

Internal Revenue Service, Treasury

§ 301.6104(a)-3

insurance company that files an application for a determination letter.

(Secs. 6104(a)(1)(A), 6104(a)(1)(B), and 7805 of the Internal Revenue Code of 1954 (72 Stat. 1660, 88 Stat. 940, 68A Stat. 917; 26 U.S.C. 6104(a)(1)(A), 6104(a)(1)(B), 7805))

[T.D. 7845, 47 FR 50487, Nov. 8, 1982]

§ 301.6104(a)-3 Public inspection of Internal Revenue Service letters and documents relating to pension and other plans.

(a) *In general.* Except as provided in § 301.6104(a)-4 with respect to plans having fewer than 26 participants, a letter or other document issued by the Internal Revenue Service after September 2, 1974, is open to public inspection under section 6104(a)(1)(B)(iv) and this section, if it is issued with respect to—

(1) The qualification of a pension, profit-sharing or stock bonus plan under section 401(a), an annuity plan under section 403(a), a bond purchase plan under section 405(a), or an individual retirement account or annuity described in section 408 (a), (b) or (c),

(2) The exemption from tax under section 501(a) of an organization forming part of such a plan or account, or a custodial account described in section 401(f), or

(3) The approval of a master, prototype, pattern or other such plan or account.

(b) *Scope.* Internal Revenue Service letters and documents open to public inspection under section 6104(a)(1)(B)(iv) and this section are not limited to those issued in response to an application for a determination letter described in § 301.6104(a)-2. They are, however, limited to those issued by the Internal Revenue Service to the person or organization which either did or could file an application for a determination letter for the plan, account or annuity to which the letter or document relates. If such a person or organization designates a representative having a power of attorney, however, then the letter or document will be open to inspection if issued to the representative. For rules relating to when a letter or document is issued, see § 301.6110-2(h). Internal Revenue Service letters and documents are open to public inspection under section 6104(a)(1)(B)(iv) and this section wheth-

er or not the Internal Revenue Service determines that the plan, account or annuity to which the letter or document relates is qualified or that any related trust or custodial account is exempt from tax.

(c) *Letters and documents open to public inspection.* Internal Revenue Service letters and documents open to public inspection under section 6104(a)(1)(B)(iv) and this section include, but are not limited to:

(1) Determination letters relating to the qualification of a plan, account or annuity described in paragraph (a)(1) of this section (see § 601.201 (o)),

(2) Technical advice memoranda (see § 601.201(n)(9)) relating to the issuance of such determination letters,

(3) Technical advice memoranda relating to the continuing qualification of a plan, account or annuity previously determined to be qualified, or to the qualification of a plan, account or annuity for which no determination letter has been issued,

(4) Letters or documents revoking or modifying any prior favorable determination letter or denying the qualification of a plan, account or annuity for which no determination letter has been issued,

(5) Determination letters relating to the exemption from tax of a trust or custodial account described in paragraph (a)(2) of this section (see § 601.201 (o)(2)(i)(b)), or

(6) Opinion letters relating to the acceptability of the form of any master, prototype or other such plan or account (see § 601.201 (p) and (q)) or notification letters issued with respect to pattern plans.

(d) *Extent letter or document open to public inspection.* A letter or document issued by the Internal Revenue Service is open to public inspection under section 6104(a)(1)(B)(iv) and this section only to the extent it relates directly to the qualification of a plan, account or annuity, the exemption from tax of a related organization or custodial account, or the approval of a master, prototype, pattern or other such plan. Any part of the letter or document which does not directly relate to such a qualification, exemption or approval is not open to public inspection. For example,

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a letter to an employer which concludes that an employee's plan is not qualified and the related trust is not tax exempt will be open to public inspection. However, that same letter may also assert an income tax deficiency because employer contributions to the trust are, therefore, not deductible. In such a case, that part of the letter relating to the tax deficiency will be deleted before the letter is opened to public inspection.

(e) *Letters or documents issued with respect to tax return examination.* In the case of an examination of a taxpayer's return or consideration of a taxpayer's claim for credit or refund, no letter or document issued to the taxpayer before the preliminary or "30-day" letter described in § 601.105(d)(1) is issued to the taxpayer will be open to public inspection under section 6104(a)(1)(B)(iv) and this section. The "30-day" letter and any statutory notice of deficiency subsequently issued to the taxpayer under section 6212 will be open to public inspection to the extent provided in paragraph (d) of this section. If any letter or document other than a statutory notice of deficiency is issued to the taxpayer after the "30-day" letter is issued, such letter or document will be open to inspection to the extent provided in paragraph (d) of this section only if it finally resolves or otherwise disposes of a plan qualification or tax exemption issue raised in the "30-day" letter.

(f) *Letters or documents issued after September 2, 1974.* Section 6104(a)(1)(B)(iv) and this section apply to letters or documents issued by the Internal Revenue Service after September 2, 1974, even though the relevant application for a determination letter or other initiating correspondence from the applicant was filed with the Internal Revenue Service before September 2, 1974.

(Secs. 6104(a)(1)(A), 6104(a)(1)(B), and 7805 of the Internal Revenue Code of 1954 (72 Stat. 1660, 88 Stat. 940, 68A Stat. 917; 26 U.S.C. 6104(a)(1)(A), 6104(a)(1)(B), 7805))

[47 FR 7845, 47 FR 50487, Nov. 8, 1982]

§ 301.6104(a)-4 Requirement for 26 or more plan participants.

(a) *Inspection by plan participants.* In the case of a plan, annuity or account

described in § 301.6104(a)-2(b) and § 301.6104(a)-3(a) that has fewer than 26 participants, material described in §§ 301.6104(a)-2 and 301.6104(a)-3 as open to public inspection is only open to inspection by a plan participant or the participant's authorized representative. This limitation does not apply, however, with respect to documents which an applicant files with respect to a request for approval of a master, prototype, pattern or other such plan (see § 301.6104 (a)-2 (b)(3)) or to opinion, notification or other such letters issued by the Internal Revenue Service with respect to such plans (see § 301.6104 (a)-3 (a)(3)).

(b) *Determining number of plan participants—(1) In general.* For purposes of determining whether a plan has fewer than 26 participants, the number of plan participants will be the number indicated on the most recent annual return filed for the plan under section 6058. Where an annual return indicates the number of participants both at the beginning and end of the plan year, the number indicated on the return means the number at the end of the plan year. If no annual return has been filed for the plan, then the number of plan participants will be the number indicated on the most recent application for a determination letter filed for the plan. If, however, the number of plan participants is increased prior to final Internal Revenue Service action on the application, the number of plan participants will be that increased number.

(2) *Decreasing number of plan participants.* If a plan having 26 or more participants, as indicated on an annual return or application for a determination letter, subsequently files an annual return indicating fewer than 26 plan participants, then material relating to the plan which is issued or received by the Internal Revenue Service after the date the annual return is filed will be open to inspection only by plan participants or their authorized representatives. Similarly, if a plan having 26 or more participants as indicated on an annual return or an application for a determination letter, subsequently files an application for a determination letter which indicates fewer than 26 plan participants, then that application and related material, as well as any other