

Revenue Procedure 2010-01, Section 15.03(4)

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SECTION 15. WHAT ARE THE USER FEE REQUIREMENTS FOR REQUESTS FOR LETTER RULINGS AND DETERMINATION LETTERS?

Legislation authorizing user fees

.01 Section 7528 was added to the Internal Revenue Code by section 202 of the Temporary Assistance for Needy Families Block Grant Program, Pub. L. No. 108-89, and was made permanent by section 8244 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110-28.

Section 7528 provides that the Secretary of the Treasury or delegate (the "Secretary") shall establish a program requiring the payment of user fees for requests to the Service for letter rulings, opinion letters, determination letters, and similar requests. The fees apply to requests made through September 30, 2014. The fees charged under the program are to: (1) vary according to categories or subcategories established by the Secretary; (2) be determined after taking into account the average time for, and difficulty of, complying with requests in each category and subcategory; and (3) be payable in advance. The Secretary is to provide for exemptions and reduced fees under the program as the Secretary determines to be appropriate, but the average fee applicable to each category must not be less than the amount specified in § 7528.

Requests to which a user fee applies

.02 In general, user fees apply to all requests for—

(1) letter rulings (including advance consent Forms 3115), determination letters, and advance pricing agreements;

(2) closing agreements described in paragraph (A)(3)(d) of Appendix A of this revenue procedure and pre-filing agreements described in Rev. Proc. 2005-12, 2005-1 C.B. 311 (or its successor);

(3) renewal of advance pricing agreements; and

(4) reconsideration of letter rulings or determination letters.

Requests to which a user fee applies must be accompanied by the appropriate fee as determined

from the fee schedule provided in Appendix A of this revenue procedure. The fee may be refunded as provided in section 15.10 of this revenue procedure.


Requests to which a user fee does not apply

.03 User fees do not apply to—

(1) elections made pursuant to § 301.9100-2, pertaining to automatic extensions of time (*see* section 5.03 of this revenue procedure);

(2) late initial classification elections made pursuant to Rev. Proc. 2009-41 (*see* section 5.03(6) of this revenue procedure);

(3) late S corporation and related elections made pursuant to Rev. Proc. 2004-49, Rev. Proc. 2004-48, Rev. Proc. 2003-43, or Rev. Proc. 97-48 (*see* section 5.02 of this revenue procedure);
or

 (4) requests for a change in accounting period or method of accounting permitted to be made by a published automatic change revenue procedure (*see* section 9.01(1) of this revenue procedure);
or

(5) information letters.

Exemptions from the user fee requirements

.04 The user fee requirements do not apply to—

(1) departments, agencies, or instrumentalities of the United States if they certify that they are seeking a letter ruling or determination letter on behalf of a program or activity funded by Federal appropriations. The fact that a user fee is not charged does not have any bearing on whether an applicant is treated as an agency or instrumentality of the United States for purposes of any provision of the Code; or

(2) requests as to whether a worker is an employee for Federal employment taxes and income tax withholding purposes (Subtitle C of the Code) submitted on Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, or its equivalent.

Fee schedule

.05 The schedule of user fees is provided in Appendix A of this revenue procedure. For the user fee requirements applicable to—

(1) requests for advance pricing agreements or renewals of advance pricing agreements, *see* section 4.12 of Rev. Proc. 2006-9, 2006-1 C.B. 278; or 5.14 of Rev. Proc. 96-53, 1996-2 C.B. at 379; or

(2) requests for letter rulings, determination letters, etc., under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, *see* Rev. Proc. 2010-8, this Bulletin.

Applicable user fee for a request involving multiple offices, fee categories, issues, transactions, or entities

.06

(1) Requests involving several offices. If a request dealing with only one transaction involves more than one office within the Service (for example, one issue is under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries) and another issue is under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division), only one fee applies, namely the highest fee that otherwise would apply to each of the offices involved. *See* Rev. Proc. 2010-8, this Bulletin, for the user fees applicable to issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

(2) Requests involving several fee categories. If a request dealing with only one transaction involves more than one fee category, only one fee applies, the highest fee that otherwise would apply to each of the categories involved.

(3) Requests involving several issues. If a request dealing with only one transaction involves several issues, a request for a change in method of accounting dealing with only one item or submethod of accounting involves several issues, or a request for a change in accounting period dealing with only one item involves several issues, the request is treated as one request. Therefore, only one fee applies, the fee that applies to the particular category or subcategory involved. The addition of a new issue relating to the same transaction, item, or submethod will not result in an additional fee unless the issue places the transaction, item, or submethod in a higher fee category.

(4) Requests involving several unrelated transactions. If a request involves several unrelated transactions, a request for a change in method of accounting involves several unrelated items or submethods of accounting, or a request for a change in accounting period involves several unrelated items, each transaction or item is treated as a separate request. As a result, a separate fee will apply for each unrelated transaction, item, or submethod. An additional fee will apply if the request is changed by the addition of an unrelated transaction, item, or submethod not contained in the initial request. An example of a request involving unrelated transactions is a request involving relief under § 301.9100-3 and the underlying issue.

(5) Requests involving several entities. Each entity involved in a transaction (for example, a reorganization) that desires a separate letter ruling in its own name must pay a separate fee regardless of whether the transaction or transactions may be viewed as related. *But see* section 15.07 of this revenue procedure.

Applicable user fee for requests for substantially identical letter rulings or identical changes in method of accounting

(1) In general. The user fees provided in paragraph (A)(5) of Appendix A of this revenue procedure apply to the situations described in sections 15.07(2) and 15.07(4) of this revenue procedure. To assist in the processing of these user fee requests, all letter ruling requests submitted under this section 15.07 should—

(a) Except for advance consent Forms 3115, include the following typed or printed language at the top of the letter ruling request: “REQUEST FOR USER FEE UNDER SECTION 15.07 OF REV. PROC. 2010-1”;

(b) List on the first page of the submission all taxpayers and entities, and separate and distinct trades or businesses, including qualified subchapter S subsidiaries (QSubs) or single member limited liability companies (single member LLCs), requesting a letter ruling (including the taxpayer identification number, and the amount of user fee submitted, for each taxpayer, entity, or separate and distinct trade or business); and

(c) Submit one check to cover all user fees.

If the Service determines that the letter ruling requests do not qualify for the user fee provided in paragraph (A)(5) of Appendix A of this revenue procedure, the Service will request the proper fee. *See* section 15.09 of this revenue procedure.

(2) Substantially identical letter rulings. The user fee provided in paragraph (A)(5)(a) of Appendix A of this revenue procedure applies to a taxpayer who requests substantially identical letter rulings (including accounting period, method of accounting, and earnings and profits requests other than those submitted on Forms 1128, 2553, 3115, and 5452) for either multiple entities with a common member or sponsor, or multiple members of a common entity. To qualify for this user fee, all information and underlying documents must be substantially identical and all letter ruling requests must be submitted at the same time. In addition, the letter ruling requests must—

(a) State that the letter ruling requests and all information and underlying documents are substantially identical; and

(b) Specifically identify the extent to which the letter ruling requests, information, and underlying documents are not identical.

(3) Substantially identical plans under section 25(c)(2)(B). The user fee provided in paragraph (A)(5)(b) of Appendix A of this revenue procedure shall apply to a taxpayer who submits substantially identical plans for administering the 95-percent requirement of § 143(d)(1) following the submission and approval of an initial plan for administering the requirement. The request for subsequent approvals of substantially identical plans must (1) state that a prior plan was submitted and approved and include a copy of the prior plan and approval; (2) state that the subsequent plan is substantially identical to the approved plan; and (3) describe any differences between the approved plan and the subsequent plan.

(4) Identical changes in method of accounting and related § 301.9100 letter rulings.

The following situations are eligible for the user fees provided in paragraphs (A)(5)(b) and (d) of Appendix A of this revenue procedure:

(i) A taxpayer requests an identical change in method of accounting on a single Form 3115, or an extension of time to file Form 3115 under § 301.9100-3 for the identical change in method of accounting, for two or more separate and distinct trades or businesses (for purposes of § 1.446-1(d)) of that taxpayer, including QSubs and single member LLCs;

(ii) A common parent requests the identical change in method of accounting on a single Form 3115, or an extension of time to file Form 3115 under § 301.9100-3 for the identical change in method of accounting, on behalf of two or more members of the consolidated group;

(iii) A common parent requests the identical change in method of accounting on a single Form 3115, or an extension of time to file Form 3115 under § 301.9100-3 for the identical change in method of accounting, on behalf of two or more controlled foreign corporations (CFCs) or noncontrolled section 902 corporations (10/50 corporations) that do not engage in a trade or business within the United States where all controlling U.S. shareholders of the CFCs and all majority domestic corporate shareholders of the 10/50 corporations are members of the consolidated group; or

(iv) A taxpayer requests an identical change in method of accounting on a single Form 3115, or an extension of time to file Form 3115 under § 301.9100-3 for the identical change in method of accounting, on behalf of two or more CFCs or 10/50 corporations that do not engage in a trade or business within the United States for which the taxpayer is the sole controlling U.S. shareholder of the CFCs or the sole domestic corporate shareholder of the 10/50 corporations.

To qualify as an identical change in method of accounting, the multiple separate and distinct trades or businesses of a taxpayer, including QSubs and single member LLCs, the multiple members of a consolidated group, the multiple eligible CFCs or 10/50 corporations must request to change from an identical present method of accounting to an identical proposed method of accounting. All aspects of the requested change in method of accounting must be identical, including the present and proposed methods, the underlying facts and the authority for the request, except for the § 481 (a) adjustments for the year of change. If the Associate office determines that the requested changes in method of accounting are not identical, additional user fees will be required before any letter ruling is issued.

The taxpayer or common parent must, for each separate and distinct trade or business (including a QSub or single-member LLC, member of a consolidated group, eligible CFC or eligible 10/50 corporation for which the change in method of accounting is being requested), attach to the Form 3115a schedule providing the name, employer identification number (where applicable), and § 481 (a) adjustment for the year of change. If the request is on behalf of eligible CFCs or 10/50 corporations, the taxpayer or common parent must attach a statement that “[a]ll controlling U.S. shareholders (as defined in § 1.964-1 (c)(5)) of all the CFCs to which the request relates are members of the common parent's consolidated group,” “[a]ll majority domestic corporate shareholders (as defined in § 1.964-1(c)(5)) of all the 10/50 corporations to which the request relates are members of the common parent's consolidated group,” that “[t]he taxpayer filing the request is the sole controlling U.S. shareholder (as defined in § 1.964-1(c)(5)) of the CFCs to which the request relates,” or “[t]he taxpayer filing the request is the sole domestic corporate shareholder (as defined in § 1.964—1 (c)(5)) of the 10/50 corporations to which the request

relates,” as applicable.

In the case of a § 301.9100 request for an extension of time to file a Form 3115 requesting an identical change in method of accounting for multiple separate and distinct trades or businesses of a taxpayer (including QSubs or single-member LLCs, multiple members of the consolidated group, multiple eligible CFCs or 10/50 corporations), the taxpayer or common parent must submit the information required in the preceding paragraph in addition to the information required by section 5.03 of this revenue procedure.

Method of payment

.08 Each request to the Service for a letter ruling, determination letter, advance pricing agreement, closing agreement described in paragraph (A)(3)(d) of Appendix A of this revenue procedure, or reconsideration of a letter ruling or determination letter must be accompanied by a check or money order in U.S. dollars, payable to the Internal Revenue Service, in the appropriate amount. (The user fee check or money order should not be attached to the Form 2553, *Election by a Small Business Corporation*, when it is filed at the Service Center. If on the Form 2553, an electing S corporation requests a ruling to use a fiscal year under section 6.03 of Rev. Proc. 2002-39, 2002-1 C.B. 1046, the Service Center will forward the request to the Associate office. When the Associate office receives the Form 2553 from the Service Center, it will notify the taxpayer that the fee is due.) Taxpayers should not send cash.

Effect of nonpayment or payment of incorrect amount

.09 If a request is not accompanied by a properly completed check or money order or is accompanied by a check or money order for less than the correct amount, the respective office within the Service that is responsible for issuing the letter ruling, determination letter, information letter, advance pricing agreement, closing agreement, or reconsideration of a letter ruling or determination letter generally will exercise discretion in deciding whether to return immediately the request. If a request is not immediately returned, the taxpayer will be contacted and given a reasonable amount of time to submit the proper fee. If the proper fee is not received within a reasonable amount of time, the entire request will then be returned. The Service will usually defer substantive consideration of a request until proper payment has been received. The return of a request to the taxpayer may adversely affect substantive rights if the request is not perfected and resubmitted to the Service within 30 calendar days of the date of the cover letter returning the request.

If a request is accompanied by a check or money order for more than the correct amount, the request will be accepted and the amount of the excess payment will be returned to the taxpayer.

Refunds of user fee

.10 In general, the user fee will not be refunded unless the Service declines to rule on all issues for which a ruling is requested.

(1) The following situations are examples of situations in which the user fee will not be refunded:

(a) The request for a letter ruling, determination letter, etc., is withdrawn at any time subsequent to its receipt by the Service, unless the only reason for withdrawal is that the Service has advised the taxpayer that a higher user fee than was sent with the request is applicable and the taxpayer is unwilling to pay the higher fee.

(b) The request is procedurally deficient, although accompanied by the proper fee or an overpayment, and is not timely perfected. When there is a failure to timely perfect the request, the case will be considered closed and the failure to perfect will be treated as a withdrawal for purposes of this revenue procedure. *See* section 8.05(3) of this revenue procedure.

(c) The Associate office notifies the taxpayer that the Associate office will not issue the letter ruling and has closed the case as a result of the taxpayer's failure to submit timely the additional information requested by the Associate office. The failure to submit the additional information will be treated as a withdrawal for purposes of this revenue procedure. *See* section 8.05(3) of this revenue procedure (section 9.08(7) for a request for a change in method of accounting).

(d) A letter ruling, determination letter, etc., is revoked in whole or in part at the initiative of the Service. The fee paid at the time the original letter ruling, determination letter, etc., was requested will not be refunded.

(e) The request contains several issues, and the Service rules on some, but not all, of the issues. The highest fee applicable to the issues on which the Service rules will not be refunded.

(f) The taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or not responsive (other than an issue on which the Associate office has declined to rule) and requests reconsideration. The Associate office, upon reconsideration, does not agree that the letter ruling is erroneous or is not responsive. The fee accompanying the request for reconsideration will not be refunded.

(g) The situation is the same as described in paragraph (f) of this section 15.10(1) except that the letter ruling covered several unrelated transactions. The Associate office, upon reconsideration, does not agree with the taxpayer that the letter ruling is erroneous or is not responsive for all of the transactions, but does agree that it is erroneous as to one transaction. The fee accompanying the request for reconsideration will not be refunded except to the extent applicable to the transaction for which the Associate office agrees the letter ruling was in error.

(h) The request is for a supplemental letter ruling, determination letter, etc., concerning a change in facts (whether significant or not) relating to the transaction on which the Service ruled.

(i) The request is for reconsideration of an adverse or partially adverse letter ruling or a final adverse determination letter, and the taxpayer submits arguments and authorities not submitted before the original letter ruling or determination letter was issued.

(2) The following situations are examples of situations in which the user fee will be refunded:

(a) In a situation to which section 15.10(1)(i) of this revenue procedure does not apply, the taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or is

not responsive (other than an issue on which the Associate office declined to rule) and requests reconsideration. Upon reconsideration, the Associate office agrees that the letter ruling is erroneous or is not responsive. The fee accompanying the taxpayer's request for reconsideration will be refunded.

(b) In a situation to which section 15.10(1)(i) of this revenue procedure does not apply, the taxpayer requests a supplemental letter ruling, determination letter, etc., to correct a mistake that the Service agrees it made in the original letter ruling, determination letter, etc., such as a mistake in the statement of facts or in the citation of a Code section. Once the Service agrees that it made a mistake, the fee accompanying the request for the supplemental letter ruling, determination letter, etc., will be refunded.

(c) The taxpayer requests and is granted relief under § 7805(b) in connection with the revocation in whole or in part, of a previously issued letter ruling, determination letter, etc. The fee accompanying the request for relief will be refunded.

(d) In a situation to which section 15.10(1)(e) of this revenue procedure applies, the taxpayer requests reconsideration of the Service's decision not to rule on an issue. Once the Service agrees to rule on the issue, the fee accompanying the request for reconsideration will be refunded.

(e) The letter ruling is not issued and taking into account all the facts and circumstances, including the Service's resources devoted to the request, the responsible Associate Chief Counsel determines a refund is appropriate. This determination is at the sole discretion of the Associate Chief Counsel.

(f) Refunds based on grounds (a) - (d) are approved at the branch level by a reviewer or branch chief. Refunds based on ground (e) must be approved by the Associate Chief Counsel.

Request for reconsideration of user fee

.11 A taxpayer who believes the user fee charged by the Service for its request for a letter ruling, determination letter, advance pricing agreement, or closing agreement is either inapplicable or incorrect and wishes to receive a refund of all or part of the amount paid (*see* section 15.10 of this revenue procedure) may request reconsideration and, if desired, the opportunity for an oral discussion by sending a letter to the Service at the appropriate address given in section 7.03 in this revenue procedure. Both the incoming envelope and the letter requesting such reconsideration should be prominently marked "USER FEE RECONSIDERATION REQUEST." No user fee is required for these requests. The request should be marked for the attention of:

<i>If the matter involves primarily:</i>	<i>Mark for the attention of:</i>
Associate Chief Counsel (Corporate) letter ruling requests	Associate Chief Counsel (Corporate)

Associate Chief Counsel (Financial Institutions and Products) letter ruling requests

Associate Chief Counsel
(Financial Institutions and
Products)

Associate Chief Counsel (Income Tax and Accounting) letter ruling requests

Associate Chief Counsel
(Income Tax and
Accounting)

Associate Chief Counsel (International) letter ruling and advance pricing agreement requests

Associate Chief Counsel
(International)

Associate Chief Counsel (Passthroughs and Special Industries) letter ruling requests

Associate Chief Counsel
(Passthroughs and Special
Industries)

Associate Chief Counsel (Procedure and Administration) letter ruling requests

Associate Chief Counsel
(Procedure and
Administration)

Deputy Chief Counsel/Deputy Associate Chief Counsel (Tax Exempt and Government Entities) letter ruling requests

Deputy Chief
Counsel/Deputy Associate
Chief Counsel ()
(Complete by using the
applicable designation
“Employee Benefits” or
“Employment Tax/Exempt
Organizations/Government

Entities”)

**Determination
letter requests
submitted
pursuant to this
revenue
procedure by
taxpayers
under the
jurisdiction of
LMSB**

Manager, Office of Pre-
Filing and Technical
Services

**Determination
letter requests
submitted
pursuant to this
revenue
procedure by
taxpayers
under the
jurisdiction of
SB/SE, W&I**

The appropriate SB/SE
official listed in Appendix
D

**Determination
letter requests
submitted
pursuant to this
revenue
procedure by
taxpayers
under the
jurisdiction of
TE/GE**

Director, Employee Plans
Examinations Director,
Exempt Organizations
Examinations Director,
Federal, State & Local
Governments Director,
Tax Exempt Bonds
Director, Indian Tribal
Governments

(Add name of field office
handling the request)