

709 and submit sufficient information about the transaction that will give the Service a complete and accurate description of the transfer. Such information includes a description of the transferred property, the identity and relationship of the parties to the transfer and any entities involved, a description of the methods used to value the transferred property, a description of any restrictions on the transferred property, and a statement of any potential controversy or legal issue involved.

**Current Actions:** There is no change to this existing regulation.

**Type of Review:** Extension of OMB approval.

**Affected Public:** Individuals or households.

The reporting burden contained in § 301.6501(c)-1(f) is reflected in the burden for Form 709, U.S. Gift (and Generation-Skipping Transfer) Tax Return.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 12, 2007.

**R. Joseph Durbala,**  
*IRS Reports Clearance Officer.*  
[FR Doc. E7-18690 Filed 9-20-07; 8:45 am]  
BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Notices 437, 437-A, 438 and 466

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notices 437, 437-A, 438 and 466, Notice of Intention to Disclose.

**DATES:** Written comments should be received on or before November 20, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at [Larnice.Mack@irs.gov](mailto:Larnice.Mack@irs.gov).

#### SUPPLEMENTARY INFORMATION:

**Title:** Notice of Intention to Disclose.

**OMB Number:** 1545-0633.

**Notice Number:** Notices 437, 437-A, 438, and 466.

**Abstract:** Section 6110(f) of the Internal Revenue Code requires that a notice of intention to disclose be sent to all persons to which a written determination (either a technical advice memorandum or a private letter ruling) is issued. That section also requires that such persons receive a notice if related background file documents are requested. Notice 437 is issued to recipients of letter rulings; Notices 437-A to recipients of Chief Counsel Advice; Notice 438 to recipients of technical

advice memorandums; and Notice 466 to recipients if a request for the related background file document is received. The notices also inform the recipients of their right to request further deletions to the public inspection version of written determinations or related background file documents.

**Current Actions:** There are no changes being made to the notice at this time.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

**Estimated Number of Respondents:** 5,250.

**Estimated Time Per Respondent:** 30 minutes.

**Estimated Total Annual Burden Hours:** 2,625.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 12, 2007.

**R. Joseph Durbala,**  
*IRS Reports Clearance Officer.*  
[FR Doc. E7-18691 Filed 9-20-07; 8:45 am]  
BILLING CODE 4830-01-P

(7) geological and geophysical information and data, including maps, concerning wells.

The Secretary shall determine the appropriate extent of such deletions and, except in the case of intentional or willful disregard of this subsection, shall not be required to make such deletions (nor be liable for failure to make deletions) unless the Secretary has agreed to such deletions or has been ordered by a court (in a proceeding under subsection (f)(3)) to make such deletions.

*Amendments*

P.L. 94-455, § 1201(a):

Added Code Sec. 6110(c), to read as above. Effective 11-1-76.

[Sec. 6110(d)]

(d) PROCEDURES WITH REGARD TO THIRD PARTY CONTACTS.—

(1) NOTATIONS.—If, before the issuance of a written determination, the Internal Revenue Service receives any communication (written or otherwise) concerning such written determination, any request for such determination, or any other matter involving such written determination from a person other than an employee of the Internal Revenue Service or the person to whom such written determination pertains (or his authorized representative with regard to such written determination), the Internal Revenue Service shall indicate, on the written determination open to public inspection, the category of the person making such communication and the date of such communication.

(2) EXCEPTION.—Paragraph (1) shall not apply to any communication made by the Chief of Staff of the Joint Committee on Taxation.

(3) DISCLOSURE OF IDENTITY.—In the case of any written determination to which paragraph (1) applies, 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 the written determination pertains be disclosed. The court shall order disclosure of such identity if there is evidence in the record from which one could reasonably conclude that an impropriety occurred or undue influence was exercised with respect to such written determination by or on behalf of such person. The court may also direct the Secretary to disclose any portion of any other deletions made in accordance with subsection (c) where such disclosure is in the public interest. If a proceeding is commenced under this paragraph, the person whose identity is subject to being disclosed and the person about whom a notation is made under paragraph (1) shall be notified of the proceeding in accordance with the procedures described in subsection (f)(4)(B) and shall have the right to intervene in the proceeding (anonymously, if appropriate).

(4) PERIOD IN WHICH TO BRING ACTION.—No proceeding shall be commenced under paragraph (3) unless a petition is filed before the expiration of 36 months after the first day that the written determination is open to public inspection.

*Amendments*

P.L. 94-455, § 1201(a):

Added Code Sec. 6110(d), to read as above. Effective 11-1-76.

[Sec. 6110(e)]

(e) BACKGROUND FILE DOCUMENTS.—Whenever the Secretary makes a written determination open to public inspection under this section, he shall also make available to any person, but only upon the written request of that person, any background file document relating to the written determination.

*Amendments*

P.L. 94-455, § 1201(a):

Added Code Sec. 6110(e), to read as above. Effective 11-1-76.

[Sec. 6110(f)]

(f) RESOLUTION OF DISPUTES RELATING TO DISCLOSURE.—

(1) NOTICE OF INTENTION TO DISCLOSE.—The Secretary shall upon issuance of any written determination, or upon receipt of a request for a background file document, mail a notice of intention to disclose such determination or document to any person to whom the written determination pertains (or a successor in interest, executor, or other person authorized by law to act for or on behalf of such person).

**Sec. 6110(d)**

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**CONTACTS.—**

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(2) **ADMINISTRATIVE REMEDIES.**—The Secretary shall prescribe regulations establishing administrative remedies with respect to—

(A) requests for additional disclosure of any written determination or any background file document, and

(B) requests to restrain disclosure.

(3) **ACTION TO RESTRAIN DISCLOSURE.**—

(A) **CREATION OF REMEDY.**—Any person—

(i) to whom a written determination pertains (or a successor in interest, executor, or other person authorized by law to act for or on behalf of such person), or who has a direct interest in maintaining the confidentiality of any such written determination or background file document (or portion thereof),

(ii) who disagrees with any failure to make a deletion with respect to that portion of any written determination or any background file document which is to be open or available to public inspection, and

(iii) who has exhausted his administrative remedies as prescribed pursuant to paragraph (2),

may, within 60 days after the mailing by the Secretary of a notice of intention to disclose any written determination or background file document under paragraph (1), together with the proposed deletions, file a petition in the United States Tax Court (anonymously, if appropriate) for a determination with respect to that portion of such written determination or background file document which is to be open to public inspection.

(B) **NOTICE TO CERTAIN PERSONS.**—The Secretary shall notify any person to whom a written determination pertains (unless such person is the petitioner) of the filing of a petition under this paragraph with respect to such written determination or related background file document, and any such person may intervene (anonymously, if appropriate) in any proceeding conducted pursuant to this paragraph. The Secretary shall send such notice by registered or certified mail to the last known address of such person within 15 days after such petition is served on the Secretary. No person who has received such a notice may thereafter file any petition under this paragraph with respect to such written determination or background file document with respect to which such notice was received.

(4) **ACTION TO OBTAIN ADDITIONAL DISCLOSURE.**—

(A) **CREATION OF REMEDY.**—Any person who has exhausted the administrative remedies prescribed pursuant to paragraph (2) with respect to a request for disclosure may file a petition 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 any written determination or background file document (or portion thereof) be made open or available to public inspection. Except where inconsistent with subparagraph (B), the provisions of subparagraphs (C), (D), (E), (F), and (G) of section 552(a)(4) of title 5, United States Code, shall apply to any proceeding under this paragraph. The Court shall examine the matter de novo and without regard to a decision of a court under paragraph (3) with respect to such written determination or background file document, and may examine the entire text of such written determination or background file document in order to determine whether such written determination or background file document or any part thereof shall be open or available to public inspection under this section. The burden of proof with respect to the issue of disclosure of any information shall be on the Secretary and any other person seeking to restrain disclosure.

(B) **INTERVENTION.**—If a proceeding is commenced under this paragraph with respect to any written determination or background file document, the Secretary shall, within 15 days after notice of the petition filed under subparagraph (A) is served on him, send notice of the commencement of such proceeding to all persons who are identified by name and address in such written determination or background file document. The Secretary shall send such notice by registered or certified mail to the last known address of such person. Any person to whom such determination or background file document pertains may intervene in the proceeding (anonymously, if appropriate). If such notice is sent, the Secretary shall not be required to defend the action and shall not be liable for public disclosure of the written determination or background file document (or any portion thereof) in accordance with the final decision of the court.

**61,210** INSPECTION OF DETERMINATIONS— § 6110 (¶ 5229C)

(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. [Reg. § 301.6110-4.]

.10 Historical Comment: Proposed 6/17/77 Adopted 12/15/77 by T D. 7524.

● **Regulations**

**¶ 5229H** § 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.

(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

**61,212 INSPECTION OF DETERMINATIONS— § 6110 [§ 5229C]**

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 (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 (1) 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 (1) 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

**61,214** INSPECTION OF DETERMINATIONS— § 6110 [§ 5229C]

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. [Reg. § 301.6110-5.]

.10 *Historical Comment:* Proposed 6/17/77 Adopted 12/15/77 by T.D. 7524.

● **Regulations**

[§ 5229I] § 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 post-marked 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:

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

(iv) Determination letters.

(v) Written determinations issued pursuant to requests submitted before November 1, 1976 with respect to the exempt status 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).

(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:



her person described in subsection (X)(16) shall,  
tion—

or return information—

or commission described in subsection (d),  
any other person described in subsection (X)(16)  
return information (along with any copies made  
n information undisclosable in any manner and  
describing such manner,

in subsections (h)(2), (h)(5), (i)(1), (2), (3), or (5),  
(11), (12), (13), (14), (15), or 17, or (o)(1), or the

returns or return information (along with any

or return information undisclosable, or  
urned or made undisclosable, ensure that the  
(C), (D), and (E) of this paragraph continue to be  
return information, and

**§ 10,640.]**

velop procedures under which a taxpayer filing returns  
electronically (and their designees under section 6103(c) of  
e Internal Revenue Code of 1986) would be able to review  
e taxpayer's account electronically, but only if all neces-  
sary safeguards to ensure the privacy of such account infor-  
mation are in place.

(b) REPORT.—Not later than December 31, 2003, the  
ecretary of the Treasury shall report on the progress the  
ecretary is making on the development of procedures under  
bsection (a) to the Committee on Ways and Means of the  
use of Representatives and the Committee on Finance of  
Senate.

Act Sec. 3508 provided:

**SEC. 3508. DISCLOSURE TO TAXPAYERS.**

The Secretary of the Treasury or the Secretary's delegate  
ll ensure that any instructions booklet accompanying an  
ividual Federal income tax return form (including forms  
10, 1040A, 1040EZ, and any similar or successor forms)  
ll include, in clear language, in conspicuous print, and in a  
spicuous place, a concise description of the conditions  
er which return information may be disclosed to any  
ty outside the Internal Revenue Service, including disclo-  
e to any State or agency, body, or commission (or legal  
representative) thereof.

**INFORMATION REQUIRED FROM  
ORGANIZATIONS AND CERTAIN TRUSTS.**

—The information required to be furnished by  
and addresses of such organizations and trusts,  
in such places as the Secretary may prescribe,  
disclose the name or address of any contributor  
ation, as defined in section 509(a) which is  
organization described in section 501(d), this  
5031(b) with respect to such organization.

**11,355.]**

he above amendment is effective on the date of the  
ment of this Act.

**AND APPLICATIONS FOR EXEMPTION.—**

**(1) ANNUAL RETURNS.—**

• • •

(C) NONDISCLOSURE OF CONTRIBUTORS.—Subparagraph (A) shall not require the disclosure of the name or address of any contributor to the organization. *In the case of an organization described in section 501(d), subparagraph (A) shall not require the disclosure of the copies referred to in section 6031(b) with respect to such organization.*

**[CCH Explanation at ¶ 691. Committee Reports at ¶ 11,355.]**

Amendment Notes The above amendment is effective on the date of the enactment of this Act.  
Act Sec. 6019(b) amended Code Sec. 6104(e)(1)(C) by adding at the end a new sentence to read as above.

**[¶ 6130] CODE SEC. 6109. IDENTIFYING NUMBERS.**

(a) SUPPLYING OF IDENTIFYING NUMBERS.—When required by regulations prescribed by the Secretary:

• • •

For purposes of paragraphs (1), (2), and (3), the identifying number of an individual (or his estate) shall be such individual's social security account number.

**[CCH Explanation at ¶ 865. Committee Reports at ¶ 10,680.]**

Amendment Notes The above amendment is effective on the date of the enactment of this Act.  
Act Sec. 3710(a) amended the last sentence of Code Sec. 6109(a) by striking "For purposes of this subsection" and inserting "For purposes of paragraphs (1), (2), and (3)".

**[¶ 6140] CODE SEC. 6110. PUBLIC INSPECTION OF WRITTEN DETERMINATIONS.**

• • •

(b) DEFINITIONS.—For purposes of this section—

(1) WRITTEN DETERMINATION.—The term "written determination" means a ruling, determination letter, technical advice memorandum, or Chief Counsel advice.

• • •

**[CCH Explanation at ¶ 892. Committee Reports at ¶ 10,605.]**

Amendment Notes  
Act Sec. 3509(a) amended Code Sec. 6110(b)(1) by striking "or technical advice memorandum" and inserting "technical advice memorandum, or Chief Counsel advice".

The above amendment applies to any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act. For transition rules, see Act Sec. 3509(d)(2)-(4), below.

Act Sec. 3509(d)(2)-(4) provided:

(2) TRANSITION RULES.—The amendments made by this section shall apply to any Chief Counsel advice issued after December 31, 1985, and before the 91st day after the date of the enactment of this Act by the offices of the associate chief counsel for domestic, employee benefits and exempt organizations, and international, except that any such Chief Counsel advice shall be treated as made available on a timely basis if such advice is made available for public inspection not later than the following dates:

(A) One year after the date of the enactment of this Act, in the case of all litigation guideline memoranda, service center advice, tax litigation bulletins, criminal tax bulletins, and general litigation bulletins.

(B) Eighteen months after such date of enactment, in the case of field service advice and technical assistance to the field issued on or after January 1, 1994.

(C) Three years after such date of enactment, in the case of field service advice and technical assistance to the field issued on or after January 1, 1992, and before January 1, 1994.

(D) Six years after such date of enactment, in the case of any other Chief Counsel advice issued after December 31, 1985.

(3) DOCUMENTS TREATED AS CHIEF COUNSEL ADVICE.—If the Secretary of the Treasury by regulation provides pursuant to section 6110(i)(2) of the Internal Revenue Code of 1986, as added by this section, that any additional advice or instruction issued by the Office of Chief Counsel shall be treated as Chief Counsel advice, such additional advice or instruction shall be made available for public inspection pursuant to section 6110 of such Code, as amended by this section, only in accordance with the effective date set forth in such regulation.

(4) CHIEF COUNSEL ADVICE TO BE AVAILABLE ELECTRONICALLY.—The Internal Revenue Service shall make any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act and made available for public inspection pursuant to section 6110 of such Code, as amended by this section, also available by computer telecommunications within 1 year after issuance.

(f) RESOLUTION OF DISPUTES RELATING TO DISCLOSURE.—

(1) NOTICE OF INTENTION TO DISCLOSE.—Except as otherwise provided by subsection (i), the Secretary shall upon issuance of any written determination, or upon receipt of a request for a background file document, mail a notice of intention to disclose such determination or document to any person to whom the written determination pertains (or a successor in interest, executor, or other person authorized by law to act for or on behalf of such person).

• • •

**[CCH Explanation at ¶ 892. Committee Reports at ¶ 10,605.]**

Amendment Notes  
Act Sec. 3509(c)(1) amended Code Sec. 6110(f)(1) by striking "The Secretary" and inserting "Except as otherwise provided by subsection (i), the Secretary".

The above amendment applies to any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act. For transition rules, see Act Sec.

**Code Sec. 6110(f) ¶ 6140**

3509(d)(2)-(4) under the amendment notes to subsection (b), above.

**(I) SPECIAL RULES FOR DISCLOSURE OF CHIEF COUNSEL ADVICE.—**

**(1) CHIEF COUNSEL ADVICE DEFINED.—**

(A) **IN GENERAL.**—For purposes of this section, the term "Chief Counsel advice" means written advice or instruction, under whatever name or designation, prepared by any national office component of the Office of Chief Counsel which—

(i) is issued to field or service center employees of the Service or regional or district employees of the Office of Chief Counsel, and

(ii) conveys—

(I) any legal interpretation of a revenue provision,

(II) any Internal Revenue Service or Office of Chief Counsel position or policy concerning a revenue provision, or

(III) any legal interpretation of State law, foreign law, or other Federal law relating to the assessment or collection of any liability under a revenue provision.

(B) **REVENUE PROVISION DEFINED.**—For purposes of subparagraph (A), the term "revenue provision" means any existing or former internal revenue law, regulation, revenue ruling, revenue procedure, other published or unpublished guidance, or tax treaty, either in general or as applied to specific taxpayers or groups of specific taxpayers.

(2) **ADDITIONAL DOCUMENTS TREATED AS CHIEF COUNSEL ADVICE.**—The Secretary may by regulation provide that this section shall apply to any advice or instruction prepared and issued by the Office of Chief Counsel which is not described in paragraph (1).

(3) **DELETIONS FOR CHIEF COUNSEL ADVICE.**—In the case of Chief Counsel advice open to public inspection pursuant to this section—

(A) paragraphs (2) through (7) of subsection (c) shall not apply, but

(B) the Secretary may make deletions of material in accordance with subsections (b) and (c) of section 552 of title 5, United States Code, except that in applying subsection (b)(3) of such section, no statutory provision of this title shall be taken into account.

(4) **NOTICE OF INTENTION TO DISCLOSE.**—

(A) **NONTAXPAYER-SPECIFIC CHIEF COUNSEL ADVICE.**—In the case of Chief Counsel advice which is written without reference to a specific taxpayer or group of specific taxpayers—

(i) subsection (f)(1) shall not apply, and

(ii) the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, complete any deletions described in subsection (c)(1) or paragraph (3) and make the Chief Counsel advice, as so edited, open for public inspection.

(B) **TAXPAYER-SPECIFIC CHIEF COUNSEL ADVICE.**—In the case of Chief Counsel advice which is written with respect to a specific taxpayer or group of specific taxpayers, the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, mail the notice required by subsection (f)(1) to each such taxpayer. The notice shall include a copy of the Chief Counsel advice on which is indicated the information that the Secretary proposes to delete pursuant to subsection (c)(1). The Secretary may also delete from the copy of the text of the Chief Counsel advice any of the information described in paragraph (3), and shall delete the names, addresses, and other identifying details of taxpayers other than the person to whom the advice pertains, except that the Secretary shall not delete from the copy of the Chief Counsel advice that is furnished to the taxpayer any information of which that taxpayer was the source.

[CCH Explanation at ¶ 892. Committee Reports at ¶ 10,605.]

**Amendment Notes**

Act Sec. 3509(b) amended Code Sec. 6110 by redesignating subsections (i), (j), (k), and (l) as subsections (j), (k), (l), and (m), respectively, and by inserting after subsection (b) a new subsection (i) to read as above.

The above amendment applies to any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act. For transition rules, see Act Sec. 3509(d)(2)-(4) in the amendment notes to subsection (b) above.

**(j) CIVIL REMEDIES.—**

(1) **CIVIL ACTION.**—Whenever the Secretary—

(A) fails to make deletions required in accordance with subsection (c), or

(B) fails to follow the procedures in subsection (g) or (i)(4)(B), the recipient of the written determination or any person identified in the written determination shall have as an exclusive civil remedy an action against the Secretary in the United States Claims Court, which shall have jurisdiction to hear any action under this paragraph.

(2) **DAMAGES.**—In any suit brought under the provisions of paragraph (1)(A) in which the Court determines that an employee of the Internal Revenue Service intentionally or willfully failed to delete in accordance with subsection (c), or in any suit brought under subparagraph (1)(B) in which the Court determines that an employee intentionally or willfully failed to act in accordance with

subsection (g) or (i)(4)(B), the United States sum of—

(A) actual damages sustained receive less than the sum of \$1,000,

(B) the costs of the action to go to Court.

[CCH Explanation at ¶ 892. Committee R

**Amendment Notes**

Act Sec. 3509(b) amended Code Sec. 6110 by redesignating subsection (i) as subsection (j).

Act Sec. 3509(c)(2) amended Code Sec. 6110(j)(1)(2), as redesignated, by striking "subsection (g)" each it appears and inserting "subsection (g) or (i)(4)(B)".

**(k) SPECIAL PROVISIONS.—**

(1) **FEES.**—The Secretary is authorized

(A) for duplication of any written available to the public under this section

(B) incurred in searching for and from any written determination or inspection only upon written request

The Secretary shall furnish any written or at a reduced charge if he determines it because furnishing such determination or benefiting the general public.

[CCH Explanation at ¶ 892. Committee R

**Amendment Notes**

Act Sec. 3509(b) amended Code Sec. 6110 by redesignating subsection (j) as subsection (k).

Act Sec. 3509(c)(3) amended Code Sec. 6110(k)(1)(2), as redesignated, by striking "subsection (c)" and inserting "subsection (c)(1) or (i)(3)".

(l) **SECTION NOT TO APPLY.**—This section

(1) any matter to which section 6104

(2) any—

(A) written determination issued with respect to the exempt status under 501(c) or (d), the status of an organization as an operator

(B) written determination described made before November 1, 1976,

(C) determination letter not obtained pursuant to a request made before November 1, 1976,

(D) background file document not made before July 5, 1967, or

(E) letter or other document described made before November 1, 1974.

[CCH Explanation at ¶ 892. Committee R

**Amendment Notes**

Act Sec. 3509(b) amended Code Sec. 6110 by redesignating subsection (k) as subsection (l).

The above amendment applies to any Chief Counsel advice issued more than 90 days after the date of

(m) **EXCLUSIVE REMEDY.**—Except as otherwise provided in connection with a judicial proceeding, no person shall make any written determination or background file document, or refrain from disclosure of any such documents.

[CCH Explanation at ¶ 892. Committee R

**Amendment Notes**

Act Sec. 3509(b) amended Code Sec. 6110 by redesignating subsection (l) as subsection (m).

E.—  
section, the term "Chief Counsel advice" means  
er name or designation, prepared by any national  
sel which—  
er employees of the Service or regional or district  
, and

revenue provision,  
vice or Office of Chief Counsel position or policy

of State law, foreign law, or other Federal law  
on of any liability under a revenue provision.  
oses of subparagraph (A), the term "revenue  
ternal revenue law, regulation, revenue ruling,  
fished guidance, or tax treaty, either in general or  
pecific taxpayers.

VICE.—The Secretary may by regulation provide  
ction prepared and issued by the Office of Chief

of Chief Counsel advice open to public inspection

on (c) shall not apply, but  
aterial in accordance with subsections (b) and (c)  
cept that in applying subsection (b)(3) of such  
l be taken into account.

-In the case of Chief Counsel advice which is  
r group of specific taxpayers—  
nd

s after the issuance of the Chief Counsel advice,  
tion (c)(1) or paragraph (3) and make the Chief  
c inspection.

he case of Chief Counsel advice which is written  
pecific taxpayers, the Secretary shall, within 60  
ice, mail the notice required by subsection (f)(1)  
a copy of the Chief Counsel advice on which is  
roposes to delete pursuant to subsection (c)(1),  
the text of the Chief Counsel advice any of the  
shall delete the names, addresses, and other  
erson to whom the advice pertains, except that  
he Chief Counsel advice that is furnished to the  
r was the source.  
10,605.]

he above amendment applies to any Chief Counsel  
re issued more than 90 days after the date of the  
ment of this Act. For transition rules, see Act Sec.  
(d)(2)-(4) in the amendment notes to subsection (b),  
e.

lance with subsection (c), or  
m (g) or (i)(4)(B), the recipient of the written  
ten determination shall have as an exclusive  
United States Claims Court, which shall have  
ph.

visions of paragraph (1)(A) in which the Court  
te Service intentionally or willfully failed to  
brought under subparagraph (1)(B) in which  
or willfully failed to act in accordance with

subsection (g) or (i)(4)(B), the United States shall be liable to the person in an amount equal to the sum of—  
(A) actual damages sustained by the person but in no case shall a person be entitled to receive less than the sum of \$1,000, and  
(B) the costs of the action together with reasonable attorney's fees as determined by the Court.

[CCH Explanation at ¶ 892. Committee Reports at ¶ 10,605.]

Amendment Notes  
Act Sec. 3509(b) amended Code Sec. 6110 by redesignating subsection (i) as subsection (j).  
Act Sec. 3509(c)(2) amended Code Sec. 6110(j)(1)(B) and (2), as redesignated, by striking "subsection (g)" each place it appears and inserting "subsection (g) or (i)(4)(B)".

The above amendments apply to any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act. For transition rules, see Act Sec. 3509(d)(2)-(4) in the amendment notes to subsection (b), above.

(k) SPECIAL PROVISIONS.—

(1) FEES.—The Secretary is authorized to assess actual costs—  
(A) for duplication of any written determination or background file document made open or available to the public under this section, and  
(B) incurred in searching for and making deletions required under subsection (c)(1) or (i)(3) from any written determination or background file document which is available to public inspection only upon written request.  
The Secretary shall furnish any written determination or background file document without charge or at a reduced charge if he determines that waiver or reduction of the fee is in the public interest because furnishing such determination or background file document can be considered as primarily benefiting the general public.

[CCH Explanation at ¶ 892. Committee Reports at ¶ 10,605.]

Amendment Notes  
Act Sec. 3509(b) amended Code Sec. 6110 by redesignating subsection (i) as subsection (j).  
Act Sec. 3509(c)(3) amended Code Sec. 6110(k)(1)(B), as redesignated, by striking "subsection (c)" and inserting "subsection (c)(1) or (j)(3)".

The above amendments apply to any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act. For transition rules, see Act Sec. 3509(d)(2)-(4) in the amendment notes to subsection (b), above.

(l) SECTION NOT TO APPLY.—This section shall not apply to—  
(1) any matter to which section 6104 applies, or  
(2) any—  
(A) written determination issued pursuant to a request made before November 1, 1976, with respect to the exempt status under section 501(a) of an organization described in section 501(c) or (d), the status of an organization as a private foundation under section 509(a), or the status of an organization as an operating foundation under section 4942(j)(3),  
(B) written determination described in subsection (g)(5)(B) issued pursuant to a request made before November 1, 1976,  
(C) determination letter not otherwise described in subparagraph (A), (B), or (E) issued pursuant to a request made before November 1, 1976,  
(D) background file document relating to any general written determination issued before July 5, 1967, or  
(E) letter or other document described in section 6104(a)(1)(B)(iv) issued before September 2, 1974.

[CCH Explanation at ¶ 892. Committee Reports at ¶ 10,605.]

Amendment Notes  
Act Sec. 3509(b) amended Code Sec. 6110 by redesignating subsection (k) as subsection (l).  
The above amendment applies to any Chief Counsel advice issued more than 90 days after the date of the

enactment of this Act. For transition rules, see Act Sec. 3509(d)(2)-(4) in the amendment notes to subsection (b), above.

(m) EXCLUSIVE REMEDY.—Except as otherwise provided in this title, or with respect to a discovery order made in connection with a judicial proceeding, the Secretary shall not be required by any Court to make any written determination or background file document open or available to public inspection, or to refrain from disclosure of any such documents.

[CCH Explanation at ¶ 892. Committee Reports at ¶ 10,605.]

Amendment Notes  
Act Sec. 3509(b) amended Code Sec. 6110 by redesignating subsection (l) as subsection (m).

The above amendment applies to any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act. For transition rules, see Act Sec. 3509(d)(2)-(4) in the amendment notes to subsection (b), above.

(c) Furnishing number for dependents. Any taxpayer who claims an exemption under section 151 for any dependent on a return for any taxable year shall include on such return the identifying number (for purposes of this title) of such dependent."

—P.L. 104-188, Sec. 1704(t)(42), redesignated subsec. (f) as subsec. (g) [as added by Sec. 2201(d), P.L. 101-624, see below], effective 8/20/96.

In 1994, P.L. 103-465, Sec. 742(b), amended subsec. (e), effective for returns for tax yrs. begin. after 12/31/94, except as provided in Sec. 742(c)(2) of this Act, which reads as follows:

"(2) Exception. The amendments made by this section shall not apply to—

"(A) returns for taxable years beginning in 1995 with respect to individuals who are born after October 31, 1995, and

"(B) returns for taxable years beginning in 1996 with respect to individuals who are born after November 30, 1996."

Prior to amendment, subsec. (e) read as follows:

"(c) Furnishing number for certain dependents.

"If—

"(1) any taxpayer claims an exemption under section 151 for any dependent on a return for any taxable year, and

"(2) such dependent has attained the age of 1 year before the close of such taxable year,

such taxpayer shall include on such return the identifying number (for purposes of this title) of such dependent."

—P.L. 103-296, Sec. 316(b)(1), amended para. (f)(2)... Sec. 316(b)(2), substituted "pursuant to this subsection by the Secretary of Agriculture or the head of the instrumentality with which the information is shared pursuant to paragraph (2)" for "by the Secretary of Agriculture pursuant to this subsection" in para. (f)(3)... Sec. 316(b)(3), substituted "pursuant to this subsection by the Secretary of Agriculture or any agency or instrumentality with which information is shared pursuant to paragraph (2)" for "by the Secretary of Agriculture pursuant to this subsection" in para. (f)(4), effective 8/15/94.

Prior to amendment, para. (f)(2) read as follows:

"(2) Safeguards. The Secretary of Agriculture shall restrict, to the satisfaction of the Secretary of the Treasury, access to employer identification numbers obtained pursuant to paragraph (1) only to officers and employees of the United States whose duties or responsibilities require access for the administration or enforcement of the Food Stamp Act of 1977. The Secretary of Agriculture shall provide such other safeguards as the Secretary of the Treasury determines to be necessary or appropriate to protect the confidentiality of the employer identification numbers."

In 1992, P.L. 102-486, Sec. 1933(a), added subsec. (h), effective for tax yrs. begin. after 12/31/91.

In 1990, P.L. 101-624, Sec. 1735(c), added subsec. (f), effective and implemented the 1st day of the month beginning 120 days after the publication of implementing regulations. Such regulations shall be promulgated not later than 10/1/91.

—P.L. 101-624, Sec. 2201(d), added subsec. (f) [sic (g)], effective 11/28/90.

—P.L. 101-508, Sec. 11112(a), substituted "1 year" for "2 years" in para. (e)(2), effective for returns for tax yrs. begin. after 12/31/90.

In 1988, P.L. 100-485, Sec. 703(c)(3), substituted "or whose identifying number is required to be shown on a return of another person shall furnish" for "shall furnish" in para. (a)(2), effective for tax yrs. begin. after 12/31/88.

—P.L. 100-485, Sec. 704(a), substituted "age of 2" for "age of 5" in para. (e)(2), effective for return the due date for which (determined without regard to extensions) is after 12/31/89.

In 1986, P.L. 99-514, Sec. 1524(a), added subsec. (e), effective for returns the due date for which (determined without regard to extensions) is after 12/31/87.

In 1976, P.L. 94-455, Sec. 1203(d), added para. (a)(4) and the last sentence in subsec. (a), effective for documents prepared after 12/31/76.

—P.L. 94-455, Sec. 1211(c), added subsec. (d), effective 10/4/76.

—P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in Code Sec. 6109, effective 2/1/77.

In 1961, P.L. 87-397, Sec. a, added Code Sec. 6109 and redesignated former Code Sec. 6109 as 6110. Code Sec. 6109(a)(1) shall apply only in respect of returns, statements, and other documents relating to periods begin. after 12/31/61. Code Sec. 6109(a)(2) and (3) shall apply only in respect of returns, statements, or other documents relating to periods begin. after 12/31/62.

## Sec. 6110. Public inspection of written determinations.

### (a) General rule.

Except as otherwise provided in this section, the text of any written determination and any background file document relating to such written determination shall be open to public

inspection at such place as the Secretary may by regulations prescribe

### (b) Definitions.

For purposes of this section—

#### (1) Written determination.

(A) In general. The term "written determination" means a ruling, determination letter, technical advice memorandum, or Chief Counsel advice.

(B) Exceptions. Such term shall not include any matter referred to in subparagraph (C) or (D) of section 6103(b)(2).

(2) Background file document. The term "background file document" with respect to a written determination includes the request for that written determination, any written material submitted in support of the request, and any communication (written or otherwise) between the Internal Revenue Service and persons outside the Internal Revenue Service in connection with such written determination (other than any communication between the Department of Justice and the Internal Revenue Service relating to a pending civil or criminal case or investigation) received before issuance of the written determination.

#### (3) Reference and general written determinations.

(A) Reference written determination. The term "reference written determination" means any written determination which has been determined by the Secretary to have significant reference value.

(B) General written determination. The term "general written determination" means any written determination other than a reference written determination.

### (c) Exemptions from disclosure.

Before making any written determination or background file document open or available to public inspection under subsection (a), the Secretary shall delete—

(1) the names, addresses, and other identifying details of the person to whom the written determination pertains and of any other person, other than a person with respect to whom a notation is made under subsection (d)(1), identified in the written determination or any background file document;

(2) information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and which is in fact properly classified pursuant to such Executive order;

(3) information specifically exempted from disclosure by any statute (other than this title) which is applicable to the Internal Revenue Service;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) information contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for use of an agency responsible for the regulation or supervision of financial institutions; and

(7) geological and geophysical information and data, including maps, concerning wells.

The Secretary shall determine the appropriate extent of such deletions and, except in the case of intentional or willful disregard of this subsection, shall not be required to make such deletions (nor be liable for failure to make deletions) unless the Secretary has agreed to such deletions or has been ordered by a court (in a proceeding under subsection (f)(3)) to make such deletions.

**(d) Procedures with regard to third party contacts.**

(1) **Notations.** If, before the issuance of a written determination, the Internal Revenue Service receives any communication (written or otherwise) concerning such written determination, any request for such determination, or any other matter involving such written determination from a person other than an employee of the Internal Revenue Service or the person to whom such written determination pertains (or his authorized representative with regard to such written determination), the Internal Revenue Service shall indicate, on the written determination open to public inspection, the category of the person making such communication and the date of such communication.

(2) **Exception.** Paragraph (1) shall not apply to any communication made by the Chief of Staff of the Joint Committee on Taxation.

(3) **Disclosure of identity.** In the case of any written determination to which paragraph (1) applies, 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 the written determination pertains be disclosed. The court shall order disclosure of such identity if there is evidence in the record from which one could reasonably conclude that an impropriety occurred or undue influence was exercised with respect to such written determination by or on behalf of such person. The court may also direct the Secretary to disclose any portion of any other deletions made in accordance with subsection (c) where such disclosure is in the public interest. If a proceeding is commenced under this paragraph, the person whose identity is subject to being disclosed and the person about whom a notation is made under paragraph (1) shall be notified of the proceeding in accordance with the procedures described in subsection (f)(4)(B) and shall have the right to intervene in the proceeding (anonymously, if appropriate).

(4) **Period in which to bring action.** No proceeding shall be commenced under paragraph (3) unless a petition is filed before the expiration of 36 months after the first day that the written determination is open to public inspection.

**(e) Background file documents.**

Whenever the Secretary makes a written determination open to public inspection under this section, he shall also make available to any person, but only upon the written request of that person, any background file document relating to the written determination.

**(f) Resolution of disputes relating to disclosure.**

(1) **Notice of intention to disclose.** Except as otherwise provided by subsection (i), the Secretary shall upon issuance of any written determination, or upon receipt of a request for a background file document, mail a notice of intention to disclose such determination or document to any person to whom the written determination pertains (or a successor in interest, executor, or other person authorized by law to act for or on behalf of such person).

(2) **Administrative remedies.** The Secretary shall prescribe regulations establishing administrative remedies with respect to—

(A) requests for additional disclosure of any written determination of any background file document, and

(B) requests to restrain disclosure.

**(3) Action to restrain disclosure.**

(A) **Creation of remedy.** Any person—

(i) to whom a written determination pertains (or a successor in interest, executor, or other person authorized by law to act for or on behalf of such per-

son), or who has a direct interest in maintaining the confidentiality of any such written determination or background file document (or portion thereof),

(ii) who disagrees with any failure to make a deletion with respect to that portion of any written determination or any background file document which is to be open or available to public inspection, and

(iii) who has exhausted his administrative remedies as prescribed pursuant to paragraph (2),

may, within 60 days after the mailing by the Secretary of a notice of intention to disclose any written determination or background file document under paragraph (1), together with the proposed deletions, file a petition in the United States Tax Court (anonymously, if appropriate) for a determination with respect to that portion of such written determination or background file document which is to be open to public inspection.

(B) **Notice to certain persons.** The Secretary shall notify any person to whom a written determination pertains (unless such person is the petitioner) of the filing of a petition under this paragraph with respect to such written determination or related background file document, and any such person may intervene (anonymously, if appropriate) in any proceeding conducted pursuant to this paragraph. The Secretary shall send such notice by registered or certified mail to the last known address of such person within 15 days after such petition is served on the Secretary. No person who has received such a notice may thereafter file any petition under this paragraph with respect to such written determination or background file document with respect to which such notice was received.

**(4) Action to obtain additional disclosure.**

(A) **Creation of remedy.** Any person who has exhausted the administrative remedies prescribed pursuant to paragraph (2) with respect to a request for disclosure may file a petition 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 any written determination or background file document (or portion thereof) be made open or available to public inspection. Except where inconsistent with subparagraph (B), the provisions of subparagraphs (C), (D), (E), (F), and (G) of section 552(a)(4) of title 5, United States Code, shall apply to any proceeding under this paragraph. The Court shall examine the matter de novo and without regard to a decision of a court under paragraph (3) with respect to such written determination or background file document, and may examine the entire text of such written determination or background file document in order to determine whether such written determination or background file document or any part thereof shall be open or available to public inspection under this section. The burden of proof with respect to the issue of disclosure of any information shall be on the Secretary and any other person seeking to restrain disclosure.

(B) **Intervention.** If a proceeding is commenced under this paragraph with respect to any written determination or background file document, the Secretary shall, within 15 days after notice of the petition filed under subparagraph (A) is served on him, send notice of the commencement of such proceeding to all persons who are identified by name and address in such written determination or background file document. The Secretary shall send such notice by registered or certified mail to the last known address of such person. Any person to whom such determination or background file document

pertains may intervene in the proceeding (anonymously, if appropriate). If such notice is sent, the Secretary shall not be required to defend the action and shall not be liable for public disclosure of the written determination or background file document (or any portion thereof) in accordance with the final decision of the court.

(5) **Expedition of determination.** The Tax Court shall make a decision with respect to any petition described in paragraph (3) at the earliest practicable date.

(6) **Publicity of Tax Court proceedings.** Notwithstanding sections 7458 and 7461, the Tax Court may, in order to preserve the anonymity, privacy, or confidentiality of any person under this section, provide by rules adopted under section 7453 that portions of hearings, testimony, evidence, and reports in connection with proceedings under this section may be closed to the public or to inspection by the public.

(g) **Time for disclosure.**

(1) **In general.** Except as otherwise provided in this section, the text of any written determination or any background file document (as modified under subsection (c)) shall be open or available to public inspection—

(A) no earlier than 75 days, and no later than 90 days, after the notice provided in subsection (f)(1) is mailed, or, if later,

(B) within 30 days after the date on which a court decision under subsection (f)(3) becomes final.

(2) **Postponement by order of court.** The court may extend the period referred to in paragraph (1)(B) for such time as the court finds necessary to allow the Secretary to comply with its decision.

(3) **Postponement of disclosure for up to 90 days.** At the written request of the person by whom or on whose behalf the request for the written determination was made, the period referred to in paragraph (1)(A) shall be extended (for not to exceed an additional 90 days) until the day which is 15 days after the date of the Secretary's determination that the transaction set forth in the written determination has been completed.

(4) **Additional 180 days.** If—

(A) the transaction set forth in the written determination is not completed during the period set forth in paragraph (3), and

(B) the person by whom or on whose behalf the request for the written determination was made establishes to the satisfaction of the Secretary that good cause exists for additional delay in opening the written determination to public inspection,

the period referred to in paragraph (3) shall be further extended (for not to exceed an additional 180 days) until the day which is 15 days after the date of the Secretary's determination that the transaction set forth in the written determination has been completed.

(5) **Special rules for certain written determinations, etc.** Notwithstanding the provisions of paragraph (1), the Secretary shall not be required to make available to the public—

(A) any technical advice memorandum, any Chief Counsel advice, and any related background file document involving any matter which is the subject of a civil fraud or criminal investigation or jeopardy or termination assessment until after any action relating to such investigation or assessment is completed, or

(B) any general written determination and any related background file document that relates solely to approval of the Secretary of any adoption or change of—

(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,

but the Secretary shall make any such written determination and related background file document available upon the written request of any person after the date on which (except for this subparagraph) such determination would be open to public inspection.

(h) **Disclosure of prior written determinations and related background file documents.**

(1) **In general.** Except as otherwise provided in this subsection, a written determination issued pursuant to a request made before November 1, 1976, and any background file document relating to such written determination shall be open or available to public inspection in accordance with this section.

(2) **Time for disclosure.** In the case of any written determination or background file document which is to be made open or available to public inspection under paragraph (1)—

(A) subsection (g) shall not apply, but

(B) such written determination or background file document shall be made open or available to public inspection at the earliest practicable date after funds for that purpose have been appropriated and made available to the Internal Revenue Service.

(3) **Order of release.** Any written determination or background file document described in paragraph (1) shall be open or available to public inspection in the following order starting with the most recent written determination in each category:

(A) reference written determinations issued under this title;

(B) general written determinations issued after July 4, 1967; and

(C) reference written determinations issued under the Internal Revenue Code of 1939 or corresponding provisions of prior law.

General written determinations not described in subparagraph (B) shall be open to public inspection on written request, but not until after the written determinations referred to in subparagraphs (A), (B), and (C) are open to public inspection.

(4) **Notice that prior written determinations are open to public inspection.** Notwithstanding the provisions of subsections (f)(1) and (f)(3)(A), not less than 90 days before making any portion of a written determination described in this subsection open to public inspection, the Secretary shall issue public notice in the Federal Register that such written determination is to be made open to public inspection. The person who received a written determination may, within 75 days after the date of publication of notice under this paragraph, file a petition in the United States Tax Court (anonymously, if appropriate) for a determination with respect to that portion of such written determination which is to be made open to public inspection. The provisions of subsections (f)(3)(B), (5), and (6) shall apply if such a petition is filed. If no petition is filed, the text of any written determination shall be open to public inspection no earlier than 90 days, and no later than 120 days, after notice is published in the Federal Register.

(5) **Exclusion.** Subsection (d) shall not apply to any written determination described in paragraph (1).

(i) **Special rules for disclosure of Chief Counsel advice.**

(1) **Chief Counsel Advice defined.**

(A) In general. For purposes of this section, the term "Chief Counsel advice" means written advice or instruction, under whatever name or designation, prepared by any national office component of the Office of Chief Counsel which—

(i) is issued to field or service center employees of the Service or regional or district employees of the Office of Chief Counsel; and

(ii) conveys—

(I) any legal interpretation of a revenue provision;

(II) any Internal Revenue Service or Office of Chief Counsel position or policy concerning a revenue provision; or

(III) any legal interpretation of State law, foreign law, or other Federal law relating to the assessment or collection of any liability under a revenue provision.

(B) **Revenue provision defined.** For purposes of subparagraph (A), the term "revenue provision" means any existing or former internal revenue law, regulation, revenue ruling, revenue procedure, other published or unpublished guidance, or tax treaty, either in general or as applied to specific taxpayers or groups of specific taxpayers.

(2) **Additional documents treated as Chief Counsel advice.** The Secretary may by regulation provide that this section shall apply to any advice or instruction prepared and issued by the Office of Chief Counsel which is not described in paragraph (1).

(3) **Deletions for Chief Counsel advice.** In the case of Chief Counsel advice open to public inspection pursuant to this section—

(A) paragraphs (2) through (7) of subsection (c) shall not apply, but

(B) the Secretary may make deletions of material in accordance with subsections (b) and (c) of section 552 of title 5, United States Code, except that in applying subsection (b)(3) of such section, no statutory provision of this title shall be taken into account.

(4) **Notice of intention to disclose.**

(A) No taxpayer specific Chief Counsel advice. In the case of Chief Counsel advice which is written without reference to a specific taxpayer or group of specific taxpayers—

(i) subsection (f)(1) shall not apply; and

(ii) the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, complete any deletions described in subsection (c)(1) or paragraph (3) and make the Chief Counsel advice, as so edited, open for public inspection.

(B) **Taxpayer-specific Chief Counsel advice.** In the case of Chief Counsel advice which is written with respect to a specific taxpayer or group of specific taxpayers, the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, mail the notice required by subsection (f)(1) to each such taxpayer. The notice shall include a copy of the Chief Counsel advice on which is indicated the information that the Secretary proposes to delete pursuant to subsection (c)(1). The Secretary may also delete from the copy of the text of the Chief Counsel advice any of the information described in paragraph (3), and shall delete the names, addresses, and

other identifying details of taxpayers other than the person to whom the advice pertains, except that the Secretary shall not delete from the copy of the Chief Counsel advice that is furnished to the taxpayer any information of which that taxpayer was the source.

(j) **Civil remedies.**

(1) **Civil action.** Whenever the Secretary—

(A) fails to make deletions required in accordance with subsection (c), or

(B) fails to follow the procedures in subsection (g) or (i)(4)(B), the recipient of the written determination or any person identified in the written determination shall have as an exclusive civil remedy an action against the Secretary in the United States Claims Court, which shall have jurisdiction to hear any action under this paragraph.

(2) **Damages.** In any suit brought under the provisions of paragraph (1)(A) in which the Court determines that an employee of the Internal Revenue Service intentionally or willfully failed to delete in accordance with subsection (c), or in any suit brought under subparagraph (1)(B) in which the Court determines that an employee intentionally or willfully failed to act in accordance with subsection (g) or (i)(4)(B), the United States shall be liable to the person in an amount equal to the sum of—

(A) actual damages sustained by the person but in no case shall a person be entitled to receive less than the sum of \$1,000, and

(B) the costs of the action together with reasonable attorney's fees as determined by the Court.

(k) **Special provisions.**

(1) **Fees.** The Secretary is authorized to assess actual costs—

(A) for duplication of any written determination or background file document made open or available to the public under this section, and

(B) incurred in searching for and making deletions required under subsection (c)(1) or (i)(3) from any written determination or background file document which is available to public inspection only upon written request.

The Secretary shall furnish any written determination or background file document without charge or at a reduced charge if he determines that waiver or reduction of the fee is in the public interest because furnishing such determination or background file document can be considered as primarily benefiting the general public.

(2) **Records disposal procedures.** Nothing in this section shall prevent the Secretary from disposing of any general written determination or background file document described in subsection (b) in accordance with established records disposition procedures, but such disposal shall, except as provided in the following sentence, occur not earlier than 3 years after such written determination is first made open to public inspection. In the case of any general written determination described in subsection (h), the Secretary may dispose of such determination and any related background file document in accordance with such procedures but such disposal shall not occur earlier than 3 years after such written determination is first made open to public inspection if funds are appropriated for such purpose before January 20, 1979, or not earlier than January 20, 1979, if funds are not appropriated before such date. The Secretary shall not dispose of any reference written determinations and related background file documents.

(3) **Precedential status.** Unless the Secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent. The preceding sentence

shall not apply to change the precedential status (if any) of written determinations with regard to taxes imposed by subtitle D of this title.

**(l) Section not to apply.**

This section shall not apply to—

- (1) any matter to which section 6104 or 6105 applies, or  
(2) any—

(A) written determination issued pursuant to a request made before November 1, 1976, with respect to the exempt status under section 501(a) of an organization described in section 501(c) or (d), the status of an organization as a private foundation under section 509(a), or the status of an organization as an operating foundation under section 4942(j)(3),

(B) written determination described in subsection (g)(5)(B) issued pursuant to a request made before November 1, 1976,

(C) determination letter not otherwise described in subparagraph (A), (B), or (E) issued pursuant to a request made before November 1, 1976,

(D) background file document relating to any general written determination issued before July 5, 1967, or

(E) letter or other document described in section 6104(a)(1)(B)(iv) issued before September 2, 1974.

**(m) Exclusive remedy.**

Except as otherwise provided in this title, or with respect to a discovery order made in connection with a judicial proceeding, the Secretary shall not be required by any Court to make any written determination or background file document open or available to public inspection, or to refrain from disclosure of any such documents.

In 2000, P.L. 106-554, Sec. 1(a)(7) [which enacted into law Sec. 304(c)(1) of H.R. 5662], amended para. (b)(1) . . . Sec. 1(a)(7) [which enacted into law Sec. 304(c)(2) of H.R. 5662], added "or 6105" after "section 6104" in para. (l)(1), effective 12/21/2000.

Prior to amendment, para. (b)(1) read as follows:

"(1) Written determination. The term 'written determination' means a ruling, determination letter, technical advice memorandum, or Chief Counsel advice. Such term shall not include any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement."

—P.L. 106-554, Sec. 1(a)(7) [which enacted into law Sec. 313(e) of H.R. 5662], added ", any Chief Counsel advice," after "technical advice memorandum" in subpara. (g)(5)(A), effective for any Chief Counsel advice issued more than 90 days after 7/22/98. For special rules, see Sec. 3509(d)(2)-(4) of P.L. 105-206, reproduced below.

In 1999, P.L. 106-170, Sec. 521(a)(2), added a sentence at the end of para. (b)(1), effective 12/17/99.

In 1998, P.L. 105-206, Sec. 3509(a), substituted "technical advice memorandum, or Chief Counsel advice" for "or technical advice memorandum" in para. (b)(1) . . . Sec. 3509(b), redesignated subsecs. (i), (j), (k) and (l) as subsecs. (j), (k), (l) and (m) and added new subsec. (i) . . . Sec. 3509(c)(1), substituted "Except as otherwise provided by subsection (i), the Secretary" for "The Secretary" in para. (f)(1) . . . Sec. 3509(c)(2), substituted "subsection (g) or (i)(4)(B)" for "subsection (g)" each place it appeared in subpara. (j)(1)(B) and para. (j)(2) . . . Sec. 3509(c)(3), substituted "subsection (c)(1) or (i)(3)" for "subsection (c)", in subpara. (k)(1)(B) [as redesignated by Sec. 3509(b) of this Act], effective for any Chief Counsel advice issued more than 90 days after 7/22/98. For special rules, see Sec. 3509(d)(2)-(4) of this Act, which reads as follows:

"(2) Transition rules. The amendments made by this section shall apply to any Chief Counsel advice issued after December 31, 1985, and before the 91st day after the date of the enactment of this Act by the offices of the associate chief counsel for domestic, employee benefits and exempt organizations, and international, except that any such Chief Counsel advice shall be treated as made available on a timely basis if such advice is made available for public inspection not later than the following dates:

"(A) One year after the date of the enactment of this Act, in the case of all litigation guideline memoranda, service center advice, tax litigation bulletins, criminal tax bulletins, and general litigation bulletins.

"(B) Eighteen months after such date of enactment, in the case of field service advice and technical assistance to the field issued on or after January 1, 1994.

"(C) Three years after such date of enactment, in the case of field service advice and technical assistance to the field issued on or after January 1, 1992, and before January 1, 1994.

"(D) Six years after such date of enactment, in the case of any other Chief Counsel advice issued after December 31, 1985.

"(3) Documents treated as Chief Counsel advice. If the Secretary of the Treasury by regulation provides pursuant to section 6110(i)(2) of the Internal Revenue Code of 1986, as added by this section, that any additional advice or instruction issued by the Office of Chief Counsel shall be treated as Chief Counsel advice, such additional advice or instruction shall be made available for public inspection pursuant to section 6110 of such Code, as amended by this section, only in accordance with the effective date set forth in such regulation.

"(4) Chief Counsel advice to be available electronically. The Internal Revenue Service shall make any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act and made available for public inspection pursuant to section 6110 of such Code, as amended by this section, also available by computer telecommunications within 1 year after issuance."

In 1992, P.L. 102-572, Sec. 902(b), effective 10/29/92, relating to Court designation provides as follows:

"(b) Other provisions of law. Reference in any other Federal law or documents to—

"(1) the 'United States Claims Court' shall be deemed to refer to the 'United States Court of Federal Claims'; and

"(2) the 'Claims Court' shall be deemed to refer to the 'Court of Federal Claims'."

In 1987, P.L. 100-203, Sec. 10511, provides rules for fees for requests for ruling, determination, and similar letters. Sec. 10511 of P.L. 100-203 is reproduced in note following Code Sec. 7805.

In 1984, P.L. 98-620, Sec. 103(28)(B), deleted "and the Court of Appeals shall expedite any review of such decision in every way possible" after "practical date" in para. (f)(5), effective 11/8/84 except for cases pending on 11/8/84.

In 1982, P.L. 97-164, Sec. 160(a)(9), substituted "United States Claims Court" for "Court of Claims" in para. (i)(1), effective 10/1/82.

In 1976, P.L. 94-455, Sec. 1201(a), redesignated Code Sec. 6110 as Code Sec. 6111 and added new Code Sec. 6110, effective 11/1/76. Sec. 1201(b) of this Act provides:

"(b) Effect upon pending requests. Any written determination or background file document which is the subject of a judicial proceeding pursuant to section 552 of title 5, United States Code, commenced before January 1, 1976, shall not be treated as a written determination subject to subsection (h)(1), but shall be available to the complainant along with the background file document, if requested, as soon as practicable after July 1, 1976."

**Sec. 6111. Registration of tax shelters.**

**(a) Registration.**

(1) In general. Any tax shelter organizer shall register the tax shelter with the Secretary (in such form and in such manner as the Secretary may prescribe) not later than the day on which the first offering for sale of interests in such tax shelter occurs.

(2) Information included in registration. Any registration under paragraph (1) shall include—

- (A) information identifying and describing the tax shelter,  
(B) information describing the tax benefits of the tax shelter represented (or to be represented) to investors, and  
(C) such other information as the Secretary may prescribe.

**(b) Furnishing of tax shelter identification number; inclusion on return.**

(1) Sellers, etc. Any person who sells (or otherwise transfers) an interest in a tax shelter shall (at such times and in such manner as the Secretary shall prescribe) furnish to each investor who purchases (or otherwise acquires) an interest in such tax shelter from such person the identification number assigned by the Secretary to such tax shelter.

(2) Inclusion of number on return. Any person claiming any deduction, credit, or other tax benefit by reason of a tax shelter shall include (in such manner as the Secretary