

26 CFR 601.702: Publication and public inspection.
(Also: Part I, Section 6110, 301.6110-1)

Rev. Proc. 2012-31

SECTION 1. PURPOSE

The purpose of this revenue procedure is to update Rev. Proc. 95-15, 1995-1 C.B. 523, and to revise the fee prescribed under the authority of section 6110(k) of the Internal Revenue Code (Code) for processing requests for a background file document, including the costs for searching for the document, duplication and making redactions, relating to a written determination issued by the National Office of the Internal Revenue Service (National Office).

SECTION 2. BACKGROUND

The National Office issues written determinations to taxpayers and other offices in the Internal Revenue Service (Service). See I.R.C. § 6110(a), (i); Rev. Proc. 2012-1, 2012-1 I.R.B. 1; Rev. Proc. 2012-2, 2012-1 I.R.B. 92. Written determinations include letter rulings, determination letters, technical advice memorandums, and Chief Counsel advice. I.R.C. § 6110(b)(1).

A letter ruling interprets the tax laws and applies the laws to a taxpayer's specific set of facts. A letter ruling is issued to a taxpayer by an Associate Office in response to the taxpayer's written inquiry about the taxpayer's status for tax purposes or the tax

effect of its acts or transactions. The request must be filed with the Service prior to the taxpayer filing any returns or reports required by the Code. See Rev. Proc. 2012-1.

A determination letter is a written determination issued by a Director, as that term is defined in Revenue Procedure 2012-1 or any successor revenue procedure, that applies principles and precedent previously announced by the Service to a specific set of facts when a determination can be made based on rules clearly established in a statute, tax treaty, regulations, revenue ruling, or opinion or court decision. See Rev. Proc. 2012-1.

A technical advice memorandum is issued by an Associate Office responding to a request made for assistance on a technical or procedural question that develops during any proceeding before the Service. See Rev. Proc. 2012-2.

Chief Counsel advice is defined in section 6110(i)(1)(A) as written advice or instructions prepared by the National Office that is issued to a non-National Office function and conveys a legal interpretation of, a position or policy concerning, or a legal interpretation relating to the assessment or collection of a liability under a revenue provision.

A background file document includes the request for the written determination and any material submitted in support of the request. It also includes any communication between the Service and persons outside the Service in connection with the written determination. It does not include communications between the Service and the Department of Justice relating to a pending criminal or civil investigation. I.R.C. § 6110(b)(2).

Section 6110(a) provides that, generally, the text of any written determination and background file document related to that written determination shall be open for public inspection, subject to the deletions required by sections 6110(c) and 6110(i)(3). Upon receipt of a request for a background file document related to a written determination, section 6110(f)(1) provides that the Service must mail a notice of intent to disclose to the individual to whom the written determination pertains. Pursuant to section 6110(g)(1), the Service must make the background file document available no earlier than 75 days, but no later than 90 days, after mailing the notice of intent to disclose.

Section 6110(k)(1) authorizes the Secretary to assess actual costs for duplication of any background file document, searching, and making deletions required under subsection 6110(c)(1) or (i)(3).

SECTION 3. SCOPE

This revenue procedure applies to requests for background file documents pertaining to any written determination issued by the National Office.

SECTION 4. PROCEDURE

.01 Requests. Requests for a background file document must be in writing and must include the file number of the written determination for which the background file is being requested. The request should specify whether it is for all the documents in the file or only a specific document. For example, a requester may request only the trust agreement (or the will, partnership agreement, plan of reorganization, etc.) that was the subject of the written determination. See Section 4.07 of this revenue procedure for a

sample of a request letter for background file documents pursuant to section 6110.

.02 Release or File Numbers. To request a background file document for a specific written determination, include the release number or file number of the written determination. Section 6110 written determinations are indexed by Internal Revenue Code sections. If requesting background file documents for written determinations under a specific Code section, obtain the release or file numbers for the written determinations from the list of published IRS Written Determinations in the Electronic Reading Room on irs.gov or at the National Office Reading Room, Room 1621, IRS Building, 11th Street and Pennsylvania Avenue, N.W., Washington, DC 20224. The Reading Room is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, and the telephone number is (202) 622-5164 (not a toll-free call).

.03 Fees. Requests for background file documents should contain the requester's agreement to pay the Service a fee for searching for the file, making deletions, and making copies. The request should state the maximum amount of charges the Service may incur without further authorization from the person making the request. If the request does not contain a stated maximum amount or the fees will exceed the stated maximum amount, the Service will forward to the requester a payment agreement with the estimated cost for processing the request. The payment agreement must be signed and returned to the Service before the Service will begin processing the file.

The fee for processing a request for background file documents is \$100 per hour. This fee covers all costs associated with processing the request, including the costs to

search for, make deletions to, and copies of the background file documents.

.04 Mailing Address. Requests for background file documents should be mailed to:

Chief, Disclosure & Litigation Support Branch

Internal Revenue Service

Attn: CC:PA:LPD:DLS

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

.05 Payment of Fees. The Service must receive payment of the background file processing fee before the documents will be released to the requester. The person making the request will be notified by letter of the total cost of processing the documents.

.06 Release Date. Generally, the requester will receive a background file document between 90 and 120 days after the Service receives the request for the document. This provides the Service time to notify the person to whom the document pertains of its intention to disclose the document. If the document has previously been requested and processed, however, the documents may be available within two weeks after the Service receives the request.

.07 Sample Request. The following is a sample of a letter requesting background file documents pursuant to section 6110:

Internal Revenue Service

Attn: Chief, Disclosure & Litigation Support Branch

CC:PA:LPD:DLS

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

[Date]

Dear Sir or Madam:

This is a request under section 6110 of the Code for the background file documents relating to [type of written determination], [file number].

(Option) I am requesting a copy of all of the documents in the file.

(Option) I am requesting only a copy of [specific type of document(s) requesting].

I am willing to pay fees for this request up to a maximum of \$[amount willing to pay]. If you estimate that the fees will exceed this limit, please inform me before processing the documents. I understand that I will be notified of the final fee amount before the documents are scheduled for release and that payment must be made before the documents are released to me.

Sincerely,

[Name]

[Address]

[City, State Zip Code]

[Telephone Number]

SECTION 5. EFFECT ON OTHER DOCUMENTS (when applicable)

Rev. Proc. 95-15, 1995-1 C.B. 523; Announcement 83-196, 1983-52 I.R.B. 24; Announcement 85-141, 1985-39 I.R.B. 118, are superseded.

SECTION 6. INQUIRIES

Inquiries regarding this procedure should be directed to Chief, Disclosure & Litigation Support Branch, Internal Revenue Service, CC:PA:LPD:DLS, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for requests received after September 30, 2012.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Emily M. Lesniak of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure contact Emily M. Lesniak on 202-622-4940 (not a toll free call).