

parent's household by an authorized placement agency for legal adoption. Examples of acceptable documentary evidence establishing placement for legal adoption by an authorized placement agency may include—

(i) A copy of a placement agreement entered into between the prospective adoptive parent and an authorized placement agency;

(ii) An affidavit or letter signed by the adoption attorney or government official who placed the child for legal adoption pursuant to state law;

(iii) A document authorizing the release of a newborn child from a hospital to a prospective adoptive parent for adoption; and

(iv) A court document ordering or approving the placement of a child for adoption.

(d) *Effective date.* The provisions of this section apply to income tax returns due (without regard to extension) on or after April 15, 1998.

[T.D. 8839, 64 FR 51242, Sept. 22, 1999]

§ 301.6110-1 Public inspection of written determinations and background file documents.

(a) *General rule.* Except as provided in § 301.6110-3, relating to deletion of certain information, § 301.6110-5(b), relating to actions to restrain disclosure, paragraph (b)(2) of this section, relating to technical advice memoranda involving civil fraud and criminal investigations, and jeopardy and termination assessments, and paragraph (b)(3) of this section, relating to general written determinations relating to accounting or funding periods and methods, the text of any written determination (as defined in § 301.6110-2(a)) issued pursuant to a request postmarked or hand delivered after October 31, 1976, shall be open to public inspection in the places provided in paragraph (c)(1) of this section. The text of any written determination issued pursuant to a request postmarked or hand delivered before November 1, 1976, shall be open to public inspection pursuant to section 6110(h) and § 301.6110-6, when funds are appropriated by Congress for such purpose. The procedures and rules set forth in §§ 301.6110-1 through 301.6110-5 and 301.6110-7 do not apply to written determinations issued pursu-

ant to requests postmarked or hand delivered before November 1, 1976, unless § 301.6110-6 states otherwise. There shall also be open to public inspection in each place of public inspection an index to the written determinations open or subject to inspection at such place. Each such index shall be arranged by section of the Internal Revenue Code, related statute, or tax treaty and by subject matter description with such section in such manner as the Commissioner may from time to time provide. The Commissioner shall not be required to make any written determination or background file document open to public inspection pursuant to section 6110 or refrain from disclosure of any such documents or any information therein, except as provided by section 6110 or with respect to a discovery order made in connection with a judicial proceeding. The provisions of section 6110 shall not apply to matters for which the determination of whether public inspection should occur is made pursuant to section 6104. Matters within the ambit of section 6104 include: Any application filed with the Internal Revenue Service with respect to the qualification or exempt status of an organization, plan, or account described in section 6104(a)(1), whether the plan or account has more than 25 or less than 26 participants; any document issued by the Internal Revenue Service in which the qualification or exempt status of an organization, plan, or account described in section 6104 (a)(1) is granted, denied or revoked or the portion of any document in which technical advice with respect thereto is given to a district director; any application filed, and any document issued by the Internal Revenue Service, with respect to the qualification or status of master, prototype, and pattern employee plans; the portion of any document issued by the Internal Revenue Service in which is discussed the effect on the qualification or exempt status of an organization, plan, or account described in section 6104(a)(1) of proposed transactions by such organization, plan, or account; and any document issued by the Internal Revenue Service in which is discussed the qualification or status of an organization described in section 509(a) or 4942(j)(3), but not

including any document issued to non-exempt charitable trusts described in section 4947(a)(1).

(b) *Items that may be inspected only under certain circumstances*—(1) *Background file documents*. A background file document (as such term is defined in §301.6110-2(g)) relating to a particular written determination issued pursuant to a request postmarked or hand delivered after October 31, 1976, shall not be subject to inspection until such written determination is open to public inspection or available for inspection pursuant to paragraph (b) (2) or (3) of this section, and then only if a written request pursuant to paragraph (c)(4) of this section is made for inspection of such background file document. Background file documents relating to written determinations issued pursuant to requests postmarked or hand delivered before November 1, 1976, shall be subject to inspection pursuant to section 6110 (h) and §301.6110-6, when funds are appropriated by Congress for such purpose. The version of the background file document which is available for inspection shall be the version originally made available for inspection, as modified by any additional disclosure pursuant to section 6110(d)(3) and (f)(4).

(2) *Technical advice memoranda involving civil fraud and criminal investigations, jeopardy and termination assessments*. Any technical advice memorandum (as such term is defined in §301.6110-2(f) involving any matter that is the subject of a civil fraud or criminal investigation, a jeopardy assessment (as such term is defined in section 6861), or a termination assessment (as such term is defined in section 6851) shall not be subject to inspection until all actions relating to such investigation or assessment are completed and then only if a written request pursuant to paragraph (c)(4) of this section is made for inspection of such technical advice memorandum. A “civil fraud investigation” is any administrative step or judicial proceeding in which an issue for determination is whether the Commissioner should impose additional tax pursuant to section 6653(b). A “criminal investigation” is any administrative step or judicial proceeding in which an issue for determination is

whether a taxpayer should be charged with or is guilty of criminal conduct. An action relating to a civil fraud or criminal investigation includes any such administrative step or judicial proceeding, the review of subsequent related activities and related returns of the taxpayer or related taxpayers, and any other administrative step or judicial procedure or proceeding or appellate process that is initiated as a consequence of the facts and circumstances disclosed by such investigation. An action relating to a jeopardy or termination assessment includes any administrative step or judicial proceeding that is initiated to determine whether to make such assessment, that is brought pursuant to section 7429 to determine the appropriateness or reasonableness of such assessment, or that is brought to resolve the legal consequences of the tax status or liability issue underlying the making of such assessment. Any action relating to a civil fraud or criminal investigation, a jeopardy assessment, or a termination assessment is not completed until all available administrative steps and judicial proceedings and remedies, including appeals, have been completed.

(3) *Written determinations with respect to adoption of or change in certain accounting or funding periods and methods*. Any general written determination (as defined in §301.6110-2(c) that relates solely to approval of any adoption of or change in—

(i) The funding method or plan year of a plan under section 412.

(ii) A taxpayer’s annual accounting period under section 442.

(iii) A taxpayer’s method of accounting under section 446(e), or

(iv) A partnership’s or partner’s taxable year under section 706

shall not be subject to inspection until such written determination would, but for this paragraph (b)(3), be open to public inspection pursuant to §301.6110-5(c) and then only if a written request pursuant to paragraph (c)(4) of this section is made for inspection of such written determination.

(c) *Procedure for public inspection*—(1) *Place of public inspection*. The text of any ruling (as such term is defined in §301.6110-2(d) or technical advice

memorandum that is open to public inspection pursuant to section 6110 shall be located in the National Office Reading Room. The text of any determination letter (as such term is defined in § 301.6110-2(e)) that is open to public inspection pursuant to section 6110 shall be located in the Reading Room of the Regional Office in which is located the district office that issued such determination letter. Inspection of any written determination subject to inspection only upon written request shall be requested from the National Office Reading Room. Inspection of any background file document shall be requested only from the reading room in which the related written determination is either open to public inspection or subject to inspection upon written request. The locations and mailing addresses of the reading rooms are set forth in § 601.702(b)(3)(i) of this chapter.

(2) *Time and manner of public inspection.* The inspection authorized by section 6110 will be allowed only in the place provided for such inspection in the presence of an Internal Revenue officer or employee and only during the regular hours of business of the Internal Revenue Service office in which the reading room is located. The public will not be allowed to remove any record from a reading room. A person who wishes to inspect reading room material without visiting a reading room may submit a written request pursuant to paragraph (c)(4) of this section for copies of any such material to the Internal Revenue Service reading room in which is located such material.

(3) *Copies.* Notes may be taken of any material open to public inspection under section 6110, and copies may be made manually. Copies of any material open to public inspection or subject to inspection upon written request will be furnished by the Internal Revenue Service to any person making requests therefor pursuant to paragraph (c)(4) of this section. If made at the time of inspection the request for copies need not be in writing, unless the material is not immediately available for copying. The Commissioner may prescribe fees pursuant to section 6110(j) for furnishing copies of material open or subject to inspection.

(4) *Requests.* Any request for copies of written determinations, for inspection of general written determinations relating to accounting or funding periods and methods or technical advice memoranda involving civil fraud and criminal investigations, and jeopardy and termination assessments, for inspection or copies of background file documents, and for copies of the index shall be submitted to the reading room in which is located the requested material. If made in person, the request may be submitted to the internal revenue employee supervising the reading room. The request shall contain:

(i) Authorization for the Internal Revenue Service to charge the person making such request for making copies, searching for material, and making deletions therefrom;

(ii) The maximum amount of charges which the Internal Revenue Service may incur without further authorization from the person making such request;

(iii) With respect to requests for inspection and copies of background file documents, the file number of the written determination to which such background file document relates and a specific identification of the nature or type of the background file document requested;

(iv) With respect to requests for inspections of general written determinations relating to accounting or funding periods and methods, the day, week, or month of issuance of such written determination, and the applicable category as selected from a special summary listing of categories prepared by the Internal Revenue Service;

(v) With respect to requests for copies of written determinations, the file number of the written determination to be copied, which can be ascertained in the reading room or from the index;

(vi) With respect to requests for copies of portions of the index, the section of the Internal Revenue Code, related statute or tax treaty in which the person making such request is interested;

(vii) With respect to material which is to be mailed, the name, address, and telephone number of the person making such request and the address to which copies of the requested material should be sent; and

(viii) Such other information as the Internal Revenue Service may from time to time require in its operation of reading rooms.

[T.D. 7524, 42 FR 63412, Dec. 16, 1977]

§ 301.6110-2 Meaning of terms.

(a) *Written determination.* A “written determination” is a ruling, a determination letter, or a technical advice memorandum, as such terms are defined in paragraphs (d), (e), and (f) of this section, respectively. Notwithstanding paragraphs (d) through (f) of this section, a written determination does not include for example, opinion letters (as defined in §601.201(a)(4) of this chapter), information letters (as defined in §601.201(a)(5) of this chapter), technical information responses, technical assistance memoranda, notices of deficiency, reports on claims for refund, Internal Revenue Service decisions to accept taxpayers’ offers in compromise, earnings and profits determinations, or documents issued by the Internal Revenue Service in the course of tax administration that are not disclosed to the persons to whose tax returns or tax liability the documents relate.

(b) *Reference written determination.* A “reference written determination” is any written determination that the Commissioner determines to have significant reference value. Any written determination that the Commissioner determines to be the basis for a published revenue ruling is a reference written determination until such revenue ruling is obsoleted, revoked, superseded or otherwise held to have no effect.

(c) *General written determination.* A “general written determination” is any written determination that is not a reference written determination.

(d) *Ruling.* A “ruling” is a written statement issued by the National Office to a taxpayer or to the taxpayer’s authorized representative (as such term is defined in §601.201(e)(7) of this chapter) on behalf of the taxpayer, that interprets and applies tax laws to a specific set of facts. A ruling generally recites the relevant facts, sets forth the applicable provisions of law, and shows the application of the law to the facts.

(e) *Determination letter.* A “determination letter” is a written statement issued by a district director in response to a written inquiry by an individual or an organization that applies principles and precedents previously announced by the National Office to the particular facts involved.

(f) *Technical advice memorandum.* A “technical advice memorandum” is a written statement issued by the National Office to, and adopted by, a district director in connection with the examination of a taxpayer’s return or consideration of a taxpayer’s claim for refund or credit. A technical advice memorandum generally recites the relevant facts, sets forth the applicable law, and states a legal conclusion.

(g) *Background file document—(1) General rule.* A “background file document” is—(i) The request for a written determination.

(ii) Any written material submitted in support of such request by the person by whom or on whose behalf the request for a written determination is made,

(iii) Any written communication, or memorandum of a meeting, telephone communication, or other contact, between employees of the Internal Revenue Service or Office of its Chief Counsel and persons outside the Internal Revenue Service in connection with such request or written determination which is received prior to the issuance (as such term is defined in paragraph (h) of this section) of the written determination, but not including communications described in paragraph (g)(2) of this section, and

(iv) Any subsequent communication between the National Office and a district director concerning the factual circumstances underlying the request for a technical advice memorandum, or concerning a request by the district director for reconsideration by the National Office of a proposed technical advice memorandum.

(2) *Limitations.* Notwithstanding paragraph (g)(1) of this section, a “background file document” shall not include any—

(i) Communication between the Department of Justice and the Internal Revenue Service or the Office of its