

Part IV- Items of General Interest

Revenue Procedure 2006-44

Appeals Arbitration Program

SECTION 1. PURPOSE

This revenue procedure formally establishes the Appeals arbitration program, which is designed to improve tax administration, provide customer service and reduce taxpayer burden. Arbitration is available for cases within Appeals jurisdiction that meet the operational requirements of the program. Generally, this program is available for cases in which a limited number of factual issues remain unresolved following settlement discussions in Appeals. Within Appeals, the Office of Tax Policy and Procedure will be responsible for the management of the Appeals arbitration program.

SECTION 2. BACKGROUND

.01 Section 7123(b)(2) of the Internal Revenue Code, as enacted by § 3465 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, provides that the Secretary shall establish a pilot program under which a taxpayer and Appeals may jointly request binding arbitration on certain unresolved issues. On January 18, 2000, Appeals began a two-year test of an initial arbitration procedure. See Announcement 2000-4, 2000-1 C.B. 317. On July 1, 2003, Appeals completed an additional one-year test of its arbitration procedure. See Announcement 2002-60, 2002-2 C.B. 28. During these test periods, the IRS allowed taxpayers to request arbitration for certain factual issues that were already subject to the Appeals administrative process.

.02 This revenue procedure supersedes Announcements 2000-4 and 2002-60.

SECTION 3. SCOPE OF ARBITRATION

.01 The arbitration procedure may be used to resolve issues while a case is in Appeals, after settlement discussions are unsuccessful and, generally, when all other issues are resolved but for the specific factual issue(s) for which arbitration is being requested.

.02 The arbitration procedure does not create any special authority for settlement by Appeals. During the arbitration process, Appeals is still subject to the procedures that would be applicable if the issue were being considered by Appeals, including procedures in the Internal Revenue Manual and existing published guidance.

.03 Arbitration is available:

(1) Only for factual issues;

(2) For factual issues for which a request for competent authority assistance has not yet been filed. Taxpayers are cautioned that if they enter into a settlement with Appeals (including an Appeals settlement through the arbitration process), and then request competent authority assistance, the U.S. competent authority will endeavor only to obtain a correlative adjustment with the treaty country and will not take any actions that would otherwise change the settlement. See section 7.05 of Rev. Proc. 2002-52, 2002-2 C.B. 242, or the corresponding provision of any successor guidance. If a taxpayer enters into the Appeals arbitration program, the taxpayer may not request competent authority assistance until the arbitration process is completed, unless the taxpayer demonstrates that a request for competent authority assistance is necessary to keep open a statute of limitations in the treaty country. If so, competent authority assistance may be requested while arbitration is pending and the U.S. competent authority will suspend action on the case until arbitration is completed; and

(3) For factual issues unresolved at the conclusion of unsuccessful attempts to enter into a closing agreement under I.R.C. § 7121.

.04 Arbitration will not be available for:

(1) Legal issues;

(2) Cases in which arbitration is not appropriate under either 5 U.S.C. § 572 or 5 U.S.C. § 575, which provide the general authority and guidelines for the use of alternative of dispute resolution in the administrative process.

(3) Issues docketed in any court;

(4) Issues in a taxpayer's case designated for litigation;

(5) Compliance Coordinated (formerly Industry Specialization Program) Issues (CCI) or Appeals Coordinated Issues (ACI) listed at <http://www.irs.gov/irs/article/0,,id=128327,00.html>; see §§ 8.7.3.2.1 and 8.7.3.2.2 of the Internal Revenue Manual, found at <http://www.irs.gov/irm/index.html>;

(6) Issues for which a request for competent authority assistance has been filed under the provisions of Rev. Proc. 2002-52, or any successor guidance, including issues in cases submitted to the competent authority under the simultaneous appeals procedure. If the competent authority declines assistance, the competent authorities fail to agree, or if the taxpayer does not accept the mutual agreement reached by the competent authorities, the taxpayer is permitted to refer the unresolved issues to Appeals for further consideration and may submit a request to arbitrate unresolved factual issues under this revenue procedure;

(7) Collection cases, except for those involving: (i) an unsuccessful attempt to enter into a compromise under I.R.C. § 7122; and (ii) trust fund recovery penalty (TFRP)

cases that involve whether a person: (a) was required to collect, truthfully account for, and pay over income, employment, or excise taxes; (b) was willful in attempting in any manner to evade or defeat any aforementioned tax or the payment thereof; and (c) is liable for the TFRP under I.R.C. § 6672; as provided for in any subsequent guidance issued by the Service;

(8) Issues for which arbitration would not be consistent with sound tax administration, e.g., issues governed by closing agreements, by res judicata, or controlling Supreme Court precedent;

(9) “Whipsaw” issues, i.e., issues for which resolution with respect to one party might result in inconsistent treatment in the absence of the participation of another party;

(10) Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2001-41, 2001-2 C.B.173 which defines frivolous issues and sets forth the Service’s policy against making technical rulings on such issues.

(11) Cases in which the taxpayer did not act in good faith during Appeals settlement negotiations, e.g., failure to respond to document requests, failure to respond timely to offers to settle, failure to address arguments and precedents raised by Appeals; or

(12) Issues that have been otherwise identified as excluded from the arbitration program.

SECTION 4. APPLICATION PROCESS

.01 Arbitration is optional for both the taxpayer and Appeals. Either the taxpayer or Appeals may submit a request to arbitrate after consulting with the other party.

.02 A taxpayer may submit a request to arbitrate by sending a written request to the appropriate Appeals Team Manager and a copy to the Chief, Appeals, 1099 14th Street, NW, Suite 4200 East, Washington, DC 20005, Attn: Office of Tax Policy and Procedure. The request to arbitrate should:

(1) Provide the taxpayer's name, TIN, address, and the name, title, address and telephone number of a person to contact;

(2) Provide the Appeals Team Case Leader's, Appeals Officer's, or Settlement Officer's name;

(3) Identify the taxable period(s) involved;

(4) Describe the issue for which the taxpayer is requesting arbitration, including the dollar amount of the adjustment in dispute; and

(5) Contain a representation that the issue is not an excluded issue listed in section 3.04, above.

.03 The Appeals Team Manager will respond to the taxpayer and the Appeals Team Case Leader, Appeals Officer, or Settlement Officer, generally, within two weeks after the Appeals Team Manager receives the taxpayer's request for arbitration. The Appeals Team Manager will secure the concurrence of the Chief, Appeals - Office of Tax Policy and Procedure, prior to notifying the taxpayer and the Appeals Team Case Leader, Appeals Officer, or Settlement Officer of the decision.

(1) If Appeals approves the request to arbitrate, the Appeals Team Manager will schedule a conference or conference call that will include a representative from the Chief, Appeals - Office of Tax Policy and Procedure. This representative will act as the Administrator to manage and supervise the arbitration proceeding and to act as liaison

between the taxpayer and Appeals (the Parties) and between the Parties and the Arbitrator. At a later date, pursuant to section 6.02, the Parties may select another Administrator, including non-IRS persons.

(2) Although no formal appeal procedure exists for the denial of a request to arbitrate, a taxpayer may request a conference with the Appeals Team Manager to discuss the denial. The denial of a request to arbitrate is not subject to judicial review.

SECTION 5. AGREEMENT TO ARBITRATE

.01 Upon approval of the request to arbitrate, the Parties will enter into a written agreement to arbitrate. See Exhibit 1 of this revenue procedure for a model agreement to arbitrate. The attached model agreement is designed to serve as a basic framework; if there is mutual agreement, the Parties are free to eliminate or modify existing provisions and add new provisions as necessary. Each Party enters an agreement to arbitrate in reliance on the other Party's agreement to be bound by the decision of the Arbitrator. The agreement to arbitrate will, at minimum:

(1) Specify the issue(s) that the Parties have agreed to arbitrate;

(2) Assign to the Arbitrator the prescribed task of finding facts;

(3) Describe with precision the answer the Parties seek; e.g., a specific dollar amount, range of dollar values, a 'yes' or 'no' finding, etc.

(4) Describe and limit the kind of information the Arbitrator may consider, e.g., the Parties' agreement as to any legal guidance the Arbitrator must rely upon in reaching a decision;

(5) Contain an initial list of witnesses, attorneys, representatives, and observers for each Party (collectively known as Participants);

(6) Provide that the time and place of any hearing will be determined by mutual agreement of the Parties, and;

(7) Prohibit ex parte contacts between the Arbitrator and the Parties.

.02 The agreement to arbitrate may limit the number, identity and participation of Participants. In addition, the agreement may stipulate the subsequent tax or other treatment resulting from the Arbitrator's decision and clarify any other issues that may result from the Arbitrator's decision.

.03 The Appeals Team Manager, in consultation with the Appeals Team Case Leader, Appeals Officer, or Settlement Officer, will sign the agreement to arbitrate on behalf of Appeals.

.04 Generally, the Parties will complete the agreement to arbitrate within four weeks after the taxpayer is notified that Appeals has approved the request to arbitrate, and proceed to arbitration within 90 days after signing the agreement to arbitrate. A taxpayer's inability to adhere to these timeframes, without reasonable cause, may result in Appeals' withdrawal from the arbitration process.

.05 In executing the agreement to arbitrate, the taxpayer consents to the disclosure by the IRS of the taxpayer's returns and return information incident to the arbitration to any Participant for the taxpayer identified in the initial list of Participants and to any Participants for the taxpayer identified in writing by the taxpayer subsequent to execution of the agreement to arbitrate. If the agreement to arbitrate is executed by a person pursuant to a power of attorney executed by the taxpayer, that power of attorney must clearly express the taxpayer's grant of authority to consent to disclose the

taxpayer's returns and return information by the IRS to third parties, and a copy of that power of attorney must be attached to the agreement.

SECTION 6. ARBITRATION PROCESS

.01 A Party must notify the other Party and the Administrator, in a signed writing, not later than thirty (30) days before the arbitration session, of any change to the initial list of Participants contained in the agreement to arbitrate. The Parties, by mutual agreement, may modify the list of Participants at any time up to and including the date of the arbitration session. The Administrator will forward each Party's list(s) to the Arbitrator. Appeals reserves the right to have an observer attend any arbitration. If a taxpayer does not accept observers, the taxpayer's request for arbitration may be denied. Taxpayers may also have an observer attend any arbitration session. The identity and affiliation of all observers will be established in the agreement to arbitrate signed prior to the arbitration session. See section 5.01(5); section 2 of Exhibit 1. All observers affiliated with Appeals will be bound by the confidentiality provisions of the Internal Revenue Code. See section 9.01. Appeals also reserves the right to have the Office of Chief Counsel assist and participate in the arbitration proceeding.

.02 The Parties, by mutual agreement, may select an Arbitrator from Appeals, or from any local or national organization that provides a roster of neutrals. In the event such local or national organization provides an Arbitrator, this organization may also provide the Administrator for the arbitration, in lieu of the Administrator from the Chief, Appeals - Office of Tax Policy and Procedure. In obtaining the services of a non-IRS Arbitrator, the IRS will follow all applicable provisions of the Federal Acquisition Regulation. An Arbitrator shall have no official, financial, or personal conflict of interest with respect to

the Parties, unless such interest is fully disclosed in writing to the taxpayer and the Appeals Team Manager and they agree that the Arbitrator may serve. See 5 U.S.C. § 573.

.03 If the Parties select a non-IRS Arbitrator, the Parties will share equally the compensation, expenses, and related fees and costs of the Arbitrator, as well as any reasonable costs for the services of a non-IRS Administrator subject to applicable rules and regulations for Government procurement. The non-IRS Arbitrator and non-IRS Administrator will be contractors subject to the disclosure restrictions of I.R.C. § 6103(n).

.04 If the Parties select an Appeals Arbitrator, the Arbitrator shall be from another Appeals office, or from the office of the Chief, Appeals. Appeals will pay all expenses associated with an Appeals Arbitrator. Due to the inherent conflict that results because the Appeals Arbitrator is an employee of the IRS, the Appeals Arbitrator will provide to the taxpayer a statement confirming the proposed service as an Arbitrator and status as a current employee of the IRS, and that a conflict results from the continued status as an IRS employee.

.05 Criteria for selecting an Arbitrator may include some or all of the following: completion of arbitration training, previous arbitration experience, a substantive knowledge of tax law and knowledge of industry practices. The Arbitrator's qualifications and potential conflicts of interest should be thoroughly reviewed prior to selection. The projected travel costs, hourly fees and other expenses of a non-IRS Arbitrator are subject to the applicable rules and regulations for Government

procurement. The non-IRS Arbitrator shall look solely to each Party for one-half of the compensation, expenses and related reasonable fees and costs.

SECTION 7. ARBITRATION SESSION

.01 Each Party will prepare a summary of its position for consideration by the Arbitrator. The Parties should submit their summaries to the Administrator no later than thirty (30) days before the scheduled arbitration session.

.02 The Arbitrator will look solely to the legal guidance identified by the Parties. If the Arbitrator desires further legal guidance, both Parties must agree to provide the guidance and the manner in which it is to be communicated to the Arbitrator.

.03 The arbitration process is confidential. Therefore, all information concerning any dispute resolution communication related to the arbitration proceeding is confidential and may not be disclosed by any Party, Participant, or Arbitrator, except as provided under 5 U.S.C § 574. A dispute resolution communication includes all oral or written communications prepared for purposes of a dispute resolution proceeding. See 5 U.S.C. § 571(5).

.04 The Parties agree that there shall be no ex parte communications between the Arbitrator and either Party or agent for a Party. In addition, the Arbitrator may not have contact with any other individuals, including Participants, outside the arbitration session, concerning the arbitration matter without the express approval of the Parties. Any contact with the Arbitrator by either Party must be in the presence of the other Party and the Administrator. Written submissions should be sent simultaneously to the Administrator and the other Party. The Administrator will in turn send the submissions to the Arbitrator. See section 6 of Exhibit 1. Should the Parties require additional

information or clarification regarding the arbitration process, they shall contact the Administrator.

.05 By mutual agreement, the Parties may withdraw from the arbitration process to reach a final Appeals settlement at any time prior to the date of the arbitration session. Postponements for good cause shall be determined by agreement between the Parties.

SECTION 8. POST-SESSION PROCEDURE

.01 Generally, no later than thirty (30) days after completion of the arbitration proceeding, the Arbitrator will prepare a written report and submit a copy to the Administrator. Because the Arbitrator is limited to the task of finding facts, the report will not provide any decision or reasoning that represents an interpretation of the law.

Neither Party may appeal the decision of the Arbitrator or contest the decision in any judicial proceeding, including, but not limited to, the Tax Court, United States Court of Federal Claims or a federal district or appellate court.

.02 Once the Arbitrator renders a decision on all or some issues through the arbitration process, Appeals will use established procedures to close the case, including preparation of a specific matters closing agreement (Form 906). Delegation Order 236 (Rev. 3), or any successor delegation order, may apply to settlements resulting from the arbitration process.

.03 If applicable, Appeals will report a settlement reached as a result of the arbitration process to the Joint Committee on Taxation in accordance with I.R.C. § 6405.

SECTION 9. GENERAL PROVISIONS

.01 All IRS and Treasury employees, including the Appeals Administrator, who participate in or observe in any way the arbitration process and any person under

contract to the IRS as described in I.R.C. § 6103(n), including the non-IRS Arbitrator and non-IRS Administrator will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including I.R.C. §§ 6103, 7213, and 7431.

.02 Under I.R.C. § 7214(a)(8), IRS employees who have knowledge or information of the violation of any revenue law of the United States must report in writing such knowledge or information to the Secretary. The agreement to arbitrate will state this duty and the Parties will acknowledge it.

.03 The Arbitrator will be disqualified from representing the taxpayer in any pending or future action that involves the transactions or issues that are the particular subject matter of the arbitration. This disqualification extends to representing any other parties involved in the transactions or issues that are the particular subject matter of the arbitration. Moreover, the Arbitrator's firm will be disqualified from representing the taxpayer or any other parties involved in the transactions or issues that are the particular subject matter of the arbitration in an action that involves the transactions or issues that are the particular subject matter of the arbitration. The Arbitrator's firm will not be disqualified from representing the taxpayer or any other parties in any future action that involves the same transactions or issues that are the particular subject matter of the arbitration, provided that: (i) the Arbitrator disclosed the potential of such representation prior to the Parties' acceptance of the Arbitrator; (ii) such action relates to a taxable year that is different from the taxable year under arbitration; (iii) the firm's internal controls preclude the Arbitrator from any form of participation in the matter; and (iv) the firm does not allocate to the Arbitrator any part of the fee therefrom. In the event the Arbitrator has been selected prior to learning the identity of any Party involved in the

arbitration, requirement (i) will be deemed satisfied if the Arbitrator promptly notifies the Parties of the potential representation.

.04 Although the Arbitrator may not receive a direct allocation of the fee from the taxpayer (or other party) in the matter for which the internal controls are in effect, the Arbitrator will not be prohibited from receiving a salary, partnership share, or corporate distribution established by prior independent agreement. The Arbitrator and the firm are not disqualified from representing the taxpayer or any other parties involved in the arbitration in any matters unrelated to the transactions or issues that are the particular subject matter of the arbitration.

.05 The disqualifications described in sections 9.03 and 9.04 only apply to representations on matters before the IRS. The provisions of these sections are in addition to any other applicable disqualification provisions including, for example, the rules of the American Bar Association Model Code of Professional Conduct and the applicable canons of ethics.

.06 The decision by the Arbitrator will neither be binding on nor otherwise control, the Parties for taxable years not covered by the arbitration. Except as provided in the agreement to arbitrate, no Party may use the arbitration findings as precedent.

SECTION 10. EFFECTIVE DATE

This revenue procedure is effective October 30, 2006.

SECTION 11. CONTACT INFORMATION

For further information concerning the drafting of this revenue procedure, please contact Sandy Cohen, from the Chief, Appeals - Office of Tax Policy and Procedure,

(202) 435-5617 (not a toll-free number) or Jason Spitzer, from the Office of Chief Counsel, Procedure and Administration, Administrative Provisions and Judicial Practice, (202) 622-7950 (not a toll-free number). For further information about the operation of the Appeals Arbitration program, contact Sandy Cohen, listed above.

Model Arbitration Agreement

1. THE ARBITRATION PROCESS. Arbitration is optional and will be used to assist [NAME OF TAXPAYER] and the Internal Revenue Service--Appeals (the Parties) in resolving certain factual issues that are currently in the Appeals administrative process. This arbitration process will be conducted pursuant to Rev. Proc. 2006-XX, 2006 I.R.B. XX. The Parties to this agreement will submit the issues for arbitration and agree to be bound by the Arbitrator's findings on these issues. Each Party enters this agreement in reliance on the other Party's agreement to be bound by the decision of the Arbitrator. There can be no ex parte communication between the Arbitrator and any Party, third party, witness, agent, or other person regarding the issues for arbitration. All communications between the Arbitrator and either Party, including requesting and transferring documentation and information, will be made through an Administrator.

2. PARTICIPANTS. The participants in the arbitration session will be:

For Taxpayer:

For Appeals:

Appeals reserves the right to have an observer attend any arbitration. Taxpayers or their representatives may also have an observer attend the arbitration.

All witnesses, attorneys, representatives and observers (Participants) who will attend the arbitration on behalf of or at the request of a Party must be set forth in the list of Participants. If a Party subsequently modifies its list, then, no later than thirty (30) days before commencement of the arbitration session, such Party will submit to the Administrator a complete and final list of Participants who will attend the arbitration session. The list must identify, for each Participant, his or her position with the Party or other affiliation and address, telephone and fax numbers. The Administrator will simultaneously submit each Party's list to the other Party and to the Arbitrator by facsimile or other arrangement agreed to by the Parties. The Parties, by mutual agreement, may modify the list of Participants in writing at any time up to and including the date of the commencement of the arbitration session. Witnesses will be identified in accordance with section 6 of this agreement.

3. SELECTION OF ARBITRATOR, COSTS. The Parties have agreed to select an Arbitrator from Appeals or from any local or national organization that provides a roster of neutrals. On behalf of the Parties, the Administrator will arrange for the hiring of the Arbitrator. The fees and costs of the Arbitrator will be shared equally by the taxpayer and Appeals, subject to applicable rules and regulations for Government procurement.

4. ISSUES TO BE ARBITRATED. The Parties agree that the issues submitted for resolution by the Arbitrator are factual in nature and do not require the Arbitrator to interpret any law, regulation, ruling or other legal authority. The following issues shall be resolved separately for each of the taxable years at issue:

5. GUIDANCE FOR ARBITRATOR. The Arbitrator is not permitted to make any determinations of law or provide reasoning that represents an interpretation of the law; however, it may be necessary for the Arbitrator to refer to the existing applicable law in making a finding on the factual issues. In doing so, the Arbitrator shall look solely to the following legal guidance specified by the Parties:

a. Findings of facts shall be consistent with the legal authorities identified in [Appendix A].

b. The Parties will follow the Federal Rules of Evidence when proffering testimonial and documentary evidence at the arbitration session. The Arbitrator, in his or her sole discretion, shall apply the Rules with the objective of admitting only evidence that is reliable and credible. The Arbitrator will make final rulings on evidentiary disputes. To the extent the conduct of the Arbitration session is not governed by this agreement, the Parties agree to follow the Federal Rules of Civil Procedure.

c. At the request of the Arbitrator, the Parties may agree to provide further legal guidance. The Administrator shall determine, after consultation with the Arbitrator and the Parties, the appropriate manner (i.e., verbal or written form and timing) to submit the further legal guidance to the Arbitrator. If no agreement can be reached with respect to the further legal guidance and it is determined by the Arbitrator that further guidance from the Parties is necessary to decide the matter, then the matter cannot be arbitrated and this agreement will terminate.

d. When legal guidance provided by the Parties is in conflict, the Arbitrator, where practicable, will ignore the guidance and decide the factual issue. If it is not practicable to set aside the Parties' guidance, then during the arbitration session, the Parties will attempt to agree on the guidance needed to resolve the issue. If the Parties cannot agree and the guidance is necessary to decide the matter, then the matter cannot be arbitrated and this agreement will terminate.

6. SUBMISSION OF MATERIALS. Each Party agrees to provide a written summary of the case and their position (not to exceed 25 pages) to the Administrator at least thirty (30) days prior to the date of commencement of the arbitration session. On the due date for the summaries, the Parties will simultaneously exchange the summaries by facsimile or other arrangement agreed to by the Parties and submit a copy to the Administrator for transmittal to the Arbitrator by facsimile or by means of an overnight express delivery service. The Parties will submit testimonial and documentary evidence to the Arbitrator in accordance with the procedures set forth in sections 6 a. and 6 b. below.

The Arbitrator may order a Party to produce a summary of their documents and other evidence which the Party intends to present in support of its position and may order a Party to produce other documents, exhibits or evidence deemed necessary or appropriate. Any and all information and materials that a Party provides must be submitted to the other Party and Administrator who will simultaneously forward such to the Arbitrator.

The Parties will attempt to stipulate to as many facts, documents or conclusions as possible prior to the arbitration session. A stipulation shall be submitted to the Arbitrator, through the Administrator, prior to the commencement of the arbitration session. The Parties may jointly submit supplemental stipulations to the Arbitrator, through the Administrator, at any time prior to the date that the report is issued pursuant to section 14.

a. The Parties may, with mutual agreement and the consent of the Arbitrator, offer witnesses at the arbitration session:

(1) Witnesses shall be subject to direct examination, cross examination and questions by the Arbitrator. In the discretion of the Arbitrator, Parties may request the opportunity to redirect and recross a witness. The Parties shall submit to the Administrator a listing of potential fact witnesses no later than thirty (30) days prior to the date of commencement of the arbitration session. The listing should include the name, current position (if an employee of [NAME OF COMPANY], current and former positions with the applicable company and period such position(s) were held), and brief description of the anticipated testimony.

(2) The Administrator shall forward the witness lists to the Arbitrator and the opposing Party on the due date for such documents.

(3) Once the witness lists have been submitted to the Arbitrator, a Party shall not add additional persons except upon joint agreement of both Parties. A witness will not be entitled to testify at the arbitration session if that person is not included on the listing of witnesses timely submitted to the Administrator.

b. The Parties may, with mutual agreement, submit to the Arbitrator any reliable and credible documents that are relevant to the issues to be decided by the Arbitrator. Issues of relevance, reliability and credibility shall be resolved by the Arbitrator. All documents shall be based solely on information contained within the existing record.

(1) All documents to be submitted to the Arbitrator prior to the commencement of the arbitration session shall be by joint agreement of the Parties, unless otherwise ordered by the Arbitrator. The time and manner of the submission shall be by joint agreement of the Parties.

(2) All documents to be offered by a Party during the arbitration session shall be identified and, if not previously provided, exchanged with the opposing Party no later

than thirty (30) days prior to the date of commencement of the arbitration session. The Parties shall submit their documents to the Administrator who will immediately and simultaneously forward them to the Arbitrator. The Parties shall exchange documents directly. Failure to timely exchange documents not previously provided shall preclude the use of such document(s) in the arbitration session, except by a showing of good cause and lack of prejudice to the opposing Party, as determined by the Arbitrator.

c. The Parties agree that the methodology to be used by the Arbitrator in deciding any issue described in section 4 of this agreement must follow these principles:

[For example, language describing the answer sought by the Parties from the Arbitrator, e.g. a specific dollar value, a range of values, a 'yes' or 'no' finding, etc.]

d. The Parties agree to clarify issues that may arise in calculating any deficiency or overpayment resulting from the Arbitrator's findings and agree to the tax treatment of the Arbitrator's findings as follows:

[For example, the Parties should specify how to calculate the taxpayer's deficiency based on the Arbitrator's determination of the value of a particular asset.]

7. CONTACT WITH ARBITRATOR. The Parties agree that there shall be no ex parte communication between the Arbitrator and either Party or any Participant. In addition, the Arbitrator may not have contact with any other individuals, except the Administrator, concerning the substance of the arbitration or the arbitration process without the express approval of the Parties. Any contact with the Arbitrator by either Party must be in the presence of the other Party and such contact must be arranged by the Administrator.

8. ARBITRATION SESSION. Subject to the approval of the Arbitrator, the arbitration session will commence on the date and time agreed to by the Parties. The procedures for the arbitration session shall be determined by the Arbitrator, e.g., length and order of opening and closing statements, presentation of witnesses, etc. The postponement or continuance of the arbitration session for good cause shall be determined by agreement between the Parties, subject to the final approval of the Arbitrator.

9. PLACE OF ARBITRATION. The Parties prefer [NAME OF LOCATION] as the site for the arbitration session, subject to change by agreement among the Parties and the Arbitrator.

10. CONFIDENTIALITY. IRS and Treasury employees who participate in any way in the arbitration process and any person under contract to the IRS pursuant to Section 6103(n) of the Internal Revenue Code of 1986, as amended, including the Arbitrator, that the IRS invites to participate will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including Sections 6103, 7213, and 7431. See also 5 U.S.C. § 574. All information concerning any dispute resolution

communication related to the arbitration proceeding is confidential and may not be disclosed by any Party, Participant, Administrator, or Arbitrator except as provided under 5 U.S.C. § 574. A dispute resolution communication includes all oral or written communications prepared for purposes of a dispute resolution proceeding. See 5 U.S.C. § 571 (5).

[NAME OF TAXPAYER] consents to the disclosure by the IRS of the taxpayer's returns and return information incident to the arbitration to any Participant for the taxpayer identified in the initial list of Participants in section 2 of this agreement, to any Participant identified in writing by the taxpayer subsequent to execution of this agreement, and to any other persons who participate in this arbitration proceeding on behalf of either Party. If the arbitration agreement is executed by a person pursuant to a power of attorney executed by [NAME OF TAXPAYER], that power of attorney must clearly express the grant of authority by [NAME OF TAXPAYER] to consent to disclose the returns and return information of [NAME OF TAXPAYER] by the IRS to third parties, and a copy of that power of attorney must be attached to this agreement.

11. I.R.C. SECTION 7214(a)(8) DISCLOSURE. The Parties acknowledge that IRS and all other Treasury employees involved in this arbitration are bound by Section 7214 (a)(8) and must report information concerning violations of any revenue law to the Secretary.

12. RECORD. The Arbitrator may request a stenographic or other record of the arbitration session. If a record is requested, the Administrator will make the arrangements and the Parties shall bear equally the costs of such record. The Parties agree that any stenographic record or other recording of the arbitration proceeding shall remain confidential and shall be destroyed by the Administrator following the issuance of the Arbitrator's report pursuant to section 14.

13. WITHDRAWALS AND POSTPONEMENT. By mutual agreement, the Parties may withdraw from the arbitration process in order to reach a final Appeals settlement any time before the scheduled arbitration session. Established Appeals procedures apply to any resolution reached by the Parties. The Arbitrator may grant postponements for good cause after a hearing before both Parties.

14. REPORT BY ARBITRATOR. The Arbitrator's report will identify each issue described in section 4 of this agreement, will state the findings of facts for each issue for each tax year, and explain any methodology referred to in section 6 c. of this agreement that was utilized in reaching such findings. The report shall be issued and submitted to the Administrator within thirty (30) days after the conclusion of the arbitration session, unless the Arbitrator requests additional time and the Parties approve such request. The Parties may not unreasonably withhold such approval. The Administrator shall forward the Arbitrator's report to the Parties.

15. FINALITY OF ARBITRATOR'S DECISION. The Parties agree to be bound by the Arbitrator's findings, as set forth in the report described in section 14 and to

incorporate those findings and the final computations determined under section 6 d. of this agreement into an Appeals closing agreement that the Parties will execute. Delegation Order 236 (Rev. 3), or successor delegation order, may apply to settlements resulting from the arbitration process. Neither Party may appeal the findings of the Arbitrator nor contest the finding(s) in any judicial proceeding, including but not limited to the United States Tax Court, United States Court of Federal Claims, or a federal district or federal appellate court.

16. PRECEDENTIAL USE. The findings by the Arbitrator will not be binding on, or otherwise control, the Parties for taxable years not covered by the arbitration. Except as provided in this agreement, the findings of facts made by the Arbitrator may not be used as precedent by any Party.

INTERNAL REVENUE SERVICE, APPEALS

By:

Date:

[NAME OF TAXPAYER]

By:

Date: