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HOW TO REQUEST (AND GET) A PLR

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I. INTRODUCTION

Each year the IRS dedicates its first published revenue procedure to the process for obtaining a private letter ruling. For 2013, applicants should rely on Revenue Procedure 2013-1 for guidance and instructions on what issues the IRS will generally rule on and what should be attached to the ruling request.¹ Rev. Proc. 2013-1 also contains references to other revenue procedures and notices that supplement it pertaining to certain specific code sections. In addition, the IRS publishes two other revenue procedures listing general and specific matters upon which the Service will not rule. Revenue Procedure 2013-3 contains the domestic no-rule areas and 2013-7 contains the international no-rule areas.² It is important to read Rev. Proc. 2013-1 and the no-rule procedures before beginning the application process.

These revenue procedures contain valuable information that can greatly streamline the process of obtaining a ruling and reduce the cost. However, there are also many factors that are not covered in the published guidance and that may be critical to the practitioner's success in obtaining the ruling. This discussion provides both an overview of the application process as outlined in the revenue procedures as well as some practical tips for requesting a private letter ruling.

II. WHAT ISSUES ARE APPROPRIATE FOR A PLR?

A private letter ruling, or PLR, is a written statement from the IRS under the jurisdiction of the Associate Chief Counsel's office in response to the taxpayer's request for an opinion on the tax effects of a proposed or completed transaction.³ A taxpayer may rely on a letter ruling received from the Associate Chief Counsel's Office as long as the transaction is carried out substantially as proposed.⁴ A request for a ruling must generally be submitted before the return is filed for the year in which the transaction is completed. However, there are a few exceptions, such as for employment and excise tax issues, which allow a request to be submitted after a return is filed.

The Associate Chief Counsel's Office issues rulings on a wide variety of issues and has seven offices to handle ruling requests. These include Corporate, Financial institutions and Products, Income Tax and Accounting, International, Passthroughs and Special Industries, Procedure and Administration, and Tax Exempt and Government Entities.⁵ These offices handle matters involving income tax, estate and gift tax, generation-skipping tax, employment and excise tax, and procedural and administrative matters.⁶ They also handle substantive provisions of an income or estate tax treaty.⁷

A request to extend the time for making a regulatory election under Reg. § 301.9100-3 is a letter ruling request. Therefore, it must be in the general form of and meet the general requirements of a letter ruling request.⁸ Such requests can be submitted even after the return to which the transaction relates is filed, while the return is being examined by the IRS, or while the matter is on administrative or judicial appeal. It is important to note that Reg. § 301.9100-3 only applies to

¹ Rev. Proc. 2013-1, 2013-1 IRB 1 (Dec. 31, 2012)

² Rev. Proc. 2013-3, 2013-1 IRB 113 (Dec. 31, 2012); Rev. Proc. 2013-7, 2013-1 IRB 233 (Dec. 31, 2012).

³ Rev. Proc. 2013-1, § 2.01.

⁴ Id. at § 11.03.

⁵ Id. at § 3.

⁶ Id. at § 5.

⁷ Id. at § 7.01(6).

⁸ Id. at § 5.03.

extensions of time for elections whose due date is prescribed by a regulation and not a statute. However, in practice, the IRS regularly issues extensions of time to make elections whose deadlines are set by statute.

Ruling requests under Reg. § 301.9100-3 must include detailed affidavits by the taxpayer and third parties describing the events that led to the failure to make a valid election and the discovery of the failure.⁹ When the taxpayer relied on a qualified tax professional for advice, the taxpayer's affidavit must describe the engagement and responsibilities of the professional as well as the extent to which the taxpayer relied on the professional. Detailed affidavits must also be submitted by the taxpayer's return preparer, any individual (including an employee of the taxpayer) who made a substantial contribution to the preparation of the return, and any accountant or attorney, knowledgeable in tax matters, who advised the taxpayer with regard to the election. An affidavit must describe the engagement and responsibilities of the individual as well as the advice that the individual provided to the taxpayer. All affidavits submitted must be signed under penalties of perjury.

Letter rulings can also be used to request a change of accounting method on Form 3115. Rev. Proc. 2013-1 contains extensive guidance on changes of accounting method. However, changes of accounting method are beyond the scope of this discussion.

III. WHAT ISSUES ARE NOT APPROPRIATE FOR A RULING?

The IRS specifically identifies certain matters on which it will not issue a private letter ruling. Generally, the Associate Office will decline to issue a PLR if the issue is frivolous, hypothetical, or if the issue is sufficiently covered by the relevant statute, regulation, or case law.¹⁰ The IRS is generally reluctant to issue private letter rulings pending the adoption of temporary or final regulations addressing the matter. Nor will the IRS issue “comfort rulings” with respect to an issue that is clearly and adequately addressed by substantial authority.¹¹

In addition, the IRS will generally decline to rule if the identical issue is involved in the taxpayer's return for an earlier period and that issue: (a) is being considered by a Field office, (b) is being considered by Appeals, (c) is pending in litigation for the taxpayer or a related taxpayer, (d) has been examined by a Field office or considered by Appeals and the statute of limitations for assessment or on filing a claim for refund has not expired, or (e) has been examined by a Field office or considered by Appeals and a closing agreement has not been entered into by either the Field office or Appeals.

Other general situations in which the IRS will not issue a private letter ruling include:¹²

- (a) if issuing a PLR is not in the interest of sound tax administration,
- (b) if the issue is part of a larger integrated transaction not included in the request, unless the other issues fall under no-rule areas,
- (c) if the issue involves which of two entities is a common-law employer,

⁹ Reg. § 301.9100-3(e).

¹⁰ Rev. Proc. 2013-1, § 6.

¹¹ *Id.* at § 6.11.

¹² *Id.*

- (d) if the applicant is a business association or group with an issue concerning the application of tax laws to its members,
- (e) if the taxpayer does not provide its tax status, liability, or reporting obligations,
- (f) if the applicant is a foreign government,
- (g) if the issue involves the federal tax consequences of proposed federal, state, local, municipal, or foreign legislation, or
- (h) if the issue cannot be resolved before a regulation or other published guidance is issued.

In addition to the general circumstances outlined above, Rev. Proc. 2013-3 and 2013-7 identify specific transactions on which the Service will not rule either because of the inherently factual nature of the issue or for other reasons. The “no-rule” areas are listed by Internal Revenue Code section and divided into four categories – a) those areas on which the IRS will not rule under any circumstances, b) those areas on which the Service will not ordinarily rule, absent some unique and compelling reason, c) those areas on which the Service has temporarily suspended rulings because the matter is under study, and d) those areas on which the Service will not rule because there are automatic approval procedures for these matters. Some of the no-rule areas involve surprisingly common transactions such as:¹³

- (a) Section 83. Property Transferred in Connection with Performance of Services. Whether a restriction constitutes a substantial risk of forfeiture, if the employee is a controlling shareholder. Also, whether a transfer has occurred, if the amount paid for the property involves a nonrecourse obligation.
- (b) Section 101(a). Certain Death Benefits. Whether there has been a transfer for value under § 101(a) in situations involving a grantor and a trust when (i) substantially all of the trust corpus consists or will consist of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, and (iv) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.
- (c) Section 102. Gifts and Inheritances. Whether a transfer is a gift within the meaning of § 102(a).
- (d) Section 121. Exclusion of Gain from Sale of Principal Residence. Whether property qualifies as the taxpayer's principal residence.
- (e) Section 162. Trade or Business Expenses. Whether compensation is reasonable in amount.
- (f) Section 170. Charitable Contributions and Gifts. Whether a charitable contribution deduction under § 170 is allowed for a transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in § 170(c).

¹³ Rev. Proc. 2013-3, § 3.01.

- (g) Section 213. Medical and Dental Expenses. Whether a capital expenditure for an item that is ordinarily used for personal, living, or family purposes, such as a swimming pool, has as its primary purpose the medical care of the taxpayer or the taxpayer's spouse or dependent, or is related directly to such medical care.
- (h) Section 704(b). Determination of Distributive Share. Whether the allocation to a partner under the partnership agreement of income, gain, loss, deduction, or credit (or an item thereof) has substantial economic effect or is in accordance with the partner's interest in the partnership.

Rev. Proc. 2013-3 also lists general areas on which the Service will not rule. These include whether a transaction has economic substance, a bona fide business purpose, reasonable cause, due diligence, good faith, or similar instances that require a factual determination. The service will also not rule on matters involving Circular 230 or whether a proposed transaction would subject the taxpayer to criminal penalties, to name a few. The applicant should thoroughly review the no-rule areas to make sure that his or her subject matter is not on the precluded list.

The issues on which the Service will not *ordinarily* rule without a unique or compelling reason, include:¹⁴

- (a) Sections 83 and 451. Property Transferred in Connection with Performance of Services. When compensation is realized by a person who, in connection with the performance of services, is granted a discounted nonstatutory option without a readily ascertainable fair market value.
- (b) Section 167. Depreciation. What a property's useful life should be.
- (c) Section 678. Beneficiary Defective Grantor Trust. Whether a person will be treated as the owner of any portion of a trust over which that person has a power that would cause that person to be the owner of the trust under § 671, if the trust purchases property from that person with a note and the trust was funded by the grantor with only a nominal amount compared to the value of the property purchased.

When requesting a ruling on an issue that the Service does not ordinarily rule on, it a good idea to request a pre-submission conference before beginning the application. A pre-submission conference can be requested in writing or by phone at one of the numbers listed in Rev. Proc. 2013-1.¹⁵ The IRS can make helpful suggestions, such as how to frame the issue or let you know how they would be inclined to rule based on your facts and circumstances. The Service may also suggest an alternate course of action, such as seeking the advice of competent authority for international issues. These tips can avoid many frustrating hours with an Associate Chief Counsel representative who has made up his mind not to issue the ruling. It pays to be persistent and tenacious during the entire application process. But it does not always lead to success.

IV. WHO MAY REPRESENT THE TAXPAYER IN A RULING REQUEST

The request for a letter ruling or determination letter must be signed and dated by the taxpayer or the taxpayer's authorized representative. To sign the request or to appear before the Service in connection with the request, the taxpayer's authorized representative must be an attorney, CPA, enrolled agent, enrolled actuary, enrolled retirement plan agent, or a person with a "Letter of Authorization" as those persons are described in Treasury Department Circular No. 230, 31

¹⁴ Rev. Proc. 2013-3, § 4.01.

¹⁵ Rev. Proc. 2013-1, § 10.07.

C.F.R. part 10.¹⁶ Registered return preparers and other tax return preparers not described above may not sign the request, appear before the Service, or represent a taxpayer in connection with a letter ruling request.¹⁷

In addition, a regular full-time employee representing his or her employer, a general partner representing his or her partnership, a *bona fide* officer representing his or her corporation, association, or organized group, a regular full-time employee representing a trust, receivership, guardianship, or estate, or an individual representing an immediate family member may sign the request or appear before the Service in connection with the request.

Form 2848, *Power of Attorney and Declaration of Representative*, should be used to provide the representative's authority.

V. THE PROCEDURE FOR REQUESTING A RULING

A private letter ruling request should be submitted to one of the seven Offices of Associate Chief Counsel, depending on the primary Internal Revenue Code section affected. The offices are Corporate, Financial Institutions and Products, Income Tax and Accounting, International, Passthroughs and Special Industries (includes estate and gift tax matters), Procedure and Administration, and Tax Exempt and Government Entities. If in doubt as to where to send the request, the applicant should call one of the phone numbers listed in Rev. Proc. 2013-1.¹⁸ If a ruling request covers more than one subject area, it may be ruled upon by more than one Associate Office. Each Associate Office will determine whether it may issue a private letter ruling on the matter submitted. It may also refer the matter to another Office.

a. Determine whether a pre-submission conference is needed

A taxpayer may request a pre-submission conference to discuss the taxpayer's area of concern and to receive guidance about substantive or procedural matters relating to the request. Whether the pre-submission conference will be granted is at the discretion of the appropriate Associate Office. The taxpayer should request the conference in writing or over the telephone and should provide the Associate Office with a brief overview of the issues at hand. The contact information for requesting a pre-submission conference may be found in Revenue Procedure 2013-1.¹⁹

b. Draft the PLR request

Appendix B of Rev. Proc. 2013-1 contains a sample PLR Request, which includes a statement of facts, an analysis of the material facts, and a discussion of the authorities both supporting and contrary to the taxpayer's position. The facts should include the names, addresses, telephone numbers, taxpayer identification numbers, accounting periods, and methods of accounting for all interested parties. If the taxpayer is a business, the facts should also include a description of the business and the business reasons for the proposed transaction. All taxpayers should include a detailed description of the transaction and the requested tax treatment of the transaction.

¹⁶ Rev. Proc. 2013-1, § 7.01(13).

¹⁷ *Id.*

¹⁸ Rev. Proc. 2013-1, § 10.07(1).

¹⁹ *Id.* at § 10.07.

The taxpayer should provide a thorough analysis of the material facts of the transaction and the law as it applies to the transaction. The analysis is much like a lawyer's trial brief. It must state the taxpayer's conclusion, an explanation of the grounds for the conclusion, and any relevant authorities. The analysis should include supporting as well as contrary authorities. If the law is uncertain on an issue or if there are no relevant contrary authorities, the taxpayer should include a statement to that effect. Additionally, if there is pending legislation that would affect the proposed transaction, the taxpayer should identify the pending legislation in the PLR request.

c. Include the required statements

Private letter rulings are open to public inspection pursuant to IRC § 6110. To protect the taxpayer's privacy, the request should include a deletion statement specifying the deletions desired so that personal information is not available to the public. A basic deletion statement will request that the names, addresses, and identifying numbers of the taxpayer should be removed from the private letter ruling. If the taxpayer wishes to have additional information, such as the taxpayer's residence, occupation, or other personal facts deleted from the PLR, the taxpayer should include an additional copy of the request with brackets around the information to be deleted. The deletion statement should include the statutory basis for the deletion pursuant to IRC § 6110.

Appendix C of Revenue Procedure 2013-1 also provides a Checklist, which must be completed and placed on top of the private letter ruling request. This checklist requires the taxpayer to indicate that all relevant portions of the request have been completed and indicate the location of the response in the application request. Therefore, it is helpful to number the workpapers and the exhibits included in the ruling. The checklist must be signed and dated by the taxpayer or his representative. Failure to include the checklist with the request may delay action on the Associate Office's review of the request.

Requests made pursuant to Treasury Regulation § 301.9100 must include a statement regarding whether the issue is part of an earlier return of the taxpayer or a related party that is currently or has previously been under examination, before Appeals, or before a Federal court. If the tax year is under examination or before Appeals or a Federal court, the taxpayer should notify the Associate Office and include the name and telephone number of the examining officer or appeals officer.

All applicants must include a statement regarding whether the same or similar issue was previously ruled on or whether a request for the issue has been submitted previously.²⁰ If the issue has been ruled on or submitted previously, the taxpayer must give the date of the request, the date the request was withdrawn or ruled upon, and any details of the Service's consideration of the issue. In other words, the IRS wants to know if this is the second time you have requested a ruling on this or a similar issue.

If an income or estate tax treaty is involved, the applicant must include a statement regarding interpretation of the relevant provision.²¹ This statement must note whether (a) the tax authority of the other country has ruled on the same or similar issue for the taxpayer or a related taxpayer, (b) the tax authority of the other country has issued a closing agreement in that jurisdiction

²⁰ Rev. Proc. 2013-1, § 7.01(5).

²¹ Rev. Proc. 2013-1, § 7.01(6).

regarding the issue for the taxpayer or a related taxpayer, and (c) whether the same or similar issue for the taxpayer is being considered by the competent authority of the other jurisdiction.

And finally, the taxpayer must submit a statement that reads: “Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.”²² The statement must be signed by the taxpayer; it may not be signed by the taxpayer’s representative. For corporations, the request should be signed by an officer with personal knowledge of the facts. The person signing for a partnership, trust, or limited liability company should be the general partner, trustee, or member-manager who has personal knowledge of the facts.

Additional notations may be placed in the private letter ruling request requesting receipt of documents by fax or requesting a conference with the Associate Office. Requests for a conference may also be made following the submission of the PLR request.

d. Attach any documents pertinent to the transaction

Any documents that impact the transaction should be included with the ruling request. For example, an estate should include copies of any wills, codicils, trust documents, and disclaimers, while a corporation should submit its balance sheet and profit and loss statement. If any of the documents are in a language other than English, the taxpayer should provide a copy of the original document, as well as a certified English translation. If applicable, foreign laws should be submitted both in the official language of the country involved and in English. The English version of the relevant laws should be from either an official publication of the foreign government or a certified English translation. Original documents should not be submitted, as they will become part of the IRS’s file and will not be returned. All documents should be labeled and attached to the request in alphabetical order.

e. Request expedited handling, if necessary

Although the Service typically processes private letter ruling requests in the order in which they are received, in certain circumstances the Associate Office will grant expedited handling of a request.²³ The taxpayer must demonstrate a compelling need for the expedited processing, such as avoidance of serious business consequences. If the taxpayer requests expedited handling, the private letter ruling request should have a notation on the top of the first page of the request that states “Expedited Handling is Requested. See page ____ of this letter.” The Service has the discretion to grant or deny a request for expedited handling, and therefore urges taxpayers to submit the private letter ruling request well in advance of the proposed transaction.

Examples of a compelling need for expedited processing include situations in which a court or governmental agency has imposed a specific deadline for completing a transaction, or where a transaction must be completed expeditiously to avoid an imminent business emergency (such as the hostile takeover of a corporate taxpayer), provided that the taxpayer can demonstrate that need and the need for expedited handling, resulted from circumstances that could not reasonably have been anticipated or controlled by the taxpayer. To qualify for expedited handling in such situations, the taxpayer must also demonstrate that the taxpayer submitted the request as promptly as possible after becoming aware of the deadline or emergency.

²² Rev.Proc. 2013-1, 2013-1 I.R.B. 1, § 7.01.

²³ Id. at § 7.02(4).

f. Submit the request

Ruling requests can be submitted by regular mail or private delivery service. The package containing the request should be marked “RULING REQUEST SUBMISSION.”²⁴ The appropriate user fee should be included with the private letter ruling request. The fee schedule may be found in Appendix A of Revenue Procedure 2013-1. Requests for relief under Reg. § 301.9100-3 are currently \$10,000, requests for a change of accounting method are \$7,000-\$8,000, and most other rulings are \$18,000.

Reduced user fees of \$2,000 and \$4,000 may be available for smaller taxpayers based on their gross income in the year preceding the ruling request. Individuals, estates, corporations, partnerships, and exempt organizations with gross income less than \$250,000 pay only a \$2,000 user fee. Those with gross incomes over \$250,000 but less than \$1,000,000 pay a \$4,000 user fee.²⁵ Reduced fees also apply in situations where the taxpayer requests substantially identical letter rulings for multiple entities at the same time.²⁶ All user fees must be paid by check or money order payable to the Internal Revenue Service.

User fees are generally not refundable.²⁷ The Service will not return a user fee if the request is withdrawn, is procedurally deficient, or if additional information requested by the branch representative is not timely provided. If the IRS fails to rule on a request, and in other very limited circumstances, a user fee may be refunded.

Generally, the taxpayer should submit the original ruling request and one copy. However, if more than one issue is addressed, an additional copy should be submitted for each issue presented. Also, an original and two copies should be submitted if the taxpayer is requesting deletion of information other than names, addresses, and identifying numbers – the second copy should be a deleted version of the request).

VI. AFTER THE REQUEST HAS BEEN SUBMITTED

a. Processing by the Service

A private letter ruling request is initially reviewed by the Docket, Records, and User Fee Branch of the Legal Processing Division of the Associate Chief Counsel (Procedure and Administration), which examines the request and assigns it to the appropriate Associate Office. The Associate Office then forwards the request to one of its branches for review.

After the request is received by the branch of the Associate Office, the representative in charge of the request has 21 days to contact the taxpayer. However, it has been the author’s experience that the representative does not initiate the contact within 21 days and the taxpayer must call to check on the status of the ruling request. If the branch representative has had sufficient time to review the request, it will generally advise the taxpayer whether it has tentatively determined the ruling, whether additional information is needed, or whether it is unable to make a tentative determination due to the complexity of the case. Any minor modifications that should be made

²⁴ Id. at § 7.03(1).

²⁵ Rev. Proc. 2013-1, Appendix A, § B(2) (The taxpayer must include certification that it meets income requirements, which may be in the form of a statement or a copy of the taxpayer’s return reflecting the taxpayer’s gross income.)

²⁶ Rev. Proc. 2013-1, § 15.07.

²⁷ Id. at § 7.07(3).

to the request will generally be addressed at this time. If more than one Associate Office is involved in reviewing the request, the branch representative will inform the taxpayer that the other branch representative will contact the taxpayer within 21 days after receiving the referral.

The taxpayer may check on the status of the private letter ruling request by contacting the Associate Office branch representative assigned to the private letter ruling. Many Associate Office personnel are working remotely and may be difficult to reach. Therefore, it is imperative that the practitioner obtain the representative's phone and fax number at the inception of the process so that phone tag can be minimized. Whenever possible, messages should be sent by fax.

The branch representative may request additional information to consider with the private letter ruling request. Any requested information must be provided within 21 days of the date of the information request or the PLR request may be closed. The branch representative may allow an extension of time for compliance with its request. If the taxpayer submits additional information by fax, telephone, or in person, the taxpayer should follow-up with a letter confirming receipt of the information by the branch representative.

Additionally, the taxpayer is entitled as a matter of right to one conference with the Associate Office. The Associate Office may request a conference, but otherwise the taxpayer must request the conference in writing. After the taxpayer has requested the conference, the branch representative will call the taxpayer to schedule the conference within 21 days of the telephone call from the branch representative. The conference may be in person or over the phone. Attendees will generally include the taxpayer, the branch representative assigned to the case, the person authorized to sign the PLR on the Associate Office's behalf. If the case is assigned to more than one associate office, the branch representative and authorized party from the additional Associate Office. The conference may not be recorded.²⁸ Additional conferences may be granted at the discretion of the IRS.

When the branch representative has reviewed the taxpayer's ruling request it will notify the taxpayer of the representative's conclusions. If representative contemplates ruling adversely on the taxpayer's position, it will provide the taxpayer an opportunity to withdraw the PLR request.²⁹ The taxpayer must withdraw the request within 10 days, or the branch representative will issue an adverse ruling unless the representative grants the taxpayer an extension of time to respond. Although the withdrawal protects the taxpayer from receiving an adverse ruling, the Associate Office may nevertheless notify the relevant Field Office regarding its findings on the taxpayer's issue and issue its ruling as Chief Counsel's Advice, despite withdrawal by the taxpayer.

The IRS may also decline to rule where the taxpayer does not meet the ruling criteria set forth in Rev. Proc. 2013-1, the subject matter is on the IRS's no-rule list³⁰, or for other reasons, including "the interest of sound tax administration." If the IRS declines to rule, it will generally refund the taxpayer's user fee. The IRS decision not to rule is not appealable. Therefore, it pays to be cordial, patient, and persistent during the application process. The taxpayer should not be discouraged if the IRS throws roadblocks in his way. That's their job. It often helps to submit additional facts or reduce the scope of the ruling request to obtain at least a partial concession.

²⁸ Id. at § 10.03.

²⁹ Id. at § 7.07.

³⁰ Rev. Proc. 2013-3 (domestic) and Rev. Proc. 2013-7 (international) provide a list of no-rule areas.

If the taxpayer receives a positive ruling from the Associate Office, the IRS will send the taxpayer a notice of proposed deletions/redactions to the ruling. The taxpayer has 20 calendar days to send a written notice to the Associate Office identifying any changes to the IRS's deletions. Twenty days after that, the Associate Office will mail the taxpayer its conclusions with respect to the deletions/redactions requested by the taxpayer. The taxpayer may request a delay of public inspection if there are good reasons for the delay. Otherwise the IRS will issue the private letter ruling, subject to public inspection under IRC § 6110.

b. Attach ruling to return

When the Associate Office issues the private letter ruling, the taxpayer must attach a copy of the PLR to the return that is relevant to the transaction for which the ruling was issued. If the taxpayer files electronically, the taxpayer should include a statement to the return that includes the date and control number of the private letter ruling.

If the relevant return is filed before the ruling is issued, the taxpayer should notify the Associate Office that the taxpayer has filed the return and must attach a copy of the PLR request to the return. Taxpayers that file their returns electronically should attach a statement with the return providing the date of the letter ruling request and the control number of the private letter ruling.

c. Modification or revocation of the PLR

The IRS may revoke or modify a private letter ruling and apply the revocation retroactively if a) there has been a misstatement or omission of controlling facts, b) the facts at the time of the transaction are materially different from the controlling facts on which the letter ruling was based, or c) the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction.³¹ The IRS can also revoke or modify a letter ruling prospectively if there has been a change in the applicable law.³²

VII. CONCLUSION

Determining whether a private letter ruling request is appropriate for a taxpayer requires a good deal of judgment. While the advantages include reasonable certainty as to how a taxpayer's transaction will be treated by the IRS or a needed extension of time to make an election, there are also drawbacks to submitting a PLR request.

The most notable drawbacks are the time and money involved. The IRS will generally issue (or decline to issue) a private letter ruling within four to six months of receiving the request, although there is certainly no guarantee that the PLR will be issued within that time. Often a taxpayer's transaction cannot be postponed that long. In addition, private letter ruling user fees are steep. And if a transaction has already been completed, it may be harmful to draw the Service's attention to its questionable aspects. A careful balancing of the taxpayer's goals and circumstances is needed when deciding whether to request a private letter ruling.

³¹ Id. at § 11.05.

³² Id. at § 11.06.