

26 CFR Part 301

(T.D. 7845)

**Inspection of Applications for Tax
Exemption and Applications for
Determination Letters for Pension and
Other Plans**

AGENCY: Internal Revenue Service,
Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to public inspection of applications for tax exemption, applications for determination of the qualification of pension and other plans, and other related material. Changes to the applicable law were made by the Employee Retirement Income Security Act of 1974 and the Tax Reform Act of 1976. The regulations provide guidance to the public on how documents may be obtained for inspection, and would affect all persons wishing to inspect the documents, as well as those submitting them.

DATE: The regulations are effective for applications for tax exemption filed after October 31, 1976, and applications for determination letters for pension and other plans filed after September 2, 1974.

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SUPPLEMENTARY INFORMATION:**Background**

On December 30, 1980, the Federal Register published proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 6104(a)(1) of the Internal Revenue Code of 1954 (45 FR 85788). The amendments were proposed to conform the regulations under section 6104(a)(1)(A) to section 1201(d) of the Tax Reform Act of 1976 (90 Stat. 1867), and the regulations under section 6104(a)(1)(B), (C) and (D) to section 1022(g) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 940).

A public hearing was not requested on the regulations. After careful consideration of all comments received regarding the proposed amendments, the amendments are adopted as revised by this Treasury Decision.

Group Exemption Situations

One comment questioned how the regulations apply to requests for information with respect to an organization covered by a group exemption. In this context, a request for information with respect to any organization will be treated as a request for information only on that organization. The Internal Revenue Service's response will provide all disclosable information relating to the organization. If the information received shows that the organization is a subordinate organization covered by a group exemption, the person making the request can then proceed with a request under these regulations for all disclosable information relating to the parent organization upon which the group exemption is based.

Compensation Ranges

Two comments specifically objected to the last sentence of section 301.6104(a)-5 (b)(4) of the proposed regulations. That sentence stated: "Further, a description of the numbers of individuals covered and not covered by a plan, listed by compensation range, does not constitute confidential compensation information." Section 301.6104(a)-5 (b)(4) is intended to describe that information which constitutes confidential compensation information within the meaning of section 6104(a)(1)(C).

The following three sentences are contained in the House Report on ERISA, and relate to section 6104 in general and section 6104(a)(1)(C) in particular:

However, under the bill information contained in these papers and documents from which the compensation of any

participant (or other person) may be ascertained is not to be open to public inspection. (However, all other information in these documents is to be available to the public, including information such as the numbers of individuals covered and not covered in a plan, listed by compensation range.) These rules are to enable plan participants and beneficiaries to obtain the full information needed to enforce their plan rights, pursuant to the new rules established in the bill, and are also to protect the confidentiality of information regarding the financial status of specific individuals.

H.R. Rep. No. 93-807, 93rd Cong., 2d Sess. 162 (1974), 1974-3 (supp.) C.B. 397.

The above quote specifically states congressional intent that compensation ranges are not considered confidential compensation information within the meaning of section 6104(a)(1)(C), and are to be made available to the public under section 6104(a). The above quote additionally points out the Congressional intent in providing plan participants and beneficiaries with full information to enforce their plan rights. Compensation ranges are an important part of many plan applications and allow interested parties to better enforce their plan rights where appropriate. Accordingly, the final regulations retain the provision that compensation ranges do not constitute section 6104(a)(1)(C) material and are, therefore, available to the public to the extent otherwise provided in these regulations.

One comment on compensation ranges also objected to the retroactivity of § 301.6104(a)-5 (b)(4). In addition to the actual language of section 6104(a)(1)(C), the above quoted legislative history put the public on notice that such information would be disclosed to the public. The public was also informed of the disclosure of compensation ranges in the 5300 series of applications completed and filed with the Internal Revenue Service. The instructions for Forms 5300, 5301, 5303 and 5307 specifically state that "the application is open to public inspection if there are more than 25 participants." Also, Forms 5302 and 5310A, which relate to the twenty-five highest paid participating employees, state in the upper right hand corner: "This form (Schedule) is NOT open to Public Inspection." The instructions to Form 5302 specifically refer to section 6104(a)(1)(C) as the source of the nondisclosure of the information included in Form 5302. The statement in the House Report, and the statement in the instructions to Forms 5300, 5301, 5303 and 5307 (in which compensation range information is required in certain circumstances), as well as the specific statement in Forms 5302 and 5310A that it in contrast, is not open to public

inspection gave adequate notice to the applicants that compensation ranges were to be disclosed. Thus, the applicable date of the proposed regulations remains unchanged in the final regulations.

One comment also claimed that compensation ranges may be trade secret information. After careful consideration, it was determined that compensation ranges, except under extraordinary circumstances, cannot be considered trade secret material. The trade secret section of the proposed regulations (section 301.6104(a)-5) is equally applicable to compensation ranges, and serves as a protection for an applicant's trade secret information.

Revocation Letters

One comment claimed there was an inconsistency between § 301.6104(a)-1 (i)(2) and § 301.6104(a)-3 (c)(4) regarding disclosure of letters from the Internal Revenue Service revoking favorable determination letters. The wording of sections 6104(a)(1)(A) and 6104(a)(1)(B) are distinct from each other regarding the scope of disclosure of letters issued by the Internal Revenue Service. These distinctions result in revocation letters regarding pension plans being disclosed (section 6104(a)(1)(B) and section 301.6104(a)-3 (c)(4)) while similar material relating to tax-exempt organizations is not disclosed (section 6104(a)(1)(A) and § 301.6104(a)-1 (i)(2)). Both provisions are retained as proposed.

Definition of "Issued By"

One comment objected to § 301.6104(a)-3(b) of the proposed regulations as unduly limiting the definition of documents "issued by" the Internal Revenue Service, within the meaning of section 6104(a)(1)(B)(iv). This definition has been retained since Congressional intent only extended to those letters or documents issued by the Internal Revenue Service to the applicant, or the applicant's representative.

Plan Participant

One comment objected to § 301.6104(a)-4(c) of the proposed regulations which provided that an administrator, executor, or trustee of the estate of a deceased plan participant automatically qualified as a plan participant for purposes of inspecting material relating to a plan with fewer than 26 participants. This section has been revised to include as plan participants, for purposes of inspecting material relating to a plan with fewer than 26 participants, only those

administrators, executors, or trustees who are receiving benefits or are entitled to receive future benefits under the plan in their official capacity.

Trade Secrets

With regard to material identified in § 301.6104(a)-5, additions of specific time deadlines have been made for organizations to respond to a determination by the Commissioner that information which an organization sought to protect from disclosure will be disclosed.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply and no regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of this regulation is Paul G. Accettura of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department, participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Parts 301.6104(a)-1—301.6104(a)-6

Administrative practice and procedure, Disclosure.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—[AMENDED]

Paragraph 1, Section 301.6104-1 is removed, and the following new sections are added in its place:

§ 301.6104(a)-1 Public inspection of material relating to tax-exempt organizations.

(a) *Application for tax exemption and supporting documents.* If the Internal Revenue Service determines that an organization described in section 501 (c) or (d) is exempt from taxation for any taxable year, the application for tax

exemption upon which the determination is based, together with any supporting documents, is open to public inspection. Some applications for tax exemption have been destroyed and therefore are not available for inspection. For purposes of determining the availability for public inspection, a claim for tax exemption filed to reestablish exempt status after denial thereof under the provisions of section 503 or 504 (as in effect on December 31, 1969), or under the corresponding provisions of any prior revenue law, is considered an application for tax exemption.

(b) *Letters or documents issued by the Internal Revenue Service with respect to an application for tax exemption.* If an application for tax exemption is filed with the Internal Revenue Service after October 31, 1976, and is open to public inspection under paragraph (a) of this section, then any letter or document issued to the applicant by the Internal Revenue Service which relates to the application is also open to public inspection. For rules relating to when a letter or document is issued, see § 301.6110-2(h). Letters or documents to which this paragraph applies include, but are not limited to—

(1) Favorable rulings and determination letters (see § 601.201(n)(1)) issued in response to applications for tax exemption.

(2) Technical advice memoranda (see § 601.201(n)(8)) issued with respect to an approved, or subsequently approved, application for tax exemption, and

(3) Letters issued in response to an application for tax exemption that propose a finding that the organization is not entitled to be exempt from tax, if the organization is subsequently determined, on the basis of the application, to be exempt from tax.

(c) *Requirement of exempt status.* An application for tax exemption, supporting documents, and letters or documents issued by the Internal Revenue Service that relate to the application will not be open to public inspection before the organization filing the application is determined, on the basis of the application, to be exempt from taxation for any taxable year. On the other hand, if the organization is determined to be exempt for any taxable year, the material will not be withheld from public inspection on the ground that the organization is determined not to be exempt for any other taxable year.

(d) *Documents included in the term "application for tax exemption".* For purposes of this section—

(1) *Prescribed application form.* If a form is prescribed for an organization's application for tax exemption, the

application for tax exemption includes the form and all documents and statements the Internal Revenue Service requires to be filed with the form.

(2) *No prescribed application form.* If no form is prescribed for an organization's application for tax exemption, the application for tax exemption includes:

(i) The application letter and a copy of the articles of incorporation, declaration of trust, or other instrument of similar import that sets forth the permitted powers or activities of the organization.

(ii) The bylaws or other code of regulations.

(iii) The latest financial statement showing assets, liabilities, receipts and disbursements.

(iv) Statements showing the character of the organization, the purpose for which it was organized, and its actual activities.

(v) Statements showing sources of income and receipts and the disposition thereof, and whether or not any income or receipts is credited to surplus or may inure to the benefit of any private shareholder or individual, and

(vi) Any other statements or documents the Internal Revenue Service requires to be filed with the application letter.

(3) *Prohibited transactions.* An application for tax exemption does not include a request for a ruling as to whether a proposed transaction is a prohibited transaction under section 503.

(e) *Supporting documents defined.* For purposes of this section, "supporting documents", as used with respect to an application for tax exemption, means any statement or document not described in paragraph (d) of this section that is submitted by an organization in support of its application. For example, a legal brief submitted in support of an application for tax exemption is a supporting document.

(f) *Statement of exempt status.* In addition to having the opportunity to inspect material relating to tax exempt organizations, a person may request a statement setting forth the following information:

(1) The subsection and paragraph of section 501 (or the corresponding provision of any prior revenue law) under which an organization has been determined, on the basis of an application open to public inspection, to qualify for exemption from taxation, and

(2) Whether the organization is currently held to be exempt.

The request for the statement must be made in the same manner as a request for inspection (see § 301.6104(a)-6).

(g) *Withholding of certain information from public inspection.* For rules relating to certain information contained in an application for tax exemption and related material which will be withheld from public inspection, see § 301.6104(a)-5(a).

(h) *Procedures for inspection.* For rules relating to procedures for public inspection of applications for tax exemption and related material, see § 301.6104(a)-6.

(i) *Material not open to public inspection under section 6104 or 6110.* Under section 6110 certain written determinations issued by the Internal Revenue Service are made available for public inspection. Section 6110 does not apply, however, to matters on which the determination of availability for public inspection is made under section 6104. Accordingly, § 301.6110-1(a) describes matters which, for purposes of section 6110, are considered within the ambit of section 6104. Some determination letters and other documents relating to tax exempt organizations that are not open to public inspection under section 6104(a)(1)(A) and this section are nevertheless within the ambit of section 6104 for purposes of section 6110. These determination letters and other documents are therefore not available for public inspection under either section 6104 or section 6110. They include but are not limited to—

(1) Unfavorable rulings or determination letters (see § 601.201(n)) issued in response to applications for tax exemption.

(2) Rulings or determination letters revoking or modifying a favorable determination letter (see § 601.201(n)(6)).

(3) Technical advice memoranda (see § 601.201(n)(9)) relating to a disapproved application for tax exemption or the revocation or modification of a favorable determination letter.

(4) Any letter or document filed with or issued by the Internal Revenue Service relating to whether a proposed or accomplished transaction is a prohibited transaction under section 503.

(5) Any letter or document filed with or issued by the Internal Revenue Service relating to an organization's status as an organization described in section 509(a) or 4942(j)(3), unless the letter or document relates to the organization's application for tax exemption, and

(6) Any other letter or document filed with or issued by the Internal Revenue Service which, although it relates to an organization's tax exempt status as an organization described in section 501(c)

or (d), does not relate to that organization's application for tax exemption, within the meaning of paragraph (d).

§ 301.6104(a)-2 *Public inspection of material relating to pension and other plans.*

(a) *Material open to inspection.* Except as provided in § 301.6104(a)-4 with respect to plans having fewer than 26 participants, an application for a determination letter which is filed with the Internal Revenue Service after September 2, 1974, together with supporting documents filed by the applicant in support of the application, will be open to public inspection under section 6104(a)(1)(B) (i) and (ii). An application for a determination letter and supporting documents will be open to public inspection whether or not the application is withdrawn by the applicant, and whether or not the Internal Revenue Service determines that the plan, account, or annuity to which the application relates is qualified or that any related trust or custodial account is exempt from tax.

(b) *Documents included in the term "application for a determination letter".*—(1) *Employees' plans and individual retirement plans.* For purposes of this section, the term "application for a determination letter" includes the documents that an applicant files with respect to a request that the Internal Revenue Service determine the qualification of—

(i) A pension, profit-sharing, or stock bonus plan under section 401(a).

(ii) An annuity plan under section 403(a).

(iii) A bond purchase plan under section 405(a), or

(iv) An individual retirement account or annuity described in section 408(a).

(b) or (c).

(2) *Tax exempt trusts or custodial accounts.* The term "application for a determination letter" also includes the documents an applicant files with respect to a request that the Internal Revenue Service determine the exemption from tax under section 501(a) of an organization forming part of a plan or account described in subparagraph (1) of this paragraph, or a custodial account described in section 401(f).

(3) *Master, prototype and pattern plans.* The term "application for a determination letter" also includes documents which an applicant files with respect to a request for approval of a master, prototype, pattern or other such plan or account.

(4) *Prescribed forms and application letters.* With respect to an application for a determination letter described in

this paragraph (b) for which an application form is prescribed, the application for a determination letter includes the form and all documents and statements required to be filed in connection with the form. With respect to an application for a determination letter for which no application form is prescribed, the application for a determination letter includes the application letter and all documents and statements the Internal Revenue Service requires to be submitted with the application letter.

(c) *Documents not constituting an "application for a determination letter".* The following are not applications for a determination letter for purposes of this section:

(1) An incomplete application that is returned without action for proper completion.

(2) An application that is returned without action to the applicant for failure to notify all interested parties in accordance with the regulations under section 7476 (relating to declaratory judgments), and

(3) A request for a ruling as to whether a proposed transaction is a prohibited transaction under section 4975.

(d) *Supporting documents.* "Supporting documents", as used with respect to an application for a determination letter which is open to public inspection under this section, means any statement or document submitted in support of the application which is not specifically required by the application form or the Internal Revenue Service. For example, a legal brief submitted in support of an application for a determination letter is a supporting document.

(e) *Applicant.* For purposes of this section, § 301.6104(a)-3 (relating to Internal Revenue Service letters and documents open to public inspection) and § 301.6104(a)-5 (relating to the withholding of certain information from public inspection), an "applicant" includes, but is not limited to, an employer, plan administrator (as defined in section 414(g)), labor union, bank, or insurance company that files an application for a determination letter.

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

(a) *In general.* Except as provided in § 301.6104(a)-4 with respect to plans having fewer than 26 participants, a letter or other document issued by the Internal Revenue Service after September 2, 1974, is open to public

inspection under section 6104(a)(1)(B)(iv) and this section, if it is issued with respect to—

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

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

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

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

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

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

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

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

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

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

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

(d) *Extent letter or document open to public inspection.* A letter or document issued by the Internal Revenue Service is open to public inspection under section 6104(a)(1)(B)(iv) and this section only to the extent it relates directly to the qualification of a plan, account or annuity, the exemption from tax of a related organization or custodial account, or the approval of a master, prototype, pattern or other such plan. Any part of the letter or document which does not directly relate to such a qualification, exemption or approval is not open to public inspection. For example, a letter to an employer which concludes that an employee's plan is not qualified and the related trust is not tax exempt will be open to public inspection. However, that same letter may also assert an income tax deficiency because employer contributions to the trust are, therefore, not deductible. In such a case, that part of the letter relating to the tax deficiency will be deleted before the letter is opened to public inspection.

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

exemption issue raised in the "30-day" letter.

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

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

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

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

(2) *Decreasing number of plan participants.* If a plan having 26 or more participants, as indicated on an annual return or application for a determination letter, subsequently files an annual return indicating fewer than 26 plan participants, then material relating to the plan which is issued or received by the Internal Revenue Service after the date the annual return is filed will be

open to inspection only by plan participants or their authorized representatives. Similarly, if a plan having 26 or more participants as indicated on an annual return or an application for a determination letter, subsequently files an application for a determination letter which indicates fewer than 26 plan participants, then that application and related material, as well as any other material relating to the plan which is received or issued by the Internal Revenue Service after the date of receipt of that application, will be open to inspection only by plan participants or their authorized representatives. In either case, material open to public inspection pursuant to the number of plan participants indicated on previous annual returns or applications for a determination letter will remain open to public inspection.

(3) *Increasing number of plan participants.* If a plan having fewer than 26 plan participants, as indicated on an annual return or application for a determination letter, files a subsequent return or application indicating 26 or more plan participants, all the plan's prior applications and other material received or issued by the Internal Revenue Service after September 2, 1974, will be open to public inspection regardless of the number of plan participants indicated on any prior return or application.

(c) *Plan participant.* Solely for purposes of determining who is a plan participant permitted to inspect material relating to a plan having fewer than 26 participants, the term "plan participant" includes, but is not limited to, former employees (such as certain retired and terminated employees) who have a nonforfeitable right to benefits under the plan. An individual who is merely a beneficiary of an employee or former employee is not a plan participant, unless the individual is a beneficiary of a deceased former employee and is receiving benefits or entitled to receive future benefits under the plan. The term "plan participant" also includes the administrator, executor, or trustee of the estate of a deceased plan participant if such administrator, executor, or trustee is receiving benefits or entitled to receive future benefits under the plan in his or her official capacity. That material may be available for inspection to an individual under this paragraph does not constitute a determination by the Internal Revenue Service that the individual is a plan participant for any purpose other than inspection under section 6104(a)(1)(B).

(d) *Authorized representative.* "Authorized representative" means the

representative of a plan participant designated by the participant in writing to inspect material described in §§ 301.6104(a)-2 and 301.6104(a)-3. The document designating the authorized representative must be signed by the plan participant and must specify that the representative is authorized to inspect the material. The document, or a copy, must be filed with the office of the Internal Revenue Service in which the authorized representative is to inspect the material. A copy which is reproduced by a photographic process need not be certified as a true and correct copy of the original.

§ 301.6104(a)-5 Withholding of certain information from public inspection.

(a) *Tax exempt organizations.—(1) Trade secrets, patents, processes, styles of work, or apparatus.* An organization whose application for tax exemption is open to public inspection under section 6104(a)(1)(A) and § 301.6104(a)-1 may in writing request the withholding of information contained in the application or supporting documents which relates to any trade secret, patent, process, style of work, or apparatus of the organization. The information will be withheld from public inspection if the Commissioner determines that the disclosure of such information would adversely affect the organization. Requests for withholding information from public inspection should be filed with the office with which the organization files the documents containing the information. The request must clearly identify the material desired to be withheld (the document, page, paragraph, and line) and must state why the information should not be open to public inspection. The organization will be notified of the Commissioner's determination as to whether the information will be withheld from public inspection. If the Commissioner determines that the information will be disclosed, the organization will be given 15 days after notification of the Commissioner's decision to contest that decision before the document is disclosed.

(2) *National defense material.* The Internal Revenue Service will withhold from public inspection any information which is submitted by an organization whose application for tax exemption is open to inspection under section 6104(a)(1)(A) and § 301.6104(a)-1, if the Commissioner determines that public disclosure would adversely affect the national defense.

(b) *Pension and other plans.—(1) Applicant's exclusion of certain information.* Except as provided in subparagraph (2) of this paragraph,

information that, in the opinion of the applicant, is of the type described in section 6104(a)(1)(C) or (D) should not be included in an application for a determination letter, supporting documents, or any other document open to inspection under section 6104(a)(1)(B). Accordingly, an applicant should not include in an application for a determination letter or supporting documents confidential compensation information as described in subparagraph (4) of this paragraph. Neither should an applicant include information relating to any trade secret, patent, process, style of work or apparatus, the disclosure of which would be adverse to the applicant.

(2) *Exception for separate document.*

The rule that an applicant should exclude from an application for a determination letter of other documents information of the type in section 6104(a)(1)(C) or (D) does not apply—

(i) In the case of the separate schedule to certain applications for a determination letter which is provided for the purpose of setting forth confidential compensation information (as described in subparagraph (4) of this paragraph) which must be submitted by the applicant.

(ii) If the applicant determines that it is impossible to provide the Internal Revenue Service with sufficient information to support an application for a determination letter without submitting what is believed to be information of the type described in section 6104(a)(1)(C) or (D), or

(iii) If the Internal Revenue Service requests that the applicant submit information of the type described in section 6104(a)(1)(C) and (D).

In a case described in subdivision (ii) or (iii) of this subparagraph, the applicant is to set forth the information in a document separate from the remainder of the application for a determination letter or other documents. The separate document is to state why the information is to be withheld from public inspection under section 6104(a)(1)(C) or (D). If the Internal Revenue Service has not requested the information, the separate document is to also state why it is impossible to provide the Internal Revenue Service sufficient information to support the application for a determination letter without including information which is to be withheld. The separate document should clearly identify the relevant portion of the application for a determination letter or other document (the document, page, paragraph, and line) to which the information set forth in the separate document relates. The Internal Revenue

Service will withhold from public inspection (including inspection by a plan participant or authorized representative) information contained in the separate document if the Commissioner determines that the information is in fact information of the type described in section 6104(a)(1)(C) or (D), and, in the case of information relating to any trade secret, patent, process, style of work or apparatus, the Commissioner further determines that disclosure would be adverse to the applicant. If the Commissioner determines that the information will be disclosed, the organization will be given 15 days after notification of the Commissioner's decision to contest the decision before the document is disclosed.

(3) *National defense material.* The Internal Revenue Service will withhold from public inspection (including inspection by a plan participant or authorized representative) any information which is included in an application for a determination letter or supporting documents if the Commissioner determines that public disclosure would adversely affect the national defense. The information will be withheld whether or not submitted on a separate document pursuant to subparagraph (2) of this paragraph.

(4) *Confidential compensation information.* If an application for a determination letter, supporting document, or related letter or document referred to in section 6104(a)(1)(B) and §§ 301.6104(a)-2 and 301.6104(a)-3 contains information (including aggregate figures) from which an individual's compensation (including deferred compensation) may be ascertained, that information is not open to public inspection (including inspection by a plan participant or authorized representative). Confidential compensation information includes the amount of benefit a specific plan participant may expect to receive at normal or early retirement age and the amount of the employer's contributions under the plan that may be allocated to a specific plan participant. However, so long as a plan has more than one participant, the amount of benefit provided under the plan to plan participants, in general, at normal or early retirement age, or the amount of the employer's contributions under the plan that are allocable to plan participants, in general, does not constitute confidential compensation information. Further, a description of the

numbers of individuals covered and not covered by a plan, listed by compensation range, does not constitute confidential compensation information.

§ 301.6104(a)-6 Procedural rules for inspection.

(a) *Place of inspection; tax exempt organizations and pension and other plans.* Material relating either to tax exempt organizations or to pension and other plans that is open to public inspection under section 6104(a)(1) and § 301.6104(a)-1 through § 301.6104(a)-3 will be made available for inspection at the Freedom of Information Reading Room, National Office, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, and in the office of any district director of internal revenue.

(b) *Request for inspection.*—(1) *Tax exempt organizations and pension and other plans; public inspection.* Material relating to either tax exempt organizations or pension and other plans that is open to public inspection under section 6104(a)(1) and §§ 301.6104(a)-1 through § 301.6104(a)-3 will be available for inspection only upon request. If inspection at the National Office is desired, a request should be made in writing to the Commissioner of Internal Revenue, Attention: Freedom of Information Reading Room, 1111 Constitution Avenue, NW., Washington, D.C. 20224. Requests for inspection in the office of a district director should be made in writing to the district director's office. The request must describe the material to be inspected in reasonably sufficient detail so that Internal Revenue Service personnel can locate the material. If a tax-exempt organization has more than one application for tax exemption open to public inspection, or if a pension or other plan has more than one application for a determination letter open to public inspection, only the most recent application and related material will be made available for inspection unless the request states otherwise. Further, in the case of a pension or other plan, only Internal Revenue Service documents issued or delivered after the date of the filing of the most recent application for a determination letter will be made available for inspection, unless the request states otherwise.

(2) *Pension and other plans; inspection by plan participant or authorized representative.* As described in § 301.6104(a)-4, material relating to plans having fewer than 26 participants is only open to inspection by a plan participant or authorized representative.

In the case of such a plan, the rules described in subparagraph (1) of this paragraph apply. The request for inspection must include satisfactory evidence that the person requesting inspection is a plan participant (see § 301.6104(a)-4(c)) or an authorized representative of such a plan participant within the meaning of § 301.6104(a)-4(d).

(c) *Time and extent of inspection.* A person requesting inspection will be notified when the material will be made available for inspection. The material will be made available for inspection at times that will not interfere with its use by the Internal Revenue Service or exclude other persons from inspecting it. In addition, the Commissioner or district director may limit the number of applications for tax exemption, applications for a determination letter, supporting documents, or letters and documents issued by the Internal Revenue Service that will be made available to any person for inspection on a given date. Inspection will be allowed only in the presence of an Internal Revenue Service employee and only during regular business hours.

(d) *Copies.* Notes may be taken of the material open for inspection. Copies may be made manually or, if a person provides the equipment, photographically at the place of inspection. Photographic copying is subject to reasonable supervision with regard to the facilities and equipment used. A fee will be charged for copies of the material furnished by the Internal Revenue Service. Copies will be certified upon request.

§§ 301.6104-2, 301.6104-3 and 301.6104-4 (Redesignated as §§ 301.6104(b)-1, 301.6104(c)-1, 301.6104(d)-1)

Par. 2 Sections 301.6104-2, 301.6104-3 and 301.6104-4 are redesignated §§ 301.6104(b)-1, 301.6104(c)-1 and 301.6104(d)-1, respectively.

This Treasury Decision is issued under the authority contained in sections 6104(a)(1)(A), 6104(a)(1)(B), and 7805 of the Internal Revenue Code of 1954 (72 Stat. 1660, 88 Stat. 940, 68A Stat. 917; 26 U.S.C. 6104(a)(1)(A), 6104(a)(1)(B), 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: September 14, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

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