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 pursuant 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

6110(f)(3) for a determination with respect to such proposed deletion. If appropriate, such petition may be filed anonymously. Any petition filed pursuant to section 6110(f)(3) must be filed within 60 days after the date on which the Commissioner mails the notice of intention to disclose required by section 6110(f)(1).

(3) *Limitations on right to bring judicial actions*. No petition shall be filed pursuant to section 6110(f)(3) unless the administrative remedies provided by paragraph (b)(1) of this section have been exhausted. However, if the petitioner has responded within the prescribed time period to the notice pursuant to section 6110(f)(1) of intention to disclose, but has not received the final administrative conclusion of the Internal Revenue Service within 50 days after the date on which the Commissioner mails the notice of intention to disclose required by section 6110(f)(1), the petitioner may file a petition pursuant to section 6110(f)(3). No judicial action with respect to any written determination or background file document shall be commenced pursuant to section 6110(f)(3) by any person who has received a notice with respect to such written determination or background file document pursuant to paragraph (b)(4) of this section.

(4) *Required notice*. If a proceeding is commenced pursuant to section 6110(f)(3) with respect to any written determination or background file document, the Secretary shall send notice of the commencement of such proceeding to any person to whom such written determination pertains or to whom such background file document relates. No notice is required to be sent to persons who have filed the petition that commenced the proceeding pursuant to section 6110(f)(3) with respect to such written determination or background file document. The notice shall be sent, by registered or certified mail, to the last known address of the persons described in this paragraph (b)(4) within 15 days after notice of the petition filed pursuant to section 6110(f)(3) is served on the Secretary. For further guidance regarding the definition of last known address, see § 301.6212–2.

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

(c) *Time at which open to public inspection*—(1) *General rule*. Except as otherwise provided in paragraph (c)(2) of this section, the text of any written determination or background file document open to public inspection or available for inspection upon written request pursuant to section 6110 shall be made open to or available for inspection no earlier than 75 days and no later than 90 days after the date on which the Commissioner mails the notice required by paragraph (a)(1) of this section. However, if an action is brought pursuant to section 6110(f)(3) to restrain disclosure of any portion of such written determination or background file document the disputed portion of such written determination or background file document shall be made open to or available for inspection pursuant to paragraph (c)(2)(i) of this section.

(2) *Limitations*—(i) *Court order*. The portion of the text of any written determination or background file document that was subject to an action pursuant to section 6110(f)(3) to restrain disclosure in which the court determined that such disclosure should not be restrained shall be made open to or available for inspection within 30 days of the date that the court order becomes final. However, in no event shall such portion of the text of such written determination or background file document be made open to or available for inspection earlier than 75 days after the date on which the Commissioner mails the notice of intention to disclose required by section 6110(f)(1) and paragraph (a)(1) of this section. Such 30–day period may be extended for such time as the court finds necessary to allow the Commissioner to comply with its decision. Any portion of a written determination or background file document which a court orders open to public inspection or subject to inspection upon written request pursuant to section 6110(f)(4) or disclosed pursuant to section 6110(d)(3) shall be made open or subject to inspection or

disclosed within such time as the court provides.

(ii) *Postponement based on incomplete status of underlying transaction*—(A) *Initial period not to exceed 90 days.* The time period set forth in paragraph (c)(1) of this section within which a written determination shall be made open to public inspection or available for inspection upon written request shall be extended, upon the written request of the person to whom such written determination pertains or the authorized representative of such person, until 15 days after the date on which the transaction set forth in the written determination is scheduled to be completed, but such day shall be no later than 180 days after the date on which the Commissioner mails the notice of intention to disclose.

(B) *Additional period.* The time period determined pursuant to paragraph (c)(2)(ii)(A) of this section shall be further extended upon an additional written request, if the Commissioner determines from the information contained in such request that good cause exists to warrant such extension. This further extension shall be until 15 days after the date on which the transaction set forth in the written determination is expected to be completed, but such day shall be no later than 360 days after the date on which the Commissioner mails the notice of intention to disclose. The good cause required by this paragraph (B) exists if the person requesting the delay in inspection demonstrates to the satisfaction of the Commissioner that it is likely that the lack of such extension will cause interference with consummation of the pending transaction.

(C) *Written request for extension.* The written request for extension of the time when a written determination is to be made open to public inspection or available for inspection upon written request shall set forth the date on which it is expected that the underlying transaction will be completed, and, with respect to the additional extension described in paragraph (c)(2)(ii)(B) of this section, set forth the reason for requesting such extension. A request for extension of time may not be submitted until the notice of intention to disclose is mailed and must be received by the Internal Revenue Service office which issued such written determination no later than—

(*1*) In the case of the initial extension, 60 days after the date on which the Commissioner mails the notice of intention to disclose, or

(*2*) In the case of the additional extension, 15 days before the day on which, for purposes of paragraph (c)(2)(ii)(A) of this section, the transaction set forth in the written determination was expected to have been completed.

(D) *Notice and determination of actual completion.* If an extension of time for inspection has been granted, and the transaction is completed prior to the day on which it was expected to have been completed, the Internal Revenue Service office which issued such written determination shall be so notified by the person who requested such extension. In such event, the written determination shall be made open to public inspection or available for inspection upon written request on the earlier of *(1)* 30 days after the day on which the Commissioner is notified that the transaction is completed, or *(2)* the day on which the written determination was scheduled to be made open to public inspection or available for inspection upon written request pursuant to paragraph (c)(2)(ii) of this section. Similarly, if the Commissioner determines that the transaction was completed prior to the day on which it was expected to have been completed, even if the person requesting such extension has not so notified the Internal Revenue Service, the written determination shall be made open to public inspection or available for inspection upon written request on the earlier of *(1)* the day which is 30 days after the Commissioner ascertains that the transaction is completed sooner than has been expected, or *(2)* the day on which the written determination was scheduled to be made open to public inspection or available for inspection upon written request pursuant to paragraph (c)(2)(ii) of this section.

(d) *Actions to obtain additional disclosure*—(1) *Administrative remedies.* Under section 6110(f)(4) any person may seek

to obtain additional disclosure of information contained in any written determination or background file document that has been made open or subject to inspection. A request for such additional disclosure shall be submitted to the Internal Revenue Service office which issued such written determination, or to which the request for inspection of such background file document has been submitted pursuant to § 301.6110–1(c)(4), and must contain the file number of the written determination or a description of the background file document (including the file number of the related written determination), the deleted information which in the opinion of such person should be open or subject to inspection, and the basis for such opinion. If the Internal Revenue Service determines that the request constitutes a request for disclosure of the name, address, or the identifying numbers described in § 301.6110–3(a)(1)(i) of any person, it shall within a reasonable time notify the person requesting such disclosure that disclosure will not be made. If the Internal Revenue Service determines that the request or any portion thereof constitutes a request for disclosure of information other than the name, address, or the identifying numbers described in § 301.6110–3(a)(1)(i) of any person, it shall send a notice that such additional disclosure has been requested to any person to whom the written determination pertains or background file document relates, and to all persons who are identified by name and address in the written determination or background file document. Notice that such persons have been contacted shall be sent to the person requesting the additional disclosure. The notice that additional disclosure has been requested shall state that the Internal Revenue Service has determined that additional disclosure of information other than the name, address, or the identifying numbers described in § 301.6110–3(a)(1)(i) of any person has been requested, inform the recipient of the notice that the person seeking the additional disclosure has the right under section 6110(f)(4) to bring a judicial action to attempt to compel such disclosure, and request the recipient of the notice to reply within 20 days by submitting a statement of whether or not the recipient of the notice agrees to the requested disclosure or portion thereof. If all persons to whom a notice is sent pursuant to this paragraph (d)(1) of this section agree to disclose the requested information or any portion thereof, the person seeking such disclosure will be so informed; the written determination or background file document shall be accordingly revised to disclose the information with respect to which an agreement to disclose has been reached. If any of the persons to whom a notice is sent pursuant to this paragraph (d)(1) of this section do not agree to the additional disclosure or do not respond to such notice, the Internal Revenue Service shall within a reasonable time so notify the person requesting such disclosure, and deny the request for additional disclosure.

(2) *Judicial remedy*. Except as provided in paragraph (d)(3) of this section, any person who seeks to obtain additional disclosure of information contained in any written determination or background file document may file a petition pursuant to section 6110(f)(4) in the United States Tax Court or a complaint in the United States District Court for the District of Columbia for an order requiring that such information be made open or subject to inspection. Nothing in this paragraph shall prevent the Commissioner from disposing of written determinations and related background file documents pursuant to § 301.6110–7(a).

(3) *Limitations on right to bring judicial action*—(i) *Exhaustion of administrative remedies*. No petition or complaint shall be filed pursuant to section 6110(f)(4) unless the administrative remedies provided by paragraph (d)(1) of this section have been exhausted. However, if the Internal Revenue Service does not approve or deny the request for additional disclosure within 180 days after the request is submitted, the person making the request may file a petition pursuant to section 6110(f)(4).

(ii) *Actions to obtain identity*. No petition or complaint shall be filed pursuant to section 6110(f)(4) to obtain disclosure of the identity of any person to whom a written determination on

which a third-party communication notation has been placed pursuant to § 301.6110–4(a) pertains. Such actions shall be brought pursuant to section 6110(d)(3).

(4) *Required notice*. If a proceeding is commenced pursuant to section 6110(f)(4) with respect to any written determination or background file document, the Secretary shall send notice of the commencement of such proceeding to any person to whom the written determination pertains or background file document relates, and to all persons who are identified by name and address in the written determination or background file document. The notice shall be sent, by registered or certified mail, to the last known address of the persons described in this paragraph (d)(4) within 15 days after notice of the petition or complaint filed pursuant to section 6110(f)(4) is served on the Secretary.

(5) *Intervention*. Any person who is entitled to receive notice pursuant to paragraph (d)(4) of this section shall have the right to intervene in any action brought pursuant to this section. 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]

§ 301.6110–6 Written determinations issued in response to requests submitted before November 1, 1976.

(a) *Inspection of written determinations and background file documents*—(1) *General rule*. Except as provided in this section, the text of any written determination issued in response to a request postmarked or hand delivered before November 1, 1976 and any related background file document shall be open or subject to inspection in accordance with the rules in §§ 301.6110–1 through 301.6110–5 and 301.6110–7. However, the rules in § 301.6110–4 do not apply to inspection under this section. The rules in § 301.6110–5 (a), (b) and (c) also do not apply, except with respect to background file documents.

(2) *Exclusions*. The following written determinations are not open or subject to inspection under this section.

(i) Written determinations with respect to matters for which the determination of whether public inspection should occur is made under section 6104. Some of these matters are listed in § 301.6110–1(a).

(ii) Written determinations issued before September 2, 1974, dealing with the qualification of a plan described in section 6104(a)(1)(B)(i) or the exemption from tax under section 501(a) of an organization forming part of such a plan.

(iii) Written determination issued pursuant to requests submitted before November 1, 1976 with respect to the exempt staus under section 501(a) of organizations described in section 501 (c) or (d), the status of organizations as private foundations under section 509(a), or the status of organizations as operating foundations under section 4942(j)(3).

(iv) General written determinations that relate solely to accounting or funding periods and methods, as defined in § 301.6110–1(b)(3).

(v) Determination letters.

(3) *Items that may be inspected only under certain circumstances*—(i) *Background file documents*. A background file document relating to a particular written determination issued in response to a request submitted before November 1, 1976 shall not be subject to inspection until the related written determination is open to public inspection or available for inspection, and then only if a written request pursuant to § 301.6110–1(c)(4) is made for inspection of the background file document. However, the following background file documents are not open or subject to inspection:

(A) Background file documents relating to general written determinations issued before July 5, 1967.

(B) Background file documents relating to written determinations described in paragraph (a)(2) of this section.

(ii) *General written determinations issued before July 5, 1967*. General written determinations issued before July 5, 1967 shall not be subject to inspection until all other written determinations issued in response to requests postmarked or hand delivered before November 1, 1976 that are open to inspection under this section have been made open to public inspection, and then only if a written request pursuant