

## **How to Get a Private Letter Ruling?**

### **The First Annual Revenue Procedure – The Ten Commandments of the Letter Ruling Process**

When structuring a planned gift, an analysis of the Code, the Regulations, IRS pronouncements and the case law<sup>1</sup> may not produce a clear answer with respect to a particular federal tax issue. In the charitable gift planning arena, a lack of clarity may arise with some frequency, as many different technical tax disciplines collide.

For instance, rules originally intended to apply to private foundations were made applicable to certain charitable gift planning vehicles; income, estate and gift tax issues often overlap; and the body of law for charitable gift planning is relatively new, devoid of significant case law and continually evolving.<sup>2</sup> Therefore, a donor or a charity may want to confirm the tax consequences of a particular charitable gift structure by obtaining a private letter ruling.

For this reason, many gift planners will need to address the benefits and burdens of submitting a private letter ruling request to the Internal Revenue Service.

#### **HONOR THE FIRST ANNUAL REVENUE PROCEDURE**

If Moses was preparing a private letter ruling request, he would have descended from Mt. Sinai with the first revenue procedure promulgated by the IRS for that calendar year.<sup>3</sup> This annual pronouncement updates the procedures for issuing letter rulings, determination letters and information letters on certain federal tax issues. This pronouncement shall be referred to in this Article as the “1<sup>st</sup> RevProc”.<sup>4</sup>

The procedures detailed in the 1<sup>st</sup> RevProc are highly technical, and tedious compliance is necessary for a successful filing. This Article does not contain an exhaustive analysis of the 1<sup>st</sup> RevProc; however, an attempt is made to address the substantive issues in general, with a special emphasis on issues related to the charitable gift planning arena. A careful review of the 1<sup>st</sup> RevProc must be done for each potential filing with the IRS.

## **REMEMBER TO DETERMINE IF THE IRS WILL RULE**

The National Office of the IRS<sup>5</sup> generally has discretion to issue private letter rulings when it is in the interest of sound tax administration.<sup>6</sup> In general, the IRS will answer inquiries of individuals and organizations regarding their tax status and the tax effects of their acts or transactions, prior to filing of returns or reports that are required by the revenue laws.<sup>7</sup>

Section 3 of the 1<sup>st</sup> RevProc provides a specific listing of issues on which the different branches of the Office of the Chief Counsel will provide guidance. For instance, in charitable gift planning related areas, Assistant Chief Counsel (Income Tax and Accounting) will provide guidance on income tax deductions, sales and exchanges and capital gains and losses. Assistant Chief Counsel (Passthroughs and Special Industries) will rule on charitable remainder trusts, and estate, gift and generation-skipping transfer tax issues.

Associate Chief Counsel (Employee Benefits and Exempt Organizations) will rule on those areas not otherwise under the jurisdiction of Assistant Commissioner (Employee Plans and Exempt Organizations).<sup>8</sup> There may be an overlap between these two offices, and they sometimes act in concert when a unified conclusion is desired in an area which will have a widespread impact on taxpayers or in a complex or novel case.

## **CIRCUMSTANCES UNDER WHICH THE IRS WILL RULE**

Section 5 of the 1<sup>st</sup> RevProc provides circumstances under which the IRS National Office will issue rulings. In income and gift tax matters, the National Office generally issues a letter ruling on proposed and completed transactions. However, the letter ruling request must be submitted before the return is filed for the year in which the transaction that is the subject of the request was completed.<sup>9</sup>

If, at the time the letter ruling is requested, the identical issue involved in the donor's return for an earlier period is being reviewed or otherwise considered by the IRS, the National Office will not ordinarily issue a letter ruling. The issue in the donor's return may: (i) be examined by a District Director, (ii) be considered by an appeals office, (iii) be pending in litigation in a case involving the donor or a related taxpayer, (iv) have been examined

by a District Director or considered by an appeals office and the statutory period of limitations has not expired for assessment or for filing a claim for refund or credit of tax, or (v) have been examined by a District Director or considered by an appeals office and a closing agreement covering the issue or liability has not been entered into by a District Director or by an appeals office.<sup>10</sup>

If a return dealing with an issue for a particular year is filed while a request for a letter ruling on that issue is pending, the National Office will ordinarily issue the letter ruling. However, the IRS will decline to rule in the event that it is notified by the donor or otherwise learns that the District Director is examining that issue or the identical issue on an earlier year's return.<sup>11</sup>

In estate tax matters, the National Office issues prospective letter rulings on transactions affecting the estate tax on the prospective estate of a living person and affecting the estate tax on the estate of a decedent before the decedent's estate tax return is filed. However, and of special interest to gift planners, the National Office will not issue letter rulings for prospective estates on computations of tax, actuarial factors, and factual matters.<sup>12</sup>

If the estate tax return is filed before the letter ruling is received, the return must disclose that a letter ruling has been requested, and a copy of the ruling request should be attached to the return. The National Office must also be notified that the return has been filed.<sup>13</sup> In that event, the National Office will make every effort to issue the letter ruling within 3 months of the date the return was filed.<sup>14</sup> It should be noted that an extension of time to file the decedent's estate tax return may provide the National Office with sufficient time to issue the ruling.<sup>15</sup>

Charitable gift planners are currently evaluating the Proposed Regulations promulgated under Code Section 664. In some instances, a donor may await the issuance of final regulations for guidance. However, a donor may desire to engage in a gift transaction related to those yet-to-be-published regulations and receive advance approval from the IRS.

The National Office will issue a letter ruling before issuing temporary or final regulations, if the letter ruling request presents an issue for which the answer seems clear by applying the Code to the facts or for which the answer seems reasonably certain but not entirely free from doubt. If the

answer does not seem reasonably certain, the National Office will use its best efforts to issue a letter ruling. If the answer cannot be readily resolved prior to publishing regulations, a letter ruling will not be issued.<sup>16</sup>

#### IRS DISCRETION TO RULE

Section 7 of the 1<sup>st</sup> RevProc provides a list of certain areas in which the IRS has discretion to issue letter rulings due to the factual nature of the problem involved or due to other reasons.<sup>17</sup> This list is not all-inclusive, because the IRS may decline to issue a letter ruling when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case.<sup>18</sup>

For instance, a letter ruling will not be issued on alternative plans of proposed transactions or on hypothetical situations.<sup>19</sup> In addition, the National Office ordinarily will not issue a letter ruling on only part of an integrated transaction.<sup>20</sup> As may be expected, the IRS will not invite a “Boston Tea Party” ruling, one which questions the validity of the federal income tax, or questions the authority or jurisdiction of the IRS to enforce the Code.<sup>21</sup>

#### IRS NO-RULE POSTURE

The 3<sup>rd</sup> RevProc updates the areas in which, because of the inherently factual nature of the problems involved or for other reasons, the IRS will not issue advance rulings. Changes are published throughout the year and are incorporated annually into this revenue procedure. However, this list is not exhaustive. The 3<sup>rd</sup> RevProc establishes three general no ruling areas: areas in which the IRS will not issue a ruling, areas in which the IRS will not ordinarily issue a ruling and areas which are under extensive study.

#### *IRS will not rule*

In general, the National Office will not issue rulings on:

- results of transactions lacking a bona fide business purpose or having reduction of federal tax as a principal purpose;
- matters involving a decision of a court which is adverse to the government and the IRS has not yet determined whether or not to contest such decision;

- a matter involving alternative plans of a proposed transaction or hypothetical situations;
- federal tax consequences of any proposed federal, state, local or municipal legislation; however, the IRS may provide general information in response to an inquiry;
- whether reasonable cause, due diligence, good faith, or other similar terms requiring a factual determination exists under subtitle F (Procedure and Administration), such as the substantial additions to tax under the accuracy-related and fraud penalties;
- whether a proposed transaction would subject a taxpayer to a criminal penalty; and
- a request that does not meet the requirements of the 1<sup>st</sup> RevProc.<sup>22</sup>

In addition, the IRS will not rule on the following specific issues relating to charitable gift planning:

- Section 170 -- Whether a taxpayer who advances funds to a charitable organization and receives therefor a promissory note may deduct as contributions, in one taxable year or in each of several years, amounts forgiven by the taxpayer in each of several years by endorsement on the note.
- Section 642(c) -- Allowance of an unlimited deduction for amounts set aside by a trust or estate for charitable purposes when there is a possibility that the corpus of the trust or estate may be invaded.
- Section 664 -- Whether the settlement of a charitable remainder trust upon the termination of the noncharitable interest is made within a reasonable period of time.
- Section 2031 -- Actuarial factors for valuing interests in the prospective gross estate of a living person.
- Section 2512 -- Actuarial factors for valuing prospective or hypothetical gifts of a donor.

*IRS will not “ordinarily” rule*

Section 4 of the 3<sup>rd</sup> RevProc provides the areas in which the IRS will not “ordinarily” issue letter rulings. “Ordinarily” means that unique and compelling reasons must be demonstrated to justify the issuance of the ruling.<sup>23</sup> In general, the IRS will not ordinarily issue rulings relating to:

- Any matter in which the determination requested is primarily one of fact, e.g., market value of property, or whether an interest in a corporation is to be treated as stock or indebtedness.
- Situations where the requested ruling deals with only part of an integrated transaction.
- The tax effect of any transaction to be consummated at some indefinite future time.
- Any matter dealing with the question of whether property is held primarily for sale to customers in the ordinary course of a trade or business, i.e., “dealer” status, raising the specter of unrelated business taxable income and the ordinary income reduction rules of Code Section 170(e).
- The tax effect of a transaction if any part of the transaction is involved in litigation among the parties affected by the transaction, except for transactions involving bankruptcy reorganizations.

The IRS will not ordinarily rule relating to the following specific topics:

- Sections 170, 2055 and 2522 -- Whether a transfer to a pooled income fund described in Code Section 642(c)(5) qualifies for a charitable contribution deduction under Code Sections 170(f)(2)(A), 2055(e)(2)(A) and 2522(c)(2)(A).
- Section 170(c) -- Whether a taxpayer who transfers property to a charitable organization and thereafter leases back all or a portion of the transferred property may deduct the fair market value of the property transferred and leased back as a charitable contribution.
- Sections 170, 2055 and 2522 -- Whether a transfer to a charitable remainder trust described in Code Section 664 that provides for annuity or unitrust payments for one or two measuring lives qualifies for a charitable deduction under Code Sections 170(f)(2)(A), 2055(e)(2)(A) and 2522(c)(2)(A).
- Section 642 -- Whether a pooled income fund satisfies the requirements described in Code Section 642(c)(5).
- Section 664 -- Whether a charitable remainder trust that provides for annuity or unitrust payments for one or two measuring lives satisfies the requirements described in Code Section 664.<sup>24</sup>

*Areas under extensive study*

Section 5 of the 3<sup>rd</sup> RevProc provides areas under which the IRS is not temporarily issuing letter rulings because those matters are under extensive study.<sup>25</sup> However, the IRS will rule once it resolves the issue through the publication of a revenue ruling, revenue procedure, regulations or otherwise.

Revenue Procedure 97-23, IRB 1997-17 was a good recent example of an area under extensive study that affects charitable gift planners. The IRS and Treasury announced that they will study the use of the so-called “spigot trust”: whether creating or using net income with makeup charitable remainder unitrusts to control the timing of the trust’s receipt of trust income for the benefit of the unitrust recipient causes the trust to fail to function exclusively as a charitable remainder trust.

Specifically, the IRS amended Section 5 of the 1<sup>st</sup> RevProc and announced that it will not rule on requests pending with the IRS on April 17, 1997 and for rulings requests received after that date, on the following subject: whether a trust that will calculate the unitrust amount under Code Section 664(d)(3) qualifies as a charitable remainder trust when a grantor, a trustee, a beneficiary or a person related or subordinate to a grantor, a trustee or a beneficiary can control the timing of the trust’s receipt of trust income from a partnership or a deferred annuity contract to take advantage of the difference between trust income under Code Section 643(b) and income for federal income tax purposes for the benefit of the unitrust recipient.

### **CONSIDER THE PROPRIETY OF SUBMITTING A REQUEST**

Gift planners can assist a donor in considering whether to submit a private letter ruling request; however, the donor must make the ultimate business decision. Obtaining a level of certainty in the federal tax treatment of a charitable gift transaction will be the number one priority. If a favorable letter ruling is obtained, the donor may rely upon it.<sup>26</sup> In addition, in the negotiation process, the proposed transaction may be restructured with the assistance and blessing of the IRS in a fashion that may be acceptable to the donor. The private letter ruling process may also prove helpful in settling a dispute<sup>27</sup> or resolving tax questions in the settlement of a dispute.<sup>28</sup>

A potential risk in filing a letter ruling request is the possibility that sensitive information may be disclosed to the public. As a general rule, the IRS must publicly disclose a private letter ruling and the background file

documents relating to the ruling;<sup>29</sup> however, the identifying facts in the ruling request, such as the donor's name, address, social security number and other identifying details, will not be disclosed to the public.<sup>30</sup>

In addition, (i) information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy and (ii) trade secrets and commercial or financial information obtained which are privileged or confidential will be exempt from disclosure by the IRS.<sup>31</sup> Although the donor has the right to protest the disclosure by the IRS<sup>32</sup>, these rules should be carefully considered in advance, if especially sensitive or identifying information is involved in the ruling request.

One of the burdens of filing a private letter ruling request is the cost. The professional fees incurred by the donor in the preparation and negotiation process may render the ruling request too costly, when compared to the amount involved in the gift transaction.

In addition, if time is of the essence with respect to the closing of the gift transaction, obtaining a ruling may not be feasible. The IRS generally attempts to process the ruling request within 60 – 90 days. If multiple branches of the IRS need to review the ruling or other extenuating circumstances exist, the ruling process can take more than 6 months.

Lastly, if a gift transaction is complete or cannot be altered, disclosure of the gift transaction may not be in the best interest of the donor. If uncertainty exists, drawing attention to those issues without the opportunity to remedy them may not be a recommended course of action. In addition, if the donor files a ruling request and then decides to withdraw the ruling or the IRS declines to issue a letter ruling, the IRS will ordinarily notify the District Director and may provide its views on the transaction.<sup>33</sup>

#### **UNDERSTAND THE EFFECT OF A PLR**

The donor must also consider the effect of a favorable ruling. In general, the donor may rely on a letter ruling received from the IRS, but may not rely on a letter ruling issued to another taxpayer.<sup>34</sup> In addition, a letter ruling that is issued on a particular transaction applies only to that transaction and not to a similar transaction in the same taxable year or any other taxable year.<sup>35</sup>

A favorable ruling will provide a definitive response. However, the ruling is not an absolute guarantee of tax results,<sup>36</sup> because letter rulings can be revoked or modified at any time if found to be in error or not in accord with the current views of the IRS.<sup>37</sup> Such revocation can be applied either retroactively or prospectively.

However, retroactive revocation of a ruling will only occur in rare or unusual circumstances, provided that (i) there has been no misstatement or omission of material facts, (ii) the facts at the time of the transaction are not materially different from the facts on which the letter ruling was based, (iii) there has been no change in the applicable law, (iv) the letter ruling was originally issued for a proposed transaction and (v) the donor directly involved in the letter ruling acted in good faith in relying on the ruling and revoking the ruling would be to the detriment of the donor.<sup>38</sup> Further, if these conditions are met, the ruling will not be affected by the subsequent issuance of regulations.<sup>39</sup>

Revocation or modification may be effected by a notice to the donor to whom the ruling originally was issued, by a revenue ruling or other statement published in the Internal Revenue Bulletin, by enactment of legislation, by a decision of the U.S. Supreme Court or by the issuance of a temporary or final regulation.<sup>40</sup> A letter ruling may also be retroactively revoked if the transaction is entered into prior to the issuance of the letter ruling or after a change in the material facts.<sup>41</sup> If however, a specific request is made under Code Section 7805(b) for limiting the retroactive effect of the ruling request<sup>42</sup>, the donor may be able to avoid the retroactive revocation to all years open under the statute of limitations. Except in fraud cases, the IRS will provide a written explanation of the reasons for the retroactive revocation.<sup>43</sup>

As an example in the charitable gift planning area, the IRS recently issued PLR 9714010 (December 20, 1996), which revoked PLR 9233053 (May 22, 1992). The prior letter ruling held that a donor's creation of a charitable remainder trust to fulfill a legally enforceable charitable pledge was not an act of self-dealing. The IRS, however, exercised its discretionary authority under Code Section 7805(b) to delay the revocation's effective date until the trust terminates and distributes all its assets. Thus, the distribution of the trust's assets to the charity in satisfaction of the donor's pledge did not result in the imposition of the self-dealing excise tax.<sup>44</sup>

## UNDERSTAND THE GENERAL PRECEDENTIAL VALUE OF A PLR

As a result of a Subcommittee on the Administration of the Internal Revenue Laws of the House Ways and Means Committee, the IRS committed itself to publish all written communications to taxpayers and field offices involving substantive issues of tax law and all procedures affecting the rights and duties of taxpayers intended to be used as precedents and guides.<sup>45</sup> Revenue Ruling 2<sup>46</sup> indicated that all such published rulings were to appear in the Internal Revenue Bulletin (“IRB”); however, rulings issued to taxpayers would remain private (unless the taxpayers decided to disclose them) and would have no precedential value.<sup>47</sup>

However, during the 1970s, the government lost two cases brought under the Freedom of Information Act<sup>48</sup>, each of which held that private letter rulings and technical advice memorandum must be disclosed to the public. Since the IRS would need to considerably raise the level of review if letter rulings were given precedential value, Congress enacted Code Section 6110 and reiterated that private letter rulings were not given precedential effect.<sup>49</sup>

Notwithstanding this clear Congressional mandate, reliance upon letter rulings has increased. In this instance, scarcity breeds reliance. The IRS is failing to provide sufficient written guidance upon which all taxpayers may rely. When the facts in a private letter ruling are substantially similar to a particular donor’s circumstances and it is the only available source of guidance, it is reasonable from a practical perspective for the donor to rely upon the conclusions in the ruling. However, for legal purposes, it is more effective for the donor to rely upon an independent analysis of the underlying authorities cited in the ruling. In addition, computers have revolutionized, via word searches, the ease with which volumes of private letter rulings may be researched and analyzed.

Taxpayers are not the only interested parties citing to letter rulings as authoritative, as several courts have reviewed and mentioned private letter rulings.<sup>50</sup>

Even though a donor may not rely upon a letter ruling issued to another taxpayer, some of the donor’s tax risks in engaging in a gift transaction may be reduced to the extent the facts are substantially similar to the facts in a published letter ruling. For instance, Code Section 6662

imposes several accuracy-related and fraud penalties, which can amount to a 20 – 40% addition to tax, and in the case of fraud, a 75% penalty. One of those penalties, substantial understatement of income tax, may be avoided if there is “substantial authority”<sup>51</sup> for the tax treatment of an item on a return. Substantial authority includes letter rulings issued after October 31, 1976.<sup>52</sup> Reliance upon the advice of a professional who reviewed and analyzed these letter rulings may also assist in avoiding the other penalties under the reasonable cause exception.<sup>53</sup>

## **DO NOT FILE AN INCOMPLETE PLR REQUEST**

The donor has decided that the IRS will rule on the particular issues involved and that the potential rewards outweigh the concomitant risks of submitting a private letter ruling request. Since the IRS will not rule on an oral request, the donor must prepare a letter to the IRS and tediously comply with the 1<sup>st</sup> RevProc. Although there is no pre-printed form required for ruling requests,<sup>54</sup> the IRS does provide a sample format.<sup>55</sup>

The donor need only file one copy of the request, unless more than one issue is presented in the request, deletions other than names, addresses, and identifying numbers are requested, or a closing agreement is also requested.<sup>56</sup> The donor may submit ruling requests by fax. However, a faxed request is discouraged by the IRS, because such request is treated in the same manner as a request by letter. For example, a faxed request is not processed until the user fee check is received.<sup>57</sup>

## **NECESSARY INCLUSIONS IN PLR REQUEST**

### *Complete statement of facts and other information*

A letter ruling request must contain a complete statement of all facts relating to the transaction. These facts include the names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties.<sup>58</sup> The ruling request must also include the annual accounting period, and the overall method of accounting of all interested parties.

In addition, the request must identify the District Office that has or will have examination jurisdiction over the return (not the Service Center where the return is filed),<sup>59</sup> and must include a full description of the taxpayer’s business operations.

Every ruling request must contain a full description of all facts relevant to the transaction and the IRS is not bound by a ruling if there are undisclosed facts.<sup>60</sup> In addition, material facts that are recited in supporting documents must be included in the ruling request or in a supplemental letter and not merely incorporated by reference.<sup>61</sup> These facts must be accompanied by an analysis of their bearing on the issue or issues.<sup>62</sup>

#### *Underlying documents*

True copies of all contracts, wills, deeds, agreements, instruments, trust documents, proposed disclaimers, and other documents pertinent to the transaction must be submitted with the request.<sup>63</sup> Each document, other than the request, should be labeled and attached to the request in alphabetical sequence. Originally executed copies of these documents, however, should not be submitted, because they become part of the IRS' file and will not be returned.

#### *Statement regarding whether same issue is in an earlier return*

The request must state whether, to the best of the knowledge of both the donor and the donor's representatives, the same issue is in an earlier return of the donor (or in a return for any year of a "related taxpayer").<sup>64</sup>

#### *Statement regarding whether same or similar issue previously ruled on or requested or currently pending*

The request must also state, whether to the best of the knowledge of both the donor and representative:

- the IRS previously ruled on the same or a similar issue for the donor, a related taxpayer or a predecessor;
- the donor, a related taxpayer, a predecessor, or any representatives previously submitted a request involving the same or a similar issue to the IRS but withdrew the request before a letter ruling or determination letter was issued;
- the donor, a related taxpayer, or a predecessor previously submitted a request involving the same or a similar issue that is currently pending with the IRS; or

- at the same time as this request, the donor or a related taxpayer is presently submitting another request involving the same or a similar issue to the IRS.<sup>65</sup>

If the statement is in the affirmative, the statement must indicate the date the request was submitted, the date the request was withdrawn or ruled on, if applicable, and other details of the IRS' consideration of the issue.

#### *Statement of authorities*

If the donor advocates a particular conclusion, an explanation of the grounds for that conclusion and the relevant authorities to support it must be included in the request. The request must also include a statement of whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities.<sup>66</sup>

The donor is also encouraged to inform the IRS about, and discuss the implications of, any authority believed to be contrary to the position advanced, such as legislation (or pending legislation), tax treaties, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements.<sup>67</sup> If the donor determines that there are no contrary authorities, a statement in the request to this effect would be helpful. If the donor does not furnish either contrary authorities or a statement that none exists, the IRS in complex cases or those presenting difficult or novel issues may request submission of contrary authorities or a statement that none exists. Failure to comply with this request may result in the IRS' refusal to issue a letter ruling.<sup>68</sup>

According to the IRS, identifying and discussing contrary authorities will generally enable IRS personnel to understand the issue and relevant authorities more quickly. When IRS personnel receive the request, they will have before them the donor's thinking on the effect and applicability of contrary authorities. This information should make research easier and lead to earlier action by the IRS. If the donor does not disclose and distinguish significant contrary authorities, the IRS may need to request additional information, which will delay action on the request.<sup>69</sup>

#### *Statement identifying pending legislation*

At the time of filing the request, the donor must identify any pending legislation that may affect the proposed transaction. In addition, if legislation is introduced after the request is filed but before a ruling or determination letter is issued, the donor must notify the IRS.<sup>70</sup>

### *Deletions statement*

As previously discussed, the text of letter rulings is open to public inspection under Code Section 6110. However, the IRS makes deletions from the text before it is made available for inspection. To help the IRS make the deletions required by Code Section 6110(c), a request for a letter ruling must be accompanied by a statement indicating the desired deletions (“deletions statement”).

The deletions statement must not appear in the request, but instead must be made in a separate document and placed on top of the request for a letter ruling. The deletions statement must be signed and dated by the donor or the donor’s authorized representative. A stamped signature is not permitted.<sup>71</sup> If the deletions statement is not submitted with the request, an IRS representative is supposed to advise the donor that the request will be closed if the IRS does not receive the deletions statement within 21 calendar days.<sup>72</sup>

A donor who wants only names, addresses, and identifying numbers to be deleted should state this in the deletions statement. If the donor wants more information deleted, the deletions statement must be accompanied by a copy of the request and supporting documents on which the donor should bracket the material to be deleted. The deletions statement must indicate the statutory basis under Code Section 6110(c) for each proposed deletion. If the donor decides to ask for additional deletions before the letter ruling is issued, additional deletions may be submitted.<sup>73</sup> In addition, the donor may protest the disclosure of certain information by following a detailed procedure.<sup>74</sup>

### *Signature of donor or authorized representative*

A request for a letter ruling or determination letter must be signed and dated by the donor or the donor’s authorized representative. A stamped signature is not permitted.<sup>75</sup>

“Authorized representatives” are not solely attorneys, but include certified public accountants, enrolled agents, enrolled actuaries, a person with a “letter of authorization,” and any other person, including a foreign representative, who has received a letter of authorization from the Director of Practice under Section 10.7(d) of Treasury Department Circular No. 230.<sup>76</sup> IRS Form 2848 is highly recommended to designate an authorized representative who will represent the donor in the ruling process.

#### *Penalties of perjury statement*

The following statement must accompany the initial request for a letter ruling, any additional factual information and any subsequent change in the request: “Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.” The declaration must be signed and dated by the donor and not the donor’s representative. A stamped signature is not permitted.<sup>77</sup>

#### *Request for conference*

It is highly recommended that a conference on the issues be requested in writing at the time of filing.<sup>78</sup> Normally, a conference is scheduled only when the National Office considers it to be helpful in deciding the case or when an adverse decision is indicated. However, the donor is entitled, as a matter of right, to one conference in the National Office<sup>79</sup>. This conference normally will be held at the branch level and will be attended by a person who, at the time of the conference, has the authority to sign the letter ruling in his or her own name or for the branch chief.<sup>80</sup>

To have a thorough and informed discussion of the issues, the conference usually will be held after the branch has had an opportunity to study the case. However, the donor may request that the conference of right be held earlier. Since conference procedures are informal, no tape, stenographic, or other verbatim recording may be made by any party. In addition to the conference of right, the IRS may offer additional conferences, including conferences with an official higher than the branch level, if the IRS decides they are needed.<sup>81</sup>

#### *Checklist*

The IRS provides a helpful checklist of all of the procedural matters that must be addressed in order to comply with the 1<sup>st</sup> RevProc. This checklist<sup>82</sup> must be completed, signed and placed on top of the ruling request. If the checklist is not received, a branch representative will ask the donor to submit the checklist, which may delay action on the letter ruling request. Supplemental checklists may also be required for ruling requests on certain matters.<sup>83</sup>

### **KNOW HOW THE IRS WILL HANDLE THE REQUEST**

Upon submission, all requests for letter rulings to the Assistant Chief Counsel's Office will be controlled by the Technical Services Staff of the Assistant Chief Counsel (Corporate) (CC:DOM:CORP:T).<sup>84</sup> That office will examine the incoming documents for completeness, process the user fee<sup>85</sup>, and forward the file to the appropriate Assistant Chief Counsel. The Assistant Chief Counsel's office will assign the letter ruling request to one of its applicable branches.

The IRS is supposed to communicate with the donor or the authorized representative within 21 calendar days after a letter ruling request has been received in the branch having jurisdiction. It is anticipated that the IRS representative will initially discuss the procedural issues in the request.<sup>86</sup>

If the request lacks essential information, the branch representative will advise the donor during the initial contact that the request will be closed if the IRS does not receive the information within 21 calendar days. However, an extension of time may be granted,<sup>87</sup> if justified in writing and approved by the branch chief, senior technical reviewer, or assistant to the branch chief of the branch to which the case is assigned.<sup>88</sup> If the donor does not submit the information requested during the initial contact within the time provided, the letter ruling request will be closed and the donor will be notified in writing.<sup>89</sup>

If the donor's ruling request deals with issues regarding income and gift tax charitable deductions and the qualification of a charitable remainder trust, various branches within the Chief Counsel's Office may need to be consulted. If so, the branch representative will also advise the donor of that fact and the fact that other branches should be similarly contacting the donor within 21 calendar days after they receive the referral.

Once the request is initially processed, all correspondence with the IRS should include the name, office symbols, and room number of the IRS representative handling the ruling and the donor's name and the case control number. It is also recommended to send a confirmatory letter to the IRS when material facts are furnished by telephone, fax or orally at a conference.

One very advantageous aspect of filing for a ruling request is the fact that the IRS will often consider how the donor might alter the gift transaction to comply with the federal tax laws. If a less than fully favorable letter ruling is indicated, the branch representative will tell the donor whether minor changes in the transaction or adherence to certain published positions would bring about a favorable ruling.<sup>90</sup>

The branch representative may also tell the donor the facts that must be furnished in a document to comply with IRS requirements. However, the branch representative will not suggest precise changes that would materially alter the form of the proposed transaction.<sup>91</sup> As may be expected, the IRS will not be bound by the informal opinion expressed by the branch representative, and such an opinion cannot be relied upon as a basis for obtaining retroactive relief under the provisions of section 7805(b).

If the IRS subsequently requests additional information and the donor fails to provide it, a letter ruling may be issued on the basis of the information on hand or, if appropriate, no letter ruling will be issued.<sup>92</sup>

Generally, after the conference of right is held, but before the letter ruling is issued, the branch representative will inform the donor of its conclusions. If the IRS is going to rule adversely, the donor should be offered the opportunity to withdraw the letter ruling request. If the donor does not promptly notify the branch representative of a decision to withdraw the ruling request, the adverse letter ruling will be issued. In that case, the user fee will not be refunded for a letter ruling request that is withdrawn.<sup>93</sup>

### **REMEMBER TO EXPEDITE THE RULING PROCESS**

There are various means throughout the ruling process to expedite a ruling request. First, expeditious handling can be specifically requested.<sup>94</sup> Although the IRS processes requests for letter rulings in order of the date received, the IRS will consider a compelling need for expeditious handling.

However, no assurance is given, and practical experience has determined, that such a request will be granted only in dire need.

For instance, the scheduling of a closing date of a transaction or a meeting of a corporation's shareholders are not sufficient reasons to process a request ahead of its regular order.<sup>95</sup> In addition, the possible effect of fluctuation of market prices on a transaction will not be considered sufficient.<sup>96</sup> Based on prior experience, the placement of a gift prior to the year's end in a complicated gift transaction was not adequate to get the expeditious attention of the IRS. However, simply staying in constant communication with the IRS may prove as effective as requesting "expeditious handling".

Second, a new opportunity has been formalized, where the IRS will informally meet with the donor prior to the actual filing of a ruling request. This process has been coined a "pre-submission conference". The IRS has determined that, sometimes, it will be advantageous to both the IRS and the donor to hold a pre-submission conference to discuss substantive or procedural issues relating to a proposed transaction. Such conferences are held only if the taxpayer actually intends to make a request, the request involves a matter on which a letter ruling is ordinarily issued, and only on a time-available basis.

Generally, the donor will be asked to provide before the pre-submission conference a statement of whether the issue is an issue on which a letter ruling is ordinarily issued and a draft of the letter ruling request or other detailed written statement of the proposed transaction, issue, and legal analysis. If the donor's authorized representative will attend the pre-submission conference, a fully executed Form 2848 will be needed.

Of course, any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the IRS, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of Code Section 7805(b). As a safeguard, the IRS indicates that a letter ruling request submitted following a pre-submission conference will not necessarily be assigned to the branch that held the pre-submission conference. However, efficiency should dictate that all the same parties should participate in the ruling process.

Third, the donor may submit a summary statement of the facts which are considered to control the issue and a complete statement of facts required for the ruling request. If the IRS agrees with the summary statement, it will be used as the basis for the ruling. This “two-part” ruling request procedure is elective, is not a substitute for the regular procedures and is generally available when the donor is requesting a particular conclusion on a proposed transaction.<sup>97</sup>

Fourth, the IRS branch representative may request that the donor submit a proposed draft of the letter ruling on the basis of discussions of the issues. Although not required to do so, submitting the draft ruling would expedite the issuance of a favorable ruling. The draft ruling should be typed and delivered to the IRS in hard copy, as well as on a disk in a word processing format.

#### **DO NOT WORSHIP OR MISUSE THE IRS**

The donor and the donor’s representative should fully cooperate with IRS personnel. It is also helpful to understand the perspective of the branch representative. First and foremost, he or she will desire to reduce their caseload, which can become very oppressive. Second, the branch representatives are specialists in their respective fields. Treated with proper respect, the branch representative can assist the donor in obtaining a successful ruling. Third, the branch representative will have to report to a technical reviewer to justify a favorable position.

For these reasons, the donor and the donor’s representative should take all action that will reduce the branch representative's workload and make it easier to justify a favorable result. For starters, the donor and the donor’s representative should be certain that the initial request fully complies with the 1<sup>st</sup> RevProc, including a fully completed Checklist and user fee. The donor should offer to prepare a draft ruling, even if the branch representative does not request it. The donor should submit additional information by fax, as soon as the information is available. Cite contrary authority and distinguish it. Lastly, the donor should deliver as many copies of the ruling request as the branch representative needs to distribute to the necessary IRS personnel, either for the purpose of preparing for a conference or distributing to multiple branches.

In addition, the donor and the donor's representative should fully disclose all material facts to the IRS. They should also provide copies of all relevant documents in the proposed gift transaction. Besides a loss of credibility, a failure to disclose materials facts or documents will provide no legal assurance in the conclusions reached in the letter ruling, as discussed at length above. Disclosing all documents will also give the IRS the opportunity to raise new or unexpected concerns about an agreement, which could still be modified.

### **OBTAIN A FAVORABLE RULING**

The branch representative has just called and informed the donor's representative that the IRS has determined to rule favorably on the letter ruling request regarding the proposed gift transaction. The donor's representative may request to review a faxed copy of the ruling request prior to issuance.<sup>98</sup> The donor's representative may want to carefully review the facts and the precise language of the rulings to assure that the initial request and subsequent discussions or filings are accurately reflected in the final ruling.

However, rulings are not considered issued until they are actually mailed.<sup>99</sup> After mailing, the IRS will subsequently publish the ruling in the Internal Revenue Bulletin, as "PLR 9837014". Such notation indicates that the PLR was the fourteenth ruling issued in the thirty-seventh week of 1998.

As a final matter, the donor should attach a copy of the ruling to his or her tax return,<sup>100</sup> giving the examining officer in the District Office the assurance that the National Office has reviewed and approved the transaction. The examining officer will determine whether the conclusions are accurately reflected in the tax return, will review the material facts and determine whether the transaction was carried out substantially as proposed, and will determine if there has been any change in the law. If the examining officer determines that the letter ruling should be revoked or modified, the District Director must refer the matter to the National Office in the form of a technical advice memorandum.

### **FINAL (NON-DIVINE) THOUGHTS**

Notwithstanding the absolute need to fully comply with the technical process requirements, sound legal arguments, common sense and courtesy

will result in many instances in the issuance of a favorable letter ruling. The IRS should be viewed as a partner in reaching equitable tax results in a proposed gift transaction, as opposed to a combatant in a tax controversy waiting to happen.

Filing a PLR request may not suit the needs of every donor. Some donors may not desire to disclose the nature of the gift transaction to anyone for many different reasons. Others may not want to go forward without a stamp of approval from the IRS. For these donors, the IRS may actually be a partner in facilitating the placement of a major planned gift.

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#### ENDNOTES

<sup>1</sup> Reference to the “Code” shall mean the Internal Revenue Code of 1986, as amended, and to the “Regulations” as the treasury regulations published pursuant to 26 Code of Federal Regulations.

<sup>2</sup> The statutory embodiment of charitable remainder trusts, charitable lead trusts and pooled income funds was created pursuant to the Tax Reform Act of 1969. Proposed Regulations under Code Section 664 were promulgated in April 1997, and The Taxpayer Relief Act of 1997 amended Code Section 664.

<sup>3</sup> Each calendar year, the IRS promulgates Revenue Procedures which detail, among other things, the private letter ruling process and supercedes the prior year’s revenue procedure. For instance, the first annual Revenue Procedure, Revenue Procedure 98-1, 1998-1 IRB 7, provides the procedures for issuing ruling letters, determination letters and information letters on certain tax issues. The third annual revenue procedure, Revenue Procedure 98-3, 1998-1 IRB 100, updates the list of those areas of the Code under the jurisdiction of the Associate Chief Counsel (Domestic) and the Associate Chief Counsel (Employee Benefits and Exempt Organization) in which it will not issue advance guidance and will be referred to as the 3<sup>rd</sup> RevProc. The fourth annual revenue procedure, Revenue Procedure 98-4, 1998-1 IRB 113, provides procedures for furnishing ruling letters, information letters and other guidance on matters relating to Sections of the Code under the jurisdiction of the Assistance Commissioner (Employee Plans and Exempt Organizations) and will be referred to as the 4<sup>th</sup> RevProc.

<sup>4</sup> The Sidebar entitled “Terminology Tips” provides a description of different forms of IRS pronouncements for reference purposes.

<sup>5</sup> The Sidebar entitled “Demystifying IRS Procedure” is intended to highlight the relevant offices of the IRS and their particular functions and not to provide the layers of consistently-changing infrastructure that comprise all components of the IRS.

<sup>6</sup> Regulation Section 601.201(d)(1) – Statement of Procedural Rules; Section 3 of the 1<sup>st</sup> RevProc; and Section 2 of the 3<sup>rd</sup> RevProc.

<sup>7</sup> Id.

<sup>8</sup> See, the 4<sup>th</sup> RevProc, which authorizes the Assistant Commissioner (Employee Plans and Exempt Organizations) to issue rulings on such matters as the qualification of a charity, unrelated business taxable income and the private foundation excise taxes.

<sup>9</sup> Section 5.01 of the 1<sup>st</sup> RevProc.

<sup>10</sup> Id.

<sup>11</sup> Id. However, even if an examination has begun, the National Office ordinarily will issue the letter ruling if the District Director agrees, by memorandum, to the issuance of the letter ruling. Also See, Section 8.04 of the 1<sup>st</sup> RevProc for a requirement to provide an affirmative representation in this regard in the submission of the letter ruling.

<sup>12</sup> Section 5.05 of the 1<sup>st</sup> RevProc.

<sup>13</sup> Section 8.04 of the 1<sup>st</sup> RevProc.

<sup>14</sup> Section 5.05 of the 1<sup>st</sup> RevProc. If the letter ruling cannot be issued within that 3-month period, the National Office will notify the District Director having jurisdiction over the return, who may, by memorandum to the National Office, grant an additional period for the issuance of the letter ruling.

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<sup>15</sup> Id.

<sup>16</sup> When the IRS has closed a regulation project or any other published guidance project that might have answered the issue or decides not to open a regulation project or any other published guidance project, the appropriate branch will consider all letter rulings requests, unless the issue is otherwise a non-ruling issue, See, Section 5.14(3) of the 1<sup>st</sup> RevProc. However, the IRS will not rule on the federal tax consequences of proposed legislation, Section 5.13 of the 1<sup>st</sup> RevProc.

<sup>17</sup> Also See, the 3<sup>rd</sup> RevProc and Revenue Procedure 98-7, 1998-1 IRB 222 (regarding international issues) for a list of these areas.

<sup>18</sup> Section 7.01 of the 1<sup>st</sup> RevProc. However, the IRS may issue an information letter calling attention to well-established principles of tax law, when it is considered appropriate and in its best interests.

<sup>19</sup> Id. Also See Section 3.02 of the 3<sup>rd</sup> RevProc.

<sup>20</sup> But See, Section 3.02 of the 1<sup>st</sup> RevProc for a circumstance in which the IRS may so rule.

<sup>21</sup> Section 7 of the 1<sup>st</sup> RevProc. In a few instances, favorable tax treatment is either conditioned upon obtaining a ruling in advance or is automatic, such as changing accounting methods, choosing a taxable year of a Partnership and an S Corporation other than the required taxable year and requesting a reasonable extension under Regulation Section 9100 to make an election or file an application for relief in respect of certain taxes, i.e., the extension relating to filing Form 1023 – Application for Tax Exempt Status, See, Section 6 of the 3<sup>rd</sup> RevProc.

<sup>22</sup> Section 3 of the 3<sup>rd</sup> RevProc.

<sup>23</sup> Section 2.01 of the 3<sup>rd</sup> RevProc.

<sup>24</sup> The IRS published a series of revenue procedures which made available sample charitable remainder trust forms. See, Revenue Procedure 89-20, 1989-1 C.B. 841, as amplified by Revenue Procedure 90-30, 1990-1 C.B. 534; Revenue Procedure 89-21, 1989-1 C.B. 842, as amplified by Revenue Procedure 90-32, 1990-1 C.B. 546; Revenue Procedure 90-31, 1990-1 C.B. 539. The IRS then announced in Revenue Procedure 90-33, 1990-1 C.B. 551 that it will not ordinarily rule as to the qualification of substantially similar trusts as the charitable remainder trusts forms or the deductibility of trust contributions for income, gift or estate tax purposes. Also See, Section 9 of the 1<sup>st</sup> RevProc for other safe harbor revenue procedures, such as Revenue Procedure 88-53, 1988-2 C.B. 712 relating to pooled income funds sample forms.

<sup>25</sup> The IRS also attempted to limit the issuance of so-called “comfort rulings”, i.e., rulings issued to taxpayers where the underlying authority appears clear and unambiguous. See, Revenue Procedure 89-34, 1989-1 C.B. 917. However, after much public outcry, the IRS issued Announcement 90-65, 1990-20 IRB 23, which indicated that the “no comfort ruling policy” would not go into effect and provided various alternative methods to address their concerns.

<sup>26</sup> Section 12 of the 1<sup>st</sup> RevProc. Also See, the discussion entitled “Understand the Effect of a PLR”.

<sup>27</sup> PLR 8321162 (February 28, 1983), where controversies arose relating to the creation and administration of two charitable remainder trusts. Also See, Joseph L. Wyatt, Jr., Scouting for Settlements with IRS Help: Using the PLR Compass, Probate & Property (March/April 1998).

<sup>28</sup> PLR 8321162 (February 28, 1983), where the settlement of a dispute between the income and remainder beneficiaries of two charitable remainder trusts may have constituted self-dealing; PLR 9525056 (March 27, 1995) and PLR 8818012 (February 4, 1988), where a settlement of a controversy may have threatened the charity’s tax-exempt status; PLR 9513006 (December 23, 1994), where a spinoff of assets to a separate private foundation under a settlement may have caused a taxable termination under Code Section 507; PLR 8929048 (April 25, 1989), where a trust was established under a settlement between a family and a charitable foundation as a device to allocate the income and remainder interests of assets of an estate which may not have qualified as a charitable remainder trust.

<sup>29</sup> Code Section 6110(a).

<sup>30</sup> Code Section 6110(c)(1).

<sup>31</sup> Code Section 6110(c)(4) and (5).

<sup>32</sup> Section 8 of the 1<sup>st</sup> RevProc.

<sup>33</sup> Section 8.07(2) of the 3<sup>rd</sup> RevProc. If however, the donor provides a written statement to the National Office that the transaction has been abandoned, the IRS generally will not then notify the District Director.

<sup>34</sup> Code Section 6110(j)(3).

<sup>35</sup> Section 12.06 of the 1<sup>st</sup> RevProc.

<sup>36</sup> Section 12.04 of the 1<sup>st</sup> RevProc.

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<sup>37</sup> Id. However, a letter ruling cannot be revoked if a closing agreement is obtained. A closing agreement is a final agreement between the IRS and a donor on a specific issue or liability and is final unless fraud, malfeasance or misrepresentation of a material fact can be shown. See 2.02 of the 1<sup>st</sup> RevProc.

<sup>38</sup> Id.

<sup>39</sup> Regulation Section 601.201(l)(6).

<sup>40</sup> Section 12.04 of the 1<sup>st</sup> RevProc.

<sup>41</sup> Section 12.09 and 12.10 of the 1<sup>st</sup> RevProc.

<sup>42</sup> Section 12.11 of the 1<sup>st</sup> RevProc provides the format to make such additional request. Code Section 7805(b)(8) provides that “the Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation), relating to the internal revenue laws, shall be applied without retroactive effect”.

<sup>43</sup> Section 12.09 and 12.10 of the 1<sup>st</sup> RevProc.

<sup>44</sup> Also See, PLR 9203005 (August 23, 1991), where the IRS modified portions of a prior letter ruling because of a change in the underlying facts. The IRS will even retroactively revoke its own revenue ruling, See, Revenue Ruling 93-8, 1993-1 C.B. 125, regarding community trust pooled income funds.

<sup>45</sup> See IRS National Office Procedures – Rulings, Closing Agreements, 621-1<sup>st</sup> Tax Mgmt. (BNA) and Gerald G. Portney, Letter Rulings: An Endangered Species?, 36 Tax Lawyer 751 (Spring, 1983) .

<sup>46</sup> 1952-1 C.B. 484.

<sup>47</sup> Id.

<sup>48</sup> Tax Analysts and Advocates v. IRS, 505 F. 2d 350 (D.C. Cir. 1974) and Fruehauf Corp. v. IRS, 566 F. 2d 574 (6<sup>th</sup> Cir. 1977).

<sup>49</sup> Code Section 6110(j)(3).

<sup>50</sup> Blackford Est. v. Commissioner, 77 T.C. 1246, n. 12 (1981), indicating that a private letter ruling was cited not for precedential purposes, but to show inconsistent treatment under the law; Xerox Corp. v. U.S., 656 F. 2d 659, n. 3 (Ct. Cl. 1981), finding that letter rulings are helpful, in general, in ascertaining the scope of the doctrine involved in that case and in showing that such doctrine has been regularly considered and applied by the IRS; and Fanning v. U.S., 83-2 USTC ¶9430 (E.D. Wash. 1983), in which the court used the letter rulings to indicate that the IRS has considered certain distinctions important in the issuance of letter rulings; and Regan v. Ross, 691 F. 2d 81 (2d Cir. 1982), recognizing that technical advice memorandum are considered by the courts.

<sup>51</sup> Code Section 6662(d)(2)(B). “Substantial authority” is a term of art and is defined in Regulation Section 1.6662-4(d), which must be carefully reviewed in its entirety. That Regulation Section defines the substantial authority standard as less stringent than the “more likely than not” standard (that is met when there is a greater than 50% likelihood of the position being upheld), but more stringent than the reasonable basis standard (which, if satisfied, generally will prevent imposition of the negligence penalty). But See, the changes made to Code Section 6662 pursuant to Section 1028(c) of The Taxpayer Relief Act of 1997 relating to tax shelters.

<sup>52</sup> Regulation Section 1.6662-4(d)(3)(iii).

<sup>53</sup> Code Section 6664(c). Also See, Section 6664(c)(2) relating to a special rule for charitable deduction property, the value of which is based upon a qualified appraisal by a qualified appraiser.

<sup>54</sup> But See, IRS Form 3115, relating to changes of accounting method and IRS Form 1128, relating to changes of accounting period.

<sup>55</sup> Appendix B of the 1<sup>st</sup> RevProc.

<sup>56</sup> Section 8.01(14) of the 1<sup>st</sup> RevProc.

<sup>57</sup> Section 8.02(5) of the 1<sup>st</sup> RevProc. The applicable addresses at the IRS National Office for the initial and additional information filings are provided in Section 10 of the 1<sup>st</sup> RevProc for the various forms of delivery, including private delivery service.

<sup>58</sup> Section 8.01 of the 1<sup>st</sup> RevProc.

<sup>59</sup> Id. This information facilitates direct communication with the relevant District Office in the event the National Office determines that it will notify the District Director or the ruling request is withdrawn.

<sup>60</sup> Id.

<sup>61</sup> Id. See, Regulation Section 601.201(e)(2).

<sup>62</sup> Id.

<sup>63</sup> Id.

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- <sup>64</sup> A related taxpayer is a taxpayer who is related with the meaning of Code Section 267 or of a member of an affiliated group of which the taxpayer is also a member within the meaning of Code Section 1504. See, Section 8.01(4) of the 1<sup>st</sup> RevProc for details.
- <sup>65</sup> Section 8.01(5) of the 1<sup>st</sup> RevProc.
- <sup>66</sup> Section 8.01(6) of the 1<sup>st</sup> RevProc.
- <sup>67</sup> Section 8.01(7) of the 1<sup>st</sup> RevProc.
- <sup>68</sup> Id.
- <sup>69</sup> Id.
- <sup>70</sup> Section 8.01(8) of the 1<sup>st</sup> RevProc.
- <sup>71</sup> Id.
- <sup>72</sup> Sections 8.01(9) and 10.06 of the 1<sup>st</sup> RevProc.
- <sup>73</sup> Id.
- <sup>74</sup> Id. If additional information is submitted after the initial request, the donor should follow the same procedure to propose deletions for the additional information.
- <sup>75</sup> Section 8.01(10) of the 1<sup>st</sup> RevProc.
- <sup>76</sup> Id.
- <sup>77</sup> Section 8.01(13) of the 1<sup>st</sup> RevProc.
- <sup>78</sup> Section 8.02(6) of the 1<sup>st</sup> RevProc.
- <sup>79</sup> But See, Section 11.05 of the 1<sup>st</sup> RevProc.
- <sup>80</sup> See Section 11.05 of the 1<sup>st</sup> RevProc for additional provisions regarding the conference of right.
- <sup>81</sup> Id. The donor may also request a telephonic conference of right, so long as the telephone call is not collect.
- <sup>82</sup> Appendix C of the 1<sup>st</sup> RevProc.
- <sup>83</sup> See, Section 9.01 of the 1<sup>st</sup> RevProc, e.g., Revenue Procedure 91-14, 1991-C.B. 482 for estate, gift and generation-skipping tax issues.
- <sup>84</sup> See Section 10 of the 1<sup>st</sup> RevProc.
- <sup>85</sup> See Section 15 of the 1<sup>st</sup> RevProc. Beginning in February, 1988, a program was instituted requiring the pre-payment of user fees to process letter ruling requests (effective until October 1, 2003). A schedule of fees is included in Section 15 and provides the following: \$3,650, for all letter ruling requests, with certain exceptions not here applicable; \$500, if the taxpayer is a U.S. citizen, resident alien individual, domestic trust and domestic estate and provides certification that his, her or its gross income is less than \$150,000; \$500 for tax-exempt organizations whose gross receipts are less than \$150,000; and \$150 for substantially identical rulings for multiple entities after the first applicable user fee has been paid. Section 15 also provides scenarios in which the user fee will and will not be refunded. Also See, Revenue Procedure 98-8, 1998-1 IRB 225, for applicable user fees for ruling requests under the 4<sup>th</sup> RevProc.
- <sup>86</sup> However, when possible, the branch representative will tell the donor how he or she is inclined to rule, whether additional information would assist in ruling or indicate that a tentative conclusion cannot be reached. Section 10 of the 1<sup>st</sup> Rev Proc.
- <sup>87</sup> See, Section 10.07 (1)(2)(3) of the 1<sup>st</sup> RevProc for instructions on submissions of additional information.
- <sup>88</sup> Section 10 of the 1<sup>st</sup> RevProc.
- <sup>89</sup> Section 10.07(5). Care must be used in this regard, because the IRS may treat the resubmission of information after the applicable deadline as a new request, requiring the payment of an additional user fee.
- <sup>90</sup> Id.
- <sup>91</sup> Section 10 of the 1<sup>st</sup> RevProc.
- <sup>92</sup> Section 10.07(5) of the 1<sup>st</sup> RevProc.
- <sup>93</sup> See, Section 8.07 of the 1<sup>st</sup> RevProc.
- <sup>94</sup> Section 8.02(4) of the 1<sup>st</sup> RevProc. This Section should be reviewed for the proper method to make such request.
- <sup>95</sup> Id.
- <sup>96</sup> Id.
- <sup>97</sup> Section 8.02(3) of the 1<sup>st</sup> RevProc.
- <sup>98</sup> Section 8.02(5) of the 1<sup>st</sup> RevProc.
- <sup>99</sup> Id. and Regulation Section 301.6110-2(h).
- <sup>100</sup> Regulation Section 601.201(e)(18).