

Part III
Administrative, Procedural, and Miscellaneous

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

Rev. Proc. 2001-22

SECTION 1. PURPOSE XX

SECTION 2. BACKGROUND XX

SECTION 3. SCOPE XX

- .01 *Eligible taxpayers.* XX
- .02 *Eligible taxable years.* XX
- .03 *Eligible issues generally.* XX
 - (1) *Factual issues and well established law* XX
 - (2) *Eligible taxable year(s)* XX
- .04 *Nonexclusive list of eligible domestic issues* XX
- .05 *Exclusive list of international issues* XX
- .06 *Excluded issues.* XX
- .07 *Methods of accounting* XX
- .08 *Definition of taxpayer.* XX

SECTION 4. REQUESTING AN LMSB PRE-FILING AGREEMENT XX

- .01 *General information.* XX
- .02 *Specific descriptions of issues.* XX
- .03 *Perjury statement.* XX
- .04 *Agreement regarding examination or inspection of records* XX
- .05 *Signature.* XX
- .06 *Where to submit request.* XX

SECTION 5. SELECTING TAXPAYERS FOR LMSB PFA PROGRAM XX

- .01 *Jurisdiction.* XX
- .02 *Criteria for selection.* XX

- .03 *Notification.* XX
- .04 *Requests not accepted.* XX

SECTION 6. PROCESSING A REQUEST FOR AN LMSB PFA XX

- .01 *Planning* XX
- .02 *Drafting* XX
- .03 *Return filing requirements* XX
- .04 *TEFRA taxpayers* XX
- .05 *Execution prior to filing.* XX
- .06 *Execution after filing* XX

SECTION 7. NATURE AND EFFECT OF AN LMSB PFA XX

- .01 *Criteria for issuance.* XX
- .02 *Form and content generally.* XX
- .03 *Methods of accounting* XX

SECTION 8. WITHDRAWAL XX

SECTION 9. NO LMSB PFA EXECUTED XX

- .01 *Accelerated issue resolution* XX
- .02 *Administrative appeals.* XX

SECTION 10. USER FEE XX

- .01 *Taxpayers subject to fees* XX
- .02 *Amount of fee* XX
- .03 *Time and method of payment* XX
- .04 *Withdrawal* XX

SECTION 11. DISCLOSURE XX

SECTION 12. RECORD KEEPING REQUIREMENTS XX

SECTION 13. PAPERWORK REDUCTION ACT XX

SECTION 14. DRAFTING INFORMATION XX

SECTION 1. PURPOSE

.01 This revenue procedure permits a taxpayer subject to the jurisdiction of the Large and Mid-Size Business Division (LMSB) of the Internal Revenue Service (Service) to request the examination of specific issues relating to a tax return before the return is timely filed. This revenue procedure also establishes a framework within

which the taxpayer and the Service can work together in a cooperative environment to resolve the examined issues. Finally, if the taxpayer and the Service are able to resolve the examined issues prior to the filing of the return, this revenue procedure authorizes the taxpayer and the Service to finalize their resolution by executing an LMSB Pre-Filing Agreement (LMSB PFA).

.02 The purpose of this revenue procedure is to facilitate and encourage the use of pre-filing examinations to resolve issues involving factual questions under well settled principles of law. A pre-filing examination can often resolve such issues more effectively and efficiently than a post-filing examination because the taxpayer and the Service have more timely access to the records and personnel relevant to the issue. A pre-filing examination also provides the taxpayer with a greater level of certainty regarding the examined issue at an earlier point in time than a post-filing examination. Thus, the use of pre-filing examinations will benefit both taxpayers and the Service by improving the quality of tax compliance while reducing its costs, burdens and delays.

.03 This revenue procedure applies only to issues involving the application of well settled principles of law. This revenue procedure is not intended to resolve issues involving questions of law that are not well settled with respect to the material facts of the issue. Such issues are more appropriately resolved through the private letter ruling process. See Rev. Proc. 2001-1, 2001-1 I.R.B. 1 (or successor).

.04 This revenue procedure is not intended to resolve disputes between the taxpayer and the Service regarding the correct interpretation of the law, except as authorized by Delegation Order Nos. 236 (Application of Appeals Settlement to Coordinated Examination Program Taxpayers) or 247 (Authority of Examination Case

Managers to Accept Settlement Offers and Execute Closing Agreements on Industry Specialization Program and International Field Assistance Program Issues).

SECTION 2. BACKGROUND.01 In Notice 2000-12, 2000-9 I.R.B. 727, the Service announced a pilot program for LMSB PFAs, under which LMSB taxpayers could request examination and resolution of specific issues relating to returns they expected to file between September and December, 2000. The purpose of the pilot program was to determine if taxpayers and Service personnel could resolve, prior to the time for filing the taxpayers' returns, issues that were likely to be disputed in post-filing audits. The Service anticipated that if such issues could be resolved through cooperation of the parties, the results would benefit both taxpayers and the Service.

.02 In evaluating the pilot program, the Service, with considerable input from the participating taxpayers, has concluded that LMSB PFAs allowed taxpayers to file more compliant returns within prescribed time frames, were cost efficient, decreased taxpayer compliance burdens, and conserved Service resources. Accordingly, the Service will offer the LMSB PFA program on a permanent basis.

SECTION 3. SCOPE

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

.02 *Eligible taxable years.* An eligible taxpayer may request an LMSB PFA with respect to the current taxable year or any prior taxable year for which the return is not yet due (including extensions) and is not yet filed. However, taxpayers are reminded the selection criteria for the LMSB PFA program include both the amount of time

remaining until the date for filing the return to which the desired LMSB PFA would relate and the overall likelihood that the LMSB PFA process can be completed prior to such date. See section 5.02 of this revenue procedure. Taxpayers are therefore urged to submit their LMSB PFA requests at the earliest possible time in order to maximize the likelihood that they will be selected for the LMSB PFA program and that an LMSB PFA agreement can be finalized prior to the filing of the return(s).

.03 Eligible issues generally.

(1) *Factual issues and well established law.* The Service generally will consider entering into an LMSB PFA on any issue that represents either (i) a factual determination or (ii) an application of legal principles to agreed upon facts in which the legal principles are well established in their application to such facts. However, the Service will not consider entering into an LMSB PFA with respect to (i) any international issue that is not listed in section 3.05 of this revenue procedure, or (ii) any excluded issue listed in section 3.06 of this revenue procedure.

(2) *Eligible taxable year(s).* An eligible issue must relate to an eligible year for which the LMSB PFA is sought; an issue is not an eligible issue if it relates to any prior or subsequent taxable year. Thus, the valuation of a specific asset during an eligible year is generally an eligible issue for the LMSB PFA program, whereas the valuation of an asset during a prior or subsequent taxable year is not.

.04 Nonexclusive list of eligible domestic issues. The following is a list of domestic issues that are likely to be suitable for resolution through the LMSB PFA

program. This list is **nonexclusive** and is not intended to prevent submission of other domestic issues that fall within the scope of the LMSB PFA program.

(1) the current valuation of specific assets (except in the context of transfer pricing), but not the appropriateness of a valuation methodology;

(2) the allocation of the purchase or sale price of a business among the assets acquired or sold;

(3) the identification and documentation of hedging transactions;

(4) issues relating to in-house research expenses under § 41;

(5) the allocation of costs among different categories of deductible and capital items, in contexts where there is a published revenue ruling, e.g. repairs (Rev. Rul. 94-12, 1994-1 C.B. 36), advertising (Rev. Rul. 92-80, 1992-2 C.B. 57), and Y2K costs (Rev. Proc. 97-50, 1997-2 C.B. 525);

(6) identification of investigatory costs incurred to determine whether to enter a new business and, if so, which business to enter, for purposes of qualifying such costs as start-up costs under § 195 (see Rev. Rul. 99-23, 1999-1 C.B. 998);

(7) whether a taxpayer's financial statement presentation of its last-in, first-out (LIFO) inventory is consistent with the LIFO conformity requirement under § 1.472-2(e);

(8) whether a taxpayer's inventory contains "sub-normal" goods within the meaning of § 1.471-2(c), and the valuation of such goods;

(9) whether a taxpayer is considered to be the tax owner of the property being produced under § 1.263A-2(a)(1)(ii)(A);

(10) whether a manufacturing contract newly entered into by the taxpayer is required to be accounted for as a long-term contract under § 460;

(11) the determination of appropriate classification under § 168(e) for depreciable property placed in service during the eligible taxable year; and

(12) whether a security became worthless during the eligible taxable year, for purposes of § 165(g).

.05 *Exclusive list of international issues.* The following is a list of international issues that are likely to be suitable for resolution through the LMSB PFA program. This list is **exclusive**; the Service will not consider entering into an LMSB PFA with respect to an international issue that is absent from this list.

(1) the valuation of specified assets, but not a retrospective change in the method of valuation or a determination of appropriate valuation methodology;

(2) the proper SIC or NAIC classification code(s) for the taxpayer's line(s) of business;

(3) whether the taxpayer's apportionment of deductions, including general and administrative expenses, that are related to all gross income properly reflects the factual relationship between deductions and gross income as required by § 1.861-8(f)(5);

(4) whether, as a factual matter, an expense relates to fewer than all members of an affiliated group for purposes of § 1.861-14T(c)(2);

(5) the verification of amounts of foreign taxes paid and the applicable exchange rates, but not whether such taxes are creditable; and

(6) whether the taxpayer must recapture a dual consolidated loss following a triggering event under § 1503(d).

.06 *Excluded issues.* The Service generally will not enter into an LMSB PFA on the following types of issues:

(1) Transfer pricing issues that are addressed under the Advance Pricing Agreement program (Rev. Proc. 96-53, 1996-2 C.B. 375);

(2) Issues for which the taxpayer has filed a request for Competent Authority assistance;

(3) Issues that can be resolved by requesting a change in method of accounting on Form 3115, Application for Change in Accounting Method;

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

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

(6) Issues that are, or will be, the subject of a pending or contemplated request for a private letter ruling, accounting method change request, determination letter or technical advice memorandum;

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

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

(9) Issues that are the subject of litigation between the Service and the taxpayer with respect to an earlier taxable period;

(10) Issues that have been designated for litigation by the Office of Chief Counsel;

(11) Issues involving a tax shelter described in § 6662(d)(2)(C)(iii); and

(12) Issues that require a determination of whether the taxpayer, rather than another entity, is the common law employer.

.07 Methods of accounting. The LMSB PFA's application of the law to the taxpayer's facts may result in treating an item differently from earlier treatments of similar items in prior taxable years (*e.g.*, deducting items that previously were capitalized, such as certain ISO 9000 costs). If so, the differing treatment may constitute a change in the method of accounting for that item. The LMSB PFA will resolve only the factual characterization of the items at issue for the taxable year(s) to which the LMSB PFA relates, but will not constitute the Commissioner's consent to make any accounting method change that may be required to conform the agreed upon factual characterization of the item with identical items in earlier years. Permission to make any accounting method changes required by the LMSB PFA's resolution of the factual and legal issues must be obtained using the applicable administrative procedures. See Rev. Proc. 99-49, 1999-2 C.B. 725 (automatic consent to change certain accounting methods); Rev. Proc. 97-27, 1997-1 C.B. 680.

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

SECTION 4. REQUESTING AN LMSB PRE-FILING AGREEMENT

.01 *General information.* A request for an LMSB PFA must contain the following general information about the taxpayer and its request for an LMSB PFA:

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

(2) The name, title, address and telephone number of a person to contact (If the person to contact is an authorized representative of the taxpayer, a properly executed Form 2848, Power of Attorney and Declaration of Representative, must accompany the request);

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

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

(5) A brief description of the taxpayer's business operations, including the NAICS (North American Industry Code System) classification used by the taxpayer on its last filed return; and

(6) The taxable period for which the LMSB PFA is sought, the last date on which the taxpayer may file (with extensions) a timely return for that period, and (if earlier) the date on which the taxpayer intends to file that return;

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

(1) Describes the issue;

(2) Summarizes all the facts that are relevant and material to the issue;

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

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

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

(6) Discusses the suitability of the issue for the LMSB PFA program in light of the purpose and criteria set forth in sections 1, 2, and 3 of this revenue procedure;

(7) Discusses whether the LMSB PFA will have any effect in taxable periods either before or after the taxable period for which the LMSB PFA is sought;

(8) States whether the taxpayer has applied for competent authority assistance with respect to the issue for the year in question or any prior year;

(9) States whether the issue, or any part of the issue, has ever been the subject of a request for private letter ruling, determination letter, consent to change a method of accounting, or technical advice with respect to the year in question or any prior year;

(10) Discusses whether the issue can be resolved by the date on which the taxpayer intends to file its return for the taxable period in question; and

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

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

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the request for the Pre-Filing Agreement are true, correct and complete.

.04 Agreement regarding examination or inspection of records. The request for a LMSB PFA must contain a statement by the taxpayer that the taxpayer agrees that the inspection of records and testimony under the LMSB PFA procedures will not preclude or impede (under § 7605(b) or any administrative provisions adopted by the Service) a later examination of a return or inspection of records with respect to any

taxable year needed to resolve the issue in the request for LMSB PFA, and that the Service need not comply with any applicable procedural restrictions (such as providing notice under § 7605(b) before beginning such examination or inspection).

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

.06 *Where to submit request*. A request for an LMSB PFA:

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

(2) In the case of a taxpayer whose return is not currently under examination, should be sent to the following address:

Internal Revenue Service
Attn: LMSB
Manager, Pre-Filing Services, Mint Building
1111 Constitution Avenue NW
Washington DC 20224

(3) Facsimile transmissions may be made to (202) 283-8427 (not a toll free call).

SECTION 5. SELECTING TAXPAYERS FOR LMSB PFA PROGRAM

.01 *Jurisdiction*. The LMSB Industry Director with jurisdiction over the taxpayer will make the final decision whether to proceed with the taxpayer's request for an

LMSB PFA. (For purposes of this revenue procedure, the term “LMSB Industry Director” includes a duly authorized designee of an LMSB Industry Director.)

.02 Criteria for selection. The criteria for selecting taxpayers to participate in the LMSB PFA program include:

- (1) The suitability of the issue presented for the LMSB PFA program;
- (2) The direct or indirect impact of an LMSB PFA upon other years, issues, taxpayers, or related cases;
- (3) The availability of Service resources;
- (4) The ability and willingness of the taxpayer to dedicate sufficient resources to the LMSB PFA process;
- (5) The likelihood that the LMSB PFA may result in two or more persons taking contrary positions with respect to an item or transaction (“whipsaw”);
- (6) The time remaining until the due date of the return to which the LMSB PFA relates; and
- (7) The overall probability of completing the process and entering into an LMSB PFA by the proposed date for filing the taxpayer’s return.

.03 Notification. A representative of LMSB will contact the taxpayer within 14 business days of receipt of the taxpayer's request for an LMSB PFA to discuss the potential suitability of the issue(s) for inclusion in the LMSB PFA program. Thereafter, a representative of LMSB will inform the taxpayer in writing whether it has been selected for participation in the LMSB PFA program.

.04 Requests not accepted. A taxpayer is not entitled to a conference to appeal a decision not to go forward with the LMSB PFA process. A taxpayer not selected for

the PFA program remains eligible for other procedures for early issue resolution, including the Accelerated Issue Resolution (AIR) program (see Rev. Proc. 94-67, 1994-2 C.B. 800).

SECTION 6. PROCESSING A REQUEST FOR AN LMSB PFA

.01 *Planning.* If the Service accepts the taxpayer's request for an LMSB PFA, a representative of LMSB will contact the taxpayer to schedule an orientation meeting with the taxpayer and examination personnel to discuss the LMSB PFA process and explain the roles and responsibilities of each participant. Immediately following the orientation meeting, the taxpayer and the Service should meet to formulate a plan and timeline that will result in a thorough development of the facts and a successful resolution of the issue prior to the time for filing the taxpayer's return.

.02 *Drafting.* After the development of the facts and issues, the Team Manager will informally meet with the taxpayer to determine whether the parties can reach agreement on a proposed LMSB PFA. If the parties reach agreement, the taxpayer will work with the Service to prepare the initial draft of the LMSB PFA closing agreement. The LMSB PFA will be prepared by the taxpayer and the audit team with assistance, as necessary, from the LMSB PFA Program Manager, the Office of Chief Counsel, or other Service personnel.

.03 *Return filing requirements.* The Service's acceptance of a taxpayer's request for a LMSB PFA does not suspend or waive the normal filing requirements for any tax returns that may be affected by the proposed LMSB PFA. If an LMSB PFA is reached prior to the filing of the return, the taxpayer will report the transaction(s) addressed in the LMSB PFA in accordance with the terms of the LMSB PFA.

.04 *TEFRA taxpayers*. If the taxpayer requesting the LMSB PFA is subject to the procedures set forth in §§ 6221 through 6233 and the issue(s) in the LMSB PFA will become a partnership item or items as defined in § 6231 when the return is filed, the LMSB PFA process will be terminated with respect to such issue(s) if no agreement on such issues is reached with all partners within 30 business days prior to the extended due date of the return.

.05 *Execution prior to filing*. If an LMSB PFA is executed prior to the filing of the return to which the LMSB PFA relates, the taxpayer must file such return according to the terms and conditions set forth in the LMSB PFA. A copy of the LMSB PFA must be attached to the return.

.06 *Execution after filing*. If the Service and the taxpayer cannot reach agreement prior to the filing of the return, the Service and the taxpayer may continue to attempt to resolve the issue and enter into an LMSB PFA. If the Service and the taxpayer desire to execute an LMSB PFA after the filing of a return to which the LMSB PFA relates and the return is not consistent with the terms and conditions of the contemplated LMSB PFA, the taxpayer is expected to file an amended return consistent with the terms and conditions of the LMSB PFA. The LMSB PFA should contain a statement whereby the taxpayer acknowledges the expectation that an amended return will be filed and that if such return is not filed that the Service will assess any additional tax due. A copy of the LMSB PFA must be attached to the amended return.

SECTION 7. NATURE AND EFFECT OF AN LMSB PFA

.01 *Criteria for issuance.* The Director, Field Operations (or other authorized official) may execute an LMSB PFA if:

(1) Entering into the LMSB PFA is consistent with the goals of the LMSB PFA program;

(2) The resolution(s) of issue(s) in the LMSB PFA reflect well settled legal principles and correctly apply those principles (or positions authorized under Delegation Order No. 236 or 247) to the facts established by the audit team; and

(3) There is an advantage in having the issue(s) permanently and conclusively closed for the taxable period covered by the LMSB PFA, or that the taxpayer shows good and sufficient reasons for desiring a closing agreement and that the United States will sustain no disadvantage through consummation of such an agreement (see § 301.7121-1 (a) of the Regulations on Procedure and Administration).

.02 *Form and content generally.* An LMSB PFA between the Service and the taxpayer is a closing agreement under § 7121, and, accordingly, must comply with the requirements of Rev. Proc. 68-16, 1968-1 C.B. 770, regarding the form and content of closing agreements.

.03 *Methods of accounting.* An LMSB PFA shall not constitute a final determination under § 7121 with respect to the methods of accounting of the taxpayer for any taxable year. Further, an LMSB PFA does not constitute the consent of the Commissioner under § 446(e) to any change in method of accounting by the taxpayer.

SECTION 8. WITHDRAWAL

.01 At any time prior to the execution of the LMSB PFA, either the taxpayer or the Service may withdraw from consideration all or part of the request for an LMSB

PFA. The withdrawal must be in writing and signed by the party initiating the withdrawal action, *i.e.*, the taxpayer or his authorized representative or the Industry Director.

.02 Notwithstanding the withdrawal by either the taxpayer or the Service of any or all the issues in the request for an LMSB PFA, the taxpayer's agreement under section 4.04 of this revenue procedure will remain effective.
SECTION 9. NO LMSB PFA EXECUTED

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

.02 *Administrative appeals.* If the Service and the taxpayer are unable to resolve an issue by an LMSB PFA or an AIR agreement, the taxpayer may pursue an administrative appeal either by requesting an Early Referral to Appeals under procedures set forth in Rev. Proc. 99-28, 1999-29 I.R.B. 109, or by protesting any proposed deficiency related to the issue.

SECTION 10. USER FEE

.01 *Taxpayers subject to fees.* Taxpayers are subject to a user fee only if they are selected to participate in the LMSB PFA program. Taxpayers not selected to participate in the LMSB PFA program are not subject to user fees.

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

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

For purposes of determining the appropriate user fee, the amount of assets held by the taxpayer will be determined by its most recently filed return.

.03 *Time and method of payment.* Taxpayers subject to user fees must submit payment within 30 business days of receiving notification that they have been selected to participate in the LMSB PFA program. Payment must be made by a check or money order payable to the Internal Revenue Service.

.04 *Withdrawal.* Notwithstanding the withdrawal by either the taxpayer or the Service of any or all of the issues in the request for an LMSB PFA, the user fee paid by the taxpayer generally will not be refundable.

SECTION 11. DISCLOSURE

.01 LMSB PFAs are closing agreements entered into pursuant to § 7121. As such, both an LMSB PFA and the information generated or received by the Service during the LMSB PFA process constitute confidential return information as defined by § 6103 (b)(2)(D). As prescribed by Congress, the Service will publish annual reports summarizing the operation of the LMSB PFA program, consistent with the restrictions

of § 6103. LMSB PFAs are not written determinations under § 6110, and accordingly, are exempt from disclosure to the public under the Freedom of Information Act (FOIA).

SECTION 12. RECORD KEEPING REQUIREMENTS

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

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

SECTION 13. PAPERWORK REDUCTION ACT

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

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

Once an LMSB PFA is entered into, the record keeping requirements under section 12 are mandatory. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or record keeping burden is 10,200 hours.

The estimated annual burden per respondent/recordkeeper varies from 5 hours to 126 hours, depending on whether a taxpayer applying to the LMSB PFA program is accepted into the program. The estimated annual burden for taxpayers who apply to the LMSB PFA program and are accepted is 126 hours. The estimated annual burden for taxpayers who apply to the LMSB PFA program and are not accepted is 5 hours. The estimated number of taxpayers who apply to the LMSB PFA program and are accepted is 75. The estimated number of taxpayers who apply to the LMSB PFA program and are not accepted is 150. The estimated total number of respondents and/or recordkeepers is 225.

The estimated annual frequency of responses is on occasion.

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

SECTION 14. DRAFTING INFORMATION

The principal author of this revenue procedure is Grant Anderson of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information about this revenue procedure, contact Mike Mann, Senior Program Analyst, LMSB Office of

Pre-filing and Technical Guidance, at (202) 283-8424 (voice)(not a toll free call), (202) 283-8427 (fax) (not a toll-free call), or pfa.info@irs.gov (e-mail).