

Part III
Administrative, Procedural, and Miscellaneous

26 CFR 601.202: Closing agreements (Also Part I, §§ 446, 482, 7121; 1.446-1, 301.7121-1)

Rev. Proc. 2005-12

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SECTION 1. PURPOSE

.01 This revenue procedure permits a taxpayer under the jurisdiction of the Large and Mid-Size Business Division to request that the Service examine specific issues relating to tax returns before those returns are filed. This revenue procedure supercedes Rev. Proc. 2001-22, 2001-1 C.B. 745. This revenue procedure provides the framework within which a taxpayer and the Service may work together in a cooperative environment to resolve, after examination, issues accepted into the

program. If the taxpayer and the Service are able to resolve the examined issues before the returns that they affect are filed, this revenue procedure authorizes the taxpayer and the Service to memorialize their agreement by executing an LMSB Pre-Filing Agreement (PFA).

.02 This revenue procedure outlines the procedures for resolving issues through pre-filing examinations. Taxpayers and the Service often resolve issues more effectively and efficiently through a pre-filing examination than a post-filing examination, because the taxpayer and the Service have more timely access to the records and personnel that are relevant to the issues. A pre-filing examination also provides the taxpayer with certainty regarding the examined issue at an earlier point in time than a post-filing examination. These procedures benefit both taxpayers and the Service by improving the quality of tax compliance while reducing costs, burdens, and delays. Unlike letter rulings and other forms of written advice provided by the Offices of the Associates Chief Counsel (see Rev. Proc. 2004-1, 2004-1 I.R.B. 1), a PFA does not determine the tax treatment of prospective or future transactions or events, but only of completed transactions or events whose tax treatment has not yet been reported on a return.

SECTION 2. BACKGROUND

.01 In Rev. Proc. 2001-22, the Service provided procedures for LMSB taxpayers to request an examination and resolve specific issues relating to returns that were neither due (taking into account any extensions of time to file) nor filed. The objective of the PFA program is to resolve, before returns are filed, issues that are likely to be disputed in post-filing audits.

.02 Because Rev. Proc. 2001-22 limited the eligible years for the PFA program to current or prior taxable years for which returns were neither due nor filed, taxpayers and the Service could not resolve issues for multiple future taxable years or issues regarding appropriate methodologies for determining tax consequences that would

affect future taxable years. The Service has determined that expanding the scope of the PFA program by allowing taxpayers and the Service to address certain issues over a limited number of future taxable years will significantly benefit both taxpayers and the Service.

.03 In addition, based on its experience with the PFA program, the Service has reconsidered the domestic and international issues that are eligible for the program.

SECTION 3. SCOPE

.01 *Eligible taxpayers.* This revenue procedure applies to taxpayers under the jurisdiction of LMSB that desire to resolve through a PFA issues that otherwise may be the subject of a post-filing examination.

.02 *Eligible taxable years.*

(1) *Current, past, and future taxable years.* An eligible taxpayer may request a PFA for the current taxable year, any prior taxable year for which the original return is not yet due (taking into account any extensions of time to file) and is not yet filed and, except in the case of a PFA provided under section 3.09(2), for a limited number of future taxable years.

(2) *Agreements for future taxable years.* Agreements for future taxable years are limited to four taxable years beyond the current taxable year.

.03 *Eligible issues generally.*

(1) *Factual issues and well-established law.* The Service will consider entering into a PFA on any issue that requires either a determination of facts or the application of well-established legal principles to known facts.

(2) *Issues that involve a methodology.* The Service also will, in general, consider entering into a PFA regarding a methodology used by a taxpayer to determine the appropriate amount of an item of income, allowance, deduction, or credit.

(3) *Issues under the jurisdiction of other Service divisions.* The Service will consider entering into a PFA on an issue under the jurisdiction of an operating division of the Service other than LMSB, but only with the concurrence of that operating division.

.04 *Relationship of eligible issues to eligible taxable years.* An issue also must relate to an eligible taxable year or years in order to be an eligible issue.

.05 *Eligible domestic and eligible international issues require coordination and consultation with Associate Chief Counsel.* There is no list of eligible domestic and international issues. Any domestic or international issue that requires either a determination of facts or application of well-established legal principles to known facts and that is not excluded under section 3.08 or section 3.09 of this revenue procedure is *likely* suitable for a PFA.

The Service may, in its sole discretion, refuse to address an issue in a PFA based on considerations of sound tax administration. Before any decision is made to proceed with the taxpayer's request for a PFA, the Service must coordinate and consult with the Associate Chief Counsel having subject matter jurisdiction over any issue proposed to be determined by a PFA. As part of this coordination and consultation, the Associate Chief Counsel may consider whether the issue is more appropriately resolved by a letter ruling or other form of written advice from the Offices of the Associates Chief Counsel, as described in Rev. Proc. 2004-1, 2004-1 I.R.B. 1, or

its successors, and whether the issue is currently one with respect to which the Service will never, or will not ordinarily, issue a letter ruling. See Rev. Proc. 2004-3, 2004-1 I.R.B. 114, Rev. Proc. 2004-7, 2004-1 I.R.B. 237, and their successors.

.06 Eligible international issues requiring Associate Chief Counsel (International) concurrence in execution. This subsection lists specific international issues that are *likely* suitable for a PFA, but also require that the Associate Chief Counsel (International) concur with the acceptance of the issue into the PFA Program and execution of the PFA. Even though an issue in a particular case appears on this list, the Service may, in its sole discretion, refuse to address that issue based on considerations of sound tax administration. The eligible issues are:

(1) whether a unit of the taxpayer's trade or business is a qualified business unit within the meaning of section 989(a) and the regulations promulgated under that section;

(2) whether the taxpayer is engaged in a trade or business within the United States (excluding questions under section 864(b)(2));

(3) the amount of gross income that is effectively connected with the conduct by the taxpayer of a trade or business within the United States;

(4) factual determinations concerning the extent to which, under section 882(c), deductions are connected with income that is effectively connected with the taxpayer's conduct of a trade or business within the United States; and

(5) whether the taxpayer has a permanent establishment in the United States for purposes of a bilateral income tax convention to which the United States is a party and, if so, what profits are attributable to that permanent establishment.

.07 *Special provisions for requests on international issues.* The provisions of this section apply, in addition to the generally applicable provisions of this revenue procedure, to any request for a PFA on an issue having international implications.

(1) A PFA and any factual information contained in the background files is subject to exchange of information under income tax treaties or tax information exchange agreements in accordance with the terms of such treaties and agreements (including terms regarding relevancy, confidentiality, and the protection of trade secrets). In cases where the exchange of information would be discretionary, information may be exchanged to the extent consistent with sound tax administration and the practices of the relevant foreign competent authority.

(2) To minimize taxpayer and governmental uncertainty and administrative cost, taxpayers who seek a PFA on an international issue are encouraged to seek competent authority consideration under the mutual agreement procedure of any applicable United States income tax convention. This consideration will be given after the PFA is concluded, and the PFA may be modified to reflect the outcome of the mutual agreement procedure.

(3) A taxpayer may request a PFA for an international issue that is the subject of a previously submitted request for competent authority assistance. The consideration of this competent authority request will not be suspended during the PFA process. If the taxpayer requests a PFA and the previously submitted request for competent authority assistance is ongoing, if appropriate, the taxpayer also should make a request for the Accelerated Competent Authority Procedure of Rev. Proc. 2002-52, 2002-2 C.B. 242.

.08 *Excluded issues.* The Service will not enter into a PFA on the following types of issues:

(1) Transfer pricing issues. See Rev. Proc. 2004-40, 2004-29 I.R.B. 50 (Advance Pricing Agreement program);

(2) Except as provided in section 3.09(2) of this revenue procedure, issues involving a change in accounting method. See Treas. Reg. § 1.446-1(e). This includes issues that are or have been the subject of a request by or with respect to the taxpayer for consent to change a method of accounting under procedures such as Rev. Proc. 97-27, 1997-1 C.B. 680 (as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432), or its predecessor or successor, or of an application filed under automatic consent procedures such as Rev. Proc. 2002-9, 2002-1 C.B. 327 (as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, as modified and amplified by Rev. Proc. 2002-19, and as amplified, clarified, and modified by Rev. Proc. 2002-54), or its predecessor or successor. This also includes issues for which a change in accounting method is necessary to resolve the issue. A taxpayer must obtain consent to make an accounting method change by using applicable administrative procedures. See generally Rev. Proc. 97-27 and Rev. Proc. 2002-9, or their successors;

(3) Issues involving the annual accounting period. See Treas. Reg. § 1.442-1. This includes issues that are or have been the subject of a request by or with respect to the taxpayer for permission to adopt, change, or retain an annual accounting period under procedures such as Rev. Proc. 2002-39, 2002-1 C.B. 1046, (as clarified and modified by Notice 2002-72, 2002-2 C.B. 843, and as modified by Rev.

Proc. 2003-34, 2003-1 C.B. 856), or an application filed under automatic procedures such as Rev. Proc. 2002-37, 2002-1 C.B. 1030, and Rev. Proc. 2002-38, 2002-1 C.B. 1037, or their predecessors or successors. This also includes issues for which a ruling regarding an annual accounting period is necessary to resolve the issue;

(4) Issues of reasonable cause, due diligence, good faith, clear and convincing evidence, or any other similar standard under Subtitle F (Procedure and Administration) of the Internal Revenue Code;

(5) Issues involving the applicability of any penalty or criminal sanction;

(6) Issues that are, or will be, the subject of a pending or proposed request for a determination letter, technical advice memorandum, or letter ruling issued to or regarding the taxpayer;

(7) Issues for which the taxpayer proposes a resolution that is contrary to a private letter ruling, determination letter, technical advice memorandum, or closing agreement previously issued to or regarding the taxpayer;

(8) Issues for which the taxpayer proposes a resolution that is contrary to a position proposed by the Service in response to a request for a private letter ruling or determination letter that was withdrawn by the taxpayer;

(9) Issues that are the subject of pending litigation between the Service and the taxpayer for an earlier taxable year;

(10) Issues designated for litigation for an earlier taxable year of the taxpayer by the Office of Chief Counsel;

(11) Issues that involve a tax shelter described in section 6662(d)(2)(C)(ii);

(12) Issues that require the Service to determine whether the taxpayer, rather than another entity, is the common law employer; and

(13) Issues relating to transactions that have not yet occurred, regardless of whether the issue otherwise would qualify as one on which the Service will issue letter rulings or other forms of written guidance as described in Rev. Proc. 2004-1, 2004-1 I.R.B. 1, and successor revenue procedures.

.09 Methods of accounting.

(1) Except as provided in section 3.09(2) of this revenue procedure, the Service will not enter into a PFA for issues relating to a change in method of accounting. In applying the law to the facts, or establishing the facts, a change in the overall plan of accounting for gross income or deductions from the treatment of such items in prior taxable years, or a change in the treatment of any item that involves the proper time for the inclusion of an item or the taking of an item as a deduction from the treatment of such item in prior taxable years generally may be a change in method of accounting. A PFA may not be used to change a taxpayer's method of accounting.

(2) If the Service has issued a letter ruling granting consent to a change in method of accounting under Rev. Proc. 97-27, or its successor, a taxpayer may request and the Service may enter into a PFA with respect to the approved change in method of accounting. In such case, a PFA may include determinations described in section 11 of Rev. Proc. 97-27 or a similar provision of its successor. Thus, for example, a taxpayer may request and the Service may enter into a PFA with respect to the amount of the section 481(a) adjustment and the implementation of the change in method of accounting in accordance with the terms and conditions of the consent

agreement and Rev. Proc. 97-27. A PFA under this provision may only apply to the taxable year of change and may not apply to any other taxable years, except that a determination of the amount of the section 481(a) adjustment under section 11.01(2) of Rev. Proc. 97-27, or a successor, shall apply to any other taxable year for which such amount is taken into account (*i.e.*, any spread period). A PFA under this provision may not be entered into with respect to a change in method of accounting requested pursuant to automatic consent procedures, such as Rev. Proc. 2002-9.

.10 Definition of taxpayer. For purposes of section 3 of this revenue procedure, any reference to the taxpayer also includes a related taxpayer and any predecessor of the taxpayer or a related taxpayer. A related taxpayer is one related within the meaning of section 267 or a member of an affiliated group within the meaning of section 1504 that includes the taxpayer. A predecessor is an entity for whose tax liability the taxpayer or a related taxpayer is or was primarily or secondarily liable.

SECTION 4. REQUESTING A PRE-FILING AGREEMENT

.01 Required information. A request for a PFA must contain the following information:

(1) Names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties;

(2) The name, title, address and telephone number of a person to contact.

If the person to contact is an authorized representative of the taxpayer, a properly executed Form 2848, Power of Attorney and Declaration of Representative, must accompany the request;

(3) The annual accounting period and the overall method of accounting (for example, cash receipts and disbursements or accrual) for maintaining the accounting books and filing the federal income tax returns of all interested parties;

(4) The location of the taxpayer's tax staff and records;

(5) A brief description of the taxpayer's business operations, including the principal business activity code used by the taxpayer on its last filed return;

(6) The taxable year(s) for which the PFA is sought, the last date on which the taxpayer may file (with extensions) a timely return for that year (or for the first of those taxable years), and, if earlier, the date on which the taxpayer intends to file that return; and

(7) The dollar amount of assets reflected on the most recently filed return.

.02 Specific descriptions of issues. A request for a PFA should also contain a separate written statement for each proposed issue that concisely:

(1) Describes the issue;

(2) Summarizes all the facts that are relevant and material to the issue and, in the case of agreements for future taxable years, any related factual assumptions that may be appropriate (see section 7.02(2), below);

(3) States whether the issue involves an item or transaction in which two or more persons may take contrary positions (a "whipsaw" issue);

(4) Summarizes all relevant legal authorities, including citations to specific sections of the Internal Revenue Code, Income Tax Regulations, case law, tax treaties, and other authorities, and discusses why the issue is an eligible issue, as defined in section 3 of this revenue procedure;

(5) Summarizes and discusses the implications of any known authorities that may be potentially contrary to the position advanced, such as legislation (or pending legislation), court decisions, regulations, revenue rulings, revenue procedures, notices (including notices of proposed rulemaking), or announcements;

(6) Discusses whether and how the PFA will affect taxable years before or after the taxable year for which the PFA is sought;

(7) Describes any proposed methodology to be used;

(8) Discusses whether the issue qualifies for mutual agreement procedure consideration under any United States income tax treaty, specifies the treaty, and states whether the taxpayer previously applied or will apply for competent authority assistance with respect to the issue for the year or years in question or any prior year;

(9) States whether the taxpayer has, for the current taxable year or any prior taxable year, requested a private letter ruling (including a request for consent to a change in method of accounting or a request to adopt, change, or retain an annual accounting period), determination letter, or technical advice on the issue;

(10) Discusses whether the issue can reasonably be resolved by the earliest date on which the taxpayer intends to file any relevant return; and

(11) Describes the availability, organization, and location of the records and other information that substantiate the taxpayer's proposed position on the issue.

.03 Perjury statement. A request for a PFA, and any supplemental submissions (including additional documents), must include a declaration, signed by a person currently authorized to sign the taxpayer's federal income tax return, in the following form:

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 facts presented in support of the request for the Pre-Filing Agreement are true, correct, and complete.

.04 Agreement regarding examination or inspection of records. The request for a PFA also must contain a statement by the taxpayer in the following form:

The taxpayer agrees that the review of records and information under the PFA procedures does not constitute an inspection within the meaning of section 7605(b) and will not preclude or impede (under section 7605(b) or any administrative provisions adopted by the Service) the Service from later examining any return or inspecting any records. The taxpayer further agrees that procedural restrictions, such as providing notice under section 7605(b), do not apply to actions taken under the PFA procedures.

.05 Signature. The request for a PFA must be signed by the taxpayer or a representative properly authorized by the taxpayer in an accompanying Form 2848, Power of Attorney and Declaration of Representative.

.06 Where to submit request. A request for a PFA:

(1) In the case of a taxpayer whose return for any taxable year is currently under examination by LMSB, should be submitted to the LMSB Team Manager in charge of the examination; or

(2) In the case of a taxpayer who has no returns under examination for any taxable year, should be sent to the following address:

Internal Revenue Service
Attn: LMSB:PFT:PFS
PFA Program Manager
Mint Building
1111 Constitution Avenue NW
Washington, DC 20224

(3) In the case of a taxpayer who has no returns under examination for any taxable year, facsimile transmissions may be made to the attention of the PFA Program Manager at (202) 283-8406 (not a toll free call).

SECTION 5. SELECTING TAXPAYERS FOR THE PFA PROGRAM

.01 Jurisdiction of LMSB Industry Director and coordination and consultation with the Associate Chief Counsel. The LMSB Industry Director having jurisdiction over the taxpayer, after coordination and consultation with the Associate Chief Counsel having subject matter jurisdiction over any issue proposed to be determined by a PFA, will decide whether to accept the taxpayer's request for a PFA. (For purposes of this revenue procedure, the term "LMSB Industry Director" includes a duly authorized designee of an LMSB Industry Director.) The decision regarding the acceptance of any PFA involving an international issue also will require the concurrence of the Director, International (LMSB). In general, the Associate Chief Counsel will respond within 10 business days to a request for coordination and consultation to proceed with the PFA.

.02 Criteria for selection. The criteria for selecting taxpayers to participate in the PFA program include, but are not limited to:

(1) Whether the specific issue presented by the taxpayer's facts is an eligible issue under section 3 of this revenue procedure and is otherwise suitable for the PFA program;

(2) The direct or indirect impact of a PFA upon other years, issues, taxpayers, or related cases;

(3) Whether Service resources are available;

- (4) Whether the taxpayer is willing and able to dedicate sufficient resources to the PFA process;
- (5) Whether the PFA is likely to result in two or more persons taking contrary positions on an item or transaction (a “whipsaw” issue);
- (6) The time remaining until the due date and expected filing date, if earlier than the due date, of the earliest return to which the PFA relates; and
- (7) The overall probability of completing the process and entering into a PFA by the proposed date for filing the earliest return to which the PFA relates.

Early submission of a request will facilitate completion of a PFA before any associated returns become due. As a result, early requests are more likely to be selected for the PFA program and the Service urges taxpayers to submit PFA requests as early as possible.

.03 Notification. A representative of LMSB will contact the taxpayer within 15 business days of actual receipt of the taxpayer's request for a PFA to acknowledge that the Service has received the request. After a PFA request is received, a representative of LMSB will inform the taxpayer in writing whether the request has been selected for the PFA program and the issues the Service will consider.

.04 Requests not accepted. A taxpayer may not appeal the Service's decision not to accept a request for a PFA. A taxpayer not selected for the PFA program remains eligible for other early issue resolution procedures, including the Accelerated Issue Resolution (AIR) program (see Rev. Proc. 94-67, 1994-2 C.B. 800).

SECTION 6. PROCESSING A REQUEST FOR A PFA

.01 *Planning.* If the Service accepts the taxpayer's request for a PFA, a representative of LMSB will contact the taxpayer and schedule an orientation meeting with the taxpayer and examination personnel to discuss the PFA process and explain the roles and responsibilities of each participant. Immediately after the orientation meeting, the taxpayer and the Service should meet to formulate a plan and timeline that will result in a thorough development of the facts and a successful resolution of the issues before any associated returns are due. During the planning phase and throughout the PFA process, the taxpayer must provide information requested by the Service and assist the Service in the timely and efficient resolution of the examined issues.

.02 *Drafting.* After the development of the facts and issues, the Team Manager will meet informally with the taxpayer to determine whether the parties agree on a PFA. If the parties reach agreement, the taxpayer will work with the Service to prepare the initial draft of the PFA. The PFA will be prepared by the taxpayer and the audit team with assistance, as necessary, from the PFA Program Manager, the Office of Chief Counsel, or other Service personnel. Except as provided in section 3.06, the Associate Chief Counsel having subject matter jurisdiction over the issue in the PFA need not execute or give final approval to the proposed PFA; however, upon execution of the PFA, a copy will be forwarded immediately to the office of that Associate Chief Counsel.

.03 Return filing requirements. The Service's acceptance of a taxpayer's request for a PFA does not suspend or waive the normal filing requirements for any tax returns that may be affected by the proposed PFA.

.04 TEFRA taxpayers. If the procedures set forth in sections 6221 through 6233 apply to the taxpayer requesting the PFA and the issue determined by the PFA is a partnership item as defined in section 6231, the PFA process will be terminated for that issue if no agreement is reached with all partners by the date that is 30 business days before the due date for the partnership return (taking into account any extensions of time to file that may be in effect).

.05 Execution prior to filing. If a PFA is executed before a return is filed, the taxpayer must report the issues determined by the PFA according to the terms and conditions of the PFA. A copy of the PFA must be attached to the return.

.06 Execution after filing. If the Service and the taxpayer do not reach agreement on an issue before the taxpayer files an associated return, the Service and the taxpayer may still attempt to resolve the issue and enter into a PFA. If the filed return is inconsistent with the terms and conditions of the contemplated PFA, the taxpayer must agree to file an amended return consistent with those terms and conditions. A post-filing PFA should state whether the taxpayer is required to file an amended return. It should further state that the Service may assess additional tax due, if any, if an amended return is not filed. The taxpayer must attach a copy of the PFA to any amended return.

SECTION 7. NATURE AND EFFECT OF A PFA

.01 Criteria for issuance. An authorized Service official may execute a PFA if that official determines that:

- (1) Entering into the PFA is consistent with the goals of the PFA program;
- (2) The resolution of issues in the PFA reflects well-settled legal principles and correctly applies those principles to the facts established by the examination team;
- (3) The issues determined by the PFA are eligible issues under section 3 of this revenue procedure;
- (4) Any methodology approved for use by a taxpayer to determine the appropriate amount of an item of income, allowance, deduction, or credit has a documented factual basis; and
- (5) There is an advantage in having the issues permanently and conclusively resolved for the taxable years covered by the PFA, or the taxpayer shows good and sufficient reasons for desiring a PFA and the United States will suffer no disadvantage if the agreement is executed.

.02 Form and content.

(1) A PFA that makes determinations for the current taxable year (and any prior taxable year for which a return is not yet due) is a closing agreement under section 7121. The form and content of this type of PFA must comply with Rev. Proc. 68-16, 1968-1 C.B. 770.

(2) A PFA that makes a determination for one or more future taxable years as well as for the current taxable year (and any prior taxable year for which a return is not yet due) is a non-statutory agreement. Although not a closing agreement under

section 7121, this type of PFA is a binding contract between the Service and a taxpayer. It is subject to any legislative enactment that is applicable to the taxable years to which the PFA relates. There is no prescribed format for such an agreement. The parties to a non-statutory agreement may, by mutual consent (and, if applicable, the further mutual agreement between the United States and any treaty partner that has entered into a mutual agreement that is a basis for the PFA), modify or terminate the agreement. A taxpayer who wants to modify or terminate a non-statutory agreement should submit a request to the office that originally processed the taxpayer's request for a PFA. The parties to a non-statutory agreement also may condition its determinations on the continuing validity of certain stated assumptions. A "stated assumption" is any fact (whether or not within the control of the taxpayer) related to the taxpayer, a third party, an industry, or business and economic conditions whose continued existence is material to the determinations of the PFA. A stated assumption might include, for example, a particular mode of conducting business operations. If a stated assumption is no longer valid, a non-statutory agreement conditioned on such stated assumption will terminate as of the first day of the taxable year in which the stated assumption is no longer valid.

(3) A PFA concerning international issues will not be subject to the special limitation of section 7.05, *Effect of Agreements or Judicial Determinations on Competent Authority Proceedings*, of Rev. Proc. 2002-52, 2002-2 C.B. 242, which sets forth the effect of a closing agreement on the procedure for competent authority consideration under the mutual agreement procedure of United States income tax conventions.

.03 *Methods and periods of accounting.*

(1) A PFA does not constitute the consent of the Commissioner under section 446(e) to any change in method of accounting or the approval under section 442 of any adoption, change, or retention of an annual accounting period by the taxpayer.

(2) A PFA does not constitute a final determination regarding the adoption, change, or retention of an annual accounting period by the taxpayer,

(3) A PFA does not constitute a final determination regarding the methods of accounting of the taxpayer for any taxable year, except to the extent authorized by section 3.09(2).

(4) A PFA authorized under section 3.09(2) must include the following agreement:

Nothing in this agreement precludes the taxpayer from requesting, or the Service from requiring, a change in the taxpayer's method of accounting for years after the year of change.

SECTION 8. WITHDRAWAL

.01 At any time prior to the execution of the PFA, either the taxpayer or the Service may withdraw from consideration all or part of the request for a PFA. The withdrawal must be in writing and signed by the party initiating the withdrawal, i.e., the taxpayer or his authorized representative or the Industry Director, Director Field Operations, or the Director Field Specialists.

.02 Notwithstanding the withdrawal by either the taxpayer or the Service of any or all the issues that are the subject of the request for a PFA, the taxpayer's agreement under section 4.04 of this revenue procedure will remain in effect.

SECTION 9. NO PFA EXECUTED

.01 *Accelerated issue resolution.* If the Service and the taxpayer do not agree upon and execute a PFA that resolves an issue, either before or after the filing of the return to which the PFA relates, and the Service subsequently disagrees with the taxpayer's treatment of the issue on the return, the taxpayer and the Service may continue their efforts to reach an agreement using post-filing procedures, such as the Accelerated Issue Resolution (AIR) procedures under Rev. Proc. 94-67, 1994-2 C.B. 800. This continuation of the process does not require a new application.

.02 *Administrative appeals.* If the Service and the taxpayer are unable to resolve an issue by a PFA or an AIR agreement, the taxpayer may pursue an administrative appeal either by requesting an early referral to Appeals under the procedures set forth in Rev. Proc. 99-28, 1999-2 C.B. 109, or by protesting any proposed deficiency related to the issue.

SECTION 10. USER FEE

.01 *Taxpayers subject to fees.* Taxpayers are subject to a user fee only if they are selected to participate in the PFA program.

.02 *Amount of fee.* The user fees for taxpayers selected to participate in the PFA program are:

- (1) \$10,000 for taxpayers having \$250,000,000 or more in assets;
- (2) \$5,000 for taxpayers having at least \$50,000,000, but less than \$250,000,000 in assets; and
- (3) \$1,000 for taxpayers having at least \$10,000,000, but less than \$50,000,000 in assets.

For purposes of determining the appropriate user fee, the amount of assets held by the taxpayer will be determined based on its most recently filed return. A fee will be assessed for each separate and distinct issue. If the subject entity of a PFA request is a member of an affiliated group filing a consolidated return, the fee will be assessed by reference to the amount of assets held by the consolidated group determined based on the group's most recently filed consolidated return. The orientation meeting or the first substantive meeting with the taxpayer to discuss the PFA issues will not take place until after the fee is received.

.03 Time and method of payment. Payment of the user fee must be made within 15 business days of notification that the issues have been selected for the PFA program. Payment must be made by check or money order payable to the Internal Revenue Service and submitted to the address indicated in section 4.06 of this revenue procedure.

.04 Withdrawal. Notwithstanding the withdrawal by either the taxpayer or the Service of any or all of the issues in the request for a PFA after acceptance of the request, the user fee paid by the taxpayer generally will not be refundable. A refund or waiver of the user fee will not be entertained unless a hardship has occurred (for example, a disaster loss) or if other circumstances beyond the control of the taxpayer exist. The Industry Director has discretion in granting a request for a refund of a user fee based on considerations of sound tax administration.

SECTION 11. DISCLOSURE

.01 PFAs are agreements described in section 6103(b)(2)(D). A PFA and the information generated or received by the Service during the PFA process constitute

confidential return information. As required by the Conference Report to H.R. 4577, The Community Renewal Tax Relief Act of 2000 (Pub. L. 106-554), H.R. Conf. Rep. No. 1033, 106th Cong., 2d Sess. 1033 (2000), the Service will, consistent with the restrictions of section 6103, continue to publish annual reports summarizing the operation of the PFA program. PFAs are not written determinations under section 6110 and, accordingly, are exempt from disclosure to the public under the Freedom of Information Act.

SECTION 12. EFFECTIVE DATE AND DURATION OF PROCEDURE

This revenue procedure is effective on December 22, 2004. This revenue procedure will remain in effect until December 31, 2006, unless sooner revoked, modified, or superseded. A request for a PFA that has been accepted into the program under section 5 of this revenue procedure will remain subject to the provisions of this revenue procedure, notwithstanding the preceding sentence.

SECTION 13. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2001-22, 2001-1 C.B. 745, is superseded.

SECTION 14. RECORD-KEEPING REQUIREMENTS

.01 No aspect of the PFA process will affect the record-keeping requirements imposed by any section of the Internal Revenue Code.

.02 The taxpayer must maintain a copy of the PFA supporting documents and books of account and records to enable the Service to ensure the taxpayer's compliance with the PFA. These records may be specified in the PFA itself or in separate agreements.

SECTION 15. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under the control number 1545-1684.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The collections of information in this revenue procedure are in sections 4, 6, and 12. The information collected under section 4 is required to provide the Service with the information necessary to determine which taxpayers should be included in the PFA program. The information collected under section 6 will be used to resolve the taxpayer's issue and to support any PFA entered into between the taxpayer and the Service. The record-keeping requirements under section 12 will be used for tax administration. The collections of information under sections 4 and 6 are voluntary. Once a PFA is entered into, the record-keeping requirements under section 12 are mandatory. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or record-keeping burden is 49,215 hours.

The estimated annual burden per respondent varies from 5 hours to 1,092 hours, depending on whether a taxpayer applying to the PFA program is accepted into the program. The estimated annual burden per respondent for taxpayers who apply to the PFA program and are accepted is 1,092 hours. The estimated annual burden per respondent for taxpayers who apply to the PFA program and are not accepted is 5 hours. The estimated number of taxpayers who apply to the PFA program and are

accepted is 45. The estimated number of taxpayers who apply to the PFA program and are not accepted is 15. The estimated total number of applicants and/or recordkeepers is 60.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained so long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 16. DRAFTING INFORMATION

The principal author of this revenue procedure is Stuart Spielman of the Office of Associate Chief Counsel (Procedure & Administration). For further information about this revenue procedure, contact Melanie Perrin, Senior Program Analyst, LMSB Office of Pre-Filing and Technical Guidance, at (202) 283-8408 (voice)(not a toll free call), (202) 283-8406 (fax) (not a toll-free call), or pfa.info@irs.gov (e-mail address).