

**Rev. Proc. 2002-32, 2002-20 I.R.B.** , dated May 20, 2002, is being re-released to make certain **technical changes**. The specific changes are contained below in a "redline" version of the changed paragraphs. The changes are technical in nature, and they relate to certain corporations (or other entities that were corporations, or other entities that become corporations) that are not, or were not, includible in a consolidated return group.

Rev. Proc. 2002-32

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#### SECTION 4. SCOPE

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.02 Except as provided in section 4.05, § 1504(a)(3)(A) does not apply to prevent the inclusion in a consolidated return of any corporation that was a member of a consolidated group (the terminating group) and that ceased to be a member of such group solely as a result of a transaction in which a nonmember corporation acquired the assets of the common parent of the terminating group in a reorganization described in § 368(a)(1)(A), (C), (D), or (G) (but, with respect to a reorganization described in § 368(a)(1)(D) or (G), only if the requirements of § 354(b)(1)(A) and (B) are met), and immediately after the acquisition, the acquiring corporation is the common parent of another affiliated group (the acquiring group). If the acquiring group files a consolidated return, all members of the terminating group **that are includible corporations** must be included in the consolidated return. See Rev. Rul. 91-70, 1991-2 C.B. 361.

.03 Except as provided in section 4.05, § 1504(a)(3)(A) does not apply to prevent the inclusion in a consolidated return of any corporation that was a member of a consolidated group (the terminating group) and that ceased to be a member of such group solely as a result of a transaction in which a member of the terminating group acquired (a) the assets of a nonmember corporation in a reorganization described in § 368(a)(1)(A), (C), (D), or (G) (but, with respect to a reorganization described in § 368(a)(1)(D) or (G), only if the requirements of § 354(b)(1)(A) and (B) are met) or (b) the stock of a nonmember corporation, and the acquisition was a reverse acquisition described in § 1.1502-75(d)(3) of the Income Tax Regulations in which the terminating group ceased to exist. If the group that remains in existence files a consolidated return, all members of the terminating group **that are includible corporations** must be included in the consolidated return. See Rev. Rul. 91-70.

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.04 Except as provided in section 4.05, § 1504(a)(3)(A) does not apply to prevent the inclusion in a consolidated return of any corporation that was a member of a consolidated group (the terminating group) and that ceased to be a member of the terminating group solely as a result of a transaction in which (1) a nonmember corporation (the acquiring corporation) acquired (a) the assets of the common parent of the terminating group in a reorganization described in § 368(a)(1)(A), (C), (D), or (G) (but, with respect to a reorganization described in § 368(a)(1)(D) or (G), only if the requirements of § 354(b)(1)(A) and (B) are met) or (b) stock of the common parent of the terminating group that satisfies the requirements of § 1504(a)(2), (2) immediately after such acquisition, the acquiring corporation is a member of another affiliated group (the acquiring group), and (3) subsequent to such acquisition, the common parent of the acquiring group or a successor of the common parent of the acquiring group acquires assets or stock of the former common parent of the terminating group or a successor of such former common parent. If the acquiring group files a consolidated return, the corporation must be included in the consolidated return, **provided such corporation is an includible corporation**. Cf. Rev. Rul. 91-70.

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SECTION 5. PROCEDURE FOR A DECONSOLIDATED CORPORATION TO REQUEST AN  
AUTOMATIC WAIVER UNDER SECTION 1504(a)(3)(B)

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\_.03 If the common parent of the current group is the common parent of the group from which the deconsolidated corporation or its predecessor disaffiliated (the former group), a representation that such common parent was ~~subject to tax under subchapter C of chapter 1 of the Code at all times~~ not an S corporation, an entity disregarded as an entity separate from its owner, a real estate investment trust, or a regulated investment company at any time during the period of disaffiliation.- If the common parent of the current group was not the common parent of the former group, a representation that the common parent of the former group and each successor of the common parent of the former group was ~~subject to tax under subchapter C of chapter 1 of the Code at all times~~ not an S corporation, an entity disregarded as an entity separate from its owner, a real estate investment trust, or a regulated investment company at any time during the period beginning on the date of disaffiliation and ending on the date that such common parent or successor ceased to exist.- In addition, if the common parent of the current group was not the common parent of the former group, a representation that the common parent of the current group was ~~subject to tax under subchapter C of chapter 1 of the Code at all times~~ not an S corporation, an entity disregarded as an entity separate from its owner, a real estate investment trust, or a regulated investment company at any time during the period beginning on the date that such corporation became a successor of the common parent of the former group and ending on the date the deconsolidated corporation became a member of the current group.

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## Part III

### Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.  
(Also Part I, §§ 1502, 1504; 1.1502-75, 1.1504-1.)

Rev. Proc. 2002-32

#### SECTION 1. PURPOSE

.01 This revenue procedure clarifies and supersedes Rev. Proc. 91-71, 1991-2 C.B. 900, which grants certain taxpayers a waiver of the general rule of § 1504(a)(3)(A) of the Internal Revenue Code. Section 1504(a)(3)(A) generally provides that a corporation that ceased to be a member of a consolidated group (or a successor of such corporation) may not be included in any consolidated return filed by that affiliated group (or another affiliated group with the same common parent or a successor of such common parent) before the 61<sup>st</sup> month beginning after the first taxable year in which such corporation ceased to be a member of such group.

.02 If (1) § 1504(a)(3)(A) applies to prevent the inclusion of a corporation in a consolidated return, and (2) the representations described in sections 5.03 and 5.14 of this revenue procedure can be made with respect to such corporation, then such corporation may be included in the consolidated return for the taxable year that includes the date on which § 1504(a)(3)(A) would first apply to prevent such corporation from being included in such consolidated return if, and only if, an automatic waiver of the general rule of § 1504(a)(3)(A) is obtained pursuant to section 5 of this revenue procedure.

.03 If (1) § 1504(a)(3)(A) applies to prevent the inclusion of a corporation in a consolidated return, and (2) the representations described in section 5.03 or 5.14 of this revenue procedure cannot be made with respect to such corporation, then a waiver of the application of the general rule of § 1504(a)(3)(A) for any taxable year may only be obtained in the form of a private letter ruling pursuant to section 7 of this revenue procedure.

.04 If (1) § 1504(a)(3)(A) applies to prevent the inclusion of a corporation in a consolidated return, (2) the representations described in sections 5.03 and 5.14 of this revenue procedure can be made with respect to such corporation, and (3) the procedures for obtaining an automatic waiver of the general rule of § 1504(a)(3)(A) are not followed, then a waiver of the application of the general rule of § 1504(a)(3)(A) may be obtained only for taxable years other than the taxable year that includes the date on which § 1504(a)(3)(A) first applies to prevent such corporation from being included in a consolidated return and may only be obtained in the form of a private letter ruling pursuant to section 7 of this revenue procedure.

## SECTION 2. BACKGROUND

.01 Section 1504(a)(3)(A) provides that (1) if a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year that includes any period after December 31, 1984, and (2) the corporation ceases to be a member of such affiliated group in a taxable year beginning after December 31, 1984, the corporation (and any successor of the corporation) may not be included in any consolidated return filed by such affiliated group (or by another affiliated group with the same common parent or a successor of the common parent) before the 61<sup>st</sup> month

beginning after its first taxable year in which it ceased to be a member of such affiliated group. Section 1504(a)(3)(B) provides that the Secretary may waive the application of § 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

.02 For purposes of this revenue procedure, unless otherwise provided, a reference to a successor of a corporation includes each successor of a successor of such corporation, and a reference to a predecessor of a corporation includes each predecessor of a predecessor of such corporation.

### SECTION 3. APPLICATION

.01 Any corporation described in section 4.01 of this revenue procedure that requests an automatic waiver by complying with the requirements set forth in section 5 of this revenue procedure is hereby granted a waiver under § 1504(a)(3)(B) so that the corporation may be included in the consolidated return filed (or required to be filed) by the affiliated group of which it is a member, as provided in section 6 of this revenue procedure. Any corporation described in section 4.01 of this revenue procedure that does not or cannot comply with the requirements set forth in section 5 may request a waiver of the application of the general rule of § 1504(a)(3)(A) pursuant to section 7 of this revenue procedure.

.02 If pursuant to section 4.02, 4.03, or 4.04 of this revenue procedure, § 1504(a)(3)(A) does not apply to prevent the inclusion in a consolidated return of a corporation, such corporation must be included in the consolidated return filed by the affiliated group of which it is a member. No waiver is necessary.

### SECTION 4. SCOPE

.01 This revenue procedure applies to any corporation (a deconsolidated corporation) (1) that was included (or was required to be included), or whose predecessor was included (or was required to be included), in a consolidated return filed (or required to be filed) by an affiliated group (the original group), (2) that ceased, or whose predecessor ceased, to be a member of such original group, and (3) that subsequently became affiliated with that original group (or another affiliated group with the same common parent or a successor of such common parent) before the 61<sup>st</sup> month beginning after the first taxable year in which it or its predecessor ceased to be a member of the original group.

.02 Except as provided in section 4.05, § 1504(a)(3)(A) does not apply to prevent the inclusion in a consolidated return of any corporation that was a member of a consolidated group (the terminating group) and that ceased to be a member of such group solely as a result of a transaction in which a nonmember corporation acquired the assets of the common parent of the terminating group in a reorganization described in § 368(a)(1)(A), (C), (D), or (G) (but, with respect to a reorganization described in § 368(a)(1)(D) or (G), only if the requirements of § 354(b)(1)(A) and (B) are met), and immediately after the acquisition, the acquiring corporation is the common parent of another affiliated group (the acquiring group). If the acquiring group files a consolidated return, all members of the terminating group that are includible corporations must be included in the consolidated return. See Rev. Rul. 91-70, 1991-2 C.B. 361.

.03 Except as provided in section 4.05, § 1504(a)(3)(A) does not apply to prevent the inclusion in a consolidated return of any corporation that was a member of a consolidated group (the terminating group) and that ceased to be a member of such

group solely as a result of a transaction in which a member of the terminating group acquired (a) the assets of a nonmember corporation in a reorganization described in § 368(a)(1)(A), (C), (D), or (G) (but, with respect to a reorganization described in § 368(a)(1)(D) or (G), only if the requirements of § 354(b)(1)(A) and (B) are met) or (b) the stock of a nonmember corporation, and the acquisition was a reverse acquisition described in § 1.1502-75(d)(3) of the Income Tax Regulations in which the terminating group ceased to exist. If the group that remains in existence files a consolidated return, all members of the terminating group that are includible corporations must be included in the consolidated return. See Rev. Rul. 91-70.

.04 Except as provided in section 4.05, § 1504(a)(3)(A) does not apply to prevent the inclusion in a consolidated return of any corporation that was a member of a consolidated group (the terminating group) and that ceased to be a member of the terminating group solely as a result of a transaction in which (1) a nonmember corporation (the acquiring corporation) acquired (a) the assets of the common parent of the terminating group in a reorganization described in § 368(a)(1)(A), (C), (D), or (G) (but, with respect to a reorganization described in § 368(a)(1)(D) or (G), only if the requirements of § 354(b)(1)(A) and (B) are met) or (b) stock of the common parent of the terminating group that satisfies the requirements of § 1504(a)(2), (2) immediately after such acquisition, the acquiring corporation is a member of another affiliated group (the acquiring group), and (3) subsequent to such acquisition, the common parent of the acquiring group or a successor of the common parent of the acquiring group acquires assets or stock of the former common parent of the terminating group or a

successor of such former common parent. If the acquiring group files a consolidated return, the corporation must be included in the consolidated return, provided such corporation is an includible corporation. Cf. Rev. Rul. 91-70.

.05 If a corporation is described in section 4.02, 4.03, or 4.04, and such corporation (or such corporation's predecessor, as applicable) (1) was included (or was required to be included) in a consolidated return filed (or required to be filed) by an affiliated group other than the terminating group (a prior group), (2) ceased to be a member of such prior group, and (3) subsequently became affiliated with such prior group (or another affiliated group with the same common parent or a successor of the common parent of such prior group) before the 61<sup>st</sup> month beginning after the first taxable year in which it or its predecessor ceased to be a member of such group, § 1504(a)(3)(A) applies to prevent the inclusion of such corporation in a consolidated return of such prior group or another affiliated group with the same common parent or a successor of the common parent of such prior group. Accordingly, that corporation is treated as a deconsolidated corporation and must comply with the requirements set forth in section 5 of this revenue procedure (or if it cannot comply with section 5, section 7) to obtain a waiver of § 1504(a)(3)(A).

#### SECTION 5. PROCEDURE FOR A DECONSOLIDATED CORPORATION TO REQUEST AN AUTOMATIC WAIVER UNDER SECTION 1504(a)(3)(B)

To obtain an automatic waiver of § 1504(a)(3)(A), the deconsolidated corporation must be included in a timely-filed consolidated return (including extensions) of the affiliated group with respect to which the waiver request relates (the current group), for the taxable year that includes the date on which such corporation most recently became



a member of such affiliated group. In addition, a statement, filed under penalties of perjury, that includes the information described in sections 5.01 through 5.14 of this revenue procedure, which is subject to verification on examination, as provided by section 6.02 of this revenue procedure, must be attached to such return.

.01 The following heading typed or legibly printed at the top of the statement:

"AUTOMATIC WAIVER OF THE APPLICATION OF SECTION 1504(a)(3) FILED PURSUANT TO REV. PROC. 2002-32.[]

.02 The name, address, and employer identification number of the deconsolidated corporation, and the name, address, and employer identification number of each corporation, if any, that was a predecessor of such deconsolidated corporation at any time on or after the date a predecessor of such deconsolidated corporation ceased to be a member of the current group (or another affiliated group with the same common parent or a predecessor of the common parent of the current group).

.03 If the common parent of the current group is the common parent of the group from which the deconsolidated corporation or its predecessor disaffiliated (the former group), a representation that such common parent was not an S corporation, an entity disregarded as an entity separate from its owner, a real estate investment trust, or a regulated investment company at any time during the period of disaffiliation. If the common parent of the current group was not the common parent of the former group, a representation that the common parent of the former group and each successor of the common parent of the former group was not an S corporation, an entity disregarded as an entity separate from its owner, a real estate investment trust, or a regulated investment company at any time during the period beginning on the date of disaffiliation

and ending on the date that such common parent or successor ceased to exist. In addition, if the common parent of the current group was not the common parent of the former group, a representation that the common parent of the current group was not an S corporation, an entity disregarded as an entity separate from its owner, a real estate investment trust, or a regulated investment company at any time during the period beginning on the date that such corporation became a successor of the common parent of the former group and ending on the date the deconsolidated corporation became a member of the current group.

.04 The year in which the current group elected to file consolidated returns.

.05 The date on which the deconsolidated corporation or its predecessor ceased to be a member of either the current group or the former group.

.06 The date on which the deconsolidated corporation most recently became a member of the current group.

.07 A description of the manner by which the deconsolidated corporation or its predecessor ceased to be a member of the current group or the former group and the manner by which the deconsolidated corporation became a member of the current group (redemption of stock, new issuance of stock, etc.). This statement should include the business purposes of the transactions that caused the disaffiliation and subsequent affiliation and describe whether the transactions were with a related party.

.08 If the common parent of the current group is the common parent of the former group and the former group remained in existence throughout the period of disaffiliation, the taxable income of the current group for (1) the taxable year prior to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a

member of the current group, (2) the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of such group, (3) each taxable year subsequent to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of such group but before the deconsolidated corporation again became a member of the current group, and (4) the taxable year in which the deconsolidated corporation became a member of the current group.

.09 If the common parent of the current group is the common parent of the former group and the former group ceased to exist on or after the date on which the deconsolidated corporation or its predecessor ceased to be a member of the former group and before the date the deconsolidated corporation became a member of the current group, the taxable income of the former group for (1) the taxable year prior to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of the former group, (2) the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of such group, and (3) each taxable year, if any, subsequent to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of such group and during which such group existed. In addition, (1) the taxable income of the common parent of the former group or its successor for each interim taxable year (as defined herein) during which such common parent of the former group was not the common parent of a consolidated group, (2) the taxable income of any consolidated group other than the former group of which the common parent of the former group or its successor was the common parent during any interim taxable year for each interim taxable year, and (3) the taxable income of the current group for the taxable year in which the deconsolidated

corporation became a member of the current group. For purposes of this section 5.09 and sections 5.10 and 5.11 of this revenue procedure, the term interim taxable year refers to any taxable year that is subsequent to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of the former group but before the taxable year in which the deconsolidated corporation became a member of the current group.

.10 If the common parent of the current group is not the common parent of the former group, the taxable income of the former group for (1) the taxable year prior to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of the former group, (2) the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of such group, and (3) each interim taxable year, if any, during which such group existed. In addition, (1) the taxable income of the common parent of the former group or its successor for each interim taxable year during which such common parent of the former group or its successor was not the common parent of a consolidated group, (2) the taxable income of any consolidated group other than the former group of which the common parent of the former group or its successor was the common parent during any interim taxable year for each interim taxable year, and (3) the taxable income of the current group for the taxable year in which the deconsolidated corporation became a member of the current group.

.11 The taxable income, or separate taxable income (adjusted for the items that would be taken into account in determining the consolidated net operating loss attributable to the deconsolidated corporation under § 1.1502-21(b)(2)(iv)), as the case

may be, of the deconsolidated corporation or its predecessor, as applicable, for (1) the taxable year prior to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of the current group or the former group, (2) the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of such group, (3) each interim taxable year, and (4) the taxable year in which the deconsolidated corporation became a member of the current group.

.12 An analysis of the effect of the disaffiliation and the effect of the subsequent consolidation on the following items of (a) the deconsolidated corporation and its predecessor, as applicable, (b) the current group, and (c) if the current group is not the group from which the deconsolidated corporation or its predecessor disaffiliated, the former group or, if the former group terminated as a result of the disaffiliation or during the period of the disaffiliation, the common parent of the former group and the members of the former group (or their successors, if applicable) with which such common parent (or its successor, as applicable) was affiliated at any time during the period of disaffiliation for all periods described in section 5.11 of this revenue procedure:

- (1) Taxable income;
- (2) Gains and losses on intercompany transactions;
- (3) Excess loss accounts;
- (4) Tax liability;
- (5) Net operating loss carryovers;
- (6) Capital loss carryovers;
- (7) Tax credits; and
- (8) Losses deferred pursuant to § 267(f).

.13 In the case of a consolidated group of which one or more members are reporting corporations described in § 6038A(a), an analysis of the effect of the disaffiliation and the effect of the subsequent consolidation on the United States taxation of any related party within the meaning of § 6038A(c)(2) (other than a member of the group). Such analysis must take into account any transfers of money or property occurring during the period of disaffiliation and involving (directly or indirectly) the deconsolidated corporation, its predecessors, and any reporting corporation or related party, if such transfers are not in the ordinary course of business.

.14 A representation that the disaffiliation and subsequent consolidation has not provided and will not provide a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance (a federal tax savings) that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would have otherwise expired, or the use of a loss recognized on a disposition of stock of the deconsolidated corporation or a predecessor of such corporation. In determining whether the disaffiliation and subsequent consolidation provided or will provide a federal tax savings, the net tax consequences to all parties, taking into account the time value of money, are considered.

## SECTION 6. EFFECT OF WAIVER

.01 A waiver under § 1504(a)(3)(B) granted pursuant to section 3.01 of this revenue procedure is binding on the consolidated group that files the statement required by section 5 of this revenue procedure with a consolidated return and may not be revoked by such consolidated group. The waiver is binding as of the date on which the

deconsolidated corporation most recently became a member of the current group and as long as the deconsolidated corporation or a successor of such corporation remains a member of the current group or another group with a common parent that is a successor of the common parent of the current group, unless permission is granted for the entire group to cease filing a consolidated return.

.02 Notwithstanding section 6.01, if the Service determines that the information provided pursuant to section 5 of this revenue procedure was incorrect in any material respect at the time the waiver request was filed, the Service may revoke the waiver granted pursuant to this revenue procedure at any time, for all or any part of the period for which it was granted.

#### SECTION 7. DECONSOLIDATED CORPORATIONS THAT DO NOT QUALIFY FOR THE AUTOMATIC WAIVER

If a deconsolidated corporation cannot qualify for an automatic waiver pursuant to section 3.01 of this revenue procedure, a waiver under § 1504(a)(3)(B) may only be obtained through a letter ruling request filed in accordance with Rev. Proc. 2002-1, 2002-1 I.R.B. 1 (or similar revenue procedure applicable to a later year). If the representations described in sections 5.03 and 5.14 of this revenue procedure can be made with respect to such corporation and the procedures for obtaining an automatic waiver of the general rule of § 1504(a)(3)(A) are not followed, however, then a private letter ruling can only be obtained to waive the application of the general rule of § 1504(a)(3)(A) for taxable years other than the taxable year that includes the date on which § 1504(a)(3)(A) first applies to prevent such corporation from being included in the consolidated return. The letter ruling request must be submitted by the common

parent of the affiliated group of which the deconsolidated corporation becomes a member before the due date (including extensions) of the consolidated return for the tax year with respect to which the waiver is requested. The letter ruling request must include the information set forth in section 5 of this revenue procedure. To the extent that the representations set forth in section 5.03 or section 5.14 of this revenue procedure cannot be made, however, the letter ruling request must: (1) contain information establishing that federal tax savings (as described in section 5.14 of this revenue procedure) was not a purpose of the disaffiliation, and that the amount of any federal tax savings attributable to the disaffiliation or a subsequent consolidation is not significant; and (2) state whether the deconsolidated corporation or a predecessor of such corporation was, at any time during the period of disaffiliation, in the effective control of any member (or successor of any member) of the current group or the former group.

#### SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 91-71, 1991-2 C.B. 900, is clarified, and, as clarified, is superseded.

#### SECTION 9. EFFECTIVE DATE

This revenue procedure is generally effective for consolidated returns due (including extensions) on or after May 20, 2002. Section 7 of this revenue procedure, however, applies to all letter ruling requests postmarked, or if not mailed, received, after May 20, 2002. Nonetheless, the Service may ask the taxpayer to submit information specified in this revenue procedure for any ruling requests postmarked, or if not mailed, received, before that date.

#### SECTION 10. PAPERWORK REDUCTION ACT



The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1784.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in section 5 and section 7. This information is required to determine whether a taxpayer qualifies for a waiver under this revenue procedure. The collections of information are required to obtain a benefit. The likely respondents are corporations that were formerly members of consolidated groups and that later join affiliated groups.

The estimated total annual reporting burden is 100 hours.

The estimated annual burden per respondent varies from 2 hours to 8 hours, depending on individual circumstances, with an estimated average of 5 hours. The estimated number of respondents is 20.

The estimated annual frequency of responses is on occasion.

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

SECTION 11. DRAFTING INFORMATION

The principal author of this revenue procedure is Vincent Daly of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, contact Mr. Daly on (202) 622-7770 (not a toll-free call).