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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 (TAMs) and technical expedited advice memoranda (TEAMs) to a director or an appeals area director. It also explains the rights a taxpayer has when a field office requests a TAM or a TEAM.

Operating divisions of the Internal Revenue Service

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

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

(2) Small Business/Self-Employed Division (SB/SE), which generally serves corporations, including S corporations, and partnerships with assets less than or equal to \$10 million; 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; and individuals 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.

When a TAM or a TEAM should be requested

.02 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 an Associate office. This revenue procedure applies only to a case under the jurisdiction of a director or an appeals area director. 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 field office that had the case concurs with the request. 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 office's decision to request a TAM or a TEAM.

Taxpayer participation not required

.03 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 multiple taxpayers will be affected by the advice (*e.g.*, subject matter of the request involves a transaction between multiple taxpayers), the Associate office can issue a single TAM or TEAM, but only if each taxpayer agrees to participate in the process. 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. In general, all parties must agree that the TEAM procedures are appropriate, with the following two exceptions:

(1) Any request in which the Associate office considers whether a letter ruling should be revoked or modified because the field office has determined that there are material differences from the controlling facts on which the original ruling was based will be treated and processed as a request for a TEAM without the need for consensus among the field office, taxpayer, and Associate office. *See* section 11.03 of Rev. Proc. 2005-1. The taxpayer's views will be considered if submitted.

(2) Any request for a TEAM that involves, as described in § 6110(g)(5)(A), 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 may be treated and processed as a TEAM without telling the taxpayer about the referral of issues, providing copies of the arguments submitted, or requesting the participation of the taxpayer.

Delegation of authority

.04 The provisions of this revenue procedure are applicable in situations in which the authority normally exercised by the director or the appeals area director has been properly delegated to another official.

Updated annually

.05 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, or, when appropriate, the Director, International, LMSB; the Director, Employee Plans Examinations; the Director, Exempt Organizations Examinations; the Director, Federal, State & Local Governments; the Director, Tax Exempt Bonds; or the Director, Indian Tribal Governments;

(2) any reference to “appeals area director” refers to an Appeals Area Director;

(3) any reference to “territory manager” refers to a territory manager, LMSB; a territory manager, examination, 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; the territory manager, Estate and Gift Tax Examination, SB/SE; the territory manager, Excise Tax Examination, SB/SE; the territory manager, Employment Tax Examination, SB/SE; or the territory manager, International Examination, SB/SE;

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

(5) 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;

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

(7) the term “field office” refers to examination or appeals personnel;

(8) the term “Division Counsel Headquarters” refers to any attorney with the Headquarters of LMSB, SB/SE, W&I, or TE/GE; and

(9) the term “field counsel” refers to any attorney with LMSB, SB/SE, or TE/GE who is not a member of Division Counsel Headquarters.

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

“Technical advice” means advice in the form of a memorandum (hereinafter referred to as a TAM) furnished by an Associate office upon the request of a director or an appeals area director, 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 Associate 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 credit or refund; (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 appeals area director. They also include processing and considering nondocketed cases in a field 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.

“Technical expedited advice” means technical advice issued in an expedited manner (hereinafter referred to as a TEAM). Subject to agreement among the taxpayer, field office, field counsel, and the Associate 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: taxpayer participation in the mandatory pre-submission conference (section 8.01), (except for the two situations in section 1.03 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 11.02); and once the conference of right is held, no further conferences will be offered (section 11.05). 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. TAMs and TEAMS are issued only on closed transactions and do not address hypothetical situations. A director or an appeals area director may raise an issue in any tax period, even though a TAM or a 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 office, other than advice furnished pursuant to this revenue procedure. In accordance with section 7.02 of this revenue procedure, a taxpayer’s request for referral of an issue to the Associate office for a TAM or a TEAM will not be denied merely because the Associate office has already provided legal advice, other than advice furnished pursuant to this revenue procedure, to the field office on the matter.

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

This revenue procedure applies to requests for TAMs or TEAMs on any issue under the jurisdiction of the Associate offices. *See* section 3 of Rev. Proc. 2005–1, this Bulletin, for a description of the principal subject matters of each office.

SECTION 5. ON WHAT ISSUES MUST TAMs OR TEAMs BE REQUESTED UNDER DIFFERENT PROCEDURES?

Alcohol, tobacco, and firearms taxes

.01 The procedures for obtaining a TAM or a TEAM specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are currently under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau of the Treasury Department.

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. 2005–5, this Bulletin. The procedures under Rev. Proc. 2005–2 (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. 2005–5, this Bulletin, and Rev. Proc. 90–27, 1990–1 C.B. 514, must be followed.

SECTION 6. WHEN SHOULD A TAM OR A TEAM NOT BE REQUESTED?

§ 301.9100 requests

.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 not submitted as a request for a TAM or a TEAM; instead, the request is submitted as 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 in Appeals or a federal court. Therefore, a § 301.9100 request should be submitted pursuant to Rev. Proc. 2005–1 (including the payment of the applicable user fee listed in Appendix A of Rev. Proc. 2005–1).

Frivolous issues

.02 For purposes of this revenue procedure, a “frivolous issue” is one without basis in fact or law, or that espouses a position that 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 the 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 if Appeals is currently considering the identical issue for the same taxpayer

.03 A case remains under the jurisdiction of the director even though Appeals has the identical issue under consideration in the case of another taxpayer (not related within the meaning of § 267 or a member of an affiliated group of which the taxpayer is not also a member within the meaning of § 1504) in a different transaction. With respect to the same taxpayer or the same transaction, when the issue is under the jurisdiction of Appeals 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 field office 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 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 Associate office may issue the TAM or the TEAM only if the appropriate appeals officer and field counsel agree, by memorandum, to the issuance of the TAM or the TEAM.

A field office may not request a TAM or a TEAM for any issue that is being litigated in a docketed case

.04 A field office may not request a TAM or a TEAM on any issue if the same issue is involved in a docketed case for any taxpayer for any taxable year.

Alternate forms of legal advice

.05 The assigned Associate office attorney and reviewer should consider whether a TAM or a TEAM is the best format for the legal advice. In some cases, drafting a lengthy written analysis may delay delivery of the conclusion. In addition, in some cases, published general guidance may be appropriate. *See* section 10.04 of this revenue procedure.

SECTION 7. WHO IS RESPONSIBLE FOR REQUESTING THE ADVICE?

Field office determines whether to request a TAM or a TEAM

.01 The field office determines whether to request a TAM or a TEAM on an issue. Requests generally originate with the examining agent or appeals officer assigned to the case, are submitted through the supervisory chain, and must be approved in writing by the director or equivalent official in the respective operating divisions or by the appeals area director (or by someone with the delegated authority to approve on their behalf) before submission to the Associate office. Exam or appeals personnel, however, should also request advice from field counsel on issues involved in cases under their jurisdiction prior to requesting a TAM or a TEAM. If, during the discussion of an issue with an examining agent or appeals officer, field counsel believes that an issue warrants consideration as a TAM or a TEAM, field counsel may make a written or oral request to the examining agent or appeals officer that the issue be referred to the Associate office for a TAM or a TEAM. If, after considering a request that an issue be submitted for a TAM or a TEAM, the examining agent or appeals officer disagrees with the request, the field counsel may request reconsideration of the denial through the appropriate supervisory chain.

Prior to making a final determination regarding whether to request a TAM or a TEAM, and prior to the pre-submission conference, the field office must coordinate with, and request advice from, field counsel.

Before submission of a TAM or a TEAM request to the Associate office, and before the pre-submission conference, the field office should submit the TAM or the TEAM request to an Associate Area Counsel for the Associate Area Counsel to provide his or her views in order to help determine whether to submit the TAM or the TEAM to the Associate office.

As discussed in section 1.03 of this revenue procedure, if a director or appeals area director requests a TAM, taxpayer cooperation is not required. Accordingly, the taxpayer cannot appeal the decision to seek a TAM. In contrast, as discussed in section 8.02 of this revenue procedure, if a director or appeals area director requests a TEAM, the field office, the taxpayer, and the Associate office must all agree that the TEAM procedures are appropriate, except for the two situations discussed above in section 1.03 of this revenue procedure. Thus, in general, if a taxpayer does not want an issue to be referred to the Associate 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 may ask that an issue be referred for a TAM or a TEAM; Territory manager or appeals area director determines whether a TAM or a TEAM will be sought

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

If the examining agent or appeals officer concludes that a taxpayer's request for referral of an issue to the Associate office for a TAM or a TEAM does not warrant referral, the examining agent or appeals officer will notify the taxpayer. A taxpayer's request for such a referral will not be denied merely because the Associate office provided legal advice, other than advice furnished pursuant to this revenue procedure, to the field office on the matter. The taxpayer may appeal the decision of the examining agent or appeals officer not to request a TAM or a TEAM. To do so, the taxpayer must submit to that officer, within ten calendar days after being notified 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 Associate office for a TAM or a TEAM. A taxpayer who needs more than ten 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 appeals area director.

The examining agent or appeals officer submits the taxpayer's statement through appropriate channels to the territory manager or the appeals area director along with the examining agent's or appeals officer's statement of why the issue should not be referred to the Associate office. The territory manager or the appeals area director determines on the basis of the statements whether a TAM or a TEAM will be requested.

If the territory manager or the appeals area director 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 appeals area director 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 ten calendar days after receiving the letter to notify the territory manager or the appeals area director of agreement or disagreement with the proposed denial. If the taxpayer does not respond within ten calendar days after receiving the letter, the lack of response will be deemed as agreement with the proposed denial.

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

.03 The taxpayer may not appeal the decision of the territory manager or the appeals area director 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 for review to the Industry Director, LMSB; the Examination 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 Appeals Director, Technical Services, as appropriate.

Review of the proposed denial will be based solely on the written record; no conference will be held with the taxpayer or the taxpayer's representative. The party responsible for review may consult with the Associate office, if necessary, and will notify the field 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 field office will then notify the taxpayer.

While the matter is being reviewed, the field office will suspend action on the issue (except when the delay would prejudice the Government's interests).

Special review procedures applicable to frivolous issues

.04 If the request for a TAM or a TEAM concerns a "frivolous issue," as described in section 6.02 of this revenue procedure, a TAM or a TEAM will not be given, and the examining agent or appeals officer will deny the taxpayer's request for referral. The taxpayer may appeal the decision of the examining agent or appeals officer. If the territory manager or the appeals area director 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 appeals area director will inform the appropriate official (the Industry Director, LMSB; the Examination Area Director, SB/SE; the Director, Compliance, W&I; the Director, International, LMSB; the Director, Federal, State, and Local Governments; the Director, Tax Exempt Bonds; the Director, Indian Tribal Governments; the Appeals Director, Technical Services; the Chief, Employment Tax Examination, SB/SE; the Chief, Estate and Gift Tax Examination, SB/SE; the Chief, Excise Tax Examination, SB/SE; or the Chief, International Examination, SB/SE) of the request for review and the basis for the denial, but will not forward the taxpayer's written request and statements, unless requested to do so by the official;

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

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

(4) the field office will notify the taxpayer in writing of the result of the review of the denial.

SECTION 8. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED?

Pre-submission conferences are required for all requests for advice

.01 In an effort to promote expeditious processing of a request for a TAM or a TEAM, the Associate office must confer with the field office and field counsel (and in some cases the taxpayer) prior to the time a request for a TAM or a TEAM is submitted to the Associate office. In all cases, a pre-submission conference is mandatory. If a request for a TAM or a TEAM is submitted without first holding a pre-submission conference, the request for advice will be returned to the requesting party. A request for a pre-submission conference should be made only after the field office determines that it likely will request a TAM or a TEAM. Before requesting a pre-submission conference, the field office must contact the taxpayer and afford the taxpayer an opportunity to participate in the process by permitting the taxpayer to prepare a statement in accordance with section 8.04 of this revenue procedure. Although taxpayer participation in the conference is not required for a TAM, it is required for a TEAM (except for the two situations described in section 1.03 of this revenue procedure where taxpayer agreement is not a prerequisite for a TEAM). If the request for a TAM or a TEAM will include issues requiring the involvement of more than one Associate office, representatives from each Associate 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 Associate office to provide the parties with a TAM or a TEAM as expeditiously as possible.

A pre-submission conference is not intended to create an alternative procedure for determining the merits of the substantive positions advocated by the field office or by the taxpayer.

During the pre-submission conference, the parties should determine whether the issue(s) is appropriate for a TEAM. The parties should discuss the framing of the issue(s), what background information and documents are required and when the request for TAM or TEAM will be submitted to the Associate office. Where more than one Associate 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 two situations described in section 1.03 of this revenue procedure.

Request for a pre-submission conference must be submitted in writing by the field office

.03 A request for a pre-submission conference for a TAM or a TEAM must be submitted in writing by the field office. The request should identify the Associate 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 of an Associate office can be made. The field office is required to coordinate with field counsel regarding all pre-submission conferences, regardless of whether a TAM or a TEAM is being requested. If the request is submitted by Appeals, field counsel assignments will be subject to the *ex parte* rules set forth in section 1001(a)(4) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, and Rev. Proc. 2000–43, 2000–2 C.B. 404. If the request involves a designated issue, an issue under the office of the Director, ATAT Examination, SB/SE, an issue under the office of the Director, OTSA, LMSB, or an industry issue under the Office of Pre-Filing and Technical Guidance, LMSB, the field office and field counsel are strongly encouraged to coordinate with the technical advisor and field counsel contact. 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 Appeals officer must coordinate with the Appeals ISP/ACI Coordinator.

The field office requests pre-submission conferences for both TAMs and TEAMS by sending the request by fax to the Technical Services Support Branch at **202–622–4817**; the director or appeals area director must also confirm the request in writing to the Technical Services Support Branch. Email or fax may be used to confirm the request. The Associate office will confirm receipt of the fax within one working day after receiving the fax.

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

.04 Prior to the scheduled pre-submission conference, the field office and the taxpayer must share and exchange statements of the pertinent facts (including any facts in dispute); statements 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 Associate office’s understanding of the issues to be discussed at the conference. After drafting the statements of the issues and facts, and prior to the scheduled pre-submission conference, the field office and the taxpayer must submit to the Associate office the statement of the pertinent facts and the statement of the issues that the parties would like to discuss. 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 Associate office to become reasonably informed regarding the subject matter prior to the conference. The field office or the taxpayer should ensure that the Associate office receives a copy of any required power of attorney, preferably on Form 2848, *Power of Attorney and Declaration of Representative* (Rev. March 2004).

If the pre-submission conference pertains to a request for a TAM, the assigned branch of the Associate office must receive the pre-submission materials at least ten working days prior to the conference.

If the pre-submission conference pertains to a request for a TEAM, the assigned branch of the Associate office must receive the pre-submission materials at least five 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 transmitting pre-submission materials

.05 Regardless of whether the pre-submission conference pertains to a request for a TAM or 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 TSS4510. Thus, the field office must work with field counsel to submit the required materials via email to TSS4510. TSS4510 will make sure the pre-submission materials get delivered to the Associate office assigned to the request for a pre-submission conference. Copies of the taxpayer statement of deletions, penalties of perjury statement and Form 2848, *Power of Attorney and Declaration of Representative* (Rev. March 2004), if not electronically available, should be transmitted by fax to the Associate office attorney assigned to the case.

The field office should send the original of the materials sent by fax, and any supporting materials that cannot reasonably be transmitted electronically, to the Associate office attorney assigned to the case by express mail or private delivery service in order to avoid any delays in regular mail.

Associate office attorney will contact the field office and field counsel to arrange the pre-submission conference

.06 If a TEAM is requested, the branch of the Associate office assigned responsibility for conducting the pre-submission conference will contact the field office and field counsel within two working 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. Because taxpayer participation in the pre-submission conference is required, the field office is responsible for coordinating with the taxpayer as well as any other Service personnel whose participation in the conference the field office believes would be appropriate.

If a TAM is requested, or if it is unclear whether the request is for a TAM or a TEAM, the branch of the Associate office assigned responsibility for conducting the pre-submission conference will contact the field office and field counsel within five working days after it receives the request 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 office is contacted.

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

.07 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 8.06 of this revenue procedure.

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 9. WHAT MUST BE INCLUDED IN THE REQUEST FOR A TAM OR A TEAM?

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 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 9.01(4) and 9.01(5) of this revenue procedure, if applicable; and the written statement required in section 9.01(6) of this revenue procedure, if applicable.

Prior to submitting the TAM or the TEAM, the party initiating the request, whether the field or the taxpayer, must prepare a statement of facts. The field and the taxpayer should have

discussed the pertinent facts and issues, prior to preparing this factual statement, during the pre-submission conference.

If the field initiates the request, the examining agent or appeals officer will prepare the factual statement with the assistance of field counsel. The taxpayer will have ten calendar days to respond to the field's statement by providing to that officer a written statement specifying any disagreement on the facts and issues. A taxpayer who needs more than ten calendar days must justify in writing the request for an extension of time, subject to the approval of the territory manager or the appeals area director. If the taxpayer initiates the TAM or the TEAM request, the taxpayer prepares the factual statement and provides it to the appropriate field office. The Service will notify the taxpayer in writing of any areas of disagreement. The taxpayer has ten calendar days after receiving the written notice to reply. A taxpayer who needs more than ten calendar days must justify in writing the request for an extension of time, subject to the approval of the territory manager or the appeals area director.

If the taxpayer and the field continue to disagree over the factual statement, the parties will have ten calendar days to attempt to resolve the disagreements. This 10-day period begins either when the field receives the taxpayer's written notification of disagreement with the field's factual statement (in the case of a field-initiated TAM or TEAM), or when the field receives the taxpayer's written reply to the field's written notification of disagreement with the taxpayer's factual statement (in the case of a taxpayer-initiated TAM or TEAM). Within five calendar days of the expiration of the 10-day period or the day that factual agreement is reached, whichever is earlier, the TAM or the TEAM request will be forwarded to the Associate office. If there is no agreement on the facts, the taxpayer must submit a statement of facts to the field office, and both sets of facts will be forwarded to the Associate office. The Associate office will, as discussed below in section 12.12 of this revenue procedure, issue a TAM or a TEAM on each set of facts. The field, with the assistance of field counsel, will prepare a memorandum for the Associate 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 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 technical advice (or technical expedited advice), and such facts are true, correct, and complete."** This declaration must be signed in accordance with the requirements in section 7.01(15)(b) of Rev. Proc. 2005-1. The taxpayer must submit this declaration to the field office so that the field office can include the declaration when submitting the TAM or the TEAM request to TSS4510.

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 agent 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 or technical expedited advice;

(b) the information required in sections 9.01(4) and 9.01(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 9.01(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 agent or appeals officer determines that a TAM or a TEAM will be requested, the taxpayer's statement, including the information required in sections 9.01(4), 9.01(5), and 9.01(6) of this revenue procedure, will be forwarded to the Associate office with the request for a TAM or a TEAM. As described in section 8.01 of this revenue procedure, the field office must first schedule a pre-submission conference prior to submitting the request for a TAM or a TEAM. When forwarding the taxpayer's statement to the Associate office, the examining agent or appeals officer must also provide a copy to field counsel.

(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 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 must submit this statement and information to the field office within 21 calendar days after the taxpayer receives a copy of the TAM or the TEAM request.

As set forth in section 10.07 of this revenue procedure, the taxpayer will be given an opportunity to submit a statement and information if a request for a TAM is submitted without taxpayer participation.

If the request for a TAM is prepared without the taxpayer's cooperation, the Associate office will nonetheless process the request, as neither factual agreement nor taxpayer participation are required. A request for a TEAM that falls into one of the two exceptions discussed in section 1.03 of this revenue procedure will be processed without a statement and information from the taxpayer. Any request for a TEAM that is not governed by those two exceptions will be treated as a request for a TAM and the taxpayer will be given an opportunity to submit a statement and information in accordance with section 10.07 of this revenue procedure.

(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 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, the taxpayer should include with the TAM or the TEAM submission a statement to this effect.

(4) Relevant parts of all foreign laws. Whether initiated by the taxpayer or by a field office, a request for a TAM or a TEAM, and other statements forwarded to the Associate 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 9.01(5) of this revenue procedure.

The taxpayer or the field 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 office are encouraged to inform the Associate 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 10.08 of this revenue procedure, the Associate 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 office, a request for a TAM or a TEAM, and other statements forwarded to the Associate 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 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 tax matters or any foreign law translated if the law is not a tax law; 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 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 (related taxpayer)), 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 ("deletion statement"). If the taxpayer does not submit the deletion statement, the director or the appeals area director will advise the taxpayer that the statement is required. In the case of a taxpayer-initiated TAM or TEAM, if the director or the appeals area director does not receive the deletion statement within ten calendar days after asking the taxpayer for it, the director or the appeals area director may decline to submit the request for a TAM or a TEAM.

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

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

The deletion statement must not appear in the request for a TAM or a TEAM but, instead, must be made in a separate document.

The deletion statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or faxed 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 deletion statement is not required with each submission of additional information if the taxpayer's initial deletion statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information.

Transmittal Form 4463, *Request for Technical Advice or Technical Expedited Advice*

.03 The field counsel, with whom the TAM or the TEAM request was coordinated as described in section 8.03 of this revenue procedure, must use Form 4463, *Request for Technical Advice or Technical Expedited Advice*, for submitting a request for a TAM or a TEAM through TSS4510 to the Associate office. While the field office is responsible for preparing Form 4463, field counsel must submit the Form 4463 for a TAM or a TEAM request to the TSS4510 email address. To the extent feasible, the accompanying documents should also be submitted to the TSS4510 email address (followed by hard copy upon the request of the assigned branch of the Associate office).

Field counsel should send additional or supporting documents that are not available in electronic form by fax to TSS4510 at 202-622-4817 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:LPD:TSS, Room 5329
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

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

The field office must indicate on, or attach to, the Form 4463 the proper mailing address of the director or appeals area director to whom the Associate office is required to mail a copy of its reply to the TAM or the TEAM request under section 12.13 of this revenue procedure. In addition, the field office must indicate the name of each Associate office attorney involved in the pre-submission conference.

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

Number of copies of request to be submitted

.04 The field office must submit three copies of any hard copies of the request for a TAM or a TEAM to the address in section 9.03 of this revenue procedure with two copies being designated for the Associate office.

The field 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.

If the request is from an Appeals office, the field office must send one copy of the request for a TAM or a TEAM to the Appeals Director, Technical Services.

Power of attorney

.05 Any authorized representative, as described in section 7.01(13) of Rev. Proc. 2005-1, 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 (Rev. March 2004)*, be used with regard to a request 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 10. HOW ARE REQUESTS FOR TAMs AND TEAMs HANDLED?

Determines whether request has been properly made

.01 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 Associate office attorney analyzes the file to see whether it meets all requirements of sections 7, 8, and 9 of this revenue procedure. In addition, the Associate office attorney must analyze the issue(s) in the TAM or the TEAM request to be sure the request does not conflict with section 6 of this revenue procedure.

If the request does not comply with the requirements of section 9.02 of this revenue procedure relating to the deletion statement, the Service will follow the procedure in the last paragraph of section 10.09 of this revenue procedure.

Field and field counsel notified

.02 Within five calendar days after the assigned branch in the Associate office receives the TAM or the TEAM request, the assigned Associate office attorney will contact the field and the field counsel to confirm the receipt of the request for advice. Within this five-day period, the assigned Associate office attorney will also contact the examining agent or appeals officer, field counsel, and the taxpayer (if the taxpayer is participating in the TAM or the TEAM request), to discuss an estimated time table setting forth how and when a TAM or a TEAM will be considered. The assigned Associate office attorney will prepare a work plan that sets forth this timetable and share the work plan with all parties, and all parties (except the taxpayer) must agree to the work plan within five business days after the assigned branch receives the TAM or the TEAM request. The assigned Associate office attorney will notify the examining agent or appeals officer and the field counsel of any deficiencies in the request for a TAM or a TEAM and will work with the examining agent, appeals officer, and the field counsel to resolve those deficiencies expeditiously.

Considers whether the issue(s) is appropriate for a TEAM

.03 The assigned Associate office attorney and reviewer should also evaluate the issue(s) presented in any TEAM request to confirm that the issue(s) is appropriate for the TEAM procedures. If the attorney and reviewer have reservations about whether the TEAM procedures should apply, the attorney and reviewer should discuss those reservations with both the field and the taxpayer and, if necessary, the Associate Chief Counsel. If they agree that the TEAM procedures should not apply because the issue is too complex or cannot, for practical reasons, be resolved within 60 calendar days, the Associate Chief Counsel should prepare a memorandum to the Chief Counsel stating that the case has been excluded from the TEAM procedures and will be treated as a TAM. 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 or if the parties have not timely submitted all materials necessary to process a TEAM request.

Considers whether published general guidance is appropriate

.04 If the assigned reviewer in the Associate office thinks that general guidance should be published regarding the issue presented, the reviewer will immediately notify the Associate Chief Counsel. The reviewer should make this determination and recommendation as soon as possible, which may occur during the pre-submission conference. As criteria for this determination, the reviewer should consider 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 Headquarters and Treasury, 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 coordinate the appropriate resolution of the TAM or the TEAM request with the general guidance project. In general, except where policy issues and concerns regarding proper administration of the tax laws require otherwise, the TAM or the TEAM will be issued in advance of the published guidance.

Taxpayer notified

.05 Regardless of whether the taxpayer or the Service initiated the request for a TAM or a TEAM, the examining agent or appeals officer in the field office will: (1) notify the taxpayer

that a TAM or a TEAM request is being submitted; and (2) at or before the time the request is submitted to the Associate office, give to the taxpayer a copy of the request, including the statement of the pertinent facts, and the arguments being submitted to the Associate office. As discussed in section 10.07 of this revenue procedure, the taxpayer will be given an opportunity to submit a statement and information after the request for a TAM is forwarded to the Associate office.

This section 10.05 does not apply to a TAM or a TEAM described in section 10.11 of this revenue procedure (civil fraud or criminal investigation cases).

Conference offered

.06 When notifying the taxpayer that a TAM or a TEAM is being requested, the examining agent or appeals officer will also tell the taxpayer about the right to a conference with the Associate office if an adverse decision is indicated, and will ask the taxpayer whether such a conference is desired.

If the TAM or the TEAM request does not include a submission from the taxpayer

.07 If the request for a TAM is prepared without participation on the part of the taxpayer, the Associate office will nonetheless process the request, as neither factual agreement nor participation by the taxpayer are required (except in the case of a TAM involving multiple taxpayers as discussed in section 1.03 of this revenue procedure). If a request for a TAM is forwarded to the Associate office without the taxpayer's statement and information, the field office must inform the taxpayer of the date on which the request for a TAM was forwarded to the Associate office. If the taxpayer chooses to submit a statement and information, the taxpayer must submit the statement and information to the Associate 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 appeals area director. The procedures for requesting an extension of the 21-day period and receiving approval of such extension are the same as those in section 12.09 of this revenue procedure for responding to a request for additional information. If the Associate office does not receive the taxpayer's statement and information within the 21-day period, plus any extensions granted by the Associate office, the Associate office, at its discretion, may base its advice on the facts provided by the field office.

Because taxpayer agreement and cooperation is required for most TEAMs, a TEAM request should not generally be submitted without the taxpayer's statement and information. A TEAM request that requires, but does not include, the taxpayer's statement and information, generally will be processed as a TAM; however, a TEAM request may be submitted to and processed by the Associate office without the taxpayer's statement and information under the two exceptions set forth above in section 1.03 of this revenue procedure.

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

.08 If the interpretation of a foreign law or foreign document is a material fact, the Associate office, at its discretion, may refuse to issue a TAM or a TEAM. This section applies whether or not the field 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 deletion statement

.09 When the field office initiates the request for a TAM or a TEAM, the taxpayer has ten calendar days after receiving the statement of facts and issues to be submitted to the Associate office to provide the deletion statement required under § 6110(c). *See* section 9.02 of this revenue procedure for directives on making deletions.

Once a deletion statement is submitted, the taxpayer may submit additional deletion statements before the TAM or the TEAM is issued. 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 deletion statement is not required with each submission of additional information if the taxpayer's initial deletion statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information.

If the taxpayer does not submit a deletion statement when a TAM or a TEAM is requested, the Associate 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)

Civil fraud or criminal investigation cases

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

.11 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 Associate office) do not apply to a TAM or a TEAM described in § 6110(g)(5)(A) that involves any matter which is the subject of a civil fraud or criminal investigation or is otherwise closely related to a civil fraud or criminal investigation, or a jeopardy or termination assessment.

In these cases, a copy of the TAM or the 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 Associate office.

Obtaining status of a TAM or a TEAM request

.12 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 office that requested the advice. *See* section 12.07 of this revenue procedure concerning discussing the tentative conclusion with the taxpayer or the taxpayer's representative. *See* section 14.03 of this revenue procedure regarding discussions of the contents of the TAM or the TEAM with the taxpayer or the taxpayer's representative.

The Associate office attorney or reviewer assigned to the TAM or the TEAM request will give status updates by telephone once a month to the examining agent or appeals officer, and field counsel. If at the beginning of the month, the Associate office attorney or reviewer expects that the TAM request will be pending more than 120 days during that month, he or she must email the examining agent or appeals officer within the first five calendar days of the month with a status update and estimated completion date. A copy of the email should be sent to TSS4510. In addition, a director or an appeals area director may get current information on the status of the request for a TAM or a TEAM by calling the Associate office attorney or reviewer assigned to the request for a TAM or a TEAM.

See section 12.08 of this revenue procedure about discussing the final conclusions with the field office and field counsel. Further, the director or the appeals area director will be notified by telephone at the time the TAM or the TEAM is mailed.

The Associate 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 Associate 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 Associate office will not advise the taxpayer of a proposed or final conclusion until the Associate office has considered a request for reconsideration under section 14.02 of this revenue procedure or, if no reconsideration is requested, after the expiration of the 30-day period to request reconsideration, whichever occurs later.

Service not barred from issuing 30-day letter while a TAM or a TEAM request is pending

.13 The Service is not barred from sending the taxpayer a letter (Letter 950 (DO), also known as a 30-day letter) notifying the taxpayer of the right to appeal the proposed changes within 30 days, while a TAM or a TEAM request is pending.

SECTION 11. HOW ARE CONFERENCES FOR TAMs AND TEAMs SCHEDULED?

If requested, offered to the taxpayer when an adverse TAM or TEAM proposed

.01 If, after the TAM or the TEAM request is analyzed, it appears that a TAM or a 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. As discussed

below in section 11.11 of this revenue procedure, the conference will normally be conducted by telephone.

Timeline

.02 The conference for a TAM must be held within 21 calendar days after the taxpayer is informed that an adverse TAM is proposed. Within 20 calendar days of receipt of the TEAM request, the assigned branch in the Associate office will analyze the facts and offer the taxpayer and the field a conference of right, which will be scheduled for a date within ten calendar days of the date of the offer for the conference.

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 Associate office will notify the examining agent or appeals officer and field counsel of the scheduled conference and will offer the examining agent or appeals officer and field counsel the opportunity to participate in the conference. The director, territory manager, or appeals area director with supervisory authority over the assigned examining agent or appeals officer may designate other Service representatives to participate in the conference in lieu of, or in addition to, the examining agent or appeals officer.

Extensions

.03 In the case of a TAM, only an Associate Chief Counsel may approve an extension of the 21-day period for holding a conference. The taxpayer (or an authorized representative) must direct a written request for the extension, with an appropriate justification, to the Associate Chief Counsel of the office to which the case is assigned. The taxpayer (or an authorized representative) must notify the examining agent or appeals officer of the request for an extension. The examining agent or appeals officer must then notify field counsel of the request for an extension. Except in rare and unusual circumstances, the Associate office will not agree to an extension of more than ten working days beyond the end of the 21-day period.

For a TAM, 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 Associate Chief Counsel 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 taxpayer (or an authorized representative) should orally inform the assigned Associate office attorney or reviewer before the end of the period about the problem and promptly submit the written request for extension. The Associate Chief Counsel or a delegate will promptly tell the taxpayer by telephone (with written confirmation) of the approval or denial of a requested extension.

No extension of the ten-day period for TEAMS will be allowed.

Denial of extension cannot be appealed

.04 There is no right to appeal the denial of a request for extension. If the taxpayer does not notify the Associate office of problems with meeting the 21-day period within the 21-day period or promptly confirm any oral request in writing, 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 Associate office, except as provided in section 11.09 of this revenue procedure. The conference is normally held at the branch level and a person who has authority to sign the transmittal memorandum (discussed in section 12.12 of this revenue procedure) in his or her own name or on behalf of the branch chief will participate.

When more than one branch of an Associate office has taken an adverse position on an issue in the request or when the position ultimately adopted by one branch will affect another branch's determination, a representative from each branch with authority to sign in his or her own name or for the branch chief will participate in the conference. If more than one subject is discussed at the conference, the discussion will constitute the taxpayer's conference of right 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.

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 15 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 ten 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 16.04 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 only tentative recommendations

.08 The senior Service representative at the conference ensures that the taxpayer has a 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 any issue, including the outcome of the § 7805(b) request for relief.

When 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 unless the case is first excluded from the TEAM procedures and treated as a TAM, as set forth in section 10.03.

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 Associate office from inviting a taxpayer to participate in additional conferences, including conferences with an official higher than the branch level, if Associate office personnel think they are necessary. Such conferences are not offered routinely following 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.

Exam or appeals personnel and field counsel will be offered the opportunity to participate in any additional taxpayer conference, including a conference with an official higher than the branch level. As provided in section 11.02 of this revenue procedure, other Service representatives are also permitted to participate in the conference.

Additional information submitted after the conference

.10 After the conference of right, the taxpayer must furnish to the Associate 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 to the appropriate Associate office branch by letter with a "penalties of perjury" statement in the form described in section 9.01 of this revenue procedure. In the

case of a TAM, the additional information must be submitted within 21 calendar days after the conference. The Associate office will notify the field both when a taxpayer has requested an extension of the 21-day period and when the Associate office grants or denies the request. In the case of a TEAM, the additional information must be submitted within 15 calendar days after the conference.

For TAMs and TEAMS, the taxpayer must also send a copy of the additional information to the director or the appeals area director for comment. The director or appeals area director must provide a copy to the field counsel assigned to the TAM or the TEAM. Any comments by the director or the appeals area director must be furnished promptly to the appropriate branch in the Associate office. If the director or the appeals area director does not have any comments, he or she must notify the Associate office attorney promptly.

If the additional information has a significant impact on the facts in the request for a TAM or a TEAM, the Associate office will ask the director or the appeals area director for comment on the facts contained in the additional information submitted. The director or the appeals area director will respond within the agreed period of time.

In the case of a TAM, if the additional information is not received from the taxpayer within 21 calendar days plus any extensions granted by an Associate Chief Counsel, the TAM will be issued on the basis of the existing record. 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 11.03 of this revenue procedure. There is no extension of the 15-day period for TEAMS.

Normally conducted by telephone

.11 The conference will be conducted by telephone, unless the taxpayer or the field requests that the conference be held in-person. The taxpayer will be advised when to call the Service representatives (not a toll-free call). In no event will the conference be delayed to provide an in-person conference rather than a telephone conference.

In accordance with section 11.02 of this revenue procedure, the examining agent or appeals officer, field counsel, and any other authorized service representative will be offered the opportunity to participate in any TAM or TEAM conference.

SECTION 12. HOW DOES THE ASSOCIATE OFFICE PREPARE THE TAM OR THE TEAM?

Contacts the field office to discuss issues

.01 Upon receipt of a request for a TAM or a TEAM, an attorney of the assigned branch of the Associate office should contact the field office and any assigned field attorney by telephone to acknowledge receipt of the TAM or the TEAM and to establish a point of contact. Then, within 21 calendar days for a TAM or within five calendar days for a TEAM, the assigned Associate office attorney should contact the field office to discuss the procedural and substantive issues in the request that come within the branch's jurisdiction. The timeline for contacting the field office to discuss issues should be included in the work plan, as described in section 10.02 of this revenue procedure.

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

.02 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 office within 21 calendar days of receiving the request that:

(1) 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 office about the TAM request within 21 calendar days after receiving it in accordance with section 12.01 of this revenue procedure.

If a request for a TEAM involves more than one Associate office, all involved Associate offices should have had the opportunity to participate in the pre-submission conference. Within five calendar days of receipt, the Associate office attorney with primary responsibility over the TEAM will confirm that all involved Associate offices have received copies of the TEAM request and will advise the field office as to who is assigned to the TEAM in each Associate office. If, after receiving the TEAM request, the Associate office with jurisdiction over a TEAM determines that coordination with another Associate office is required, the assigned Associate office attorney will also notify the field office of the new coordination within five calendar days of the receipt of the TEAM.

Informs the field office if additional information is needed

.03 The Associate office attorney will inform the field office and field counsel that a TAM or a TEAM request 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 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 Associate office attorney will request the additional information in the most expeditious manner without returning the case.

Informs the field office of tentative conclusion

.04 If all necessary information has been provided, the Associate office attorney informs the field office within 21 calendar days after receiving the information requested for a TAM and within five calendar days for a TEAM of the tentative conclusion and the estimated date that the TAM or the TEAM will be mailed.

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

.05 If a tentative conclusion has not been reached because of the complexity of the issue, the Associate office attorney informs the field office and field counsel of the estimated date the tentative conclusion will be made.

Advises the field office if tentative conclusion is changed

.06 Because the Associate office attorney's tentative conclusion may change during the preparation and review of the TAM or the TEAM, the tentative conclusion should not be considered final. If the tentative conclusion is changed, the Associate office attorney will inform the field office.

Generally does not discuss tentative conclusion with the taxpayer

.07 Neither the Associate office nor the field office should discuss with the taxpayer or the taxpayer's representative the tentative conclusion and the rationale for that conclusion during the initial consideration of the request for a TAM or a TEAM. To afford taxpayers an appropriate opportunity to prepare and present their position, however, 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 14.03 of this revenue procedure regarding discussions of the contents of the issued TAM or TEAM with the taxpayer or the taxpayer's representative.

Advises the field office of final conclusions

.08 In all cases, the Associate office attorney will inform the field office of the Associate office's final conclusions. The field office will be offered the opportunity to discuss the issues and the Associate office's final conclusions before the TAM or the TEAM is issued.

If needed, requests additional information

.09 If, following the initial contact referenced in section 12.01 of this revenue procedure, it is determined, after discussion with the branch chief or other reviewer, that additional information is needed, an Associate office attorney will obtain the additional information from the taxpayer or from the director or the appeals area director in the most expeditious manner possible. In the case of a TAM, any additional information requested from the taxpayer by the Associate office must be submitted by letter with a penalties of perjury statement that conforms with the penalties of perjury statement set forth in section 9.01 of this revenue procedure 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 Associate office must be submitted by letter with the penalties of perjury statement that conforms with the penalties of perjury statement

set forth in section 9.01 of this revenue procedure within five calendar days after the request for information is made.

(1) Request to receive a request for additional information by fax or email. To facilitate prompt action on TAM and TEAM requests, the taxpayer is encouraged to request that the Service request any additional information from the taxpayer by fax or email.

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.

(2) 21-day period for TAMS and 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 Associate office within the 21-day period for TAMS (5-day period for TEAMS), giving compelling facts and circumstances to justify the proposed extension. Only the Associate Chief Counsel of the office to which the case is assigned may determine whether to grant or deny the request for an extension. Except in rare and unusual circumstances, the Associate office will not agree to an extension of more than ten working days beyond the end of the 21-day period in the case of a TAM or a 5-day period in the case of a TEAM. There is no right to appeal the denial of a request for an extension.

(3) If the taxpayer does not submit additional information. If the Associate office does not receive the additional information within the 21-day period for TAMS or within the 5-day period for TEAMS, plus any extensions granted by the Associate Chief Counsel, the Associate office will issue the TAM or the TEAM based on the existing record.

Requests taxpayer to send additional information to the Associate office and a copy to the director or appeals area director

.10 Whether or not requested by the Service, any additional information submitted by the taxpayer should be sent to the attention of the assigned Associate office attorney. Generally, the taxpayer needs only to submit the original of the additional information to the Associate office. In appropriate cases, however, the Associate office may request additional copies of the information.

The taxpayer must also send a copy of the additional information to the director or the appeals area director for comment. Any comments by the director or the appeals area director must be furnished within an agreed period of time to the appropriate branch in the Associate office. If the director or the appeals area director does not have any comments, he or she must notify the Associate office attorney promptly. When the director or the appeals area director receives a copy of the additional information from the taxpayer, the director or the appeals area director must provide field counsel with a copy.

Informs the taxpayer when requested deletions will not be made

.11 Generally, before replying to the request for a TAM or a TEAM, the Associate office informs the taxpayer orally or in writing of the material likely to appear in the TAM or the 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 ten 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 Associate 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 14.05 of this revenue procedure for the procedures to protest the disclosure of information in the TAM or the TEAM.

Prepares reply in two parts

.12 The Service prepares replies to TAM or TEAM requests 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 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 Associate 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 Associate office.

The conclusions give direct answers, whenever possible, to the specific issues raised by the field office. The Associate office is not bound by the precise statement of the issues as submitted by the taxpayer or by the field 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 Associate office (*i.e.*, the parties were unable to reach agreement on the facts), the following procedure will be used: If the Associate office would rule the same way on either set of facts, a TAM or a TEAM may be issued, which will note that the factual disagreement is immaterial. If the Associate office would rule differently based on which specific set of facts is considered, then a single TAM or a single TEAM may be issued describing the resolution of the issue based on each set of facts.

As discussed in section 14.01 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 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 reply to appropriate office

.13 When field personnel requests a TAM or a TEAM under the signature authority of a director, replies to the request are addressed to the field personnel who requested the TAM or the TEAM. A copy of the reply to a request from LMSB should be mailed simultaneously to the director. Replies to requests from appeals should be routed to the appropriate field office through the Appeals Director, Technical Services, C:AP.

Sends copy of reply to appropriate division counsel and field counsel

.14 The Associate 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 and to any field counsel involved in assisting the examining agent or appeals officer in submitting the TAM or the TEAM request.

SECTION 13. 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 Associate office, only a director or an appeals area director 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 the TEAM is signed.

The director or the appeals area director 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 7.03 of this revenue procedure must be followed.

Associate office may provide views

.02 When a request for a TAM or a TEAM is withdrawn, the Associate office may send its views to the director or the appeals area director and field counsel when acknowledging the withdrawal request. These memoranda 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 Appeals office, through the Appeals Director, Technical Services, C:AP. In appropriate cases, the subject matter may be published as a revenue ruling or as a revenue procedure.

SECTION 14. HOW DOES A FIELD OFFICE USE THE TAM OR THE TEAM?

Generally applies advice in processing the taxpayer's case

.01 The director or the appeals area director must process the taxpayer's case on the basis of the conclusions in the TAM or the TEAM unless:

- (1) the director or the appeals area director decides that the conclusions reached by the Associate office in a TAM or a 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 Associate office participants who drafted the memorandum; or
- (2) in the case of a TAM or a TEAM unfavorable to the taxpayer, the appeals area director 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. 4-25 (or its successor); 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 office.

Except as provided in paragraphs (1), (2), (3), or (4) of this section 14.01, the director or appeals area director must treat conclusions in a TAM or a TEAM involving a § 103 obligation and the issuer of this obligation as applying to the issuer and any holder of the obligation, unless the holder also initiates a request for a TAM or a TEAM on the same issue addressed in the TAM or the TEAM involving the issuer, and the Associate office issues a TAM or a TEAM involving that issue and that holder.

Reconsideration

.02 The director or appeals area director has 30 calendar days after receipt of a TAM or a TEAM to either formally request reconsideration or give the adopted TAM or TEAM to the taxpayer. If no request for reconsideration is made during the 30-day period after the receipt of a TAM or a TEAM, the TAM or the TEAM is deemed adopted.

Before formally requesting reconsideration, the director or appeals area director must consult with field counsel. Requests for TAM or TEAM reconsideration must describe with specificity the errors in the TAM or 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 TAM or the TEAM overlooked or misconstrued in the field's arguments in support of their request. The Associate office will consider the field's request for reconsideration of

a TEAM and rule on that request within 30 calendar days of receipt. The Associate office may request further submissions from the field or the taxpayer, but the parties should make no additional submissions in the absence of such a request. In the event that a request for reconsideration fails to follow the procedures set forth in this section of this revenue procedure, or the request fails to raise issues or arguments different from those asserted in the initial TAM or TEAM request, the Associate office may return the request for reconsideration to the requesting party without ruling on the request for reconsideration.

If the field does not request reconsideration of a TAM or a TEAM, the TAM or the TEAM, once adopted, will take effect when the field provides a copy of the adopted TAM or TEAM to the taxpayer, as described in section 14.04 of this revenue procedure.

If reconsideration is requested for a TAM or a TEAM, the TAM or the TEAM will be deemed adopted five calendar days after the reconsideration is ruled on. After the reconsideration is ruled on and the TAM or the TEAM is adopted, the TAM or the TEAM will take effect when the field provides a copy of the adopted TAM or the TEAM to the taxpayer, described in section 14.04 of this revenue procedure.

Discussion with the taxpayer

.03 The Associate office will not discuss the contents of the TAM or the TEAM with the taxpayer or the taxpayer's representative until the field office gives a copy of the TAM or the TEAM to the taxpayer. *See* section 12.07 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer or the taxpayer's representative.

If reconsideration is requested for a TAM or a TEAM, the Service is not required to inform the taxpayer or the taxpayer's representative that a request for reconsideration is being considered.

Provides copy to the taxpayer

.04 Upon adopting the TAM or the TEAM, the director or the appeals area director gives the taxpayer:

(1) a copy of the TAM or the TEAM; and

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

If a formal request for reconsideration is made and ruled upon, the director or the appeals area director will provide the taxpayer with the reconsidered TAM or TEAM only. The TAM or the TEAM drafted prior to the ruling on the request for reconsideration must not be forwarded to the taxpayer. Additionally, if a formal request for reconsideration is made and ruled upon, only the reconsidered TAM or TEAM will be open to public inspection and notations of third party communications under § 6110(d).

In the event that a TAM or a TEAM request pertains to more than one taxpayer (see section 1.03 of this revenue procedure), the director or the appeals area director will provide each pertinent taxpayer with a copy of the TAM or the TEAM, in accordance with this section of the revenue procedure.

The requirement to give a taxpayer a copy of the TAM or the TEAM does not apply to a TAM or a TEAM involving civil fraud or a criminal investigation, or a jeopardy or termination assessment, as described in section 10.11 of this revenue procedure.

The director or appeals officer must notify the Associate office when it gives the TAM or the TEAM to the taxpayer. This requirement does not apply to a TAM or a TEAM involving civil fraud or a criminal investigation, or a jeopardy or termination assessment, as described in section 10.11 of this revenue procedure.

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

.05 After receiving the notice under § 6110(f)(1) of intention to disclose the TAM or the 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 the TEAM proposed to be open to public inspection with brackets around the deletions proposed by the taxpayer that have not been made by the Associate office.

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

When no copy is given to the taxpayer

.06 If the Associate office tells the director or the appeals area director that a copy of the TAM or the TEAM should not be given to the taxpayer and the taxpayer requests a copy, the director or the appeals area director will tell the taxpayer that no copy will be given.

SECTION 15. WHAT IS THE EFFECT OF A TAM OR A TEAM?

Applies only to the taxpayer for whom the TAM or the 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 a closed transaction, a holding that is adverse to the taxpayer is also applied retroactively, unless the Associate Chief Counsel with jurisdiction over the TAM or the TEAM, as appropriate, exercises the discretionary authority under § 7805(b) to limit the retroactive effect of the holding.

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

.03 A holding that modifies or revokes a holding in a prior TAM or TEAM is generally applied retroactively, unless the Associate Chief Counsel with jurisdiction over the TAM or the TEAM, as appropriate, exercises the discretionary authority under § 7805(b) to limit the retroactive effect of the holding. *See* sections 15.05 and 15.06 of this revenue procedure, however, for situations when the retroactive effect of the holding will not be limited.

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 rulemaking does not affect the application of a TAM or a TEAM.

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

.05 If the new holding in a TAM or a TEAM is less favorable to the taxpayer than the holding in an earlier TAM or TEAM, it generally is not applied to the period when the taxpayer relied on the prior holding in situations involving a continuing action or a series of actions. A taxpayer is not protected, however, against retroactive modification or revocation of a TAM or a TEAM involving a continuing action or a series of actions for any actions occurring after the material facts on which the earlier TAM or TEAM was based have changed.

Does not apply retroactively under certain conditions

.06 In the case of a TAM or a TEAM revoking or modifying a letter ruling, TAM or TEAM, the TAM or the 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 a letter ruling, TAM, or TEAM 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 a TEAM revoking or modifying a letter ruling or another TAM or a 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 in a corporation is directly involved in a letter ruling on the reorganization of the corporation. The shareholders' reliance on the letter ruling may, depending on all facts and circumstances, be in good faith. The tax liability of a member of an industry, however, is not directly involved in a letter ruling, TAM, or TEAM issued to another member of the same industry and, therefore, a nonretroactive revocation or modification of a letter ruling, TAM, or TEAM to one member of an industry will not extend to other members of the industry who have not received letter rulings. 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 16. HOW MAY RETROACTIVE EFFECT BE LIMITED?

Taxpayer may request that retroactivity be limited

.01 Under § 7805(b), an Associate Chief Counsel, 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 a TEAM request is pending may request that the appropriate Associate Chief Counsel limit the retroactive effect of any holding in the TAM or the TEAM or of any subsequent modification or revocation of the TAM or the 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 the TEAM early during the consideration of the advice request by the Associate office. This § 7805(b) request should be made initially as part of that pending TAM or TEAM request. The Associate office will consider a § 7805(b) request to limit the retroactive effect of the holding if the request is made at a later time and the Service determines that there is justification for having delayed the request.

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 the 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. 2005-1 (this Bulletin).

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 appeals area director (including when the taxpayer is informed that the director or the appeals area director 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 a TEAM request, which are given in sections 7 and 9 of this revenue procedure. The request must also:

- (1) state that it is being made under § 7805(b);
- (2) state the relief sought;
- (3) explain the reasons and arguments in support of the relief sought (including a discussion of the five items listed in section 15.06 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 appeals area director who must then forward the request to the Associate 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 Associate office in accordance with the provisions of section 11 of this revenue procedure. In accordance with section 11.02 of this revenue procedure, the examining agent or appeals officer, field counsel, and other Service representatives will be offered the opportunity to participate in the conference on the § 7805(b) issue.

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.

Reconsideration of § 7805(b) relief

.05 When a TAM or a TEAM grants a taxpayer relief under § 7805(b), the director or appeals area director may not request reconsideration of the § 7805(b) issue unless the director or appeals area director determines there has been a misstatement or omission of controlling facts by the taxpayer in its request for § 7805(b) relief.

SECTION 17. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2004-2?

In the event that multiple taxpayers will be affected by the advice (*e.g.*, subject matter of the request involves a transaction between multiple taxpayers), the Associate office can issue a single TAM or TEAM, but only if each taxpayer agrees to participate in the process. (section 1.03)

A director may not request a TAM or a TEAM for any issue that is being litigated in a docketed case. (section 6.04)

The field office and the taxpayer are required to coordinate and share their statement of facts and issues prior to submitting materials to the Associate office for the pre-submission conference. (section 8.04)

Replies to requests for a TAM or a TEAM are addressed to the field personnel who requested it, and copies of replies are now addressed to director or the appeals area director. (section 12.13)

The Associate office has discretion to not rule on a request for reconsideration if the request for reconsideration does not follow the procedures in this revenue procedure or fails to raise issues or arguments different from those asserted in the initial TAM or TEAM request. (section 14.02)

In addition, editorial changes have been made in updating Rev. Proc. 2004–2.

Rev. Proc. 2004–2, 2004–1 I.R.B. 83, is superseded.

SECTION 18. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

SECTION 19. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?

This revenue procedure is effective January 3, 2005.

DRAFTING INFORMATION

The principal author of this revenue procedure is Dillon J. Taylor of the Office of Associate Chief Counsel (Procedure & 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 Shirley S. Lee at (202) 283–8417 (not a toll-free call);

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

(10) the Commissioner (Wage and Investment Division), contact Geoffrey Gerbore at (631) 447–4428 (not a toll-free call); or

(11) the Chief Appeals, contact Sandy Cohen at (202) 435–5617 (not a toll-free call).

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