# L. CLOSING AGREEMENTS

**by**
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## 1. Introduction: A Remedy for Ambivalent Conditions

A closing agreement, as authorized by IRC 7121, can be a useful tool to resolve disputes between the Service and taxpayers. The closing agreement is not a new option for exempt organizations matters, but it is receiving a new emphasis and is being used with increasing frequency to resolve a variety of exempt organizations issues. Closing agreements will become more common in the near future.

Closing agreements fit well into the Service's "Compliance 2000" approach to promoting compliance, as they promote compliance while conserving the Service's scarce resources. All parties gain something from a properly executed closing agreement. The taxpayer obtains both certainty that the matter is concluded once and for all, and guidance on how to comply in the future. The Service resolves a compliance problem that otherwise would consume time and resources (through the revocation or assessment process) and obtains a commitment to future compliance.

Although a closing agreement may not be the solution for every disagreement between taxpayers and the Service, it can be a pragmatic method to resolve sensitive matters in which there are mitigating circumstances. In some cases, the infractions are marginal violations of mechanical limits that do not substantially hinder the organization's beneficial operations. In such cases, the standard solutions available to the Service, such as revocation of exemption, may be too harsh. They may seriously impair the organization's ability to function or even put it out of business. A closing agreement gives the Service the leeway to limit the penalty for past transgressions if the taxpayer will commit to future compliance.

As an example, consider a large hospital system that is the sole source of comprehensive health care for the communities it serves. It might enter a joint venture with related physicians, in which it sells its gross or net revenue stream from some of its activities to the joint venture, resulting in the prospect of revocation due to inurement and private benefit. Loss of tax exemption could force the hospital to close, or at least to curtail some charitable aspects of its operations.

Rather than deprive the community of a vital asset because of what is essentially a one-time violation, it may be more appropriate to allow the offending hospital to rescind the arrangement and institute procedures to prevent similar problems in the future. Such a resolution could be achieved through a closing agreement.

Some more examples of exempt organization cases that may be suitable for closing agreements are discussed in Section 4 of this article. First, however, Section 2 discusses the nature and impact of closing agreements, and Section 3 provides an overview of how agreements are executed.

## 2. What a Closing Agreement Is: Authority, Function, and Effect

### A. Authority and Function

A closing agreement is a final agreement between the Service and a taxpayer on a specific issue or liability. Under IRC 7121, the Service can negotiate a written closing agreement with any taxpayer to make a final resolution of any of the taxpayer's tax liabilities for any period. After the Service approves an agreement, it is final and conclusive, and unless there is a showing of fraud, malfeasance, or misrepresentation of material fact, it cannot be reopened as to the matters agreed on or modified by the Service, nor may it (or any legal action in accordance with it) be annulled, modified, set aside, or disregarded in any suit, action, or proceeding. Simple unintentional errors are not treated as fraud, malfeasance, or misrepresentations that allow reopening of an agreement.

Existence of any disqualifying elements are subject to review by a court. Such a review may involve examination of the organization's books. The burden of proof in establishing the disqualifying factor falls upon the party seeking to set the agreement aside.

The applicable Procedure and Administrative Regulations are at IRC 301.7121-1. Also, see the Statement of Procedural Rules, IRC 601.202(a)(2) and Internal Revenue Manual (IRM) 8(13)10, Closing Agreement Handbook. Guidelines specific to exempt organizations will be added to IRM 7(10)69, Exempt Organizations Examination Guidelines Handbook.

According to the regulations, the key determinants governing the election of closing agreements are:

- an apparent benefit in having the case permanently and conclusively closed;

- good and sufficient reasons on the part of the taxpayer for desiring such an arrangement; and

- evidence that the fulfillment of the agreement will not be detrimental to the United States. (However, there need be no showing that the resulting closing agreement will confer an advantage on the United States.)

B. Scope

If it is for a taxable period ending before the date of the agreement, a closing agreement can cover the entire tax liability for a year or years, or be limited to a specific tax item. A closing agreement may also cover future periods, though in such a case it is limited to how a specific item or issue will be treated, as determining the entire tax liability for future periods is too speculative. It is not necessary, however, that there actually be a tax liability in place for the period covered by the closing agreement.

In appropriate cases, taxpayers may be asked to enter into a closing agreement as a condition to the issuance of a letter ruling. It is not necessary that the closing agreement be concluded before the ruling letter is issued: the ruling can be conditioned on the subsequent closing agreement.

A closing agreement can also cover a class of taxpayers. Such an agreement would be unusual in the exempt organizations area, though it could apply to groups of related organizations or organizations under a group ruling letter. If a class closing agreement is in order, individual agreements with each person in the class will only be negotiated in cases where the class consists of 25 persons or less. If the issue and holding are the same for all members of the class and there are more than 25, the Service will enter into a "mass closing agreement" with the taxpayer who is authorized to represent the class.

C. Other Closing Procedures

Closing agreements should be distinguished from other, similar case-closing options, such as compromises and collateral agreements. The "compromise", which is authorized by IRC 7122, is frequently used in collection cases to settle a tax liability for something less than the assessed amount. Similarly, a closing agreement is not a settlement, as that term is used in Appeals. Compromises and settlements deal with disputed tax liabilities: if exemption is not revoked because of a closing agreement, there is no tax liability to dispute. Neither is a "collateral

agreement" used in exempt organization cases. Unlike the closing agreement, none of these options are specifically authorized by statute as being binding on both the Service and a taxpayer.

Some other types of agreement that may resolve limited issues with the Service are not equivalent to closing agreements and should not be confused with them. For example, Income Tax Examination Changes (Form 4549) and an Installment Agreement (Form 433-D) do not, as with a bona fide closing agreement, bar further assessment or prohibit the Service from determining a deficiency. Neither is the Service's acceptance of a check with a restrictive endorsement equivalent to a closing agreement with the taxpayer. In one instance, it was concluded that there was never a properly executed closing agreement coinciding with the endorsement and only closing agreements or compromises that comply with statutory procedure may be construed as resolving tax disputes. Kennedy v. U.S. (DC Ill; 1990) 67 AFTR2d 91-537. In one case the Service's claim that a closing conference and the taxpayer's check amounted to a closing agreement, did not bar the taxpayer from protesting or litigating certain items of adjustment that were adverse to him. There was no closing agreement, since such an agreement had to be clear and unequivocal. The document had to reveal an intent to finally dispose of all contention affecting the years in question. Couzens v. Commissioner, 11 B.T.A. 1040 (1928).

In other cases, taxpayers have mistaken waivers of restriction on assessments and collection of deficiency in tax (Form 870) for closing agreement counterparts, since some of the express language and conditions approximate elements of a closing agreement; however, waivers are no substitute in situations warranting a closing agreement. They may, however, be executed in conjunction with the closing agreement.

D. Covered Taxable Periods

Closing agreements concerning income tax liability are usually executed for taxable periods ending before the date of the agreement. They determine either the total tax liability of the taxpayer with respect to one or more types of tax for such periods, one or more separate items affecting the tax liability, or both.

Closing agreements that cover a taxable period ending before the date of the agreement are not usually subject to subsequent changes in the law. Rev. Rul. 56-322, 1956-2 C.B. 963, provides that a valid closing agreement establishing final determination of Federal tax liability for a prior taxable period is not affected by

subsequent legislation retroactively applicable to the taxable period covered by the agreement if the legislation is silent as to its effect on closing agreements.

Closing agreements can also cover a taxable period ending subsequent to the date of the agreement. In such a case, the agreement is either for a specific matter or is a combined agreement that covers both prior and subsequent years. Closing agreements executed with exempt organizations will usually be combined agreements, as they will cover the events (and tax liability) that gave rise to the Service's concern, and will provide for future conduct by the organization to assure future compliance.

E. Permanency and Modifications

Agreements for subsequent periods are subject to changes in or modifications of the law enacted subsequent to the date of the agreement and applicable to a covered taxable period or periods. However, a subsequent court decision interpreting and clarifying the law is not a "change in the law" for this purpose. To avoid any possibility of confusion, however, each closing agreement determining specific matters should state this condition. (See IRM 8(13)10:-121(5) & (7)).

A closing agreement that covers the entire tax liability for the specified year is not automatically binding on the "constituent elements" of the tax as they relate to the computation of tax for other years. For example, a closing agreement that determines the total unrelated business income tax liability of an organization for year 1 would not, without a specific provision, bind the Service to accept the same calculation method in subsequent years. Thus, to insure future compliance with the requirements of the law, closing agreements concerning unrelated business income tax should specify allocation methods and deductions to the extent possible with respect to subsequent years.

A closing agreement with respect to a specific item does not necessarily bind any successor to the taxpayer for future years because the Commissioner may lack authority to create successor rules by closing agreements where the successors are not parties to the agreement. Even if the agreement purports to bind successors, there is uncertainty, as it is unclear whether an agreement can bind other presently unidentifiable related or controlled successors in interest who are not parties to the agreement. (See IRM 8(13)10:850(1) & (2)).

Another potential for nullifying an agreement arises when the result is an additional assessment that is inconsistent with the taxing statutes (i.e., based on a groundless and explicitly erroneous application of the law). Although the parties generally have wide latitude in negotiating terms, any adjustment that is clearly contrary to the statute is contestable on the grounds that it is not "in respect of any internal revenue tax". As the Supreme Court stated in Utah Power & Light Co. v. United States, 243 U.S. 389, 409 (1917), ". . . the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit." However, this does not require that the matter be indisputably consistent with the applicable Code provision, as the whole point of closing agreements is to dispose of debatable matters.

Thus, the parties may negotiate the agreement, with the noted exceptions, with assurance that it will conclusively determine the tax liability (or, in our case, also exempt or private foundation status). Because of its finality, great caution should be exercised in entering into an agreement.

3. How a Closing Agreement is Transacted and Implemented

A. General Procedures

There is not yet a revenue procedure specifically applicable to closing agreements concerning exempt organizations. Revenue Procedure 68-16, 1968-1 C.B. 770, sets out general procedures for executing closing agreements that can be adapted to exempt organizations cases. The full text of Rev. Proc. 68-16 is reproduced in **Appendix A**. It discusses formulation and drafting of forms, format, step-by-step instructions, identification of parties and issues, and special circumstances. **Appendix B** presents a sample closing agreement in the exempt organizations domain. The latter is modeled on the Form 906 [Closing Agreement as to Final Determination Covering Specific Matters] pattern, since this is the type most likely to be followed in deciding exempt organizations issues.

A request to enter into a closing agreement for a period ending before the date of the proposed agreement is normally submitted to the District Director with jurisdiction over the particular tax matter, or the Appellate Division if the matter is pending there. A request covering a future tax period is submitted to the Internal Revenue Service National Office in Washington, D.C. except in cases where prior years for that taxpayer are also under examination.

If the situation concerns the final determination of a tax liability, then Form 866 [Agreement as to Final Determination of Tax Liability] is executed. In instances where the determination involves specific matters, or particular items, rather than complete liability, Form 906 is used. In cases where both the complete tax liability and specific matters are to be determined, a typed combined agreement format should be used. Most matters coming under the jurisdiction of the exempt organizations function would probably employ an adaptation of Form 906; a few cases might warrant the combined arrangement.

B. Authority to Enter Closing Agreements

The procedural authority for closing agreements is defined in Reg. 301.7121-1(d). It provides that a request for a closing agreement that relates to a prior taxable period may be submitted at any time before a case with respect to the tax liability in issue is docketed in the Tax Court. Thus, a closing agreement is an option in any case until the taxpayer goes to court. Del. Order No. 97 (as revised) provides, in paragraph 5., that certain officials, including the Assistant Commissioner (Employee Plans and Exempt Organizations), Regional Commissioners, and Chiefs and Associate Chiefs of Appeals Offices, are, upon request of the Chief Counsel or his/her delegate, authorized in cases under their jurisdiction docketed in the Tax Court to enter into and approve closing agreements with respect to tax liability, but only with respect to related specific items affecting other taxable periods.

The authority to approve and sign closing agreements is contained in certain delegation orders. Closing agreements applicable to exempt organizations are covered under Del. Order No. 97 (as revised). Del. Order 97 authorizes the Assistant Commissioner (Employee Plans and Exempt Organizations), Assistant Regional Commissioners (Examination), and District Directors to enter closing agreements concerning tax liability in cases under their respective jurisdictions. The Assistant Commissioner (Employee Plans and Exempt Organizations) may redelegate authority to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) and to the Technical Advisors on the Staff of the Assistant Commissioner (Employee Plans and Exempt Organizations) for cases that do not involve precedent issues. District Directors may redelegate authority, but not below the Chief, Quality Review Staff/Section.

The authority delegated in Del. Order 97 does not include the authority to set aside any closing agreement. That authority is retained by the Commissioner.

IRM 8(13)10, IRC 121(5) provides that agreements having the following characteristics are the types that will be entered into under paragraphs 2 through 6 of Del. Order No. 97:

1. Agreements with respect to taxable periods ended prior to the date of the agreement determining either total tax liability of the taxpayer with respect to one or more types of tax for such periods or one or more separate items affecting such liability or both.

2. Agreements entered into with respect to specific matters related to such periods and affecting future periods. [Emphasis supplied].

Under Del. Order 97, certain agreements are reserved for National Office attention:

a. Competent authority determinations under tax treaties.

b. Cases being litigated by the Department of Justice.

c. Docketed cases where Appeals has released jurisdiction, unless requested by Chief Counsel.

## C. Elements of a Closing Agreement

The closing agreement contains five distinct parts: (1) identification of the parties, (2) introductory clauses, (3) the agreed determination, (4) the ending clause, and (5) the signatures. Because of the finality of these agreements, it is extremely important that they be carefully drafted.

### 1. Headings, Parties, and Introductory Clauses

The top of the agreement contains a standard caption expressing the nature of the document, followed by identification of the parties to the agreement. Next is an enumeration of the matters and the premises upon which the closing agreement is based, which comprise the introduction to the subject matter of the agreement. These items are set out in numbered sentences or paragraphs, each introduced by "Whereas". The "whereas" clauses are the informative and explanatory elements. The actual matters agreed upon are separated from this introductory segment and preceded by the caption "Now it is hereby determined and agreed," ordinarily followed by the qualification "for Federal _____ tax purposes that:...." These items should also, for the sake of clarity, be separately listed in numbered sections and drafted with the view that each is a continuation of the "hereby determined"

phrase. Also, they should each correspond with the respective "whereas" clauses and should be explicitly stated.

In negotiating and drafting the terms of the agreement, the taxpayer should be aware that the closing agreement is not binding upon the Service if there has been a misrepresentation of material fact. Even though inadvertent inaccuracies or omissions are not to be treated as disqualifying misrepresentations, it is possible that they could nevertheless be construed in this light. Thus, the introductory statements should reflect as accurately as possible those facts that are germane to the determinations that follow.

2. The Substance: Agreed Determination

The substance of any particular closing agreement will depend on the facts of the case. However, closing agreements should usually provide that

- The taxpayer must be willing to make a payment (if one is appropriate or required) to the U.S. Treasury in lieu of revocation (and subsequent imposition of income tax) or assessment of unrelated business income tax; and

- The taxpayer must be willing to commit to future compliance, whether by eliminating factors that gave rise to proposed revocation, filing tax returns, for example, Form 990-T, and paying the proper amount of tax, or taking any other steps necessary to bring it into compliance with the exemption requirements.

There should be no uncertainty as to the determination of tax or other amounts to be paid. This should be explicitly stated in dollar amounts rather than percentages or formulas based on contingent evaluations. Also, all effective dates and years involved should be spelled out in any case where they differ from the traditional or usual construction. For example, the dates for the evaluation of net operating assets for purposes of computing certain private foundation excise taxes should be specified if they differ from those prescribed by statute or regulation.

Rev. Proc. 68-16, at section 7.06, recommends that, in general, the Service should avoid agreements based upon executory provisions (i.e., the taxpayer agrees to do something) because of potential difficulties in the event the taxpayer does not perform as agreed upon. However, ruling letters and determination letters to exempt organizations are customarily based on the taxpayer's representations concerning certain future activities or transactions. The issues presented in an exempt organization examination will often call for this type of performance-based

agreement to correct conditions that gave rise to the proposed tax or revocation. For example, if there have been substantial lobbying expenditures and this is based on some internal structural defect linking it with a non-exempt lobbyist, the organization might be asked both to break off its connection with a lobbying group and to make the election under IRC 501(h).

Bearing in mind the hazards of making executory provisions, it is crucial to affirm the acts agreed upon by the taxpayer in connection with the consequences of noncompliance; that is, failing the execution of the agreed changes, certain fixed amounts will be assessed or adverse actions will be taken by definite dates. Also, it is important to spell out the exact dates on or by which the acts will have been executed, acceptable alternative actions, and, to the extent possible, the exact form, including dollar amounts, structural changes, etc., that the corrective measures will take.

The closing agreement should state precisely any agreed-upon ramifications of the closing agreement on subsequent periods. In exempt organization cases, this will typically include a provision that the organization will continue to be recognized as exempt as long as it complies with the terms of the agreement and otherwise qualifies for exemption. The agreement should also expressly state the consequences of any failure by the organization to comply with the agreement.

3. Ending Clause and Signature Authority

The ending clause in the example (Appendix B) relates to the finality and conclusiveness of the agreement, emphasizing the exceptions for misrepresentation and fraud, and the possible supersession of parts of the agreement by the enactment of overriding law or the repeal or revision of the law upon which it is based as this applies to the effective period of the agreement.

Closing agreements are always signed by or on behalf of taxpayers before the Service representatives sign. An agreement tendered with the taxpayer's signature is considered by the Service to be the taxpayer's offer to enter into the closing agreement, which is then signed by the appropriate Service official as a sign of acceptance and approval.

Signature authority for the taxpayer is another area where Service representatives should exercise special caution. Generally, where a return is involved, an examining agent accepts the signature authority of the person signing at face value as being legitimate. However, in cases involving prospective closing

agreements, the Service representative should have had ample exposure to all documents pertaining to competent signature: positions, identities and numbers of the parties. This information can be found in articles of incorporation, by-laws, trust documents or other governing instruments, or sometimes in separate riders to these records. Where it is not clear, the Service representative should confer with officials that are authorized to make decisions on behalf of the organization. Thus, the prima facie evidence that the signature is binding on the organization is rebuttable (See IRM 8(13)10:344.(11)). One of the consequences of accepting signature authority without such inquiry could be invalidation of the agreement as a binding instrument during a future investigation into a possible breach of the agreement.

In cases where the actual taxpayer does not sign the agreement, then careful attention must be paid to the authority of the person signing to bind the taxpayer. Section 6.07 of Rev. Proc. 68-16 spells out the evidence of authority to be attached to any such agreement not signed by the taxpayer. There are also specific instructions regarding signature authority in this section for power of attorney holders, decedents and estates, trusts, dissolved corporations, partnerships, insolvent taxpayers, and guardians other than court-appointed fiduciaries. A power-of-attorney must expressly provide authorization to execute an agreement.

4. Preparation and Processing

A closing agreement may be proposed by either the taxpayer or the Service. Typically, the exempt organizations agent will advise the taxpayer of the opportunity to enter negotiations for a closing agreement when advising it of the probable adverse conclusion. However, the taxpayer does not need to wait for the Service offer. In fact, the taxpayer does not even need to be under examination or in the process of requesting a private letter ruling. An exempt organization that is not under examination but which has an exemption or tax issue that might be eligible for the closing agreement program can voluntarily ask the Service to execute a closing agreement.

In some cases, the taxpayer or its representative may prepare the entire agreement and submit it before or after signature for consideration by the Service representative or the taxpayer might rely upon the concerned Service personnel to draft the agreement. In most cases, it would be preferable for the Service and taxpayer representatives to collaborate in drafting the agreement.

IRM 8(13)10 provides instructions and prescribed procedures for district and regional Service personnel handling closing agreements entered into under IRC 7121. Instructions specifically for exempt organizations will be issued in IRM 7(10)69, Exempt Organizations Examination Guidelines Handbook.

4. Distinctive EO Applications of the Closing Agreement

In non-EO contexts, closing agreements have been used where a taxpayer seeking to consummate a sale of stock needs to determine the tax liability before the deal can be completed; where a taxpayer seeks nonrecognition of gain on liquidation of certain foreign corporations under IRC 332(a); where the issue is whether a deficiency dividend deduction under IRC 547 should be allowed; to provide relief from economic distress in cases involving double taxation of foreign interests; where a taxpayer needed to fulfill creditors' demands for authentication of its tax liability; to determine cost, fair market value, or adjusted basis as of a given past date; and to determine the amount of a net operating loss. Common to these cases is the taxpayer's need to ensure certainty of the tax liability or the fact that attempting to assess and/or collect the tax would be cumbersome and unproductive for the Service as well as a burden on the taxpayer.

In general, favorable occasions for executing closing agreements with exempt organizations would be situations in which revocation of exemption is supported by the facts, but would appear harsh or excessive. For example, where revocation for narrow technical infractions would jeopardize the organization's ability to continue its charitable operations. If, in the judgment of the Service, the technical flaws could be eliminated definitively through changes in the organization's operations or procedures, then this alternative should be explored. However, if it is apparent that an organization has engaged in flagrant and continuous acts compelling revocation and has not been operating in good faith, then the closing agreement is not a practical remedy.

With the above stipulations, some exempt organizations circumstances where the closing agreement might be a useful procedure include, but are not limited to, the following hypothetical situations; it is emphasized that the following are merely suggestive and are not meant to be prescriptive, since facts and circumstances may vary widely:

> Certain closely controlled IRC 501(c)(3) organizations are, essentially, established from the personal holdings of the founder. The organization, typically, operates out of the founder's home, and

accumulates assets that may not be readily segregated from the founder's personal assets because of functional duality of certain cooperatively employed assets, such as the home, automobile, etc. Certain funds of the exempt organization might be commingled with the founder's personal funds. The founder applies all of the funds to operate the exempt organization and provide for his or her personal living expenses as well, either in lieu of a salary or supplemental to a nominal salary that does not cover EO-related expenses. In cases where there appears to be no avaricious intent on the part of the founder, it might be possible to execute a closing agreement that would result in a well-defined accounting system that would be more reflective of the respective personal and exempt function areas.

Certain hospitals or universities have been meeting a legitimate community need, but a few executives have used their positions for personal gain. These transgressions have not discernibly diminished the organization's benefits to the community. It should be possible to reach an agreement with the institution to curtail the offending behavior or remove the offending individuals without depriving the community of the organization's valued services.

Hospitals have been known to "dump" patients; that is, to divert emergency patients who are uninsured and unable to pay to other, more accessible, hospitals. This may be identified during examination. News reports or complaints about alleged dumping may even have led to initiation of the examination. This practice is contrary to the requirements that exempt hospitals accept "charity" patients to the extent of their financial resources. However, if the hospital's practice is not pervasive and not the result of a generally hostile attitude towards treating indigent or non-reimbursable cases, the hospital might be afforded the opportunity to formally rescind and reverse the policy.

Charitable organizations may inadvertently advertise full deductibility of amounts paid to the exempt organization for fundraising events, such as prizes, admissions to entertainment or recreational activities, sale of products, etc. Similarly, a school may have promulgated the erroneous notion that parents may deduct a portion of their child's tuition as a contribution under IRC 170. In many cases, these

incidents are one-time occurrences and are not reflective of any willful intent to defraud prospective donors or patrons.

Social clubs, exempt under IRC 501(c)(7), are another area in which some cases could be resolved by closing agreements. In some instances, where there is only a marginal failure to adhere to the 15-35% nonmember income threshold, and the "facts and circumstances" show that substantially all the club's other activities further IRC 501(c)(7) purposes, a closing agreement might be negotiated wherein the organization would agree to reduce its nonmember activities within a certain time frame. An agreement, wherein the club would pay unrelated business income tax on all non-member and investment income generated during the tax periods under examination and agree to discontinue the activity and/or maintain more reliable records accurately reflecting member income, might be appropriate where the non-member income has been sporadic and insignificant.

In the case of veterans' organizations exempt under IRC 501(c)(19), situations might arise when the organization narrowly fails the percentage of membership test through interpretative difficulties. Some of these might warrant an interim period wherein the organization could correct its roster.

The above examples are illustrative rather than prescriptive. The closing agreement is a privilege, not a right. Thus, it is not automatically granted to an organization or individual seeking this remedy; its application is discretionary with the Service. Accordingly, before considering this course of action, Service officials should be satisfied that the taxpayer has operated in good faith and that the events giving rise to the agreement are incidental and inadvertent, not part of a pattern of abuse. The closing agreement is not a viable alternative to revocation or imposition of tax where there are flagrant violations stemming from a deliberate intent to exploit the advantages conferred by tax exemption. It also should be remembered that there are some intermediate measures available to the EO specialist, such as limiting the retroactivity of any revocation of exemption or imposition of unrelated business income tax, allowance of deductions in computing the latter, or discretion in the effective date of the imposition of private foundation excise taxes.

# APPENDIX A

Rev. Proc. 68-16

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to explain procedures applicable to the processing of closing agreements by the Internal Revenue Service under section 7121 of the Internal Revenue Code of 1954 and to present guidelines and illustrations useful in the preparation of closing agreements. This Procedure does not, however, discuss procedures with respect to closing agreements entered into and approved in connection with rulings prepared by the office of the Assistant Commissioner (Technical) (discussed in Revenue Procedure 67-1, C.B. 1967-1, 544).

SEC. 2. BACKGROUND.

.01 Effective July 1, 1966, Commissioner's Delegation Order No. 97 (Rev. 2), C.B. 1966-2, 1189, while continuing prior delegations of closing agreement authority to the Assistant Commissioners (Compliance) and (Technical) and to district directors in Revenue Procedure 64-24, C.B. 1964-1 (Part 1), 693, cases and conveying certain authority to the Director of International Operations, authorized Regional Commissioners, Assistant Regional Commissioners (Appellate), and Chiefs and Associate Chiefs of regional Appellate Division offices to enter into certain closing agreements. This decentralization of authority covered closing agreements in cases under district or regional office jurisdiction pertaining to tax liability for any taxable period ended prior to the date of the agreement (except in cases docketed in the Tax Court of the United States and except as noted in section 2.02) and those pertaining to specific items related to taxable periods under the jurisdiction of district or regional offices and affecting other taxable periods (except as noted in section 2.02). A practical effect of the foregoing delegation is that most closing agreements are signed by Chiefs and Associate Chiefs or regional Appellate Division offices. Those officials sign closing agreements in cases under their jurisdiction as well as those recommended by district directors in cases under 1968-1 C.B. 770; 1968 IRB the jurisdiction of the latter.

.02 Under Delegation Order No. 97 (Rev. 4) the following categories of closing agreements will be signed in the National Office:

1 Those arising out of and pertaining to cases where Regional Counsel or Chief Counsel has jurisdiction, such as certain bankruptcy cases, Tax Court cases in session status, and Tax Court cases in pre-session status if in such latter cases the closing agreements cover issues subject to final decision by Chief Counsel under paragraph 1(a)(3) of Delegation Order No. 60, C.B. 1958-1, 681;

2 Those arising out of and pertaining to cases in litigation under the jurisdiction of the Department of Justice;

3 Those entered into and approved by the Director of International Operations: (a) as competent authority in the administration of the operating provisions of the tax conventions of the United States, (b) providing for the mitigation of economic double taxation under section 3 of Revenue Procedure 64-54, C.B. 1964-2, 1008, and (c) providing for both such mitigation and relief under Revenue Procedure 65-17, C.B. 1965-1, 833;

4 Those pertaining to prospective transactions and some of those pertaining to completed transactions affecting returns to be filed (including those agreements entered into in connection with the issuance of rulings as noted in section 1); and

5 Those pertaining to specific items related to taxable periods docketed in the Tax Court but not affecting other taxable periods.

.03 As a result of the foregoing changes, it became necessary to institute new procedures for the routing and processing of closing agreements. In connection with an explanation of the procedural changes effected, it also appears desirable to discuss the general guidelines followed by the Service in the preparation and review of closing agreements and to make available some illustrative examples upon which closing agreements may be patterned. This Procedure has been prepared to better acquaint interested taxpayers and practitioners with the foregoing procedures and guidelines and to provide them with some examples reflecting format and content for closing agreements in typical circumstances.

SEC. 3. GENERAL.

.01 A closing agreement under section 7121 of the Code is, as the name implies, an agreement pursuant to statute. Section 7121 of the Code states that such an agreement may be entered into with "any person." There need be no tax liability with respect to the period to which the closing agreement relates. Section 301.7121-1(a) of the Administrative Regulations provides that "A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of such an agreement." Subject to the guidelines provided by the regulations, whether or not an agreement will be entered into is a matter within the Commissioner's discretion and, therefore, within the discretion of those to whom he has delegated his authority to enter into and approve such agreements. In practice if the taxpayer shows good reasons for requesting the agreement and furnishes necessary facts and documentation, and the Government will suffer no disadvantage therefrom, a closing agreement will ordinarily be entered into provided the content of the agreement can be satisfactorily agreed upon. No request to enter into a closing agreement will be denied solely because granting the request would result in no apparent advantage to the Government.

.02 Agreements with respect to taxable periods ended prior to the date of the agreement may determine either the total tax liability of the taxpayer with respect to a specified type of tax for such periods or one or more separate items affecting such liability or both. Agreements may be entered into with respect to specific matters related to such periods and affecting those or

other periods. To the extent provided in section 2, agreements having the foregoing characteristics are the types that may be entered into by field office officials under Delegation Order No. 97 (Rev. 4). There may be more than one closing agreement relating to the tax liability for a single period, although no such agreement may modify any matter previously determined by closing agreement except as provided by statute. A closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in or modification of law enacted subsequent to the date of the agreement and applicable to such taxable period and each such closing agreement should so recite.

.03 A closing agreement determining tax liability may be entered into at any time before such liability determination becomes a matter within the province of a court of competent jurisdiction and may thereafter be entered into in appropriate circumstances when authorized by the court (e.g., in certain bankruptcy situations). For example, a closing agreement must not determine the amount of tax liability (or deficiency or overpayment) for any taxable periods over which the Tax Court has jurisdiction since the liability for such docketed years is fixed by the Tax Court. During the litigation of a case a specific matter closing agreement can be entered into with respect to a specific item related to the taxable period in litigation (in such agreements entered into by regional officials pertaining to taxable periods docketed in the Tax Court the specific item must affect other taxable periods). Where a closing agreement is secured in a case in litigation it is ordinarily necessary to secure stipulations, which are held in escrow while the agreement is being processed.

.04 Section 301.7121-1(d)(2) of the regulations provides that any tax or deficiency or overpayment in tax determined pursuant to a closing agreement shall be assessed and collected or credited and refunded in accordance with the applicable provisions of the law.

SEC. 4. EXAMPLES OF USE OF CLOSING AGREEMENTS.

.01 A determination of tax liability by closing agreement may be entered into for good reasons shown by the taxpayer where there is no disadvantage to the Government or where desired by the Government. Representative of acceptable reasons for entering into such agreements are the following circumstances:

1 The taxpayer wishes to definitely establish its tax liability in order that a transaction may be facilitated, such as the sale of its stock.

2 The fiduciary of an estate desires a closing agreement in order that he may be discharged by the court.

3 The fiduciary of a trust or receivership desires a final determination before distribution is made.

4 A corporation in the process of liquidation or dissolution desires a closing agreement in order to wind up its affairs.

5 A taxpayer wishes to fulfill creditors' demands for authentic evidence of the status of its tax liability.

6 Where proposed assessments are contested on the theory that the years are barred and the parties wish to agree, with finality, to some portion or all of the assessments.

7 A taxpayer wishes to assure itself that a controversy between it and the Service is conclusively disposed of.

8 To determine personal holding company tax in order to permit deficiency dividends under section 547 of the Code.

.02 A determination of one or more specific matters may be accomplished by closing agreement for good reasons shown by the taxpayer where there is no disadvantage to the Government or where desired by the Government. A few examples of circumstances that may merit entering into such closing agreements are as follows:

1 To determine cost, fair market value, or adjusted basis as at a given past date. It may be desirable to have both an estate and its legatees or devisees (or both donors and donees) sign such agreements.

2 To dispose of cases pursuant to Revenue Procedure 65-17, C.B. 1965-1, 833, and Amendment I, C.B. 1966-2, 1211. See sections 2.023, 5.06 and 11.013 of this Procedure and Exhibit C.

3 To dispose of cases pursuant to Revenue Procedure 64-54, C.B. 1964-2, 1008, and Revenue Procedure 66-33, C.B. 1966-2, 1231. See sections 2.023 and 5.06 of this Procedure.

4 To dispose of certain interest income cases pursuant to Revenue Procedure 64-24, C.B. 1964-1 (Part 1), 693. See sections 2.01 and 5.05 of this Procedure, and Revenue Procedure 66-27, C.B. 1966-1, 655.

5 To determine the amount of a net operating loss.

6 To provide determinations for disposition of cases involving sections 1311 to 1315 of the Code.

7 To determine an alternative method of adjusting basis under section 1.1017-2 of the Income Tax Regulations as a result of receipt of income from cancellation of indebtedness under section 108(a) of the Code. See section 11.012 of this Procedure and Exhibit B.

8 To prevent inconsistencies in "whipsaw" situations such as those that could result where a related taxpayer concedes an issue (with the result that the other related party obtains a benefit) and then subsequently, after the statutory period of limitations has expired against the other related party, contests the issue by filing a claim. A typical example would be a "widow payment" case where the corporation is allowed the deduction and the widow assents to

the inclusion of the payments in income, subject to the $5,000.00 exclusion under section 101(b) of the Code.

9 To determine the consequences of deferred intercompany transactions of domestic public utilities (see section 1.1502-13(j) of the regulations).

10 To determine the amount of income from a transaction, the amounts of deductions or the year of includibility or deductibility.

11 To enable a taxpayer to comply with section 963(e)(2) of the Code and section 1.963-6 of the regulations by payment of deficiency dividends in certain cases involving controlled foreign corporations.

SEC. 5. AUTHORITY AND JURISDICTION.

.01 Section 7121 of the Code empowers the Secretary of the Treasury or his delegate to enter into closing agreements. Treasury Department Order No. 150-32, dated November 18, 1953, transferred all of the Secretary's closing agreement functions to the Commissioner of Internal Revenue. Treasury Department Order No. 150-36, dated August 17, 1954 [C.B. 1954-2, 733], continued that delegation under the 1954 Code. Section 4 of Public Law 86-368 [C.B. 1959-2, 705] (September 22, 1959) continued the effectiveness of the foregoing delegations. Pursuant to the aforementioned authority, the Commissioner has redelegated authority to enter into and approve closing agreements. The redelegation is presently embodied in Delegation Order No. 97 (Rev. 4), effective March 13, 1967, C.B. 1967-1, 528. The redelegation does not, however, delegate the Commissioner's authority to set aside closing agreements.

.02 Paragraph 1 of Delegation Order No. 97 (Rev. 4) confers upon the Assistant Commissioner (Compliance) with regard to alcohol, tobacco, and certain firearms taxes the authority to enter into closing agreements with respect to prospective transactions and completed transactions affecting returns to be filed for such taxes. After conveying similar authority to the Assistant Commissioner (Technical) with respect to all other categories of taxes, the Order, in paragraph 3, confers upon the Assistant Commissioner (Compliance) the authority to enter into closing agreements relating to tax liability for periods ended prior to the date of the agreement and agreements covering specific items related to such periods and affecting other taxable periods. Agreements under paragraph 3 of the Order may relate to any class of tax administered under the authority of the Commissioner of Internal Revenue. As previously noted, authority similar to part of that contained in said paragraph 3 has also been delegated by the Order (Rev. 4), to certain field officials. Those agreements which field officials cannot sign, which are agreements not within the provisions of paragraphs 4, 5, and 7 of the revised Order, are ordinarily signed by the Assistant Commissioner (Compliance) except as provided in paragraphs 2 and 6 of the revised Order.

.03 Paragraph 4 of Delegation Order No. 97 (Rev. 4) confers upon Regional Commissioners, in cases under their jurisdiction, the authority to enter into and approve closing agreements with respect to taxable periods ended prior to the dates of such agreements (other than Tax Court cases) and with respect to related specific items affecting other taxable periods.

Paragraph 5 of the Order authorizes Regional Commissioners, in docketed Tax Court cases under their jurisdiction, to enter into closing agreements with respect to related specific items affecting other taxable periods. It will be noted that there are two general limitations on the closing agreement authority of Regional Commissioners. The first is that the agreements must be with respect to cases under their jurisdiction. The second is that such agreements must pertain to taxable periods ended before the dates of such agreements or to specific items related to such periods and affecting other taxable periods. Regional Commissioners are not authorized to sign closing agreements pertaining to prospective transactions. Such agreements are handled by the offices of the Assistant Commissioners (Technical) and (Compliance) as explained in section 5.02. Regional Commissioners have not been delegated authority to sign those closing agreements which must be forwarded to the National Office for signature as explained in section 2.02. In practice it is contemplated that closing agreements will not ordinarily be signed by the Regional Commissioners but by Chiefs and Associate Chiefs of Appellate Branch Offices in most cases. The Regional Commissioner will execute agreements within his signing authority that Appellate officials and District Directors are not authorized to sign.

.04 Regional Appellate Divisions.

1 Paragraph 4 of Delegation Order No. 97 (Rev. 4) confers upon Assistant Regional Commissioners (Appellate) and Chiefs and Associate Chiefs of Appellate Branch Offices, in cases under their jurisdiction and in cases in which closing agreements have been recommended by offices of District Directors, the authority to enter into and approve closing agreements with respect to taxable periods ended prior to the dates of such agreements (except taxable periods docketed in the Tax Court) and with respect to related specific items affecting other taxable periods. Paragraph 5 of the revised Order authorizes the foregoing officials, in Tax Court cases under their jurisdiction, to enter into closing agreements with respect to related specific items affecting other taxable periods. It will be noted that there are two general limitations on the closing agreement authority of the foregoing officials. The first is that the agreements must be with respect to cases under their jurisdiction or under the jurisdiction of a District Director. The second is that such agreements must pertain to taxable periods ended before the dates of such agreements or to specific items related to such periods and affecting other taxable periods. Appellate officials are not authorized to sign closing agreements pertaining to prospective transactions. Such agreements are handled by the offices of the Assistant Commissioners (Technical) and (Compliance) as explained in section 5.02. Appellate officials have not been delegated authority to sign those closing agreements which must be forwarded to the National Office for signature as explained in section 2.02. In practice, it is intended that closing agreements coming within Appellate authority will be signed by Chiefs and Associate Chiefs of Appellate Branch Offices, rather than by Assistant Regional Commissioners (Appellate).

2 Section 601.202(b) of the Statement of Procedural Rules provides "A request for a closing agreement which determines tax liability may be submitted at any time before the determination of such liability becomes a matter within the province of a court of competent jurisdiction." Where the case is docketed in the Tax Court and is still under the joint jurisdiction of the regional Appellate Division and the Regional Counsel (i.e., has not reached session status), an agreement may be entered into by a Chief or Associate Chief (with the prior concurrence of

Regional Counsel) with respect to a specific matter related to the docketed taxable period and affecting other taxable periods. Execution for the Commissioner is ordinarily deferred until necessary stipulations are secured and placed in escrow. If the case is in session status, such an agreement is obtained by Regional Counsel or Chief Counsel, reviewed in the office of the Director, Appellate Division, and sent to the Assistant Commissioner (Compliance) for approval and signature (or reviewed, entered into and approved by the Director of International Operations if he has signing authority - see section 2.023). Consistent with the foregoing, other closing agreements pertaining to taxable periods coming within the jurisdiction of the Chief Counsel will also be reviewed and signed in the National Office, as indicated in section 2.021. If a case is in litigation under the jurisdiction of the Department of Justice, a closing agreement requested by that Department to give effect to an agreed upon disposition of part of the matters in issue in the taxable period in litigation (even though it may directly apply only to taxable periods not in litigation) is forwarded to the office of the Assistant Commissioner (Compliance), through the Director, Appellate Division, for signature (or directly to the Director of International Operations if he has signing authority, see section 2.023). Where closing agreements are obtained in session settlements of Tax Court cases or in cases under the jurisdiction of the Department of Justice, the Chief Counsel's recommendation for acceptance of such agreement and the basis therefor are contained in a memorandum from the Chief Counsel to the Assistant Commissioner (Compliance), through the Director, Appellate Division (or to the Director of International Operations where applicable).

3 Regional Appellate Division jurisdiction with respect to closing agreements recommended by District Directors relates only to the acceptability or nonacceptability of the closing agreements. Therefore, Appellate offices are only responsible for the review of those facets of the cases having a bearing on the acceptability of such agreements. Where, for example, a closing agreement as to total income tax liability is recommended, this will necessitate a review of the whole income tax case for that taxable period. Where only specific matters are covered by the closing agreement, only such review will be made as will satisfy the Appellate office as to the acceptability of the agreement covering such matters. The Appellate review encompasses an independent judgmental evaluation and the adequacy of the supporting record and the legal effect of the agreement.

.05 Paragraph 7 of Delegation Order No. 97 (Rev. 4) authorizes District Directors in cases under their jurisdiction to enter into and approve closing agreements with respect to the taxability of earnings from deposits or accounts of the types described in Revenue Procedure 64-24, C.B. 1964-1 (Part 1), 693. (See also Rev. Proc. 66-27, C.B. 1966-1, 655.) Such agreements provide that if such accounts or deposits were opened prior to November 15, 1962, earnings thereon are not includible in gross income until the account either matures or terminates, whichever is earlier. Such agreements also provide that the full amount of such earnings will constitute gross income in the year the account or deposit matures, is assigned, or is terminated, whichever occurs first. Therefore, District Directors will ordinarily execute such closing agreements, rather than forward them to Appellate offices with recommendations for approval. If, however, a closing agreement covering such a specific matter also covers other matters or determines tax liability, such agreement will be forwarded to the Appellate office for review and execution. Except as previously stated in this paragraph and in section 2.02, in a case under district jurisdiction where a closing agreement is recommended, that agreement and the file are

forwarded for signature to the regional Appellate office customarily handling protested cases from that district.

.06 Paragraph 6 of Delegation Order No. 97 (Rev. 4) authorizes the Director of International Operations to enter into and approve closing agreements as competent authority in the administration of the operating provisions of the tax conventions of the United States and closing agreements providing for the mitigation of economic double taxation under Section 3 of Revenue Procedure 64-54, C.B. 1964-2, 1008. To facilitate the handling of cases involving relief under both Revenue Procedure 64-54 and Revenue Procedure 65-17, C.B. 1965-1, 833, the revised Order also authorizes the Director of International Operations to enter into and approve closing agreements providing combined relief under both Revenue Procedures. To avoid coordination problems, such closing agreements ordinarily will not contain determinations with respect to matters other than those essential to determinations affording relief under the two Revenue Procedures. If such other determinations are included in a closing agreement of this type (and do not come within the provisions of section 2.02), the other determinations must be cleared with and approved by the Appellate branch office having jurisdiction in the case (or having review jurisdiction with respect to closing agreements from the district having jurisdiction in the case) before approval and execution of the agreement by the Director of International Operations. Where there is lack of district or regional Appellate Division jurisdiction, such as in an agreement arising out of and pertaining to a case in litigation under Department of Justice jurisdiction or a session settlement of a Tax Court case, such agreements need not be cleared through a regional Appellate Division office (except to effect coordination where desirable).

SEC. 6. MATTERS OF FORM.

.01 Form 866, Agreement As To Final Determination of Tax Liability.

1 Final determinations of tax liability pursuant to section 7121 of the Code are ordinarily reflected on Form 866. See section 6.09 as to the number of copies required. In those few cases where space on the form is insufficient for the content, the entire agreement should be typed out on plain bond paper. Typed out agreements should ordinarily contain all the printed provisions reflected on Form 866.

2 A determination of tax liability must reflect the total corrected tax liability (specifying type of tax and period covered, date of death etc.) after giving effect to all applicable credits which reduce the liability imposed but not taking into account those credits which represent payment of the liability. Exhibit D illustrates such an agreement. In such agreements the amounts of deficiencies, overassessments, or overpayments are not ordinarily reflected. Where any matter in addition to tax liabilities is to be finally determined by the agreement, a combination agreement should be used, as explained in Section 6.03.

.02 Form 906, Closing Agreement As To Final Determination Covering Specific Matters. Final determinations of specific matters pursuant to section 7121 of the Code are ordinarily reflected on Form 906. Where the space provided on the form is insufficient, after utilizing the first page of the form the content may be continued on additional pages (adequately identified)

inserted between the pages of the form or the entire agreement may be typed on plain bond paper. See Section 6.09 as to the number of copies required. Completely typed agreements should ordinarily contain all the printed provisions reflected on Form 906.

.03 Combined Agreements. Neither Form 866 nor Form 906 is specifically designed for closing agreements which determine both tax liability and specific matters. Instead, a typed combined agreement should be used employing the format and beginning and ending standard language reflected in Exhibit F. However, the last page of Form 906 may be used as the last page for such an agreement since the concluding provisions of a combined agreement should ordinarily be identical with those of Form 906.

.04 Identification of Parties.

1 The names of all taxpayer parties to the closing agreement should be accurately set forth at the beginning of the agreement and in the signature thereto. Where one or more tax returns involved do not reflect the correct name, this should be briefly noted in the introductory portion of the agreement. The taxpayer identifying number should ordinarily be shown at the beginning of the agreement.

2 Where the taxpayer's name has been changed since the beginning of the first taxable period affected by the closing agreement, this should be briefly explained in one of the introductory clauses of the agreement. Similarly, important relationships should be explained. For example, if a common parent corporation is entering into the agreement on behalf of all the members of the consolidated group, it is generally preferable to so state, giving the names of the affiliates (but see section 6.072).

3 On a completely typed agreement, if the taxpayer party to the agreement is referred to in the body of the agreement as the "taxpayer," that party should be so identified at the beginning of the agreement by placing the word "taxpayer" as an appositive immediately following the name. An additional taxpayer party can be designated as an "other party" and subsequently so referred to in the agreement. If shortened versions of proper names are to be used in referring to parties, or others, the introductory portion of the agreement should explain this.

4 Where the closing agreement (exclusive of attachments) consists of more than one page, each page after the first should be identified as a closing agreement, stating the taxpayer's name, in a manner equivalent to: "Closing Agreement With (name of taxpayer)." Where there are several parties to the agreement, the name of the first named party in the agreement plus "et al." may be used in the foregoing illustration to identify the second and succeeding pages.

.05 Arrangement of Content.

1 As reflected in the exhibits to this Procedure, closing agreements follow a standard logical format. They should begin with the standard caption at the top which states the nature of the document. Thereafter, the parties to the agreement should be identified (see section

6.04). In agreements determining tax liability only, the format of Form 866 should ordinarily be followed throughout. In agreements determining [*26] both tax liability and specific matters, the format reflected in Exhibit F should be followed. Provisions of an agreement should not be reflected on the reverse side of a page. The following guidelines, except as otherwise noted, apply primarily to closing agreements determining specific matters.

2 The identification of the parties is followed by one or more WHEREAS clauses which serve to introduce the subject matter of the agreement and state premises upon which it is based. These clauses should ordinarily be brief as demonstrated in Exhibits A through C.

3 It is important to distinguish between matters which are merely informative and explanatory and matters which are being agreed upon. The former should be segregated from the latter and should ordinarily be reflected in the introductory recitals contained in the WHEREAS clauses mentioned in section 6.052. To emphasize the transition from recitals to matters being determined and agreed upon, the latter should be separate from and follow the WHEREAS clauses and should ordinarily be preceded by the caption "NOW IT IS HEREBY DETERMINED AND AGREED," usually followed by the qualification "for Federal (type of tax) purposes that:" For clarity, the matters being agreed upon should generally be logically grouped in separate numbered determination clauses. Each such clause should ordinarily be drafted with the view that it is a continuation of the statement "NOW IT IS HEREBY DETERMINED AND AGREED for Federal (type of tax) tax purposes that:"

4 An agreement determining only tax liability should ordinarily end with provisions identical to those printed in the concluding portion of Form 866. Combined agreements (see section 6.03) or agreements determining specific matters only should ordinarily end with provisions identical to those printed in the concluding portion of Form 906. These provisions should be followed by the dated signatures of the parties (see section 6.07 with regard to execution). See section 6.11 with respect to attachments. Where agreements are more than one page in length, it is preferable to number pages as "Page 1 of 4," "Page 2 of 4," etc.

.06 Dating. The official signing on behalf of the Commissioner reflects the date of his signature since that is the day the agreement becomes effective. The date of the taxpayer's signature should also be shown (see section 6.071(a)).

.07 Execution by the Taxpayer.

1 GENERAL.

(a) Closing agreements are always signed by or on behalf of the taxpayer before they are signed for the Commissioner. The former signature ordinarily constitutes an offer to agree (or is a constituent part thereof) and the latter an acceptance and approval. All copies should be signed by or for all parties, except as provided in sections 6.0710 and 6.102.

(b) Signatures should be reflected at the end of the agreement or, where there are attachments (see section 6.11), at the end of the main body of the agreement. The signatures should not be on a page by themselves. Ordinarily, in completely typed agreements, the page

bearing the signatures should contain at least two lines of the clause immediately preceding the execution clause. Attachments and pages other than the signature page should not be signed and ordinarily need not be initialed (but see section 6.12 with respect to erasures or alterations), but there is no objection to the initialing of such pages by the taxpayer if he so desires. (c) The signature of a corporate officer on behalf of a corporation should be preceded by the name of the corporation and followed by the officer's title. Signatures of trustees and executors should similarly reflect the name of the taxpayer, the signature and the fiduciary capacity of the signer. See also section 6.13 with respect to joint returns.

2 CONSOLIDATED RETURNS.

Sections 1.1502-16A and 1.1502-77 of the Income Tax Regulations provide, in general, that the common parent may act as agent for other members of the affiliated group. This general rule does not apply in all situations (for example, in some post disaffiliation circumstances), however, and the regulations should be carefully read before concluding that the parent may sign for and bind its affiliates in the particular case involved. See also section 6.042.

3 POWER OF ATTORNEY HOLDER.

General instructions with respect to powers of attorney are contained in sections 601.501 to 509, inclusive, of the Statement of Procedural Rules. Such instructions authorize the execution of closing agreements by power of attorney holders where expressly so authorized in the powers. Form 2848, Power of Attorney, contains provisions to that effect. If counsel of record in a case being litigated signs the closing agreement for the litigant, he must submit a power of attorney authorizing him to do so.

4 DECEDENTS AND THEIR ESTATES.

The agreement should be executed by the executor or administrator if one has been appointed and is acting and responsible for disposition of the matter. An attested copy of the letters testamentary or the order of the court vesting such person with authority so to act, and a recent certificate to the effect that such authority remains in full force and effect, should be submitted with the agreement under such circumstances. In the event that a trustee under the will is acting with respect to the matter agreed upon, the agreement should be executed by the trustee. If both the executor and trustee are functioning and the matter affects both, the agreement should be signed by both. The file should include appropriate evidence of the authority of the trustee to act. If no executor, administrator, or trustee under the will is currently responsible for disposition of the matter and the estate has been distributed to the residuary legatees, the agreement should be executed by the residuary legatee or legatees. Where feasible under the jurisdiction and the circumstances, there should be submitted a statement from the court certifying that no executor, administrator, or trustee under the will is acting or responsible for disposition of the matter, naming the residuary legatees and indicating the proper share to which each is entitled. Alternatively, copies of court orders containing such evidence may suffice. In the event that a decedent died intestate and the administrator has been discharged and is not responsible for disposition of the matter, or none was ever appointed, the agreement must be executed by the distributees. Where applicable, evidence should be submitted of the discharge of the

administrator (if one had been appointed) and evidence that the administrator is not responsible for disposition of the matter. Such submission should also include statements made under the penalties of perjury with other appropriate available evidence tending to show the relationship to the deceased of the signatories to the agreement and the right of each of them to the respective shares claimed under the applicable law. If appointment of a fiduciary is imminent, it may be preferable to defer execution of the agreement until the appointment is made. Where there are coexecutors or coadministrators all should sign the closing agreement unless it is shown that less than all have the authority to act.

5 TRUSTS.

(a) A closing agreement in which a trust is a party should be signed by the trustee or trustees. In cases where there is more than one trustee appointed, all should join unless it is shown that less than all have authority to act. Adequate documentary evidence of the authority of the signing trustees to act should be submitted. Evidence of trustees' authority should include either a copy of the trust instrument (possibly a will), properly certified, or a certified copy of pertinent extracts from the trust instrument (or will), and should establish: (1) The date of the instrument, (2) That it is or is not of record in any court, (3) The beneficiaries, (4) The appointment of the trustee, the authority granted, and such other information as may be necessary to show that such authority extends to Federal tax matters, and (5) That the trust has not been terminated, and that the trustee appointed therein is still acting. (b) A self-serving affidavit by the trustee in this connection will not be considered appropriate evidence. In the event that the trustee appointed in the original trust instrument is no longer acting and has been replaced by another trustee, adequate documentary evidence of the appointment of the new trustee should be submitted.

6 DISSOLVED CORPORATIONS.

If a liquidating trustee or trustee under dissolution is appointed, or if a trustee derives authority over the corporation under a state statute, the agreement should be executed by such trustee. If there is more than one trustee, all must join unless it is established that less than all have authority to act in the matter. There should be submitted a copy of the instrument under which the trustee derives his authority, properly authenticated, and evidence that such authority remains in full force and effect. If the authority is derived under a state statute, citation or quotations from such statute should be submitted as well as a statement made under the penalties of perjury setting forth the facts required by the statute as a condition precedent to the vesting of the authority in said trustee and stating that the trustee's authority has not been terminated. If the trustee's entering into the agreement is approved by a court, evidence of such approval must be submitted.

7 PARTNERSHIPS.

(a) While closing agreements determining the effect of partnership operations on the taxable income of individual partners are ordinarily entered into with the partners (and usually their spouses) as individual taxpayers, closing agreements may be entered into with partnerships relating to the taxable treatment of partnership transactions. In such cases, the

partnership should be named as a party to the agreement and the signatures of the partners should be preceded by the name of the partnership and followed by a reflection of the legal capacity in which they sign, ordinarily as a "Partner."

(b) If the agreement is not signed by all partners, the signer or signers must confirm and explain their authority to bind the partnership. Appropriate evidence to that effect will be required.

(c) A closing agreement with a dissolved partnership should be signed by each of the former partners. In case some of the partners are dead, their legal representatives should sign instead. If, however, under the laws of the particular state, surviving partners at the time of the execution of the agreement have exclusive right to the control and possession of the firm's assets for the purpose of winding up its affairs, their signatures alone may be sufficient. If only the surviving partners sign the agreement, they should submit a citation to and extract from the pertinent provisions of the state law under which they claim authority exclusive of the legal representatives of any deceased partners.

8 INSOLVENT TAXPAYER.

There should be submitted a certificate from the court having jurisdiction over the insolvent showing the appointment and authority of the trustee or receiver and that his authority has not been terminated. In cases pending before a district court of the United States, an authenticated copy of the order approving the bond of the trustee or receiver may meet this requirement. If an attorney has been appointed under authority of the court for the trustee or receiver, a copy of the court order appointing such attorney (where he is to represent the trustee or receiver) should be submitted. If no attorney has been appointed, the trustee or receiver should execute the agreement and the above-described evidence should be submitted showing the appointment of the trustee or receiver. If the trustee or receiver does not wish to appoint an attorney, he will be recognized upon establishing his authority in the manner described above. A copy of the pertinent court order or other adequate evidence of court authorization to enter into the closing agreement, or evidence of court approval of the proposed closing agreement, will ordinarily be required. Where an insolvency action is before a State court only, the authority to agree to a determination of Federal tax liability may be subject to the State court's authority. In such circumstances, adequate evidence of authority to enter into the agreement must be submitted.

9 GUARDIANS AND OTHER FIDUCIARIES APPOINTED BY COURT OF RECORD.

The agreement should be executed by the fiduciary in the name of and on behalf of the person (or entity) to whom he stands in a fiduciary relationship, and there should be submitted a copy of the court certificate or court order showing that such fiduciary has been appointed and that his appointment has not been terminated.

10 MULTIPLE PARTY AGREEMENTS.

Where the number of taxpayer parties to the agreement (perhaps coupled with geographic location problems) makes signature by each on all copies of the agreement impracticable or inconvenient, two alternative methods of signing are available. The parties may be power of attorney (see section 6.073) authorize one or a small number of individuals to sign the agreement in their behalf. At the same time, or alternatively, the parties or their representative may sign the agreement in triplicate and photocopies may then be made for furnishing copies to the taxpayers and association with their affected filed returns. The duplicate copy, constituting a duplicate original, is ordinarily furnished to the key taxpayer, if there is one. See section 6.09 as to the number of required copies and section 6.10 as to the preparation of copies.

.08 Execution for the Commissioner. A Service official executing a closing agreement pursuant to authority delegated to him by the Commissioner of Internal Revenue signs his own name and shows his own title and the date thereafter. Individuals officially designated in writing to act in the capacity of such officials may sign closing agreements in their own names in the performance of duties in such acting capacity.

.09 Number of Copies.

1 REVENUE PROCEDURE 64-24 CASES.

Closing agreements executed by District Directors in Revenue Procedure 64-24 cases (see section 5.05) should be prepared in duplicate except in those cases where the account or deposit is held jointly by taxpayers other than husband and wife (or where a triplicate is needed for other purposes). In all cases where more than one taxpayer is a party to the agreement (except for the husband and wife joint return situation), there must be two additional copies of the agreement for each additional taxpayer.

2 ONE TAXPAYER AGREEMENTS.

Where only one taxpayer (or a husband and wife who elected joint return benefits) is a party to a closing agreement, the agreement will ordinarily be prepared and executed in triplicate, except as provided in section 6.091 (Revenue Procedure 64-24 cases). In the husband and wife joint return situation the taxpayers may request that each spouse be furnished a copy of the agreement. Such request will be complied with. However, an understanding should be reached as to whether the additional copy will be a reproduced copy of the executed agreement or whether an additional duplicate original is desired. In the latter circumstance the agreement must be executed in quadruplicate.

3 MULTIPLE PARTY AGREEMENTS.

Where more than one taxpayer party enters into and signs the closing agreement, two additional copies of the agreement are required for each additional party. One of the additional copies will be furnished the additional party and the other will be attached to an affected return of the additional party. See section 6.092 with regard to joint returns and section 6.091 with regard to Revenue Procedure 64-24 agreements. For alternative methods of executing

closing agreements where the execution of numerous copies by all parties becomes impracticable or inconvenient, see section 6.0710. If circumstances so warrant, copies may be certified under section 7622 of the Code. See section 6.102 in regard to use of photocopies.

.10 Preparation of Copies.

1 Form 866, Agreement As To Final Determination Of Tax Liability, and Form 906, Closing Agreement As To Final Determination Covering Specific Matters, and combined agreements (see section 6.03) will ordinarily be prepared in triplicate (but see section 6.091 as to Revenue Procedure 64-24 cases). The duplicate and triplicate copies will constitute duplicate originals for evidence purposes. Where closing agreements are completely typed, the duplicate original concept should be utilized if feasible. In addition, typed agreements to be executed in triplicate should employ plain bond paper for the carbon copies of a weight equal to the original and approximately equal to that of the printed form. The foregoing will apply to most agreements since most involve only one taxpayer party (or a husband and wife) and are prepared in triplicate. In the event of two or more taxpayer parties to the agreement, the carbon copies can be made on thinner stock in order that each may have a legible carbon copy that will serve as a duplicate original.

2 The use of photocopies may be desirable where there will be several parties to the agreement and a sufficient number of legible carbon copies cannot be made at one typing. Ordinarily, the original and each photocopy will be executed by all parties to the agreement. Alternatively, the agreement could be executed in triplicate (or some greater number as long as the agreement accurately so states) and additional copies of the executed agreement reproduced for use of the parties and the Service. In any event, the Service retains the original for its files. See also section 6.0710 for procedure where the number of taxpayer parties to the agreement (possibly coupled with geographic location problems) makes signing by all impracticable or inconvenient.

.11 Attachments. Where feasible the matters determined in a closing agreement should be contained in the body of the agreement, rather than in an attachment. Attachments may cause problems if they become unattached or inadvertent substitutions are made, or if they conflict with or render ambiguous the determinations made. Attachments are advantageous for reflecting voluminous data, generally as part of the premises upon which the determinations are based. When used, attachments should be adequately referred to and identified in the appropriate portion of the agreement. The location of the reference will depend upon whether an attachment is part of a determination or part of the recitals and premises preceding the determination. The top of each page of the attachment should include a statement thereon that it is an attachment to a closing agreement with the named taxpayer and the pages of the attachment numbered as "Page 1 of 4," "Page 2 of 4," etc. For example, "Page 2 of 4, Attachment I of Closing Agreement With John Doe Corporation" is acceptable. Where there are several parties to the agreement, the name of the first named party in the agreement plus "et al." may be used to identify pages of the attachment. See section 6.12 as to effecting changes in an agreement signed and submitted by the taxpayer.

.12 Erasures and Alterations.

1 The agreement should not contain material erasures of significant matter. Erasures, when not critically located in key words or amounts, do not preclude acceptance of an agreement. The nature and extent of the erasures will be considered in determining whether they preclude acceptance of the agreement.

2 If after receipt of a signed closing agreement from a taxpayer and addition or correction is necessary, a change may be made in handwriting (legible script or printing by pen) by the taxpayer (or authorized representative signing the closing agreement), who should date and initial the changed page adjacent to the change. If a new page must be substituted in an agreement of more than one page already signed by or for the taxpayer, he (or his authorized representative signing the agreement) should reflect his dated initials at the bottom of the new page, unless it is the page containing the signatures of the parties. In the latter case, his dated initials should be entered at the bottom of all other pages.

.13 Required Signatories. All signatories to the agreement should be named as parties at the beginning of the agreement. Conversely, all parties named as such (whether described as taxpayers, other parties, etc.) at the beginning of the agreement should be signatories to the agreement. An agreement as to liability with respect to a year for which a joint income tax return was filed by a husband and wife must be signed by both spouses, except that one spouse may sign as agent for the other if a photocopy or an authenticated copy of the power of attorney or other document specifically authorizing such agent to act in that capacity has been submitted. However, where an agreement as to specific matters pertains only to the tax affairs of one spouse, it may not be necessary that the agreement be signed by both spouses.

.14 Contingencies. Contingencies that would preclude a closing agreement from taking effect or remaining in effect are avoided. The condition that another closing agreement from a related taxpayer be accepted simultaneously would be an exception if such other agreement is submitted and concurrently determined to be acceptable.

.15 Penalties. In the event penalties are determined on Form 866 or a combined agreement, the words "any penalty or" should be deleted from the standard provisions. The amount of each type of penalty for each taxable period should be shown on a separate line on the agreement as reflected in Exhibit E.

.16 Interest.

1 Unless there is some issue with respect to interest liability, the closing agreement will not ordinarily determine such liability or make any provision therefor. Interest applicable to tax liabilities determined by closing agreement may be assessed and collected pursuant to section 301.7121-1(d)(2) of the regulations and section 6601(h) of the Code.

2 Where a closing agreement as to tax liability is entered into, the provisions of section 6601(d) of the Code, relating to the suspension of interest for a period beginning 30 days after a waiver of restrictions under section 6213(d) of the Code is received (or accepted where an Appellate Division waiver such as Form 870-AD is involved), are not applicable unless such

waiver is: 1. received (or accepted where acceptance is necessary) before the closing agreement is entered into, and 2. not qualified to take effect at or after the date of execution of the closing agreement. See section 8.03 as to waivers and interest.

.17 Transferee Cases. In a closing agreement with a transferee, the name of the taxpayer party to the agreement should be reflected in a manner equivalent to the following to clearly designate that the agreement refers to the transferee liability of the taxpayer and not to tax liability on his own income (gift, estate, etc.): "THIS CLOSING AGREEMENT, made in triplicate under and in pursuance of Section 7121 of the Internal Revenue Code of 1954, by and between John Doe, (address and taxpayer identification number), as transferee of assets of Richard Roe, (address and taxpayer identification number), and the Commissioner of Internal Revenue:." The applicable taxable periods (or date of death, etc.) and type of tax of the transferor should be specified in the agreement as well as the amount of transferee liability agreed to with respect to such periods and type of tax. A closing agreement with a transferee should be signed in a manner equivalent to the following:

John Doe (signature) Transferee of Richard Roe
or
John Doe Corporation
Transferee of Richard Roe Corporation
By: John Doe (signature) President

SEC. 7. MATTERS OF CONTENT.

.01 General. Section 7121 of the Code provides that closing agreements may not, in the absence of fraud, malfeasance, or misrepresentation of material fact, be reopened as to matters agreed upon or modified by any officer, employee, or agent of the United States. Additionally, that section provides that, with the foregoing exceptions, such agreements shall not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding. Because of the finality with which such agreements are imbued, it is extremely important that they be carefully drafted. The guidelines in this section are intended to cover the more frequently encountered problems with respect to the content of closing agreements.

.02 Unambiguous Determinations Required. Determined matters should be stated with such clarity as to lead reasonably to only one interpretation. Although related documents, files and testimony may be utilized in an attempt to explain the intent of the agreement, the agreement itself will be the primary basis for future action.

.03 Matters Not Properly Determinable. Determinations should not attempt to fix tax treatment for future years where correct treatment will depend primarily on circumstances that will arise subsequent to the agreement, such as the application of capital gains treatment to future sales of real estate or the treatment of farm losses for future years.

.04 Essentials to Determinations. Essentials must not be overlooked. For example, the agreement should state to whom the income pertains, and specify the years involved. Affected property should be adequately identified. In those cases where specific matters are being

determined the applicable dollar amounts, dates, and types of taxable income should be set forth wherever possible. To avoid ambiguity in descriptive terms it is usually preferable to use statutory terms where applicable. If an amount is to be includible in gross income as a longterm capital gain, the agreement should so specify.

.05 Related Cases and Years. The direct or indirect impact of the determination of a specific matter upon other years or related cases particularly those within the jurisdiction of another office, should be given careful consideration. Necessary coordination with other offices on related cases or years should be effected at the earliest practicable date when submitting closing agreements.

.06 Dependence On Executory Provisions. The Service avoids agreements depending upon executory provisions, i.e., that the taxpayer agrees to do something. To avoid the difficulties that may ensue if taxpayer does not perform as agreed upon, the agreement should state the tax treatment to be accorded the transaction or amount. For example, in lieu of a statement that "the taxpayer will report as income in the year received," a statement to the effect that "such amount shall be includible in the taxpayer's taxable income in the year of receipt" is ordinarily preferable. In appropriate cases it is feasible to state what the tax consequences will be if a certain event happens and what it will be if it does not happen.

SEC. 8. DISTRICT PROCEDURES.

.01 General. Except as explained in sections 2.01 and 5.05, the authority and responsibility of district officials with respect to closing agreements recommended by them pertaining to cases under their jurisdiction have not been changed by Delegation Order No. 97 (Rev. 4). As long as the case is under his jurisdiction, the District Director may decline to recommend a closing agreement for approval. In a case where the taxpayer has signed a waiver of restrictions (or other agreement, such as Form 870, etc.) covering the entire district office determination he cannot secure consideration by the Appellate branch office solely on the ground that the District Director refuses to recommend a closing agreement. However, if as a result of the District Director's refusal the taxpayer declines to sign a waiver of restrictions (or other agreement) indicating agreement with the findings of the district office the usual appeal procedures are applicable. A closing agreement may be accepted with respect to a taxpayer not under examination. However, the Service (ordinarily the District Director) must be furnished sufficient facts and documentation (and may take sufficient examination or inquiry) to warrant acceptance of the agreement. If for good reasons it is recommended that a specific matter closing agreement be entered into even though district action on the case cannot be concluded for reasons not related to and not precluding acceptance of the closing agreement, the district office may forward such agreement (with adequate documentation and explanation) to the Appellate branch office for review and acceptance. The District Director establishes controls necessary to ensure the Government against loss through failure to give effect to all the terms of closing agreements affecting tax liability for periods ending subsequent to the date of such agreements or subsequent to periods under examination.

.02 Preparation and Submission of Agreements. The actual process of preparing a closing agreement for the taxpayer's signature may differ considerably among cases. In some instances,

the taxpayer's representative may prepare the entire agreement and submit it before or after execution for inspection by an Internal Revenue Agent examining his tax return. In some instances, the taxpayer or his representative will rely upon the examining officer to draft the agreement. In most situations, however, it would appear preferable for the examining officer and the taxpayer or his representative to collaborate in drafting the agreement.

.03 Waivers of Restrictions on Assessment.

1 Form 870 and other waivers of restrictions on assessment and collection which are ordinarily signed and submitted by taxpayers pursuant to the provisions of section 6213(d) of the Code will ordinarily be submitted with respect to a taxable period the tax liability for which is being determined by closing agreement (assuming there is a deficiency or overassessment), though a waiver is not legally required in order to assess a deficiency without issuance of a statutory notice of deficiency in such cases. If, in such circumstances, the waiver is received by the Service (or accepted, where certain Appellate Division waivers are used) before approval of the closing agreement without qualification delaying the effective date of the waiver until or beyond the effective date of the closing agreement, the interest suspension period provided by section 6601(d) of the Code will be effective even though the closing agreement is entered into less than 30 days after the signed waiver is received (or accepted, where certain Appellate Division waivers are used). See section 6.162. If the waiver contains a qualification that it will be effective upon the acceptance of a closing agreement determining the tax liability, the waiver has no effect as the closing agreement not only provides the necessary authority for making assessments but precludes application of the interest suspension provision previously referred to. See Revenue Ruling 57-305, C.B. 1957-2, 856, for further discussion of this point.

2 If the taxpayer wishes to submit a waiver conditioned upon the approval of a closing agreement (covering either tax liability, specific matters or both), a provision to that effect may be inserted on the waiver form.

.04 Forwarding to Appellate.

1 An adequate explanation of the closing agreement is prepared by the district examining officer and associated with the examination report. After review of the proposed closing agreement and report by the district office, the agreement, report, and file are forwarded to the regional Appellate Division office which normally considers the protested cases of that district unless the agreement must be signed in the National Office (see section 2.02).

2 When the statutory period of limitation for assessment of tax (if any) for a period involving a closing agreement will expire within a period of 120 days from the date such agreement will be submitted to the regional Appellate Division office for approval, the taxpayer is advised that the closing agreement will not be submitted for approval unless a consent (Form 872 etc.) is signed extending the period of limitation for assessment to a date at least 180 days (at least one year in a case requiring review by the Joint Committe on Internal Revenue Taxation -- see section 601.108 of the Statement of Procedural Rules) from the date such agreement is signed by the taxpayer or a date that will be at least 120 days after the date such agreement is

submitted to Appellate, whichever is later. To comply with this requirement, consents may be secured to cover years for which overassessments are proposed.

3 When a case ready for submission to the Joint Committee involves a recommended closing agreement which must be forwarded to an Appellate branch office for review and approval, the entire file will be forwarded to the appropriate Appellate branch office by the district office. If the agreement is acceptable, the Appellate office will forward the entire file, indicating tentative approval of the closing agreement, to the National Office. After review without objection by the Staff of the Joint Committee, the National Office will forward the unexecuted closing agreement and file to the Appellate branch office for execution. The closing agreement and file will then be forwarded by the Appellate branch office to the district Collection Division or Service Center for processing the refund or credit.

SEC. 9. REGIONAL APPELLATE DIVISION PROCEDURES.

.01 In addition to approving and executing closing agreements originating in regional Appellate Division cases, Chiefs and Associate Chiefs of regional Appellate Division offices review, approve, and execute closing agreements recommended by district offices (see section 5.04 for authority). Such action is performed on a high priority basis. Where Appellate Division review discloses that a district recommended agreement is unacceptable, the agreement is returned to the originating district with an explanation of the deficiencies noted. If a district recommended closing agreement, as originally submitted or as resubmitted, or such an agreement originating in an Appellate case, is deemed acceptable, it is executed on behalf of the Commissioner by the Chief or Associate Chief of the Appellate office. The original of the agreement is retained in the Appellate office. The duplicate copy (constituting a duplicate original) is ordinarily forwarded to the taxpayer (or representative) by certified mail. The triplicate copy (constituting a duplicate original) is associated with the most recently affected return in the file. All returns in the file covering years to which the agreement pertains are marked to indicate the existence of the agreement. See section 8.03 with respect to waivers and section 6.093 with respect to multiple party agreements.

.02 Since the district office has jurisdiction over the determination of tax liability in a case that is forwarded to the Appellate Division only for approval of the closing agreement, the taxpayer does not have a right to a conference with the Appellate office concerning the closing agreement. The Appellate office does not initiate conferences with the taxpayer in such a case. If conferences with respect to the closing agreement are necessary, they are initiated by the district office after receipt of the Appellate Division comments. In unusual cases, where deemed necessary by both offices, representatives from the Appellate office may participate in a district initiated conference to resolve closing agreement problems.

SEC. 10. SETTING ASIDE OF CLOSING AGREEMENTS.

.01 Closing agreements may be set aside upon a showing of fraud, malfeasance or misrepresentation of a material fact. Since the Commissioner of Internal Revenue has not delegated authority to set aside such agreements, recommendations for such action must be forwarded to his office in accordance with the following procedures.

.02 In a case not involving criminal prosecution considerations, if a district office or a regional Appellate Division office determines that a recommendation to set aside a closing agreement will be made, the taxpayer will be notified by letter of the contemplated action and the reason therefor and afforded an opportunity for a conference. If after fully considering the matter and the taxpayer's position, the district or Appellate office concludes that the recommendation to set aside the closing agreement should be made as contemplated, that office will prepare a memorandum containing the recommendation and fully explaining the circumstances. That memorandum and the administrative file will be forwarded (through the appropriate regional Appellate Division office, if originated by a district office) to the Director, Appellate Division, National Office, for review. If the latter official concurs, the recommendation will be forwarded to the office of the Commissioner for decision. If the Commissioner sets aside the closing agreement, the taxpayer will be so notified.

.03 In the event it is proposed to set aside a closing agreement entered into while the case to which it pertains was under the jurisdiction of a regional Appellate Division office, action to reopen the case or set aside the closing agreement is subject to approval by the Director, Appellate Division, National Office. If the closing agreement in question was not secured while the case to which it pertains was under such Appellate jurisdiction and if the taxpayer is not protesting a determination of tax liability he does not have the right to have a regional Appellate Division office consider the setting aside of the closing agreement.

SEC. 11. ILLUSTRATIVE PATTERN AGREEMENTS.

.01 The exhibits in this Procedure reflect current illustrative pattern agreements as described in this section. Agreements patterned after these illustrations are ordinarily acceptable in usual cases involving the circumstances the illustrations are designed for. However, in the judgment of the Service officials involved, circumstances in individual cases or subsequent developments (including revisions by the National Office) may necessitate modification of or departure from the illustrations furnished.

EXHIBIT A - PATTERN WIDOW PAYMENT AGREEMENT.

This agreement is designed for use in the usual case where a corporate employer has made payments to the widow (or, perhaps some other relative) of a deceased employee. The premises stated in the WHEREAS clause of this agreement identify the payments which will be the subject of the determination clause. The determination clause first establishes that all payments in excess of $5,000.00 made pursuant to the resolution will be includible in the taxpayer's gross income in the years received. Thus, the treatment to be accorded all past payments as well as all future payments to her pursuant to the identified corporate resolution is thereby established. The additional determination establishes the payments and period to which the $5,000.00 exclusion pertains and reflects what amounts are includible in those years for which the extent of payments has been ascertained (usually for all taxable periods ended prior to the date of the agreement.)

2 EXHIBIT B - PATTERN SECTION 1017 AGREEMENT.

This agreement is designed for determining the amounts of reductions to bases of assets occasioned by complying with certain provisions of sections 108 and 1017 of the Code and regulations thereunder with respect to certain income from discharge of indebtedness. Taxpayers seek closing agreements in these cases in order to apply the basis reduction to one asset (or to a few selected assets) rather than going through the multitude of computations and changes to records that could be required to spread the reductions over all applicable assets. It is preferred that such agreements clearly identify the securities from which the income was derived as well as the assets the bases of which are being reduced.

3 EXHIBIT C - PATTERN REVENUE PROCEDURE 65-17 AGREEMENT.

This agreement is designed to serve as a guide in preparing closing agreements for cases which involve requests for relief under the provisions of Revenue Procedure 65-17, C.B. 1965-1, 833, and Amendment I, C.B. 1966-2, 1211. See also Revenue Procedure 65-31, C.B. 1965-2, 1024. The illustration generally contemplates circumstances involving a domestic parent corporation on the accrual method of accounting and its wholly owned foreign subsidiary. It is not contemplated that such controlled foreign corporations having no United States tax liabilities will be parties to such closing agreements. Domestic corporations involved in such reallocations will be parties to and sign appropriate closing agreements providing relief under Revenue Procedure 65-17.

4 EXHIBIT D - PATTERN TAX LIABILITY AGREEMENT.

For discussion of tax liability agreements, see section 6.01. See sections 6.16 and 8.03 with respect to interest. See section 11.015, following, with regard to penalties.

5 EXHIBIT E - PATTERN TAX LIABILITY AGREEMENT REFLECTING PENALTIES.

See section 11.014, preceding, for references to discussions of tax liability closing agreements in general. It is preferable to state the Code section authority in identifying each determined penalty. Since striking the words "any penalty or" on the form indicates that penalties are being determined, it promotes clarity to reflect that there are no penalties for the stated taxable years with respect to the specified type of tax where such is the case. In the usual agreement where the foregoing quoted words are not deleted and the penalties are not shown, a subsequent assessment of applicable penalties is not prohibited.

6 EXHIBIT F - EXAMPLE OF COMBINED AGREEMENT.

This example illustrates the usual format for determining both tax liability and a specific matter. Such agreements may be completely typed or the last page of Form 906 may ordinarily be used as the last page for the agreement.

SEC. 12. INQUIRIES.

Inquiries in regard to this Revenue Procedure should refer to its number and be addressed to the Assistant Commissioner (Compliance), Attention: CP:AP:P, Internal Revenue Service, Washington, D.C. 220224.

# APPENDIX B

## Closing Agreement As To Final Determination Covering Specific Matters

[Organization Name], and the Commissioner of Internal Revenue("Commissioner") make the following closing agreement under section 7121 of theInternal Revenue Code of 1986:

WHEREAS, [Organization] has been recognized as an organization described in section 501(c)() of the Code since _____.

WHEREAS, Commissioner conducted an examination of [Organization's] annual return(s), [Form(s) 990, 990-T, 990-PF, etc.] for the year(s) ending _____;

WHEREAS, on a preliminary basis Commissioner adopted a proposed adverse position that [Organization's] [tax exempt status under section 501(c)() of the Code should be revoked] or [is liable for unrelated business income tax, etc.]. This position is based on information indicating that [describe facts upon which the proposed adverse position is based].

WHEREAS, Commissioner and [Organization] differ as to [whether Organization's exempt status under section 501(c)() of the Code should be revoked] or [whether Organization is liable for unrelated business income tax, etc.] because of _____.

Whereas, Commissioner and [Organization], through their respective authorized representatives, have each determined that resolution of this disagreement according to the terms of the agreement set forth herein is in its best interests;

WHEREAS, [Organization] [describe corrective steps already taken].

NOW, THEREFORE, IT IS HEREBY DETERMINED AND AGREED for federal income tax purposes that:

(1) Commissioner will recognize organization as exempt from federal income tax under section 501(c)() of the Code for the year(s) ending _____.

[List any other actions the Commissioner will take, if applicable]

(2) [List action(s) the organization will take]

THIS AGREEMENT IS FINAL AND CONCLUSIVE, EXCEPT:

(a) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact;

(b) it is subject to the Code sections that expressly provide that effect be given to their provisions notwithstanding any other law or rule of law except Code section 7122; and

(c) if it relates to any taxable period ending after the date of this agreement, it is subject to any law enacted after the agreement date that applies to that taxable period.

By signing below, the parties certify that they have read and agreed to the terms of this document.

[NAME OF ORGANIZATION]
By:_____ Date:_____
(Title or authority of signer)

COMMISSIONER OF INTERNAL REVENUE
By:_____ Date:_____