

(c) *Limitations on the making of deletions.* Any portion of a written determination or background file document that has been deleted will be restored to the text thereof—

(1) If pursuant to section 6110(d)(3) or (f)(4)(A) a court orders disclosure of such portion, or

(2) If pursuant, to § 301.6110-5(d)(1) an agreement is reached to disclose information.

[T.D. 7524, 42 FR 63414, Dec. 16, 1977]

**§ 301.6110-4 Communications from third parties.**

(a) *General rule.* Except as provided in paragraph (b) of this section a record will be made of any communication, whether written, by telephone, at a meeting, or otherwise, received by the Internal Revenue Service or Office of its Chief Counsel prior to the issuance of written determination from any person other than a person to whom the written determination pertains or the authorized representative of such person. This rule applies to any communication concerning such written determination, any communication concerning the request for such written determination, or any communication concerning other matters involving such written determination. A notation that such communication has been made shall be placed on such written determination when it is made open to public inspection or available for inspection upon written request pursuant to § 301.6110-5. The notation to be placed on a written determination shall consist of the date on which the communication was received and the category of the person making such communication, for example, Congressional, Department of Commerce, Treasury, trade association, White House, educational institution. Any person may request the Internal Revenue Service to disclose the name of any person about whom a notation has been made pursuant to this paragraph.

(b) *Limitations.* The provisions of paragraph (a) of this section shall not apply to communications received by the Internal Revenue Service from employee of the Internal Revenue Service or Office of its Chief Counsel, from the Chief of Staff of the Joint Committee on Internal Revenue Taxation, from

the Department of Justice with respect to any pending civil or criminal case or investigation, or from another government agency in response to a request made by the Internal Revenue Service to such agency for assistance involving the expertise of such agency.

(c) *Action to obtain disclosure of identity of person to whom written determination pertains—(1) Creation of remedy.* With respect to any written determination on which a notation has been placed pursuant to paragraph (a) of this section, any person may file a petition in the United States Tax Court or file a complaint in the United States District Court for the District of Columbia for an order requiring that the identity of any person to whom such written determination pertains be disclosed, but such petition or complaint must be filed within 36 months of the date such written determination is made open or subject to inspection.

(2) *Necessary disclosure.* Whenever an action is brought pursuant to section 6110(d)(3), the court may order that the identity of any person to whom the written determination pertains be disclosed. Such disclosure may be ordered if the court determines that there is evidence in the record from which it could reasonably be concluded that an impropriety occurred or undue influence was exercised with respect to such written determination by or on behalf of the person to whom the written determination pertains. The court may, pursuant to section 6110(d)(3), also order the disclosure of any material deleted pursuant to section 6110(c) if such disclosure is in the public interest. The written determination or background file document with respect to which the disclosure was sought shall be revised to disclose the information which the court orders to be disclosed.

(3) *Required notice.* If a proceeding is commenced pursuant to section 6110(d)(3) and paragraph (c)(1) of this section with respect to any written determination, the Secretary shall send notice of the commencement of such proceeding to any person whose identity is subject to being disclosed and to the person about whom a third-party communication notation has been made pursuant to section 6110(d)(1). Such notice shall be sent, by registered

or certified mail, to the last known address of the persons described in this paragraph (c)(3) within 15 days after notice of the petition or complaint filed pursuant to section 6110(d)(3) is served on the Secretary. For further guidance regarding the definition of last known address, see § 301.6212-2.

(4) *Intervention.* Any person who is entitled to receive notice pursuant to paragraph (c)(3) of this section shall have the right to intervene in any action brought pursuant to section 6110(d)(3). If appropriate such person shall be permitted to intervene anonymously.

[T.D. 7524, 42 FR 63415, Dec. 16, 1977, as amended by T.D. 8939, 66 FR 2819, Jan. 12, 2001]

**§ 301.6110-5 Notice and time requirements; actions to restrain disclosure; actions to obtain additional disclosure.**

(a) *Notice*—(1) *General rule.* Before a written determination is made open to public inspection or subject to inspection upon written request, or before a background file document is subject to inspection upon written request, the person to whom the written determination pertains or background file document relates shall be notified by the Commissioner of intention to disclose such written determination or background file document. The notice with respect to a written determination, other than a written determination described in § 301.6110-1(b) (2) or (3) shall be mailed when such written determination is issued. The notice with respect to any written determination relating to accounting or funding periods and methods, any technical advice memoranda involving civil fraud and criminal investigations, and jeopardy and termination assessments, and any background file document shall be mailed within a reasonable time after the receipt of the first written request for inspection thereof.

(2) *Contents of notice.* The notice required by paragraph (a)(1) of this section shall—

(i) Include a copy of the text of the written determination or background file document, which the Commissioner proposes to make open to public inspection or subject to inspection pursu-

ant to a written request, on which is indicated (A) the material that the Commissioner proposes to delete pursuant to section 6110(c), (B) any substitutions proposed to be made therefor, and (C) any third-party communication notations required to be placed pursuant to § 301.6110-4(a) on the face of the written determination.

(ii) State that the written determination or background file document is to be open to public inspection or subject to inspection pursuant to a written request pursuant to section 6110.

(iii) State that the recipient of the notice has the right to seek administrative remedies pursuant to paragraph (b)(1) of this section and to commence judicial proceedings pursuant to section 6110(f)(3) within indicated time periods, and

(iv) Prominently indicate the date on which the notice is mailed.

(b) *Actions to restrain disclosure*—(1) *Administrative remedies.* Any person to whom a written determination pertains or background file document relates, and any successor in interest, executor or authorized representative of such person may pursue the administrative remedies described in § 601.105(b)(5) (iii)(i) and (vi)(f) and § 601.201(e) (11) and (16) of this chapter. Any person who has a direct interest in maintaining the confidentiality of any written determination or background file document or portion thereof may pursue the administrative remedies described in § 601.105(b)(5)(vi)(f) and § 601.201(e)(16) of this chapter. No person about whom a third-party communication notation has been made pursuant to § 301.6110-4(a) may pursue any administrative remedy for the purpose of restraining disclosure of the identity of such person where such identity appears with respect to the making of such third-party communication.

(2) *Judicial remedy.* Except as provided in paragraph (b)(3) of this section, any person permitted to resort to administrative remedies pursuant to paragraph (b)(1) of this section may, if such person proposes any deletion not made pursuant to § 301.6110-3 by the Commissioner, file a petition in the United States Tax Court pursuant to section