

additional disclosure has the right under section 6110(f)(4) to bring a judicial action to attempt to compel such disclosure, and request the recipient of the notice to reply within 20 days by submitting a statement of whether or not the recipient of the notice agrees to the requested disclosure or portion thereof. If all persons to whom a notice is sent pursuant to this paragraph (d)(1) of this section agree to disclose the requested information or any portion thereof, the person seeking such disclosure will be so informed; the written determination or background file document shall be accordingly revised to disclose the information with respect to which an agreement to disclose has been reached. If any of the persons to whom a notice is sent pursuant to this paragraph (d)(1) of this section do not agree to the additional disclosure or do not respond to such notice, the Internal Revenue Service shall within a reasonable time so notify the person requesting such disclosure, and deny the request for additional disclosure.

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

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

(ii) *Actions to obtain identity.* No petition or complaint shall be filed pursuant to section 6110(f)(4) to obtain disclosure of the identity of any person to whom a written determination on which a third-party communication notation has been placed pursuant to §301.6110-4(a) pertains. Such actions shall be brought pursuant to section 6110(d)(3).

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

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

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

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

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

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

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

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

(iii) Written determination issued pursuant to requests submitted before November 1, 1976 with respect to the exempt 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).

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

(v) Determination letters.

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

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

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

(ii) *General written determinations issued before July 5, 1967.* General written determinations issued before July 5, 1967 shall not be subject to inspection until all other written determinations issued in response to requests

postmarked or hand delivered before November 1, 1976 that are open to inspection under this section have been made open to public inspection, and then only if a written request pursuant to § 301.6110-1(c)(4) is made for inspection of the written determination. In this regard, the request for inspection must also contain the section of the Internal Revenue Code in which the requester is interested and the dates of issuance of the written determinations.

(b) *Notice and time requirements, and actions to restrain disclosure—(1) Notice—(i) General rule.* Before a written determination is made open to public inspection and before a particular written determination is subject to inspection in response to the first written request therefor, the Commissioner shall publish in the FEDERAL REGISTER a notice that the written determination is to be made open or subject to inspection. Notices with respect to written determinations, other than those described in paragraph (a)(3)(ii) of this section, shall be published at the earliest practicable time after this regulation is adopted as a Treasury decision. Notices with respect to written determinations subject to inspection upon written request shall be published within a reasonable time after the receipt of the first written request for inspection thereof, but no sooner than the day as of which all other written determinations open to public inspection under this section have been made open to public inspection. Notices with respect to background file documents shall be sent in accordance with the rules in § 301.6110-5(a) and will be mailed by the Internal Revenue Service to the most recent addresses of the persons to whom the background file document relates that are in the written determination file.

(ii) *Sequence of notices.* Notices with respect to written determinations, other than general written determinations issued before July 5, 1967, shall be published in the following order. The first category is notices with respect to reference written determinations issued under the Internal Revenue Code of 1954. The second category is notices with respect to general written determinations issued after July 4, 1967. The third category is notices with respect

to reference written determinations issued under the Internal Revenue Code of 1939 or corresponding provisions of prior law. Within a category, the Commissioner may publish notices individually or for groups of written determinations arranged according to the jurisdictions of the ruling branches in the Office of the Assistant Commissioner (Technical) and the Assistant Commissioner (Employee Plans and Exempt Organizations), as the Commissioner may find reasonable. To the extent practicable, notices published individually shall be published in the reverse order of the issuance of the written determinations for which they are published, starting with the most recent written determination issued. To the extent practicable, each group shall consist of consecutively issued written determinations. Notices for groups shall be published, to the extent practicable, in the reverse order of the time period of issuance of the written determinations in each group, starting with the most recent time period.

(iii) *Contents of notice.* The notice required by paragraph (b)(1)(i) of this section shall:

(A) Identify by subject matter description and dates of issuance the written determinations that the Commissioner proposes to make open or subject to inspection.

(B) State that the written determinations will be made open or subject to inspection pursuant to section 6110(h).

(C) State that the persons to whom the written determinations pertain have the right to seek administrative remedies under paragraph (b)(2)(ii) of this section and to commence judicial proceedings under section 6110(h)(4) within indicated time periods.

(D) State that there exist the possibilities that someone might request additional disclosure under section 6110(f)(4) and that someone might request inspection of a related background file document, and

(E) State that any notice that must be mailed by the Internal Revenue Service will be sent to the most recent address of the person to whom the notice must be sent that is in the relevant written determination file.

(2) *Actions to restrain disclosure—(i) Information on written determinations de-*

scribed by notice. Any person may, within 15 days after the Commissioner publishes in the FEDERAL REGISTER a notice of intention to disclose a written determination under section 6110(h), request the Internal Revenue Service to provide certain information. This information includes whether any of the written determinations described by the notice is one that was issued to the person requesting this information. The Internal Revenue Service will also inform the person whether any of the written determinations described by the notice is one that was issued to a person with respect to whom the person requesting this information is a successor in interest executor or authorized representative. However, in order to do so, the Internal Revenue Service must be given the name and taxpayer identifying number of this other person and documentation of the relationship between that person and the person requesting the information. If the person requesting this information is a person to whom a written determination described by the notice pertains, or a successor in interest, executor, or authorized representative of that person, the Internal Revenue Service will also provide the person with a copy of the written determination on which is indicated the material that the Commissioner proposes to delete under section 6110(c) and any substitution proposed to be made therefor.

(ii) *Administrative remedies.* Any person to whom a written determination described by the notice in the FEDERAL REGISTER pertains, and any successor in interest, executor or authorized representative of that person may pursue the administrative remedies described in this paragraph (b)(2)(ii). If after receiving the information described in paragraph (b)(2)(i) of this section, the person pursuing these administrative remedies desires to protest the disclosure of certain information in the written determination, that person must within 35 days after the notice is published submit a written statement identifying those deletions not made by the Internal Revenue Service which the person believes should have been made. The person pursuing these administrative remedies must also submit a copy of the version of the written

determination proposed to be open or subject to inspection on which that person indicates, by the use of brackets, the deletions which the person believes should have been made. The Internal Revenue Service shall, within 20 days after receipt of the response by the person pursuing these administrative remedies, mail to that person its final administrative conclusion with respect to the deletions to be made.

(iii) *Judicial remedy.* Except as provided in paragraph (b)(2)(iv) of this section, any person permitted to resort to administrative remedies under paragraph (b)(2)(ii) of this section may, if that person proposed any deletion not made under section 6110(c) by the Commissioner, file a petition in the United States Tax Court under section 6110(h)(4) for a determination with respect to the proposed deletion. If appropriate, the petition may be filed anonymously. Any petition filed under section 6110(h)(4) must be filed within 75 days after the date on which the Commissioner publishes in the FEDERAL REGISTER the notice of intention to disclose required under section 6110(h)(4).

(iv) *Limitations on right to bring judicial actions.* No petition shall be filed under section 6110(h)(4) unless the administrative remedies provided by paragraph (b)(2)(ii) of this section have been exhausted. However, under two circumstances the petition may be filed even though the administrative remedies have not been exhausted. The first circumstance is if the petitioner requests the information described in paragraph (b)(2)(i) of this section within 15 days after the notice of intention to disclose is published in the FEDERAL REGISTER, but does not receive it within 30 days after the notice is published. The other circumstance is if the petitioner submits the statement of deletions within 35 days after the notice is published, but does not receive the final administrative conclusion of the Internal Revenue Service within 65 days after the notice is published. No judicial action with respect to any written determination shall be commenced under section 6110(h)(4) by any person who has received a notice with respect to the written determination

under paragraph (b)(2)(v) of this section.

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

(vi) *Intervention.* Any person who is entitled to receive notice under paragraph (b)(2)(v) of this section has the right to intervene in any action brought under this paragraph (b)(2). If appropriate, this person shall be permitted to intervene anonymously.

(vii) *Background file documents.* The following qualifications of the rules in § 301.6110-5(b) apply with respect to the restraint of disclosure of background file documents related to written determinations to which this section applies. First, the administrative remedies described in §§ 601.105 (b)(5)(iii)(i) and 601.201(e)(11) of this chapter do not apply. Second, the rule in §§ 601.105(b)(5)(vi)(f) and 601.201(e)(16) that the Internal Revenue Service will not consider the deletion of material not proposed for deletion prior to the issuance of the written determination does not apply.

(3) *Time at which open to public inspection—(i) General rule.* Except as otherwise provided in paragraph (b)(3)(ii) of this section, the text of any written determination open to public inspection or available for inspection upon written request under section 6110(h) shall be made open to or available for inspection no earlier than 90 days and no later than 120 days after the date on which the Commissioner publishes in the FEDERAL REGISTER the notice of intention to disclose required under section 6110(h)(4). However, if an

action is brought under section 6110(h)(4) to restrain disclosure of any portion of a written determination, the disputed portion of that written determination shall be made open to or available for inspection under paragraph (b)(3)(ii) of this section.

(ii) *Limitation on account of court order.* The portion of the text of any written determination that was subject to an action under section 6110(h)(4) to restrain disclosure in which the court determined that the 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 that portion of the text of that written determination be made open to or available for inspection earlier than 90 days after the date on which the Commissioner publishes in the FEDERAL REGISTER the notice of intention to disclose required by section 6110(h)(4) and paragraph (b)(1) of this section. This 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 which a court orders open to public inspection or subject to inspection upon written request under section 6110(f)(4) shall be open or subject to inspection within such time as the court provides.

(iii) *Background file documents.* The rules in § 301.6110-5(c)(2)(ii) do not apply with respect to the time at which background file documents related to written determinations to which this section applies are subject to inspection.

[T.D. 7548, 43 FR 20791, May 15, 1978, as amended by T.D. 8939, 66 FR 2819, Jan. 12, 2001]

§ 301.6110-7 Miscellaneous provisions.

(a) *Disposition of written determinations and background file documents—(1) Reference written determinations.* The Internal Revenue Service shall not dispose of any reference written determinations or related background file documents. The Commissioner may reclassify reference written determinations as general written determinations if the classification as reference was erroneous or if the Commissioner determines that such written determination no longer has any significant

reference value. Notwithstanding the preceding sentence, the Commissioner shall not classify as a general written determination any written determination which is determined to be the basis for a published revenue ruling unless such revenue ruling is obsolete, revoked, superseded or otherwise held to have no effect.

(2) *General written determinations.* The Internal Revenue Service may dispose of general written determinations and any background file document relating to such written determination pursuant to its established records disposition procedures. Disposition of a written determination shall not occur earlier than 3 years after the date on which such written determination is made open to public inspection or available for inspection upon written request. Disposition of a background file document shall not occur earlier than 3 years after the date on which the related written determination is made open to public inspection or available for inspection upon written request.

(b) *Precedential status of written determinations open to public inspection.* A written determination may not be used or cited as precedent, but the rule set forth in this paragraph shall not apply to change the precedential status, if any, of written determinations issued with respect to taxes imposed by subtitle D of the Internal Revenue Code of 1954.

(c) *Civil remedies—(1) Liability for failure to make deletions or to conform to time limitations—(i) Creation of remedy.* An exclusive remedy against the Commissioner shall exist in the Court of Claims for—

(A) The person to whom the written determination pertains whenever the Commissioner fails to act in accordance with the time requirements of section 6110(g), and

(B) The person to whom the written determination pertains and any person identified in such written determination whenever the Commissioner fails to make deletions required by section 6110(c) if as a consequence of such failure there is disclosed the identity of such person or other information with respect to such person that is required