



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.6.3

OCTOBER 6, 2016

EFFECTIVE DATE

(10-06-2016)

PURPOSE

- (1) This transmits revised IRM 8.6.3, *Conference and Settlement Practices, Appeals Rulings*.

MATERIAL CHANGES

- (1) Revised IRM throughout to reflect applicable revenue procedures.
- (2) Reorganized subsections and paragraphs for improved flow and formatting.
- (3) Updated IRM 8.6.3.2 to reflect the delegation of authority to Associate Chief Counsel (Tax Exempt and Government Entities) to issue all TAMs for matters previously under the jurisdiction of the Commissioner, Tax Exempt and Government Entities.
- (4) Updated IRM 8.6.3.3 to clarify issues for which Appeals will not settle a case contrary to a Service position and situations in which Appeals will coordinate with Associate Chief Counsel prior to settling a case contrary to a Service position.
- (5) Updated IRM 8.6.3.3 to provide electronic procedures for making a request through the Chief, Appeals, for Associate Chief Counsel review of an Appeals conclusion contrary to a Service position. Form 4368 is obsolete.
- (6) Updated IRM 8.6.3.4.1 to provide electronic procedures for making a request through the Director, Policy, Quality and Case Support, for legal advice from Associate Chief Counsel. Form 4368 is obsolete.
- (7) Updated references to LB&I and TE/GE to eliminate obsolete terminology.
- (8) Updated IRM 8.6.3.10 to indicate that Appeals will not settle cases contrary to a National Office ruling in response to a taxpayer's application for an advance (non-automatic) consent change in accounting method.
- (9) Updated IRM 8.6.3.11 to indicate that Appeals will not settle cases contrary to a National Office adverse ruling in response to a taxpayer's request for an extension of time to make certain elections under 26 CFR 301.9100-3.

EFFECT ON OTHER DOCUMENTS

IRM 8.6.3, *Conference and Settlement Practices, Appeals Rulings*, dated August 13, 2012, is superseded.

AUDIENCE

Appeals

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8.6.3
Appeals Rulings

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8.6.3.1
(10-06-2016)
Definition of Revenue Rulings

- (1) A revenue ruling is an official interpretation by the IRS of the tax laws, related statutes, treaties, and regulations published in the Internal Revenue Bulletin. It is the conclusion of the IRS on how the law is applied to a specific set of facts. Each Associate office within the Office of Chief Counsel issues revenue rulings on issues under its subject matter jurisdiction.
- (2) Revenue rulings provide information and guidance for taxpayers, IRS employees, and others. They help taxpayers voluntarily comply with the tax laws and help IRS employees apply the tax laws correctly and uniformly. Revenue rulings do not have the force and effect of Treasury Regulations, but they may be used as precedents.
- (3) However, when applying revenue rulings, consider the effect of subsequent legislation, regulations, court decisions, revenue rulings, and revenue procedures. Appeals personnel are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.
- (4) Certain issues may be under active consideration in the Office of Chief Counsel for publication as a revenue ruling. Obtain information on the status of these issues from the Appeals Director, Policy, Quality and Case Support (PQCS) by accessing the *Tax Policy and Procedure I SharePoint site* and selecting "Enter New Question." Include "Attn: Director, PQCS - Revenue Ruling Active Issues" in the subject line of the request.

8.6.3.2
(10-06-2016)
Request for a Technical Advice Memorandum (TAM)

- (1) Technical Advice Memorandums (TAMs) provide advice furnished by an Associate office in the Office of Chief Counsel to an IRS field office (including Appeals) in response to a request for assistance concerning the interpretation or proper application of the tax law, tax treaties, regulations, revenue rulings or other precedents. The Office of Associate Chief Counsel publishes a TAM for a set of specific facts involving a specific taxpayer.
- (2) TAMs are submitted under Rev. Proc. 2016-2 , 2016-1 IRB 102 (or its successor). The IRS updates this revenue procedure annually as the second revenue procedure of the year, but the revenue procedure may be modified or amplified during the year.

Note: Beginning in 2015, the Associate Chief Counsel (Tax Exempt and Government Entities) was delegated the authority to issue all TAMs for matters previously under the jurisdiction of the Commissioner, Tax Exempt and Government Entities. Thus, all TAM requests are submitted under Rev. Proc. 2016-2, or its successor. (TAM requests regarding issues in the employee plans area and the exempt organizations area were previously covered by Rev. Proc. 2014-5 and its predecessors). Rev. Proc. 2015-2, section 15, reflects this procedural change.

- (3) Appeals determines whether to request a TAM on any non-docketed case under its jurisdiction. Request a TAM when a lack of uniformity exists on the disposition of the issue or the issue is unusual or complex enough to warrant consideration by Associate Chief Counsel. Because TAM requests often result in the issuance of revenue rulings or other published guidance, Appeals is responsible for bringing appropriate issues to the attention of Associate Chief Counsel through the TAM process. See Rev. Proc. 2016-2, 2016-1 IRB 102 (or its successor), for further information and background on TAM request procedures. Do not request a TAM for any issue if the same issue is involved in a

docketed case for any taxpayer for any taxable year. See section 4.05 of Rev. Proc. 2016-2. Instead, request legal advice from Division Counsel pursuant to the procedures in IRM 8.6.3.4, *Requests for Legal Advice*.

- Note:** If during the preliminary review of the case, it is determined there is a need for a TAM, return the case to the originating function so it may make the request. If subsequent to the preliminary review, it is determined there is a need for a TAM, submit the request as soon as possible and do not return the case to the originating function.
- (4) A taxpayer may request that an issue under Appeals jurisdiction be referred for a TAM. However, the request may be denied if the Appeals Area Director determines the referral to Associate Chief Counsel is not warranted. If the taxpayer disagrees with the Area Director's denial of a request, the Area Director will contact the Director, TPP, by accessing the *Tax Policy and Procedure I SharePoint site* and selecting "Enter New Question." Include "Attn: Director, TPP - Appeals-Denied TAM Request" in the subject line of the request. After an analyst responds to the request, submit to the analyst by encrypted e-mail all data on the issue for which a TAM has been sought, including the taxpayer's written request and statements, for review. Section 5 of Rev. Proc. 2016-2 (or its successor) contains detailed procedures for denial and review of a taxpayer's TAM requests.
- (5) Pre-submission conferences prior to submitting a TAM request are mandatory because they promote expeditious processing of the request. A pre-submission conference will generally include Appeals, the taxpayer, Division Counsel, and Associate Chief Counsel. Appeals must consider the following issues regarding pre-submission conferences:
- **If the request for a TAM is submitted without first holding a pre-submission conference, the Associate Chief Counsel office will return the request.**
 - Appeals should request a pre-submission conference only after determining a request for a TAM is likely.
 - Before requesting a pre-submission conference, Appeals must contact the taxpayer and afford the taxpayer an opportunity to participate in the process by permitting the taxpayer to prepare a statement in accordance with section 6.03 of Rev. Proc. 2016-2.
 - A request for a pre-submission conference must be submitted by Appeals in writing, with the assistance of Division Counsel. Division Counsel assignments for pre-submission conferences are subject to the *ex parte* rules set forth in section 1001(a)(4) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, and Rev. Proc. 2012-18, 2012-10 IRB 455 (or its successor).
 - If the TAM request involves a coordinated or emerging issue under Appeals Domestic or International Operations or the Appeals Coordinated Issue (ACI) Program, the Appeals Technical Employee (ATE) must coordinate the request with the Appeals Domestic Operations or International Operations Technical Specialist before contacting the Division Counsel office. See section 6.04 of Rev. Proc. 2016-2 (or its successor).
 - Taxpayer participation in the pre-submission conference is not required. TAM requests can proceed even if a taxpayer declines to participate in a pre-submission conference.

- See section 6 of Rev. Proc. 2016-2 (or its successor) for more details on pre-submission conferences.
- (6) Request a TAM at the earliest possible stage of the proceedings. However, the lack of timeliness is not a reason for denying a request.
 - (7) Appeals and Division Counsel have the following responsibilities when making the TAM request:
 - a. Appeals must prepare Form 4463, *Request for Technical Advice Memorandum*, and provide it in electronic format to the Division Counsel attorney with whom the TAM request was coordinated. Use the most recent form found on the Publishing website. Form 4463 must include the mailing address of the Appeals Area Director to whom the Associate Chief Counsel office should mail a copy of its reply to the TAM request.
 - b. The Division Counsel attorney will submit the TAM and any supporting documentation to Associate Chief Counsel via the e-mail address provided in section 7.07 of Rev. Proc. 2016-2 (or its successor). If supporting documentation is not available in electronic format, the attorney will submit it to the address provided in section 7.08 of the revenue procedure.
 - c. Appeals must submit a paper copy of the TAM request to the address below, as required by section 7.08 of Rev. Proc. 2016-2 (or its successor):
Internal Revenue Service
Attn: CC:PA:LPD:TSS, Room 5336
1111 Constitution Avenue, NW
Washington, DC 20224
 - d. The Appeals office that submitted the TAM request must also advise TPP that a request has been submitted by accessing the *Tax Policy and Procedure I SharePoint site* and selecting “Enter New Question.” Include “Attn: TAM Requested” in the subject line of the submission. After an analyst responds to the submission, send a copy of the TAM request to the analyst by encrypted e-mail. The office should **not** send a paper copy of the request to Tax Policy and Procedure.
 - (8) Associate Chief Counsel will mail its reply to the TAM request to the Appeals Area Director indicated on Form 4463. It will also upload an electronic copy to the *Intake List for Case Support Requests* on the *Appeals Account & Processing Support SharePoint site* using Request Type “TPP: TAM Coordinator” on the intake request. This upload will generate an email to the TPP analyst who owns the TAM program.
 - (9) If Appeals believes the TAM contains specific errors in its analysis or conclusions, it must submit a written request for reconsideration. Before requesting reconsideration, consult with Division Counsel. See section 10.08 of Rev. Proc. 2016-2 (or its successor) for more details.
 - (10) After a TAM is issued to the taxpayer, Appeals is bound by the TAM’s conclusions if they are favorable to the taxpayer. When a TAM is unfavorable to the taxpayer, Appeals may generally settle the issue under existing settlement authority. However, see IRM 8.6.3.3, *Procedures If Appeals Conclusion is Contrary to Service Position*, for specific procedures to follow when considering a conclusion contrary to a TAM, and for restrictions on taking positions contrary to TAMs related to employee plans and exempt organizations.
 - (11) The holdings in a TAM, whether favorable or unfavorable, are generally applied retroactively. In rare and unusual circumstances, the Associate Chief Counsel

with jurisdiction over the TAM may exercise the discretionary authority under IRC 7805(b) to limit the retroactive effect of the TAM's holding. See sections 13.01 and 14 of Rev. Proc. 2016-2 (or its successor).

8.6.3.3
(10-06-2016)
**Procedures If Appeals
Conclusion is Contrary
to Service Position**

- (1) For purposes of this section, the term "Service position" means the conclusion on an issue as expressed in a revenue ruling, a TAM issued to the taxpayer under consideration, or other guidance that falls within the meaning of a "letter ruling" in Rev. Proc. 2016-1 (or its successor).
- (2) When the Service position is favorable to the taxpayer, Appeals follows it. Generally, if the Service position is adverse to the taxpayer, Appeals may partially or fully concede the issue based on the litigating hazards. However, the following are exceptions and additional considerations Appeals must take into account when recommending partial or full concessions adverse to a Service position:
 - Appeals will not partially or fully concede an issue in a case where the Associate Chief Counsel office has issued a decision with regard to an issue that a court reviews using an abuse of discretion standard (for example, the denial of non-automatic change of accounting method requests (requested on Form 3115)). See IRM 8.6.3.10, *Change in Accounting Practice or Method*.
 - When full concession of an issue is recommended without offsetting concession, and is contrary to a Service position, Appeals must request and consider the views of the appropriate Associate Chief Counsel office function.
 - Appeals must coordinate consideration of the issues listed in *CCDM Exhibit 31.1.1-1* with the Associate Chief Counsel office.
 - If the taxpayer's facts are distinguishable from the facts upon which the Service based its position, Appeals does not have to obtain the views of the Associate Chief Counsel. Generally, this statement applies to a revenue ruling, private letter ruling, or other Service position that was not issued directly to the taxpayer with regard to the year at issue.
 - Appeals will not settle an issue contrary to a letter ruling or TAM concerning an employee plan's status or qualification, an organization's exempt status, or an organization's foundation classification. If Appeals proposes a contrary disposition to such a letter ruling or TAM, it must do so as a request for a new TAM. See section 12.01 of Rev. Proc. 2016-2 (or its successor).
- (3) Requests for the Associate Chief Counsel office's views required in (2) above are made through the Chief, Appeals. The Appeals office making the request must submit the request by accessing the *Tax Policy and Procedure I Share-Point site* and selecting "Enter New Question." Include "Attn: Director, PQCS - Concession of Issue Contrary to Service Position" in the subject line of the request. After an analyst responds to the request, send an e-mail in memorandum format to the analyst and attach a copy of the proposed Appeals Case Memorandum (ACM) to the e-mail, which states the issue, facts, law, and contemplated action. If a case involves so many issues that writing a proposed ACM would unduly delay the notification, attach a statement limited to the issue on which the Appeals conclusion is contrary to a Service position. The statement must include the facts, issue, law, and proposed action.
- (4) The Chief, Appeals, solicits the views of the Associate Chief Counsel office that issued the Service position ("issuing office") and transmits those views to the

requesting Appeals office. After considering the views of the issuing office, close the case. If the views of the issuing office are not followed, the requesting office must e-mail the final supporting statement stating the reasons why the issuing office's views are not being followed to the same analyst referenced in paragraph (3) above, with "Attn: Director, PQCS - Concession of Issue Contrary to Service Position" in the subject line. The Chief, Appeals, will forward the final supporting statement to the issuing office.

8.6.3.4
(10-06-2016)
**Requests for Legal
Advice**

- (1) The term "legal advice," as used in this section, means the advice, comments, or views of a component of the Office of Chief Counsel on substantive questions regarding the interpretation of the Internal Revenue Code, regulations, revenue rulings, revenue procedures, and court decisions. The Office of Chief Counsel furnishes legal advice to assist IRS personnel, including Appeals personnel, to establish and maintain consistent positions in the settlement of cases.
- (2) Request legal advice from an Associate Chief Counsel office on novel or significant issues within that office's subject matter jurisdiction. A request for legal advice is not used when the procedures for requesting technical advice in IRM 8.6.3.2 apply.
- (3) Legal advice is advisory. The Office of Chief Counsel furnishes legal advice to assist in the evaluation of the settlement potential of the case in relation to the litigating hazards involved. Appeals does not cite legal advice as the basis for closing a case and does not furnish copies of legal advice to taxpayers or their representatives.
- (4) Appeals may withdraw requests for legal advice.

8.6.3.4.1
(10-06-2016)
**Procedures for
Requesting Legal Advice**

- (1) The Appeals Area Director submits requests for legal advice from an Associate Chief Counsel office by accessing the *Tax Policy and Procedure I SharePoint site* and selecting "Enter New Question." Include "Attn: Director, PQCS - Request for Legal Advice" in the subject line of the request. After an analyst responds to the request, send an e-mail in memorandum format to the analyst, which includes the items listed in paragraph (2) next.
- (2) The electronic request for legal advice must include the following information (either in the body of the e-mail or as attachments):
 - a. a complete statement of all facts relating to the issue;
 - b. a detailed description and analysis of the issue, citing the pertinent authorities (facts and legal discussion should be included in the request, not merely incorporated by reference);
 - c. copies of any material that pertains to the issue; and
 - d. a full and precise statement of the reasons why Chief Counsel consideration is requested.
- (3) Upon receipt of the request for legal advice, the Director, PQCS, determines whether the request is appropriate. If the request is appropriate, the Director, PQCS, refers it to the appropriate Associate Chief Counsel office. If the request is inappropriate or not fully developed, the Director, PQCS, returns the request to the Area Director. Some examples of inappropriate requests are as follows:

- Requests involving factual determinations where uniformity and consistency are not involved.
- The issue is not sufficiently widespread to warrant consideration by the Associate Chief Counsel office.
- A revenue ruling or acquiescence already covers the situation and there is no reason to believe that such revenue ruling or acquiescence will be revoked or modified.
- The case is not docketed and it concerns an issue for which a TAM is appropriate.

(4) The Associate Chief Counsel office addresses and furnishes the legal advice to the Chief, Appeals. The Director, PQCS, forwards the legal advice to the requesting Appeals office through the Area Director.

8.6.3.5
(10-06-2016)
**Requests for Legal
Opinion**

(1) If an Appeals office requires a legal opinion in a case, either docketed or non-docketed, concerning the application of settled principles of law to a specific set of facts, contact the Division Counsel office. Opinions may be secured for the following items:

- Meaning, or force and effect of legal terms in a contract
- Enforceability of a contract
- Application of State law to a contract
- Corporate existence of transferee
- Similar questions

(2) A direct request for a legal opinion by an Appeals office to an Associate Chief Counsel office is not appropriate. Division Counsel determines whether the request concerns a matter that should be referred to an Associate Chief Counsel office.

8.6.3.6
(10-06-2016)
**Assistance from the
Deputy Commissioner
(International)**

(1) IRM 4.60.1.2, *Specific Exchange of Information Program*, provides the procedures for obtaining tax-related information located in a foreign jurisdiction.

8.6.3.7
(10-06-2016)
**Economist Assistance in
IRC 482 Cases**

(1) To supplement the legal and accounting skills of ATEs and assist them in properly evaluating the economics underlying many of the issues they may encounter, particularly those in international transfer pricing issue cases, Appeals has economists available to assist with issue resolution. See IRM 1.4.28.9, *Referrals to Appeals Domestic Operations, International, and TEGE*, for a general guide for requesting assistance from an economist. See also IRM 4.49.1, *Economist Program*, for an overview of the Large Business & International (LB&I) economist program.

8.6.3.8
(10-06-2016)
Actions on Decisions

(1) Chief Counsel prepares and publishes Actions on Decisions to represent the Service's litigating posture on controversial issues in a specific case and provide the legal basis for the Service's position on those issues. See IRM 8.6.4.1.6, *Case Evaluation for Settlement Purposes*, for information concerning Actions on Decisions.

8.6.3.9
(10-06-2016)
**Cases Requiring
Actuarial Assistance**

- (1) This section describes case coordination with the office of Employee Plans Technical (EP Technical) in cases requiring actuarial assistance.
- (2) The Office of the Deputy Commissioner, Tax Exempt and Government Entities (TE/GE), has the responsibility for providing actuarial assistance to all Service components. It provides such assistance through EP Technical, which is an office within the Employee Plans Rulings and Agreements division. See IRM 7.1.6.5, *Technical Assistance*, for information on formally requesting assistance from EP Technical. See IRM 8.7.8.3.9, *Actuarial Funding and Deduction Issues*, for information on informally contacting an actuary for assistance.
- (3) Assistance is provided in response to actuarial questions relating to the following issues:
 - Tax treatment of pension, profit-sharing, stock bonus, annuity, life or accident insurance and health plans.
 - Tax treatment of other benefit and compensation plans and contracts.
 - Taxation of life insurance companies.
 - Determination of unstated interest on certain deferred payments.
 - Valuation of life estates, remainder interests, contingent assurance, series of payments, and actuarial interests in trusts.
- (4) EP Technical also furnishes assistance in these areas to the Office of Chief Counsel and the Justice Department (through the Office of Chief Counsel) in the development and presentation of actuarial issues for trial or pre-trial settlement. Such assistance may include securing or providing expert witnesses for cases in litigation.
- (5) Requests for actuarial assistance may be submitted as a request for technical advice, following the procedures contained in IRM 8.6.3.2 and Rev. Proc. 2016-2, 2016-1 IRB 102. Such requests may also be made as a request for legal advice, following the procedures in IRM 8.6.3.4.

Note: Beginning in 2015, the Associate Chief Counsel (TE/GE) was delegated the authority to issue all TAMs for matters previously under the jurisdiction of the Commissioner, TE/GE. This delegation of authority includes TAMs regarding actuarial issues.

8.6.3.10
(10-06-2016)
**Change in Accounting
Practice or Method**

- (1) A taxpayer may request, using Form 3115, *Application for Change in Accounting Method*, to change its method of accounting even if the method to be changed is an issue under consideration by an Appeals office. This provision is effective for taxable years ending on or after December 31, 2001. See section 2.03(2)(b) of Rev. Proc. 2002-19, 2002-13 IRB 696. The request does not affect full consideration of the pending issue in Appeals because the taxpayer's method change is without audit protection. See sections 3.08(2) and 8.02(7) of Rev. Proc. 2015-13, 2015-5 IRB 419 (or its successor).
- (2) In general, taxpayers may not request, or otherwise make, a retroactive change in accounting method. See section 2.05 of Rev. Proc. 2015-13, 2015-5 IRB 419. The applicable revenue procedure is the revenue procedure in effect at the time the request was submitted. For Forms 3115 filed on or after January 16, 2015, for a tax year of change ending on or after May 31, 2014, Rev. Proc. 2015-13, provides the procedures under which taxpayers may obtain either automatic consent or advance (non-automatic) consent of the Commissioner to change a method of accounting. In prior years, the proce-

dures for automatic consent and advance (non-automatic) consent were separated into two revenue procedures, with the following effective dates:

Automatic consent applications:

- Rev. Proc. 2011-14, 2011-4 IRB 330 (Forms 3115 filed on or after January 10, 2011, for tax years ending on or after April 30, 2010)
- Rev. Proc. 2008-52, 2008-36 IRB 587 (Forms 3115 filed on or after August 18, 2008, for tax years ending on or after December 31, 2007)
- Rev. Proc. 2002-9, 2002-3 IRB 327 (Forms 3115 filed on or after December 31, 2001, for tax years ending on or after January 7, 2002)
- Rev. Proc. 99-49, 1999-52 IRB 725 (Forms 3115 filed on or after December 27, 1999, for tax years ending on or after December 27, 1999)

Advance (non-automatic) consent applications:

- Rev. Proc. 97-27, 1997-21 IRB 11 (Forms 3115 filed on or after May 15, 1997)
- Rev. Proc. 92-20, 1992-12 IRB 10 (Forms 3115 filed on or after March 23, 1992)

Note: The revenue procedures listed above are subject to being modified, amplified, clarified, or superseded by subsequent revenue procedures, each with their own effective dates.

- (3) In a case where the taxpayer has challenged the National Office's denial of a requested advance (non-automatic) consent accounting method change made on Form 3115, the court will review the taxpayer's challenge under an abuse of discretion standard. See IRM 8.6.3.3., *Procedures if Appeals Conclusion is Contrary to Service Position*. Thus, Appeals will not settle any case contrary to the National Office's decision to deny the method change, nor will it give weight to any hazards of litigation based upon the possibility of a reversal of the denial in a court proceeding.
- (4) The IRS may impose changes to the taxpayer's accounting method, as provided in IRC 446(b) . See also 26 CFR 1.446-1(b) and Rev. Proc. 2002-18 , 2002-13 IRB 678. An ATE may resolve an accounting method issue by offering terms and conditions that differ from those ordinarily applicable to a Service-imposed accounting method change to appropriately reflect hazards of litigation.

Example: An ATE may compromise the year of change (for example, by agreeing to a later year of change) to reflect hazards of litigation. However, the ATE may only compromise the year of change to a taxable year finalizing the change that is currently before Appeals. See Rev. Proc. 2002-18, sections 1.03 and 6.02(c)(i), and Delegation Order 8-3.

- (5) To implement a Service-imposed change in method of accounting, secure a closing agreement under IRC 7121. To resolve an accounting method issue raised by the Service on a non-accounting-method change basis, execute a closing agreement under IRC 7121. See IRM 8.13.1, *Closing Agreements*, and Rev. Proc. 2002-18.
- (6) When resolving an accounting method issue as an accounting method change, Appeals must provide notice to the taxpayer that resolution of the issue is

being treated as an accounting method change unless such notice was provided by the examining agent. The notice must be in writing and this requirement is satisfied if a closing agreement is executed finalizing the change. The resolution of an accounting method issue does not establish a new method of accounting if the Service does not provide such notice. See section 7 of Rev. Proc. 2002-18.

8.6.3.11
(10-06-2016)
**Extension of Time for
Making Certain Elections**

- (1) 26 CFR 301.9100-1 provides that the Commissioner may grant a reasonable extension of the time fixed by regulations for making elections or applications for relief.
- (2) An election made pursuant to 26 CFR 301.9100-2 for an automatic extension of time is not a letter ruling request and does not require payment of a user fee under Rev. Proc. 2016-1, 2016-1 IRB 1.
- (3) A request for an extension of time for making an election or other application for relief under 26 CFR 301.9100-3 is not submitted as a request for a TAM; instead, the request is submitted as a letter ruling request even if the request is submitted after the examination of the taxpayer's return has begun or after the issues in the return are being considered in Appeals or a federal court. Therefore, a section 301.9100-3 request should be submitted pursuant to Rev. Proc. 2016-1, 2016-1 IRB 1 (or its successor), including the payment of the applicable user fee listed in Appendix A of Rev. Proc. 2016-1. Also see IRM 1.2.53.4, *Delegation Order 30-3 (formerly DO-183, Rev. 8)*, which does not delegate authority to grant relief under section 301.9100-3 to Appeals.
- (4) In a case where the taxpayer has challenged the National Office's adverse letter ruling issued under 26 CFR 301.9100-3, Appeals will not settle any case contrary to the National Office's decision to deny the extension request, nor will it give weight to any hazards of litigation based upon the possibility of a reversal of the adverse ruling in a court proceeding.

