Code **Sec. 1.1-1 Income tax on individuals.**

(a) General rule.

(1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States and, to the extent provided by section 871(b) or 877(b), on the income of a nonresident alien individual. For optional tax in the case of taxpayers with adjusted gross income of less than $10,000 (less than $5,000 for taxable years beginning before January 1, 1970) see section 3. The tax imposed is upon taxable income (determined by subtracting the allowable deductions from gross income). The tax is determined in accordance with the table contained in section 1. See subparagraph (2) of this paragraph for reference guides to the appropriate table for taxable years beginning on or after January 1, 1964, and before January 1, 1965, taxable years beginning after December 31, 1964, and before January 1, 1971, and taxable years beginning after December 31, 1970. In certain cases credits are allowed against the amount of the tax. See Part IV (section 31 and following), Subchapter A, Chapter 1 of the Code. In general, the tax is payable upon the basis of returns rendered by persons liable therefor (Subchapter A (sections 6001 and following), Chapter 61 of the Code) or at the source of the income by withholding. For the computation of tax in the case of a joint return of a husband and wife, or a return of a surviving spouse, for taxable years beginning before January 1, 1971, see section 2. The computation of tax in such a case for taxable years beginning after December 31, 1970, is determined in accordance with the table contained in section 1(a) as amended by the Tax Reform Act of 1969. For other rates of tax on individuals, see section 5(a). For the imposition of an additional tax for the calendar years 1968, 1969, and 1970, see section 51(a).

(2)

(i) For taxable years beginning on or after January 1, 1964, the tax imposed upon a single individual, a head of a household, a married individual filing a separate return, and estates and trusts is the tax imposed by section 1 determined in accordance with the appropriate table contained in the following subsection of section 1:

Taxable years beginning in 1964	Taxable years beginning after 1964 but before 1971	Taxable years beginning after Dec. 31, 1970 (references in this column are to the Code as amended by the Tax Reform Act of 1969)

Single individual	Sec. 1(a)(1)	Sec. 1(a)(2)	Sec. 1(c).
Head of a household	Sec. 1(b)(1)	Sec. 1(b)(2)	Sec. 1(b).
Married individual filing a separate return	Sec. 1(a)(1)	Sec. 1(a)(2)	Sec. 1(d).
Estates and trusts	Sec. 1(a)(1)	Sec. 1(a)(2)	Sec. 1(d).

(ii) For taxable years beginning after December 31, 1970, the tax imposed by section 1(d), as amended by the Tax Reform Act of 1969, shall apply to the income effectively connected with the conduct of a trade or business in the United States by a married alien individual who is a nonresident of the United States for all or part of the taxable year or by a foreign estate or trust. For such years the tax imposed by section 1(c), as amended by such Act, shall apply to the income effectively connected with the conduct of a trade or business in the United States by an unmarried alien individual (other than a surviving spouse) who is a nonresident of the United States for all or part of the taxable year. See paragraph (b)(2) of section 1.871-8.

(3) The income tax imposed by section 1 upon any amount of taxable income is computed by adding to the income tax for the bracket in which that amount falls in the appropriate table in section 1 the income tax upon the excess of that amount over the bottom of the bracket at the rate indicated in such table.

(4) The provisions of section 1 of the Code, as amended by the Tax Reform Act of 1969, and of this paragraph may be illustrated by the following examples:

Example 1.

A, an unmarried individual, had taxable income for the calendar year 1964 of $15,750. Accordingly, the tax upon such taxable income would be $4,507.50, computed as follows from the table in section 1(a)(1):

Tax on $14,000 (from table)	$3,790.00

Tax on $1,750 (at 41 percent as determined from the table)	717.50
Total tax on $15,750	4,507.50

Example 2.

Assume the same facts as in example (1), except the figures are for the calendar year 1965. The tax upon such taxable income would be $4,232.50, computed as follows from the table in section 1(a)(2):

Tax on $14,000 (from table)	$3,550.00
Tax on $1,750 (at 39 percent as determined from the table)	682.50
Total tax on $15,750	4,232.50

Example 3.

Assume the same facts as in example (1), except the figures are for the calendar year 1971. The tax upon such taxable income would be $3,752.50, computed as follows from the table in section 1(c), as amended:

Tax on $14,000 (from table)	$3,210.00
Tax on $1,750 (at 31 percent as determined from the table)	542.50
Total tax on $15,750	3,752.50

(b) Citizens or residents of the United States liable to tax.

In general, all citizens of the United States, wherever resident, and all resident alien individuals are

liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States. Pursuant to section 876, a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year is, except as provided in section 933 with respect to Puerto Rican source income, subject to taxation in the same manner as a resident alien individual. As to tax on nonresident alien individuals, see sections 871 and 877.

(c) Who is a citizen.

Every person born or naturalized in the United States and subject to its jurisdiction is a citizen. For other rules governing the acquisition of citizenship, see Chapters 1 and 2 of Title III of the Immigration and Nationality Act (8 U.S.C. 1401-1459). For rules governing loss of citizenship, see sections 349 to 357, inclusive, of such Act (8 U.S.C. 1481-1489), Schneider v. Rusk, (1964) 377 U.S. 163, and Rev. Rul. 70-506, C.B. 1970-2, 1. For rules pertaining to persons who are nationals but not citizens at birth, e.g., a person born in American Samoa, see section 308 of such Act (8 U.S.C. 1408). For special rules applicable to certain expatriates who have lost citizenship with a principal purpose of avoiding certain taxes, see section 877. A foreigner who has filed his declaration of intention of becoming a citizen but who has not yet been admitted to citizenship by a final order of a naturalization court is an alien.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 7332, 39 FR 44216, Dec. 23, 1974]

Code **Sec. 31.3401(c)-1 Employee.**

(a) The term EMPLOYEE includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term includes officers and employees, whether elected or appointed, of the United States, a State, Territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily

present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employee.

(c) Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are not employees.

(d) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(e) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(f) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers and other supervisory personnel are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is not considered to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

(g) The term EMPLOYEE includes every individual who receives a supplemental unemployment compensation benefit which is treated under paragraph (b)(14) of Section 31.3401(a)-1 as if it were wages.

(h) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 3401(a).

[T.D. 6516, 25 FR 13096, Dec. 20, 1960, as amended by T.D. 7068, 35 FR 17329, Nov. 11, 1970]

Sec. 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(a) Processing of returns.

When the returns are filed in the office of the district director of internal revenue or the office of the director of a regional service center, they are checked first for form, execution, and mathematical accuracy. Mathematical errors are corrected and a correction notice of any such error is sent to the taxpayer. Notice and demand is made for the payment of any additional tax so resulting, or refund is made of any overpayment. Returns are classified for examination at regional service centers. Certain individual income tax returns with potential unallowable items are delivered to Examination Divisions at regional service centers for correction by correspondence. Otherwise, returns with the highest examination potential are delivered to district Examinations Divisions based on workload capacities. Those most in need of examination are selected for office or field examination.

(b) Examination of returns - (1) General. The original examination of income (including partnership and fiduciary), estate, gift, excise, employment, exempt organization, and information returns is a primary function of examiners in the Examination Division of the office of each district director of internal revenue. Such examiners are organized in groups, each of which is under the immediate supervision of a group supervisor designated by the district director. Revenue agents (and such other officers or employees of the Internal Revenue Service as may be designated for this purpose by the Commissioner) are authorized to examine any books, papers, records, or memoranda bearing upon matters required to be included in Federal tax returns and to take testimony relative thereto and to administer oaths. See section 7602 of the Code and the regulations thereunder. There are two general types of examination. These are commonly called 'office examination' and 'field examination'. During the examination of a return a taxpayer may be represented before the examiner by an attorney, certified public accountant, or other representative. See Subpart E of this part for conference and practice requirements.

(2) Office examination - (i) Adjustments by Examination Division at service center. Certain individual income tax returns identified as containing potential unallowable items are examined by Examination Divisions at regional service centers. Correspondence examination techniques are used. If the taxpayer requests an interview to discuss the proposed adjustments, the case is transferred to the taxpayer's district office. If the taxpayer does not agree to proposed adjustments, regular appellate procedures apply.

(ii) Examinations at district office. Certain returns are examined at district offices by office examination techniques. These returns include some business returns, besides the full range of nonbusiness individual income tax returns. Office examinations are conducted primarily by the interview method. Examinations are conducted by correspondence only when warranted by the nature of the questionable items and by the

convenience and characteristics of the taxpayer. In a correspondence examination, the taxpayer is asked to explain or send supporting evidence by mail. In an office interview examination, the taxpayer is asked to come to the district director's office for an interview and to bring certain records in support of the return. During the interview examination, the taxpayer has the right to point out to the examiner any amounts included in the return which are not taxable, or any deductions which the taxpayer failed to claim on the return. If it develops that a field examination is necessary, the examiner may conduct such examination.

(3) Field examination. Certain returns are examined by field examination which involves an examination of the taxpayer's books and records on the taxpayer's premises. An examiner will check the entire return filed by the taxpayer and will examine all books, papers, records, and memoranda dealing with matters required to be included in the return. If the return presents an engineering or appraisal problem (e.g., depreciation or depletion deductions, gains or losses upon the sale or exchange of property, or losses on account of abandonment, exhaustion, or obsolescence), it may be investigated by an engineer agent who makes a separate report.

(4) Conclusion of examination. At the conclusion of an office or field examination, the taxpayer is given an opportunity to agree with the findings of the examiner. If the taxpayer does not agree, the examiner will inform the taxpayer of the appeal rights. If the taxpayer does agree with the proposed changes, the examiner will invite the taxpayer to execute either Form 870 or another appropriate agreement form. When the taxpayer agrees with the proposed changes but does not offer to pay any deficiency or additional tax which may be due, the examiner will also invite payment (by check or money order), together with any applicable interest or penalty. If the agreed case involves income, profits, estate, gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 taxes, the agreement is evidenced by a waiver by the taxpayer of restrictions on assessment and collection of the deficiency, or an acceptance of a proposed overassessment. If the case involves excise or employment taxes or 100 percent penalty, the agreement is evidenced in the form of a consent to assessment and collection of additional tax or penalty and waiver of right to file claim for abatement, or the acceptance of the proposed overassessment. Even though the taxpayer signs an acceptance of a proposed overassessment the district director or the director of the regional service center remains free to assess a deficiency. On the other hand, the taxpayer who has given a waiver may still claim a refund of any part of the deficiency assessed against, and paid by, the taxpayer, or any part of the tax originally assessed and paid by the taxpayer. The taxpayer's acceptance of an agreed overassessment does not prevent the taxpayer from filing a claim and bringing a suit for an additional sum, nor does it preclude the Government from maintaining suit to recover an

erroneous refund. As a matter of practice, however, waivers or acceptances ordinarily result in the closing of a case insofar as the Government is concerned.

(5) Technical advice from the National Office - (i) Definition and nature of technical advice. (a) As used in this subparagraph, 'technical advice' means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon request of a district office in connection with the examination of a taxpayer's return or consideration of a taxpayer's return claim for refund or credit. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent holdings in the several districts. It does not include memorandums on matters of general technical application furnished to district offices where the issues are not raised in connection with the examination of the return of a specific taxpayer.

(b) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the examination or consideration of a return of the taxpayer. Thus, a district director may, in his discretion, request technical advice with respect to the consideration of a request for a determination letter.

(c) If a district director is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked, and requests the National Office to reconsider the ruling, the reference of the matter to the National Office is treated as a request for technical advice and the procedures specified in subdivision (iii) of this subparagraph should be followed in order that the National Office may consider the district director's recommendation. Only the National Office can revoke a ruling letter. Before referral to the National Office, the district director should inform the taxpayer of his opinion that the ruling letter should be revoked. The district director, after development of the facts and consideration of the taxpayer's arguments, will decide whether to recommend revocation of the ruling to the National Office. For procedures relating to a request for a ruling, see Sec. 601.201.

(d) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, is exclusively responsible for providing technical advice in any issue involving the establishment of basic principles and rules for the uniform interpretation and application of tax laws other than those which are under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms. This authority has been largely redelegated to subordinate officials.

(e) The provisions of this subparagraph apply only to a case under the jurisdiction of a district director but do not apply to an Employee Plans case under the jurisdiction of a key district director as provided in Sec. 601.201(o) or to an Exempt Organization case under the jurisdiction of a key

district director as provided in Sec. 601.201(n). The technical advice provisions applicable to Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9). The provisions of this subparagraph do not apply to a case under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms. They also do not apply to a case under the jurisdiction of an Appeals office, including a case previously considered by Appeals. The technical advice provisions applicable to a case under the jurisdiction of an Appeals office, other than Employee Plans and Exempt Organizations cases, are set forth in Sec. 601.106(f)(10). A case remains under the jurisdiction of the district director even though an Appeals office has the identical issue under consideration in the case of another taxpayer (not related within the meaning of section 267 of the Code) in an entirely different transaction. Technical advice may not be requested with respect to a taxable period if a prior Appeals disposition of the same taxable period of the same taxpayer's case was based on mutual concessions (ordinarily with a Form 870-AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment). However, technical advice may be requested by a district director on issues previously considered in a prior Appeals disposition, not based on mutual concessions, of the same taxable periods of the same taxpayer with the concurrence of the Appeals office that had the case.

(ii) Areas in which technical advice may be requested. (a) District directors may request technical advice on any technical or procedural question that develops during the audit or examination of a return, or claim for refund or credit, of a taxpayer. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(b) District directors are encouraged to request technical advice on any technical or procedural question arising in connection with any case of the type described in subdivision (i) of this subparagraph, which cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other precedent issued by the National Office. This request should be made at the earliest possible stage of the examination process.

(iii) Requesting technical advice. (a) It is the responsibility of the district office to determine whether technical advice is to be requested on any issue before that office. However, while the case is under the jurisdiction of the district director, a taxpayer or his/her representative may request that an issue be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. This request should be made at the earliest possible stage of the examination process. While taxpayers are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reason for requesting National Office advice, a taxpayer may make the request orally. If, after considering the

taxpayer's request, the examiner is of the opinion that the circumstances do not warrant referral of the case to the National Office, he/she will so advise the taxpayer. (See subdivision (iv) of this subparagraph for taxpayer's appeal rights where the examiner declines to request technical advice.)

(b) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in (g) of this subdivision. If the examiner initiates the action, the taxpayer will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice submitted by the district director should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

(c) After receipt of the statement of facts and specific questions from the district office, the taxpayer will be given 10 calendar days in which to indicate in writing the extent, if any, to which he may not be in complete agreement. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division. Every effort should be made to reach agreement as to the facts and specific point at issue. If agreement cannot be reached, the taxpayer may submit, within 10 calendar days after receipt of notice from the district office, a statement of his understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division.

(d) If the taxpayer initiates the action to request advice, and his statement of the facts and point or points at issue are not wholly acceptable to the district officials, the taxpayer will be advised in writing as to the areas of disagreement. The taxpayer will be given 10 calendar days after receipt of the written notice to reply to the district official's letter. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division. If agreement cannot be reached, both the statements of the taxpayer and the district official will be forwarded to the National Office.

(e)(1) In the case of requests for technical advice the taxpayer must also submit, within the 10-day period referred to in (c) and (d) of this subdivision, whichever applicable (relating to agreement by the taxpayer with the statement of facts submitted in connection with the request for technical advice), the statement described in (f) of this subdivision of proposed deletions pursuant to section 6110(c) of the Code. If the statement is not submitted, the taxpayer will be informed by the district director that such a statement is required. If the district director does not receive the statement within 10 days after the taxpayer has been informed of the need for such statement, the district director may decline to submit the request for technical advice. If the district director decides to

request technical advice in a case where the taxpayer has not submitted the statement of proposed deletions, the National Office will make those deletions which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(2) The requirements included in Sec. 601.105(b)(5) with respect to submissions of statements and other material with respect to proposed deletions to be made from technical advice memoranda before public inspection is permitted to take place do not apply to requests made by the district director before November 1, 1976, or requests for any document to which section 6104 of the Code applies.

(f) In order to assist the Internal Revenue Service in making the deletions, required by section 6110(c) of the Code, from the text of technical advice memoranda which are open to public inspection pursuant to section 6110(a) of the Code, there must accompany requests for such technical advice either a statement of the deletions proposed by the taxpayer and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted. Such statements shall be made in a separate document. The statement of proposed deletions shall be accompanied by a copy of all statements of facts and supporting documents which are submitted to the National Office pursuant to (c) or (d) of this subdivision, on which shall be indicated, by the use of brackets, the material which the taxpayer indicates should be deleted pursuant to section 6110(c) of the Code. The statement of proposed deletions shall indicate the statutory basis, under section 6110(c) of the Code, for each proposed deletion. The statement of proposed deletions shall not appear or be referred to anywhere in the request for technical advice. If the taxpayer decides to request additional deletions pursuant to section 6110(c) of the Code prior to the time the National Office replies to the request for technical advice, additional statements may be submitted.

(g) If the taxpayer has not already done so, the taxpayer may submit a statement explaining the taxpayer's position on the issues, citing precedents which the taxpayer believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be forwarded for association with the case file.

(h) At the time the taxpayer is informed that the matter is being referred to the National Office, the taxpayer will also be informed of the taxpayer's right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether such a conference is desired.

(i) Generally, prior to replying to the request for technical advice, the National Office shall inform the taxpayer orally or in writing of the material likely to appear in the

technical advice memorandum which the taxpayer proposed be deleted but which the Internal Revenue Service determined should not be deleted. If so informed, the taxpayer may submit within 10 days any further information, arguments or other material in support of the position that such material be deleted. The Internal Revenue Service will attempt, if feasible, to resolve all disagreements with respect to proposed deletions prior to the time the National Office replies to the request for technical advice. However, in no event shall the taxpayer have the right to a conference with respect to resolution of any disagreements concerning material to be deleted from the text of the technical advice memorandum, but such matters may be considered at any conference otherwise scheduled with respect to the request.

(j) The provisions of (a) through (i) of this subdivision, relating to the referral of issues upon request of the taxpayer, advising taxpayers of the referral of issues, the submission of proposed deletions, and the granting of conferences in the National Office, are not applicable to technical advice memoranda described in section 611(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments. However, in such cases the taxpayer shall be allowed to provide the statement of proposed deletions to the National Office upon the completion of all proceedings with respect to the investigations or assessments, but prior to the date on which the Commissioner mails the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum.

(k) Form 4463, Request for Technical Advice, should be used for transmitting requests for technical advice to the National Office.

(iv) Appeal by taxpayers of determinations not to seek technical advice. (a) If the taxpayer has requested referral of an issue before a district office to the National Office for technical advice, and after consideration of the request the examiner is of the opinion that the circumstances do not warrant such referral, he will so advise the taxpayer.

(b) The taxpayer may appeal the decision of the examining officer not to request technical advice by submitting to that official, within 10 calendar days after being advised of the decision, a statement of the facts, law, and arguments with respect to the issue, and the reasons why he believes the matter should be referred to the National Office for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division.

(c) The examining officer will submit the statement of the taxpayer through channels to the Chief, Examination Division, accompanied by a statement of his reasons why the issue should not be referred to the National Office. The Chief, Examination Division, will determine, on the basis of the

statements submitted, whether technical advice will be requested. If he determines that technical advice is not warranted, he will inform the taxpayer in writing that he proposes to deny the request. In the letter to the taxpayer the Chief, Examination Division, will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer will be given 15 calendar days after receipt of the letter in which to notify the Chief, Examination Division, whether he agrees with the proposed denial. The taxpayer may not appeal the decision of the Chief, Examination Division, not to request technical advice from the National Office. However, if he does not agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including taxpayer's written request and statements, will be submitted to the National Office, Attention: Director, Examination Division, for review. After review in the National Office, the district office will be notified whether the proposed denial is approved or disapproved.

(d) While the matter is being reviewed in the National Office, the district office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

> (v) Conference in the National Office. (a) If, after a study of the technical advice request, it appears that advice adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer. The conference will be arranged by telephone, if possible, and must be held within 21 calendar days after contact has been made. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief.

(b) A taxpayer is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in (c) of this subdivision exists. This conference will usually be held at the branch level in the appropriate division (Corporation Tax Division or Individual Tax Division) in the office of the Assistant Commissioner (Technical), and will usually be attended by a person who has authority to act for the branch chief. In appropriate cases the examining officer may also attend the conference to clarify the facts in the case. If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each subject. At the request of the taxpayer or his representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A taxpayer has no 'right' of

appeal from an action of a branch to the director of a division or to any other National Office official.

(c) In the process of review of a holding proposed by a branch, it may appear that the final answer will involve a reversal of the branch proposal with a result less favorable to the taxpayer. Or it may appear that an adverse holding proposed by a branch will be approved, but on a new or different issue or on different grounds than those on which the branch decided the case. Under either of these circumstances, the taxpayer or his representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer to attend further conferences when, in the opinion of National Office personnel, such need arises. All additional conferences of this type discussed are held only at the invitation of the Service.

(d) It is the responsibility of the taxpayer to furnish to the National Office, within 21 calendar days after the conference, a written record of any additional data, line of reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but were not previously or adequately presented in writing. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief. Any additional material and a copy thereof should be addressed to and sent to the National Office which will forward the copy to the appropriate district director. The district director will be requested to give the matter his prompt attention. He may verify the additional facts and data and comment upon it to the extent he deems it appropriate.

(e) A taxpayer or a taxpayer's representative desiring to obtain information as to the status of the case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

Official Telephone numbers, (Area Code 202)

Director Corporation Tax 566-4504 or 566-4505.

Division,

Director, Individual Tax Division 566-3767 or 566-3788.

(vi) Preparation of technical advice memorandum by the National Office. (a) Immediately upon receipt in the National Office, the technical employee to whom the case is assigned will analyze the file to ascertain whether it meets the requirements of subdivision (iii) of this subparagraph. If the case is not complete with respect to any requirement in subdivisions (iii) (a) through (d) of this subparagraph, appropriate steps will be taken to complete the file. If any request for technical advice does not comply with the requirements of subdivision (iii)(e) of this subparagraph, relating to the statement of proposed deletions, the National Office will make those deletions from the technical advice memorandum which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(b) If the taxpayer has requested a conference in the National Office, the procedures in subdivision (v) of this subparagraph will be followed.

(c) Replies to requests for technical advice will be addressed to the district director and will be drafted in two parts. Each part will identify the taxpayer by name, address, identification number, and year or years involved. The first part (hereafter called the 'Technical Advice Memorandum') will contain (1) a recitation of the pertinent facts having a bearing on the issue; (2) a discussion of the facts, precedents, and reasoning of the National Office; and (3) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the district office. The discussion of the issues will be in such detail that the district officials are apprised of the reasoning underlying the conclusion. There shall accompany the technical advice memorandum a notice pursuant to section 6110 (f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications pursuant to section 6110 (d) of the Code) which the district director shall forward to the taxpayer at such time that the district director furnishes a copy of the technical advice memorandum to the taxpayer pursuant to (e) of this subsection.

(d) The second part of the reply will consist of a transmittal memorandum. In the unusual cases it will serve as a vehicle for providing the district office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(e) It is the general practice of the Service to furnish a copy of the technical advice memorandum to the taxpayer after it has been adopted by the district director. However, in the case of technical advice memoranda described in section 6110(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments, a copy of the technical

advice memorandum shall not be furnished the taxpayer until all proceedings with respect to the investigations or assessments are completed.

(f) After receiving the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum, if the taxpayer desires to protest the disclosure of certain information in the technical advice memorandum, the taxpayer must within 20 days after the notice is mailed submit a written statement identifying those deletions not made by the Internal Revenue Service which the taxpayer believes should have been made. The taxpayer shall also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection on which the taxpayer indicates, by the use of brackets, the deletions proposed by the taxpayer but which have not been made by the Internal Revenue Service. Generally the Internal Revenue Service will not consider the deletion under this subparagraph of any material which the taxpayer did not, prior to the time when the National Office sent its reply to the request for technical advice to the district director, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the taxpayer to the notice pursuant to section 6110(f)(1) of the Code, mail to the taxpayer its final administrative conclusion with respect to the deletions to be made.

(vii) Action on technical advice in district offices. (a) Unless the district director feels that the conclusions reached by the National Office in a technical advice memorandum should be reconsidered and promptly requests such reconsideration, his office will proceed to process the taxpayer's case on the basis of the conclusions expressed in the technical advice memorandum.

(b) The district director will furnish to the taxpayer a copy of the technical advice memorandum described in subdivision (vi)(c) of this subparagraph and the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications pursuant to section 6110(d) of the Code). The preceding sentence shall not apply to technical advice memoranda involving civil fraud or criminal investigations, or jeopardy or termination assessments, as described in subdivision (iii)(j) of this subparagraph or to documents to which section 6104 of the Code applies.

(c) In those cases in which the National Office advises the district director that he should not furnish a copy of the technical memorandum to the taxpayer, the district director will so inform the taxpayer if he requests a copy.

(viii) Effect of technical advice. (a) A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and

precedents to the facts of a specific case, and is issued primarily as a means of assisting district officials in the examination and closing of the case involved.

(b) Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied retroactively. Moreover, since technical advice, as described in subdivision (i) of this subparagraph, is issued only on closed transactions, a holding in a technical advice memorandum that is adverse to the taxpayer is also applied retroactively unless the Assistant Commissioner (Technical) exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the holding. Likewise, a holding in a technical advice memorandum that modifies or revokes a holding in a prior technical advice memorandum will also be applied retroactively, with one exception. If the new holding is less favorable to the taxpayer, it will generally not be applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions of the type described in Sec. 01.201(1) (7) and 601.201(1) (8).

(c) Technical advice memoranda often form the basis for revenue rulings. For the description of revenue rulings and the effect thereof, see Sec. 01.601(d)(2)(i)(a) and 601.601(d) (2) (v).

(d) A district director may raise an issue in any taxable period, even though he or she may have asked for and been furnished technical advice with regard to the same or a similar issue in any other taxable period.

(c) District procedure-(1) Office examination. (i) In a correspondence examination the taxpayer is furnished with a report of the examiner's findings by a form letter. The taxpayer is asked to sign and return an agreement if the taxpayer accepts the findings. The letter also provides a detailed explanation of the alternatives available if the taxpayer does not accept the findings, including consideration of the case by an Appeals office, and requests the taxpayer to inform the district director, within the specified period, of the choice of action. An Appeals office conference will be granted to the taxpayer upon request without submission of a written protest.

(ii) If, at the conclusion of an office interview examination, the taxpayer does not agree with the adjustments proposed, the examiner will fully explain the alternatives available which include, if practicable, an immediate interview with a supervisor or an immediate conference with an Appeals Officer. If an immediate interview or Appeals office conference is not practicable, or is not requested by the taxpayer, the examination report will be mailed to the taxpayer under cover of an appropriate transmittal letter. This letter provides a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requests the taxpayer to inform the district director, within the specified period, of the choice of action. An appeals office

conference will be granted to the taxpayer upon request without submission of a written protest.

(2) Field examination. (i) If, at the conclusion of an examination, the taxpayer does not agree with the adjustments proposed, the examiner will prepare a complete examination report fully explaining all proposed adjustments. Before the report is sent to the taxpayer, the case file will be submitted to the district Centralized Services and, in some cases, Quality Review function for appropriate review. Following such review, the taxpayer will be sent a copy of the examination report under cover of a transmittal (30-day) letter, providing a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requesting the taxpayer to inform the district director, within the specified period, of the choice of action.

(ii) If the total amount of proposed additional tax, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) does not exceed $2,500 for any taxable period, the taxpayer will be granted an Appeals office conference on request. A written protest is not required.

(iii) If for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000, the taxpayer, on request, will be granted an Appeals office conference, provided a brief written statement of disputed issues is submitted.

(iv) If for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000, the taxpayer, on request, will be granted an Appeals office conference, provided a written protest is filed.

(d) Thirty-day letters and protests - (1) General. The report of the examiner, as approved after review, recommends one of four determinations:

(i) Acceptance of the return as filed and closing of the case;

(ii) Assertion of a given deficiency or additional tax;

(iii) Allowance of a given overassessment, with or without a claim for refund, credit, or

abatement;

(iv) Denial of a claim for refund, credit, or abatement which has been filed and is found wholly lacking in merit. When a return is accepted as filed (as in subdivision (i) of this subparagraph), the taxpayer is notified by appropriate 'no change' letter. In an unagreed case, the district director sends to the taxpayer a preliminary or '30-day letter' if any one of the last three determinations is made (except a full allowance of a claim in respect of any tax). The 30-day letter is a form letter which states the determination proposed to be made. It is accompanied by a copy of the examiner's report explaining the basis of the proposed determination. It suggests to the taxpayer that if the taxpayer concurs in the recommendation, he or she indicate agreement by executing and returning a waiver or acceptance. The preliminary letter also informs the taxpayer of appeal rights available if he or she disagrees with the proposed determination. If the taxpayer does not respond to the letter within 30 days, a statutory notice of deficiency will be issued or other appropriate action taken, such as the issuance of a notice of adjustment, the denial of a claim in income, profits, estate, and gift tax cases, or an appropriate adjustment of the tax liability or denial of a claim in excise and employment tax cases.

(2) Protests. (i) No written protest or brief written statement of disputed issues is required to obtain an Appeals office conference in office interview and correspondence examination cases.

(ii) No written protest or brief written statement of disputed issues is required to obtain an Appeals office conference in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) is $2,500 or less for any taxable period.

(iii) A written protest is required to obtain Appeals consideration in a field examination case if the total amount of proposed tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000 for any taxable period.

(iv) A written protest is optional (although a brief written statement of disputed issues is required) to obtain Appeals consideration in a field examination case if for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but

does not exceed $10,000.

(v) Instructions for preparation of written protests are sent to the taxpayer with the transmittal (30-day) letter.

(e) Claims for refund or credit. (1) After payment of the tax a taxpayer may (unless he has executed an agreement to the contrary) contest the assessment by filing a claim for refund or credit for all or any part of the amount paid, except as provided in section 6512 of the Code with respect to certain taxes determined by the Tax Court, the decision of which has become final. A claim for refund or credit of income taxes shall be made on Form 1040X, 1120X, or an amended income tax return, in accordance with Sec. 301.6402-3. In the case of taxes other than income taxes, a claim for refund or credit shall be made on Form 843. The appropriate forms are obtainable from district directors or directors of service centers. Generally, the claim, together with appropriate supporting evidence, must be filed at the location prescribed in Sec. 301.6402-2(a) (2). A claim for refund or credit must be filed within the applicable statutory period of limitation. In certain cases, a properly executed income tax return may operate as a claim for refund or credit of the amount of the overpayment disclosed by such return. (See Sec. 301.6402-3).

(2) When claims for refund or credit are examined by the Examination Division, substantially the same procedure is followed (including appeal rights afforded to taxpayers) as when taxpayers' returns are originally examined. But see Sec. 601.108 for procedure for reviewing proposed overpayment exceeding $200,000 of income, estate, and gift taxes.

(3) As to suits for refund, see Sec. 601.103 (c).

(4) (Reserved)

(5) There is also a special procedure applicable to applications for tentative carryback adjustments under section 6411 of the Code (consult Forms 1045 and 1139).

(6) For special procedure applicable to claims for payment or credit in respect of gasoline used on a farm for farming purposes, for certain nonhighway purposes, for use in commercial aircraft, or used by local transit systems, see sections 39, 6420, and 6421 of the Code and Sec. 601.402(c)(3). For special procedure applicable to claims for payment or credit in respect of lubricating oil used otherwise than in a highway motor vehicle, see sections 39 and 6424 of the Code and Sec. 601.402(c)(3). For special procedure applicable for credit or refund of aircraft use tax, see section 6426 of the Code and Sec. 601.402(c)(4). For special procedure applicable for payment or credit in respect of special fuels not used for taxable purposes, see sections 39 and 6427 of the Code and Sec. 601.402(c)(5).

(7) For special procedure applicable in certain cases to adjustment of overpayment of estimated tax by a corporation see section 6425 of the Code.

(f) Interruption of examination procedure. The process of field examination and the course of the administrative procedure described in this section and in the following section may be interrupted in some cases by the imminent expiration of the statutory period of limitations for assessment of the tax. To protect the Government's interests in such a case, the district director of internal revenue or other designated officer may be required to dispatch a statutory notice of deficiency (if the case is within jurisdiction of U.S. Tax Court), or take other appropriate action to assess the tax, even though the case may be in examination status. In order to avoid interruption of the established procedure (except in estate tax cases), it is suggested to the taxpayer that he execute an agreement on Form 872 (or such other form as may be prescribed for this purpose). To be effective this agreement must be entered into by the taxpayer and the district director or other appropriate officer concerned prior to the expiration of the time otherwise provided for assessment. Such a consent extends the period for assessment of any deficiency, or any additional or delinquent tax, and extends the period during which the taxpayer may claim a refund or credit to a date 6 months after the agreed time of extension of the assessment period. When appropriate, a consent may be entered into restricted to certain issues.

(g) Fraud. The procedure described in this section does not apply in any case in which criminal prosecution is under consideration. Such procedure does obtain, however, in cases involving the assertion of the civil fraud penalty after the criminal aspects of the case have been closed.

(h) Jeopardy assessments. If the district director believes that the assessment or collection of a tax will be jeorpardized by delay, he/she is authorized and required to assess the tax immediately, together with interest and other additional amounts provided by law, notwithstanding the restrictions on assessment or collection of income, estate, gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 taxes contained in section 6213(a) of the Code. A jeopardy assessment does not deprive the taxpayer of the right to file a petition with the Tax Court. Collection of a tax in jeopardy may be immediately enforced by the district director upon notice and demand. To stay collection, the taxpayer may file with the district director a bond equal to the amount for which the stay is desired. The taxpayer may request a review in the Appeals office of whether the making of the assessment was reasonable under the circumstances and whether the amount assessed or demanded was appropriate under the circumstances. See section 7429. This request shall be made, in writing, within 30 days after the earlier of -

(1) The day on which the taxpayer is furnished the written statement described in section

7429(a)(1); or

(2) The last day of the period within which this statement is required to be furnished. An Appeals office conference will be granted as soon as possible and a decision rendered without delay.

(i) Regional post review of examined cases. Regional Commissioners review samples of examined cases closed in their district offices to insure uniformity throughout their districts in applying Code provisions, regulations, and rulings, as well as the general policies of the Service.

(j) Reopening of Cases Closed After Examination. (1) The Service does not reopen any case closed after examination by a district office or service center, to make an adjustment unfavorable to the taxpayer unless:

(i) There is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact; or

(ii) The prior closing involved a clearly defined substantial error based on an established Service position existing at the time of the previous examination; or

(iii) Other circumstances exist which indicate failure to reopen would be a serious administrative omission.

(2) All reopenings are approved by the Chief, Examination Division (District Director in streamlined districts), or by the Chief, Compliance Division, for cases under his/her jurisdiction. If an additional inspection of the taxpayer's books of account is necessary, the notice to the taxpayer required by Code section 7605(b) will be delivered to the taxpayer at the time the reexamination is begun.

(k) Transfer of returns between districts. When request is received to transfer returns to another district for examination or the closing of a cased, the district director having jurisdiction may transfer the case, together with pertinent records to the district director of such other district. The Service will determine the time and place of the examination. In determining whether a transfer should be made, circumstances such as the following will be considered:

(1) Change of the taxpayer's domicile, either before or during examination.

(2) Discovery that taxpayer's books and records are kept in another district.

(3) Change of domicile of an executor or administrator to another district before or during

examination.

(4) The effective administration of the tax laws.

(l) Special procedures for crude oil windfall profit tax cases. For special procedures relating to crude oil windfall profit tax cases, see Sec. 601.405. (5 U.S.C. 301 and 552) 80 Stat. 379 and 383; sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805))

[32 FR 15990, Nov. 22, 1967]

Sec. 601.106 Appeals functions.

(a) General.

(1)

(i) There are provided in each region Appeals offices with office facilities within the region.

Unless they otherwise specify, taxpayers living outside the United States use the facilities of the Washington, D.C., Appeals Office of the the Mid-Atlantic Region. Subject to the limitations set forth in subparagraphs (2) and (3) of this paragraph, the Commissioner has delegated to certain officers of the Appeals offices authority to represent the regional commissioner in those matters set forth in subdivisions (ii) through (v) of this subparagraph. If a statutory notice of deficiency was issued by a district director or the Director, Foreign Operations District, the Appeals office may waive jurisdiction to the director who issued the statutory notice during the 90-day (or 150-day) period for filing a petition with the Tax Court, except where criminal prosecution has been recommended and not finally disposed of, or the statutory notice includes the ad valorem fraud penalty. After the filing of a petition in the Tax Court, the Appeals office will have exclusive settlement jurisdiction, subject to the provisions of subparagraph (2) of this paragraph, for a period of 4 months (but no later than the receipt of the trial calendar in regular cases and no later than 15 days before the calendar call in S cases), over cases docketed in the Tax Court. Subject to the exceptions and limitations set forth in subparagraph (2) of this paragraph, there is also vested in the Appeals offices authority to represent the regional commissioner in his/her exclusive authority to settle (a) all cases docketed in the Tax Court and designated for trial at any place within the territory comprising the region, and (b) all docketed cases originating in the office of any district director situated within the region, or in which jurisdiction has been transferred to

the region, which are designated for trial at Washington, D.C., unless the petitioner resides in, and his/her books and records are located or can be made available in, the region which includes Washington, D.C.

(ii) Certain officers of the Appeals offices may represent the regional commissioner in his/her exclusive and final authority for the determination of -

(a) Federal income, profits, estate (including extensions for payment under section 6161(a)(2)), gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 tax liability (whether before or after the issuance of a statutory notice of deficiency);

(b) Employment or certain Federal excise tax liability; and

(c) Liability for additions to the tax, additional amounts, and assessable penalties provided under Chapter 68 of the Code, in any case originating in the office of any district director situated in the region, or in any case in which jurisdiction has been transferred to the region.

(iii) The taxpayer must request Appeals consideration.

(a) An oral request is sufficient to obtain Appeals consideration in (1) all office interview or correspondence examination cases or (2) a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) is $2,500 or less for any taxable period. No written protest or brief statement of disputed issues is required.

(b) A brief written statement of disputed issues is required (a written protest is optional) to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000 for any taxable period.

(c) A written protest is required to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be

compromised) exceeds $10,000 for any taxable period.

(d) A written protest is required to obtain Appeals consideration in all employee plan and exempt organization cases.

(e) A written protest is required to obtain Appeals consideration in all partnership and S corporation cases.

(iv) Sections 6659(a)(1) and 6671(a) provide that additions to the tax, additional amounts, penalties and liabilities (collectively referred to in this subdivision as 'penalties') provided by Chapter 68 of the Code shall be paid upon notice and demand and shall be assessed and collected in the same manner as taxes. Certain Chapter 68 penalties may be appealed after assessment to the Appeals office. This post-assessment appeal procedure applies to all but the following cCapter 68 penalties:

(a) Penalties that are not subject to a reasonable cause or reasonable basis determination (examples are additions to the tax for failure to pay estimated income tax under sections 6654 and 6655);

(b) Penalties that are subject to the deficiency procedures of subchapter B of Chapter 63 of the Code (because the taxpayer has the right to appeal such penalties, such as those provided under section 6653 (a) and (b), prior to assessment):

(c) Penalties that are subject to an administratively granted preassessment appeal procedure such as that provided in Sec. 1.6694-2(a)(1) because taxpayers are able to protest such penalties prior to assessment;

(d) The penalty provided in section 6700 for promoting abusive tax shelters (because the penalty is subject to the procedural rules of section 6703 which provides for an extension of the period of collection of the penalty when a person pays not less than 15 percent of the amount of such penalty); and

(e) The 100 percent penalty provided under section 6672 (because the taxpayer has the opportunity to appeal this penalty prior to assessment). The appeal may be made before or after payment, but shall be made before the filing of a claim for refund. Technical advice procedures are not applicable to an appeal made under this subdivision.

(v) The Appeals office considers cases involving the initial or continuing recognition of

tax exemption and foundation classification. See Sec. 601.201(n)(5) and (n)(6). The Appeals office also considers cases involving the initial or continuing determination of employee plan qualification under Subchapter D of Chapter 1 of the Code. See Sec. 601.201(o)(6). However, the jurisdiction of the Appeals office in these cases is limited as follows:

(a) In cases under the jurisdiction of a key district director (or the National Office) which involve an application for, or the revocation or modification of, the recognition of exemption or the determination of qualification, if the determination concerning exemption is made by a National Office ruling, or if National Office technical advice is furnished concerning exemption or qualification, the decision of the National Office is final. The organization/plan has no right of appeal to the Appeals office or any other avenue of administrative appeal. See Sec. 601.201(n)(i), (n)(6)(ii)(b), (n)(9)(viii)(a), (o)(2)(iii), and (o)(6)(i).

(b) In cases already under the jurisdiction of an Appeals office, if the proposed disposition by that office is contrary to a National Office ruling concerning exemption, or to a National Office technical advice concerning exemption or qualification, issued prior to the case, the proposed disposition will be submitted, through the Office of the Regional Director of Appeals, to the Assistant Commissioner (Employee Plans and Exempt Organizations) or, in section 521 cases, to the Assistant Commissioner (Technical). The decision of the Assistant Commissioner will be followed by the Appeals office. See Sec. 601.201(n)(5)(iii), (n)(6)(ii)(d), (n)(6)(iv), and (o)(6)(iii).

(2) The authority described in subparagraph (1) of this paragraph does not include the authority to:

(i) Negotiate or make a settlement in any case docketed in the Tax Court if the notice of deficiency, liability or other determination was issued by Appeals officials;

(ii) Negotiate or make a settlement in any docketed case if the notice of deficiency, liability or other determination was issued after appeals consideration of all petitioned issues by the Employee Plans/Exempt Organizations function;

(iii) Negotiate or make a settlement in any docketed case if the notice of deficiency, liability or final adverse determination letter was issued by a District Director and is based upon a National Office ruling or National Office technical advice in that case

involving a qualification of an employee plan or tax exemption and/or foundation status of an organization (but only to the extent the case involves such issue);

(iv) Negotiate or make a settlement if the case was docketed under Code sections 6110, 7477, or 7478;

(v) Eliminate the ad valorem fraud penalty in any case in which the penalty was determined by the district office or service center office in connection with a tax year or period, or which is related to or affects such year or period, for which criminal prosecution against the taxpayer (or related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, except upon the recommendation or concurrence of Counsel; or

(vi) Act in any case in which a recommendation for criminal prosecution is pending, except with the concurrence of Counsel.

(3) The authority vested in Appeals does not extend to the determination of liability for any excise tax imposed by Subtitle E or by Subchapter D of chapter 78, to the extent it relates to Subtitle E.

(4) In cases under Appeals jurisdiction, the Appeals official has the authority to make and subscribe to a return under the provisions of section 6020 of the Code where taxpayer fails to make a required return.

(b) Initiation of proceedings before Appeals.

In any case in which the district director has issued a preliminary or '30-day letter' and the taxpayer requests Appeals consideration and files a written protest when required (see paragraph (c)(1) of Sec. 01.103, (c)(1) and (c)(2) of 601.105 and 601.507) against the proposed determination of tax liability, except as to those taxes described in paragraph (a)(3) of this section, the taxpayer has the right (and will be so advised by the district director) of administrative appeal to the Appeals organization. However, the appeal procedures do not extend to cases involving solely the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds. Organizations such as labor unions and trade associations which have been examined by the district director to determine the amounts expended by the organization for purposes of lobbying, promotion or defeat of legislation, political campaigns, or propaganda related to those purposes are treated as 'taxpayers' for the purpose of this right of administrative appeal. Thus, upon requesting appellate consideration and filing a written protest, when required, to

the district director's findings that a portion of member dues is to be disallowed as a deduction to each member because expended for such purposes, the organization will be afforded full rights of administrative appeal to the Appeals activity similar to those rights afforded to taxpayers generally. After review of any required written protest by the district director, the case and its administrative record are referred to Appeals. Appeals may refuse to accept a protested nondocketed case where preliminary review indicates it requires further consideration or development. No taxpayer is required to submit a case to Appeals for consideration. Appeal is at the option of the taxpayer. After the issuance by the district director of a statutory notice of deficiency, upon the taxpayer's request, Appeals may take up the case for settlement and may grant the taxpayer a conference thereon.

(c) Nature of proceedings before Appeals.

Proceedings before Appeals are informal. Testimony under oath is not taken, although matters alleged as facts may be required to be submitted in the form of affidavits, or declared to be true under the penalties of perjury. Taxpayers may represent themselves or designate a qualified representative to act for them. See Subpart E of this part for conference and practice requirements. At any conference granted by Appeals on a nondocketed case, the district director will be represented if the Appeals official having settlement authority and the district director deem it advisable. At any such conference on a case involving the ad valorem fraud penalty for which criminal prosecution against the taxpayer (or a related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, the District Counsel will be represented if he or she so desires.

(d) Disposition and settlement of cases before Appeals.

(1) In general.

During consideration of a case, the Appeals office should neither reopen an issue as to which the taxpayer and the office of the district director are in agreement nor raise a new issue, unless the ground for such action is a substantial one and the potential effect upon the tax liability is material. If the Appeals raises a new issue, the taxpayer or the taxpayer's representative should be so advised and offered an opportunity for discussion prior to the taking of any formal action, such as the issuance of a statutory notice of deficiency.

(2) Cases not docketed in the Tax Court.

(i) If after consideration of the case by Appeals a satisfactory settlement of some or all the issues is reached with the taxpayer, the taxpayer will be requested to sign Form

870-AD or other appropriate agreement form waiving restrictions on the assessment and collection of any deficiency and accepting any overassessment resulting under the agreed settlement. In addition, in partially unagreed cases, a statutory notice of deficiency will be prepared and issued in accordance with subdivision (ii) of this subparagraph with respect to the unagreed issue or issues.

(ii) If after consideration of the case by Appeals it is determined that there is a deficiency in income, profits, estate, gift tax, generation-skipping transfer, or Chapter 41, 42, 43, or 44 tax liability to which the taxpayer does not agree, a statutory notice of deficiency will be prepared and issued by Appeals. Officers of the Appeals office having authority for the administrative determination of tax liabilities referred to in paragraph (a) of this section are also authorized to prepare, sign on behalf of the Commissioner, and send to the taxpayer by registered or certified mail any statutory notice of deficiency prescribed in sections 6212 and 6861 of the Code, and in corresponding provisions of the Internal Revenue Code of 1939. Within 90 days, or 150 days if the notice is addressed to a person outside of the States of the Union and the District of Columbia, after such a statutory notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the U.S. Tax Court for a redetermination of the deficiency. In addition, if a claim for refund is disallowed in full or in part by the Appelate Division and the taxpayer does not sign Form 2297, Appeals will prepare the statutory notice of claim disallowance and send it to the taxpayer by certified mail (or registered mail if the taxpayer is outside the United States), with a carbon copy to the taxpayer's representative by regular mail, if appropriate. In any other unagreed case, the case and its administrative file will be forwarded to the appropriate function with directions to take action with respect to the tax liability determined in Appeals. Administrative appeal procedures will apply to 100-percent penalty cases, except where an assessment is made because of Chief Counsel's request to support a third-party action in a pending refund suit. See Rev. Proc. 69-26.

(iii) Taxpayers desiring to further contest unagreed excise (other than those under Chapters 41 through 44 of the Code) and employment tax cases and 100-percent penalty cases must pay the additional tax (or portion thereof of divisible taxes) when assessed, file claim for refund within the applicable statutory period of limitations (ordinarily 3 years from time return was required to be filed or 2 years from payment, whichever expires later), and upon disallowance of claim or after 6 months from date claim was filed, file suit in U.S. District Court or U.S. Claims Court. Suits for refund of

taxes paid are under the jurisdiction of the Department of Justice.

(3) Cases docketed in the Tax Court.

(i) If the case under consideration in Appeals is docketed in the Tax Court and agreement is reached with the taxpayer with respect to the issues involved, the disposition of the case is effected by a stipulation of agreed deficiency or overpayment to be filed with the Tax Court and in conformity with which the Court will enter its order.

(ii) If the case under consideration in Appeals is docketed in the Tax Court and the issues remain unsettled after consideration and conference in Appeals, the case will be referred to the appropriate district counsel for the region for defense of the tax liability determined.

(iii) If the deficiency notice in a case docketed in the Tax Court was not issued by the Appeals office and no recommendation for criminal prosecution is pending, the case will be referred by the district counsel to the Appeals office for settlement as soon as it is at issue in the Tax Court. The settlement procedure shall be governed by the following rules:

(a) The Appeals office will have exclusive settlement jurisdiction for a period of 4 months over certain cases docketed in the Tax Court. The 4-month period will commence at the time Appeals receives the case from Counsel, which will be after the case is at issue. Appeals will arrange settlement conferences in such cases within 45 days of receipt of the case. In the event of a settlement, Appeals will prepare and forward to Counsel the necessary computations and any stipulation decisions secured. Counsel will prepare any needed settlement documents for execution by the parties and filing with the Tax Court. Appeals will also have authority to settle less than all the issues in the case and to refer the unsettled issues to Counsel for disposition. In the event of a partial settlement, Appeals will inform Counsel of the agreement of the petitioner(s) and Appeals may secure and forward to Counsel a stipulation covering the agreed issues. Counsel will, if necessary, prepare documents reflecting settlement of the agreed issues for execution by the parties and filing with the Tax Court at the appropriate time.

(b) At the end of the 4-month period, or before that time if Appeals determines the case is not susceptible of settlement, the case will be returned to Counsel.

Thereafter, Counsel will have exclusive authority to dispose of the case. If, at the end of the 4-month period, there is substantial likelihood that a settlement of the entire case can be effected in a reasonable period of time, Counsel may extend Appeals settlement jurisdiction for a period not to exceed 60 days, but not beyond the date of the receipt of a trial calendar upon which the case appears. Extensions beyond the 50-day period or after the event indicated will be granted only with the personal approval of regional counsel and will be made only in those cases in which the probability of settlement of the case in its entirety by Appeals clearly outweighs the need to commence trial preparation.

(c) During the period of Appeals jurisdiction, Appeals will make available such files and information as may be necessary for Counsel to take any action required by the Court or which is in the best interests of the Government. When a case is referred by Counsel to Appeals, Counsel may indicate areas of needed factual development or areas of possible technical uncertainties. In referring a case to Counsel, Appeals will furnish its summary of the facts and the pertinent legal authorities.

(d) The Appeals office may specify that proposed Counsel settlements be referred back to Appeals for its views. Appeals may protest the proposed Counsel settlements. If Counsel disagrees with Appeals, the Regional Counsel will determine the disposition of the cases.

(e) If an offer is received at or about the time of trial in a case designated by the Appeals office for settlement consultation, Counsel will endeavor to have the case placed on a motions calendar to permit consultation with and review by Appeals in accordance with the foregoing procedures.

(f) For issues in docketed and nondocketed cases pending with Appeals which are related to issues in docketed cases over which Counsel has jurisdiction, no settlement offer will be accepted by either Appeals or Counsel unless both agree that the offer is acceptable. The protest procedure will be available to Appeals and regional counsel will have authority to resolve the issue with respect to both the Appeals and Counsel cases. If settlement of the docketed case requires approval by regional counsel or Chief Counsel, the final decision with respect to the issues under the jurisdiction of both Appeals and Counsel will be made by regional counsel or Chief Counsel. See Rev. Proc. 79-59.

(g) Cases classified as 'Small Tax' cases by the Tax Court are given expeditious consideration because such cases are not included on a Trial Status Request. These cases are considered by the Court as ready for placing on a trial calendar as soon as the answer has been filed and are given priority by the Court for trial over other docketed cases. These cases are designated by the Court as small tax cases upon request of petitioners and will include letter 'S' as part of the docket number.

(e) Transfer and centralization of cases.

(1) An Appeals office is authorized to transfer settlement jurisdiction in a non-docketed case or in an excise or employment tax case to another region, if the taxpayer resides in and the taxpayer's books and records are located (or can be made available) in such other region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division.

(2) An Appeals office is authorized to transfer settlement jurisdiction in a docketed case to another region if the location for the hearing by the Tax Court has been set in such other region, except that if the place of hearing is Washington, D.C., settlement jurisdiction shall not be transferred to the region in which Washington, D.C., is located unless the petitioner resides in and the petitioner's books and records are located (or can be made available) in that region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division. Likewise, the Chief Counsel has corresponding authority to transfer the jurisdiction, authority, and duties of the regional counsel for any region to the regional counsel of another region within which the case has been designated for trial before the Tax Court.

(3) Should a regional commissioner determine that it would better serve the interests of the Government, he or she may, by order in writing, withdraw any case not docketed before the Tax Court from the jurisdiction of the Appeals office, and provide for its disposition under his or her personal direction.

(f) Conference and practice requirements.

Practice and conference procedure before Appeals is governed by Treasury Department Circular 230 as amended (31 CFR Part 10), and the requirements of Subpart E of this part. In addition to such rules but not in modification of them, the following rules are also applicable to practice before Appeals:

(1) Rule I.

An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

(2) Rule II.

Appeals will ordinarily give serious consideration to an offer to settle a tax controversy on a basis which fairly reflects the relative merits of the opposing views in light of the hazards which would exist if the case were litigated. However, no settlement will be made based upon nuisance value of the case to either party. If the taxpayer makes an unacceptable proposal of settlement under circumstances indicating a good faith attempt to reach an agred disposition of the case on a basis fair both to the Government and the taxpayer, the Appeals official generally should give an evaluation of the case in such a manner as to enable the taxpayer to ascertain the kind of settlement that would be recommended for acceptance. Appeals may defer action on or decline to settle some cases or issues (for example, issues on which action has been suspended nationwide) in order to achieve greater uniformity and enhance overall voluntary compliance with the tax laws.

(3) Rule III.

Where the Appeals officer recommends acceptance of the taxpayer's proposal of settlement, or, in the absence of a proposal, recommends action favorable to the taxpayer, and said recommendation is disapproved in whole or in part by a reviewing officer in Appeals the taxpayer shall be so advised and upon written request shall be accorded a conference with such reviewing officer. The Appeals office may disregard this rule where the interest of the Government would be injured by delay, as for example, in a case involving the imminent expiration of the period of limitations or the dissipation of assets.

(4) Rule IV.

Where the Appeals official having settlement authority and the district director deem it advisable, the district director may be represented at any Appeals conferences on a nondocketed case. This rule is also applicable to the Director, Foreign Operations District in the event his or her office issued the preliminary or '30-day letter'.

(5) Rule V.

In order to bring an unagreed income, profits, estate, gift, or Chapter 41, 42, 43, or 44 tax case in prestatutory notice status, an employment or excise tax case, a penalty case, an Employee Plans and Exempt Organization case, a termination of taxable year assessment case, a jeopardy assessment case, or an offer in compromise before the Appeals office, the taxpayer or the taxpayer's representative should first request Appeals consideration and, when required, file with the district office (including the Foreign Operations District) or service center a written protest setting forth specifically the reasons for the refusal to accept the findings. If the protest includes a statement of facts upon which the taxpayer relies, such statement should be declared, to be true under the penalties of perjury. The protest and any new facts, law, or arguments presented therewith will be reviewed by the receiving office for the purpose of deciding whether further development or action is required prior to referring the case to Appeals. Where Appeals has an issue under consideration it may, with the concurrence of the taxpayer, assume jurisdiction in a related case, after the office having original jurisdiction has completed any necessary action. The Director, Appeals Division, may authorize the regional Appeals office to accept jurisdiction (after any necessary action by office having original jurisdiction) in specified classes of cases without written protests provided written or oral requests for Appeals consideration are submitted by or for each taxpayer.

(6) Rule VI.

A taxpayer cannot withhold evidence from the district director of internal revenue and expect to introduce it for the first time before Appeals, at a conference in nondocketed status, without being subject to having the case returned to the district director for reconsideration. Where newly discovered evidence is submitted for the first time to Appeals, in a case pending in nondocketed status, that office, in the reasonable exercise of its discretion, may transmit same to the district director for his or her consideration and comment.

(7) Rule VII.

Where the taxpayer has had the benefit of a conference before the Appeals office in the prestatutory notice status, or where the opportunity for such a conference was accorded but not availed of, there will be no conference granted before the Appeals office in the 90-day status after the mailing of the statutory notice of deficiency, in the absence of unusual circumstances.

(8) Rule VIII.

In cases not docketed in the United States Tax Court on which a conference is being conducted

by the Appeals office, the district counsel may be requested to attend and to give legal advice in the more difficult cases, or on matters of legal or litigating policy.

(9) Rule IX - Technical advice from the National Office.

(i) Definition and nature of technical advice.

(a) As used in this subparagraph, 'technical advice' means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon request of an Appeals office in connection with the processing and consideration of a nondocketed case. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent holdings in the various regions. It does not include memorandum on matters of general technical application furnished to Appeals offices where the issues are not raised in connection with the consideration and handling of a specific taxpayer's case.

(b) The provisions of this subparagraph do not apply to a case under the jurisdiction of a district director or the Bureau of Alcohol, Tobacco, and Firearms, to Employee Plans, Exempt Organization, or certain penalty cases being considered by an Appeals office, or to any case previously considered by an Appeals office. The technical advice provisions applicable to cases under the jurisdiction of a district director, other than Employee Plans and Exempt Organization cases, are set forth in Sec. 601.105(b)(5). The technical advice provisions applicable to Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9). Technical advice may not be requested with respect to a taxable period if a prior Appeals disposition of the same taxable period of the same taxpayer's case was based on mutual concessions (ordinarily with a form 870-AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment). However, technical advice may be requested by a district director on issues previously considered in a prior Appeals disposition, not based on mutual concessions, of the same taxable periods of the same taxpayer with the concurrence of the Appeals office that had the case.

(c) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the consideration and

handling of a taxpayer's case. Thus, an Appeals office may, under this subparagraph, request technical advice with respect to the consideration of a request for a determination letter. The technical advice provisions applicable to a request for a determination letter in Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9).

(d) If an Appeals office is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked and it requests the National Office to reconsider the ruling, the reference of the matter to the National Office is treated as a request for technical advice. The procedures specified in subdivision (iii) of this subparagraph should be followed in order that the National Office may consider the recommendation. Only the National Office can revoke a ruling letter. Before referral to the National Office, the Appeals office should inform the taxpayer of its opinion that the ruling letter should be revoked. The Appeals office, after development of the facts and consideration of the taxpayer's arguments, will decide whether to recommend revocation of the ruling to the National Office. For procedures relating to a request for a ruling, see Sec. 601.201.

(e) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, is exclusively responsible for providing technical advice in any issue involving the establishment of basic principles and rules for the uniform interpretation and application of tax laws in cases under this subparagraph. This authority has been largely redelegated to subordinate officials.

(ii) Areas in which technical advice may be requested.

(a) Appeals offices may request technical advice on any technical or procedural question that develops during the processing and consideration of a case. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(b) As provided in Sec. 601.105(b)(5) (ii)(b) and (iii)(a), requests for technical advice should be made at the earliest possible stage of the examination process. However, if identification of an issue on which technical advice is appropriate is not made until the case is in Appeals, a decision to request such advice (in nondocketed cases) should be made prior to or at the first conference.

(c) Subject to the provisions of (b) of this subdivision, Appeals Offices are encouraged to request technical advice on any technical or procedural question arising in connection with a case described in subdivision (i) of this subparagraph which cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other precedent issued by the National Office.

(iii) Requesting technical advice.

(a) It is the responsibility of the Appeals Office to determine whether technical advice is to be requested on any issue being considered. However, while the case is under the jurisdiction of the Appeals Office, a taxpayer or his/her representative may request that an issue be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. While taxpayers are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reason for requesting National Office advice, a taxpayer may make the request orally. If, after considering the taxpayer's request, the Appeals Officer is of the opinion that the circumstances do not warrant referral of the case to the National Office, he/she will so advice the taxpayer. (See subdivision (iv) of this subparagraph for taxpayer's appeal rights where the Appeals Officer declines to request technical advice.)

(b) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in (j) of this subdivision. If the Appeals Office initiates the action, the taxpayer will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

(c) After receipt of the statement of facts and specific questions, the taxpayer will be given 10 calendar days in which to indicate in writing the extent, if any, to which he/she may not be in complete agreement. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office. Every effort should be made to reach agreement as to the facts and specific points at issue. If agreement cannot be reached, the taxpayer may submit,

within 10 calendar days after receipt of notice from the Appeals Office, a statement of his/her understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office.

(d) If the taxpayer initiates the action to request advice, and his/her statement of the facts and point or points at issue are not wholly acceptable to the Appeals Office, the taxpayer will be advised in writing as to the areas of disagreement. The taxpayer will be given 10 calendar days after receipt of the written notice to reply to such notice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office. If agreement cannot be reached, both the statements of the taxpayer and the Appeals Office will be forwarded to the National Office.

(e)

(1) In the case of requests for technical advice, the taxpayer must also submit, within the 10-day period referred to in (c) and (d) of this subdivision, whichever is applicable (relating to agreement by the taxpayer with the statement of facts and points submitted in connection with the request for technical advice), the statement described in (f) of this subdivision of proposed deletions pursuant to section 6110(c) of the Code. If the statement is not submitted, the taxpayer will be informed by the Appeals Office that the statement is required. If the Appeals Office does not receive the statement within 10 days after the taxpayer has been informed of the need for the statement, the Appeals Office may decline to submit the request for technical advice. If the Appeals Office decides to request technical advice in a case where the taxpayer has not submitted the statement of proposed deletions, the National Office will make those deletions which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(2) The requirements included in this subparagraph relating to the submission of statements and other material with respect to proposed deletions to be made from technical advice memoranda before public inspection is permitted to take place do not apply to requests for any

document to which section 6104 of the Code applies.

(f) In order to assist the Internal Revenue Service in making the deletions required by section 6110(c) of the Code, from the text of technical advice memoranda which are open to public inspection pursuant to section 6110(a) of the Code, there must accompany requests for such technical advice either a statement of the deletions proposed by the taxpayer, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted. Such statements shall be made in a separate document. The statement of proposed deletions shall be accompanied by a copy of all statements of facts and supporting documents which are submitted to the National Office pursuant to (c) or (d) of this subdivision, on which shall be indicated, by the use of brackets, the material which the taxpayer indicates should be deleted pursuant to section 6110(c) of the Code. The statement of proposed deletions shall indicate the statutory basis for each proposed deletion. The statement of proposed deletions shall not appear or be referred to anywhere in the request for technical advice. If the taxpayer decides to request additional deletions pursuant to section 6110(c) of the Code prior to the time the National Office replies to the request for technical advice, additional statements may be submitted.

(g) If the taxpayer has not already done so, he/she may submit a statement explaining his/her position on the issues, citing precedents which the taxpayer believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be forwarded for association with the case file.

(h) At the time the taxpayer is informed that the matter is being referred to the National Office, he/she will also be informed of the right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether a conference is desired.

(i) Generally, prior to replying to the request for technical advice, the National Office shall inform the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum which the taxpayer proposed be deleted but which the Internal Revenue Service determined should not be deleted. If so informed, the taxpayer may submit within 10 days any further information, arguments, or other material in support of the position that such

material be deleted. The Internal Revenue Service will attempt, if feasible, to resolve all disagreements with respect to proposed deletions prior to the time the National Office replies to the request for technical advice. However, in no event shall the taxpayer have the right to a conference with respect to resolution of any disagreements concerning material to be deleted from the text of the technical advice memorandum, but such matters may be considered at any conference otherwise scheduled with respect to the request.

(j) The provisions of (a) through (i) of this subdivision, relating to the referral of issues upon request of the taxpayer, advising taxpayers of the referral of issues, the submission of proposed deletions, and the granting of conferences in the National Office, are not applicable to technical advice memoranda described in section 6110 (g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments. However, in such cases, the taxpayer shall be allowed to provide the statement of proposed deletions to the National Office upon the completion of all proceedings with respect to the investigations or assessments, but prior to the date on which the Commissioner mails the notice pursuant to section 6110 (f)(1) of the Code of intention to disclose the technical advice memorandum.

(k) Form 4463, Request for Technical Advice, should be used for transmitting requests for technical advice to the National Office.

(iv) Appeal by taxpayers of determinations not to seek technical advice.

(a) If the taxpayer has requested referral of an issue before an Appeals Office to the National Office for technical advice, and after consideration of the request, the Appeals Officer is of the opinion that the circumstances do not warrant such referral, he/she will so advise the taxpayer.

(b) The taxpayer may appeal the decision of the Appeals Officer not to request technical advice by submitting to that official, within 10 calendar days after being advised of the decision, a statement of the facts, law, and arguments with respect to the issue, and the reasons why the taxpayer believes the matter should be referred to the National Office for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office.

(c) The Appeals Officer will submit the statement of the taxpayer to the chief,

Appeals Office, accompanied by a statement of the officer's reasons why the issue should not be referred to the National Office. The Chief will determine, on the basis of the statements submitted, whether technical advice will be requested. If the Chief determines that technical advice is not warranted, that official will inform the taxpayer in writing that he/she proposes to deny the request. In the letter to the taxpayer the Chief will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer will be given 15 calendar days after receipt of the letter in which to notify the Chief whether the taxpayer agrees with the proposed denial. The taxpayer may not appeal the decision of the Chief, Appeals Office not to request technical advice from the National Office. However, if the taxpayer does not agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including the taxpayer's written request and statements, will be submitted to the National Office, Attention: Director, Appeals Division, for review. After review in the National Office, the Appeals Office will be notified whether the proposed denial is approved or disapproved.

(d) While the matter is being reviewed in the National Office, the Appeals Office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

(v) Conference in the National Office.

(a) If, after a study of the technical advice request, it appears that advice adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer. The conference will be arranged by telephone, if possible, and must be held within 21 calendar days after contact has been made. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief.

(b) A taxpayer is entitled, as a matter of right, to only one conference in the

National Office unless one of the circumstances discussed in (c) of this subdivision exists. This conference will usually be held at the branch level in the appropriate division (Corporation Tax Division or Individual Tax Division) in the Office of the Assistant Commissioner (Technical), and will usually be attended by a person who has authority to act for the branch chief. In appropriate cases the Appeals Officer may also attend the conference to clarify the facts in the case. If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each subject. At the request of the taxpayer or the taxpayer's representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A taxpayer has no 'right' of appeal from an action of a branch to the director of a division or to any other National Office official.

(c) In the process of review of a holding proposed by a branch, it may appear that the final answer will involve a reversal of the branch proposal with a result less favorable to the taxpayer. Or it may appear that an adverse holding proposed by a branch will be approved, but on a new or different issue or on different grounds than those on which the branch decided the case. Under either of these circumstances, the taxpayer or the taxpayer's representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer to attend further conferences when, in the opinion of National Office personnel, such need arises. All additional conferences of this type discussed are held only at the invitation of the Service.

(d) It is the responsibility of the taxpayer to furnish to the National Office, within 21 calendar days after the conference, a written record of any additional data, line of reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but were not previously or adequately presented in writing. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief. Any additional material and a copy thereof should be addressed to and sent to the National Office which will forward the copy to the appropriate Appeals Office. The Appeals Office will be requested to give the matter prompt attention, will verify the additional facts and data, and will comment on it to the extent deemed appropriate.

(e) A taxpayer or the taxpayer's representative desiring to obtain information as

to the status of the case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

TELEPHONE NUMBERS (AREA CODE 202) Official:

Director, Corporation Tax Division - 566-4504 or 566-4505

Director, Individual Tax Division - 566-3767 or 566-3788.

(vi) Preparation of technical advice memorandum by the National Office.

(a) Immediately upon receipt in the National Office, the technical employee to whom the case is assigned will analyze the file to ascertain whether it meets the requirements of subdivision (iii) of this subparagraph. If the case is not complete with respect to any requirement in subdivision (iii) (a) through (d) of this subparagraph, appropriate steps will be taken to complete the file. If any request for technical advice does not comply with the requirements of subdivision (iii)(e) of this subparagraph, relating to the statement of proposed deletions, the National Office will make those deletions from the technical advice memorandum which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(b) If the taxpayer has requested a conference in the National Office, the procedures in subdivision (v) of this subparagraph will be followed.

(c) Replies to requests for technical advice will be addressed to the Appeals office and will be drafted in two parts. Each part will identify the taxpayer by name, address, identification number, and year or years involved. The first part (hereafter called the 'technical advice memorandum') will contain (1) a recitation of the pertinent facts having a bearing on the issue; (2) a discussion of the facts, precedents, and reasoning of the National Office; and (3) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the Appeals office. The discussion of the issues will be in such detail that the Appeals office is apprised of the reasoning underlying the conclusion. There shall accompany the technical advice memorandum a notice, pursuant to section 6110(f)(1) of the Code, of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications pursuant to section 6110(d) of the Code) which the Appeals office shall forward to the

taxpayer at such time that it furnishes a copy of the technical advice memorandum to the taxpayer pursuant to (e) of this subdivision and subdivision (vii)(b) of this subparagraph.

(d) The second part of the reply will consist of a transmittal memorandum. In the unusual cases it will serve as a vehicle for providing the Appeals office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(e) It is the general practice of the Service to furnish a copy of the technical advice memorandum to the taxpayer after it has been adopted by the Appeals office. However, in the case of technical advice memorandums described in section 6110(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments, a copy of the technical advice memorandum shall not be furnished the taxpayer until all proceedings with respect to the investigations or assessments are completed.

(f) After receiving the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum, the taxpayer, if desiring to protest the disclosure of certain information in the memorandum, must, within 20 days after the notice is mailed, submit a written statement identifying those deletions not made by the Internal Revenue Service which the taxpayer believes should have been made. The taxpayer shall also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection on which the taxpayer indicates, by the use of brackets, the deletions proposed by the taxpayer but which have not been made by the Internal Revenue Service. Generally, the Internal Revenue Service will not consider the deletion of any material which the taxpayer did not, prior to the time when the National Office sent its reply to the request for technical advice to the Appeals office, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the taxpayer to the notice pursuant to section 6110(f)(1) of the Code, mail to the taxpayer its final administrative conclusion regarding the deletions to be made.

(vii) Action on technical advice in Appeals offices.

(a) Unless the Chief, Appeals Office, feels that the conclusions reached by the National Office in a technical advice memorandum should be reconsidered and

promptly requests such reconsideration, the Appeals office will proceed to process the taxpayer's case taking into account the conclusions expressed in the technical advice memorandum. The effect of technical advice on the taxpayer's case is set forth in subdivision (viii) of this subparagraph.

(b) The Appeals office will furnish the taxpayer a copy of the technical advice memorandum described in subdivision (vi)(c) of this subparagraph and the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third-party communications pursuant to section 6110(d) of the Code). The preceding sentence shall not apply to technical advice memorandums involving civil fraud or criminal investigations, or jeopardy or termination assessments, as described in subdivision (iii)(j) of this subparagraph (except to the extent provided in subdivision (vi)(e) of this subparagraph) or to documents to which section 6104 of the Code applies.

(c) In those cases in which the National Office advises the Appeals office that it should not furnish a copy of the technical advice memorandum to the taxpayer, the Appeals office will so inform the taxpayer if he/she requests a copy.

(viii) Effect of technical advice.

(a) A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case, and is issued primarily as a means of assisting Service officials in the closing of the case involved.

(b) Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied retroactively. Moreover, since technical advice, as described in subdivision (i) of this subparagraph, is issued only on closed transactions, a holding in a technical advice memorandum that is adverse to the taxpayer is also applied retroactively unless the Assistant Commissioner or Deputy Assisitant Commissioner (Technical) exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the holding. Likewise, a holding in a technical advice memorandum that modifies or revokes a holding in a prior technical advice memorandum will also be applied retroactively, with one exception. If the new holding is less favorable to the taxpayer, it will generally

not be applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions of the type described in Sec. 601.201(l)(7) and Sec. 601.201(l)(8).

(c) The Appeals office is bound by technical advice favorable to the taxpayer. However, if the technical advice is unfavorable to the taxpayer, the Appeals office may settle the issue in the usual manner under existing authority. For the effect of technical advice in Employee Plans and Exempt Organization cases see Sec. 601.201(n)(9)(viii).

(d) In connection with section 446 of the Code, taxpayers may request permission from the Assistant Commissioner (Technical) to change a method of accounting and obtain a 10-year (or less) spread of the resulting adjustments. Such a request should be made prior to or at the first Appeals conference. The Appeals office has authority to allow a change and the resulting spread without referring the case to Technical.

(e) Technical advice memorandums often form the basis for revenue rulings. For the description of revenue rulings and the effect thereof, see Sec. 01.601(d)(2)(i)(a) and 601.601(d)(2)(v).

(f) An Appeals office may raise an issue in a taxable period, even though technical advice may have been asked for and furnished with regard to the same or a similar issue in any other taxable period.

(g) Limitation on the jurisdiction and function of Appeals.

(1) Overpayment of more than $200,000.

If Appeals determines that there is an overpayment of income, war profits, excess profits, estate, generation-skipping transfer, or gift tax, or any tax imposed by chapters 41 through 44, including penalties and interest, in excess of $200,000, such determination will be considered by the Joint Committee on Taxation, See Sec. 601.108

(2) Offers in compromise.

For jurisdiction of Appeals with respect to offers in compromise of tax liabilities, see Sec. 601.203.

(3) Closing agreements.

For jurisdiction of Appeals with respect to closing agreements under section 7121 of the Code relating to any internal revenue tax liability, see Sec. 601.202.

(h) Reopening closed cases not docketed in the Tax Court.

(1) A case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both the Appeals and the taxpayer will not be reopened by action initiated by the Service unless the disposition involved fraud, malfeasance, concealment or misrepresentation of material fact, or an important mistake in mathematical calculations, and then only with the approval of the Regional Director of Appeals.

(2) Under certain unusual circumstances favorable to the taxpayer, such as retroactive legislation, a case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both Appeals and the taxpayer may be reopened upon written application from the taxpayer, and only with the approval of the Regional Director of Appeals. The processing of an application for a tentative carryback adjustment or of a claim for refund or credit for an overassessment (for a year involved in the prior closing) attributable to a claimed deduction or credit for a carryback provided by law, and not included in a previous Appeals determination, shall not be considered a reopening requiring approval. A subsequent assessment of an excessive tentative allowance shall likewise not be considered such a reopening. The Director of the Appeals Division may authorize, in advance, the reopening of similar classes of cases where legislative enactments or compelling administrative reasons require such advance approval.

(3) A case not docketed in the Tax Court and closed by Appeals on a basis not involving concessions made by both Appeals and the taxpayer will not be reopened by action initiated by the Service unless the disposition involved fraud, malfeasance, concealment or misrepresentation of material fact, an important mistake in mathematical calculation, or such other circumstance that indicates that failure to take such action would be a serious administrative omission, and then only with the approval of the Regional Director of Appeals.

(4) A case not docketed in the Tax Court and closed by the Appeals on a basis not involving concessions made by both Appeals and the taxpayer may be reopened by the taxpayer by any appropriate means, such as by the filing of a timely claim for refund.

(i) Special procedures for crude oil windfall profit tax cases.

For special procedures relating to crude oil windfall profit tax cases, see Sec. 601.405.

(5 U.S.C. 301 and 552) 80 Stat. 379 and 383; sec. 7805 of the Internal Revenue Code of 1954, 68A

Stat. 917 (26 U.S.C. 7805))

[32 FR 15990, Nov. 22, 1967]