

ed to implement such an in-person initial review of ITIN applications, in conjunction with an expansion of the community-based certified acceptance agent program under subsection (c) [set out as a note above], with a goal of transitioning to such a program by 2020.

“(C) Strategies for more efficient processing of ITIN applications.

“(D) The acceptance agent program as in existence on the date of the enactment of this Act [Dec. 18, 2015] and ways to expand the geographic availability of agents through the community-based certified acceptance agent program under subsection (c).

“(E) Strategies for the Internal Revenue Service to work with other Federal agencies, State and local governments, and other organizations and persons described in subsection (c) to encourage participation in the community-based certified acceptance agent program under subsection (c) to facilitate in-person initial review of ITIN applications.

“(F) Typical characteristics (derived from Form W-7 and other sources) of mail applications for ITINs as compared with typical characteristics of in-person applications.

“(G) Typical characteristics (derived from 17 [sic] Form W-7 and other sources) of ITIN applications before the Internal Revenue Service revised its application procedures in 2012 as compared with typical characteristics of ITIN applications made after such revisions went into effect.

“(3) REPORT.—The Secretary, or the Secretary’s delegate, shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report detailing the study under paragraph (1) and its findings not later than 1 year after the date of the enactment of this Act [Dec. 18, 2015].

“(4) ADMINISTRATIVE STEPS.—The Secretary of the Treasury shall implement any administrative steps identified by the report under paragraph (3) not later than 180 days after submitting such report.”

§ 6110. Public inspection of written determinations

(a) General rule

Except as otherwise provided in this section, the text of any written determination and any background file document relating to such written determination shall be open to public inspection at such place as the Secretary may by regulations prescribe.

(b) Definitions

For purposes of this section—

(1) Written determination

(A) In general

The term “written determination” means a ruling, determination letter, technical advice memorandum, or Chief Counsel advice.

(B) Exceptions

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

(2) Background file document

The term “background file document” with respect to a written determination includes the request for that written determination, any written material submitted in support of the request, and any communication (written or otherwise) between the Internal Revenue Service and persons outside the Internal Revenue Service in connection with such written determination (other than any communication

between the Department of Justice and the Internal Revenue Service relating to a pending civil or criminal case or investigation) received before issuance of the written determination.

(3) Reference and general written determinations

(A) Reference written determination

The term “reference written determination” means any written determination which has been determined by the Secretary to have significant reference value.

(B) General written determination

The term “general written determination” means any written determination other than a reference written determination.

(c) Exemptions from disclosure

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

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

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

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

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

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

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

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

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

(d) Procedures with regard to third party contacts

(1) Notations

If, before the issuance of a written determination, the Internal Revenue Service receives any communication (written or otherwise) concerning such written determination,

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

(2) Exception

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

(3) Disclosure of identity

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

(4) Period in which to bring action

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

(e) Background file documents

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

(f) Resolution of disputes relating to disclosure

(1) Notice of intention to disclose

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

(2) Administrative remedies

The Secretary shall prescribe regulations establishing administrative remedies with respect to—

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

(B) requests to restrain disclosure.

(3) Action to restrain disclosure

(A) Creation of remedy

Any person—

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

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

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

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

(B) Notice to certain persons

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

(4) Action to obtain additional disclosure

(A) Creation of remedy

Any person who has exhausted the administrative remedies prescribed pursuant to paragraph (2) with respect to a request for disclosure may file a petition in the United States Tax Court or a complaint in the United States District Court for the District of Columbia for an order requiring that any written determination or background file document (or portion thereof) be made open or available to public inspection. Except

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

(B) Intervention

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

(5) Expedition of determination

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

(6) Publicity of Tax Court proceedings

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

(g) Time for disclosure

(1) In general

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

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

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

(2) Postponement by order of court

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

(3) Postponement of disclosure for up to 90 days

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

(4) Additional 180 days

If—

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

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

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

(5) Special rules for certain written determinations, etc.

Notwithstanding the provisions of paragraph (1), the Secretary shall not be required to make available to the public—

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

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

(i) the funding method or plan year of a plan under section 412,

(ii) a taxpayer's annual accounting period under section 442,

(iii) a taxpayer's method of accounting under section 446(e), or

(iv) a partnership's or partner's taxable year under section 706,

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

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

(1) In general

Except as otherwise provided in this subsection, a written determination issued pursu-

ant to a request made before November 1, 1976, and any background file document relating to such written determination shall be open or available to public inspection in accordance with this section.

(2) Time for disclosure

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

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

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

(3) Order of release

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

(A) reference written determinations issued under this title;

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

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

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

(4) Notice that prior written determinations are open to public inspection

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

(5) Exclusion

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

(i) Special rules for disclosure of Chief Counsel advice

(1) Chief Counsel advice defined

(A) In general

For purposes of this section, the term “Chief Counsel advice” means written ad-

vice or instruction, under whatever name or designation, prepared by any national office component of the Office of Chief Counsel which—

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

(ii) conveys—

(I) any legal interpretation of a revenue provision;

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

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

(B) Revenue provision defined

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

(2) Additional documents treated as Chief Counsel advice

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

(3) Deletions for Chief Counsel advice

In the case of Chief Counsel advice and related background file documents open to public inspection pursuant to this section—

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

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

(4) Notice of intention to disclose

(A) Nontaxpayer-specific Chief Counsel advice

In the case of Chief Counsel advice which is written without reference to a specific taxpayer or group of specific taxpayers—

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

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

(B) Taxpayer-specific Chief Counsel advice

In the case of Chief Counsel advice which is written with respect to a specific taxpayer or group of specific taxpayers, the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, mail the notice required by subsection (f)(1) to each such taxpayer. The notice shall include a copy of the Chief Counsel advice on which is indicated

the information that the Secretary proposes to delete pursuant to subsection (c)(1). The Secretary may also delete from the copy of the text of the Chief Counsel advice any of the information described in paragraph (3), and shall delete the names, addresses, and other identifying details of taxpayers other than the person to whom the advice pertains, except that the Secretary shall not delete from the copy of the Chief Counsel advice that is furnished to the taxpayer any information of which that taxpayer was the source.

(j) Civil remedies

(1) Civil action

Whenever the Secretary—

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

(B) fails to follow the procedures in subsection (g) or (i)(4)(B),

the recipient of the written determination or any person identified in the written determination shall have as an exclusive civil remedy an action against the Secretary in the United States Court of Federal Claims, which shall have jurisdiction to hear any action under this paragraph.

(2) Damages

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

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

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

(k) Special provisions

(1) Fees

The Secretary is authorized to assess actual costs—

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

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

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

(2) Records disposal procedures

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

(3) Precedential status

Unless the Secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent. The preceding sentence shall not apply to change the precedential status (if any) of written determinations with regard to taxes imposed by subtitle D of this title.

(l) Section not to apply

This section shall not apply to—

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

(2) any—

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

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

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

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

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

(m) Exclusive remedy

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

(Added Pub. L. 94-455, title XII, §1201(a), Oct. 4, 1976, 90 Stat. 1660; amended Pub. L. 97-164, title

I, § 160(a)(9), Apr. 2, 1982, 96 Stat. 48; Pub. L. 98-620, title IV, § 402(28)(B), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 105-206, title III, § 3509(a)-(c), July 22, 1998, 112 Stat. 772, 773; Pub. L. 106-170, title V, § 521(a)(2), Dec. 17, 1999, 113 Stat. 1925; Pub. L. 106-554, § 1(a)(7) [title III, §§ 304(c), 313(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A-634, 2763A-643; Pub. L. 110-172, § 10(a), Dec. 29, 2007, 121 Stat. 2484; Pub. L. 115-141, div. U, title IV, § 401(a)(325)(A), Mar. 23, 2018, 132 Stat. 1199.)

REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (h)(3)(C), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

PRIOR PROVISIONS

A prior section 6110 was renumbered 6116 of this title.

AMENDMENTS

2018—Subsec. (j)(1). Pub. L. 115-141, which directed amendment of subsec. (j)(1)(B) by substituting “United States Court of Federal Claims” for “United States Claims Court”, was executed by making the substitution in concluding provisions of par. (1), to reflect the probable intent of Congress.

2007—Subsec. (i)(3). Pub. L. 110-172 inserted “and related background file documents” after “Chief Counsel advice” in introductory provisions.

2000—Subsec. (b)(1). Pub. L. 106-554, § 1(a)(7) [title III, § 304(c)(1)], amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “The term ‘written determination’ means a ruling, determination letter, technical advice memorandum, or Chief Counsel advice. Such term shall not include any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement.”

Subsec. (g)(5)(A). Pub. L. 106-554, § 1(a)(7) [title III, § 313(e)], inserted “, any Chief Counsel advice,” after “technical advice memorandum”.

Subsec. (l)(1). Pub. L. 106-554, § 1(a)(7) [title III, § 304(c)(2)], inserted “or 6105” after “6104”.

1999—Subsec. (b)(1). Pub. L. 106-170 inserted at end “Such term shall not include any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement.”

1998—Subsec. (b)(1). Pub. L. 105-206, § 3509(a), substituted “technical advice memorandum, or Chief Counsel advice” for “or technical advice memorandum”.

Subsec. (f)(1). Pub. L. 105-206, § 3509(c)(1), substituted “Except as otherwise provided by subsection (i), the Secretary” for “The Secretary”.

Subsec. (i). Pub. L. 105-206, § 3509(b), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 105-206, § 3509(b), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(1)(B), (2). Pub. L. 105-206, § 3509(c)(2), substituted “subsection (g) or (i)(4)(B)” for “subsection (g)”.

Subsec. (k). Pub. L. 105-206, § 3509(b), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (l).

Subsec. (k)(1)(B). Pub. L. 105-206, § 3509(c)(3), substituted “subsection (c)(1) or (i)(3)” for “subsection (c)”.

Subsecs. (l), (m). Pub. L. 105-206, § 3509(b), redesignated subsecs. (k) and (l) as (l) and (m), respectively.

1984—Subsec. (f)(5). Pub. L. 98-620 struck out provision that the Court of Appeals had to expedite any review of such decision in every way possible.

1982—Subsec. (i)(1). Pub. L. 97-164 substituted “United States Claims Court” for “Court of Claims”.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-172, § 10(b), Dec. 29, 2007, 121 Stat. 2484, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998 [Pub. L. 105-206] to which it relates.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, § 1(a)(7) [title III, § 304(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-634, provided that: “The amendments made by this section [enacting section 6105 of this title and amending this section and section 6103 of this title] shall take effect on the date of the enactment of this Act [Dec. 21, 2000].”

Amendment by section 1(a)(7) [title III, § 313(e)] of Pub. L. 106-554 effective as if included in the provisions of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, to which such amendment relates, see section 1(a)(7) [title III, § 313(f)] of Pub. L. 106-554, set out as a note under section 6015 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, § 3509(d), July 22, 1998, 112 Stat. 774, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act [July 22, 1998].

“(2) TRANSITION RULES.—The amendments made by this section shall apply to any Chief Counsel advice issued after December 31, 1985, and before the 91st day after the date of the enactment of this Act [July 22, 1998] by the offices of the associate chief counsel for domestic, employee benefits and exempt organizations, and international, except that any such Chief Counsel advice shall be treated as made available on a timely basis if such advice is made available for public inspection not later than the following dates:

“(A) One year after the date of the enactment of this Act [July 22, 1998], in the case of all litigation guideline memoranda, service center advice, tax litigation bulletins, criminal tax bulletins, and general litigation bulletins.

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

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

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

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

“(4) CHIEF COUNSEL ADVICE TO BE AVAILABLE ELECTRONICALLY.—The Internal Revenue Service shall make any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act [July 22, 1998] and made available for public inspection pursuant to section 6110 of such Code, as amended by this section, also available by computer telecommunications within 1 year after issuance.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Pub. L. 94-455, title XII, §1201(e), Oct. 4, 1976, 90 Stat. 1667, provided that: "Except as otherwise provided in this section [enacting this section and provisions set out below], the amendments made by this section shall take effect on November 1, 1976."

PENDING REQUESTS

Pub. L. 94-455, title XII, §1201(b), Oct. 4, 1976, 90 Stat. 1667, provided that: "Any written determination or background file document which is the subject of a judicial proceeding pursuant to section 552 of title 5, United States Code, commenced before January 1, 1976, shall not be treated as a written determination subject to subsection (h)(1) [subsec. (h)(1) of this section], but shall be available to the complainant along with the background file document, if requested, as soon as practicable after July 1, 1976."

§ 6111. Disclosure of reportable transactions**(a) In general**

Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

- (1) information identifying and describing the transaction,
- (2) information describing any potential tax benefits expected to result from the transaction, and
- (3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

(b) Definitions

For purposes of this section:

(1) Material advisor**(A) In general**

The term "material advisor" means any person—

- (i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and
- (ii) who directly or indirectly derives gross income in excess of the threshold amount (or such other amount as may be prescribed by the Secretary) for such aid, assistance, or advice.

(B) Threshold amount

For purposes of subparagraph (A), the threshold amount is—

- (i) \$50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and
- (ii) \$250,000 in any other case.

(2) Reportable transaction

The term "reportable transaction" has the meaning given to such term by section 6707A(c).

(c) Regulations

The Secretary may prescribe regulations which provide—

- (1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,
- (2) exemptions from the requirements of this section, and
- (3) such rules as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98-369, div. A, title I, §141(a), July 18, 1984, 98 Stat. 677; amended Pub. L. 99-514, title II, §201(d)(13), title XV, §1531(a), title XVIII, §1899A(54), Oct. 22, 1986, 100 Stat. 2142, 2749, 2961; Pub. L. 105-34, title X, §1028(a), Aug. 5, 1997, 111 Stat. 926; Pub. L. 108-357, title VIII, §815(a), Oct. 22, 2004, 118 Stat. 1581; Pub. L. 109-135, title IV, §412(zz), Dec. 21, 2005, 119 Stat. 2641.)

PRIOR PROVISIONS

A prior section 6111 was renumbered 6116 of this title.

AMENDMENTS

2005—Subsec. (b)(1)(A)(ii). Pub. L. 109-135 substituted "aid, assistance, or advice" for "advice or assistance".

2004—Pub. L. 108-357 amended section catchline and text generally, substituting provisions relating to disclosure of reportable transactions for provisions relating to registration of tax shelters and inclusion of identification numbers on returns.

1997—Subsecs. (d) to (f). Pub. L. 105-34 added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1986—Subsec. (c)(2)(A). Pub. L. 99-514, §1531(a), substituted "350 percent" for "200 percent".

Subsec. (c)(3)(B)(ii). Pub. L. 99-514, §201(d)(13), substituted "section 465(b)(3)(C)" for "section 168(e)(4)".

Subsec. (d)(1)(B). Pub. L. 99-514, §1899A(54), substituted "subparagraph" for "subparagraph".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §815(c), Oct. 22, 2004, 118 Stat. 1583, provided that: "The amendments made by this section [amending this section and sections 6112 and 6708 of this title] shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, §1028(e), Aug. 5, 1997, 111 Stat. 928, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 6662 and 6707 of this title] shall apply to any tax shelter (as defined in section 6111(d) of the Internal Revenue Code of 1986, as amended by this section) interests in which are offered to potential participants after the Secretary of the Treasury prescribes guidance with respect to meeting requirements added by such amendments.

"(2) MODIFICATIONS TO SUBSTANTIAL UNDERSTATEMENT PENALTY.—The amendments made by subsection (c) [amending section 6662 of this title] shall apply to items with respect to transactions entered into after the date of the enactment of this Act [Aug. 5, 1997]."