

River District in Florida. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Indian River Grapefruit Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 912.207 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Indian River Grapefruit Committee during the period August 1, 1967, through July 31, 1968, will amount to \$25,000.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each handler in accordance with § 912.41, is fixed at \$0.005 per standard packed box of grapefruit.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of grapefruit are now being made, (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment herein fixed shall be applicable to all assessable grapefruit handled during the aforesaid period, and (3) such period began on August 1, 1967, and said rate of assessment will automatically apply to all such grapefruit beginning with such date.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: November 17, 1967.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 67-13693; Filed, Nov. 21, 1967; 8:46 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of International Commerce, Department of Commerce

SUBCHAPTER B—EXPORT REGULATIONS [10th Gen. Rev. of Export Regs., Amdt. 41]

PART 379—EXPORT CLEARANCE AND DESTINATION CONTROL

General Requirements

Part 379 of the Code of Federal Regulations is amended as set forth below:

Section 379.1(a) (3) is revised to read as follows:

§ 379.1 General export clearance requirements.

(a) *Exports by water or air carrier.*

(3) A shipment to Canada or to Country Group S, T, or V does not require the submission of a Shipper's Export Declaration if the shipment is valued at less than \$100 and is not made under the provisions of General License GLV or a validated export license. As used in this subparagraph (3), a "shipment" is defined as all of the commodities classified under a single seven-digit Schedule B Number that are shipped on the same exporting carrier from one exporter to one importer.

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023; E.O. 10945, 28 F.R. 4487, 3 CFR 1959-63 Comp.; E.O. 11038, 27 F.R. 7003, 3 CFR 1959-63 Comp.)

Effective date: November 16, 1967.

RAUER H. MEYER,
Director,
Office of Export Control.

[F.R. Doc. 67-13674; Filed, Nov. 21, 1967; 8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

Subpart D—Food Additives Permitted in Food for Human Consumption

NICKEL SULFATE

Sections 121.242 *Nickel sulfate* and 121.1122 *Nickel sulfate* are hereby deleted. These regulations, which established tolerances for residues of nickel sulfate in the bran of wheat and oats to be ingested as or converted to food or feed, are obsolete since the U.S. Department of Agriculture's experimental permit under which in part they were issued expired February 15, 1967.

(Secs. 409, 701(a), 52 Stat. 1055, 72 Stat. 1785; 21 U.S.C. 348, 371(a))

Dated: November 15, 1967.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 67-13709; Filed, Nov. 21, 1967; 8:47 a.m.]

SUBCHAPTER C—DRUGS

PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

Tetracycline-Nystatin for Oral Suspension

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357), and delegated by him to the Commissioner of Food and Drugs (21 CFR 2.120), § 146c.236(c) is revised to read as follows to provide for an extension of the maximum expiration date for the subject antibiotic drug:

§ 146c.236 Tetracycline-nystatin for oral suspension.

(c) It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

Notice and public procedure and delayed effective date are unnecessary prerequisites to the promulgation of this order, and I so find, since the change provided for by this amendment cannot be applied to any specific product unless its manufacturer has supplied adequate data regarding that article.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: November 16, 1967.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 67-13710; Filed, Nov. 21, 1967; 8:47 a.m.]

PART 148b—AMPHOTERICIN

Amphotericin B; Amphotericin B Cream

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and delegated by him to the Commissioner of Food and Drugs (21 CFR 2.120), Part 148b is amended to effect a technical change in the assay procedure for amphotericin

B and a cross-reference change in the regulation for amphotericin B cream. Accordingly, §§ 148b.1(b) (2) (i) and (ii) and 148b.5(b) are revised to read as follows:

§ 148b.1 Amphotericin B.

(b) * * *

(2) *Amphotericin A content*—(i) *Amphotericin A*. Dry approximately 20 milligrams of the amphotericin A working standard as described in § 141a.5(a) of this chapter. Accurately weigh the dried working standard and quantitatively transfer into a 200-milliliter volumetric flask. Add exactly 20.0 milliliters of dimethyl sulfoxide and dissolve. Make to mark with methyl alcohol and mix thoroughly. Pipette 4.0 milliliters of this solution into a 50-milliliter volumetric flask. Add methyl alcohol to mark and mix thoroughly.

(ii) *Amphotericin B*. Dry approximately 50 milligrams of the amphotericin B working standard as described in § 141a.5(a) of this chapter. Accurately weigh the dried working standard and quantitatively transfer into a 50-milliliter volumetric flask and proceed as directed in subdivision (i) of this subparagraph.

§ 148b.5 Amphotericin B cream.

(b) *Tests and methods of assay; potency*. Proceed as directed in § 148b.4 (b) (1). The amphotericin B content is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of milligrams of amphotericin B per gram that it is represented to contain.

This order merely provides a technical change in the assay procedure for amphotericin B and a cross-reference change in the regulation for amphotericin B cream and raises no points of controversy; therefore, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: November 16, 1967.

J. K. KIRK,
Associate Commissioner
for Compliance.

[P.R. Doc. 67-13711; Filed, Nov. 21, 1967; 8:48 a.m.]

PART 148f—GRAMICIDIN
PART 148o—PAROMOMYCIN
Miscellaneous Amendments

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and delegated by him to the Commissioner of Food and Drugs (21 CFR 2.120), Parts 148f and 148o of the antibiotic-drug regulations are amended as follows to effect miscellaneous editorial and technical changes:

§ 148f.1 [Amended]

1. In § 148f.1 *Gramicidin*, paragraph (b) (6) is amended by changing "0.02" to "0.05" in the first and second sentences.

2. Section 148o.1(b) (6) is revised to read as follows:

§ 148o.1 Paromomycin sulfate.

(b) * * *

(6) *Residue on ignition*. Proceed as directed in § 141e.401(g) of this chapter.

3. Section 148o.2(b) (1) is revised to read as follows:

§ 148o.2 Paromomycin sulfate capsules.

(b) *Tests and methods of assay*—(1) *Potency*. Proceed as directed in § 148o.1 (b) (1), except prepare a stock solution of convenient concentration by pooling the entire contents of a representative number of capsules in an appropriately-sized volumetric flask and dissolve with 0.1M potassium phosphate buffer, pH 8.0. The paromomycin content is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of milligrams of paromomycin that each capsule is represented to contain.

4. Section 148o.3(a) (1) is revised to read as follows:

§ 148o.3 Paromomycin sulfate syrup.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity*. Paromomycin sulfate syrup contains the equivalent of 25 milligrams of paromomycin per milliliter. It may contain one or more suitable and harmless solvents, flavorings, colorings, preservatives, and buffers in water. Its pH is not less than 7.5 and not more than 8.5. The paromomycin sulfate used conforms to the requirements of § 148o.1(a) (1) (i), (ii), (iv), (v), and (vi). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms

to the standards prescribed therefor by such official compendium.

Since the amendments hereina are merely of a minor technical or editorial nature and raise no points of controversy, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: November 16, 1967.

J. K. KIRK,
Associate Commissioner
for Compliance.

[P.R. Doc. 67-13712; Filed, Nov. 21, 1967; 8:48 a.m.]

Title 36—PARKS, FORESTS,
AND MEMORIALS

Chapter III—Corps of Engineers,
Department of the Army

PART 311—PUBLIC USE OF CERTAIN
RESERVOIR AREAS

J. Percy Priest Reservoir Area, Tenn.

The Secretary of the Army having determined that the use of J. Percy Priest Reservoir Area, Stones River, Tenn., by the general public for boating, swimming, bathing, fishing, and other recreational purposes will not be contrary to the public interest and will not be inconsistent with the operation and maintenance of the reservoir for its primary purposes, hereby prescribes rules and regulations for its public use, pursuant to the provisions of section 4 of the Flood Control Act of 1944, as amended (76 Stat. 1195), adding the reservoir to the list in § 311.1, as follows:

§ 311.1 Areas covered.

TENNESSEE

J. Percy Priest Reservoir Area, Stones River.

[Regs., Oct. 27, 1967, ENGOW-OM] (Sec. 4, 58 Stat. 889, as amended; 16 U.S.C. 460d)

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[P.R. Doc. 67-13677; Filed, Nov. 21, 1967; 8:45 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury SUBCHAPTER H—INTERNAL REVENUE PRACTICE

PART 601—STATEMENT OF PROCEDURAL RULES

Republication

In order to facilitate its distribution and use, Part 601 of Chapter I of Title 26, Code of Federal Regulations is hereby republished. This republication is a compilation reflecting amendments to such part subsequent to January 1, 1961 and includes the latest amendment to the part dated September 14, 1967 (32 F.R. 13058).

The compilation as set forth below contains no substantive changes.

SHELDON S. COHEN,
Commissioner of Internal Revenue.

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- 601.521 Requirements for conference and representation in conference.
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Subpart F—Rules, Regulations, and Forms

- 601.601 Rules and regulations.
- 601.602 Forms and instructions.

Subpart G—Records

- 601.701 Publicity of information.
- 601.702 Publication and public inspection.

AUTHORITY: The provisions of this Part 601 issued under 5 U.S.C. 301 and 552.

Subpart A—General Procedural Rules § 601.101 Introduction.

(a) *General.* The Internal Revenue Service is a branch of the Treasury Department under the immediate direction of the Commissioner of Internal Revenue. The Commissioner has general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue and also of other functions relating to the administration and enforcement of laws applicable to alcohol and certain firearms which are in addition to those related to taxes. The Internal Revenue Service is the agency by which these functions are performed. Within an internal revenue district the internal revenue laws are administered by a district director of internal revenue. The Director of International Operations administers the internal revenue laws applicable to taxpayers residing or doing business abroad, foreign taxpayers deriving income from sources within the United States and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations. For purposes of these procedural rules any reference to a district director or a district office includes the Director of International Operations or the Office of International Operations, if appropriate. Generally, the procedural rules of the Service are based on the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954, and the procedural rules in this part apply to the taxes imposed by both Codes except to the extent specifically stated or where the procedure under one Code is incompatible with the procedure under the other Code. Reference to sections of the Code are references to the Internal Revenue Code of 1954, unless otherwise expressly indicated.

(b) *Scope.* This part sets forth the procedural rules of the Internal Revenue Service respecting all taxes administered by the Service, and supersedes the previously published statement (26 CFR (1949 ed., Part 300-End) Parts 600 and 601) with respect to such procedural rules. Subpart A provides a descriptive statement of the general course and method by which the Service's functions are channeled and determined, insofar as such functions relate generally to the assessment and collection of internal revenue taxes. Certain provisions special to particular taxes are separately described in Subpart D of this part. Conference and practice requirements of the Internal Revenue Service are contained in Subpart E of this part. Specific matters not generally involved in the assessment and collection functions are separately described in Subpart B of this part. A description of the rulemaking functions of the Treasury Department with respect to internal revenue tax matters is contained in Subpart F of this part. The procedural rules of the Service with respect to distilled spirits, wines,

beer, cigars, cigarettes, and cigarette papers and tubes, and certain firearms are described in Subpart C of this part. Subpart G of this part relates to matters of official record in the Internal Revenue Service and the extent to which records and documents are subject to publication or open to public inspection. This part does not contain a detailed discussion of the substantive provisions pertaining to any particular tax or the procedures relating thereto, and for such information it is necessary that reference be made to the applicable provisions of law and the regulations promulgated thereunder. The regulations relating to the taxes administered by the Service are contained in Titles 26 and 27 of the Code of Federal Regulations.

§ 601.102 Classification of taxes collected by the Internal Revenue Service.

(a) *Principal divisions.* Internal revenue taxes fall generally into the following principal divisions:

- (1) Taxes collected by assessment.
- (2) Taxes collected by means of revenue stamps.

(b) *Assessed taxes.* Taxes collected principally by assessment fall into the following two main classes:

- (1) Taxes within the jurisdiction of the Tax Court of the United States. These include:

(i) Income and profits taxes imposed by chapters 1 and 2 of the 1939 Code and taxes imposed by subtitle A of the 1954 Code, relating to income taxes.

(ii) Estate taxes imposed by chapter 3 of the 1939 Code and chapter 11 of the 1954 Code.

(iii) Gift tax imposed by chapter 4 of the 1939 Code and chapter 12 of the 1954 Code.

(2) Taxes not within the jurisdiction of the Tax Court of the United States. Taxes not imposed by chapter 1, 2, 3, or 4 of the 1939 Code or subtitle A or chapter 11 or 12 of the 1954 Code are within this class, such as:

- (i) Employment taxes.
- (ii) Various sales taxes collected by return.

(iii) Miscellaneous excise taxes collected by return, and

(iv) Miscellaneous excise taxes collected by sale of revenue stamps.

(3) The difference between these two main classes is that only taxes described in subparagraph (1) of this paragraph, i.e., those within the jurisdiction of the Tax Court, may be contested before an independent tribunal prior to payment. Taxes of both classes may be contested by first making payment, filing claim for refund, and then bringing suit to recover if the claim is disallowed or no decision is rendered thereon within six months.

(c) *Stamp taxes.* Taxes collected by means of revenue stamps may in special circumstances be collected by assessment, but references hereinafter to the assessment process do not contemplate taxes ordinarily collectible by means of stamps, except as specially stated. For provisions special to taxes collected by means of revenue stamps, see § 601.404.

Taxes collectible by assessment may be collected by suit without assessment, but this is seldom done.

§ 601.103 Summary of general tax procedure.

(a) *Collection procedure.* The Federal tax system is basically one of self-assessment. In general each taxpayer (or person required to collect and pay over the tax) is required to file a prescribed form of return which shows the facts upon which tax liability may be determined and assessed. Generally, the taxpayer must compute the tax due on the return and make payment thereof on or before the due date for filing the return. If the taxpayer fails to pay the tax when due, the district director of internal revenue or the director of the regional service center after assessment issues a notice and demands payment within 10 days from the date of the notice. In the case of wage earners and nonresident aliens, the income tax is collected in large part through withholding at the source. Another means of collecting the income tax is through payments on declarations of estimated tax which are required by law to be filed by certain individual and corporate taxpayers. Neither withholding nor a declaration of estimated tax relieves a taxpayer from the duty of filing a return otherwise required. Certain excise taxes are collected by the sale of internal revenue stamps.

(b) *Examination and determination of tax liability.* After the returns are filed in the office of the district director of internal revenue or in the office of the director of a regional service center, they are sorted, classified, and processed. Many of these returns are selected for examination. If adjustments are proposed with which the taxpayer does not agree, he is ordinarily afforded certain appeal rights, including an opportunity to discuss the proposed adjustments (except mathematical errors) in a conference in the district director's office. If this conference results in agreement on the proposed adjustments, the taxpayer is requested to execute an agreement form. If the tax involved is an income, profits, estate, or gift tax, and if the taxpayer waives restrictions on the assessment and collection of the tax (see § 601.105(b)), the deficiency will be immediately assessed.

(c) *Disputed liability—(1) General.* If the conference on the proposed adjustments does not result in agreement, the taxpayer is given an opportunity to request that his case be considered by the regional Appellate Division, provided that Division has jurisdiction (see § 601.106(a)(3)). If the taxpayer requests such consideration, the case will be referred to the regional Appellate Division where the taxpayer may have another conference. The determination of tax liability by the Appellate Division is final insofar as the taxpayer's appellate rights within the Service are concerned. Upon protest of cases under the jurisdiction of the Director of International Operations exclusive settlement authority is

vested in the regional Appellate Division having jurisdiction of the place where the taxpayer requests the Appellate Division conference. If the taxpayer does not specify a location for the conference, or if the location specified is outside the territorial limits of the regional Appellate Divisions, the Washington, D.C., branch office of the Appellate Division for the Mid-Atlantic region assumes jurisdiction. The fact that conferences were held by the Office of International Operations either before or after the receipt of a protest does not foreclose a taxpayer from having the Appellate Division consider his case.

(2) *Petition to the Tax Court of the United States.* In the case of income, profits, estate, and gift taxes, before a deficiency may be assessed a statutory notice of deficiency (commonly called a "90-day letter") must be sent to the taxpayer by certified mail or registered mail unless the taxpayer waives this restriction on assessment. See, however, § 601.105(h) and § 601.109 for exceptions. The taxpayer may then file a petition for a redetermination of the proposed deficiency with the Tax Court of the United States within 90 days from the date of the mailing of the statutory notice. If the notice is addressed to a person outside the States of the Union and the District of Columbia, the period within which a petition may be filed in the Tax Court is 150 days in lieu of 90 days. In other words, the taxpayer has the right in respect of these taxes to contest any proposed deficiency before an independent tribunal prior to assessment or payment of the deficiency. Unless the taxpayer waives the restrictions on assessment and collection after the date of the mailing of the statutory notice, no assessment or collection of a deficiency (not including the correction of a mathematical error) may be made in respect of these taxes until the expiration of the applicable period or, if a petition is filed with the Tax Court, until the decision of the Court has become final. If, however, the taxpayer makes a payment with respect to a deficiency, the amount of such payment may be assessed. See, however, § 601.105(h). If the taxpayer fails to file a petition with the Tax Court within the applicable period, the deficiency will be assessed upon the expiration of such period and notice and demand for payment of the amount thereof will be mailed to the taxpayer. If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by a final decision of the Tax Court will be assessed and is payable upon notice and demand. There are no restrictions on the timely assessment and collection of the amount of any deficiency determined by the Tax Court, and a petition for review of the Court's decision will not stay the assessment and collection of the deficiency so determined, unless on or before the time the petition for review is filed the taxpayer files with the Tax Court a bond in a sum fixed by the Court not exceeding twice the portion of the deficiency in respect of which the

petition for review is filed. No part of an amount determined as a deficiency but disallowed as such by a decision of the Tax Court which has become final may be assessed or collected by levy or by proceeding in court with or without assessment.

(3) *Claims for refund.* After payment of the tax a taxpayer may, within the applicable period of limitations, contest the assessment by filing with the district director a claim for refund of all or any part of the amount paid, except with respect to certain taxes determined by the Tax Court, the decision of which has become final. If the claim is allowed, the overpayment of tax and allowable interest thereon will be credited against other liabilities of the taxpayer, or will be refunded to the taxpayer. Generally, if the claim for refund is rejected in whole or in part, the taxpayer is notified of the rejection by certified mail or registered mail. He may then bring suit in the United States District Court or in the United States Court of Claims for recovery of the tax. Suit may not be commenced before the expiration of six months from the date of filing of the claim for refund, unless a decision is rendered thereon within that time, nor after the expiration of two years from the date of mailing by certified mail or registered mail to the taxpayer of a notice of the disallowance of the part of the claim to which the suit relates. Under the 1954 Code, the 2-year period of limitation for bringing suit may be extended for such period as may be agreed upon in a properly executed Form 907. Also, under the 1954 Code, if the taxpayer files a written waiver of the requirement that he be sent a notice of disallowance, the 2-year period for bringing suit begins to run on the date such waiver is filed. See section 6532(a) of the Code.

§ 601.104 Collection functions.

(a) *Collection methods—(1) Returns.* Generally, an internal revenue tax assessment is based upon a return required by law or regulations to be filed by the taxpayer upon which he himself computes the tax in the manner indicated by the return. If a taxpayer fails to make a return it may be made for him by a district director or other duly authorized officer or employee. See section 6020 of the Code and the regulations thereunder. Returns must be made on the forms prescribed by the Internal Revenue Service. Forms are obtainable at the principal and branch offices of district directors of internal revenue. Forms are generally mailed to persons whom the Service has reason to believe may be required to file returns, but failure to receive a form does not excuse failure to comply with the law or regulations requiring a return. Returns, supplementary returns, statements or schedules, and the time for filing them, may sometimes be prescribed by regulations issued under authority of law by the Commissioner with the approval of the Secretary of the Treasury or his delegate. In the case of certain individual income

taxpayers having gross income from specified sources of less than \$10,000, a special form (Form 1040A) is prescribed upon which the taxpayer may set forth the information necessary to a determination of his tax liability. A taxpayer filing a return on Form 1040A shall compute the tax and transmit with the return any unpaid balance of tax, except that if his income was less than \$5,000 he may elect to have the Internal Revenue Service compute the tax and mail him a notice stating the amount of tax due. A husband and wife may make a single income tax return jointly. Certain affiliated groups of corporations may file consolidated income tax returns. See section 1501 of the Code and the regulations thereunder.

(2) *Withholding of tax at source.* Withholding at the source of income payments is an important method used in collecting taxes. For example, in the case of wage earners, the income tax is collected in large part through the withholding by employers of taxes on wages paid to their employees. The tax withheld at the source on wages is applied as a credit in payment of the individual's income tax liability for the taxable year. In no case does withholding of the tax relieve an individual from the duty of filing a return otherwise required by law. The chief means of collecting the income tax due from nonresident alien individuals and foreign corporations not engaged in trade or business within the United States is the withholding of the tax by persons paying or remitting the income to the recipients. The tax withheld is allowed as a credit in payment of the tax imposed on such nonresident alien individuals and foreign corporations.

(3) *Declarations of estimated tax.* Any individual who may reasonably expect to receive gross income for the taxable year from wages or from sources other than wages, in excess of amounts specified by law, or who can reasonably expect his estimated tax to be \$40 or more, is required to file a declaration of estimated income tax. Payments of estimated tax are applied in payment of the tax for the taxable year. A husband and wife may make a single declaration jointly, and the amount of the estimated tax paid on the declaration may be applied in payment of the income tax liability of either spouse in any proportion they may specify. For taxable years ending on or after December 31, 1955, the law requires a declaration of estimated tax by certain corporations. See section 6016 of the Code.

(4) *Collection by sale of revenue stamps.* Certain taxes are collected by sale of revenue stamps. These taxes fall into three general classes: Documentary stamp taxes, commodity stamp taxes, and occupational stamp taxes. The documentary and commodity stamp taxes are paid by having affixed to the document, package, container, etc., in respect to which the tax is imposed, internal revenue stamps in the amount equal to the tax due and by canceling such stamps in the manner prescribed. Pay-

ment of occupational taxes is evidenced by posting or displaying a special occupational tax stamp on the premises where the business is operated. In certain situations where it is not practicable to collect the tax by stamp, for example, where the instrument or commodity subject to stamp tax is no longer in existence or for other reasons cannot be stamped or where it is discovered that an occupational stamp tax was due for a prior taxable year, the tax may be collected by assessment. For special provisions applicable to stamp taxes, see § 601.404.

(5) *Collection of tax by another person.* Certain miscellaneous excise taxes are imposed on the person making the payment for telephone service, air transportation, and other facilities or services. Such taxes are required to be collected by the telephone company, airline, or other person receiving the payment. All taxes collected in this manner are held by the collecting agent in trust for the United States until paid over to the district director of internal revenue. If the person from whom the tax is required to be collected refuses to pay it, or if for any reason it is impossible for the collecting agency to collect the tax from such person, the collecting agency is required to report the facts to the district director of internal revenue, and the tax will then be collected by direct assessment against the person failing or refusing to pay the tax to the collecting agent. For special provisions applicable to excise taxes collected by another person, see § 601.403.

(b) *Extension of time for filing returns.* Under certain circumstances the Commissioner is authorized to grant a reasonable extension of time for filing a return or declaration. This authority has been delegated to the several district directors of internal revenue. The maximum period for extensions cannot be in excess of six months, except in the case of taxpayers who are abroad. With an exception in the case of estate tax returns, written application for extension must be received by the district director on or before the date prescribed by law for filing the return or declaration. On or before the last date prescribed by law for filing its income tax return, a corporation may obtain an automatic three-month extension of time for filing the income tax return by filing Form 7004 and paying an estimated amount not less than would be required as the first installment of tax due should the corporation elect to pay the tax in installments. An extension of time for filing a declaration of estimated tax (generally limited to a period of not more than 15 days) automatically extends the time for paying the estimated tax (without interest) for the same period.

(c) *Enforcement procedure—(1) General.* Taxes shown to be due on returns, deficiencies in taxes, additional or delinquent taxes to be assessed, and penalties, interest, and additions to taxes, are recorded by the district director or the director of the regional service center as "assessments." Under the law an assessment is prima facie correct for

all purposes. Generally, the taxpayer bears the burden of disproving the correctness of an assessment. Upon assessment, the district director is required to effect collection of any amounts which remain due and unpaid. Generally, payment within 10 days from the date of the notice and demand for payment is requested; however, payment may be required in a shorter period if collection of the tax is considered to be in jeopardy.

(2) *Levy.* If a taxpayer neglects or refuses to pay any tax within the period provided for its payment, it is lawful for the district director to make collection by levy on the taxpayer's property. See section 6331 of the Code. No suit for the purpose of restraining the assessment or collection of an internal revenue tax may be maintained in any court, except to restrain the assessment or collection of income, estate, or gift taxes during the period within which the assessment or collection of deficiencies in such taxes is prohibited. See section 7421 of the Code. Property taken under authority of any revenue law of the United States is irrepleviable. 28 U.S.C. 2463.

(3) *Liens.* The United States' claim for taxes is a lien on the taxpayer's property at the time of assessment. Such lien is not valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice has been filed by the district director. Despite such filing, the lien is not valid with respect to certain securities as against any purchaser of such security who, at the time of purchase, did not have actual notice or knowledge of the existence of such lien and as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien. Certain motor vehicle purchases are similarly protected. Even though a notice of lien has been filed, certain other categories are afforded additional protection. These categories are: Retail purchases, casual sales, possessory liens, real property taxes and property assessments, small repairs and improvements, attorneys' liens, certain insurance contracts and passbook loans. A valid lien generally continues until the liability is satisfied, becomes unenforceable by reason of lapse of time or is discharged in bankruptcy. A certificate of release of lien may be issued upon the taxpayer's furnishing proper bond in lieu of the lien, or when the liability is satisfied, becomes unenforceable by reason of lapse of time or discharged in bankruptcy. The Code also contains additional provisions with respect to the discharge of specific property from the effect of the lien. Also, under certain conditions, a lien may be subordinated. The Code also contains additional provisions with respect to liens in the case of estate and gift taxes. For the specific rules with respect to liens, see subchapter C of chapter 64 of the Code and the regulations thereunder.

(4) *Penalties.* In the case of failure to file a return within the prescribed time, a certain percentage of the amount of tax is, pursuant to statute, added to the

tax unless the failure to file the return within the prescribed time is shown to the satisfaction of the district director or the director of the regional service center to be due to reasonable cause and not neglect. Civil penalties are also imposed for fraudulent returns; in the case of income and gift taxes, for intentional disregard of rules and regulations or negligence; and additions to the tax are imposed for the failure to comply with the requirements of law with respect to the estimated income tax. See chapter 68 of the Code. A 50 percent penalty, in addition to the personal liability incurred, is imposed upon any person who fails or refuses without reasonable cause to honor a levy. Civil penalties may also be imposed for failure to pay the tax on liquors, cigars, cigarettes, and cigarette papers and tubes within the time prescribed. See chapters 51 and 52 of the Code. Criminal penalties are imposed for willful failure to make returns, keep records, supply information, etc. See chapter 75 of the Code.

(5) *Informants' rewards.* Payments to informers are authorized for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws. See section 7623 of the Code and the regulations thereunder. Claims for rewards should be made on Form 211. Relevant facts should be stated on the form, which after execution should be forwarded to the district director of internal revenue for the district in which the informer resides, or to the Commissioner of Internal Revenue, Washington, D.C. 20224.

§ 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(a) *Processing of returns.* When the returns are filed in the office of the district director of internal revenue or the office of the director of a regional service center, they are checked first for form, execution, and mathematical accuracy. Mathematical errors are corrected and a correction notice of any such error is sent to the taxpayer. Notice and demand is made for the payment of any additional tax so resulting, or refund is made of any overpayment. All returns are then sorted according to such classifications and subclassifications as are prescribed by the uniform management directive of the Commissioner. The purpose of these classifications is to facilitate prompt processing of returns showing refunds due and returns received with insufficient or no remittance, the selection of refunds for audit, and the compilation of income and other statistics.

(b) *Examination of returns.*—(1) *General.* The original examination of income, profits, estate, gift, excise, and employment tax returns is a primary function of internal revenue agents in the Audit Division of the office of each district director of internal revenue. Such internal revenue agents are organized in groups, each of which is under the immediate supervision of a group supervisor designated by the district director. Revenue agents (and such other officers or em-

ployees of the Internal Revenue Service as may be designated for this purpose by the Commissioner) are authorized to examine any books, papers, records, or memoranda bearing upon matters required to be included in Federal tax returns and to take testimony relative thereto and to administer oaths. See section 7602 of the Code and the regulations thereunder. There are two general types of audit. These are commonly called "office audit" and "field audit". During the audit of a return a taxpayer may be represented before the examining officer by an attorney, certified public accountant, or other representative. See Subpart E of this part for conference and practice requirements.

(2) *Office audit.* Certain returns are examined by office audit. These are returns susceptible to office audit techniques and include certain business returns in addition to the full range of nonbusiness individual income tax returns. Office audits are conducted either by correspondence or by office interview. The method employed normally depends upon the complexity of the items questioned. When an examination can be conducted by either method, the convenience of the taxpayer generally will be the principal consideration. In a correspondence audit, the taxpayer is asked to supply explanations or supporting evidence by mail. In an office interview audit the taxpayer is asked to come to the district director's office for a personal interview and to bring certain records with him in support of his return. During the audit the taxpayer has the right, of course, to bring to the attention of the examining officer any amounts included in his return which are not taxable or any deductions which he failed to claim on his return. If it develops that a field audit is necessary, an appropriate transfer will be made.

(3) *Field audit.* Certain returns are examined by field audit which involves an examination by an internal revenue agent of the taxpayer's books and records on the taxpayer's premises. The revenue agent will check the entire return filed by the taxpayer and will examine all books, papers, records, and memoranda dealing with matters required to be included in the return. If the return presents an engineering or appraisal problem (e.g., depreciation or depletion deductions, gains or losses upon the sale or exchange of property, or losses on account of abandonment, exhaustion, or obsolescence), it may be investigated by an engineer agent who makes a separate report.

(4) *Conclusion of audit.* At the conclusion of an office or field audit, the taxpayer is given an opportunity to agree with the findings of the examining officer. If the taxpayer does not agree, the examining officer will inform the taxpayer of his appeal rights. See paragraph (c) of this section for district conference procedure. If the taxpayer does agree with the proposed changes, the examining officer will invite him to execute either Form 870 or another appropriate agreement form. When the

taxpayer agrees with the proposed changes but does not offer to pay any deficiency or additional tax which may be due, the examining officer will also invite payment (by check or money order), together with any applicable interest or penalty. If the agreed case involves income, profits, estate, or gifts taxes, the agreement is evidenced by a waiver by the taxpayer of restrictions on assessment and collection of the deficiency, or an acceptance of a proposed overassessment. If the case involves excise or employment taxes or 100 percent penalty, the agreement is evidenced in the form of a consent to assessment and collection of additional tax or penalty and waiver of right to file claim for abatement, or the acceptance of the proposed overassessment. Even though the taxpayer signs an acceptance of a proposed overassessment the district director or the director of the regional service center remains free to assess a deficiency. On the other hand, the taxpayer who has given a waiver may still claim a refund of any part of the deficiency assessed against him and paid by him, or any part of the tax originally assessed and paid by him. The taxpayer's acceptance of an agreed overassessment does not prevent his filing a claim and bringing a suit for an additional sum, nor does it preclude the Government from maintaining suit to recover an erroneous refund. As a matter of practice, however, waivers or acceptances ordinarily result in the closing of a case insofar as the Government is concerned.

(5) *Technical advice from the National Office.*—(1) *Definition and nature of technical advice.* (a) As used in this subparagraph, "technical advice" means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon request of a district office in connection with the examination or consideration of a taxpayer's return or claim for refund or credit. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent positions in the several districts. It does not include memorandums on matters of general technical application furnished to district offices where the issues are not raised in connection with the examination of the return of a specific taxpayer.

(b) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the examination or consideration of a return of the taxpayer. Thus, a district director may, in his discretion, request technical advice with respect to the consideration of a request for a determination letter.

(c) If a district director is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked, and he requests the National Office to reconsider the ruling, the reference of the matter to the National Office is treated as a request for technical

advice and the procedures set out in this subparagraph will be followed. (For procedures relating to a request for a ruling, see § 601.201.)

(d) The provisions of this subparagraph apply only to a case under the jurisdiction of a district director. They do not apply to a case under the jurisdiction of the Alcohol and Tobacco Tax Division or of the Appellate Division.

(e) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner, is exclusively responsible for providing technical advice in any issue involving the establishment of basic principles or policies for the uniform interpretation and application of substantive tax laws other than those which are under the jurisdiction of the Alcohol and Tobacco Tax Division. This authority has been largely redelegated to subordinate officials.

(ii) *Areas in which technical advice may be requested.* (a) District directors may request technical advice or assistance on any technical or procedural question which develops during the audit or examination of a return, or claim for refund or credit, of a taxpayer. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(b) District directors are encouraged to request technical advice on any technical or procedural question arising in connection with any case of the type described in subdivision (i) of this subparagraph, at any stage of the proceedings in the district office, which cannot be resolved on the basis of law, regulations, or a clearly applicable Revenue Ruling or other precedent issued by the National Office.

(iii) *Requesting technical advice.* (a) It is the responsibility of the district office to determine whether technical advice is to be requested on any issue before that office. However, during the course of an examination or a conference in a district office, a taxpayer or his representative may request that an issue be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. While taxpayers are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reasons for requesting National Office advice, a taxpayer may make the request orally. If, after considering the taxpayer's request, the examining officer or conferee is of the opinion that the circumstances do not warrant referral of the case to the National Office, he will so advise the taxpayer.

(b) The taxpayer may appeal the decision of the examining officer or conferee not to request technical advice by submitting to that official, within 10 days (or such longer period as may be agreed upon), a statement of the facts, law, and arguments with respect to the issue, and the reasons why he believes the matter should be referred to the National Office for advice.

(c) The examining officer or conferee will submit the statement of the taxpayer through channels to the Chief, Audit Division, accompanied by a statement of his reasons why the issue should not be referred to the National Office. The Chief, Audit Division, will determine, on the basis of the statements submitted, whether technical advice will be requested. If he determines that technical advice is not warranted, he will inform the taxpayer in writing that he proposes to deny the request. In the letter to the taxpayer the Chief, Audit Division, will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer may not appeal the decision of the Chief, Audit Division, not to request technical advice from the National Office. However, he will have 15 days in which to notify the Chief, Audit Division, whether he agrees with the proposed denial. If he does not agree, all data relating to the issue for which technical advice has been sought, including taxpayer's written request and statements will be submitted to the National Office, Attention: Director, Audit Division, for review. After review in the National Office, the district office will be notified as to whether the proposed denial is approved or disapproved.

(d) While the matter is being reviewed in the National Office, the district office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

(e) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in (f) of this subdivision. If the examining officer or the conferee initiates the action, the taxpayer will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice submitted by the district director should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

(f) The taxpayer will be given 10 days (or such longer period as may be agreed upon) in which to indicate in writing the extent, if any, to which he may not be in complete agreement with the statement of facts and specific questions presented to him by the district office. Every effort should be made to reach agreement as to the facts and the specific point at issue. If agreement cannot be reached, the taxpayer may submit a statement of his understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice.

(g) If the taxpayer initiates the action to request advice, and his statement of the facts and point or points at issue are

not wholly acceptable to the district officials, the taxpayer will be advised in writing as to the areas of disagreement. If agreement cannot be reached, both the statements of the taxpayer and the district official will be forwarded to the National Office.

(h) If the taxpayer has not already done so, he may submit a statement explaining his position on the issues, citing precedents which he believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be forwarded for association with the case file.

(i) At the time the taxpayer is informed that the matter is being referred to the National Office, he will also be informed of his right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether he desires such a conference.

(j) The provisions of (a) through (i) of this subdivision, relating to the referral of issues upon request of taxpayer, advising taxpayers of the referral of issues, and the granting of conferences in the National Office, are not applicable to matters primarily of internal concern or in instances where it would be prejudicial to the interests of the Internal Revenue Service (as for example in cases involving fraud or jeopardy assessments).

(iv) *Preparation of technical advice memorandum by the National Office.* (a) Immediately upon receipt in the National Office, the technical assistant to whom the case is assigned will analyze the file to ascertain whether it meets all requirements of subdivision (iii) of this subparagraph. If the case is not complete, appropriate steps will be taken to complete the file.

(b) If the taxpayer has requested a conference in the National Office, the procedures in subdivision (vi) of this subparagraph will be followed.

(c) Replies to requests for technical advice will be addressed to the district director and will be drafted in two parts. Each part will identify the taxpayer by name, address, identification number, and year or years involved. The first part (hereafter called the "Technical Memorandum") will contain (1) a recitation of the pertinent facts having a bearing on the issue; (2) a discussion of the facts, precedents, and reasoning of the National Office; and (3) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the district office. The discussion of the issues will be in such detail that the district officials are apprised of the reasoning underlying the conclusion.

(d) The second part of the reply will consist of a transmittal memorandum. In the unusual cases it will serve as a vehicle for providing the district office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(e) It is the general practice of the Service to furnish a copy of the technical memorandum to the taxpayer, upon his

request, after it has been adopted by the district director. See (c) of this subdivision. However, where no definitive answer is given to the specific question presented, where the factual submission is such as to indicate that the issue should be decided by the district office, or where it would not be in the interest of wise administration of the tax laws, a copy of the technical memorandum will not be furnished the taxpayer. The National Office will specifically advise the district director in those cases where it is determined that a copy of the technical memorandum is not to be made available to the taxpayer.

(v) *Action on technical advice in district offices.* (a) Upon adoption of the technical advice by a district director, the district office will proceed to process the taxpayer's case on the basis of the conclusions expressed in the technical advice memorandum. Except as provided in (b) of this subdivision, a copy of the technical memorandum will be furnished to the taxpayer, upon his request, for his information as to the position of the Service on the issue.

(b) In those cases in which the National Office advises the district director that he should not furnish a copy of the technical memorandum to the taxpayer, the district director will so inform the taxpayer, if he requests such a copy.

(vi) *Conference in the National Office.* (a) If, after a comprehensive study of the case file, it appears that advice which is adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer.

(b) A taxpayer is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in (a) through (c) of this subdivision exists. This conference will usually be held at the branch level in the appropriate division in the office of the Assistant Commissioner (Technical) and will usually be attended by a person who has authority to act for the branch chief. (See § 601.201(a)(2) for the divisions involved.) If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each subject. At the request of the taxpayer or his representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A taxpayer has no "right" of appeal from an action of a branch to the director of a division or to any other National Office official.

(c) In the process of consideration, in the National Office, of a position proposed by a branch, it may appear that the position of the Service will involve a reversal of the position proposed by the branch with a result that will be less favorable to the taxpayer or it may appear that an adverse position proposed by a branch will be sustained and

become the position of the Service, but on a new or different issue or on substantially different grounds than those on which the branch turned the case. Under either of these circumstances, the taxpayer or his representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer to attend further conferences when, in the opinion of responsible National Office personnel, such need arises. All additional conferences of the type discussed in this subdivision are held only at the invitation of the Service.

(d) It is the responsibility of the taxpayer to furnish to the National Office, for addition to the case file, a written record of any additional data, lines of reasoning, precedents, etc., which are proposed by the taxpayer and discussed at the conference but which were not previously or adequately presented in writing. This additional record should be addressed to the National Office, but it should be sent to the appropriate district director who will forward it for association with the case file. The district director may verify the additional facts and data presented and comment upon it, to the extent he deems it appropriate, when he forwards it to the National Office.

(e) A taxpayer or his representative desiring to obtain information as to the status of his case may do so by contacting the appropriate division in the office of the Assistant Commissioner (Technical). (See § 601.201(a)(2) for the divisions involved.)

(vii) *Effect of technical advice.* (a) A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case, and is issued primarily as a means of assisting district officials in the examination and closing of the case involved.

(b) A technical memorandum given a taxpayer will, in general, be afforded the same effect as a ruling to the taxpayer on a closed and completed transaction. In this connection see paragraph (1) of § 601.201. Since technical advice, in connection with cases of the type described in subdivision (i) (a) of this subparagraph will always be issued with respect to a closed transaction, the taxpayer may not expect a modification or revocation of the position stated in the technical memorandum to be applied nonretroactively, except under circumstances of the type described in paragraph (1) (7) and (8) of § 601.201, relating to continuing transactions.

(c) A district director may raise an issue in any taxable period, even though he may have asked for and been furnished, technical advice with regard to the same or a similar issue in any other taxable period.

(c) *District conference procedure—* (1) *Office audit.* (i) In a correspondence audit the taxpayer is informed of the examining officer's proposed findings by

a form letter. He is asked to sign and return an agreement if he accepts the findings. The letter also informs the taxpayer of several courses of appeal available to him, including a district conference and consideration of his case by the regional Appellate Division. A conference in the district director's office will be granted the taxpayer upon request without submission of a written protest. If no agreement is reached at the conference, the taxpayer will be furnished a report of the findings and a 30-day letter describing his further appeal rights.

(ii) In an office interview audit the taxpayer will usually be informed of the examining officer's findings at the interview. If no agreement is reached at the conference, the taxpayer is given an opportunity to request a district conference at the end of the interview or is invited in a 15-day letter to arrange for such a conference. The balance of the procedure in a correspondence audit is also applicable in an office interview audit.

(2) *Field audit.* (i) If, at the conclusion of an examination, the taxpayer does not agree with the adjustments proposed by the examining officer, a complete examination report will be prepared fully explaining all proposed adjustments. Before the report or any invitation to a district Audit Division conference is sent to the taxpayer, the case file will be submitted to the district Review Staff for a thorough technical and procedural review. Following such review, the taxpayer will receive a copy of the examination report under cover of a transmittal letter (30-day letter) providing him with a detailed explanation of the available appeal procedure and requesting the taxpayer to inform the district director of his choice of action.

(ii) If the total amount of proposed additional tax, proposed overassessment, or claimed refund does not exceed \$1,000 for any taxable year, the taxpayer will be granted a district Audit Division conference on request. A written protest is not required.

(iii) If the amount of proposed additional tax, proposed overassessment, or claimed refund exceeds \$1,000 for any taxable year, the taxpayer, on request will be granted a district Audit Division conference, provided a written protest is filed setting forth the facts, law, and arguments upon which the taxpayer relies.

(iv) If the issues involved are such that there appears to be little possibility of disposing of them in a district Audit Division conference, the taxpayer will be encouraged to bypass the district conference in favor of prompt consideration of his case by the regional Appellate Division. In such a case, unless the taxpayer expressly requests a district conference, the taxpayer's protest and case file, after preliminary screening by the Chief, Conference Staff, will be forwarded to the regional Appellate Division.

(v) Ordinarily, the examining officer will not attend the district Audit Division conferences.

(vi) Changes made by the Conference Staff in the proposals set forth in the examining officer's examination report will be reflected in a Conference Audit Statement which will be forwarded to the taxpayer to inform him of changes made and to serve as a supplement to the examination report.

(vii) The determination of the Conference Staff will not be submitted to the district Review Staff for review.

(3) *Scope of district conference procedure.* The conference procedure described in this paragraph is applicable in the determination of any liability in respect of income, profits, estate, gift, excise, or employment taxes. This procedure, however, is not applicable in the determination of liability for any excise tax imposed by subtitle E of the Internal Revenue Code (relating to alcohol, tobacco, machineguns, and certain other firearms), or by subchapter D of chapter 78 (relating to certain import taxes) insofar as it relates to alcohol and tobacco. The procedure described in this paragraph does not apply in any case where criminal prosecution is under consideration, or in any case in which, in the discretion of the district director of internal revenue, the Government's interest would be prejudiced thereby. Nor does this procedure preclude the taking of appropriate action where the assessment or collection of the tax is in jeopardy. See paragraph (h) of this section.

(4) *Rules governing district conferences.* The objective of the district conference procedure is to give taxpayers a greater opportunity to reach an early agreement with respect to disputed items arising from office and field audits. If the taxpayer is represented at a district conference, see the conference and practice requirements of Subpart E. In conduct of conferences, it is the duty of the conferee (i) to conduct the conference in accordance with the objectives of the conference procedure, (ii) to provide the taxpayer a fair and courteous hearing at which the taxpayer may discuss the issues, (iii) to make certain that all pertinent facts are included in the record and are considered in arriving at the proposed recommendation, (iv) to make certain that the pertinent provisions of the Internal Revenue Code are applied in arriving at the proposed recommendation and that the proposed recommendation is in accord with the interpretations of the Internal Revenue Service as expressed in regulations and rulings, and (v) to explain fully to the taxpayer the conclusions reached and the reasons therefor. If an agreement with the taxpayer is reached at the conference, the taxpayer will be requested to execute Form 870 or another appropriate agreement form. Any deficiency in tax or additional tax proposed will then be assessed, or any overpayment will be credited or refunded.

(5) *Settlement authority.* The authority of the Chief, Conference Staff, may be extended to include the settlement of selected issues on a basis reflecting an evaluation of litigating hazards, provided a substantially identical

issue has been previously so disposed of by a regional Appellate Division. This procedure applies only if the total amount of proposed additional tax, proposed overassessment, or claimed refund does not exceed \$1,000 for any year.

(d) *Thirty-day letters and protests.*

(1) *General.* The report of the examining officer, as approved after review, recommends one of four determinations:

(i) Acceptance of the return as filed and closing of the case;

(ii) Assertion of a given deficiency or additional tax;

(iii) Allowance of a given overassessment, with or without a claim for refund, credit, or abatement;

(iv) Denial of a claim for refund, credit, or abatement which has been filed and is found wholly lacking in merit.

In an unagreed case, the district director sends to the taxpayer a preliminary or "30-day letter" if any one of the last three determinations is made (except a full allowance of a claim in respect of any tax). The 30-day letter is a form letter which states the determination proposed to be made. It is accompanied by a copy of the examining officer's report explaining the basis of the proposed determination. It suggests to the taxpayer that if he concurs in the recommendation, he indicate his agreement by executing and returning a waiver or acceptance. The preliminary letter also advises the taxpayer that if he disagrees with the proposed determination he may file a written protest (see §§ 601.103(c)(1) and 601.509) within 30 days (60 days if taxpayer is outside of the country) from the date of the letter stating the grounds for his disagreement, and he may have a conference in the Appellate Division of the region if requested and if that Division has jurisdiction (see § 601.106(a)(3)). If the taxpayer does not respond to the letter within 30 days a statutory notice of deficiency will be issued or other appropriate action taken, such as the issuance of a notice of adjustment, the denial of a claim in income, profits, estate, and gift tax cases, or an appropriate adjustment of the tax liability or denial of a claim in excise and employment tax cases.

(2) *Protests.* (i) No written protest is required to obtain a district Audit Division conference in an office audit case. However, in a field audit case a written protest is required to obtain a district conference if the total amount of proposed additional tax, proposed overassessment or claimed refund exceeds \$1,000 for any taxable year. A written protest is required in every case in which the taxpayer requests Appellate Division consideration. Instructions for the preparation of protests are sent with the preliminary letter.

(ii) Protests against proposed determinations of excise taxes imposed by chapter 35 of the Code (relating to wagering), and subchapter A of chapter 39 (relating to narcotic drugs and marijuana), which are excluded from Appellate Division jurisdiction, are reviewed in the Audit Division of the district director's office. In the event that an agree-

ment with the taxpayer is reached, he will be requested to execute an appropriate agreement form. If consideration of the protest does not result in closing the case on an agreed basis, the taxpayer is notified of the conclusions reached. Any additional tax will then be assessed or any overpayment will be credited or refunded.

(e) *Claims for refund or credit.* (1) After payment of the tax a taxpayer may (unless he has executed an agreement to the contrary) contest the assessment by filing a claim for refund or credit for all or any part of the amount paid, except as provided in section 6512 of the Code with respect to certain taxes determined by the Tax Court, the decision of which has become final. A claim for refund or credit is made on Form 843, which is obtainable from the district director. Generally, the claim, together with appropriate supporting evidence, must be filed in the office of the district director for the district in which the tax was paid. A claim for refund or credit must be filed within the applicable statutory period of limitation. In the case of individuals a properly executed income tax return may, if the taxpayer elects, operate as a claim for refund or credit of the amount of the overpayment disclosed by such return. If an individual income taxpayer files Form 1040A as a return and properly elects to have the tax computed by the district director or the director of the regional service center, such return operates automatically as a claim for refund for the amount of any overpayment disclosed by such computation.

(2) Generally, claims for refund or credit are investigated and considered by the Audit Division of the district director's office. The procedure applicable to the determination of correct tax liability upon the basis of a claim for refund or credit filed by the taxpayer is substantially the same as the procedure applicable to the original determination of tax liability upon the basis of a return filed by a taxpayer. See § 601.108 for procedure for review of proposed overpayment exceeding \$100,000 of income, estate, and gift taxes.

(3) As to suits for refund, see § 601.103 (c).

(4) A special procedure is applicable to claims for excess profits tax relief (including credit or refund) under section 722 of the Internal Revenue Code of 1939. See § 601.107 for a description of the applicable procedure.

(5) There is also a special procedure applicable to applications for tentative carryback adjustments under section 6411 of the Code (consult Forms 1045 and 1139).

(6) For special procedure applicable to claims for payment or credit in respect of gasoline used on a farm for farming purposes, or by local transit systems, see sections 39, 6420, and 6421 of the Code and § 601.402(c)(3). For special procedure applicable to claims for payment or credit in respect of lubricating oil used otherwise than in a highway motor ve-

hicle, see sections 39 and 6424 of the Code and § 601.402(c)(3).

(f) *Interruption of audit and conference procedure.* The process of field audits and the course of the administrative procedure described in this section and in the following section may be interrupted in some cases by the imminent expiration of the statutory period of limitations for assessment of the tax. In this event, the district director of internal revenue or other appropriate officer concerned must dispatch a statutory notice of deficiency (income, profits, estate or gift tax cases) or take other appropriate action with a view to assessment, even though the audit or conferences may then be going forward. In order to avoid interruption of the established procedure (except in estate tax cases), it is suggested to the taxpayer that he execute an agreement on Form 872 (or such other form as may be prescribed for this purpose). To be effective this agreement must be entered into by the taxpayer and the district director or other appropriate officer concerned prior to the expiration of the time otherwise provided for assessment. Such a consent extends the period for assessment of any deficiency, or any additional or delinquent tax, and extends the period during which the taxpayer may claim a refund or credit to a date 6 months after the agreed time of extension of the assessment period.

(g) *Fraud.* The procedure described in this section does not apply in any case in which criminal prosecution is under consideration. Such procedure does obtain, however, in cases involving the assertion of the civil fraud penalty after the criminal aspects of the case have been closed.

(h) *Jeopardy assessments.* If the district director believes that the assessment or collection of a tax will be jeopardized by delay, he is authorized and required to assess the tax immediately, together with interest and other additional amounts provided by law, notwithstanding the restrictions on assessment or collection of income, estate and gift taxes contained in section 6213(a) of the Code. A jeopardy assessment does not deprive the taxpayer of his right to file a petition with the Tax Court. Collection of a tax in jeopardy may be immediately enforced by the district director upon notice and demand. To stay collection the taxpayer may file with the district director a bond equal to the amount for which the stay is desired.

(i) *Regional post review of examined cases.* Regional commissioners review samples of the examined cases closed in their district offices to assure uniformity throughout their districts in the application of the provisions of the Code, regulations, and rulings, as well as the general policies of the Service. The Audit Division of the National Office in a similar manner reviews samples of the examined cases closed in the Office of International Operations. In certain circumstances, such as where substantial errors are found or where there is evidence of fraud or collusion, the regional commissioner has authority to reopen the case. When a reexamination of books

and records is necessary, Form 2756, notice of reexamination, will be delivered to the taxpayer at the time the reexamination is begun.

§ 601.106 Appellate functions.

(a) *General.* (1) There is provided in each region an Appellate Division with office facilities within the region. Unless they otherwise specify, taxpayers residing outside the territorial limits of the regional Appellate Divisions use the facilities of the Washington, D.C., branch office of the Appellate Division of the Mid-Atlantic Region. Subject to the limitations set forth in subparagraphs (2) and (3) of this paragraph, the Commissioner has delegated to certain officers of the Appellate Division of each region authority to represent the regional commissioner in his exclusive and final authority for the determination of Federal income, profits, estate, or gift tax liability (whether before or after the issuance of a statutory notice of deficiency) and for the determination of employment or certain Federal excise tax liability in any case originating in the office of any district director situated in the region, or in any case in which jurisdiction has been transferred to the region in which the taxpayer has protested the determination of liability made by that officer and no agreement has been reached. The Appellate Division has complete jurisdiction of every income, profits, estate, or gift tax case after the issuance of the statutory notice of deficiency, subject to the limitations provided in subparagraph (2) of this paragraph. If the statutory notice of deficiency was issued by a district director or the Director of International Operations, the Appellate Division may waive jurisdiction to the director who issued the statutory notice during the 90-day (or 150-day) period for filing petition with the Tax Court, except where criminal prosecution has been recommended and not finally disposed of or the statutory notice includes the ad valorem fraud penalty. After the filing of a petition in the Tax Court the Appellate Division continues to have exclusive jurisdiction of the case, subject to the provisions of subparagraph (2) of this paragraph. Subject to the exceptions and limitations set forth in subparagraph (2) of this paragraph, there is also vested in the Appellate Division of the region authority to represent the regional commissioner in his exclusive authority to settle (i) all cases docketed in the Tax Court of the United States and designated for trial at any place within the territory comprising the region and (ii) all docketed cases originating in the office of any district director situated within the region or in which jurisdiction has been transferred to the region, which are designated for trial at Washington, D.C., unless the petitioner resides in and his books and records are located (or can be made available) in the region which includes Washington, D.C.

(2) The authority described in subparagraph (1) of this paragraph does not include the authority to:

(i) Negotiate or make a settlement in any case docketed in the Tax Court on and after the opening date of the session at which the case is calendared for trial, or of any pre-trial hearing or report session thereon, otherwise referred to as "session" cases;

(ii) Make or approve a settlement in pre-session cases docketed in the Tax Court, except with the concurrence of regional counsel;

(iii) Eliminate the ad valorem fraud penalty in any income, profits, estate or gift tax case in which the penalty has been determined by the district office in connection with a tax year or period, or which is related to or affects such year or period, for which criminal prosecution against the taxpayer (or a related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, except upon the recommendation or concurrence of the Regional Counsel;

(iv) Act in any case in which a recommendation for criminal prosecution is pending, except with the concurrence of regional counsel; nor

(v) Modify any decision of the Excess Profits Tax Council with respect to any issue arising under section 722 of the Internal Revenue Code of 1939, except with the concurrence of the Director of the Appellate Division.

Authority to negotiate and make a settlement or concession in a case docketed in the Tax Court in a session status referred to in subdivision (i) of this subparagraph is delegated to the regional counsel.

(3) The authority vested in the Appellate Division does not extend to the determination of liability for any excise tax imposed by the following chapters of the Internal Revenue Code (and the corresponding provisions of the 1939 Code): chapter 35 (relating to wagering); subchapter A of chapter 39 (relating to narcotic drugs and marihuana); subtitle E (relating to alcohol, tobacco, machine guns and certain other firearms); and subchapter D of chapter 78 (relating to certain import taxes) insofar as it relates to alcohol and tobacco.

(b) *Initiation of proceedings before the Appellate Division.* In any case in which the district director has issued a preliminary or "30-day letter" and the taxpayer files a written protest (see paragraph (c) (1) of § 601.103 and § 601.509) against the proposed determination of tax liability, except as to those taxes described in paragraph (a) (3) of this section, the taxpayer has the right (and will be so advised by the district director) of administrative appeal to the regional office of the Appellate Division. Organization such as labor unions and trade associations which have been examined by the district director to determine the amounts expended by the organization for purposes of lobbying, promotion or defeat of legislation, political campaigns, or propaganda related to those purposes are treated as "taxpay-

ers" for the purpose of this right of administrative appeal. Thus, upon filing a protest to the district director's findings that a portion of member dues is to be disallowed as a deduction to each member because expended for such purposes, the organization will be afforded full rights of administrative appeal to the Appellate Division of the region similar to those rights afforded to taxpayers generally. After review of any protest by the district director, the case and its administrative record are referred to the Appellate Division. No taxpayer is required to submit his case to the Appellate Division for consideration. Appeal is at the option of the taxpayer. A request for administrative appeal to the Appellate Division will not be denied because no district conference was held in the district director's office. After the issuance by the district director of a statutory notice of deficiency, upon the taxpayer's request, the Appellate Division may take up the case for settlement and may grant the taxpayer a conference thereon. Except in unusual circumstances, however, no conference will be granted prior to the filing of a petition in the Tax Court for a redetermination of the deficiency proposed in the statutory notice.

(c) *Nature of proceedings before the Appellate Division.* Proceedings before the Appellate Division are informal. Testimony under oath is not taken, although matters alleged as facts may be required to be submitted in the form of affidavits, or declared to be true under the penalties of perjury. Taxpayers may represent themselves or designate a qualified representative to act for them. See Subpart E of this part for conference and practice requirements. At any conference granted by the Appellate Division on a non-docketed case, the district director will be represented if he and the Appellate Division official having settlement authority deem it advisable. At any such conference on a case involving the ad valorem fraud penalty for which criminal prosecution against the taxpayer (or a related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, the Regional Counsel will be represented if he so desires.

(d) *Disposition and settlement of cases before the Appellate Division.*—(1) *Cases not docketed in the Tax Court.* (i) If after consideration of the case by the Appellate Division of the region a satisfactory settlement of the issues is reached with the taxpayer, he will be requested to sign Form 870-AD or other appropriate agreement form waiving restrictions on the assessment and collection of any deficiency and accepting any overassessment resulting under the agreed settlement.

(ii) If after consideration of the case by the Appellate Division of the region it is determined that there is a deficiency in income, profits, estate, or gift tax, to which the taxpayer does not agree, a statutory notice of deficiency will be pre-

pared and issued by the Appellate Division after consideration by the regional counsel of the memorandum recommending the issuance of such statutory notice. Officers of the Appellate Division having authority for the administrative determination of tax liabilities referred to in paragraph (a) of this section are also authorized to prepare, sign on behalf of the Commissioner, and send to the taxpayer by registered or certified mail any statutory notice of deficiency prescribed in sections 6212 and 6861 of the Code, and in corresponding provisions of the Internal Revenue Code of 1939. Within 90 days, or 150 days if the notice is addressed to a person outside of the States of the Union and the District of Columbia, after such a statutory notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court of the United States for a redetermination of the deficiency. In any other unagreed case, the case and its administrative file will be forwarded to the service center director or returned to the district director with directions to take such action with respect to the tax liability determined in the Appellate Division as may be appropriate, such as the issuance of a statutory notice of disallowance of a claim for refund or credit in whole or in part, the preparation of a notice of adjustment or other appropriate action, or the collection of any additional tax (excise and employment tax cases).

(2) *Cases docketed in the Tax Court.*

(i) If the case under consideration in the Appellate Division is docketed in the Tax Court and agreement is reached with the taxpayer with respect to the issues involved, the disposition of the case is effected by a stipulation of agreed deficiency or overpayment to be filed with the Tax Court and in conformity with which the Court will enter its order.

(ii) If the case under consideration in the Appellate Division is docketed in the Tax Court and the issues remain unsettled after consideration and conference in the Appellate Division, the case will be referred to the regional counsel for the region for defense of the tax liability determined.

(iii) If the deficiency notice in a case docketed in the Tax Court was not issued by the Appellate Division and no recommendation for criminal prosecution is pending, the case will be referred by the regional counsel to the Appellate Division for settlement as soon as it is at issue in the Tax Court. The settlement procedure shall be governed by the following rules:

(a) The Appellate Division will arrange a conference for settlement purposes promptly after receipt of the file. Except in unusual circumstances, the regional counsel will be represented at the conference and will actively participate in it.

(b) If a settlement is agreed upon by the Appellate Division and the regional counsel as a result of a conference with the taxpayer, the stipulation of settle-

ment will be prepared and filed with the Tax Court without delay.

(c) If no settlement is reached at a conference with the taxpayer, the file will be returned promptly to the regional counsel for preparation for trial and the taxpayer will be so advised by appropriate letter by the Appellate Division.

(d) In the event of disagreement between the Appellate Division and the regional counsel as to the settlement of the case, any issue in the case, or with respect to the amount of a counter offer which should be made, efforts will be made to resolve the matter quickly. If agreement cannot be reached the case will promptly be referred in writing to the Chief Counsel for decision.

(e) During the period between receipt of the Tax Court's "Trial Status Order" (usually issued from 60 to 90 days in advance of the issuance of the trial calendar) and the receipt of the trial calendar (usually issued about 90 days in advance of the opening date of the trial calendar) the Appellate Division will conclude settlement negotiations on any case not previously settled or referred to the regional counsel.

(f) In order to enable the regional counsel to prepare the case for trial and stipulate the undisputed facts in any case on the trial calendar which has not been settled, the Appellate Division will ordinarily, upon receipt of the trial calendar, return to the regional counsel any file still in its possession in any case on the calendar. Concurrent with any such return of the file, the Appellate Division will advise the taxpayer by letter that, since settlement negotiations have not been productive, the case is being referred to the regional counsel for preparation for trial.

(g) Upon receipt of the trial calendar, the regional counsel will address an appropriate letter to the taxpayer in each case on the calendar which has not been settled, or where the file has been retained by the Appellate Division, or in which the parties are not then negotiating a stipulation of facts. This letter will arrange or suggest a conference at an early date for the purpose of stipulating facts, as required by Rule 31(b) of the Tax Court, to clarify and, if possible, limit the issues.

(h) Any request for conferences received after receipt of the trial calendar will be referred to the regional counsel.

(e) *Transfer and centralization of cases.* (1) If a case is docketed in the Tax Court of the United States and the place designated by the Court for trial is within one region, and such case is originated in the office of a district director situated within another region, the Commissioner has the authority to confer all or any part of the jurisdiction, authority, and duties vested in the Appellate Division of the region in which the case originated upon the Appellate Division of the region within which the place designated for trial is located. Except in unusual cases, jurisdiction will not be transferred to the Appellate Division of the region which includes Washington, D.C., in any docketed case

designated for trial at Washington, D.C., which did not originate within such region, unless the taxpayer currently resides within that region and can produce all required books and records there. Likewise, the Chief Counsel has corresponding authority to transfer the jurisdiction, authority, and duties of the regional counsel for any region to the regional counsel of another region within which the case has been designated for trial before the Tax Court.

(2) Should a regional commissioner determine that it would better serve the interests of the Government, he may, by order in writing, withdraw any case not docketed before the Tax Court from the jurisdiction of the Appellate Division of the region, and provide for its disposition under his personal direction.

(f) *Conference and practice requirements.* Practice and conference procedure before the Appellate Division is governed by Treasury Department Circular 230 as amended (31 CFR Part 10), and the requirements of Subpart E of this part. In addition to such rules but not in modification of them, the following rules are also applicable to practice before the Appellate Division:

(1) *Rule I.* The Appellate Division conferee shall bear in mind that an exaction by the U.S. Government which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the United States Constitution. The conferee, in his conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be the duty of the conferee to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

(2) *Rule II.* In recognition of the difference between abstract theory and practical administration, where substantial uncertainties exist either in law or in fact, or both, as to the correct application of the law to the whole record of a controversy, the Appellate Division will give serious consideration to an offer of settlement of the dispute on a basis which fairly reflects the strength or weakness of the opposing views. However, no settlement will be countenanced based upon nuisance value of the case to either party.

(3) *Rule III.* Where the Appellate Division conferee recommends acceptance of the taxpayer's proposal of settlement, or, in the absence of a proposal, recommends action favorable to the taxpayer, and said recommendation is disapproved in whole or in part by a reviewing officer in the Appellate Division, the taxpayer shall be so advised and upon written request shall be accorded a conference with such reviewing officer. The Appellate Division may disregard this rule where the interest of the Government would be injured by delay, as for example, in a case involving the imminent expiration of the period of limitations or the dissipation of assets.

(4) *Rule IV.* Where the Appellate Division official having settlement authority and the district director deem it advisable, the district director may be represented at any Appellate Division conferences on a nondocketed case. This rule is also applicable to the Director of International Operations in the event his office issued the preliminary or "30-day letter".

(5) *Rule V.* In order to bring before the Appellate Division an unagreed income, estate, or gift tax case in pre-statutory notice status, an unagreed employment or excise tax case, or an offer in compromise, the taxpayer or his representative must first file with the district director a written protest setting forth specifically the reasons for his refusal to accept the district director's findings. If the protest includes a statement of facts upon which the taxpayer relies, such statement must be declared to be true under the penalties of perjury (see paragraph (c)(1) of § 601.103 and § 601.509). The protest and any new facts, law, or arguments presented therewith will be reviewed by the district director for the purpose of deciding whether further development or action is required prior to referring the case to the Appellate Division. Where the Appellate Division has an issue under consideration as a result of the filing of a protest or Tax Court petition, it may, with the concurrence of the taxpayer, assume jurisdiction in a related case without the necessity of an additional protest, after the district director has completed any necessary action. The Director, Appellate Division, may authorize the regional Appellate Division to accept jurisdiction (after any necessary action by the district director) in specified classes of cases without a written protest, provided a written request for Appellate Division consideration is submitted by or on behalf of each taxpayer.

(6) *Rule VI.* A taxpayer cannot withhold evidence from the district director of internal revenue and expect to introduce it for the first time before the Appellate Division, at a conference in nondocketed status, without being subject to having the case returned to the district director for reconsideration. Where newly discovered evidence is submitted for the first time to the Appellate Division, in a case pending in nondocketed status, that office, in the reasonable exercise of its discretion, may transmit same to the district director for his consideration and comment.

(7) *Rule VII.* Where the taxpayer has had the benefit of a conference either before the office of the district director of internal revenue or before the Appellate Division, as the case may be, in the pre-statutory notice status, or where the opportunity for such a conference was accorded but not availed of, there will be no conference granted before the Appellate Division in the 90-day status after the mailing of the statutory notice of deficiency, in the absence of unusual circumstances.

(8) *Rule VIII.* In any case docketed in the Tax Court of the United States on

which a conference is being conducted by the Appellate Division, the regional counsel will be invited to participate in the conference. In cases not docketed in the Tax Court of the United States on which a conference is being conducted by the Appellate Division, the regional counsel may be requested to attend and to give legal advice in the more difficult cases, or on matters of legal or litigating policy.

(9) *Rule IX.* Prior to the receipt of the Tax Court trial calendar on which a docketed case is listed for trial, the taxpayer may request a conference for the purpose of reopening or resuming settlement negotiations before the Appellate Division. If the taxpayer requests reopening or resumption of settlement negotiations subsequent to the issuance of the trial calendar and prior to the opening date of the session of the Tax Court, the request for such a conference shall be referred to regional counsel. (See paragraph (d)(2)(iii)(h) of this section.)

(g) *Limitation on the jurisdiction and functions of the Appellate Division.*—(1) *Overpayments of more than \$100,000.* If the Appellate Division of a region determines in any case that there is an overpayment of income, war profits, excess profits, estate or gift tax, including penalties and interest, in excess of \$100,000, such determination will be considered by the Joint Committee on Internal Revenue Taxation. See § 601.108.

(2) *Offers in compromise.* For jurisdiction of the Appellate Division with respect to offers in compromise of tax liabilities, see § 601.203.

(3) *Closing agreements.* For jurisdiction of the Appellate Division with respect to closing agreements under section 7121 of the code relating to any internal revenue tax liability, see § 601.202.

(4) *Bankruptcy and receivership.* For limitations on the authority and functions of the Appellate Division in bankruptcy and receivership cases, see § 601.109.

§ 601.107 Excess Profits Tax Council; appellate functions and procedures under section 722 of the Internal Revenue Code of 1939.

(a) *General.* (1) Subchapter E of chapter 2 of the Internal Revenue Code of 1939 imposed on corporations an excess profits tax based on their "adjusted excess profits net income" as defined in section 711 of such Code. This tax was effective as to taxable years beginning after December 31, 1939, and was repealed by the Revenue Act of 1945, with respect to taxable years beginning after December 31, 1945. Section 722 of the 1939 Code provides that, if the taxpayer, pursuant to certain rules and standards in such section, establishes that the tax computed under subchapter E is excessive and discriminatory, relief under limitations contained in section 722 will be granted. The appellate functions of the Excess Profits Tax Council, which is under technical supervision and administrative control of the Director of the

Appellate Division, Washington, D.C., relate to the consideration and the determination of issues arising under section 722 of the 1939 Code.

(2) The rules bearing upon the procedure applicable with respect to section 722 of the 1939 Code are found in Regulations 109 (26 CFR, 1938 Ed., and Supps., Part 30) and Regulations 112 (26 CFR, 1938 Ed. and Supps., Part 35). There has also been published "Bulletin on Section 722 of the Internal Revenue Code", copies of which may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Practice and conference procedure before the Council is also governed by the requirements of Subpart E of this part.

(b) *Procedure.* (1) To secure excess profits tax relief under section 722 of the 1939 Code an application therefor must be filed within the applicable period of time prescribed by section 322 of such Code. The application is required to be filed in duplicate on Form 991, copies of which are obtainable at district directors' offices. The regulations promulgated under section 722 (see paragraph (a)(2) of this section) provide that an application must be filed for each year for which the benefits of section 722 are claimed and that only one section 722 application for any year may be filed. Such applications are required to be so framed as to adequately disclose the essential facts and issues involved.

(2) Applications for relief under section 722 are referred for investigation and consideration to section 722 field committees established at the offices of district directors of internal revenue. After completion of investigation and consideration of an application for relief by a section 722 field committee, the taxpayer is afforded opportunity for a conference for the consideration of the committee's findings. After field committee consideration and conference with the taxpayer, the recommendations of the field committee are certified to the Excess Profits Tax Council for review. In the event that the taxpayer and the field committee cannot reach an agreement on the application or where an agreement between the taxpayer and the field committee is not approved by the Council, the taxpayer will be afforded an adequate opportunity to have its case heard before the Council. The Director of the Appellate Division is authorized exclusively to exercise final authority in all issues under section 722 of the 1939 Code in cases not docketed in the Tax Court.

(3) Determinations of the Director, Appellate Division are subject to appeal to the Tax Court of the United States under the provisions of section 732 of the 1939 Code.

(4) With respect to all issues under section 722 of the 1939 Code docketed with the Tax Court, the Director of the Appellate Division represents the Commissioner in functions comparable to those delegated to the Regional Appellate Divisions in standard issue docketed cases. See § 601.106(d)(2).

§ 601.108 Review of overpayments exceeding \$100,000.

(a) *General.* Section 6405(a) of the Code provides that no refund or credit of income, profits, estate, or gift taxes in excess of \$100,000 may be made until 30 days after a report has been made to the Joint Committee on Internal Revenue Taxation. Taxpayers in cases requiring review by the Joint Committee are afforded the same district conference and appeal rights as other taxpayers. In general, these cases follow regular procedures, except for preparation of reports to and review by the Joint Committee.

(b) *Reports to Joint Committee.* In any case in which no protest is made to the Appellate Division and no petition docketed in the Tax Court, the report to the Joint Committee is prepared by a Joint Committee Coordinator, who is an Audit Division regional specialist. In cases in which such a protest has been made or such a petition docketed, the report to the Joint Committee is prepared by an Appellate Division conferee.

(c) *Procedure after report to Joint Committee.* After compliance with section 6405 of the Code, the case is processed for issuance of a certificate of overassessment, and payment or credit of any overpayment. If the final determination involves a rejection of a claimed overpayment in whole or in part, a statutory notice of disallowance will be sent by certified or registered mail to the taxpayer, except where the taxpayer has filed a written waiver of such notice of disallowance.

§ 601.109 Bankruptcy and receivership cases.

(a) *General.* (1) Upon the adjudication of bankruptcy of any taxpayer in any liquidating proceeding, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act or the appointment of a receiver for any taxpayer in any receivership proceeding before a court of the United States or of any State or Territory or of the District of Columbia, the assessment of any deficiency in income, profits, estate, or gift tax (together with all interests, additional amounts, or additions to the tax provided for by law) shall be made immediately. See section 6871 of the Code. In such cases the restrictions imposed by section 6213(a) of the Code upon assessments are not applicable. (In the case of an assignment for the benefit of creditors, the assessment will be made under section 6861, relating to jeopardy assessments. See § 601.105(h).) Cases in which immediate assessment will be made include those of taxpayers in receivership or in bankruptcy, agricultural composition, reorganization, arrangement, or wage earner proceedings under chapters I to VII, sections 75, 77, chapters X, XI, XII, and XIII of the Bankruptcy Act. The term "approval of a petition in any other proceeding under the Bankruptcy Act" includes the filing

of a petition under section 75 or chapters XI to XIII of the Bankruptcy Act with a court of competent jurisdiction. A fiduciary in any proceeding under the Bankruptcy Act (including a trustee, receiver, debtor in possession, or other person designated by the court as in control of the assets or affairs of a debtor) or a receiver in any receivership proceeding may be required, as provided in regulations prescribed under section 6036 of the Code, to give notice in writing to the district director of his qualification as such. Failure on the part of such fiduciary in a receivership proceeding or a proceeding under the Bankruptcy Act to give such notice, when required, results in the suspension of the running of the period of limitations on the making of assessments from the date of the institution of the proceeding to the date upon which such notice is received by the district director, and for an additional 30 days thereafter. However, in no case where the required notice is not given, shall the suspension of the running of the period of limitations on assessment exceed 2 years. See section 6872 of the Code.

(2) Except in cases where departmental instructions direct otherwise, the district director will, promptly after ascertaining the existence of any outstanding Federal tax liability against a taxpayer in any proceeding under the Bankruptcy Act or receivership proceeding, and in any event within the time limited by appropriate provisions of law or the appropriate orders of the court in which such proceeding is pending, file a proof of claim covering such liability in the court in which the proceeding is pending. Such a claim may be filed regardless of whether the unpaid taxes involved have been assessed. Whenever an immediate assessment is made of any income, estate, or gift tax after the commencement of a proceeding, the district director will send to the taxpayer notice and demand for payment together with a copy of such claim.

(b) *Procedure in office of district director.* (1) While the district director is required by section 6871 of the Code to make immediate assessment of any deficiency in income, estate, or gift taxes, such assessment is not made as a jeopardy assessment (see paragraph (h) of § 601.105), and the provisions of section 6861 of the Code do not apply to any assessment made under section 6871. Therefore, the notice of deficiency provided for in section 6861 (b) will not be mailed to the taxpayer. Nevertheless, a letter (Form 7900) will be prepared and addressed in the name of the taxpayer, immediately followed by the name of the trustee, receiver, debtor in possession, or other person designated to be in control of the assets or affairs of the debtor by the court in which the bankruptcy or receivership proceeding is pending. Such letter will state how the deficiency was computed, advise that within 30 days a written protest under penalties of perjury may be filed with the district director showing wherein the deficiency is claimed to be incorrect, and advise that upon request a district

conference will be granted with respect to such deficiency. If, after protest is filed and a district conference is held, adjustment appears necessary in the deficiency, appropriate action will be taken. Except where the interests of the Government require otherwise, Form 7900 letters are issued by the office of the district director. If at the time of the adjudication of bankruptcy in a liquidating proceeding, the approval of a petition in any other proceeding under the Bankruptcy Act, or appointment of a receiver, a case was pending before the Tax Court, the prescribed Form 7900 letter will not advise the addressee of any right to request a conference in the office of the district director. Protests must be filed in triplicate. The district conference procedures described in paragraph (c) of § 601.105 are generally applicable to a district conference held after the issuance of a Form 7900 letter.

(2) The immediate assessment required by section 6871 of the Code represents an exception to the usual restrictions on the assessment of Federal income, estate, and gift taxes. Since there are no restrictions on the assessment of Federal excise or employment taxes, immediate assessment of such taxes will be made in any case where section 6871 of the Code would require immediate assessment of income, estate, or gift taxes.

(3) If after such assessment a claim for abatement is filed and such claim is accompanied by a request in writing for a conference, a district conference in the office of the district director of internal revenue will be granted. Ordinarily, only one conference will be held, unless it develops that additional information can be furnished which has a material bearing upon the tax liability, in which event the conference will be continued to a later date.

(c) *Procedure before the Appellate Division restricted.* (1) Except as provided in subparagraph (2) of this paragraph, a case involving an immediate assessment under section 6871 of the Code or an assessment of excise or employment taxes will not be referred by a district director to a field office of the Appellate Division after (i) the adjudication of bankruptcy of any taxpayer in any liquidating proceeding; (ii) the filing with a court of competent jurisdiction or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act; or (iii) the appointment of any receiver. Therefore, the taxpayer, or the trustee, receiver, or debtor in possession or other person designated by the court as in control of the assets or affairs of the debtor, may not request consideration of the case by the Appellate Division. If at the time of the adjudication of bankruptcy, or the filing of the approval of a petition or the appointment of a receiver, an income, estate, or gift tax case is under consideration by a field office of the Appellate Division, whether before or after issuance of a statutory notice of

deficiency, the case will be returned to the district director for assessment (if not previously made), and for issuance of the Form 7900 letter, and filing proof of claim in the proceeding. Excise and employment tax cases pending in the Appellate Division at such time will likewise be returned to the district director for assessment (if not previously made) and for filing proof of claim in the proceeding. Thereafter, such cases will not be referred by the district director to the Appellate Division except as provided in subparagraph (2) of this paragraph. A petition for redetermination of a deficiency may not be filed in the Tax Court after the adjudication of bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of a receiver. See section 6871(b) of the Code. However, the Tax Court is not deprived of jurisdiction where the adjudication of bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of a receiver, occurred after the filing of the petition. In such a case, the jurisdiction of the bankruptcy or receivership court and the Tax Court is concurrent.

(2) If a petition for redetermination of the deficiency has been filed in the Tax Court prior to the adjudication of bankruptcy or the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, the taxpayer in any other bankruptcy proceeding, or the appointment of a receiver, the proceeding may be prosecuted in the Tax Court. All such docketed cases will be referred to the Appellate Division promptly after issuance of the Form 7900 letter. If a case not docketed in the Tax Court is under Appellate Division consideration at the time that circumstances require the issuance of a Form 7900 letter, that Division may request return of the file in order to continue its consideration and arrive at a determination.

(d) *Priority of claims.* Under section 3466 of the Revised Statutes and section 3467 of the Revised Statutes, as amended, and section 64 of the Bankruptcy Act, taxes are entitled to the priority over other claims therein stated and the trustee, receiver, debtor in possession or other person designated as in control of the assets or affairs of the debtor by the court in which the bankruptcy or receivership proceeding is pending may be held personally liable for failure on his part to protect the priority of the Government respecting taxes of which he has notice. Sections 75 (1), 77 (e), 199, 337 (2), 455 and 659 (6) of the Bankruptcy Act also contain provisions with respect to the rights of the United States relative to priority of payment. Bankruptcy courts have jurisdiction under the Bankruptcy Act to determine all dis-

putes regarding the amount and the validity of tax claims against a bankrupt or a debtor in a proceeding under the Bankruptcy Act. A bankruptcy or receivership proceeding or an assignment for the benefit of creditors does not discharge any portion of a claim of the United States for taxes except in the case of a proceeding under section 77 or chapter X of the Bankruptcy Act; and any portion of a claim of the United States for taxes which has been allowed by the court in which the bankruptcy or receivership is pending and which remains unsatisfied after the termination of the proceeding shall be collected with interest in accordance with law.

Subpart B—Rulings and Other Specific Matters

§ 601.201 Rulings and determination letters.

(a) General practice and definitions.

(1) It is the practice of the Internal Revenue Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and as to the tax effects of their acts or transactions. One of the functions of the National Office of the Internal Revenue Service is to issue rulings in such matters. District directors apply the statutes, regulations, Revenue Rulings, and other precedents published in the Internal Revenue Bulletin in the determination of tax liability, the collection of taxes, and the issuance of determination letters in answer to taxpayers' inquiries or request. For purposes of this section any reference to district director or district office also includes, where appropriate, the office of the Director, Office of International Operations.

(2) A "ruling" is a written statement issued to a taxpayer or his authorized representative by the National Office which interprets and applies the tax laws to a specific set of facts. Rulings are issued only by the National Office. The issuance of rulings is under the general supervision of the Assistant Commissioner (Technical) and has been largely redelegated to the Directors of three divisions: Director, Income Tax Division; Director, Exempt Organization and Pension Trust Division; and Director, Miscellaneous Tax Division.

(3) A "determination letter" is a written statement issued by a district director in response to an inquiry by an individual or an organization, which applies to the particular facts involved, the principles, and precedents previously announced by the National Office. Determination letters are issued only where a determination can be made on the basis of clearly established rules as set forth in the statutes, Treasury decisions or regulations, or by rulings, opinions, or court decisions published in the Internal Revenue Bulletin. Where such a determination cannot be made, such as where the question presented involves a novel issue, or the matter is excluded from the jurisdiction of a district director by the provisions of paragraph (c)

of this section, a determination letter will not be issued.

(4) An "information letter" is a statement issued either by the National Office or by a district director which does no more than call attention to a well-established interpretation or principle of tax law, without applying it to a specific set of facts. An information letter may be issued when the nature of the request from the individual or the organization suggests that it is seeking general information, or where the request does not meet all the requirements of paragraph (e) of this section, and it is believed that such general information will assist the individual or organization.

(5) A "Revenue Ruling" is an official interpretation by the Service which has been published in the Internal Revenue Bulletin. Revenue Rulings are issued only by the National Office and are published for the information and guidance of taxpayers, Internal Revenue Service officials, and others concerned.

(6) A "closing agreement," as the term is used herein, is an agreement between the Commissioner of Internal Revenue or his delegate and a taxpayer with respect to a specific issue or issues entered into pursuant to the authority contained in section 7121 of the Internal Revenue Code. Such a closing agreement is based on a ruling which has been signed by the Commissioner or his delegate and in which it is indicated that a closing agreement will be entered into on the basis of the holding of the ruling letter. Closing agreements are final and conclusive except upon a showing of fraud, malfeasance, or misrepresentation of material fact. They may be entered into where it is advantageous to have the matter permanently and conclusively closed, or where a taxpayer can show good and sufficient reasons for an agreement and the Government will sustain no disadvantage by its consummation. See § 601.202 for closing agreements of the type not covered in this section.

(b) Rulings issued by the National Office. (1) In income and gift tax matters, the National Office issues rulings on prospective transactions and on completed transactions before the return is filed. However, rulings will not ordinarily be issued if the identical issue is also involved in a return of the taxpayer already filed for a taxable period with respect to which the statutory period of limitations on assessment or refund of tax has not expired. The National Office issues rulings involving qualifications of plans under section 401 of the Code or the exempt status of organizations under section 501 or 521 of the Code, only to the extent provided in paragraphs (c) and (n), respectively, of this section. The National Office will not issue rulings with respect to the replacement of involuntarily converted property, even though replacement has not been made, if the taxpayer has filed a return for the taxable year in which the property was converted. However, see paragraph (c) (6) of this section as to the authority of district directors to issue determination letters in this connection.

(2) In estate tax matters, the National Office issues rulings with respect to transactions affecting the estate tax of a decedent before the estate tax return is filed. It will not rule with respect to such matters after the estate tax return has been filed, nor will it rule on matters relating to the application of the estate tax to property or the estate of a living person.

(3) In employment and excise tax matters, the National Office issues rulings with respect to prospective transactions and to completed transactions either before or after the return is filed. However, the National Office will not ordinarily rule with respect to an issue, whether related to a prospective or a completed transaction, if it knows or has reason to believe that the same or an identical issue is before any field office (or any branch office of the Appellate Division) in connection with an examination or audit of the liability of the same taxpayer for the same or a prior period.

(4) Ordinarily, the Service will not issue rulings to business, trade, or industrial associations or to other similar groups relating to the application of the tax laws to members of the group. However, rulings may be issued to such groups or associations relating to their own tax status or liability provided such tax status or liability is not an issue before any field office (or any branch office of the Appellate Division) in connection with an examination or audit of the liability of the same taxpayer for the same or a prior period.

(c) Determination letters issued by district directors. (1) In income and gift tax matters, district directors issue determination letters in response to taxpayers' requests submitted to their offices involving completed transactions which affect returns required to be filed in their districts, but only if the question presented is covered specifically by statute, Treasury decision or regulation, or specifically by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. A determination letter will not usually be issued with respect to a question which involves a return to be filed by the taxpayer if the identical question is involved in a return or returns already filed by the taxpayer. District directors may not issue determination letters as to the tax consequence of prospective or proposed transactions, except as provided in subparagraphs (5) and (6) of this paragraph.

(2) In estate tax matters, district directors issue determination letters in response to requests submitted to their offices affecting the estate tax returns of decedents which will be filed in their districts, but only if the questions presented are specifically covered by statute, Treasury decision or regulation, or specifically by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. District directors may not issue determination letters relating to matters involving the application of the estate tax to property or the estate of a living person.

(3) In employment and excise tax matters, district directors issue deter-

mination letters in response to requests from taxpayers who have filed or who are required to file returns in their districts, but only if the questions presented are covered specifically by statute, Treasury decision or regulation, or specifically by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. Because of the impact of these taxes upon the business operation of the taxpayer and because of special problems of administration both to the Service and to the taxpayer, district directors may take appropriate action in regard to such requests, whether they relate to completed or prospective transactions or returns previously filed or to be filed.

(4) Notwithstanding the provisions of subparagraphs (1), (2), (3), (5), and (6) of this paragraph, a district director may not issue a determination letter in response to an inquiry, although the inquiry presents a question covered specifically by statute, regulations, rulings, etc., published in the Internal Revenue Bulletin, where (i) it appears that the taxpayer has directed a similar inquiry to the National Office, (ii) the identical issue involving the same taxpayer is pending in a case before the Appellate Division, (iii) the determination letter is requested by an industry, trade association, or similar group, or (iv) the request involves an industry-wide problem. Under no circumstances will a district director issue a determination letter unless it is clearly indicated that the inquiry is with regard to a taxpayer or taxpayers who have filed or are required to file returns in the district under his supervision. Notwithstanding the provisions of subparagraph (3) of this paragraph, a district director may not issue a determination letter on an employment tax question when the specific question involved has been or is being considered by the national office of the Social Security Administration. Nor may district directors issue determination letters on excise tax questions if a request is for a determination of a constructive sales price under sections 4216(b) and 4218 of the Code. However, the National Office will issue rulings in this area. See paragraph (d) (3) of this section.

(5) District directors issue determination letters as to the qualification of plans under section 401 of the Code, and as to the exempt status of related trusts under section 501 of the Code, to the extent provided in paragraph (c) of this section. They also issue determination letters as to the qualification of certain organizations for exemption from Federal income tax under sections 501 and 521 of the Code, to the extent provided in paragraph (n) of this section.

(6) District directors issue determination letters with regard to the replacement of involuntarily converted property under section 1033 of the Code even though the replacement has not been made, if the taxpayer has filed his income tax return for the year in which the property was involuntarily converted.

(7) A request received by a district director with respect to a question in-

volvement in an income, estate, or gift tax return already filed will, in general, be considered in connection with the examination of the return. If response is made to such inquiry prior to an examination or audit, it will be considered a tentative finding in any subsequent examination or audit of the return.

(d) *Discretionary authority to issue rulings and determination letters.* (1) It is the practice of the Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and the tax effect of their acts or transactions.

(2) There are, however, certain areas where, because of the inherently factual nature of the problem involved, or for other reasons, the Service will not issue rulings or determination letters. A specific area or a list of these areas is published from time to time in the Internal Revenue Bulletin. Such list is not all inclusive since the Service may decline to issue rulings or determination letters on other questions whenever warranted by the facts or circumstances of a particular case. The National Office and district directors may, when it is deemed appropriate and in the best interest of the Service, issue information letters calling attention to well-established principles of tax law.

(3) The National Office will issue rulings in all cases on prospective or future transactions when the law or regulations require a determination of the effect of a proposed transaction for tax purposes, as in the case of a transfer coming within the provisions of sections 1491 and 1492 of the Code, or an exchange coming within the provisions of section 367 of the Code. The National Office will issue rulings in all cases involving the determination of a constructive sales price under section 4216(b) or 4218 of the Code.

(e) *Instructions to taxpayers.* (1) A request for a determination letter or a ruling is to be submitted in duplicate if (i) it is a request for exemption under section 501(c) or 501(d) of the Code; (ii) more than one issue is presented in the request; or (iii) a closing agreement is requested with respect to the issue presented. It is not necessary to present requests in duplicate under other circumstances including requests for exemption from tax under section 521 of the Code or with respect to the qualification of plans under section 401 of the Code. Requests relating to prospective transactions may not contain alternative plans.

(2) Each request for a determination letter or a ruling must contain a complete statement of facts relating to the transaction. This includes, but is not necessarily limited to, the names, addresses, and taxpayer identifying numbers of all interested parties; the district office where each files or will file its return or report; a full and precise statement of the business reasons for the transaction; and true copies of all contracts, wills, deeds, agreements, or other documents involved in the trans-

action. (The term "all interested parties" is not to be construed as requiring a list of all shareholders of a widely held corporation requesting a ruling relating to a reorganization, or a list of employees where a large number may be involved in a plan.) The request must contain a statement whether, to the best of the knowledge of the taxpayer or his representative, the identical issue is being considered by any field office of the Service in connection with an examination or audit of a tax return of the taxpayer already filed. Where the request pertains to only one step of a larger integrated transaction, the facts, circumstances, etc., must be submitted with respect to the entire transaction. As documents and exhibits become a part of the Internal Revenue Service file and cannot be returned, the original documents should not be submitted. When documents and exhibits are submitted, they must be accompanied by an analysis of their bearing on the issue or issues, specifying the pertinent provisions. If the request is with respect to a corporate distribution, reorganization, or other similar or related transaction, the corporate balance sheet nearest the date of the transaction should be submitted. (If the request relates to a prospective transaction, the most recent balance sheet should be submitted.)

(3) If the taxpayer is contending for a particular determination, he must furnish an explanation of the grounds for his contentions, together with a statement of relevant authorities in support of his views. Even though the taxpayer is urging no particular determination with regard to a proposed or prospective transaction, he must state his views as to the tax results of the proposed action and furnish a statement of relevant authorities to support such views.

(4) If the request is with respect to the qualification of a plan under section 401(a) of the Code, see paragraph (c) of this section. If the request is with respect to the qualification of an organization for exemption from Federal income tax under section 501 or 521 of the Code, see paragraph (n) of this section.

(5) A request by or for a taxpayer must be signed by the taxpayer or his authorized representative. If the request is signed by a representative of the taxpayer, or if the representative is to appear before the Internal Revenue Service in connection with the request, he must either be:

(i) An attorney who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and who files with the Service a written declaration that he is currently qualified as an attorney and he is authorized to represent the principal.

(ii) A certified public accountant who is duly qualified to practice in any State, possession, territory, Commonwealth, or the District of Columbia, and who files with the Service a written declaration that he is currently qualified as a cer-

tified public accountant and he is authorized to represent the principal, or

(iii) A person, other than an attorney or certified public accountant, enrolled to practice before the Service. (See Treasury Department Circular No. 230, as amended, C.B. 1966-2, 1171.)

The above requirements do not apply to an individual representing his full-time employer, or to a bona fide officer, administrator, trustee, etc., representing a corporation, trust, estate, association, or organized group. An unenrolled preparer of a return (other than an attorney or certified public accountant referred to in subdivisions (i) and (ii) of this subparagraph (5)) who is not a full-time officer, administrator, trustee, etc., may not represent a taxpayer with respect to a ruling or a determination letter. Any authorized representative, whether or not he is enrolled to practice, must also comply with the conference and practice requirements of Subpart E of this part.

(6) A request for a ruling by the National Office should be addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224. A request for a determination letter should be addressed to the district director of internal revenue for the district with which the tax return of the taxpayer has been filed or is required to be filed. See also paragraphs (n) and (o) of this section.

(7) Any request for a ruling or a determination letter which does not comply with all the provisions of this section will be acknowledged, pointing out the requirements which have not been met. See Subpart E for power of attorney requirements.

(8) A taxpayer or his representative who desires an oral discussion of the issue or issues involved should indicate such desire in writing when filing the request or soon thereafter in order that the conference may be arranged at that stage of consideration when it will be most helpful.

(9) It is the practice of the Service to process requests for rulings or determination letters in regular order and as expeditiously as possible. Compliance with a request for consideration of a particular matter ahead of its regular order, or by a specified time, tends to delay the disposition of other matters. Requests for processing ahead of the regular order, made in writing and showing clear need for such treatment, will be given consideration as the particular circumstances warrant. However, no assurance can be given that any ruling or determination letter will be processed by the time requested. Requests by telegram will be treated in the same manner as requests by letter. Rulings and determination letters ordinarily will not be issued by telegram. A taxpayer or his representative desiring to obtain information as to the status of his case may do so by contacting the appropriate division in the office of the Assistant Commissioner (Technical).

(10) Where a taxpayer receives a determination letter or a ruling prior to the filing of his return he should attach to his return the determination letter or ruling (or a copy thereof) with re-

spect to any transaction which has been consummated and which is relevant to the return being filed.

(f) Conferences in the National Office.

(1) If a conference has been requested, the taxpayer will be notified of the time and place of the conference. In order to promote a free and open discussion of the vital issues, the conference will usually be held after the branch has had an opportunity to thoroughly study the issue. If conferences are being arranged with respect to more than one request for a ruling involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer.

(2) A taxpayer is entitled as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in this paragraph exists. This conference will usually be held at the branch level of the appropriate division in the office of the Assistant Commissioner (Technical) and will usually be attended by a person who has authority to act for the branch chief. (See § 601.201(a) (2) for the divisions involved.) If more than one subject is to be discussed at the conference, the discussion will constitute a conference with respect to each subject. At the request of the taxpayer or his representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. No taxpayer has a "right" to appeal the action of a branch to a Division Director or to any other official of the Service.

(3) In the process of consideration, in the National Office, of a position proposed by a branch, it may appear that the position of the Service will involve a reversal of the position proposed by the branch with a result that will be less favorable to the taxpayer. Or it may appear that an adverse position proposed by a branch will be sustained and become the position of the Service, but on a new or different issue or on substantially different grounds than that on which the branch turned the case. Under either of these circumstances, the taxpayer or his representative will be invited to another conference. The provisions of this section limiting the number of conferences to which a taxpayer is entitled will not foreclose the invitation of a taxpayer to attend further conferences when, in the opinion of responsible National Office personnel, such need arises. All additional conferences of the type discussed in this subparagraph are held only at the invitation of the Service.

(4) It is the responsibility of the taxpayer to add to the case file a written record of any additional data, lines of reasoning, precedents, etc., which are proposed by the taxpayer and discussed at the conference but which were not previously or adequately presented in writing.

(g) Reference of matters to the National Office. (1) Requests for determination letters received by district directors which, in accordance with the provisions of paragraph (c) of this sec-

tion may not be acted upon by a district office shall be forwarded to the National Office for reply and the taxpayer advised accordingly. District directors also may refer to the National Office any request for a determination letter which in their judgment warrants the attention of the National Office. See also the provisions of paragraph (c) of this section, with respect to requests relating to qualification of a plan under section 401 of the Code and paragraph (n) of this section, with respect to the applications for exemption from tax under sections 501 and 521 of the Code.

(2) If the request is with regard to an issue or an area with respect to which the Service will not issue a ruling or a determination letter, such request will not be forwarded to the National Office, but the district office will advise the taxpayer that the Service will not issue a ruling or a determination letter on the issue. See paragraph (d) (2) of this section.

(h) Reference of matters to district offices. Requests for rulings received in the National Office which, pursuant to the provisions of paragraph (b) of this section, may not be acted upon by the National Office, but which, under the authorities set out in paragraph (c) of this section, may be acted upon by a district office will be forwarded for appropriate action to the district office in which the return has been or will be filed. If the request is with respect to an issue or an area of the type discussed in paragraph (d) (2) of this section, the taxpayer will be so advised and the request may be forwarded to the appropriate district office for association with the proper return or report of the taxpayer.

(i) Review of determination letters.

(1) Determination letters issued with respect to the types of inquiries authorized by paragraph (c) (1), (2), and (3) of this section are not generally reviewed by the National Office as they merely inform a taxpayer of a position of the Service which has been previously established either in the regulations or in a ruling, opinion, or court decision published in the Internal Revenue Bulletin. If a taxpayer believes that a determination letter of this type is in error, he may ask the district director to reconsider the matter. He may also ask the district director to request advice from the National Office. If the district director, in his discretion, decides to request such advice, the procedure in paragraph (b) (5) of § 601.105 will be followed.

(2) The procedures for review of determination letters relating to the qualification of employers' plans under section 401(a) of the Code are provided in paragraph (c) of this section.

(3) The procedures for review of determination letters relating to the exemption from Federal income tax of certain organizations under sections 501 and 521 of the Code are provided in paragraph (n) of this section.

(j) Withdrawal of requests. The taxpayer's request for a ruling or a determination letter may be withdrawn at any time prior to the signing of the letter of

reply. However, in such a case, the National Office may furnish its views to the district director in whose office the return has been or will be filed. The information submitted will be considered by the district director in a subsequent audit or examination of the taxpayer's return. Even though a request is withdrawn, all correspondence and exhibits will be retained in the Service and may not be returned to the taxpayer.

(k) *Oral advice to taxpayers.* (1) The Service does not issue rulings or determination letters upon oral requests. Furthermore, National Office officials and employees ordinarily will not discuss a substantive tax issue with a taxpayer or his representative prior to the receipt of a request for a ruling, since oral opinions or advice are not binding on the Service. This should not be construed as preventing a taxpayer or his representative from inquiring whether the Service will rule on a particular question, or from discussing questions relating to procedural matters with regard to submitting a request for a ruling.

(2) A taxpayer may, of course, seek oral technical assistance from a district office in the preparation of his return or report, pursuant to other established procedures. Such oral advice is advisory only and the Service is not bound to recognize it in the examination of the taxpayer's return.

(l) *Effect of rulings.* (1) A ruling, except to the extent incorporated in a closing agreement, may be revoked or modified at any time in the wise administration of the taxing statutes. See paragraph (a) (6) of this section for the effect of a closing agreement. If a ruling is revoked or modified, the revocation or modification applies to all open years under the statutes, unless the Commissioner or his delegate exercises the discretionary power under section 7805(b) of the Code to limit the retroactive effect of the ruling. The manner in which the Commissioner or his delegate generally will exercise this power is set forth in this paragraph. With reference to rulings relating to the sale or lease of articles subject to the manufacturers excise tax, see specifically subparagraph (8) of this paragraph.

(2) As part of the determination of a taxpayer's liability, it is the responsibility of the district director to ascertain whether any ruling previously issued to the taxpayer has been properly applied. It should be determined whether the representations upon which the ruling was based reflected an accurate statement of the material facts and whether the transaction actually was carried out substantially as proposed. If, in the course of the determination of the tax liability, it is the view of the district director that a ruling previously issued to the taxpayer should be modified or revoked, the findings and recommendations of that office will be forwarded to the National Office for consideration prior to further action. Such reference to the National Office will be treated as a request for technical advice and the procedures of paragraph (b)(5) of § 601.105 will be followed. Otherwise,

the ruling is to be applied by the district office in its determination of the taxpayer's liability.

(3) Appropriate coordination with the National Office shall be undertaken in the event that any other field official having jurisdiction of a return or other matter proposes to reach a conclusion contrary to a ruling previously issued to the taxpayer.

(4) A ruling found to be in error or no longer in accord with the position of the Service may be modified or revoked. Modification or revocation may be effected by a notice to the taxpayer to whom the ruling originally was issued, or by a Revenue Ruling or other statement published in the Internal Revenue Bulletin.

(5) Except in rare or unusual circumstances, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer whose tax liability was directly involved in such ruling if (i) there has been no misstatement or omission of material facts, (ii) the facts subsequently developed are not materially different from the facts on which the ruling was based, (iii) there has been no change in the applicable law, (iv) the ruling was originally issued with respect to a prospective or proposed transaction, and (v) the taxpayer directly involved in the ruling acted in good faith in reliance upon the ruling and the retroactive revocation would be to his detriment. To illustrate, the tax liability of each employee covered by a ruling relating to a pension plan of an employer is directly involved in such ruling. Also, the tax liability of each shareholder is directly involved in a ruling related to the reorganization of a corporation. However, the tax liability of members of an industry is not directly involved in a ruling issued to one of the members, and the position taken in a revocation or modification of ruling to one member of an industry may be retroactively applied to other members of that industry. By the same reasoning, a tax practitioner may not obtain the nonretroactive application to one client of a modification or revocation of a ruling previously issued to another client.

(6) A ruling issued to a taxpayer on a particular transaction applies to that transaction only. If the ruling is later found to be in error or no longer in accord with the position of the Service, it will afford the taxpayer no protection with respect to a like transaction in the same or subsequent year, except to the extent provided in subparagraphs (7) and (8) of this paragraph.

(7) If a ruling is issued covering a continuing action or a series of actions and it is determined that the ruling was in error or no longer in accord with the position of the Service, the Assistant Commissioner (Technical) ordinarily will limit the retroactivity of the revocation or modification to a date not earlier than that on which the original ruling was modified or revoked. To illustrate, if a taxpayer rendered service or provided

a facility which is subject to the excise tax on services or facilities, and in reliance on a ruling issued to the same taxpayer did not pass the tax on to the user of the service or the facility, the Assistant Commissioner (Technical) ordinarily will restrict the retroactive application of the revocation or modification of the ruling.

(8) A ruling holding that the sale or lease of a particular article is subject to the manufacturers excise tax or the retailers excise tax may not revoke or modify retroactively a prior ruling holding that the sale or lease of such article was not taxable, if the taxpayer to whom the ruling was issued, in reliance upon such prior ruling, parted with possession or ownership of the article without passing the tax on to his customer. Section 1108(b), Revenue Act of 1926.

(9) With respect to Revenue Rulings published in the Internal Revenue Bulletin, taxpayers generally may rely upon such rulings in determining the rule applicable to their own transactions and need not request a specific ruling applying the principles of a published Revenue Ruling to the facts of their particular cases where otherwise applicable. However, see subparagraph (10) of this paragraph. Revenue Rulings published in the Internal Revenue Bulletin ordinarily are not revoked or modified retroactively.

(10) Since each Revenue Ruling represents the conclusion of the Service as to the application of the law to the entire state of facts involved, taxpayers, Service personnel, and others concerned are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. Furthermore, they should consider the effect of subsequent legislation, regulations, court decisions, and Revenue Rulings.

(m) *Effect of determination letters.* A determination letter issued by a district director, in accordance with this section, shall be given the same effect upon examination of the return of the taxpayer to whom the determination letter was issued as is described in paragraph (1) of this section, in the case of a ruling issued to a taxpayer, except that reference to the National Office is not necessary where, upon examination of the return, it is the opinion of the district director that a conclusion contrary to that expressed in the determination letter is indicated. A district director may not limit the modification or revocation of a determination letter but may refer the matter to the National Office for exercise by the Commissioner or his delegate of the authority to limit the modification or revocation.

(n) *Organization claiming exemption under section 501 or 521 of the Code—*

(1) *Filing applications for exemption.*

(i) An organization seeking a ruling or determination letter of exemption under section 501 or section 521 of the Code is required to file an application (in duplicate, if under section 501) with the district director of internal revenue for the district where it would otherwise be required to file a tax return. Any applica-

tion received by the National Office or by a district director other than as provided above will be forwarded, without any action thereon, to the appropriate district director.

(1) An exemption ruling or determination letter will be issued to an organization, provided its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization clearly will be exempt. A mere restatement of purpose or a statement that proposed activities will be in furtherance of such purposes will not satisfy the requirements for an advance ruling. Where the Service considers it warranted, a record of actual operations may be required before a ruling or determination letter will be issued.

(2) Requests for rulings or determination letters other than in the form of applications for exemption are governed by the procedures outlined in paragraphs (a) through (m) of this section.

(3) *Processing applications.* (1) Under the general procedures outlined in paragraphs (a) through (m) of this section, district directors are authorized to issue determination letters involving applications for exemption under sections 501 and 521 of the Code.

(2) A district director will refer applications which present questions not covered by established precedents to the National Office for ruling. The National Office will consider each such application, issue a ruling directly to the organization, and send a copy of the ruling to the district director. In the event of a conclusion unfavorable to the applicant, it will be informed of the basis for the conclusion and of its rights to file a protest and to a conference in the National Office. If a conference is requested, the conference procedures outlined in subdivision (vi) of paragraph (b) (5) of § 601.105 will be followed. After reconsideration of the application in the light of the protest and any information developed in conference, the National Office will affirm, modify, or reverse the original conclusion, issue a ruling to the organization, and send a copy of the ruling to the district director.

(3) An exemption application which does not contain the required information will be classified as an "incomplete application case." The applicant will be advised in writing why a determination will not be made.

(4) *Effect of exemption rulings or determination letters.* (1) An exemption ruling or determination letter is usually effective as of the date of formation of an organization if its purposes and activities during the period prior to the date of the ruling or determination letter were consistent with the requirements for exemption. If the organization is required to alter its activities or to make substantive amendments to its enabling instruments in order to qualify for exemption, the exemption ruling or determination

letter will be effective only for the period specified therein.

(2) An exemption ruling or determination letter may not be relied upon if there is a material change inconsistent with exemption in the character, the purpose, or the method of operation of the organization.

(3) *National Office review of determination letters.* The National Office will review determination letters to assure uniformity in the application of the established principles and precedents of the Service. Where the National Office takes exception to a determination letter, the district director will be advised. If the organization protests the exception taken, the file and protest will be returned to the National Office. The referral will be treated as a request for technical advice and the procedures of paragraph (b) (5) of § 601.105 will be followed.

(4) *Protest of adverse determination letters.* (1) Upon the issuance of a determination letter adverse to the applicant the district director will advise the organization of its right to protest the determination by submitting a statement of the facts, law, and arguments in support of its application for exemption, and of its right to a district office conference.

(2) The organization may waive its right to a district office conference and request referral of the matter directly to the National Office. The district director will advise the organization in writing that the matter will be referred to the National Office in accordance with its request only after a statement is filed setting forth the facts, law, and arguments in support of its application for exemption. In addition, the organization will be requested to specify whether it desires a conference in the National Office in the event an adverse decision is indicated.

(3) If, after considering the organization's protest and any information developed in conference, the district director maintains his position and the organization does not agree, the case will be referred to the National Office. The referral will be considered a request for technical advice and the procedures of paragraph (b) (5) of § 601.105 will be followed.

(4) The adverse determination letter will serve to inform the organization of the pertinent facts and the question or questions proposed for submission to the National Office, and will be deemed to satisfy the requirements of subdivision (iii) (e) of paragraph (b) (5) of § 601.105.

(5) The organization will not be afforded protest and conference rights if the determination letter is based on technical advice.

(6) *Revocation or modification of exemption rulings or determination letters.*

(1) An exemption ruling or determination letter may be revoked or modified by a ruling or determination letter addressed to the organization, or by a Revenue Ruling or other statement published in the Internal Revenue Bulletin. The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in

a manner materially different from that originally represented, or engaged in a prohibited transaction of the type described in subdivision (vii) of this subparagraph.

(2) If a district director concludes, as a result of examining an information return or considering information from any other source, that a ruling or determination letter should be revoked or modified, the organization will be advised in writing of the proposed action and the reasons therefor. The district director will also advise the organization of its right to protest the proposed action by submitting a statement of the facts, law, and arguments in support of its continued exemption, and of its right to a district office conference.

(3) The organization may waive its right to a district office conference and request referral of the matter directly to the National Office. The district director will advise the organization in writing that the matter will be referred to the National Office in accordance with its request only after it files a statement setting forth the facts, law, and arguments in support of continued exemption. In addition, the organization shall be requested to specify whether it desires a conference in the National Office in the event an adverse decision is indicated.

(4) If the organization agrees with the proposed action, either before or after a district office conference, or if no protest is filed, the district director will issue a determination letter revoking or modifying the organization's exemption.

(5) If, after considering the organization's protest and any information developed in conference, the district director maintains his position and the organization does not agree, the file and protest will be referred to the National Office. The referral will be considered a request for technical advice and the procedures of paragraph (b) (5) of § 601.105 will be followed.

(6) The letter advising the organization of the proposed revocation or modification action will serve to inform the organization of the pertinent facts and the question or questions proposed for submission to the National Office, and will be deemed to satisfy the requirements of subdivision (iii) (e) of paragraph (b) (5) of § 601.105.

(7) If it is concluded that an organization entered into a prohibited transaction for the purpose of diverting corpus or income from its exempt purpose and if the transaction involved a substantial part of the corpus or income of the organization, its exemption is revoked effective as of the beginning of the taxable year during which the prohibited transaction was commenced. An organization is ordinarily notified of such revocation of exemption by regular mail.

(8) In all other prohibited transaction cases, the exemption is revoked effective as of the beginning of the first taxable year after the date of the revocation letter. In these cases the organization will be notified of the revo-

cation of exemption by registered or certified mail, sent to its last known address.

(ix) While the organization, in a prohibited transaction case, will usually be permitted to submit its brief and to be heard in conference before the revocation notice is issued, the Service may, at its discretion, issue the revocation notice by registered or certified mail, prior to the receipt of the brief or prior to granting a conference. If it is later determined that the revocation was in error, it will be rescinded as of the date it was issued.

(x) The provisions of this section relating to protests and conference before a revocation notice is issued are not applicable to matters where delay would be prejudicial to the interests of the Internal Revenue Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the period of limitations, or where immediate action is necessary to protect the interests of the Government).

(7) *Prohibited transactions.* (i) Section 503 of the Code denies exemption to certain organizations which engage in transactions of the type described therein. The National Office may issue a ruling as to whether an organization has entered into, or proposed to enter into, a prohibited transaction; but, except as provided in subdivision (ii) of this subparagraph, a ruling will not be issued where the determination is primarily one of fact, e.g., market value of property, reasonableness of compensation, etc. Also no ruling will be issued with respect to such transactions as sales and leasebacks, gifts and leasebacks, and other rental transactions of real or personal property directly or indirectly with the creator or a related or controlled interest.

(ii) Where the adequacy of the security of a loan is involved, a ruling may be issued, but only if there is a clear indication of value which can be established by reference to recognized sources without requiring physical valuation or appraisal. The following are examples of transactions where the adequacy of security can be established by reference to recognized sources:

- (a) A surety bond issued by a recognized surety company doing a surety bond business under applicable state law;
- (b) An assignment of an insurance contract having a cash surrender value sufficient to cover the loan, interest, and possible costs of collection;
- (c) A first mortgage on real property in an amount not in excess of 50 percent of its assessed value for local tax purposes; or,
- (d) Collateral represented by securities listed on a recognized exchange of an aggregate value equal to twice the amount of the loan.

(iii) An organization whose exemption is revoked by reason of section 503 of the Code may file a new application in any taxable year following the taxable year in which the notice of revocation was issued. But the exempt status of an organization may not be renewed before the beginning of the first taxable year following the year in which its new ap-

plication is filed. Thus, if a revocation notice was issued in 1966, the organization may not file a new application for exemption until 1967, and the new exemption may not be granted for a taxable year prior to 1968. If the organization does not file a new application until 1968, the new exemption may not be recognized for a year prior to 1969.

(c) *Employees' trusts or plans.* (1) *Determination letters.* (i) Determination letters authorized in paragraph (c) (5) of this section are limited to the qualification of plans or trusts under section 401(a) of the Code and bond purchase plans under section 405(a), and to the exempt status of trusts under section 501(a). This includes consummated and proposed transactions relating to the following:

- (a) The initial qualification of a plan and, if trustee, the status for exemption of a trust;
- (b) Compliance with the applicable requirements of foreign situs trusts as to taxability of beneficiaries (section 402(c)) and deductions for employer contributions (section 404(a) (4));
- (c) Amendments to plans and trusts;
- (d) Curtailment of plans;
- (e) Termination of plans and trusts; and
- (f) The effect on the qualification of the plan, and status for exemption of the trust, of an investment of trust funds in the stock or securities of the employer or controlled corporation (ownership of 50 percent or more of all voting stock or 50 percent or more of the total value of shares of all classes of stock).

(ii) Determination letters authorized by subdivision (i) of this subparagraph do not include determinations or opinions relating to other inquiries with respect to plans or trusts. Thus, except as provided in subdivision (i) (b) of this subparagraph, district directors may not issue determination letters relating to issues under other sections of the Code, such as sections 72, 402 through 404, 502, 503, and 511 through 515, unless such determination letters are otherwise authorized under paragraph (c) of this section.

(iii) *Employees' trusts* must be maintained and operated for the exclusive benefit of the employees or their beneficiaries, and investments by such trusts must be consistent with that purpose. District directors are authorized to issue determination letters with respect to the investments of such trusts in the stocks or securities of corporations of the type described in subdivision (i) (f) of this subparagraph, relating to the compliance with these requirements. However, they may not issue determination letters with regard to the fair market value of the investment or with respect to the adequacy of security behind a loan. These issues are within the prohibited transactions area. In this connection see subparagraph (3) of this paragraph.

(2) *Instructions to taxpayers.* (i) All of the provisions of paragraph (e) of this section are applicable to requests for determination letters of the type discussed in this paragraph. In addition, the information required by subdivisions (ii) through (vi) of this subparagraph,

together with the identification number of a participating trust, must also be furnished in requesting a determination letter on the qualification of an employees' plan or trust.

(ii) If the request relates to the initial qualification of a plan or the compliance with the requirements for a foreign situs trust, the following information must be submitted:

- (a) The information required by § 1.404(a)-2 of this chapter (Income Tax Regulations);
- (b) Type of organization of employer;
- (c) Date incorporated, if a corporation, or date business commenced, if other type of organization;
- (d) Nature of business of employer; and
- (e) Name of predecessor business, if any, type of organization of predecessor, and when transfer took place; and
- (f) Date on which the accounting year of the trust ends.

(iii) If the request relates to an amendment to a plan, the following information must be submitted:

- (a) A copy of the amendment;
- (b) The information required by § 1.404(a)-2 of this chapter (Income Tax Regulations) unless it was furnished with a request for a determination letter for the same year for which the amendment is to become effective. (However, if the amendment changes the requirements for coverage, contributions, or benefits, the information must be submitted even though previously submitted with a prior request.);
- (c) The information required by subdivision (ii) (b) through (f) of this subparagraph, unless it was previously furnished with a request for a determination letter.

(iv) If the request relates to a curtailment or termination of the plan, the following information must be submitted:

- (a) The date the plan was, or is proposed to be, terminated or curtailed;
- (b) A statement of the reasons and circumstances for the termination or curtailment;
- (c) A statement whether any of the funds under the plan will revert to or become available to the employer; if so, details must be furnished;
- (d) A statement, with full particulars, as to any funds under the plan which at any time were contributed in the form of, or invested in, obligations or property of the employer or related companies;

(e) The information specified in this subdivision, in columnar form, with respect to each of the 25 highest paid employees covered by the plan at the time of termination or curtailment (the most recent anniversary date of the plan if the action is proposed), listed in the order of their compensation, and with respect to all other employees covered by the plan (as a group) and showing the number in the group:

- (1) Name and whether an officer or supervisor;
- (2) Percentage of each class of stock owned directly or indirectly by the employee or members of his family;

(3) Data, separately for the year of termination or curtailment and for each of the 5 preceding years of the plan's operation (if more are required they will be requested) with respect to (i) total compensation other than deferred compensation, (ii) employer's contribution, (iii) employee's contribution, and (iv) employee's share of forfeitures;

(4) Totals for each of the columns under (3) of this subdivision for each year;

(5) Summary columns aggregating for all years (totaled horizontally) with respect to each employee listed and for all others, data similar to that required by (3) of this subdivision; and

(6) Total value of benefits distributed or to be distributed to each employee listed, and to all others;

(f) A schedule showing separately for the year of termination or curtailment and for each of the 5 preceding years of the plan (if more are required they will be requested):

(1) Number of participants at beginning of year;

(2) Number of participants added in year;

(3) Number of participants dropped in year; and

(4) Number of participants remaining at end of year.

(v) If the request relates to an investment of trust funds in the stock or securities of the employer, the following information, without duplicating information previously furnished, must be submitted:

(a) Balance sheets of the employer (and controlled corporation, if involved) as of the close of the last 2 taxable years;

(b) Comparative statements of income and profit and loss for the last 5 taxable years;

(c) Analysis of surplus for the last 5 years, specifically showing the amount and rate of dividends paid on each class of stock;

(d) A statement accounting for all material changes from the latest dates of the information in (a), (b), and (c) of this subdivision to the date of filing the information;

(e) A schedule showing the nature and amounts of the various assets in trust fund; and

(f) A statement setting forth the amount to be invested in the stock or securities of the employer or a controlled corporation (or both), the nature of the investment, the present rate of return, collateral or type of security for the loan, if any, and the reasons for the investment.

(The information called for under (a), (b), and (f) of this subdivision, and related data, may be submitted in composite form.) A full disclosure must be made where trust funds are invested in stock or securities of, or loaned to, the employer, whether or not a determination letter is requested. This information must in all cases be furnished to the appropriate district director. See subdivision (vii) of this subparagraph.

(vi) When in connection with the request for a determination on the quali-

fication of the plan, it is necessary to determine whether an organization is an association taxable as a corporation as defined in section 7701(a)(3) of the Code, and that an employer-employee relationship exists between it and its associates, the district director will make such determination. The request, in such case shall also be accompanied by copies of the articles of association or agreement establishing the organization, bylaws, and all other data relevant to the formation and operation of the association, and should show all pertinent dates. The organization should also support its request by furnishing copies of applicable local law relating to its status, copies of contracts of employment with its associates, and a brief of its position on its status for taxation and its relationship with its associates.

(vii) Requests for determination letters with respect to matters authorized by subparagraph (1)(i) of this paragraph and the necessary supporting data, are to be addressed to the district director specified in this subdivision:

(a) A single employer will address his request to the district director for the district in which its principal place of business is located.

(b) If a parent company and its subsidiaries have a single plan, the request will be addressed to the district director for the district in which the principal place of business of the parent company is located, whether separate or consolidated returns are filed.

(c) If the plan is established or proposed for an industry by all subscribing employers, whose principal places of business are located within the jurisdiction of more than one district director, the request will be addressed to the district director for the district in which is located the principal place of business of the trustee, or if more than one trustee, the usual meeting place of the trustees.

(d) In the case of a pooled fund arrangement (individual trusts under separate plans pooling their funds for investment purposes through a master trust), the request on behalf of the master trust will be addressed to the district director for the district where the principal place of business of such trust is located. Requests on behalf of the participating trusts and related plans will be addressed as otherwise provided in (a) through (c) of this subdivision.

(e) In the case of a plan of multiple employers not otherwise provided for in (a) through (f) of this subdivision, the request will be addressed to the district director for the district in which is located the principal place of business of the trustee, or if not trustee, or if more than one trustee, the principal or usual meeting place of the trustees or plan supervisors.

(f) If the plan is with respect to an organization of the type described in subdivision (vi) of this subparagraph, the association will address its request to the district director with whom it is required to file its tax returns.

(3) *Prohibited transactions.* (i) Section 503 of the Code denies exemption

to certain organizations which engage in transactions of the type described in such section. The National Office may issue a ruling as to whether a trust has entered into, or proposes to enter into, a prohibited transaction, but, except as provided in subdivision (ii) of this subparagraph, a ruling will not be issued where the determination is primarily one of fact, e.g., market value of property, reasonableness of compensation, etc. Also, no rulings or determination letters will be issued with respect to such transactions as sales and leasebacks, gifts and leasebacks, and other rental transactions of real or personal property directly or indirectly with the creator, or a related or controlled interest.

(ii) Where the adequacy of the security of a loan is involved, a ruling may be issued, but only if there is a clear indication of value which can be established by reference to recognized sources without requiring physical valuation or appraisal. The following are examples of transactions where the adequacy of security can be established by reference to recognized sources:

(a) A surety bond issued by a recognized surety company doing a surety bond business under applicable State law;

(b) An assignment of an insurance contract having a cash surrender value sufficient to cover the loan, interest, and possible costs of collection;

(c) A first mortgage on real property in an amount not in excess of 50 percent of its assessed value for local tax purposes; or

(d) Collateral represented by securities listed on a recognized exchange of an aggregate value equal to twice the amount of the loan.

Such rulings may be issued only with respect to proposed transactions and with respect to completed transactions where the return for the first year for which the transaction is effective has not been filed or the filing date has not passed. This subparagraph does not preclude the National Office from ruling as to whether a transaction is within the purview of section 503 (c), (h), or (i) of the Code.

(iii) If, upon examination of the return or returns of a trust, or from other sources, a district director is of the opinion that a trust has entered into a prohibited transaction, the trust will be advised in writing that it is proposed to revoke its exemption, and the reasons for such proposed action. The district office will also advise the trust of its rights to protest the proposed action by submitting a statement of the facts, law, and arguments in support of its continued exemption, and of its rights to a conference in the district office.

(iv) If the trust agrees with the proposed action, either before or after an informal conference, or if no protest is filed, the district director will advise the organization in writing of the revocation of the exempt status.

(v) If, after considering the information submitted by the trust, both in writing and in conference, the district office

is still of the opinion that the exemption should be revoked, and the trust does not agree, the findings of the district office will be forwarded to the National Office for consideration prior to further action. Such reference to the National Office will be considered a request for technical advice and the procedures in paragraph (b) (5) of § 601.105 will be followed.

(vi) If it is concluded that a prohibited transaction was entered into for the purpose of diverting corpus or income from its exempt purpose and if the transaction involved a substantial part of the corpus or income of the trust, its exemption is revoked, effective as of the beginning of the taxable year during which the prohibited transaction was commenced. No notification to the trust of the loss of its exemption is required under these circumstances. In all other cases, however, its exemption is revoked, effective as of the beginning of the first taxable year after the date of the revocation letter. Under these circumstances, a revocation letter is sent by registered or certified mail to the last known address of the organization.

(vii) The trust will usually be permitted to submit its brief and to be heard in conference before final action is taken. However, the Service may, at its discretion, issue the revocation letter prior to the receipt of the brief or prior to granting a conference. If it is later determined that the revocation was in error, it will be rescinded as of the date it was issued.

(viii) A trust which is denied exemption under section 503 of the Code may file a new claim for exemption in any taxable year following the taxable year in which the notice of denial was issued. But it may not be granted a new exemption before the beginning of the first taxable year following the year in which its new claim is filed. Thus, if a revocation notice is issued in 1961, the trust may not file a new claim for exemption until 1962, and the new exemption may not be granted for a taxable year prior to 1963. If the trust does not file a new claim until 1963, the new exemption may not be granted for a year prior to 1964.

(ix) District directors have the authority to determine that a trust will not knowingly again engage in a prohibited transaction and that the trust also satisfies all other requirements under section 401(a) of the Code, and to notify such trust of the reestablishment of its exemption.

(4) *Reference of matters to the National Office.* (i) Technical advice is defined in paragraph (b) (5) of § 601.105 as advice or guidance furnished upon request of a field official in connection with the examination or consideration of a return of a taxpayer. Although a taxpayer may request a determination letter with respect to the qualification of its plan or trust under section 401(a) of the Code, prior to the filing of any return affected by the plan or trust, the consideration or examination of the facts relating to the qualification, amendment, curtailment, or termination of the plan or relating to the exempt status of the trust will be considered to

be in connection with the examination or consideration of a return of the taxpayer. Thus, a district director may request technical advice with respect to issues which arise as the result of requests for determination letters of the type discussed in this paragraph.

(ii) Where issues arise in a district director's office with respect to matters within the contemplation of subparagraph (1) (i) of this paragraph, and the district office does not request technical advice from the National Office, the organization may notify the district director that it intends to request National Office consideration. The notice will consist of a copy of the request which the organization intends to file with the National Office. See subdivision (iv) of this subparagraph. Should the district director make an adverse determination, or should no action be taken within 30 days after the notice is filed with the district director, the request may be filed with the National Office.

(iii) Requests for National Office consideration will be entertained upon a clear showing—

(a) That the position of the district office is contrary to the law or regulations on the points at issue;

(b) That the position of the district office is contrary to the position of the Service as set forth in a Revenue Ruling currently in effect;

(c) That the position of the district office is contrary to a court decision which is followed by the Service, i.e., acquiescence in an adverse Tax Court decision;

(d) That the contemplated district office action is in conflict with a determination made in a similar case in the same or another district; or

(e) That the issues arise because of unique or novel facts which had not previously been passed upon, in any published Revenue Ruling or announcement.

(iv) The request to the National Office must show the following:

(a) Date of request;

(b) Name and address of taxpayer (employer), and name and address of representative, if any, who has been authorized to represent taxpayer (see paragraph (e) (5) of this section);

(c) District office in which the case is pending;

(d) Type of plan (pension, annuity, profit sharing, stock bonus) and type of action involved (initial qualification, amendment, curtailment, termination, or investment);

(e) Date of filing a copy of this request with the district director and the date and symbols of determination letter, if any;

(f) A concise statement of the issues without presentation of the facts or argumentation (e.g., whether a limitation may be imposed on employer contributions used to provide benefits for stockholder-employees);

(g) Grounds for requesting National Office consideration, e.g., action of the district office contrary to law or regulations (cite sections involved), contrary to published precedent (cite), conflict be-

tween districts or in same district (give name and district of case in conflict), unique or novel facts (describe briefly);

(h) Whether the applicable information required by subparagraph (2) of this paragraph has been filed with the district director;

(i) Whether a conference is desired in the National Office.

(v) Upon receipt of the request in the National Office, a determination will be made as to whether the case is to be considered at the National Office, and the taxpayer will be advised as to this determination. If the National Office determines that it will consider the case, the file will be called in from the district office and the taxpayer will be afforded an opportunity to furnish a statement on the points at issue and to a conference in Washington, if such a conference was requested. Copies of all written submissions are to be furnished the district director. The district director will have an opportunity to make such comments to the National Office as he deems appropriate. After full consideration of the entire file, including any conference discussion, the National Office will notify the taxpayer of its determination, and the case file will be returned to the district office for appropriate disposition in accordance with the National Office determination. The procedures in paragraphs (a) through (m) of this section will control to the extent they are not inconsistent with the provisions of this subparagraph.

(vi) Should a district director determine that an organization of the type described in subparagraph (2) (vi) of this paragraph is not an association taxable as a corporation or that the proper employer-employee relationship does not exist between the organization and its associates, the district director will so advise the organization. Inasmuch as the primary issue here is not the qualification of the plan under section 401(a) of the Code, the appeals procedures of subdivision (ii) through (v) of this subparagraph are not applicable.

(5) *Review of determination letters.* All determination letters issued by district directors under the procedures in this paragraph are subject to post review in the National Office under the jurisdiction of the Assistant Commissioner (Technical). If, during the course of review, a determination letter does not appear to conform to the interpretations and policies of the Service, the district director will be advised of the exceptions noted. If the taxpayer protests the exceptions taken by the National Office, the matter will be returned to the National Office. The determination letter and the protest will be treated as a request for technical advice. The procedures in paragraph (b) (5) of § 601.105 will be followed.

(6) *Oral advice to taxpayers.* (i) In conformity with the general principle announced in paragraph (k) of this section, district officials will not ordinarily confer with taxpayers or their representatives on matters regarding the formation or qualification of pension or similar plans, or related matters, including

amendments or curtailments to approved plans, prior to the submission of a plan, amendment, or curtailment for a determination.

(ii) A district director may grant such a conference upon written request from a taxpayer or his representative, provided the request shows that a substantive plan, amendment, etc., has been developed for submission to the Service, but that special problems or issues are involved, and the district director concludes that such a conference would be warranted in the interest of facilitating review and determination when the plan, etc., is formally submitted.

(iii) The furnishing of advice or assistance, whether requested by personal appearance, telephone, or correspondence, except as otherwise provided in subdivision (ii) of this subparagraph, will be limited to general procedures, or will direct the inquirer to source material, such as pertinent Code provisions, regulations, Revenue Procedures, and Revenue Rulings which may aid the inquirer in resolving his question or problem.

(7) *Effect of pension trust determination letters.* Determination letters issued pursuant to the provisions of this paragraph have the effect, generally, of any other determination letter as provided in paragraph (1) of this section. Determination letters issued under provisions of this paragraph contain only opinions as to the qualification of plans under section 401(a) of the Code and the status of related trusts under section 501(a). While favorable determination letter may serve as a basis for determining deductions for employer contributions thereunder, it is not to be taken as an indication that contributions are necessarily deductible as made. Such determinations can be made only upon an examination of the employer's tax return, in accordance with the limitations and subject to the conditions of section 404 of the Code.

§ 601.202 Closing agreements.

(a) *General.* (1) Under section 7121 of the Code and the regulations and delegations thereunder, the Commissioner, or any officer or employee of the Internal Revenue Service authorized in writing by the Commissioner, may enter into and approve a written agreement with a person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period. Such agreement, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, shall be final and conclusive.

(2) Closing agreements under section 7121 of the Code may relate to any taxable period ending prior or subsequent to the date of the agreement. With respect to taxable periods ended prior to the date of the agreement, the matter agreed upon may relate to the total tax liability of the taxpayer or it may relate to one or more separate items affecting the tax liability of the taxpayer. A closing agreement may also be entered into in order to provide a "determination",

as defined in section 1313 of the Code, and for the purpose of allowing a deficiency dividend deduction under section 547 of the Code. But see also sections 547(c)(3) and 1313(a)(4) of the Code and the regulations thereunder as to other types of "determination" agreements. With respect to taxable periods ending subsequent to the date of the agreement, the matter agreed upon may relate to one or more separate items affecting the tax liability of the taxpayer. A closing agreement with respect to any taxable period ending subsequent to the date of the agreement is subject to any change in or modification of the law enacted subsequent to the date of the agreement and applicable to such taxable period, and each closing agreement shall so recite. Closing agreements may be entered into even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of agreements relating to the tax liability for a single period. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or where good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner or his representatives that the Government will sustain no disadvantage through consummation of such an agreement.

(b) *Use of prescribed forms.* In cases in which it is proposed to close conclusively the total tax liability for a taxable period ending prior to the date of the agreement Form 866, Agreement as to Final Determination of Tax Liability, will be used. In cases in which agreement has been reached as to the disposition of one or more issues and a closing agreement is considered necessary to insure consistent treatment of such issues in any other taxable period Form 906, Closing Agreement as to Final Determination Covering Specific Matters, generally will be used. A request for a closing agreement which determines tax liability may be submitted at any time before the determination of such liability becomes a matter within the province of a court of competent jurisdiction. The request should be submitted to the district director of internal revenue with whom the return for the period involved was filed. However, if the matter to which the request relates is pending before an office of the Appellate Division, the request should be submitted to that office. A request for a closing agreement which relates only to a subsequent period should be submitted to the Commissioner of Internal Revenue, Washington, D.C. 20224.

(c) *Approval.* (1) Closing agreements relating to alcohol, tobacco, and firearms taxes (other than the manufacturers excise tax on firearms arising from application of secs. 4181 and 4182 of the Internal Revenue Code of 1954) in respect of any prospective transactions or completed transactions affecting returns to be filed may be entered into and approved

by the Assistant Commissioner (Compliance).

(2) Closing agreements relating to taxes other than those taxes covered by delegation to the Assistant Commissioner (Compliance) in subparagraph (1) of this paragraph in respect of any prospective transactions or completed transactions affecting returns to be filed may be entered into and approved by the Assistant Commissioner (Technical).

(3) Closing agreements for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods may be entered into and approved by the Assistant Commissioner (Compliance).

(4) Closing agreements in cases under the jurisdiction of regional commissioners, assistant regional commissioners (appellate), and chiefs and associate chiefs of appellate branch offices and also in cases in which a closing agreement has been recommended for approval by the office of a district director (but excluding cases docketed before the Tax Court of the United States) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods may be entered into and approved by such regional commissioners, assistant regional commissioners (appellate), and chiefs and associate chiefs of appellate branch offices.

(5) Closing agreements in cases under the jurisdiction of regional commissioners, assistant regional commissioners (appellate), and chiefs and associate chiefs of appellate branch offices docketed in the Tax Court of the United States but only in respect to related specific items affecting other taxable periods may be entered into and approved by such regional commissioners, assistant regional commissioners (appellate), and chiefs and associate chiefs of appellate branch offices.

(6) Closing agreements providing for the mitigation of economic double taxation under section 3 of Revenue Procedure 64-54, C.B. 1964-2, 1008, or for such mitigation and relief under Revenue Procedure 65-17, C.B. 1965-1, 833, may be entered into and approved by the Director of International Operations. The Director of International Operations may also enter into and approve closing agreements for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods, as the competent authority in the administration of the operating provisions of the tax conventions of the United States.

(7) Closing agreements in cases under the jurisdiction of a district director providing that the taxability of earnings from a deposit or account of the type described in Revenue Procedure 64-24, C.B. 1964-1 (Part 1), 693, opened prior to November 15, 1962, will be determined on the basis that earnings on such deposits or accounts are not includible in gross income until maturity or termination, whichever occurs earlier, and that the full amount of earnings on the deposit or account will constitute gross income in the year the plan matures, is

assigned, or is terminated, whichever occurs first, may be entered into and approved by such district director.

(d) *Applicability of ruling requirements.* The requirements relating to requests for rulings (see § 601.201) shall be applicable with respect to requests for closing agreements pertaining to future periods only (see paragraph (b) of § 601.202).

§ 601.203 Offers in compromise.

(a) *General.* (1) The Commissioner may compromise, in accordance with the provisions of section 7122 of the Code, any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense. Certain functions of the Commissioner with respect to compromise of civil cases involving liability under \$100,000, and of certain specific penalties involving only the regulatory provisions of the Code and related statutes, have been delegated to district directors. In civil cases involving liability of \$500 or over and in criminal cases the functions of the General Counsel are performed by the Chief Counsel for the Internal Revenue Service. In certain cases these functions are performed in the National Office and in other cases by Regional Counsel. (See also paragraph (c) of this section.)

(2) An offer in compromise of taxes, interest, ad valorem penalties, or specific penalties may be based on either inability to pay or doubt as to liability. Offers in compromise arise usually when payments of assessed liabilities are demanded, ad valorem penalties for delinquency in filing returns are asserted, or specific civil or criminal penalties are incurred by taxpayers. A criminal liability will not be compromised unless it involves only the regulatory provisions of the Internal Revenue Code and related statutes. However, if the violations involving the regulatory provisions are deliberate and with intent to defraud, the criminal liabilities will not be compromised.

(b) *Use of prescribed form.* Offers in compromise are required to be submitted on Forms 656 (Rev. 7-57), properly executed, and accompanied by a financial statement on Form 433 (if based on inability to pay). Form 656 is used in all cases regardless of whether the amount of the offer is tendered in full at the time the offer is filed or the amount of the offer is to be paid by deferred payment or payments. Copies of Form 656 may be obtained from district directors. An offer in compromise should be filed with the district director charged with the duty of collecting the tax sought to be compromised.

(c) *Consideration of offer.* (1) An offer in compromise is first considered by the district director with whom the offer is filed. An examining officer, after investigation of the financial condition of the taxpayer, makes a written recommendation for acceptance or rejection of the offer. If the district director has jurisdiction over the processing of the offer he will:

(i) Reject the offer, or

(ii) Accept the offer if it involves a civil liability under \$500, or

(iii) Accept the offer if it involves a civil liability of \$500 or more, but less than \$100,000, or involves a specific penalty (including in the case of narcotics, smoking opium, and marihuana taxes only those specific penalties which involve delinquency in registration or delinquency in payment), and the Regional Counsel concurs in the acceptance of the offer, or

(iv) Recommend to the National Office the acceptance of the offer if it involves a civil liability of \$100,000 or over.

(2) (i) If the district director does not have jurisdiction over the entire processing of the offer, the offer is transmitted to the appropriate Regional Counsel if the case is one in which:

(a) Recommendations for prosecution are pending in the Office of the Chief Counsel, the Department of Justice, or in an office of a United States attorney, including cases in which criminal proceedings have been instituted but not disposed of and related cases in which offers in compromise have been submitted or are pending;

(b) The taxpayer is in receivership or is involved in a proceeding under any provision of the Bankruptcy Act;

(c) The taxpayer is deceased (without regard to the class of tax involved);

(d) A proposal is made to discharge property from the effect of a tax lien or liens;

(e) An insolvent bank is involved;

(f) An assignment for the benefit of creditors is involved;

(g) A liquidation proceeding is involved; or

(h) Court proceedings are pending, except Tax Court cases.

(ii) The Regional Counsel considers and processes offers submitted in cases described in subdivisions (a) through (h) of subdivision (i) of this subparagraph with the exception of offers submitted in those cases being handled in the Office of the Chief Counsel in Washington. Where a case described in (a) through (h) of subdivision (i) of this subparagraph is being handled in the Office of the Chief Counsel in Washington, consideration and processing of the offer is accomplished in Washington, D.C.

(iii) In those cases described in (a) of subdivision (i) of this subparagraph no investigation will be made unless specifically requested by the office having jurisdiction of the criminal case.

(iv) In those cases described in (b) through (h) of subdivision (i) of this subparagraph the district director retains the duplicate copy of the offer and the financial statement for investigation. After investigation, the district director transmits to the appropriate regional counsel for consideration and processing his recommendation for acceptance or rejection of the offer together with the examining officer's report of his investigation.

(v) An offer under the processing jurisdiction of the Regional Counsel which is considered acceptable is either referred

to the district director or to the Office of the Chief Counsel in Washington for approval, depending upon the amount of civil liability involved.

(3) The district directors are authorized to reject any offer in compromise referred for their consideration. Unacceptable offers considered by the Chief Counsel, regional counsel, or the Appellate Division are also rejected by district directors. If an offer is not acceptable, the taxpayer is promptly notified of the rejection of that offer. If an offer is rejected, the sum submitted with the offer is returned by the district director to the proponent, unless the taxpayer, in submitting the offer, authorized the district director to retain the sum submitted with the offer. A selective post review of offers rejected by a district director involving liabilities totaling \$5,000 or more is made by each regional commissioner. A selected post review of offers rejected by the Director of International Operations involving liabilities totaling \$5,000 or more is made by the Audit Division of the National Office.

(4) If an offer involving unpaid liability of \$100,000 or more is considered acceptable by the office having jurisdiction over the offer, a recommendation for acceptance is forwarded to the National Office for review. If the recommendation for acceptance is approved, the offer is forwarded to the Office of the Chief Counsel for approval. After approval by the Office of the Chief Counsel, it is forwarded to the Commissioner for acceptance. The taxpayer is notified of the acceptance of the offer in accordance with its terms. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

(d) *Conferences.* Before filing a formal offer in compromise, a taxpayer may request a conference in the office which would have jurisdiction of the offer filed by him for the purpose of exploring the possibilities of compromising the unpaid tax liability. A conference may also be requested by the taxpayer in the office which has jurisdiction of the offer filed by him after all investigations have been made for the purpose of determining the amount which may be accepted as a compromise. If the offer is one with respect to which the district director has processing jurisdiction and the proponent does not agree with the rejection or proposed rejection, and neither the examining officer nor the conferee of the district director's office has been able to convince the proponent of the correctness of the conclusion reached, the proponent will be apprised of his privilege of submitting a request in writing, accompanied by a protest, for a district conference. If the controversial issues cannot be resolved at the district conference level, the taxpayer may appeal the case to the appropriate appellate branch office for a conference provided the required protest has been filed. The procedure outlined in the preceding sentence will not be followed if the offer relates to a tax over which the Appellate Division has no authority

(see paragraph (a)(3) of § 601.106). Taxpayers and their representatives are required to fulfill and comply with the applicable conference and practice requirements. See Subpart E of this part.

§ 601.204 Changes in accounting periods and in methods of accounting.

(a) *Accounting periods.* A taxpayer who changes his accounting period shall, before using the new period for income tax purposes, comply with the provisions of the income tax regulations relating to changes in accounting periods. In cases where the regulations require the taxpayer to secure the consent of the Commissioner to the change, the application for permission to change the accounting period shall be made on Form 1128 and shall be submitted to the Commissioner of Internal Revenue, Washington, D.C. 20224, within the period of time prescribed in such regulations. See section 442 and the regulations thereunder (under the 1939 Code, § 39.46-1 of Regulations 118) (26 CFR Rev. 1953, Parts 1-79, 39.46-1). If the change is approved by the Commissioner, the taxpayer shall thereafter make his returns and compute his net income upon the basis of the new accounting period. A request for permission to change the accounting period will be considered by the Income Tax Division.

(b) *Methods of accounting.* A taxpayer who changes the method of accounting employed in keeping his books shall, before computing his income upon such method for purposes of income taxation, comply with the provisions of the income tax regulations relating to changes in accounting methods. The regulations require that, in the ordinary case, the taxpayer secure the consent of the Commissioner to the change. See section 446 of the Code and the regulations thereunder. Application for permission to change the method of accounting employed shall be made on Form 3115 and shall be submitted to the Commissioner of Internal Revenue, Washington, D.C. 20224, within 90 days after the beginning of the taxable year in which it is desired to make the change. Permission to change the method of accounting will not be granted unless the taxpayer and the Commissioner agree to the terms and conditions under which the change will be effected. The request will be considered by the Income Tax Division.

(c) *Verification of changes.* Written permission to a taxpayer by the National Office consenting to a change in his annual accounting period or to a change in his accounting method is a "ruling." Therefore, in the examination of returns involving changes of annual accounting periods and methods of accounting, district directors must determine whether the representations upon which the permission was granted reflect an accurate statement of the material facts, and whether the agreed terms, conditions, and adjustments have been substantially carried out as proposed.

§ 601.205 Tort claims.

Claims for property loss or damage, personal injury, or death caused by the

negligent or wrongful act or omission of any employee of the Service, acting within the scope of his office or employment, filed under the Federal Tort Claims Act, as amended, must be prepared and filed in accordance with Treasury Department regulations entitled "Central Office Procedures" and "Claims Regulations" (31 CFR Parts 1 and 3). Such regulations contain the procedural and substantive requirements relative to such claims, and set forth the manner in which they are handled. The claims should be filed with the Commissioner of Internal Revenue, Washington, D.C. 20224, and must be filed within 2 years after the accident or incident occurred.

Subpart C—Provisions Relating to Distilled Spirits, Wines, Beer, Cigars, Cigarettes, and Cigarette Papers and Tubes and Certain Firearms

DISTILLED SPIRITS, WINES, AND BEER

§ 601.301 Imposition of taxes, qualification requirements, and regulations.

(a) *Imposition of taxes.* Subchapter A of Chapter 51 of the Internal Revenue Code of 1954 imposes taxes on distilled spirits (including alcohol), wine, and beer. Except as specifically provided, additional taxes are imposed when distilled spirits and wine are rectified by blending, compounding, etc. Subchapter A of chapter 51 of the Code also imposes taxes on stills and condensers used to produce spirits. Occupational taxes are imposed upon still manufacturers, brewers, rectifiers, dealers in liquors, and as a prerequisite for drawback under section 5134 of the Code, upon manufacturers of non-beverage products.

(b) *Qualification requirements.* Distillers, winemakers, brewers, warehousemen, rectifiers, bottlers, liquor bottle manufacturers, dealers in specially denatured alcohol, users of tax-free and specially denatured alcohol, and wholesalers and importers of liquors, are required to qualify with the Internal Revenue Service, usually by filing notice or application and bond with, and procuring permit from, the assistant regional commissioner (alcohol and tobacco tax) of the region in which operations are to be conducted. Detailed information respecting such qualification, including the forms to be used and the procedure to be followed, is contained in the respective regulations described in paragraph (c) of this section.

(c) *Regulations.* The procedural requirements with respect to matters relating to distilled spirits, wines, and beer which are within the jurisdiction of the Alcohol and Tobacco Tax Division are published in the regulations described in this paragraph. These regulations contain full information as to the general course and method by which the functions concerning liquors are channeled and determined, including the nature and requirements of formal and informal procedures, the forms, records, reports, and other documents required, and the contents of applications, notices, registrations, permits, bonds, and other doc-

uments. Supplies of prescribed forms may be obtained from the office of assistant regional commissioners (alcohol and tobacco tax), except that Forms 52-A, 52-B, 122, 133, 338, 2051, 2056-2060, 2621, and 2637 must be provided by the users at their own expense. Users and commercial printers may procure specimen copies of such forms from such offices. The following is a brief description of the several regulations arranged according to the principal subjects and operations concerned:

(1) *Establishment and operation of distilled spirits plants.* Part 201 of this chapter contains the regulations relating to the location, qualification, construction, arrangement, equipment, and operations (including activities incident thereto) of distilled spirits plants for the production and/or warehousing (including denaturation), rectification, and bottling (including bottling in bond) of distilled spirits.

(2) *Miscellaneous liquor transactions.* Part 170 of this chapter contains miscellaneous regulations relative to:

(i) Restamping of packages of distilled spirits by persons other than proprietors of distilled spirits plants;

(ii) Refunds of tax and duty paid on distilled spirits, wine, rectified products, and beer lost as a result of floods, hurricanes, or other disasters;

(iii) Application of section 6423, Internal Revenue Code of 1954, as amended, to refund or credit of tax on distilled spirits, wines, and beer;

(iv) Regulations in effect on June 30, 1959, which were prescribed on July 1, 1959, as interim regulations;

(v) Manufacture and sale of certain compounds, preparations, and products containing alcohol; and

(vi) Temporary regulations respecting the filing of deferred payment tax returns by proprietors of distilled spirits plants, by proprietors of bonded wine cellars, and by brewers.

(3) *Disposition of substances used in the manufacture of distilled spirits and articles and of containers used for the packaging of distilled spirits.* Part 173 of this chapter contains the regulations relative to the returns and records of the disposition of articles from which distilled spirits may be recovered, of substances of the character used in the manufacture of distilled spirits, and of containers of the character used for the packaging of distilled spirits.

(4) *Manufacture and use of containers of distilled spirits.* Part 175 of this chapter contains the regulations relating to the traffic in containers of distilled spirits of a capacity of not more than 5 wine gallons. The regulations cover the manufacture, sale, and use of liquor bottles for packaging distilled spirits for other than industrial use; use of liquor bottles for purposes other than packaging distilled spirits; labeling of distilled spirits; permits and revocation proceedings; imports and exports of liquor bottles; records, reports, and inventories of liquor bottles; reuse or refilling of liquor bottles (see also Part 194 of this chapter); and the purchase, sale, and possession of refilled or used liquor bottles.

(5) *Gauging of distilled spirits.* Part 186 of this chapter contains the regulations that prescribe the gauging instruments, and methods or techniques to be used in measuring distilled spirits (including denatured spirits). Tables are provided for use in making the necessary computation from gauge data.

(6) *Stills and condensers.* Part 196 of this chapter contains the regulations relative to the manufacture, taxpayment, removal, use, and registration of stills and condensers, and the exportation or transfer to foreign-trade zones of stills and condensers with benefit of drawback of internal revenue tax or without payment of tax.

(7) *Rules of practice in permit proceedings.* Part 200 of this chapter contains the rules governing the procedure and practice in connection with the disapproval of applications for basic permits, and for the issuance of citations for the suspension, revocation and annulment of such permits under sections 3 and 4 of the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.), and disapproval, suspension, revocation of container, industrial use, operating, withdrawal, and tobacco permits under the Code. Such rules also govern, insofar as applicable, any adversary proceeding involving adjudication required by statute to be determined on the record, after opportunity for hearing, under laws administered by the Alcohol and Tobacco Tax Division.

(8) *Basic permit requirements under the Federal Alcohol Administration Act.* Regulations No. 1 (27 CFR Part 1), issued pursuant to the Federal Alcohol Administration Act, as amended, contain the requirements relative to the issuance under that Act of basic permits to producers, rectifiers, blenders, bottlers, warehousemen, importers, and wholesalers of distilled spirits, wine, or beer, and the amendment, duration, revocation, suspension, or annulment of such permits.

(9) *Bulk sales and bottling of distilled spirits.* Regulations No. 3 (27 CFR Part 3), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act, including the terms of warehouse receipts for distilled spirits in bulk.

(10) *Labeling and advertising of distilled spirits.* Regulations No. 5 (27 CFR Part 5), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to the labeling and advertising of distilled spirits under the Federal Alcohol Administration Act, including standards of identity for distilled spirits, standards of fill for bottles of distilled spirits, withdrawal of bottled imported distilled spirits from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(11) *Credit period to be extended to retailers of alcoholic beverages.* Regulations No. 8 (27 CFR Part 8) issued under the Federal Alcohol Administration Act, as amended, contain the require-

ments relative to the credit period which may be extended by vendors to retailers of alcoholic beverages.

(12) *Production and removal of wine.* Part 240 of this chapter contains the regulations relative to the establishment and operation of bonded wine cellars, including bonded wineries, for the production, cellar treatment, and storage of wines, including amelioration, sweetening, addition of volatile fruit-flavor concentrates, addition of wine spirits (including distillates containing aldehydes), blending, and other cellar treatment; removals; taxpayment; return of unmerchandiseable taxpaid wine; use of wine for distilling material and manufacture of vinegar; and record and report requirements.

(13) *Bottling or packaging of taxpaid wine.* Part 231 of this chapter contains the regulations relative to the establishment, qualification, and operations of taxpaid wine bottling houses on premises other than those of a plant operated under Part 201 of this chapter, and to the bottling and packaging of taxpaid United States and foreign wines at such premises.

(14) *Nonindustrial use of distilled spirits and wine.* Regulations No. 2 (27 CFR Part 2), issued under the Federal Alcohol Administration Act, as amended, specify what uses of distilled spirits and wine are considered "nonindustrial", as that term is used in section 17 of the Federal Alcohol Administration Act.

(15) *Labeling and advertising of wine.* Regulations No. 4 (27 CFR Part 4), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to the labeling and advertising of wine under the Federal Alcohol Administration Act, including standards of identity for wine, standards of fill for containers of wine, the withdrawal of imported wine from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(16) *Establishment and operations of breweries.* Part 245 of this chapter contains the regulations relating to the production (including concentration and reconstitution incident thereto) and removal of beer and cereal beverages. The regulations cover the location, construction, equipment, and operations of breweries; and the qualification of such establishments, including the ownership, control, and management thereof.

(17) *Labeling and advertising of malt beverages.* Regulations No. 7 (27 CFR Part 7), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to the labeling and advertising of malt beverages (beer) under the Federal Alcohol Administration Act, including withdrawal of imported malt beverages from customs custody, and the issuance of certificates of label approval.

(18) *Liquor dealers.* Part 194 of this chapter contains the regulations relative to the special (occupational) taxes imposed on wholesale and retail dealers in liquors, wholesale and retail dealers in beer, and limited retail dealers; restric-

tions on purchases of distilled spirits; reuse or refilling of liquor bottles (see also Part 175 of this chapter); sale or possession of refilled or used liquor bottles; repackaging of alcohol for industrial use; recordkeeping and reporting requirements; and provisions relating to entry of premises and inspection of records by internal revenue officers.

(19) *Production of vinegar by the vaporizing process.* Part 195 of this chapter contains the regulations relating to the production of vinegar by the vaporizing process (fermentation and distillation of alcoholic liquid). The regulations cover the location, construction, equipment, qualification, and operation of vinegar plants.

(20) *Drawback of tax on spirits used in nonbeverage products.* Part 197 of this chapter contains the regulations which relate to obtaining drawback of internal revenue tax on distilled spirits used in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes.

(21) *Production of volatile fruit-flavor concentrates.* Part 198 of this chapter contains the regulations relating to the manufacture, removal, sale, storage, transfer in bond, transportation, recordkeeping and reporting requirements, and use of volatile fruit-flavor concentrates. It includes provisions regarding the location, qualification, use, and operations of concentrate plants.

(22) *Inducements furnished to retailers.* Regulations No. 6 (27 CFR Part 6), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to the furnishing, giving, renting, lending, or selling of equipment, fixtures, signs, supplies, money, services, or other things of value to retailers of distilled spirits, wine, and malt beverages, by other members of the liquor industry (principally vendors), including the furnishing of samples and advertising cuts.

(23) *Distribution and use of denatured spirits.* Part 211 of this chapter contains the regulations relating to the procurement, use, disposition, and recovery of denatured alcohol, specially denatured rum, and articles containing denatured spirits; and includes requirements in respect to industrial use and withdrawal permits; and the packaging, labeling, sale, rebottling, and reprocessing of articles containing specially denatured spirits.

(24) *Formulas for denatured spirits.* Part 212 of this chapter contains the regulations relating to the formulation of completely denatured alcohol, specially denatured alcohol, and specially denatured rum; to the uses of specially denatured spirits; and to the specifications for denaturants. The procedural requirements relative to the production of denatured alcohol and specially denatured rum are prescribed in Part 201 of this chapter, and those relative to the distribution and use of denatured alcohol and specially denatured rum are prescribed in Part 211 of this chapter.

(25) *Distribution and use of tax-free spirits.* Part 213 of this chapter contains the regulations relating to tax-free alcohol and covers the procurement, storage, use, and recovery of such alcohol; and includes requirements in respect to industrial use and withdrawal permits.

(26) *Liquors and articles from Puerto Rico and the Virgin Islands.* Part 250 of this chapter contains the regulations relating to the production, bonded warehousing, and withdrawal of distilled spirits, and denatured spirits, and the manufacture of articles in Puerto Rico and the Virgin Islands to be brought into the United States free of tax and the collection of internal revenue taxes on taxable alcoholic products coming into the United States from Puerto Rico and the Virgin Islands.

(27) *Importation of liquors.* Part 251 of this chapter contains the substantive and procedural requirements relative to the importation of distilled spirits, wines, and beer into the United States from foreign countries including special (occupational) and commodity taxes, permits, marking, branding, and labeling, and stamping of containers and packages.

(28) *Exportation of liquors.* Part 252 of this chapter contains the regulations relating to exportation including, where applicable, lading for use on vessels and aircraft, transfer to a foreign-trade zone, or transfer to a manufacturing bonded warehouse, Class 6, of distilled spirits (including specially denatured spirits), beer (including beer concentrate), and wine, whether without payment of tax, free of tax, or with benefit of drawback. It includes requirements with respect to removal, shipment, lading, deposit, evidence of exportation, losses, claims, and bonds.

§ 601.302 Taxes.

(a) *Collection.* Taxes on distilled spirits, wines, beer, and rectified products are paid by returns. If the person responsible for paying the tax has filed a proper bond with the assistant regional commissioner (alcohol and tobacco tax), he may file semimonthly returns, with proper remittances, to cover the taxes incurred on distilled spirits, wines, beer, and rectified products during such semimonthly period. If the taxpayer is not qualified to defer taxpayment, or has been placed on a prepayment basis by the assistant regional commissioner, he must prepay the tax on the distilled spirits, wines, beer, or rectified products. Distilled spirits and rectification tax returns are filed with an officer designated by the assistant regional commissioner (alcohol and tobacco tax), or with the district director when so directed by the assistant regional commissioner, except that where a remittance is in cash the return must be filed with the district director. Returns of tax on beer and wine are filed with the district director in all cases. The forms for filing these tax returns are furnished to industry members by the assistant regional commissioner (alcohol and tobacco tax). Special tax stamps are issued to denote the payment of special

(occupational) taxes by liquor dealers, brewers, rectifiers, still manufacturers, and manufacturers of nonbeverage products; such stamps are required to be posted in the taxpayer's place of business as evidence of taxpayment. Special tax stamps are also issued to denote payment of the commodity tax on stills and condensers, and are required to be cancelled and secured to the article or furnished to the user of the apparatus for retention at the premises where such apparatus is set up, available for inspection by internal revenue officers. Detailed information respecting the payment of tax on liquors and the payment of occupational and commodity taxes, including the forms to be used and the procedure to be followed, is contained in the respective regulations described in § 601.301(c).

(b) *Assessment.* If additional or delinquent tax liability is disclosed by an investigation, or by an examination of records, of a qualified plant or permittee, a notice (except where delay may jeopardize collection of the tax, or where the amount involved is nominal or the result of an evident mathematical error) is sent to the taxpayer advising him of the basis and amount of the liability and affording him an opportunity to submit a protest, with supporting facts, or to request a conference.

§ 601.303 Claims.

(a) *Claims for remission.* When distilled spirits (including distilling material and denatured spirits) or beer on which the tax has not been paid or determined is lost, and the person liable for payment of the tax thereon desires to be relieved from such liability, he may file claim on Form 2635 for remission of tax on the quantity that was lost. The assistant regional commissioner may, in any event, require such a claim to be filed, and will require it if circumstances indicate that the loss was caused by theft or, in the case of distilled spirits (including distilling material), unauthorized voluntary destruction. On receipt of a claim the assistant regional commissioner makes a factual determination, and notifies the claimant of allowance or rejection of his claim. If the claim is rejected, and circumstances so warrant, the assistant regional commissioner will take appropriate steps to collect the tax.

(b) *Claims for abatement.* When the tax on distilled spirits, wines, beer, or the rectification tax is assessed and the taxpayer thinks that the tax is not due under the law, he may file a claim for abatement of the tax on Form 843 with the district director of internal revenue or, where required by regulations, with the assistant regional commissioner (alcohol and tobacco tax). Forms 843 may be procured from the district director or the assistant regional commissioner. The district director forwards the claim to the assistant regional commissioner (alcohol and tobacco tax) for consideration, and the district director may call upon the taxpayer to file a bond in double the amount of the tax in order to insure collection of the tax if the claim is

rejected. When the claim is acted upon, both the taxpayer and the district director are notified of the allowance or rejection of the claim. If the claim is rejected, the district director will proceed to collect the tax.

(c) *Claims for refund.*—(1) *Taxes illegally, erroneously, or excessively collected.* A claim on Form 843 for refund of taxes illegally, erroneously, or excessively collected may be filed by a taxpayer with the district director of internal revenue to whom the tax was paid. Such claim must be filed within three years (two years under certain circumstances) after the date of payment of the tax. The district director forwards the claim to the assistant regional commissioner (alcohol and tobacco tax) for consideration. If the claim is rejected, the taxpayer is notified of the rejection by registered or certified mail, and he may then bring suit in the United States District Court or the Court of Claims for recovery of the tax. Such suits must be filed generally within two years from the date of mailing of the rejection notice. If the claim is allowed, an appropriate notice of allowance with a check for the amount of the refund and allowable interest is forwarded to the taxpayer; however, if there are other unpaid taxes outstanding against the taxpayer, the overpayment may be applied to the outstanding taxes and the balance, if any, refunded.

(2) *Taxes on liquors lost, destroyed, returned to bond, or taken as samples by the United States.* A taxpayer may, subject to the conditions in the appropriate regulations, file claim on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for refund of tax paid on (i) spirits returned to bonded premises, lost in rectification or bottling operations, lost by accident or disaster, or taken as samples by the United States, or (ii) wine returned to bond as unmerchantable, or lost by disaster, or (iii) beer removed from the market, or lost by disaster. If the claim is allowed, a notice of allowance with a check for the amount of the refund is forwarded to the claimant; except, that where there are any unpaid taxes outstanding against the claimant, the refund may be applied to the outstanding taxes and a check for the balance, if any, forwarded to the claimant. If the claim is rejected, a notice giving the reasons for rejection is forwarded to the claimant.

(d) *Claims for allowance, credit, or relief.* A qualified permittee, manufacturer, or proprietor may, subject to the conditions in the appropriate regulations, file claim on Form 2635 with the assistant regional commissioner (alcohol and tobacco tax) for allowance of loss, credit of tax, or relief from tax liability, as applicable, on (1) spirits returned to bonded premises, lost or destroyed on bonded premises or in transit thereto, or lost in rectification or bottling operations; (2) wine lost or destroyed on bonded premises or in transit thereto, and unmerchantable domestic wine returned to bond; (3) beer removed from the market, lost

(other than by theft), or destroyed by fire, casualty, or act of God; (4) denatured spirits lost or destroyed in bond, or lost on the premises of a qualified dealer or user or in transit to such premises; and (5) tax-free spirits lost on the premises of a qualified user or in transit to such premises.

(e) *Claims for payment—disaster losses.* When distilled spirits, wines, rectified products, or beer held or intended for sale is lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" as determined by the President of the United States, the person holding such product for sale at that time may, subject to the conditions in the appropriate regulations, file claim on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) of the region in which the product was lost, rendered unmarketable, or condemned, for payment of an amount equal to the internal revenue taxes paid or determined and any customs duties paid thereon. Claims must be filed within 6 months from the date on which the President makes the determination that the disaster has occurred. The determination date is construed to mean the date the Director, Office of Emergency Planning, identifies the specific disaster area.

§ 601.304 Preparation and filing of claims.

(a) *Distilled spirits at distilled spirits plants.* Procedural instructions in respect of claims for remission, abatement, credit, or refund of tax on spirits (including denatured spirits) lost or destroyed on or lost in transit to, or on spirits returned to, the premises of a distilled spirits plant are contained in Part 201 of this chapter. It is not necessary to file a claim for credit of tax on taxpaid samples taken by internal revenue officers from distilled spirits plants, as the assistant regional commissioner will allow credit, without claim, for tax on such samples.

(b) *Specially denatured spirits.* Procedural instructions in respect of claims for allowance of loss on specially denatured spirits lost on the premises of a bonded dealer or user, or while in transit to such premises, are contained in Part 211 of this chapter.

(c) *Tax-free alcohol.* Procedural instructions in respect of claims for allowance of loss on tax-free alcohol lost on the premises of a qualified user, or while in transit to such premises, are contained in Part 213 of this chapter.

(d) *Wine spirits and wine at bonded wine cellar.* Procedural instructions in respect of claims for (1) remission of tax on wine spirits lost on the premises of a bonded wine cellar or in transit thereto, (2) allowance of losses of wine in bond, and (3) credit or refund of tax paid on unmarketable domestic wine returned to bond are contained in Part 240 of this chapter.

(e) *Beer.* Procedural instructions in respect of claims for refund or credit of tax which has been paid (or allowance, credit, or relief of tax liability if the tax has not been paid) on domestic beer

removed from the market or lost or destroyed by fire, casualty, or act of God are contained in Part 245 of this chapter.

(f) *Distilled spirits, wines, or beer for export.* Procedural instructions in respect of claims for (1) drawback of internal revenue tax on distilled spirits or wines, for export, use as supplies on certain vessels or aircraft, deposit in a foreign-trade zone or customs manufacturing bonded warehouse and on beer removed for export, use as supplies on certain vessels and aircraft, or transfer to a foreign-trade zone, and (2) remission of tax on distilled spirits, specially denatured spirits, wines, or beer, withdrawn without payment of tax and lost during transportation to the port of export, manufacturing bonded warehouse, vessel or aircraft, or foreign-trade zone, are contained in Part 252 of this chapter.

(g) *Miscellaneous.* Procedural instructions are contained in Part 170 of this chapter in respect of claims for—

(1) Refund or credit of tax on distilled spirits, wines, or beer where such refund or credit is claimed on the grounds that tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive, and where such refund or credit is subject to the limitations imposed by section 6423 of the Code,

(2) Payment of an amount equal to the internal revenue tax paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a major disaster occurring in the United States after June 30, 1959, and

(3) Redemption, in Puerto Rico, of unused rectification tax sheet stamps and unused special Puerto Rican rectification stamps.

(h) *Special taxes.* Procedural instructions in respect of claims for abatement of assessments or refund of overpayments of liquor dealers occupational taxes and penalties are contained in Part 194 of this chapter. When claim is filed for refund of an occupational tax for which a stamp was issued, the stamp (or a Certificate in Lieu of Lost or Destroyed Special Tax Stamp, accompanied by affidavits attesting to loss or destruction of the stamp) must be surrendered with the claim. Such claims must be submitted within three years from the date of payment of the tax.

(i) *Low wines at vinegar plants.* Procedural instructions in respect of claims for remission of tax on low wines (distilled spirits) lost at vinegar plants producing vinegar by the vaporizing process are contained in Part 195 of this chapter.

(j) *Stills and condensers.* Procedural instructions in respect of claims for drawback of the internal revenue tax paid on stills and condensers which have been exported or deposited in a foreign-trade zone for exportation, destruction, or storage therein pending exportation, are contained in Part 196 of this chapter.

(k) *Distilled spirits used in nonbeverage products.* Procedural instructions in respect of claims (1) for drawback of tax on distilled spirits used in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes, and (2) for refund or adjustment of special (occupational) tax, are contained in Part 197 of this chapter.

§ 601.305 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under chapter 51 of the Code and of penalties for violation of the Federal Alcohol Administration Act, is set forth in § 601.327.

§ 601.306 Application for approval of interlocking directors and officers under section 8 of the Federal Alcohol Administration Act.

Any person who is an officer or director of a corporation now engaged in business as a distiller, rectifier, or blender of distilled spirits, or of an affiliate thereof, who desires to take office in other companies similarly engaged, must obtain permission to do so from the Director of the Alcohol and Tobacco Tax Division. Applications for such permission to take office shall be prepared and filed in accordance with instructions available from the assistant regional commissioner (alcohol and tobacco tax) or from the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C. 20224.

§ 601.307 Rulings.

The procedure for rulings in alcohol tax matters is set forth in § 601.328.

§ 601.308 Conferences.

Any person desiring a conference in the office of the assistant regional commissioner (alcohol and tobacco tax) of his region or of the Director, Alcohol and Tobacco Tax Division, in Washington, relative to any matter arising in connection with his operations, will be accorded such a conference upon request. No formal requirements are prescribed for such conference.

§ 601.309 Representatives.

Subpart E, conference and practice requirements, is applicable to all representatives of the taxpayer before the Service, in the office of the Director Alcohol and Tobacco Tax Division, or in the office of the assistant regional commissioner (alcohol and tobacco tax).

§ 601.310 Forms.

For forms to be used, see § 601.301(c).

CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

§ 601.311 Imposition of taxes; regulations.

(a) *Taxes.* Subchapter A of chapter 52 of the Internal Revenue Code of 1954, as amended, imposes taxes on cigars, cigarettes, and cigarette papers and tubes manufactured in or imported into the United States. Subchapter D of chapter 78 of the Code imposes a tax (equal to the internal revenue tax im-

posed in the United States upon the like articles of merchandise of domestic manufacture) on cigars, cigarettes, and cigarette papers and tubes of Puerto Rican manufacture brought into the United States and withdrawn for consumption or sale, and on such articles brought into the United States from the Virgin Islands.

(b) *Regulations.* The procedural requirements with respect to matters relating to cigars, cigarettes, and cigarette papers and tubes are contained in the regulations listed below:

(1) Part 200 of this chapter relates to the procedure and practice in connection with the disapproval of applications for permits, and the suspension and revocation of permits, under chapter 52 of the Code.

(2) Part 270 of this chapter relates to the manufacture of cigars and cigarettes; the payment by manufacturers of tobacco products of internal revenue taxes imposed by chapter 52 of the Code; and the qualification of and operations by manufacturers of tobacco products.

(3) Part 275 of this chapter relates to cigars, cigarettes, and cigarette papers, and tubes imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States; the removal of cigars from a customs bonded manufacturing warehouse, Class 6; and the release of such articles from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

(4) Part 285 of this chapter relates to the manufacture of cigarette papers and tubes; the payment by manufacturers of cigarette papers and tubes of internal revenue taxes imposed by chapter 52 of the Code; and the qualification of and operations by manufacturers of such articles.

(5) Part 290 of this chapter relates to the exportation (including supplies for vessels and aircraft and transfers to a foreign-trade zone) of cigars, cigarettes, and cigarette papers and tubes, without payment of tax, or with benefit of drawback of tax, and the qualification of and operations by export warehouse proprietors.

(6) Part 295 of this chapter relates to the removal of cigars, cigarettes, and cigarette papers, and tubes, without payment of tax, for use of the United States.

(7) Part 296 of this chapter relates to the provisions of a miscellaneous nature or not of continuing application. Included are regulations relating to:

(i) Limitations imposed by section 6423 of the Code on the refund or credit of tax paid or collected on cigars, cigarettes, and cigarette papers and tubes;

(ii) Losses of cigars, cigarettes, and cigarette papers and tubes caused by disasters occurring in the United States on or after September 3, 1958;

(iii) Purchase, receipt, possession, offering for sale, or sale or other disposition of cigars and cigarettes by dealers in such products;

(iv) Authorizations to execute bonds and extensions of coverage of bonds on behalf of corporate sureties; and

(v) Periods to be covered by tax returns filed by manufacturers for the deferred payment of taxes on cigars and cigarettes.

§ 601.312 Qualification and bonding requirements.

(a) *Manufacturers of tobacco products and proprietors of export warehouses.* Every person, before commencing business as a manufacturer of tobacco products or as a proprietor of an export warehouse, is required to qualify with the Internal Revenue Service by making application for permit and filing bond and other required documents with, and obtaining a permit from, the assistant regional commissioner (alcohol and tobacco tax) for the region in which operations are to be conducted.

(b) *Manufacturers of cigarette papers and tubes.* Every person, before commencing business as a manufacturer of cigarette papers and tubes, is required to qualify with the Internal Revenue Service by filing bond and other required documents with the assistant regional commissioner (alcohol and tobacco tax) for the region in which operations are to be conducted.

(b-1) *Puerto Rican manufacturers of cigars and cigarettes.* Every manufacturer of cigars and cigarettes in Puerto Rico who desires to defer payment in Puerto Rico of the internal revenue tax imposed by section 7652(a) of the Code on cigars and cigarettes of Puerto Rican manufacture coming into the United States must file a bond with the Director's Representative of the Office of International Operations, in Puerto Rico. Such bond is conditioned on the principal's paying, at the time and in the manner prescribed in the regulations, the full amount of tax computed on the cigars and cigarettes which are released for shipment to the United States. No bond is required if the tax is prepaid.

(c) *Proprietors of customs warehouses.* Every proprietor of a customs bonded manufacturing warehouse, Class 6, who desires to remove under Part 290 tax-exempt cigars for exportation (including supplies for vessels and aircraft), or for delivery for subsequent exportation, is required to file a bond with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the customs warehouse is located. However, removal of cigars for sale or consumption in the United States is subject to customs regulations.

(d) *Drawback of tax.* Taxpaid cigars, cigarettes, and cigarette papers and tubes may be exported with benefit of drawback of tax. Drawback may be allowed only to the person who paid the tax on such articles and who files claim and otherwise complies with the provisions contained in the applicable regulations referred to in § 601.311. As a condition precedent to the allowance of any drawback claim, the claimant is required to file a bond in an amount not less than the amount of tax covered in the claim.

(e) *General.* Detailed information relating to the qualification and bonding requirements, including the forms to be used and the procedure to be followed, is fully set forth in the regulations referred to in § 601.311.

§ 601.313 Collection of taxes.

(a) *Cigars and cigarettes.* Taxes on cigars and cigarettes are paid by the manufacturer on the basis of a return. If the manufacturer has filed a proper bond, he may defer payment at the time of removal and file semimonthly returns to cover the taxes. If the manufacturer has not filed such a bond or if he has defaulted in any way in paying his taxes, he is required to file a prepayment return prior to removal of such products, and to continue so doing until the assistant regional commissioner (alcohol and tobacco tax) finds that the revenue will not be jeopardized by deferred payment. Tax returns, with remittances, are filed by the domestic manufacturer with the appropriate district director of internal revenue. Taxes on cigars produced in a customs bonded manufacturing warehouse, Class 6, are paid on the basis of a return to the collector of customs in accordance with customs procedures and regulations. Taxes on cigars and cigarettes imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are paid by the importer to the collector of customs on the basis of a return made on the customs form by which release from customs custody is to be effected. However, taxes on cigars and cigarettes manufactured in Puerto Rico and brought into the United States may be prepaid in Puerto Rico on the basis of a return. If a Puerto Rican manufacturer has filed a proper bond, he may defer payment at the time of release for shipment to the United States and file a semimonthly return to cover the taxes. If the manufacturer has not filed such a bond or if he has defaulted in any way in payment of his taxes, he must file a prepayment return prior to removal of such products for shipment to the United States, and continue to do so until the Director's Representative of the Office of International Operations in Puerto Rico finds that the revenue will not be jeopardized by deferred payment. Tax returns in Puerto Rico, with remittances, are filed with the Director's Representative.

(b) *Cigarette papers and tubes.* Taxes on cigarette papers and tubes are paid by the manufacturer on the basis of a monthly return. Such returns, with remittances, are filed with the district director of internal revenue for the district in which the factory is located. Taxes on cigarette papers and tubes imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are paid to the collector of customs before removal on the basis of a return made on the customs form by which release from customs custody is effected. However, taxes on cigarette papers and tubes of Puerto Rican manufacture which are to be

shipped to the United States may be prepaid in Puerto Rico on the basis of a return.

(c) *General.* Detailed information about the payment of taxes on cigars, cigarettes, and cigarette papers and tubes, including the forms to be used, records to be kept, and reports and inventories to be filed, is contained in the respective regulations referred to in § 601.311.

§ 601.314 Assessments.

When additional or delinquent tax liability on cigars, cigarettes, and cigarette papers and tubes is disclosed by an investigation or by an examination of the taxpayer's records, a notice (except where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error) is forwarded to the taxpayer advising him of the basis for, and amount of, the liability and affording him an opportunity to show cause, in writing, against assessment.

§ 601.315 Claims.

(a) *Abatement of assessment.* Abatement of the unpaid portion of an assessment of any tax on cigars, cigarettes, and cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. The taxpayer against whom such assessment has been made may file a claim for abatement of the tax on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the tax or liability was assessed.

(b) *Allowance of tax.* Relief from the payment of tax on cigars, cigarettes, and cigarette papers and tubes may be extended to a manufacturer by allowance of the tax, where such articles, after removal from the factory upon determination of tax and prior to the time for payment of such tax, are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such articles, or are withdrawn by him from the market. A claim for allowance is filed with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the cigars, cigarettes, and cigarette papers and tubes were removed from the factory. A manufacturer may not anticipate allowance of his claim by making an adjusting entry in a tax return, pending consideration and action on the claim by the assistant regional commissioner.

(c) *Remission of tax liability.* Remission of tax liability on cigars, cigarettes, and cigarette papers and tubes may be extended to a manufacturer or export warehouse proprietor liable for the tax, where such articles, before removal, or after removal for tax-exempt purposes (including transfers in bond), are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in

the possession or ownership of the manufacturer or export warehouse proprietor. Remission of tax liability on shortages of cigars and cigarettes in bond may be extended to manufacturers of these products. A claim for remission of such tax liability is filed with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the factory or warehouse is located.

(d) *Refund of tax.* Taxes paid by return, or otherwise, on cigars, cigarettes, and cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer, importer, or export warehouse proprietor, or withdrawn by him from the market, may be refunded. A claim for refund of tax is filed on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the tax was paid. If tax was paid in more than one region, a claim may be filed with the assistant regional commissioner for any one of the regions in which tax was paid.

(e) *Losses caused by disaster.* Payment of an amount equal to the amount of internal revenue taxes paid or determined and customs duties paid on cigars, cigarettes, and cigarette papers and tubes removed from the factory or released from customs custody, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" as determined by the President of the United States, may be made only if, at the time of the disaster, such articles were being held for sale by the claimant. A claim for payment of the internal revenue taxes for such losses is filed on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for the internal revenue region in which the articles were lost, rendered unmarketable, or condemned. A separate claim in respect of customs duties is also filed on Form 843 with the same assistant regional commissioner. Claims must be filed within 6 months from the date on which the President makes the determination that the disaster has occurred. The determination date is construed to mean the date the Director, Office of Emergency Planning, identifies the specific disaster area.

(f) *Drawback of tax.* Drawback may be allowed only to the person who paid the tax on cigars, cigarettes, and cigarette papers and tubes which are shipped to a foreign country, Puerto Rico, and the Virgin Islands, or a possession of the United States. A claim for drawback of tax is filed with the assistant regional commissioner (alcohol and tobacco tax) for the region in which such articles covered by the claim are held by the claimant. See the appropriate regulation listed under § 601.311 for information as to proper form to be used.

(g) *Credit of tax.* Taxes paid on cigars, cigarettes, and cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or owner-

ship of the manufacturer, or withdrawn by him from the market, may be credited. A claim for credit of tax is filed with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the tax was paid. If the tax was paid in more than one region, a claim may be filed with the assistant regional commissioner for any one of the regions in which tax was paid. See the appropriate regulation listed under § 601.311 for information as to the proper form to be used.

(h) *General.* Detailed information as to the requirements necessary to be complied with and the procedure to be followed in the filing of a claim, the forms to be used, the time within which a claim may be filed, and the supporting documents which must be submitted with a claim, is contained in the applicable regulations referred to in § 601.311.

§ 601.316 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under chapter 52 of the Code is set forth in paragraph (a) of § 601.327.

§ 601.317 Rulings.

The procedure for rulings in tobacco tax matters is set forth in § 601.328.

§ 601.318 Forms.

Detailed information as to all forms prescribed for use in connection with tobacco taxes is contained in the regulations referred to in § 601.311(b). Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from assistant regional commissioners (alcohol and tobacco tax).

FIREARMS

§ 601.319 Applicable laws.

Chapter 53 of the Internal Revenue Code of 1954 (26 U.S.C. 5801-5862), the provisions of which are chiefly derived from the National Firearms Act, as amended (act of June 26, 1934, 48 Stat. 1236), imposes a tax on the manufacture, and transfer in the United States, of machine guns and certain other types of firearms, and an occupational tax upon every importer and manufacturer of, and dealer and pawnbroker in, such machine guns and firearms. Section 1(b) (2) of the act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. 781-788) makes provision for the seizure and forfeiture of vessels, vehicles, and aircraft which are used to transport, carry, or possess, or to facilitate the same, any firearm with respect to which there has been committed any violation of the National Firearms Act or any regulations issued pursuant thereto. The Federal Firearms Act as amended (52 Stat. 1250; 15 U.S.C. 901-910) makes it unlawful for any manufacturer or dealer (except a manufacturer or dealer having a license issued under the provisions of the act) or any person who is a fugitive from justice or, except as provided in § 177.31 of this chapter, any person who is under indictment for, or has been convicted of, a crime punishable by imprisonment for a term exceeding 1 year, to transport, ship, or receive in interstate or foreign commerce any

firearm or ammunition: *Provided*, That a person who has been convicted of a crime punishable by imprisonment for a term exceeding 1 year (other than a crime involving a firearm or other weapon, or a violation of the Federal Firearms Act or of the National Firearms Act) may make application to the Secretary of the Treasury for relief from the disabilities incurred by reason of such conviction.

§ 601.320 Taxes relating to machine guns and certain other firearms.

Part 179 of this chapter contains the regulations relative to the (a) payment of special (occupational) taxes by manufacturers and importers of, and dealers (including pawnbrokers) in, certain types of firearms, including machine guns and silencers or mufflers, (b) payment of the tax on the making or transfer of such firearms, (c) registration, identification, importation and exportation of such firearms, (d) keeping of books and records and rendering of returns, and (e) the forfeiture and disposition of seized firearms under the provisions of the National Firearms Act.

§ 601.321 Interstate traffic in firearms and ammunition.

Part 177 of this chapter contains the regulations relative to the licensing of manufacturers of, and dealers in, firearms and ammunition, the records required to be kept by the licensees, the interstate traffic in firearms and ammunition, and the forfeiture and disposition of seized firearms or ammunition, under the provisions of the Federal Firearms Act.

§ 601.322 Rulings.

The procedure for rulings in matters in the firearms area is set forth in § 601.328.

§ 601.323 Assessments.

Where the evidence disclosed by investigation establishes that additional or delinquent tax liability has been incurred and not paid, the assistant regional commissioner (alcohol and tobacco tax), will notify the district director to list the tax as an assessment. Notification and demand for payment of assessed taxes will be issued the taxpayer by the district director.

§ 601.324 Claims.

The procedures applicable to the filing of claims under chapter 53 of the Code are set forth below:

(a) Claims for abatement or refund of the making and transfer taxes are prepared and filed in accordance with the procedures set forth in § 601.303 (b) and (c).

(b) Claims for the redemption of "National Firearms Act" stamps are prepared and filed in accordance with the procedure set forth in Part 179 of this chapter.

(c) Claims for the abatement or refund of occupational taxes and penalties erroneously assessed or collected, and

claims for redemption of stamps for occupational taxes are prepared and filed in accordance with the procedure set forth in § 601.304 (h).

§ 601.325 Offers in compromise.

The procedure in the case of offers in compromise of liability under chapter 53 of the Code is set forth in paragraph (a) of § 601.327.

SEIZED PROPERTY

§ 601.326 Seizure and forfeiture of personal property.

Part 172 of this chapter contains the regulations relative to the personal property seized by officers of the Internal Revenue Service as subject to forfeiture as being used, or intended to be used, to violate certain Federal laws; the remission or mitigation of such forfeitures; and the administrative sale or other disposition, pursuant to forfeiture, of such seized property other than firearms seized under the National or Federal Firearms Act. For disposal of firearms under such Acts, see 26 U.S.C. 5862(b) and 15 U.S.C. 905(b), respectively.

OFFERS IN COMPROMISE

§ 601.327 Offers in compromise.

(a) *Liabilities (other than forfeiture) under Internal Revenue Code.* Persons desiring to submit offers in compromise in order to avoid prosecution proceedings, and taxpayers who disclaim liability in whole or in part for taxes or claim inability to pay the taxes in full, may submit offers in compromise to the district director of internal revenue or to an internal revenue officer for forwarding to the district director. Each assistant regional commissioner (alcohol and tobacco tax) has the authority to accept or reject offers in compromise of (1) tax liabilities arising from (i) the illegal production of untaxed distilled spirits, wines, or beer, (ii) the failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, beer, or firearms, and (iii) the failure to pay firearms "making" or transfer taxes; (2) criminal liabilities of retail dealers in liquor arising from violations of the internal revenue laws relating to liquor, including the reuse or refilling of liquor bottles; and (3) liabilities arising under chapter 52 of the Code (cigars, cigarettes, and cigarette papers and tubes). The Director, Alcohol and Tobacco Tax Division, has the authority to accept or reject offers in compromise of civil liability (of less than \$100,000) and criminal liability arising under chapters 51 and 53 of the Code in cases not subject to compromise by assistant regional commissioners (alcohol and tobacco tax). The Commissioner accepts or rejects all other offers in compromise except those in compromise of liabilities listed in paragraphs (b) and (c) of this section. (For offers in compromise generally, see § 601.203.) Form 656 is used in all cases arising under this paragraph, regardless of whether the amount of the offer is tendered in full at the time the offer is filed or the amount of the offer is to be

paid by deferred payment or payments. Offers received by the district director which come within the purview of the assistant regional commissioner (alcohol and tobacco tax) or the Director, Alcohol and Tobacco Tax Division, are forwarded to such assistant regional commissioner for consideration and appropriate action. When final action has been taken, the district director, the assistant regional commissioner (when applicable), and the proponent are notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer is returned to the proponent, and prosecution or collection proceedings are resumed. If the offer is accepted, the proponent is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

(b) *Violations of Federal Alcohol Administration Act.* The Federal Alcohol Administration Act provides penalties for violations of its provisions. The Director, Alcohol and Tobacco Tax Division, is authorized to compromise such liabilities. Persons desiring to submit offers in compromise may submit such offers on Form 656-D to the assistant regional commissioner (alcohol and tobacco tax) or an internal revenue officer under his jurisdiction. Such offers are considered by such assistant regional commissioner and are forwarded to the Director, Alcohol and Tobacco Tax Division, for final action. When the offer is acted upon, the proponent and the assistant regional commissioner (alcohol and tobacco tax) are notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed.

(c) *Forfeiture liabilities.* The assistant regional commissioner (alcohol and tobacco tax) is authorized to compromise liabilities to administrative forfeiture of personal property seized under the laws administered and enforced by the Internal Revenue Service, including liabilities to forfeiture under the internal revenue laws pertaining to wagering. Persons desiring to submit offers in compromise of such liabilities may submit such offers on Form 656-E to the supervisor-in-charge (alcohol and tobacco tax). Such offers are forwarded to the assistant regional commissioner (alcohol and tobacco tax) for final action. When the offer is acted upon, the proponent is notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

RULINGS

§ 601.328 Rulings.

(a) *Requests for rulings.* Any person who is in doubt as to any matter arising in connection with (1) operations or transactions in the alcohol tax area or under the Federal Alcohol Administration Act, (2) operations or transactions in the tobacco tax area, or (3) the taxes relating to machine guns and certain other firearms imposed by chapter 53 of the Code; the registration by importers and manufacturers of, and dealers in, such firearms; the registration of such firearms; and the licensing of manufacturers of, and dealers in, firearms or ammunition under sections 901 through 910 of Title 15 of the United States Code, may request a ruling thereon by addressing a letter to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C. 20224, or to the assistant regional commissioner (alcohol and tobacco tax) of the region in which the inquirer's business is located. Since a ruling as defined in paragraph (a) (2) of § 601.201 can issue only from the National Office, any such request made to an assistant regional commissioner will be referred by him to the Director, Alcohol and Tobacco Tax Division, for reply unless the issues involved are clearly covered by currently effective rulings or come within the plain intent of the statutes or regulations. If a request for a ruling is signed by a representative, or if the representative is to appear before the Internal Revenue Service, such representative must present a tax information authorization or a power of attorney, signed by the taxpayer authorizing him to receive or inspect confidential information in the matter (see Subpart E of this part).

(b) *Routine requests for information.* Routine requests for information should be addressed to the assistant regional commissioner (alcohol and tobacco tax) of the region in which the inquirer is located.

Subpart D—Provisions Special To Certain Employment and Excise Taxes

§ 601.401 Employment taxes.

(a) *General.*—(1) Description of taxes. Federal employment taxes are imposed by Subtitle C of the Internal Revenue Code. Chapter 21 (Federal Insurance Contributions Act) imposes a tax on employers of one or more individuals and also a tax on employees, with respect to "wages" paid and received. Chapter 22 (Railroad Retirement Tax Act) imposes a tax on employers and their employees with respect to "compensation" paid and received. It also imposes a tax on employee representatives with respect to "compensation" received. Chapter 23 (Federal Unemployment Tax Act) imposes a tax on employers of four or more individuals with respect to "wages" paid. Chapter 24 (collection of income tax at source on wages) requires every employer making payment of "wages" to deduct and withhold upon such wages the tax com-

puted or determined as provided therein. The tax so deducted and withheld is allowed as a credit against the income tax liability of the employee receiving such wages.

(2) *Applicable regulations.* The descriptive terms used in this section to designate the various classes of taxes are intended only to indicate their general character. Specific information relative to the scope of each tax, the forms used, and the functioning of the Service with respect thereto is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the district director of internal revenue.

(3) *Collection methods.* Employment taxes are collected by means of returns and by withholding by employers. Employment tax returns are not required to be filed by employees, but taxes imposed upon them must be deducted and withheld by employers from their wages. Employee representatives (as defined in the Railroad Retirement Tax Act) are required to file returns. All employers who are liable for or who must withhold employment taxes are required to file returns with the district director of internal revenue. The return of the Federal unemployment tax is required to be filed annually on Form 940 with respect to wages paid during the calendar year. All other returns of Federal employment taxes (with the exception of returns filed for agricultural employees) are required to be filed for each calendar quarter except that if pursuant to regulations the district director so notifies the employer, returns on Form 941 are required to be filed on a monthly basis. The employer and employee taxes imposed by chapter 21 (other than the employer and employee taxes on wages paid for agricultural labor) and the tax required to be deducted and withheld upon wages by chapter 24 are combined in a single return on Form 941. In the case of wages paid by employers for domestic service performed in a private home not on a farm operated for profit, the return of both the employee tax and the employer tax imposed by chapter 21 is on Form 942. However, if the employer is required to file a return for the same quarter on Form 941, he may at his election include the taxes with respect to such domestic service on Form 941. The employer and employee taxes imposed by chapter 21 with respect to wages paid for agricultural labor are required to be reported annually on Form 943. Under the Railroad Retirement Tax Act, the return required of the employer is on Form CT-1, and the return required of each employee representative is on Form CT-2.

(4) *Receipts for employees.* Employers are required to furnish each employee a receipt or statement, in duplicate, showing the total wages subject to income tax withholding, the amount of income tax withheld, the amount of wages subject to tax under the Federal Insurance Contributions Act, and the amount of employee tax withheld. See section 6051 of the Code.

(5) *Use of Federal Reserve banks and authorized commercial banks in connection with payment of Federal employment taxes.* Most employers are required to deposit employment taxes either on a monthly basis or a semi-monthly basis as follows:

(i) *Semi-monthly deposits.* With respect to wages paid during February and March of 1967 or any calendar quarter thereafter, special deposits within 3 banking days after the close of a semi-monthly period are required if the employee tax deducted and the employer tax under chapter 21, and income tax withheld at source on wages under chapter 24, exclusive of taxes reportable on Form 942 and Form 943, aggregate more than \$2,500 (\$4,000 in the case of wages paid after May 1966 and before February 1967) for any month in the preceding calendar quarter. An amount not required to be deposited by this subdivision may nevertheless be directly remitted by the employer with his return, or may be deposited and the validated depository receipt attached to his return.

(ii) *Monthly deposits.* With respect to employers not required to make deposits under subdivision (i) of this subparagraph, if (a) during any calendar month, other than the last month of a calendar quarter, the aggregate amount of the employee tax deducted and the employer tax under chapter 21 and the income tax withheld at source on wages under chapter 24, exclusive of taxes reportable on Form 942 and Form 943, exceeds \$100, or (b) at the end of any month or period of 2 or more months and prior to December 1 of any calendar year, the total amount of undeposited taxes imposed by chapter 21, with respect to wages paid for agricultural labor, exceeds \$100, it is the duty of the employer to deposit such amount within 15 days after the close of such calendar month. However, in the case of the last month of any calendar quarter (last month of the calendar year in the case of agricultural employers) the employer may either include with his return direct remittance to the district director for the amount of such taxes or attach to his return a depository receipt validated by a Federal Reserve bank.

(iii) *Additional rules.* If a deposit is made for the last month of the quarter (last month of the year for agricultural employers), or any other voluntary deposit, it must be made in ample time to enable the Federal Reserve bank to return the validated receipt to the employer so that it can be attached to and filed with the employer's return at the time prescribed for filing such return. Deposits under subdivisions (i) and (ii) of this subparagraph are made with a Federal Reserve bank or a commercial bank authorized in accordance with Treasury Department Circular No. 848, revised, to accept remittances of these taxes for transmission to a Federal Reserve bank. The remittance of such amount must be accompanied by a Federal Depository Receipt (Form 450). After the Federal Reserve bank has validated the depository receipt, it will be returned to the

employer. The validated receipts must be attached to the return on Form 941 or Form 943 and the employer shall pay to the district director the balance, if any, of the taxes due for the quarter or the year, as the case may be.

(iv) *Employers under chapter 22 of the Code.* Depositary procedures similar to those prescribed in this subparagraph are prescribed for employers as defined by the Railroad Retirement Tax Act, except that Railroad Retirement taxes are not required to be deposited semimonthly and must be deposited by using Form 515 (Railroad Retirement Depositary Receipt).

(6) *Separate accounting.* If an employer fails to withhold and pay over income, social security, or railroad retirement tax due on wages of employees, he may be required by the district director to collect such taxes and deposit them in a separate banking account in trust for the United States not later than the second banking day after such taxes are collected.

(b) *Provisions special to the Federal Insurance Contributions Act—(1) Employers' identification numbers.* For purposes of the Federal Insurance Contributions Act each employer who files Form 941 or Form 943 must have an identification number. Any such employer who does not have an identification number must secure a Form SS-4 from the district director of internal revenue or from a district office of the Social Security Administration and, after executing the form in accordance with the instructions contained thereon, file it with the district director or the district office of the Social Security Administration. At a subsequent date the district director will assign the employer a number which must appear in the appropriate space on each tax return, Form 941 or Form 943, filed thereafter. The requirement to secure an identification number does not apply to an employer who has in his employ only employees who are engaged exclusively in the performance of domestic service in his private home not on a farm operated for profit.

(2) *Employees' account numbers.* Each employee (or individual making a return of net earnings from self-employment) who does not have an account number must file an application on Form SS-5, a copy of which may be obtained from any district office of the Social Security Administration or from a district director of internal revenue. The form, after execution in accordance with the instructions thereon, must be filed with the district office of the Social Security Administration, and at a later date the employee will be furnished an account number. The employee must furnish such number to each employer for whom the employee works, in order that such number may be entered on each tax return filed thereafter by the employer.

(3) *Reporting of wages.* Forms 941, 942, and 943 each require, as a part of the return, that the wages of each em-

ployee paid during the period covered by the return be reported thereon. Form 941a is available to employers who need additional space for the listing of employees. Employers who meet the requirements of the Social Security Administration may, with the approval of the Commissioner of Internal Revenue, submit wage information on reels of magnetic tape in lieu of Form 941a. It is necessary at times that employers correct wage information previously reported. A special form, Form 941c, has been adopted for use in correcting erroneous wage information or omissions of such wage information on Form 941, 942, or 943. Instructions on Form 941, 941c, 942, and 943 explain the manner of preparing and filing the forms. Any further instructions should be obtained from the district director for the district in which the returns are filed.

(c) *Adjustments by employers—(1) Adjustments with respect to income tax withheld at source on wages.* If an employer for any quarter of a calendar year deducts and withholds more or less than the correct amount of tax upon wages, or pays more or less than the correct amount of tax to the district director, such employer may make proper adjustment without interest in any subsequent quarter in the same calendar year. No adjustment may be made in respect of an underpayment for any quarter after the district director sends notice and demand for payment of the additional tax. In such case the additional tax must be paid in accordance with the notice and demand. Nor may any adjustment be made in respect of an overpayment for any quarter after the employer files a claim for refund of such overpayment. If an employer makes an adjustment on any return in respect of errors in a preceding quarter there must be attached to the return a detailed explanation of the adjustment and a designation of the quarterly return period in which the errors occurred. If an adjustment relates to an excess withholding of tax from an employee, the explanation attached to the return must include the fact that such tax has been repaid to the employee. Errors occurring in any quarterly return period may be corrected in making the return for such period, if such errors are ascertained prior to the filing of the return. For information as to the manner of correcting errors in withholding which cannot be adjusted in a return for a subsequent quarter of the same calendar year, employers should consult the local district director of internal revenue. Refunds or credits with respect to an overpayment of income tax withheld may be made to an employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

(2) *Adjustments with respect to employee tax or employer tax under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act.* Errors in withholding during any return period under the Federal Insurance Contribu-

tions Act or the Railroad Retirement Tax Act should be corrected in the return for such period, if such errors are ascertained prior to the time the return is required to be filed with the district director. In the case of errors in withholding of employee tax or in payments of employer tax under either the Federal Insurance Contributions Act or the Railroad Retirement Tax Act, where such errors are ascertained subsequent to the time prescribed for filing the return for the period in which they occurred, the regulations relating to such taxes prescribe the conditions under which such errors may be adjusted. If adjustments cannot be made in accordance with the provisions of such regulations, underpayments of both the employer and employee tax will be assessed and collected in the usual manner, and refunds of overpayments must be claimed on Form 843.

(d) *Special refunds of employee social security tax.* (1) In the case of an employee receiving wages from more than one employer during the calendar year, amounts may be deducted and withheld as employee social security tax (that is, employee tax under the Federal Insurance Contributions Act) with respect to wages in excess of \$4,800 (\$4,200 for certain calendar years prior to 1959). Under certain conditions, the employee may receive a so-called "special refund" of the amount of employee social security tax deducted and withheld from wages in excess of such amount. An employee who is entitled to a special refund of employee tax with respect to wages received during a calendar year, and who is required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year), may obtain the benefits of such special refund only by claiming credit for such special refund on such income tax return in the same manner as if such special refund were an amount deducted and withheld as income tax at source on wages.

(2) The amount of the special refund allowed as a credit shall be considered as an amount deducted and withheld as income tax at source on wages. If the amount of such special refund when added to amounts deducted and withheld as income tax under chapter 24 exceeds the income tax imposed by chapter 1, the amount of the excess constitutes an overpayment of income tax, and interest on such overpayment is allowed to the extent provided under section 6611 of the Code upon an overpayment of income tax resulting from a credit for income tax withheld at source on wages.

(3) If an employee entitled to a special refund of employee social security tax is not required to file an income tax return for the year in which such special refund may be claimed as a credit, he may file a claim for refund of the excess social security tax on Form 843. Claims must be filed with the district director of internal revenue for the district in which the employee resides.

§ 601.402 Sales taxes collected by return.

(a) *General.* Sales taxes collected by return include the following:

(1) The retailers excise taxes, imposed by chapter 31 of the Code, with respect to:

- Diesel fuel;
- Special motor fuels.

(2) The manufacturers excise taxes, imposed by chapter 32 of the Code, with respect to the following items:

(i) Motor vehicles and related items:

- Automobiles, trucks, buses, trailers;
- Truck parts and accessories;
- Tires, tubes, and tread rubber;
- Gasoline and lubricating oil.

(ii) Recreational equipment:

- Fishing rods, creels, and reels;
- Artificial lures, baits, and flies;
- Pistols and revolvers;
- Other firearms, shells, and cartridges.

(b) *Applicable regulations.* The descriptive terms used in this section to designate the various articles and commodities subject to tax are intended only to indicate their general classes. Specific information relative to the scope of each tax, the forms used, and the functioning of the Service with respect thereto is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from any district director of internal revenue.

(c) *Returns, refunds, and credits—(1) Returns.* The sales taxes referred to in paragraph (a) of this section are collected by means of returns. Any person liable for tax is required to file returns with the district director of internal revenue for the district in which the principal place of business of such person is located. A procedure similar to the Depository Receipt procedure with respect to the payment of certain Federal employment taxes, described in paragraph (a) (5) of § 601.401, is prescribed with respect to the sales taxes referred to in paragraph (a) of this section. For information relating to the use of depository receipts for the payment of such taxes, see the applicable regulations and the instructions on Form 720, Quarterly Federal Excise Tax Return.

(2) *Refunds and credits.* After the assessment and collection of a sales tax which the taxpayer claims is not due, the taxpayer may either file a claim for refund of such tax on Form 843 or claim a credit for such amount on a return filed by him for a period subsequent to that in respect of which the alleged erroneous payment has been made. However, no claim for refund may be filed or credit taken on a return after the expiration of the applicable period of limitations on the allowance of refunds and credits. In the case of a credit claimed for an amount of tax alleged to have been erroneously paid, no particular forms for the claiming of such a credit are prescribed. The procedure to be followed in such a case is for the taxpayer to enter on the line provided for credits on the return form the amount claimed

to have been erroneously paid and to file with the return a supporting statement which should set out clearly and fully the basis on which the credit is claimed. Notice as to the disallowance of any credit is forwarded to the taxpayer and the amount of the credit is then entered on an assessment list for collection in the usual manner.

(3) *Payments to certain ultimate purchasers of gasoline and lubricating oil.* Sections 6420, 6421, and 6424 of the Code provide for certain payments to ultimate purchasers of gasoline used on a farm for farming purposes, used for certain nonhighway purposes, or used by local transit systems, and of lubricating oil used otherwise than in a highway motor vehicle. Payments allowable under section 6420, 6421, and 6424 of the Code may be claimed by an income taxpayer as a credit under section 39 of the Code against the tax due on his income tax return. Governmental agencies and certain exempt organizations may file claims for allowable payments on Form 2240 or Form 843. In the case of gasoline used for certain nonhighway purposes or used by local transit systems, and in the case of lubricating oil used otherwise than in a highway motor vehicle, the ultimate purchaser may file a claim for payment in lieu of such income tax credit, with respect to any of the first three quarters of his taxable year for which he is entitled to a payment of \$1,000 or more. Applicable regulations and instructions accompanying the prescribed forms provide detailed procedures.

(d) *Registration and bonding requirements.* (1) Under temporary regulations effective January 1, 1959, an article may, in general, be sold tax free under chapter 32 of the Code by the manufacturer for certain uses, provided the seller, first purchaser, and second purchaser, as the case may be, have been registered. In the case of State governments, registration is optional. Also, the requirements for registration do not apply to sales or purchases by the United States, or to a purchaser located in a foreign country or a possession of the United States where an article is sold for export. Any person who has been issued a certificate of registry prior to January 1, 1959, which has not been revoked, is registered for purposes of the temporary regulations. Any other person entitled to sell or purchase articles tax free under such regulations who has not previously registered, may register by completing Form 637 setting forth the prescribed information and forwarding it to his district director. Such person shall be considered to be registered for purposes of making such tax-free sales or purchases upon receipt of a validated Form 637 from his district director.

(2) If not previously registered, producers and importers of gasoline and manufacturers of lubricating oil (including wholesale distributors of gasoline who qualify as producers under applicable regulations) must, before incurring any liability for tax under section 4081 or 4091 of the Code, make application for registration on Form 637. Detailed in-

structions as to the filing of applications for registration by producers and importers of gasoline and manufacturers of lubricating oil are prescribed in applicable regulations.

(3) Every importer of foreign cars, trucks, buses, etc., taxable under chapter 32 of the Code must make application to the district director for the district in which he will file returns of the tax for a determination whether he is required to give bond securing the payment of the tax on his sales of such commodities. Detailed instructions as to the information required to be included in the application and the procedure to be followed by the importer are set forth in the applicable regulations. Form 3006 has been prescribed for the convenience of importers and may be obtained from the district director.

§ 601.403 Miscellaneous excise taxes collected by return.

(a) *General.* Miscellaneous excise taxes collected by return include the following:

(1) *Communications.* Subchapter B of chapter 33 of the Code imposes a tax on amounts paid for local telephone service, toll telephone service, and teletype-writer exchange service.

(2) *Transportation of persons by air.* Subchapter C of chapter 33 of the Code imposes a tax with respect to transportation of persons by air, including seating or sleeping accommodations furnished in connection with such transportation.

(3) *Foreign insurance policies.* Under chapter 34 of the Code a tax is imposed on premiums paid for foreign insurance policies.

(4) *Wagers.* Subchapter A of chapter 35 of the Code imposes a tax on wagers as defined therein.

(5) *Highway motor vehicle use.* Subchapter D of chapter 36 of the Code imposes a tax for each taxable year (commencing after June 30, 1956, and ending before October 1, 1972) upon the use, at any time during the taxable year, on the public highways in the United States of any highway motor vehicle which (together with certain semitrailers and trailers) has a taxable gross weight in excess of 26,000 pounds.

(6) *Sugar.* Chapter 37 of the Code also imposes a tax upon manufactured sugar manufactured in the United States.

(7) *Circulation other than of national banks.* Subchapter E of chapter 39 of the Code imposes a tax with respect to (i) the average circulation outstanding of any bank, association, corporation, company, or person, and (ii) the circulation paid out by every person, firm, association other than national bank associations, and every corporation, State bank, or State banking association.

(8) *Interest equalization.* Chapter 41 of the Code imposes (subject to specified exemptions) a tax on the acquisition by U.S. persons of foreign securities from a foreign person. The tax became effective July 19, 1963.

(9) *Hydraulic mining.* The act entitled "An Act to create the California Debris Commission and regulate hydraulic mining in the State of California",

approved March 1, 1893, as amended (33 U.S.C. 661-687), imposes a tax with respect to certain hydraulic gold mining in the State of California.

(b) *Applicable regulations.* The descriptive terms used in this section to designate the various classes of taxes are intended only to indicate their general character. Specific information relative to the scope of each tax, the forms used, and the functioning of the Service with respect thereto is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the district director of internal revenue.

(c) *Collection of tax.*—(1) *Imposed taxes.* The tax on the manufacture of sugar and the tax on the issuance of foreign insurance policies are collected in the same manner as manufacturers' sales taxes. See § 601.402. Returns of the tax on wagers are required to be filed monthly; returns of interest equalization tax and of tax on foreign insurance premiums are required to be filed quarterly; returns of the tax on circulation other than of national banks are required to be filed on June 1 and December 1 each year; and returns of the taxes on hydraulic mining and on the use of highway motor vehicles are required to be filed annually.

(2) *Collected taxes.* The other miscellaneous excise taxes referred to in this section are imposed on the person making the payment for the telephone, air transportation, or other service involved. These taxes are required to be collected by the telephone company, airline, or other person receiving the payment. All taxes collected in this manner are held by the collecting agent in trust for the United States until deposited in accordance with the Depositary Receipt procedure or paid over to the district director of internal revenue. The collecting agencies are required to file returns and the tax is payable, without notice from the district director, at the time fixed for filing the returns. If the person from whom the tax is required to be collected refuses to pay it or, if for any reason it is impossible for the collecting agency to collect the tax from such person, the collecting agency is required to report to the district director of internal revenue for the district in which its returns are required to be filed the name and address of such person, the nature of the service or facility rendered, the amount paid therefor, and the date on which paid. Upon receipt of this information the district director will proceed against the person to whom the facilities were provided or the services rendered to assert the amount of tax due, affording such person the same district conference, protest and appellate rights as are available to other excise taxpayers. In addition, when a field or office audit of a collecting agency's records, or of a taxpayer's records, discloses that the collecting agency failed during prior reporting periods to collect taxes due, the district director may assert such taxes directly against the person to whom the facilities were

provided or the services rendered, whether or not the collecting agency had attempted collection or the person liable for the tax had refused payment thereof.

(3) *Depositary receipts.* A procedure similar to the Depositary Receipt procedure with respect to the payment of certain Federal employment taxes, described in § 601.401 (a) (5), is prescribed with respect to the miscellaneous excise taxes (except the taxes on the use of highway motor vehicles, wagers, hydraulic mining, and circulation other than of national banks) referred to in paragraph (a) of this section. For information relating to the use of depositary receipts for the payment of such taxes, see the applicable regulations and the instructions on Form 720, Quarterly Federal Excise Tax Return.

(4) *Separate accounting.* Collecting agents who fail to collect and pay over the excise taxes on facilities or services may be required by the district director to collect such taxes and deposit them in a separate banking account in trust for the United States not later than the second banking day after such taxes are collected.

(d) *Refunds and credits.* The procedure in § 601.402 (c) (2) regarding refunds and credits in respect of sales taxes collected by return is, in general, applicable with respect to the miscellaneous excise taxes collected by return, except that in the case of the collected taxes referred to in paragraph (c) (2) of this section, the person upon whom the tax is imposed may file a claim on Form 843 for refund of erroneous or illegal payment of tax, but cannot take a credit since he is not required to file a return with respect to such taxes.

(e) *Licensing and registration.*—(1) *Hydraulic mining.* Every person who desires to engage in hydraulic mining operations in the State of California within the scope of the Act (see paragraph (a) (9) of this section) must procure a license to operate the mine from the California Debris Commission before beginning operations, in accordance with the rules and regulations promulgated by that Commission.

(2) *Wagering.* For the occupational tax upon any person liable for the tax on wagers or engaged in receiving wagers for or on behalf of any person so liable, see § 601.404 (d) (1).

§ 601.404 Miscellaneous excise taxes collected by sale of revenue stamps.

(a) *General.* Miscellaneous excise taxes collected by sale of revenue stamps may be grouped into 3 general classes. A brief description of each class is set forth in the 3 paragraphs immediately following.

(b) *Documentary stamp taxes.*—(1) *Deeds of conveyance.* Chapter 34 of the Internal Revenue Code imposes a tax on deeds of conveyance of realty sold.

(2) *Cotton futures.* Subchapter D of chapter 39 of the Code imposes a tax on each contract of sale of any cotton for future delivery unless the contract complies with certain specified conditions.

(c) *Commodity stamp taxes.*—(1) *Oleomargarine.* Subchapter F of chapter

38 of the Code imposes a tax with respect to all oleomargarine imported from foreign countries.

(2) *Adulterated and process or renovated butter.* Part I of subchapter C of chapter 39 of the Code imposes taxes with respect to adulterated and process or renovated butter and also imposes an occupational tax on manufacturers of adulterated and process or renovated butter and on wholesale and retail dealers in adulterated butter.

(3) *Filled cheese.* Part II of subchapter C of chapter 39 imposes a tax with respect to filled cheese and also imposes an occupational tax on manufacturers of, and wholesale and retail dealers in, filled cheese.

(4) *Opium, isonitropine, opiates, and coca leaves.* Part I of subchapter A of chapter 39 of the Code imposes a tax upon narcotic drugs produced in or imported into the United States, and sold, or removed for consumption or sale and also imposes an occupational tax on (i) importers, manufacturers, producers or compounders of such drugs; (ii) wholesale or retail dealers in such drugs; (iii) physicians, dentists, veterinary surgeons or other practitioners dispensing such drugs; (iv) persons engaged in research, instruction or analysis using such drugs; and (v) persons not otherwise taxed dispensing preparations containing such drugs. The responsibility for the administration and enforcement of these taxes is jointly shared by the Internal Revenue Service and the Bureau of Narcotics.

(5) *Opium for smoking purposes.* Subpart B of part I of subchapter A of chapter 39 of the Code imposes a tax upon all opium manufactured in the United States for smoking purposes. The responsibility for the administration and enforcement of this tax is jointly shared by the Internal Revenue Service and the Bureau of Narcotics.

(6) *Marihuana.* Part II of subchapter A of chapter 39 of the Code imposes a tax upon all transfers of marihuana and also imposes an occupational tax with respect to marihuana on similar classes of persons as those enumerated in subparagraph (4) of this paragraph and in addition imposes a tax on millers of marihuana. The responsibility for the administration and enforcement of this tax is jointly shared by the Internal Revenue Service and the Bureau of Narcotics.

(7) *White phosphorous matches.* Subchapter B of chapter 39 of the Code imposes a tax upon white phosphorous matches.

(d) *Occupational stamp taxes.*—(1) *Wagers.* Subchapter A of chapter 35 of the Code imposes a tax on wagers. Subchapter B of chapter 35 of the Code imposes an occupational tax upon each person who is liable for the tax on wagers or who is engaged in receiving wagers for or on behalf of any person so liable.

(2) *Coin-operated gaming devices.* Subchapter B of chapter 36 of the Code imposes an occupational tax with respect to coin-operated gaming devices, or similar devices operated without a coin.

(e) *Applicable regulations.* The descriptive terms used in this section to

designate the various classes of taxes are intended only to indicate their general character. Specific information relative to the scope of each tax, the forms used, and the functioning of the Service with respect thereto is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the district director of internal revenue.

(1) *General procedure.* (1) The documentary and commodity stamp taxes are paid by having affixed to the document, package, container, etc., an internal revenue adhesive stamp or stamps, in an amount equal to the tax due and by thereafter canceling such stamps in the manner prescribed. In addition, documentary stamp taxes may be paid by stamps produced by authorized documentary stamp meter machines. Payment of occupational taxes is evidenced by the posting or displaying of a special occupational tax stamp on the premises where the business is operated. If the taxpayer required to display the special occupational tax stamp has no fixed place of business, the stamp must be kept on his person. The stamps used for such purposes are prepared by the Internal Revenue Service and distributed through the district director of internal revenue.

(2) Documentary stamp taxes are payable with respect to every transfer of real property. Commodity stamp taxes are payable with respect to the manufacture, importation, or transfer, as the case may be, of the contents of each package or container. Occupational taxes are payable annually for the privilege of doing business beginning with July 1 of each year, when the taxpayer is in business on that date, or from the beginning of the month in which the business is commenced on a pro rata basis.

(3) Documentary stamps may be purchased from (i) district directors of internal revenue and duly authorized internal revenue employees; (ii) postmasters in all post offices of the first and second classes and such post offices of the third and fourth classes as are located in county seats; (iii) designated depositaries of the United States; and (iv) designated agents of any State. Commodity and occupational tax stamps may be purchased only from district directors and duly authorized internal revenue agents. Such purchases may be made only upon the filing of the prescribed requisition, application, or other form and from an official authorized by law to sell such stamps.

(4) Payments for such stamps may be made by means of cash, post office money order, or certified check, or by personal check to the extent provided by regulations. In situations (i) where the documents, commodities, etc., subject to stamp tax are no longer in existence or (ii) where, for other reasons, such documents, etc., cannot be stamped, or (iii) where it is discovered that occupational tax stamps are due for prior taxable years, or (iv) where a taxpayer, after being advised of his liability, refuses to

affix stamps, the tax is collected by assessment.

(5) Detailed information as to the person liable for tax, the forms of stamps, the prescribed application or requisitions, and all other forms required in connection with miscellaneous excise taxes payable by revenue stamps is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the district director of internal revenue.

(g) *Liability for delinquent tax.* When liability for delinquent tax is disclosed by the taxpayer or is discovered as a result of an examination of the taxpayer's books and records, the delinquent tax may be collected by assessment.

(h) *Administrative remedies available to taxpayers after purchase of documentary, commodity, or occupational tax stamps or after assessment or payment of tax—*(1) *Redemption of unused stamps.* Where stamps have been rendered useless by gumming or sticking together in transit or otherwise without fault of the purchaser, they may be exchanged by a district director of internal revenue for other stamps of the same quantity and denomination. Unused stamps which have been spoiled, destroyed, or rendered useless, or unfit for the purpose intended, or for which the owner may have no use, may be redeemed upon proper claim filed with the district director. Such claims must be prepared on Form 843 and must be filed with the district director for the district in which is located the principal office of the claimant, or if he has no such office, with the district director for the district in which he resides. The claim for redemption of unused stamps must be filed within 3 years after the date of purchase of the stamps from the Government. The unused stamps for which redemption is claimed shall be submitted with the claim. If the stamps have been destroyed or damaged to the extent that they cannot be presented for redemption, then proof satisfactory to the district director of such destruction or damage must accompany the claim. Where the actual date of purchase of the stamps from the Government cannot be given, it must be definitely shown in the claim that they were so purchased within 3 years prior to the date of the filing of the claim. Once filed, a claim for redemption follows generally the same channels as do claims for refund. See §§ 601.103 to 601.106.

(2) *Claims for abatement or refund.* In case of any tax payable by a stamp, a claim for credit or refund of an overpayment of such tax must be filed by the taxpayer within 3 years from the time the tax was paid or the stamps affixed. This includes the situation where stamps through mistake have been improperly or unnecessarily used, or have been used in excess of the amount of tax actually due. The used stamps either must actually be submitted with the claim, or if it is impracticable to remove them from the instruments, documents, etc., to which they are attached, the words

"Claim for refund of \$..... filed," with the appropriate amount inserted, shall be written across the face of the stamp by the claimant or the person having custody of the instruments or documents to which the stamps are affixed. The claimant must make a statement in his claim that the stamps have been so marked and by whom. Where a stamp tax is not paid by stamp but the amount thereof is assessed, the person against whom the assessment is made may file a claim for abatement of the tax or a claim for refund for any part of the assessment which has been paid. In either case the procedure to be followed by the claimant generally is the same as set forth in the case of claims for abatement or refund of other taxes. See §§ 601.103 to 601.106. All claims for refund of stamp tax paid pursuant to an assessment must be filed within 3 years next after payment of the tax.

(3) *Instructions.* Detailed instructions as to the manner in which claims for redemption of stamps and for abatement and refund of stamp taxes should be prepared and filed are contained in the applicable regulations.

(i) [Reserved]

(j) *Provisions special to commodity stamp taxes.* (1) Provision is made for the withdrawal of filled cheese from factories, free of tax, for the use of the United States. The procedure to be followed and the form of exemption certificate to be used in the case of such withdrawals are prescribed in the applicable regulations. Provision is also made for the exportation without payment of tax on adulterated butter. The procedure to be followed in the case of such exportation is prescribed in the applicable regulations.

(2) Every manufacturer of opium manufactured in the United States for smoking purposes must, before commencing business, furnish to the district director of the district in which his place of manufacture is located a notice on Form 268 and a bond on Form 269 with sureties satisfactory to the district director and in a penal sum of not less than \$100,000. There shall be not less than 3 personal sureties, each of whom shall qualify in the full amount of the bond. The district director on approving the bond will issue to the manufacturer a certificate on Form 270 which will specify the penal sum of the bond furnished. This certificate shall contain a transcript from the manufacturer's notice, Form 268, giving an accurate description of the factory premises. This certificate must be posted by the manufacturer in a conspicuous place within his manufactory.

(3) Every manufacturer of adulterated and process or renovated butter, filled cheese, or white phosphorous matches must also give notice and register with the district director on Form 213 before engaging in the business and furnish a satisfactory bond on Form 214. Persons required to register with the district director or furnish bond should consult the applicable regulations and the appropriate forms.

(k) *Provisions applicable to special or occupational stamp taxes.* Every person liable to pay any occupational tax imposed under subtitle D of the Code is required to register with the district director of internal revenue his name or style, place of residence, trade or business, and the place where such trade or business is carried on. In the case of a partnership the names of the partners and their place of residence must be so registered. See section 7011 of the Code. The following forms are prescribed for registration: Form 678 (relating to occupational taxes with respect to narcotics and marihuana), Form 11 (relating to adulterated and process or renovated butter and filled cheese), Form 11-B (relating to the occupational tax for coin-operated gaming devices), Form 11-C (relating to occupational tax with respect to wagering).

Subpart E—Conference and Practice Requirements

AUTHORITY: The provisions of this Subpart E issued under sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805); 5 U.S.C. 301.

§ 601.501 Scope of conference and practice requirements; definitions.

(a) *Scope.* The conference and practice requirements prescribed in this subpart apply to all offices of the Internal Revenue Service, including the Office of the Chief Counsel. Such requirements are applicable to practice (including conferences) with respect to any matter involving any internal revenue tax, but do not extend to the mere signing of a tax return, claim, or election, since such an act, of itself, does not constitute practice before the Revenue Service. The signing of a tax return, claim, or election is governed by other rules or instructions relating to such matters. For special provisions relating to alcohol and tobacco tax activities, see §§ 601.521 through 601.527.

(b) *Definitions for purposes of this subpart—(1) Matter.* The application of each tax imposed by the Internal Revenue Code for each taxable period constitutes a separate matter.

(2) *Office of the Internal Revenue Service.* The office of each district director of Internal Revenue, the office of each regional commissioner, and the office of each regional counsel constitutes a separate office of the Internal Revenue Service.

(3) *Tax information authorization.* A document signed by the taxpayer authorizing his representative to receive or inspect confidential tax information in a specified matter constitutes a tax information authorization. For rules relating to the requirements of a tax information authorization, see paragraph (c)(2) of § 601.502.

GENERAL REQUIREMENTS

§ 601.502 Requirements for conference—recognition to practice and, in certain cases, power of attorney or tax information authorization.

(a) *General.* It is the policy of the Revenue Service to encourage the discussion of disputed tax liability or any other matter in connection with an internal revenue tax which affects the taxpayer's interest. Conferences, of course, may be accorded only to taxpayers or their duly authorized representatives.

As a general rule, conferences with taxpayers or their representatives will not be held without previous arrangement. However, upon a proper showing, a request for an immediate conference without previous arrangement will be given consideration, and Revenue Service officials responsible for the arrangement of conferences may, in their discretion, make an exception to the general rule. Every protest, brief, or other statement in writing which the taxpayer or his representative desires to be considered at any conference should be submitted or filed at least 5 days prior to the date of the conference. If the taxpayer or his representative is unable to file such protest, brief, or other statement in writing at least 5 days prior to the date of the scheduled conference, the taxpayer or his representative should arrange with the appropriate Revenue Service official for a postponement of the conference to a date mutually agreeable to the parties. The taxpayer or his representative remains free, of course, to submit additional or supporting facts or evidence within a reasonable time after the conference.

(b) *Requirements to be met by taxpayer's representative in order to be recognized—(1) Explanation of recognition to practice.* Except as otherwise provided in this section, no person may appear in a representative capacity on behalf of any taxpayer or of a transferee or fiduciary unless such person is recognized to practice before the Revenue Service. A person will be recognized to practice before the Revenue Service if he meets the requirements set forth in Treasury Department Circular No. 230, as amended (31 CFR Part 10) (hereinafter referred to in this subpart as Circular No. 230), which circular contains rules governing practice before the Revenue Service. Circular No. 230 includes, among other things, the requirements of the Act of November 8, 1965 (Public Law 89-332, 79 Stat. 1281), which law governs the recognition of attorneys and certified public accountants. In general, the following persons will be recognized to practice before the Revenue Service—

(i) Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and who is not currently under suspension or disbarment from practice before the Revenue Service, and who files with the Revenue Service a written declaration that he is so currently qualified and is authorized to represent the particular party on whose behalf he acts (hereinafter referred to in this subpart as a qualified attorney);

(ii) Any person who is duly qualified to practice as a certified public accountant in any State, possession, territory, Commonwealth, or the District of Columbia, and who is not currently under

suspension or disbarment from practice before the Revenue Service, and who files with the Revenue Service a written declaration that he is so currently qualified and is authorized to represent the particular party on whose behalf he acts (hereinafter referred to in this subpart as a qualified certified public accountant);

(iii) Any person currently enrolled as an agent pursuant to the requirements of Circular No. 230; and

(iv) Any person qualified under § 10.5 (c) (relating to temporary recognition of an applicant for enrollment) or § 10.7 (relating to limited practice without enrollment in the case of a full-time employee, or a bona fide officer of a corporation, trust, estate, association, or organized group, and certain others) of Circular No. 230.

The appearance of such person and his representation of taxpayers in every respect must be in strict compliance with the requirements of all pertinent statutes, Circular No. 230, and this subpart.

(2) *Enrollment not required for certain persons.* (i) The persons described in subparagraph (1)(iv) of this paragraph (see § 10.5(c) and § 10.7 of Circular No. 230) are authorized by Circular No. 230 to appear without enrollment under the circumstances and conditions described therein. However, such persons must present satisfactory identification and, if required by paragraph (c) of this section, submit a power of attorney or a tax information authorization. The formal requirements concerning identification and authority of a person acting in a fiduciary capacity are the same as those related to the execution by a fiduciary of powers of attorney or tax information authorizations (see § 601.504). Persons described in subparagraph (1)(iv) of this paragraph who without enrollment may appear on behalf of any person with respect to the tax liability of such person, may also without enrollment appear with respect to the liability of such person as a transferee of property of a taxpayer and with respect to the liability of a fiduciary under Revised Statute § 3467, as amended (31 U.S.C. 192).

(ii) A representative (who would have to be enrolled in order to practice before the Revenue Service) will not be required to become enrolled if such representative is only authorized to inspect or receive copies of returns filed by the taxpayer where an Executive order or regulations permit such action by a representative. The Commissioner reserves the right to withhold applying the above exception in any specific case.

(3) *Employees of persons recognized to practice.* Employees of persons recognized to practice before the Revenue Service, who themselves are not so recognized, will not be recognized by offices of the Revenue Service except for the purpose of filing papers or securing information as to the status of tax cases. Recognition of such employees for the purpose of securing information as to the status of tax cases will be given only when the employee presents, with reference to a particular case, written authority from his employer to request such

information, and a power of attorney or tax information authorization, if appropriate, in such matter has previously been filed by his employer and has not been revoked by the person who granted it.

(c) *Requirement of a power of attorney or a tax information authorization.*—(1) *Requirement of power of attorney.* Except as otherwise provided in subparagraphs (3)(iii) and (4) of this paragraph, a power of attorney in proper form, or a copy thereof (for rules relating to copies, see paragraph (e) of § 601.504), executed by the taxpayer, will be required in a matter by the Revenue Service when the taxpayer's representative desires to perform one or more of the following acts on behalf of the taxpayer:

(i) Receipt (but not endorsement and collection) of a check in payment of any refund of internal revenue taxes, penalties, or interest. The endorsement and payment of a check drawn on the Treasurer of the United States after delivery to the taxpayer or his representative are governed by Treasury Department Circular No. 21, as amended (31 CFR Part 360). If the refund check is not to be endorsed by the payee personally, it should be endorsed under authority evidenced by one of the special types of powers of attorney prescribed by Circular No. 21. (For restrictions on the assignment of claims, see Revised Statute § 3477, as amended (31 U.S.C. 203). For rules relating to delivery of checks in payment of refunds, see paragraph (b) of § 601.506.)

(ii) Execution of a waiver of restriction on assessment or collection of a deficiency in tax, or a waiver of notice of disallowance of a claim for credit or refund.

(iii) Execution of a consent to extend the statutory period for assessment or collection of a tax.

(iv) Execution of a closing agreement under section 7121 of the Internal Revenue Code.

The power of attorney must specify which of the acts the representative is authorized to perform and no representative will be permitted to perform any of such acts without a proper power of attorney. Except as provided in paragraph (c) (2) of § 601.505, only one power of attorney is to be in effect in an office of the Revenue Service with respect to any of the acts enumerated in this subparagraph, and there must be included in such power of attorney the names and addresses of all representatives to whom the taxpayer has delegated authority to represent him with respect to any of the acts.

(2) *Requirement of a tax information authorization.* (i) Except as otherwise provided in subdivision (ii) of this subparagraph and subparagraphs (3) and (4) of this paragraph, in order that a taxpayer's representative may receive or inspect confidential tax information in a matter, a tax information authorization, or a copy thereof (for rules relating to copies, see paragraph (e) of § 601.504), will be required by the Revenue Service.

The tax information authorization must be signed by the taxpayer and must specify the matter covered. Examples of the receipt or inspection of confidential information for which a tax information authorization is required are the inspection of the taxpayer's tax returns (see section 6103 and the regulations thereunder), the receipt from Revenue Service officials at a conference of information disclosing the position of the Revenue Service with respect to the taxpayer's liability, the discussion with Revenue Service officials on the substance or merits of a taxpayer's request for a ruling or determination letter, and the receipt of certain notices and other communications, such as a notice of deficiency under section 6212 of the Code or a "30-day letter" and examining officer's report under § 601.105 (d), given to a taxpayer with respect to his tax affairs. A tax information authorization will not be required for receipt of notices and other communications which do not involve the disclosure of confidential information. For rules relating to the receipt of notices and other communications, see § 601.506.

(ii) Although the Revenue Service requires the taxpayer's representative to file a tax information authorization in order for such representative to receive or inspect confidential information in a matter, if such representative in connection with a matter has filed a power of attorney in order to perform one or more of the acts specified in subparagraph (1) of this paragraph he will be entitled to receive or inspect confidential information in the same matter without being required to file a separate tax information authorization.

(3) *Exceptions to requirement of power of attorney or tax information authorization in certain cases.* (i) A tax information authorization is not required of a taxpayer's representative at a conference which is also attended by the taxpayer. Unless the Revenue Service officials are advised to the contrary, in such a case, it will be presumed that the taxpayer in whose behalf the representative appears places no limitations upon the authority of his representative to receive confidential information at the conference.

(ii) A tax information authorization is not required at a conference concerning an estate tax case, even though the executor or administrator is not present at the conference, if the representative presents satisfactory evidence to the Revenue Service officials that he:

(a) Is recognized to practice before the Revenue Service within the meaning of paragraph (b) (1) of this section,

(b) Prepared the estate tax return on behalf of the executor or administrator, and

(c) Is the attorney of record for the executor or administrator before the court where the will is probated or the estate is administered.

(iii) A power of attorney or a tax information authorization is not required in the case of a trustee, receiver, or an attorney (designated to represent a trustee, receiver, or debtor in possession), appointed by a court having jurisdiction

over a debtor. In such a case, Revenue Service officials may require the submission of a certificate from the court having jurisdiction over the debtor showing the appointment and qualification of the trustee, receiver, or attorney and that his authority has not been terminated. In cases pending before a district court of the United States, an authenticated copy of the order approving the bond of the trustee, receiver, or attorney will meet this requirement.

(4) *Commissioner's authority to substitute other requirements for power of attorney or tax information authorization.* The Commissioner may, with respect to the performance of a specific act, substitute a requirement other than a power of attorney or a tax information authorization for appropriate evidence of the authority of the taxpayer's representative.

§ 601.503 *Requirements for filing evidence of recognition, power of attorney, and tax information authorization.*

(a) *Filing evidence of recognition.* Evidence of recognition must be submitted when a representative presents himself for the initial meeting in the first office of the Revenue Service in which he represents the party on whose behalf he acts in connection with the matter under consideration. Once evidence of recognition has been submitted, it will not be necessary to submit it again either in the same office or in other offices of the Revenue Service which subsequently have the same matter under consideration, unless specifically requested. In the case of a qualified attorney or a qualified certified public accountant, the filing of the applicable written declaration described in paragraph (b) (1) (i) and (ii) of § 601.502 constitutes evidence of recognition. A standard written declaration form is available in Revenue Service offices. In the case of a person currently enrolled as an agent, the demonstration by such person that he is the holder of a valid enrollment card constitutes evidence of recognition.

(b) *Filing power of attorney and tax information authorization.* Except as otherwise provided in this paragraph, one copy of a power of attorney must be filed in each office of the Revenue Service in which the representative, in connection with the matter under consideration, desires to perform one or more of the acts enumerated in paragraph (c) (1) of § 601.502. If a power of attorney with respect to the matter has not been filed with the Revenue Service, one copy of a tax information authorization must be filed in each office of the Revenue Service in which the representative, in connection with the matter under consideration, receives or inspects confidential information. For rules relating to the filing of a power of attorney alone, see paragraph (c) (2) (ii) of § 601.502. One additional copy of a power of attorney or tax information authorization also must be filed for each tax matter covered by the power of attorney or tax information authorization. If, in addition to a past or present matter, a pre-

viously filed power of attorney or tax information authorization relates to a tax matter not presently under consideration, or for which tax returns are not yet due, copies of the power of attorney or tax information authorization will be required to be filed subsequently with respect to those matters. These copies of the power of attorney or tax information authorization may be submitted with the subsequent returns or when the matter is under consideration by the Revenue Service. Where a copy of a power of attorney or tax information authorization is filed with the office of a district director which has the matter under consideration, it is not necessary to file another such copy with the office of a regional commissioner or regional counsel which subsequently has the matter under consideration, unless such office specifically requests the additional copy. In case of a request for a ruling or other matter to be considered in the National Office, a copy of a power of attorney or a tax information authorization should be submitted with each request if the representative wishes to represent the taxpayer at a conference in the National Office or receive a copy of the ruling. Standard power of attorney and tax information authorization forms are available in Revenue Service offices. For rules relating to the receipt of the original of the ruling by a representative, see paragraph (a) of § 601.506.

(c) *Practice by correspondence.* If a representative desires to represent a taxpayer through correspondence with the Revenue Service, the requirements of recognition (see paragraph (b) of § 601.502) and submission of evidence thereof and, if applicable, of submission of a power of attorney or a tax information authorization (see paragraph (c) of § 601.502) must be met even though no actual appearance is made. In the case of a qualified attorney or certified public accountant, evidence of recognition shall be in the form of the written declaration referred to in paragraph (b) (1) (i) or (ii) of § 601.502. In the case of an enrollee, evidence of recognition shall be in the form of a statement that he is enrolled and either his enrollment number or the expiration date of his enrollment card.

§ 601.504 Requirement for execution, attestation, acknowledgment or witnessing, and certification of copies, of power of attorney and tax information authorization.

(a) *Formal requirements.* The use of technical language in the preparation of a power of attorney or a tax information authorization is not necessary, but the instrument should clearly express the taxpayer's intention as to the scope of the authority of the representative, and specify the tax matter to which the authority relates. A power of attorney or tax information authorization may relate to more than one matter as, for example, a tax information authorization which relates to a taxpayer's income taxes for several different taxable years. If the taxpayer wishes to authorize his representative to perform one or more of the acts set forth in paragraph (c) (1)

of § 601.502 for which a power of attorney is required by the Revenue Service, the power must clearly specify which act or acts the representative is authorized to perform. Furthermore, if the taxpayer wishes to authorize his representative to make substitution of representatives or delegate authority to other representatives, the power of attorney must state this intention. The power of attorney need not specify the names of the representatives who may be substituted or to whom authority may be delegated, although such substitution or delegation, when it occurs, must be evidenced by a statement signed by the representative named in the power of attorney. The power of attorney or tax information authorization should also contain the mailing address of the representative and, if more than one person is to represent the taxpayer in the matter, a designation as to which representative is to receive notices and other written communications. Standard power of attorney and tax information authorization forms are available in Revenue Service offices. For rules relating to the mailing of notices or other written communications to a representative, see § 601.506.

(b) *Execution of a power of attorney or a tax information authorization—(1) Ordinary cases.* A power of attorney or a tax information authorization must be executed as follows:

(i) *Individual.* In the case of an individual taxpayer, by such individual.

(ii) *Husband and wife.* In the case of any taxable year for which a joint return was made by husband and wife, by both husband and wife except that either spouse may sign for the other if such signature is duly authorized in writing by the other spouse.

(iii) *Partnership.* In the case of a partnership, by all members, or if executed in the name of the partnership, by one of the partners duly authorized to act for the partnership.

(iv) *Corporation.* In the case of a corporation, by an officer of the corporation having authority to bind the corporation, who shall certify that he has such authority.

(v) *Association.* In the case of an association, the same requirements shall be applied as in the case of a corporation.

(2) *Special cases.* A power of attorney or a tax information authorization in the special cases set forth in subdivisions (i) through (vi) of this subparagraph must be executed by the party or parties having authority to act in the matter under consideration. In this connection, Revenue Service officials may require the submission of appropriate supplementary evidence of the authority of the party or parties. Such powers of attorney or tax information authorizations must be executed as follows:

(i) *Dissolved partnership.* In the case of a dissolved partnership, by each of the former partners. If one or more of the partners are dead, their legal representatives must sign in their stead (see subdivision (iv) of this subparagraph), unless, under the laws of the particular State,

the surviving partners at the time of execution of the power of attorney or tax information authorization have exclusive right to control and possession of the firm's assets for the purpose of winding up its affairs, in which case their signatures alone will be sufficient. If only the surviving partners sign the power of attorney or tax information authorization, the Revenue Service officials may require the submission of a copy of or a citation to the pertinent provisions of the State law under which the surviving partners claim authority without legal representatives of the deceased partners.

(ii) *Dissolved corporation.* In the case of a dissolved corporation, by the liquidating trustee or trustees under dissolution, if one or more have been appointed, or by a trustee deriving authority under a statute of the State in which the corporation was organized. If there is more than one trustee, all must join unless it is established that less than all have authority to act in the matter under consideration. The Revenue Service officials may require the submission of a properly authenticated copy of the instrument under which the trustee derives his authority. If the trustee's authority is derived under a State statute, the Revenue Service officials may require the submission of a copy of or a citation to the pertinent provisions of such statute, together with a statement made under penalties of perjury setting forth the facts required by the statute as a condition precedent to the vesting of authority in said trustee and stating that in the case of any trustee, his authority has not been terminated. If there is no trustee, the power of attorney or tax information authorization must be signed by a sufficient number of individuals to constitute a majority of the voting stock of the corporation as of the date of dissolution. The Revenue Service officials may require submission of a statement showing the total number of outstanding shares of voting stock as of the date of dissolution, the number of shares held by each signatory to the power of attorney or tax information authorization, the date of dissolution, and positive averments as to the nonexistence of any trustee.

(iii) *Insolvent taxpayer.* In the case of an insolvent taxpayer, by the trustee, receiver, or attorney appointed by the court. The Revenue Service officials may require the submission of a certificate from the court having jurisdiction over the insolvent showing the appointment and qualification of the trustee, receiver, or attorney and that his authority has not been terminated. In cases pending before a district court of the United States, an authenticated copy of the order approving the bond of the trustee, receiver, or attorney will meet this requirement.

(iv) *Deceased taxpayers.* In the case of a deceased taxpayer, by the executor or administrator if one has been appointed and is acting and responsible for disposition of the matter under consideration. The Revenue Service officials may require the submission of a short-form certificate (or authenticated copies of letters testamentary or letters of ad-

ministration) showing that the authority of the executor or administrator is in full force and effect at the time the power of attorney or tax information authorization is submitted. In the event that a trustee under the will is acting, the power of attorney or tax information authorization should be executed by the trustee, unless the executor has not been discharged and is responsible for disposition of the matter. The Revenue Service officials may require the submission of evidence of the discharge of the executor and appointment of the trustee, or other appropriate evidence of the authority of the trustee to act. If no executor, administrator, or trustee under the will is acting or responsible for disposition of the matter and the estate has been distributed to the residuary legatee or legatees, the power of attorney or tax information authorization should be executed by the residuary legatee or legatees. The Revenue Service officials may require the submission of a statement from the court certifying that no executor, administrator, or trustee under the will is acting or responsible for disposition of the matter, and naming the residuary legatee and indicating the proper share to which each is entitled. In the event that the decedent died intestate and the administrator has been discharged and is not responsible for disposition of the matter, or none was ever appointed, the power of attorney or tax information authorization must be executed by the distributees. The Revenue Service officials may require the submission of evidence of the discharge of the administrator if one had been appointed and evidence that the administrator is not responsible for disposition of the matter, and statements made under penalties of perjury and such other appropriate evidence as can be produced tending to show the relationship to the deceased of the signatories to the power of attorney or tax information authorization and the right of each of them to the respective shares claimed under the law of the domicile of the deceased.

(v) *Guardians and other fiduciaries appointed by a court of record.* In the case of a taxpayer for whom a guardian or other fiduciary has been appointed by a court of record, by the fiduciary. The Revenue Service officials may require the submission of a court certificate or court order showing that such fiduciary has been appointed and that his appointment has not been terminated.

(vi) *Trustee under agreement or declaration.* In the case of a taxpayer who has appointed a trustee, by the trustee. If there is more than one trustee appointed, all should join unless it is shown that less than all have authority to act. The Revenue Service officials may require the submission of documentary evidence of the authority of the trustee to act. Such evidence may be either a copy of the trust instrument, properly certified, or a certified copy of extracts from the trust instruments, showing:

(a) The date of the instrument,

(b) That it is or is not of record in any court,

(c) The beneficiaries,

(d) The appointment of the trustee, the authority granted, and such other information as may be necessary to show that such authority extends to Federal tax matters, and

(e) That the trust has not been terminated and the trustee appointed therein is still acting.

In the event that the trustee appointed in the original trust instrument is no longer acting and has been replaced by another trustee, documentary evidence of the appointment of the new trustee should be submitted.

(c) *Attestation and corporate seal.* It is not necessary that a power of attorney or a tax information authorization granted by a corporation be attested or that the corporate seal be affixed. Spaces provided on power of attorney or tax information authorization forms for affixing the corporate seal are for the convenience of corporations required by charter, or by the law of the jurisdiction in which they are incorporated, to affix their corporate seals in the execution of instruments. See paragraph (a)(1) of § 1.6062-1 of this chapter (Income Tax Regulations).

(d) *Acknowledgment or witnessing—*
(1) *General rule.* Except as provided in subparagraph (2) of this paragraph, a power of attorney must be acknowledged before a notary public, or in lieu thereof, witnessed by two disinterested individuals. The notarial seal must be affixed unless such seal is not required under the laws of the State in which the power of attorney is executed. A tax information authorization requires no acknowledgment or witnessing.

(2) *Exception.* If the power of attorney is granted to a representative who is recognized to practice before the Revenue Service under paragraph (b)(1)(i), (ii), or (iii) of § 601.502, and such representative executes a declaration on the power of attorney that he is so recognized, the acknowledgment or witnessing under subparagraph (1) of this paragraph will not be required.

(e) *Certification of copies.* A copy of a power of attorney or a tax information authorization, or a paper or document filed therewith, which is reproduced by photographic processes, need not be certified as a true and correct copy of the original. When such a copy is reproduced by other methods, it will be acceptable if its authenticity is certified either by a representative who is recognized to practice before the Revenue Service under paragraph (b)(1)(i), (ii), or (iii) of § 601.502, or by a notary public or other proper official who states that he has personally compared the copy with the original and finds it to be a true and correct copy.

§ 601.505 Requirements for changing representation.

(a) *No distinction between types of powers of attorney.* A power of attorney is only required by the Revenue Service for the performance of one or more of the acts enumerated in paragraph (c)

(1) of § 601.502. Accordingly, for purposes of the rules relating to change in representation set forth in paragraph (c) of this section, no distinction will be made by the Revenue Service between a general and a limited power of attorney.

(b) *Prohibition against unreasonable delay in Circular No. 230.* See section 10.23 of Circular No. 230 for the rule prohibiting a recognized representative from unreasonably delaying the prompt disposition of any matter before the Revenue Service.

(c) *Change in representation—*(1) *New power of attorney or tax information authorization required.* In any case in which there has been filed a power of attorney with respect to one or more of the acts enumerated in paragraph (c)(1) of § 601.502, or a tax information authorization, and thereafter, with respect to the same matter, the taxpayer desires:

(i) To add or to reduce the number of representatives authorized to perform one or more of such acts, or to receive confidential information,

(ii) To revoke the authority granted to a representative and to authorize a new representative to perform one or more of such acts, or to receive such confidential information, or

(iii) To change the authority granted to a representative,

a new power of attorney or a new tax information authorization, whichever is appropriate, must be filed.

(2) *Rules of revocation of power of attorney and tax information authorization.* (i) Except as provided in the next sentence, a new power of attorney filed with respect to one or more of the acts enumerated in paragraph (c)(1) of § 601.502 will be deemed as revoking a prior power of attorney (regardless of whether the act or acts enumerated in the prior power are the same as or different from the act or acts enumerated in the new power) or tax information authorization granted by the taxpayer to another representative with respect to the same matter. A new power of attorney will not be deemed as revoking a prior power of attorney or tax information authorization if it contains a clause specifically stating that it does not revoke such prior power of attorney or tax information authorization, and there is attached to the new power of attorney a copy of the unrevoked prior power of attorney or tax information authorization or a statement signed by the taxpayer listing the names and addresses of all representatives authorized under the prior power of attorney or tax information authorization. This procedure permits a taxpayer to authorize additional representatives to perform one or more of the acts enumerated in paragraph (c)(1) of § 601.502, or to receive confidential information, without revoking the authority of representatives under a prior power of attorney or tax information authorization with respect to the matter referred to in the prior power of attorney or tax information authorization. For rules relating to the practice of the Revenue Service in giving no-

tices and other written communications in cases in which a taxpayer has more than one authorized representative, see paragraph (a) of § 601.506.

(ii) Except as provided in the next sentence, a new tax information authorization will be deemed as revoking a prior tax information authorization filed with respect to the same matter. A new tax information authorization will not be deemed as revoking a prior tax information authorization with respect to the same matter if it contains a clause specifically stating that it does not revoke such prior tax information authorization, and if there is attached to the new tax information authorization a copy of the unrevoked prior tax information authorization or a statement signed by the taxpayer listing the names and addresses of all representatives authorized under the prior tax information authorization. This procedure permits a taxpayer to authorize additional representatives to receive confidential information, without revoking the authority of representatives under a prior tax information authorization with respect to the matter referred to in the prior tax information authorization. For rules relating to the practice of the Revenue Service in giving notices and other written communications in cases in which a taxpayer has more than one authorized representative, see paragraph (a) of § 601.506.

(iii) Except as provided in the next sentence, a new tax information authorization will not be deemed as revoking a prior power of attorney filed with respect to the same matter. A new tax information authorization will be deemed as revoking a prior power of attorney with respect to the same matter if there is attached to the new tax information authorization a statement signed by the taxpayer listing the names and addresses of all representatives under the prior power of attorney whose authority is revoked. This procedure permits a taxpayer to authorize additional representatives to receive confidential information, and, at the same time, revoke the authority of representatives under a prior power of attorney with respect to the matter referred to in the prior power of attorney. For rules relating to the practice of the Revenue Service in giving notices and other written communications in cases in which a taxpayer has more than one authorized representative, see paragraph (a) of § 601.506.

(iv) A taxpayer may revoke a power of attorney or a tax information authorization granted to a representative without authorizing a new representative to act for him. Upon revocation of a power of attorney or a tax information authorization when no new power of attorney or tax information authorization is executed, the taxpayer must send a signed statement to those offices of the Revenue Service where he has filed copies of the power of attorney or tax information authorization which is to be revoked listing the names and addresses of the representatives whose authority is revoked.

§ 601.506 Notices to be given to recognized representatives; delivery of refund checks to recognized representatives.

(a) *Notices.* Any notice or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the Revenue Service shall be given to the taxpayer's recognized representative. However, if such notice or communication contains confidential information with respect to the taxpayer, the notice or communication will be given to the representative only if there is on file with the Revenue Service a power of attorney or a tax information authorization in the matter signed by the taxpayer. For general rules relating to the requirement of a tax information authorization, see paragraph (c)(2) of § 601.502. Except as otherwise provided in this paragraph, if a taxpayer has more than one recognized representative in a matter, service upon any one shall be sufficient. To the extent feasible, it will be the practice of the Revenue Service to give copies of notices and other written communications to whichever of the representatives is designated by the taxpayer to receive such communications in the power of attorney or tax information authorization, whichever instrument reflects the latest date. If, in such instrument, the taxpayer designates more than one representative to receive notices and other written communications, it will be the practice of the Revenue Service to give copies of such communications to two, but not more than two, representatives so designated, but only if the two representatives have different mailing addresses. In a case in which the taxpayer does not designate which representative is to receive notices, it will be the practice of the Revenue Service to give notices to the representative first named on the instrument which reflects the latest date. In no event will failure to give notice or other written communication to a taxpayer's representative affect its validity which is to be determined solely under the provisions of the Internal Revenue Code. In the case of a request for a ruling, if it is desired that the original of the ruling (or of any correspondence in connection therewith) be addressed to the taxpayer's recognized representative, the power of attorney or tax information authorization should contain a statement to that effect and designate the mailing address of such representative.

(b) *Delivery of checks in payment of refunds.*—(1) *In general.* The Revenue Service is not bound to deliver any check in payment of refund of internal revenue taxes, penalties, or interest to a representative of any taxpayer acting under authority evidenced by a power of attorney. However, it will be the general policy of the Revenue Service to mail such a check in care of a recognized representative who has filed a power of attorney from the taxpayer, specifically authorizing him to receive but not to en-

dorse such check (see paragraph (c)(1) (i) of § 601.502), provided that such power of attorney has been filed in sufficient time for the section or division preparing the certificate of overassessment, or other appropriate notice, to show thereon the mailing address as "care of" the representative. When a representative has more than one address, a request to mail the check to an address other than that shown in the power of attorney will not be granted unless the address shown in the power of attorney is no longer that of the representative. In the event that a power of attorney is filed specifically authorizing more than one representative to receive checks on the taxpayer's behalf, and such representatives have different addresses, the Revenue Service will mail the check directly to the taxpayer, unless a statement is furnished, signed by all of the representatives named in the power of attorney, requesting that the check be mailed in care of one of their number. Furthermore, it will be the policy of the Revenue Service not to mail checks in payment of refunds to a representative who holds authority to receive such checks by reason of a substitute power of attorney obtained from the representative designated by the taxpayer.

(2) *Cases in litigation.* Checks in payment of claims which have either been reduced to judgment or settled in the course or as a result of litigation will be drawn in the name of the person or persons entitled to the money. In an action arising in a U.S. district court, the check will be sent to the appropriate U.S. Attorney for delivery to the taxpayer or the counsel of record in the court proceeding. In an action arising in the U.S. Court of Claims, the check will be sent to the Assistant Attorney General, Tax Division, Department of Justice, for such delivery.

§ 601.507 Evidence required to substantiate facts alleged in conferences.

All evidence, except that of a supplementary or incidental character, may be required to be submitted over the signed declaration of the taxpayer, made under penalties of perjury, that such evidence is true. Thus, in the case of any matter pending before the Revenue Service in respect of which the taxpayer submits a protest or other similar statement, such protest or statement should contain a recitation of the facts on which the taxpayer relies, made under the penalties of perjury, and should meet all the issues raised by the Revenue Service which the taxpayer desires to contest. In lieu of a declaration of the taxpayer made under penalties of perjury, every claim, written argument, brief, or recitation of the facts, prepared or filed by the taxpayer's representative in any matter pending before the Revenue Service, should have endorsed thereon a declaration signed by such representative as to whether or not he prepared such document and whether or not he knows of his own knowledge that the facts contained therein are true and correct. In any

case in which the taxpayer's representative is unable or unwilling to declare of his own knowledge that the facts are true and correct, the Revenue Service may request the taxpayer to make such a declaration under penalties of perjury.

§ 601.508 Contest between representatives of a taxpayer.

Where there is a contest between members of a dissolved firm or between two or more representatives as to which is entitled to represent a client in a matter pending before the Revenue Service, or to receive a check, thereafter the taxpayer only shall be recognized, unless the members or survivors of the dissolved firm, or the contesting representatives, file an agreement signed by all designating which of them shall be entitled to represent the taxpayer in such matter or to receive any check. In no case shall the delivery of a check to the taxpayer be delayed more than 60 days by reason of failure to file such agreement.

§ 601.509 Power of attorney or tax information authorization not required in cases docketed in the Tax Court of the United States.

In a case docketed in the Tax Court of the United States, the petitioner and the Commissioner stand in the position of parties litigant before a judicial body. The Tax Court has its own rules of practice and procedure and its own rules respecting admission to practice before it. Accordingly, a power of attorney or a tax information authorization is not required by the Revenue Service in cases docketed in the Tax Court. Correspondence in connection with cases docketed in the Tax Court will be addressed to counsel of record before the Court. In all cases pending in the Appellate Division, other than cases docketed in the Tax Court, the customary power of attorney or tax information authorization is required.

REQUIREMENTS FOR ALCOHOL AND TOBACCO TAX ACTIVITIES

§ 601.521 Requirements for conference and representation in conference.

The requirements for conference in the office of an assistant regional commissioner, alcohol and tobacco tax, or the Office of the Director, Alcohol and Tobacco Tax Division, are contained in § 601.308 of this part. Where an industry member or other person is to be represented in conference, the representative must be recognized to practice as provided in paragraph (b) of § 601.502. When a representative presents himself on behalf of an industry member or other person for the initial meeting in the office of an assistant regional commissioner, alcohol and tobacco tax, or of the Director, Alcohol and Tobacco Tax Division, he must submit evidence of recognition; or he should state in his first letter or other written communication with such office whether he is recognized to practice, and should enclose evidence of such recognition. In the case of a qualified attorney or a qualified certified

public accountant, the filing of the applicable written declaration described in paragraph (b) (1) (i) and (ii) of § 601.502 shall constitute evidence of recognition. In the case of an enrollee, the filing of a notification, stating that he is enrolled to practice and giving his enrollment number or the expiration date of his enrollment card, shall constitute evidence of recognition.

§ 601.522 Power of attorney.

Except as otherwise provided in this section, a power of attorney, or copy thereof, will be required for a representative of a principal (a) to perform the acts specified in paragraph (c) (1) of § 601.502; or (b) to sign any application, bond, notice, return, report, or other document required by, or provided for in, regulations issued pursuant to chapter 51 (Distilled Spirits, Wines, and Beer), chapter 52 (Cigars, Cigarettes, and Cigarette Papers and Tubes), and chapter 53 (Machine Guns and Certain Other Firearms), Internal Revenue Code, the Federal Alcohol Administration Act, or the Federal Firearms Act, which is filed with or acted on by (1) the office of an assistant regional commissioner, alcohol and tobacco tax, or (2) the Director, Alcohol and Tobacco Tax Division. The power of attorney may be executed on Form 1534, copies of which may be obtained from the assistant regional commissioner (alcohol and tobacco tax). A power of attorney will not be required for a person authorized to sign on behalf of the principal by articles of incorporation, by-laws, or a board of directors, where an acceptable copy of such authorization is on file in the office of the assistant regional commissioner or of the Director. A power of attorney filed under the provisions of this section may cover one or more acts for which a power of attorney is required and will continue in effect with respect to such acts until revoked as provided in § 601.526. The exceptions to the requirements for a power of attorney contained in paragraph (c) (3) and (4) of § 601.502 are applicable to powers of attorney under this section.

§ 601.523 Tax information authorization.

Where any of the acts specified in paragraph (c) (2) (i) of § 601.502 are to be performed by a representative, and a power of attorney for such representative has not been filed, a tax information authorization, or copy thereof, will be required. The authorization may be executed on Form 1534-A, copies of which may be obtained from the assistant regional commissioner (alcohol and tobacco tax). Such authorization may cover one or more of the acts for which a tax information authorization is required and will continue in effect with respect to such acts until revoked as provided in § 601.526. The exceptions to the requirements for a tax information authorization, provided in paragraph (c) (3) and (4) of § 601.502, are applicable to such authorizations under this section.

§ 601.524 Execution and filing powers of attorney and tax information authorizations.

(a) *Time of filing.* A copy of the power of attorney must be filed in each office (that is, office of an assistant regional commissioner and Office of the Director, Alcohol and Tobacco Tax Division) in which a document specified in § 601.522, covered by the power of attorney, is required to be filed, or in which the representative desires to perform one or more of the acts enumerated in paragraph (c) (1) of § 601.502. If a power of attorney covering an act otherwise requiring the filing of a tax information authorization has not been filed, a copy of the tax information authorization must be filed in each office in which the representative inspects or receives confidential information, or, where acts requiring a power of attorney or a tax information authorization are handled by correspondence, the representative should enclose a copy of the power or authorization with the initial correspondence. However, where a power of attorney or tax information authorization is on file with the assistant regional commissioner, alcohol and tobacco tax, an additional copy thereof will not be required in the office of the regional counsel of the same region.

(b) *Execution.* The power of attorney required by § 601.522, or tax information authorization required by § 601.523, shall be executed in the manner prescribed in paragraph (b) of § 601.504; shall indicate all acts to which it relates; should contain the mailing address of the representative; and, if more than one representative is authorized to perform the same acts on behalf of the industry member or other person, a designation as to which representative is to receive notices and other written communications. For rules relating to the mailing of notices or other written communications to a representative, see § 601.506.

(c) *Attestation and corporate seal.* In the case of a corporation, a power of attorney filed with an officer of the Alcohol and Tobacco Tax Division must be attested by the secretary and the corporate seal must be affixed. If the officer who signs the power of attorney is also the secretary, another officer of the corporation, preferably the president, vice president, or treasurer, must also sign the power of attorney so that two different individuals' signatures appear thereon. If the corporation has no seal, a certified copy of a resolution duly passed on by the board of directors of the corporation authorizing the execution of powers of attorney should be attached.

(d) *Acknowledgment.* A power of attorney filed with an office of the Alcohol and Tobacco Tax Division must be acknowledged, witnessed, or certified as provided in paragraph (d) of § 601.504.

§ 601.525 Certification of copies of documents.

The provisions of paragraph (e) of § 601.504 with respect to certification of

copies are applicable to a power of attorney or a tax information authorization required to be filed under § 601.522 or § 601.523.

§ 601.526 Revocation of powers of attorney and tax information authorizations.

The revocation of the authority of a representative covered by a power of attorney or tax information authorization filed in an office of the Alcohol and Tobacco Tax Division shall in no case be effective prior to the giving of written notice to the proper official that the authority of such representative has been revoked.

§ 601.527 Other provisions applied to representation in alcohol and tobacco tax activities.

The provisions of paragraph (b) of § 601.505, and of §§ 601.506 through 601.508 of this subpart, as applicable, shall be followed in offices of the Alcohol and Tobacco Tax Division.

Subpart F—Rules, Regulations, and Forms

§ 601.601 Rules and regulations.

(a) *Formulation.* (1) Internal revenue rules take various forms. The most important rules are issued as regulations and Treasury decisions, prescribed by the Commissioner and approved by the Secretary or his delegate. Other rules may be issued over the signature of the Commissioner or the signature of any other official to whom authority has been delegated. The channeling of rules varies with the circumstances. Regulations and Treasury decisions, except those relating to alcohol, tobacco, and certain firearms, are prepared in the Office of the Chief Counsel. Alcohol, tobacco, and certain firearms regulations and Treasury decisions are prepared in the Office of the Assistant Commissioner (Compliance) and reviewed in the Office of the Chief Counsel. After approval by the Commissioner (and, in the case of regulations relating to narcotics and certain regulations relating to alcohol and tobacco taxes, the approval of the Commissioner of Narcotics or the Commissioner of Customs, as the case may be), regulations and Treasury decisions are forwarded to the Secretary or his delegate for further consideration and final approval.

(2) Where required by section 4 of the Administrative Procedure Act (60 Stat. 237) and in such other instances as may be desirable, the Commissioner publishes in the *FEDERAL REGISTER* general notice of proposed rules (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law). This notice includes (i) a statement of the time, place, and nature of public rule-making proceedings; (ii) reference to the authority under which the rule is proposed; and (iii) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Also, pursuant to section 5 of the Federal Alcohol Adminis-

tration Act (27 U. S. C. 205 (f)) public notice and opportunity for hearing is given prior to the adoption of regulations under that section.

(b) *Comments on proposed rules.* Interested persons are privileged to submit any data, views, or arguments with respect to proposed rules. Any person submitting comments in response to a notice of proposed rule making published pursuant to 5 U.S.C. 553 shall specifically designate that portion, if any, of his comments which in his opinion contains confidential information or data. Any comments or any portion thereof not specifically designated as confidential will be made available pursuant to paragraph (c) of § 601.702 upon request. Any comments or any portion thereof specifically designated as confidential will not be disclosed to the public. The name of the person submitting the comments will not be treated as confidential unless such person requests that his name be so treated. Any portion of a comment which is designated as confidential shall be set forth on pages separate from the balance of the comment. The disclosure by the Internal Revenue Service of any name, or of any comments or any portion thereof, not specifically designated as confidential by the person submitting the comments will be a disclosure authorized by law within the meaning of any statute governing the disclosure of information. The name of any person requesting a public hearing and the issues which may be discussed at the hearing are not confidential. This paragraph applies only to comments submitted on or after August 2, 1967.

(c) *Petition to change rules.* Interested persons are privileged to petition for the issuance, amendment, or repeal of a rule. A petition for the issuance of a rule should identify the section or sections of law involved; and a petition for the amendment or repeal of a rule should set forth the section or sections of the regulations involved. The petition should also set forth the reasons for the requested action. Such petitions will be given careful consideration and the petitioner will be advised of the action taken thereon. Petitions should be addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

(d) *Publication of rules and regulations.* All internal revenue regulations and Treasury decisions are published in the *FEDERAL REGISTER* and in the Code of Federal Regulations. See paragraph (a) of § 601.702. The Treasury decisions are also published in the weekly *Internal Revenue Bulletin* and the semiannual *Cumulative Bulletin*. The *Internal Revenue Bulletin* is the authoritative instrument of the Commissioner for the announcement of official rulings, decisions, opinions, and procedures, and for the publication of Treasury decisions, Executive orders, tax conventions, legislation, court decisions, and other items pertaining to internal revenue matters. It is the policy of the Internal Revenue Service to publish in the bulletin all substantive

and procedural rulings of importance or general interest, the publication of which is considered necessary to promote a uniform application of the laws administered by the Service. It is also the policy to publish in the bulletin all rulings which revoke, modify, amend, or affect any published ruling. Rules relating solely to matters of internal practices and procedures are not published; however, statements of internal practices and procedures affecting rights or duties of taxpayers, or industry regulation, which appear in internal management documents, are published in the bulletin. No unpublished ruling or decision will be relied on, used, or cited by any officer or employee of the Internal Revenue Service as a precedent in the disposition of other cases.

§ 601.602 Forms and instructions.

(a) *Tax return forms and instructions.* Forms and instructions are developed by the Internal Revenue Service to explain the requirements of the internal revenue laws and regulations and are issued for the assistance of taxpayers in exercising their rights and discharging their duties under the internal revenue laws. All internal revenue taxes which are not collected by stamps are assessed and collected through the self-determination and self-application of the law and the regulations by taxpayers. The tax return forms are the instruments through which this is accomplished.

(b) *Other forms and instructions.* In addition to the forms and instructions for the return of internal revenue taxes, the Internal Revenue Service provides other necessary or appropriate forms for assisting the public in complying with the technical requirements of the internal revenue laws and regulations. The material contained in the forms and instructions, and the arrangement thereof is carefully considered in the Internal Revenue Service and is designed to lead the taxpayer step-by-step through an orderly accumulation of data to an accurate report of the information required.

(c) *Procurement of forms and instructions.* Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from district directors or, where appropriate, from assistant regional commissioners (alcohol and tobacco tax). Descriptions of many of the forms and publications of the Internal Revenue Service for public use are contained in Publication No. 480, *Description of Available Forms Relating to Alcohol and Tobacco Tax Division Activities*, and Publication No. 481, *Description of Principal Federal Tax Returns, Related Forms, and Publications*. Publication No. 480 and Publication No. 481 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Subpart G—Records

§ 601.701 Publicity of information.

(a) *General.* Effective July 4, 1967, section 552 of title 5 of the United States Code is amended to prescribe revised

provisions regarding the publicizing of information by Federal agencies. Generally, such section divides agency information into three major categories and provides methods by which each category is to be made available to the public. The three major categories, for which the disclosure requirements of the Internal Revenue Service are set forth in § 601.702, are as follows:

(1) Information required to be published in the *FEDERAL REGISTER*;

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale; and

(3) Information required to be made available to any member of the public upon specific request.

The revised provisions of section 552 are intended to protect, subject to specified safeguards, the right of the public to information. Section 552 is not authority to withhold information from Congress.

(b) *Exemptions*—(1) *In general*. Under 5 U.S.C. 552(b), the disclosure requirements of section 552 do not apply to certain matters described in nine specific exemptions, as follows:

(i) Matters specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(ii) Matters related solely to the internal personnel rules and practices of an agency, such as staff manuals or instructions, or parts thereof, which set forth guidelines, operating rules, or other criteria for officers or employees in auditing or inspection procedures, or in the selection or handling of cases, such as operational tactics, allowable tolerances, or criteria for the defense, prosecution, or settlement of cases;

(iii) Matters specifically exempted from disclosure by statute, as described in subparagraph (2) of this paragraph;

(iv) (a) Trade secrets and (b) commercial, financial, or other information, which is privileged or confidential and thus would not customarily be made public by the person from whom it is obtained, such as business sales statistics, inventories, customer lists, scientific or manufacturing processes or developments, personal correspondence, or matter which the agency has obligated itself in good faith not to disclose;

(v) Interagency or intraagency memorandums or letters which would not be available by law to a party in litigation with an agency, including communications (such as internal drafts, memorandums between officials or agencies, opinions and interpretations prepared by agency staff personnel or consultants for the use of the agency, and records of the deliberations of the agency or staff groups) which the agency has received from another agency, or which the agency generates, in the process of issuing an order, decision, ruling, or regulation, drafting proposed legislation, or otherwise carrying out its functions and responsibilities, if such communications would not routinely be available to such party through use of the discovery process;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of any officer or employee of an agency or of any other person;

(vii) Investigatory files compiled for any law enforcement purpose, including files prepared in connection with related Government litigation and adjudicative proceedings, except to the extent available by law to a party other than an agency;

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

(ix) Geological and geophysical information and data, including maps, concerning wells, such as seismic reports and other exploratory findings of oil companies.

(2) *Matters specifically exempted from disclosure by statute*. For purposes of subparagraph (1) (iii) of this paragraph, statutory provisions which either specifically exempt certain matters from disclosure by officers or employees of the Internal Revenue Service or specifically provide for disclosure under appropriate circumstances include the following sections of the Code and the regulations thereunder:

(i) Section 4102, relating to inspection by certain State or local government officers of records with respect to taxes on petroleum products;

(ii) Section 4773, relating to inspection by certain Government officials of records with respect to narcotic drugs and marihuana;

(iii) Section 4775, relating to requests for names of persons listed as special taxpayers under the provisions of the Code dealing with narcotic drugs and marihuana;

(iv) Section 6103, relating to publicity of certain returns and disclosure of information as to persons filing income tax returns;

(v) Section 6104, relating to publicity of information required from certain exempt organizations and certain trusts;

(vi) Section 6105, relating to publication in the *FEDERAL REGISTER* of compilation of relief from excess profits tax cases;

(vii) Section 6106, relating to publicity of unemployment tax returns;

(viii) Section 6107, relating to the keeping of lists of special taxpayers for public inspection;

(ix) Section 6108, relating to the publication of statistics of income;

(x) Section 7213, relating to penalties for unauthorized disclosure of information by Federal officers or employees or other persons; and

(xi) Section 7237(e), relating to penalties for unlawful disclosure of information on returns or order forms pertaining to narcotic drugs or marihuana.

A reference in this subparagraph to a provision of the Code will be considered to be a reference also to any corresponding provisions of prior law and the reg-

ulations promulgated thereunder. See also 18 U.S.C. 1905, which provides penalties for the unlawful disclosure by Federal officers or employees of certain information coming to them in the course of their employment. See paragraph (d) of § 601.702 for special rules pertaining to the disclosure of information in the case of certain specified matters.

(3) *Application of exemptions*. Even though an exemption described in subparagraph (1) of this paragraph may be fully applicable to a matter in a particular case, the Internal Revenue Service may, if not precluded by law, elect under the circumstances of that case not to apply the exemption to such matter. The fact that the exemption is not applied by the Service in that particular case has no precedential significance as to the application of the exemption to such matter in other cases but is merely an indication that in the particular case involved the Service finds no compelling necessity for applying the exemption to such matter.

§ 601.702 Publication and public inspection.

(a) *Publication in the Federal Register*—(1) *Requirement*. Subject to the application of the exemptions described in paragraph (b) of § 601.701 and subject to the limitations provided in subparagraph (2) of this paragraph, the Internal Revenue Service is required under 5 U.S.C. 552(a) (1) to separately state and currently publish in the *FEDERAL REGISTER* for the guidance of the public the following information:

(i) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submissions or requests, or obtain decisions, from the Service;

(ii) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures which are available;

(iii) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(iv) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Service; and

(v) Each amendment, revision, or repeal of matters referred to in subdivisions (i) through (iv) of this subparagraph.

Pursuant to the foregoing requirements, the Commissioner publishes in the *FEDERAL REGISTER* from time to time a statement, which is not codified in this chapter, on the organization and functions of the Internal Revenue Service, and such amendments as are needed to keep the statement on a current basis. In addition, there are published in the *FEDERAL REGISTER* the rules set forth in this

part (Statement of Procedural Rules), such as those in subpart E, relating to conference and practice requirements of the Internal Revenue Service; the regulations in Part 177 of this chapter (Interstate Traffic in Firearms and Ammunition); the regulations in Part 200 of this chapter (Rules of Practice in Permit Proceedings); the regulations in Part 301 of this chapter (Procedure and Administration Regulations); the various substantive regulations under the Internal Revenue Code of 1954, such as the regulations in Part 1 of this chapter (Income Tax Regulations), in Part 20 of this chapter (Estate Tax Regulations), in Part 31 of this chapter (Employment Tax Regulations), in Part 47 of this chapter (Documentary Stamp Tax Regulations), or Part 201 of this chapter (Distilled Spirits Plants Regulations); and the substantive regulations under the Federal Alcohol Administration Act (49 Stat. 977, as amended, 27 U.S.C. 201 et seq.), such as 27 CFR Part 1 (Basic Permit Regulations), 27 CFR Part 4 (Wine Labeling and Advertising Regulations), or 27 CFR Part 5 (Distilled Spirits Labeling and Advertising Regulations).

(2) *Limitations.*—(i) *Incorporation by reference in the Federal Register.* Matter which is reasonably available to the class of persons affected thereby, whether in a private or public publication, will be deemed published in the FEDERAL REGISTER for purposes of subparagraph (1) of this paragraph when it is incorporated by reference therein with the approval of the Director of the Federal Register. The matter which is incorporated by reference must be set forth in the private or public publication substantially in its entirety and not merely summarized or printed as a synopsis. Matter the location and scope of which are familiar to only a few persons having a special working knowledge of the activities of the Internal Revenue Service may not be incorporated in the FEDERAL REGISTER by reference. Matter may be incorporated by reference in the FEDERAL REGISTER only pursuant to the provisions of 5 U.S.C. 552(a) (1) and 1 CFR Part 20.

(ii) *Effect of failure to publish.* Except to the extent that a person has actual and timely notice of the terms of any matter referred to in subparagraph (1) of this paragraph which is required to be published in the FEDERAL REGISTER, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to subdivision (i) of this subparagraph. Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or affect a person's rights.

(b) *Public inspection and copying.*—(1) *In general.* Subject to the application of the exemptions described in paragraph (b) of § 601.701, the Internal Revenue Service is required under 5 U.S.C. 552(a) (2) to make available for public inspection and copying or, in the alternative, to promptly publish and offer for sale the following information:

(i) Final opinions, including concurring and dissenting opinions, and orders, if such opinions and orders are made in the adjudication of cases, such as opinions and orders by the Alcohol and Tobacco Tax Division pursuant to § 200.116 of this chapter in administrative procedures on applications for, or to suspend, revoke, or annul, permits under the alcohol, alcoholic beverages, and tobacco permit systems;

(ii) Those statements of policy and interpretations which have been adopted by the Internal Revenue Service but are not published in the FEDERAL REGISTER; and

(iii) Its administrative staff manuals and instructions to staff that affect a member of the public.

The Internal Revenue Service is also required by 5 U.S.C. 552(a) (2) to maintain and make available for public inspection and copying current indexes identifying any matter described in subdivisions (i) through (iii) of this subparagraph which is issued, adopted, or promulgated after July 4, 1967, and which is required to be made available for public inspection or published. No matter described in subdivisions (i) through (iii) of this subparagraph which is required by this subparagraph to be made available for public inspection or published may be relied upon, used, or cited as precedent by the Internal Revenue Service against a party other than an agency unless such party has actual and timely notice of the terms of such matter or unless the matter has been indexed and either made available for inspection, or published, as provided by this subparagraph. This subparagraph applies only to matters which have precedential significance. It does not apply, for example, to administrative manuals on property or fiscal accounting, vehicle maintenance, personnel administration, and similar proprietary functions of the Internal Revenue Service. Nor does it apply to any ruling or advisory interpretation which is issued to a taxpayer on a particular transaction or set of facts and applied only to that transaction or set of facts. This subparagraph does not apply to matters which have been made available pursuant to paragraph (a) of this section.

(2) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, the Internal Revenue Service will, in accordance with 5 U.S.C. 552(a) (2), delete identifying details contained in any matter described in subparagraph (1) (i) through (iii) of this paragraph before making such matter available for inspection or publishing it. However, in every case where identifying details are so deleted, the justification for the deletion must be explained in writing. The written justification for deletion will be placed as a preamble to the document from which the identifying details have been deleted, except in the case of any matter which is published in the Internal Revenue Bulletin. An introductory statement will be placed in each Internal Revenue Bulletin providing that identifying details, in-

cluding the names and addresses of persons involved, and information of a confidential nature are deleted to prevent unwarranted invasions of personal privacy and to comply with statutory provisions, such as section 7213 and 18 U.S.C. 1905, dealing with disclosure of information obtained from members of the public.

(3) *Public reading rooms.*—(i) *In general.* The National Office and each regional office of the Internal Revenue Service will provide a reading room or reading area where the matters described in subparagraph (1) (i) through (iii) of this paragraph which are required by such subparagraph to be made available for public inspection or published, and the current indexes to such matters, will be made available to the public for inspection and copying. In addition, the reading rooms will contain other matters determined to be helpful for the guidance of the public, including a complete set of the rules and regulations contained in this title and title 27, any internal revenue matters which may be incorporated by reference in the FEDERAL REGISTER pursuant to paragraph (a) (2) (i) of this section, a set of Cumulative Bulletins, and copies of various Internal Revenue Service publications, such as the description of forms or publications contained in Publication No. 480 and Publication No. 481. Fees will not be charged for the use of the materials in the reading rooms, but fees will be charged for copying and certification services, as provided in subdivision (iii) of this subparagraph. The public will not be allowed to remove any record from a reading room.

(ii) *Addresses of public reading rooms.* The addresses of the reading rooms are as follows:

NATIONAL OFFICE

Mail address: Director, Public Information Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224.

Location: Same as mail address.

NORTH ATLANTIC REGION

Mail address: Regional Public Information Officer, Room 1102, 90 Church Street, New York, N.Y. 10007.

Location: Same as mail address.

MID-ATLANTIC REGION

Mail address: Regional Public Information Officer, Post Office Box 12805, Philadelphia, Pa. 19108.

Location: 401 North Broad Street.

SOUTHEAST REGION

Mail address: Regional Public Information Officer, Post Office Box 926, Atlanta, Ga. 30301.

Location: Federal Office Building, 275 Peachtree Street.

MIDWEST REGION

Mail address: Regional Public Information Officer, 17 North Dearborn Street, Chicago, Ill. 60602.

Location: Same as mail address.

CENTRAL REGION

Mail address: Regional Public Information Officer, Room 7106, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202.

Location: Same as mail address.

SOUTHWEST REGION

Mail address: Regional Public Information Officer, 1114 Commerce Street, Dallas, Tex. 75202.

Location: Same as mail address.

WESTERN REGION

Mail address: Regional Public Information Officer, Flood Building, 870 Market Street, San Francisco, Calif. 94102.

Location: Same as mail address.

(iii) *Copying facilities.* The National Office and each regional office will provide facilities whereby a person may obtain copies of material which is on the shelves of the reading room. Certification services with respect to copies will also be provided. The fees in respect of material on the shelves of the reading rooms are as follows:

Photocopies; each page.....	\$0.25
Certification of photocopies by appropriate official; each certification.....	1.00
Sale of unpriced printed material; each 25 pages or fraction thereof.....	.25
Minimum charge applicable when one or more of the above charges is assessed.....	1.00

Generally, forms and instructions described in § 601.602 which may be obtained from district directors or from assistant regional commissioners (alcohol and tobacco tax) will not be available in the reading rooms. However, where such forms or instructions are available for distribution in the reading rooms, the fee listed in this subdivision for the sale of unpriced printed material will not apply. While certain relevant publications which are available for sale through the Government Printing Office will be placed on the shelves of the reading rooms, such publications will not be available for sale in the reading rooms. Persons desiring to purchase such publications, for example, Internal Revenue Bulletins and Cumulative Bulletins, should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. However, copies of pages of such publications on the reading room shelves may be obtained at the reading rooms in accordance with the schedule of fees set forth in this subdivision.

(iv) *Inability to use public reading rooms.* If a person is unable or unwilling to visit a reading room in person but wishes to inspect identifiable reading room material, he may request permission to inspect such material at any office of the Internal Revenue Service. To the extent that requested material is available for inspection at the reading rooms and is also readily available for inspection at the office where the request is made, such material will promptly be made available for inspection at such office to the person making the request for inspection and, where facilities are available, for copying in accordance with the schedule of fees prescribed by subdivision (iii) of this subparagraph. Copies of the requested material may also be mailed to such person by such office upon request. If the requested reading room material is not readily available for inspection at the office where the request is made, then the request will be referred

by such office to one of the reading rooms of the Internal Revenue Service. If the copies are to be transmitted by mail, the person making the request will promptly be advised of the cost of copying the requested material in accordance with the prescribed schedule of fees. Upon receipt of such fees, the requested material will be copied and mailed to the person making the request. Prepayment of fees is not required where the total fees with respect to the request are \$5 or less and the request is filled by mail.

(c) *Specific requests for other identifiable records.* (1) *In general.* Subject to the application of the exemptions described in paragraph (b) of § 601.701, the Internal Revenue Service is required under 5 U.S.C. 552(a)(3) to make identifiable records, other than those made available pursuant to paragraphs (a) and (b) of this section, promptly available to any person upon request. The request for records under section 552(a)(3) must be made in accordance with the rules set forth in this paragraph. This paragraph applies only to records in being which are in the possession or control of the Internal Revenue Service. Where a record in the possession or control of the Internal Revenue Service is the paramount or exclusive concern of another agency, the request for such record will be transferred to that agency, and the requester notified to that effect, to insure that the determination to disclose or withhold the record will be made by that agency. In applying this paragraph, the Internal Revenue Service will not compile a record pursuant to a request, or procure a record from sources outside the Service.

(2) *Form of request.* The request for records must be in writing and signed by the person making the request. The request is required to identify the requested records in accordance with subparagraph (4) of this paragraph. The request must set forth the address where the person making the request desires to be notified of the determination by the Internal Revenue Service as to whether the request will be granted. If the requester desires to make the inspection in an office other than the office to which the request is delivered or mailed, the request should designate the office of the Internal Revenue Service where inspection is desired. Where the person making the request desires to have a copy of the requested records sent to him without first inspecting such records, his request should so state.

(3) *Time and place for making request.* The request for records may be made at any office of the Internal Revenue Service. A request delivered to an office in person must be delivered during the regular office hours of that office. The person making the request should allow a reasonable period of time for processing the request.

(4) *Identification of records.* The request for records must describe the records in reasonably sufficient detail to enable personnel of the Internal Revenue Service to locate the records. While no specific formula for adequate identification of a record may be established, it

will generally suffice if the requester gives the name, subject matter, and, if known, the date and location of the requested record. However, the person making the request is advised to furnish the Internal Revenue Service with any additional information which will more clearly identify the requested records, since he has the burden of properly identifying them. The identification requirement will not be used by officers or employees of the Internal Revenue Service as a device for improperly withholding records from the public.

(5) *Fees.* A schedule of fees for the services and costs required of the Internal Revenue Service in locating, making available, copying, and certifying records pursuant to this paragraph is as follows:

Records search; each hour or fraction thereof.....	\$3.50
Photocopies; each page.....	.25
Certification of photocopies by appropriate official; each certification.....	1.00
Minimum charge with respect to photocopies.....	1.00

Such fees are intended to make any services performed with respect to the request self-sustaining to the extent possible. See title V, Act of August 31, 1951 (65 Stat. 290, 31 U.S.C. (Supp. II) 483a). If the Internal Revenue Service estimates that the total fees for costs incurred in complying with the request will amount to \$50 or more, the person making the request may be required to enter into a contract for the payment of actual fees with respect to the request before the Service will undertake actions necessary to comply with the request.

(6) *Processing a request.* (i) *In general.* The person making a request will be promptly advised in writing that the request has been received, that action is being taken thereon, and that he will be notified in writing of the determination as to whether the request is granted. If the request does not sufficiently identify a record, the person making the request will be promptly advised of such fact and notified that a more detailed description of the record is required by the Internal Revenue Service in order to proceed with the request.

(ii) *Determination by National Office.* Except in a case described in subdivision (iii) of this subparagraph, a request sufficiently identifying records will be immediately transmitted to the Assistant Commissioner (Compliance), Attention: CP:C:D, for prompt consideration. A copy of the requested records or a description thereof will also be transmitted to the Assistant Commissioner (Compliance) for consideration in connection with the request. The Assistant Commissioner (Compliance) will notify the requester in writing of his determination with respect to the request.

(iii) *Determination by a field office.* Where disclosure authorization with respect to the requested records has been delegated to an officer or employee of the Internal Revenue Service other than the Assistant Commissioner (Compliance),

ance), such other officer or employee will make the determination as to whether the request for records should be granted or denied and will notify the requester in writing of his determination with respect to the request.

(7) *Granting of request.* If it is determined that the request is to be granted, the person making the request will be notified in writing of the determination, of the fees involved in complying with the request, and of the locations where such fees are payable. Upon receipt by the Internal Revenue Service of the fees stated in its reply, the person making the request will be promptly advised, in writing, of the time and place where inspection may be made; or, if he has requested that a copy of the records be sent to him without first inspecting the records or if it has been necessary to reproduce the records in order to provide for inspection, a copy of the records will be mailed to him for his retention. In the usual case, the records will be made available for inspection at the office of the Internal Revenue Service where the request was made. However, if the person making the request has expressed a desire to inspect the records at an office of the Service other than the office where the request was made, every reasonable effort will be made to comply with the request. Records will be made available for inspection at such reasonable and proper times as not to interfere with their use by the Internal Revenue Service or to exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The person making the request will not be allowed to remove the records from the office where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies will be furnished to him upon payment of the established fees prescribed by subparagraph (5) of this paragraph. Prepayment of fees is not required where the total fees with respect to the request are \$5 or less and the request is filled by mail.

(8) *Denial of request.* If it is determined that the request for records should be denied, the person making the request will be notified of such determination by mail. The letter of notification will specify the city or other location where the requested records are situated, contain a brief statement of the grounds for denial, and advise the requester of his right to appeal to the Commissioner in accordance with subparagraph (9) of this paragraph.

(9) *Administrative appeal.* At any time within 30 days after the date of the letter of notification described in subparagraph (8) of this paragraph, the person making the request may file an appeal to the Commissioner. The appeal must be in the form of a statement signed by the appellant and mailed to the Commissioner of Internal Revenue, 1111 Constitution Avenue NW., Washington, D.C. 20224. The statement must contain the following information:

- (i) The appellant's name and address,
- (ii) The identification of the records requested,
- (iii) The date of the request and the date of the letter denying the request, and
- (iv) A request that the Commissioner consider the denial.

The appeal will be promptly considered by the Commissioner and the request either granted or denied by the Commissioner or referred by him to the Secretary for determination. The appellant will be notified of the determination by mail, and such determination shall be final.

(10) *Judicial review.* If the request is denied upon appeal pursuant to subparagraph (9) of this paragraph, or if no determination is made on the appeal within 30 days after filing, the appellant may commence an action in a U.S. district court pursuant to 5 U.S.C. 552(a)(3). The statute authorizes an action only against the agency. With respect to records of the Internal Revenue Service, the agency is the Internal Revenue Service, not an officer or employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Where provided in such Rules, delivery of process upon the Internal Revenue Service must be directed to the Commissioner of Internal Revenue: Attention: CC:OP: OS, 1111 Constitution Avenue NW., Washington, D.C. 20224. The district court will determine the matter de novo, and the burden will be upon the Internal Revenue Service to sustain its action in not making the requested records available.

(d) *Rules for disclosure of certain specified matters.* (1) *Inspection of certain tax returns.* The inspection of certain returns is governed by the provisions of the internal revenue laws and rules promulgated by the President or by the Secretary of the Treasury and approved by the President pursuant to such provisions. See section 6103 and the regulations thereunder in Part 301 of this chapter (Procedure and Administration Regulations).

(2) *Information as to persons filing income tax returns.* Information as to whether any person has filed an income tax return for a particular taxable year will be furnished to an inquirer as provided in § 301.6103(f)-1 of this chapter. See section 6103(f).

(3) *Public lists of persons paying special taxes.* Lists of persons paying special taxes under subtitle D (relating to miscellaneous excise taxes) or subtitle E (relating to alcohol, tobacco, and certain other excise taxes) of the Code are available for public inspection in the offices of district directors pursuant to the provisions and limitations of section 6107. See § 301.6107-1 of this chapter. For rules relating to the inspection of Record 10, see § 151.477 of this chapter (Regulatory Taxes on Narcotic Drugs) and § 152.131 of this chapter (Regulatory Taxes on Marihuana).

(4) *Record of seizure and sale of real estate.* Record 21, "Record of seizure and sale of real estate", is open for public inspection in offices of district directors and copies are furnished upon application, as provided in § 301.9000-1(e) of this chapter. However, Record 21 does not list real estate seized for forfeiture under the internal revenue laws (see sec. 7302).

(5) *Public lists of employers making returns under the Federal Unemployment Tax Act.* Information as to whether an employer has made an annual return on Form 940 under the Federal Unemployment Tax Act (chapter 23 of the Code) will be furnished to an inquirer as provided in §§ 301.6103(f)-1 and 301.6106-1 of this chapter. See sections 6103(f) and 6106.

(6) *Information returns of certain tax-exempt organizations and certain trusts.* Information furnished on the public portion of Form 990-A and information furnished pursuant to section 6034 (relating to annual information required of trusts claiming deduction under sec. 642(c)) on Form 1041-A is available for public inspection. The public inspection portion of Form 990-A is, however, only retained for a 4-year period. Information furnished on Form 1041-A for years ending before December 31, 1962, will be available for public inspection in the office of the district director with whom Form 1041-A was filed. Information furnished for years ending on or after December 31, 1962, will be available for public inspection in the Office of the Director, Public Information Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, as well as in the office of the district director with whom Form 990-A or Form 1041-A was filed. See section 6104(b) and § 301.6104-2 of this chapter.

(7) *Applications of certain organizations for tax exemption.* Applications, and certain papers submitted in support of such applications, filed by organizations described in section 501(c) or (d) and determined to be exempt from taxation under section 501(a) are open to public inspection in the Office of the Director, Public Information Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224. Copies of such applications filed after September 2, 1958, are open to public inspection in the offices of district directors. See section 6104(a) and § 301.6104-1 of this chapter.

(8) *Accepted offers in compromise.* (i) *Income, profits, estate, or gift tax.* For a period of 1 year, a copy of the Abstract and Statement for each accepted offer in compromise in respect of income, profits, capital stock, estate, or gift tax liability is made available for inspection (a) in the Office of the Director, Public Information Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, when the offer covers a liability of \$5,000 and over, and (b) in the office of the appropriate district director when the offer covers a liability of less than \$5,000. See 26 CFR (1939) 458.313 (17 F.R. 7688); § 301.6103(a)-1(j) of this

chapter; and section 10 of Rev. Proc. 64-44 (C.B. 1964-2, 974, 979).

(ii) *Liquors.* For each offer in compromise submitted and accepted pursuant to section 7122 in any case arising under Chapter 51 of the Code (relating to distilled spirits, wine, and beer), or pursuant to section 7 of the Federal Alcohol Administration Act (27 U.S.C. 207) in any case arising under that Act, a copy of the Abstract and Statement relating to the offer will be available for public inspection, for a period of 1 year from the date of acceptance, in—

(a) The office of the assistant regional commissioner (alcohol and tobacco tax) who received the offer, or the office of the district director for the internal revenue district in which the offer was submitted, in the case of offers accepted pursuant to the Code, or

(b) The office of the assistant regional commissioner (alcohol and tobacco tax) who received the offer, in the case of offers accepted pursuant to that Act.

Information will not be disclosed, however, concerning any trade secrets, processes, operations, style of work, or apparatus, or confidential data or any other matter within the prohibition of 18 U.S.C. 1905.

(9) *Information regarding liquor permits.*—(i) *Applications for permits.* Information with respect to the handling of applications for basic permits under the Federal Alcohol Administration Act (27 U.S.C. 204), operating permits under section 5171, and industrial use permits under section 5271 is maintained for public inspection in the offices of assistant regional commissioners (alcohol and tobacco tax) until the expiration of 1 year following final action on such applications. See 27 CFR 1.59.

(ii) *Card index record of permits.* A current card index record for—

(a) All persons to whom industrial use permits have been issued pursuant to section 5271,

(b) All proprietors of distilled spirits plants to whom operating permits have been issued pursuant to section 5171 to cover distilling for industrial use, bonded warehousing of spirits for industrial use, or denaturing of spirits, and

(c) All applicants for such industrial use and operating permits,

is available for public inspection in the offices of assistant regional commissioners (alcohol and tobacco tax).

(10) *List of plants and permittees.* Upon request, the assistant regional commissioner (alcohol and tobacco tax) will furnish a list of any type of qualified proprietor or permittee located in his region.

(11) *Information relating to certificates of label approval for distilled spirits, wine, and malt beverages.* Upon written request, the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 will furnish information as to the issuance, pursuant to section 5(e) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)) and 27 CFR Part 4, 5, or 7, of certificates of label approval, or of ex-

emption from label approval, for distilled spirits, wine, or malt beverages. The request must identify the class and type and brand name of the product and the name and address of the bottler or importer thereof or of the person to whom the certificate was issued. The person making the request may obtain reproductions or certified copies of such certificates upon payment of the established fees prescribed by paragraph (c) (5) of this section. Information will not be disclosed, however, concerning any trade secrets, processes, operations, style of work, or apparatus, or confidential data or any other matter within the prohibition of 18 U.S.C. 1905.

(12) *State liquor cases or State firearms cases.* Assistant regional commissioners (alcohol and tobacco tax) may, in the interest of Federal and State law enforcement, upon receipt of demands or requests of State authorities, and at the expense of the State, authorize investigators and other employees under their supervision to attend trials and administrative hearings in liquor cases or firearms cases in which the State is a party, produce records, and testify as to facts coming to their knowledge in their official capacities, provided that information will not be divulged contrary to section 7213 by such production or testimony. See also § 301.9000-1(f) of this chapter.

(13) *Excess profits tax relief; publication of allowances.* There is published from time to time in the FEDERAL REGISTER the information specified in section 6105 relative to excess profits tax relief allowed particular taxpayers. See § 301.6105-1 of this chapter.

(14) *Publication of statistics of income.* Statistics with respect to the operation of the income tax laws are published annually in accordance with section 6108 and § 301.6108-1 of this chapter.

(e) *Other disclosure procedures.* For procedure to be followed by officers and employees of the Internal Revenue Service upon receipt of a request or demand for certain internal revenue records or information the disclosure procedure for which is not covered by this section, see § 301.9000-1 of this chapter.

[F.R. Doc. 67-13651; Filed, Nov. 21, 1967; 8:45 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER B—SALES AND SERVICES

PART 812—USER CHARGES

Subchapter B of Chapter VII of Title 32 of the Code of Federal Regulations is amended as follows:

Part 812 is revised to read as follows:

- Sec.
812.1 Purpose.
812.2 General policy.
812.3 Determining costs and fees for special services.
812.4 Determining charges for lease or sale.

AUTHORITY: The provisions of this Part 812 issued under sec. 8012, 70A Stat. 489; 10 U.S.C. 8012.

SOURCE: AFR 177-8, June 13, 1967.

§ 812.1 Purpose.

This part prescribes general policy for developing an equitable and uniform system of charges for certain Government services and property.

§ 812.2 General policy.

Air Force activities should not compete with available commercial facilities in providing services or in lease or sale of property to non-Government recipients. However, when authorized services are provided, or a lease or sale is made, the recipient of this benefit pays a reasonable charge as determined from instructions in §§ 812.3 and 812.4.

§ 812.3 Determining costs and fees for special services.

(a) *Determining costs.* Costs are determined or estimated from the best available records in the activity; cost accounting systems must not be established solely for this purpose. The cost computation covers the direct and indirect costs incurred by the activity performing the service. This includes but is not limited to:

(1) Civilian salaries (gross holiday, annual, and sick leave entitlements) and Air Force share of retirement and insurance.

(2) Military pay and allowances at standard rates.

(3) Travel expense.

(4) Cost of fee collection and postage.

(5) Material and supplies used.

(6) Maintenance and operation of buildings and equipment (including depreciation).

(7) A pro rata share of the management and supervisory costs of the activity performing the service.

(8) The costs of research, establishing standards, enforcement and regulation to the extent they are determined by the activity to be properly chargeable to the services performed.

(b) *Establishing fees to recover costs.* Unless otherwise prescribed by Air Force directives, fees are established under the policies and procedures of this part. The fee for a special service is governed by the total cost or fair market value, whichever is higher. Fees and rates must be reviewed at least once a year, and the fees adjusted as needed.

§ 812.4 Determining charges for lease or sale.

Where federally owned resources or property are leased or sold, obtain a fair market value. Determine charges, so far as practicable and feasible, in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs—they may produce net revenues to the Government. In the absence of a known market value, a fair value for sale of material is determined on the basis of the inventory standard price or a reduced price when authorized for sale within DoD, plus accessorial and administrative costs.