office, a representative of the branch that received the original TAM 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 TAM request within 21 calendar days after receiving it in accordance with section 21.03 of this revenue procedure.

If a request for a TEAM involves more than one Associate office, all involved Associate offices should have participated in the pre-submission conference, in which case the notification required by this section will not be necessary. If the Associate office with jurisdiction over a TEAM determines that coordination with another Associate Chief Counsel is required only after receiving the TEAM request, then the notifications described above should be made within 5 calendar days of the receipt of the TEAM.

**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 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 and the reason(s) for such decision.

If only minor procedural deficiencies exist, the branch representative will request the additional information in the most expeditious manner without returning the case. In the case of a TAM, 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 TAM will be mailed, or an estimated date when a tentative conclusion will be made. In the case of a TEAM, within 20 calendar days of receipt of the TEAM request, or, if later, within 5 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 TEAM 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 TAM or TEAM 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 TAM or TEAM, 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 a TAM or a TEAM. 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 22.02 of this revenue procedure regarding discussions of the contents of the TAM or TEAM 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 TAM or TEAM is issued.

**If needed, requests additional information**

.11 If, following the initial contact referenced in section 21.03 of this revenue procedure, it is determined, after discussion with the branch chief or other 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. In the case of a TAM, 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. In the case of a TEAM, any additional information requested from the taxpayer by the national office must be submitted by letter with a penalties of perjury statement within 5 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 TAM and TEAM 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 TAM or TEAM 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 for TAMS (5-day period for TEAMS) 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 for TAMS (5-day period for TEAMS), giving compelling facts and circumstances to justify the proposed extension. The associate chief counsel of the office to which the case is assigned will determine whether

to grant or deny the request for an extension. No extension will be granted without the approval of the associate chief counsel. Except in rare and unusual circumstances, the national office will not agree to an extension of more than 10 working days beyond the end of the 21-day period in the case of a TAM (5-day period in the case of a TEAM). 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 for TAMs (5-day period for TEAMS), plus any extensions granted by the associate chief counsel, the national office will issue the TAM or the TEAM based on the existing record.

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

**.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. 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.

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

**.13** Generally, before replying to the request for a TAM or a TEAM, the national office informs the taxpayer orally or in writing of the material likely to appear in the TAM or TEAM 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 a TAM or a TEAM. The taxpayer does not have the right to a conference to resolve any disagreements about material to be deleted from the text of the TAM or the TEAM. These matters may be considered at any conference otherwise scheduled for the request. *See* section 23.04 of this revenue procedure for the procedures to protest the disclosure of information in the TAM or the TEAM.

**Prepares reply in two parts**

**.14** The replies to TAM or TEAM 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 TAM or the TEAM 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 public inspection under § 6110.

The second part is the TAM or the TEAM, 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. 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 a TAM or a TEAM. The discussion of the issues in a TAM or a TEAM will be in sufficient detail so that the field or appeals officials will understand the reasoning underlying the conclusion.

If two sets of facts are provided to the national office (*i.e.*, the parties were unable to reach agreement on the facts), the following procedure will be used: If the national office would rule the same way on either set of facts, a TAM or a TEAM will be issued, which will note that the factual disagreement is immaterial. If the national office would rule differently based on which specific set of facts is considered, then a TAM or a TEAM will be issued describing the resolution of the issue based on each set of facts.

As discussed in section 22.01 of this revenue procedure, if a TAM or a TEAM provides alternate responses based on separate sets of facts, the field is required to process the case consistently with the legal analysis in the TAM or the TEAM as applied to the facts as they are ultimately determined by the field or area office.

Accompanying the TAM or the TEAM is a notice under § 6110(f)(1) of intention to disclose a TAM or a TEAM (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 a TAM or a TEAM are addressed to the director (see paragraph 2(1) of this revenue procedure) or the area director, appeals (see paragraph 2(2) of this revenue procedure). 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 Director, Appeals Field Technical Services, C:AP.

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

**.16** The national office will send a copy of the reply to the request for a TAM or a TEAM to the division counsel of the operating division that has jurisdiction over the taxpayer's tax return that is the subject of the TAM or the TEAM.

**SECTION 22. HOW DOES A FIELD OR AREA OFFICE USE THE TAM OR THE TEAM?**

**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 TAM or TEAM unless—

(1) the director or the area director, appeals decides that the conclusions reached by the national office in a TAM or TEAM should be reconsidered and requests reconsideration. The reconsideration process may include a conference held by the field participants who requested a TAM or a TEAM and the national office participants who drafted the memorandum; or

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

(3) in the case of a TAM or a TEAM unfavorable to a Coordinated Industry Case taxpayer on a coordinated issue within the Office of Pre-Filing and Technical Guidance, LMSB, on which Appeals has approved settlement guidelines, the team manager decides to settle the issue under the settlement authority delegated in Delegation Order No. 247 (or its successor), 1996-1 C.B. 356; or

(4) if a TAM or a TEAM provides alternate responses based on separate sets of facts, the field is required to process the case consistently with the legal analysis in the TAM or the TEAM as applied to the facts as they are ultimately determined by the field or area office.

Except as provided in paragraphs (1), (2), (3), or (4) of this section 22.01, the conclusions in a TAM or a TEAM 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 a TAM or a TEAM on the same issue addressed in the TAM or TEAM involving the issuer, and the national office issues a TAM or TEAM involving that issue and that holder.

## **Discussion with the taxpayer**

**.02** The national office will not discuss the contents of the TAM or TEAM with the taxpayer or the taxpayer's representative until the taxpayer has been given a copy of the TAM or TEAM by the field or area office. *See* section 21.09 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer or the taxpayer's representative.

## **Provides copy to the taxpayer**

**.03** The director or the area director, appeals only after adopting the TAM or the TEAM, gives the taxpayer—

(1) a copy of the TAM or TEAM described in section 21.14 of this revenue procedure; and

(2) the notice under § 6110(f)(1) of intention to disclose the TAM or TEAM (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 area director, appeals has 30 calendar days after receipt of a TAM to either formally request reconsideration or give the adopted TAM to the taxpayer. The director or appeals officer must notify the national office when the TAM is given to the taxpayer. This requirement does not apply to a TAM involving a criminal or civil fraud investigation, or a jeopardy or termination assessment, as described in section 14.08 of this revenue procedure.

The field will have 30 calendar days from issuance of a TEAM to request reconsideration or the TEAM becomes final and will be released to the taxpayer, as is provided in this section of this revenue procedure. The request for reconsideration from the field must come from the director or area director, appeals. The request for reconsideration must describe with specificity the errors in the TEAM analysis and conclusions. Requests for reconsideration should not reargue points raised in the initial request, but should instead focus on points that the TEAM overlooked or misconstrued in the field's arguments in support of their request.

The national office will consider the field's request for reconsideration of a TEAM and rule on that request within 30 calendar days of receipt. The national office may request further submissions from the field or the taxpayer, but no additional submissions shall be made in the absence of such a request. If the field does not request reconsideration of a TEAM, the TEAM will take effect at the end of the 30-day period following the issuance of the TEAM to the field. If reconsideration is requested, the TEAM will take effect 5 calendar days after the reconsideration is ruled on.

In the event of a TAM or a TEAM adverse to the taxpayer, in whole or in part, the taxpayer may request § 7805(b) relief. Such a request will be treated as a separate request for a TAM or a TEAM.

## **Taxpayer may protest deletions not made**

**.04** After receiving the notice under § 6110(f)(1) of intention to disclose the TAM or TEAM, the taxpayer may protest the disclosure of certain information in it. The taxpayer must submit a written statement within 20 calendar days identifying those deletions not made by the Service that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the TAM or TEAM 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.

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

**.05** If the national office tells the director or the area director, appeals that a copy of the TAM or TEAM 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.

## **SECTION 23. WHAT IS THE EFFECT OF A TAM OR A TEAM?**

**Applies only to the taxpayer for whom TAM or TEAM was requested**

**.01** A taxpayer may not rely on a TAM or a TEAM 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 TAM or a TEAM that is favorable to the taxpayer is applied retroactively.

Moreover, because a TAM or a TEAM, as described in section 3 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 and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate, exercises the discretionary authority under § 7805(b) to limit the retroactive effect of the holding.

**Generally applied retroactively to modify or revoke prior TAM or TEAM**

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

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

**.04** If a TAM or a TEAM 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 rule-making does not affect the application of a TAM or a TEAM.

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

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

**Does not apply retroactively under certain conditions**

**.06** A TAM or TEAM revoking or modifying a letter ruling, TAM or TEAM will be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling if—

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

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

Generally, in all other circumstances, a TAM or TEAM revoking or modifying a letter ruling or another TAM or TEAM will not be applied retroactively to the taxpayer for whom the letter ruling, TAM or TEAM was issued or to a taxpayer whose tax liability was directly involved in the letter ruling, TAM or TEAM, provided that—

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

(2) in the case of a letter ruling, it was originally issued for a proposed transaction; and

(3) the taxpayer directly involved in the letter ruling, TAM or TEAM acted in good faith in relying on the letter ruling, TAM or TEAM and revoking or modifying it retroactively would be to the taxpayer's detriment. For example, the tax liability of each shareholder is directly involved in a letter ruling on the reorganization of a corporation. The tax liability of a member of an industry is not directly involved in a letter ruling, TAM or TEAM issued to another member and, therefore, the holding in a revocation or modification of a letter ruling, TAM, or TEAM to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not extend to one client the non-retroactive application of a revocation or modification of a letter ruling, TAM or TEAM previously issued to another client.

When a letter ruling to a taxpayer or a TAM or a TEAM 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 24. 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 and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as the Commissioner's delegate, may prescribe the extent, if any, to which a TAM or a TEAM will be applied without retroactive effect.

A taxpayer for whom a TAM or a TEAM was issued or for whom a TAM or TEAM request is pending may request that the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate, limit the retroactive effect of any holding in the TAM or TEAM or of any subsequent modification or revocation of the TAM or TEAM.

When germane to a pending TAM or TEAM request, a taxpayer should request to limit the retroactive effect of the holding of the TAM or TEAM early during the consideration of the advice request by the national office. This § 7805(b) request should be made initially as part of that pending TAM or TEAM request. The national office 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 TAM or a TEAM 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 TAM or TEAM 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 Rev. Proc. 2003-1.

### **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 TAM, TEAM, 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 a TAM or a TEAM.

The request must meet the general requirements of a TAM or TEAM request, which are given in sections 7, 8, 9, and 12 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 23.06 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 a TAM or a TEAM concerns only the application of § 7805(b), the taxpayer has the right to a conference with the national office in accordance with the provisions of sections 18 and 19 of this revenue procedure. In accordance with sections 18.02 and 19 of this revenue procedure, the examining officer or appeals officer will be offered the opportunity to participate in the conference on the § 7805(b) issue. Sections 18.02 and 19 of this revenue procedure also provide 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 a TAM or a TEAM on the substantive issues or is made before the conference of right on the substantive issues, the § 7805(b) issues will be discussed at the taxpayer's one conference of right.

If the request for the application of § 7805(b) is made as part of a pending TAM or TEAM 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 25. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2002-2?**

The TEAM pilot program set forth in Rev. Proc. 2002-30, 2002-24 I.R.B. 1184, is incorporated as modified herein. The TEAM procedures are now permanent and are no longer limited to issues arising under the jurisdiction of the Associate Chief Counsel (Income Tax and Accounting). Additionally, the TAM procedures no longer require that there be an agreed upon set of facts for a TAM to be issued. Instead, a TAM will be issued addressing both the taxpayer's and the field's facts.

## **SECTION 26. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?**

Rev. Proc. 2002-2, 2002-1 I.R.B. 82, as modified by Rev. Proc. 2002-30, 2002-24 I.R.B. 1184, is superseded.

## **SECTION 27. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?**

This revenue procedure is effective January 6, 2003.

## **DRAFTING INFORMATION**

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

(1) the Associate Chief Counsel (Corporate), contact Richard Todd at (202) 622-7700 (not a toll-free call);

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

(3) the Associate Chief Counsel (Income Tax and Accounting), contact Arlene Blume at (202) 622-4800 (not a toll-free call);

(4) the Associate Chief Counsel (Passthroughs and Special Industries), contact Kathleen Reed at (202) 622-3110 (not a toll-free call);

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

(6) the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), contact Calder Robertson at (202) 622-6000 (not a toll-free call);

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

(8) the Commissioner (Large and Mid-Size Business Division), contact James Carfine at (202) 283-8552 (not a toll-free call);

(9) the Commissioner (Small Business and Self-Employed Division), contact Ronald E. Hartman at (856) 321-2398 (not a toll-free call);

(10) the Commissioner (Wage and Investment Division), contact Hugh Barrett at (404) 338-9903 (not a toll-free call); or

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

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