F. ABATEMENT AND WAIVERS

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1. Preface

Provisions for abatement of tax or waiver of a requirement are "safety valves". They ameliorate problems that mechanical application of the laws can cause. Major provisions that apply to exempt organizations include IRC 4962, IRC 4961, Reg. 301.7611-1 A-14, and Reg. 1.9100-1.

Although these provisions serve different purposes and may operate in slightly different manners, they share the characteristic of easing application of the law.

2. IRC 4962 - Abatement of First-Tier Excise Taxes

A. Introduction

IRC 4962 introduces an element that must be considered in almost every private foundation excise tax case: whether the tax should be abated. The taxpayer can request abatement of any first tier excise tax other than the IRC 4941 tax on self-dealing at any time. Even if the taxpayer does not specifically request that a Chapter 42 tax be abated, the Service should consider whether abatement is appropriate in each case.

B. Background

When Congress enacted the Chapter 42 provisions in 1969, it made the sanctions automatic to ensure enforcement. After experience with the provisions, however, Congress concluded that in certain circumstances the automatic first-tier penalties were stricter than needed to effectively enforce the private foundation requirements and prohibitions. In 1984 it eased the restrictions by adding IRC 4962 to provide the Service discretionary authority to abate first-tier taxes (other than the IRC 4941(a) tax on self-dealing) in certain circumstances. In 1987 Congress included discretionary abatement authority when it added the excise tax for political expenditures imposed by IRC 4955 on private foundations, public charities, and their managers.

C. Statutory Provisions

IRC 4962(a) provides discretionary authority to the Service not to assess, or to abate or refund, any "qualified" first-tier tax if the foundation establishes to the satisfaction of the Service that the violation

(1) was due to reasonable cause;

(2) was not due to willful neglect; and

(3) has been corrected within the appropriate correction period.

IRC 4962(c) provides a special rule for the tax on political expenditures imposed by IRC 4955(a), by substituting "not willful and flagrant" for "due to reasonable cause and not to willful neglect." This suggests a more lenient standard for abatement of IRC 4955(a) taxes.

D. Qualified First-Tier Tax

The term "qualified first-tier tax" means any first-tier tax imposed by IRC 4942 through IRC 4945 and IRC 4955. It expressly does not include the tax on self-dealing imposed by IRC 4941(a), because the underlying reason for abatement is the preservation of assets for charitable purposes. Congress did not believe there was any justification for abatement on the self-dealer, because charity does not suffer if the self-dealer pays, and because current law generally prohibits commercial transactions between disqualified persons and foundations.

E. Due to Reasonable Cause

IRC 4962 does not define "reasonable cause." Neither is it defined in measurable terms elsewhere in the Code or regulations where a reasonable cause standard is imposed. There are guides, however, in the regulations and in many court cases that have considered whether particular circumstances amounted to reasonable cause. Reg.301.6651-1(c), which provides rules for imposition of additional taxes and penalties for failure to file tax returns or pay tax, applies a standard of "ordinary business care and prudence." The section provides that a failure to pay tax will be considered to be due to reasonable cause to the extent the taxpayer satisfactorily shows that he or she exercised ordinary business care and prudence in providing for the payment of the tax liability, but was either unable to

pay or would have suffered an undue hardship if the liability had been paid on the due date.

Under Reg. 301.6651-1(c) and other provisions that impose a reasonable cause standard, determining whether reasonable cause was shown requires consideration of all the facts and circumstances.

F. Not Due to Willful Neglect

IRC 4962 does not define "willful neglect." IRC 6653(3) (or, for returns due after December 31, 1989, IRC 6662(c)) defines "negligence" for purposes of the negligence penalty as including any failure to make a reasonable attempt to comply with the provisions. In the generally accepted legal sense, negligence is the failure to do something that a reasonable person, guided by those considerations that ordinarily regulate the conduct of human affairs, would do, or doing something that a prudent and reasonable person would not do. "Willful" is defined in several places, for example, Reg. 53.4941(a)-1(b)(4), as "voluntary, conscious, and intentional", and Reg. 1.507-1(c)(5), which provides that no motive to avoid the foundation restrictions is necessary to make an act or failure to act willful, but that an act or failure to act is not willful if the foundation does not know that it is an act to which the foundation rules apply. Thus, the term "willful neglect" implies failure to exercise the care that a reasonable person would observe under the circumstances to see that the standards were observed, despite knowledge of the standards or rules in question.

A finding that a violation was caused by willful neglect will preclude abatement of the first-tier tax, but a mere finding of no willful neglect does not, in itself, justify abatement. Numerous cases that have considered similar standards under IRC 6651, concerning additions for failure to file a tax return or pay tax, have held that the mere absence of willful neglect is insufficient, as there must also be reasonable cause for the violation. (See, for example: Rembusch v. Commissioner, T.C.M. 1979-73; de Belaieff v. Commissioner, T.C.M. 1956-273; Rogers Hornsby v. Commissioner, 26 B.T.A. 591 (1932)) Ignorance of the law is a clear example of the operation of this principle: the fact that a foundation's managers or directors did not know that an act or failure to act was a violation shows that it was not due to willful neglect, but it does not meet the reasonable cause requirement.

G. Special Rule for Tax on Political Expenditures

The first-tier tax imposed by IRC 4955(a) is subject to special rules that generally require abatement if correction is made unless the political expenditures are flagrant, thus supporting immediate termination assessments under IRC 6852. IRC 4962(c) provides that the standard for abatement of the IRC 4955(a) tax on political expenditures is whether the taxable event was "not willful and flagrant." There is no requirement that reasonable cause be shown.

Reg. 1.507-1(c)(2) defines "willful and flagrant" for purposes of the IRC 507 involuntary termination tax. It provides that an act is deemed willful and flagrant if it is "voluntarily, consciously, and knowingly" committed in violation of any such rule and if it "appears to a reasonable man to be a gross violation...." Reg. 1.507-1(c)(5) further clarifies the meaning of "willful." It provides that motive to avoid the foundation restrictions is not necessary to make an act willful, but that an act is not willful if the foundation (or manager, if applicable) does not know that it is an act to which the foundation rules apply. Thus, unlike other taxes subject to abatement under IRC 4962(a), evidence of ignorance of the political expenditures prohibition could be sufficient reason to abate the IRC 4955 tax (assuming adequate correction is made), as it could show the act was not willful.

IRC 4962(c) must also be considered in light of IRC 6852, which provides authority for termination assessments if an IRC 501(c)(3) organization makes political expenditures that constitute a flagrant violation of the prohibition against making political expenditures. The effect of the use of the term "flagrant" in both IRC 4962(c) and IRC 6852 should be to require abatement of IRC 4955(a) tax in all cases in which correction is made unless the expenditures constitute a flagrant violation that supports an immediate termination assessment.

H. Correction

Correction within the appropriate correction period, in the manner required by the particular statutory provision to avoid second-tier tax, is a prerequisite for abatement. With respect to political expenditures subject to tax under IRC 4955, correction means recovering the expenditure to the extent possible and establishing safeguards to prevent future political expenditures. If full recovery is not possible, IRC 4955(f)(3) provides the organization shall take such corrective action as is prescribed by regulations. Regulations, however, have not yet been issued.

I. Authority to Abate First-tier Excise Taxes

Delegation Order No. 237, dated 2-12-91, delegated authority to abate substantial first-tier excise taxes to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations). Authority to abate "other than substantial" qualified first tier excise tax amounts was delegated to District Directors, Chiefs and Assistant Chiefs of EP/EO Divisions, and Chiefs, Technical/Review Staffs in EP/EO key district offices. "Substantial qualified first tier tax amount" is described as a sum exceeding $200,000 for all such tax payments or deficiencies (excluding interest, other taxes, and penalties) involving all related parties and transactions arising from Chapter 42 taxable events within the statute of limitations as determined by the key district office involved.

J. Practical Application

Requests for abatement under IRC 4962 may be made during an examination, after a 30-day letter or a 90-day letter (statutory notice of deficiency) has been issued, in a protest of a tax due and assessed on Form 4720, or in a request filed (formally or informally) after the tax has been assessed and paid. If the tax has been paid, the request for abatement is treated as a claim, even though abatements under IRC 4962 differ fundamentally from claims. (Abatement is discretionary relief from an obligation: a claim disputes the existence of an obligation.)

Because abatement can be requested at any time, it should be considered in every case subject to IRC 4962. If the facts support abatement, the district (or National Office) should abate the tax even if the taxpayer has not raised the issue. If the facts do not support abatement, the file should document why.

K. Examples

Text 3(12)2 of IRM 7(10)69, Exempt Organizations Examination Guidelines Handbook, provides examples of both appropriate and inappropriate abatement cases. Situations in which abatement of a first tier tax may be appropriate include:

(1) The foundation incurred an IRC 4943(a) tax liability when an unrelated third party exercised its property rights on an ownership interest in a jointly owned enterprise in a manner that revised the proportion of the foundation's interest in the enterprise. This was done at a time and in a manner that made it difficult for the foundation to identify its risk in a timely manner in spite of prudent precautions;

(2) The foundation incurred an IRC 4945 liability when it gave scholarships for the first time without expressly obtaining specific advance approval of its scholarship

procedures and, upon review of its procedures, an EO specialist determined that they met the criteria for advance approval at the time the scholarships were originally given;

(3) The foundation relied, in good faith, on the written advice of an attorney or accountant (dated prior to the transaction) that the transaction was not subject to Chapter 42 excise tax.

Reasons that do not establish the reasonable cause needed to justify abatement include:

(1) The foundation's officers, directors, and representatives state they were ignorant of the law;

(2) The foundation's Form 990-PF for the tax period involved was prepared by a paid attorney, accountant, or enrolled agent, but gave no notice that a specifically identified questionable transaction occurred;

(3) The foundation, a related foundation, or a predecessor foundation has had a previous tax amount abated under IRC 4962 for the same type of taxable event;

(4) The transaction was not identified as a potential violation of Chapter 42 provisions by any party involved until the examination began and the costs of an examination were incurred, unless the foundation relied, in good faith, on the written advice, dated before the transaction, of an attorney or accountant.

3. IRC 4961 - Abatement of Second Tier Taxes After Correction

A. Introduction

The abatement procedures of IRC 4961, Abatement of Second Tier Taxes where There is Correction, are less a device to prevent harshness due to mechanical application of the law as a device to make the law workable. IRC 4961 was added by Pub. L. 96-596 to correct a defect in the 1969 statutory language that made the two-tier excise tax scheme unworkable. Unlike the abatement relief of IRC 4962, it is not discretionary: if an organization satisfies the statutory conditions, the second tier tax must be abated because the liability for the tax was eliminated by timely correction of the taxable event.

B. Background

The Tax Reform Act of 1969, Pub. L. 91-172, established a two-tier excise tax scheme in Chapter 42, concerning private foundations and certain other tax-

exempt organizations, and in Chapter 43, concerning qualified pension plans. For example, IRC 4941(a) imposed an initial, first-tier tax of five percent of the amount involved for each act of self-dealing for each taxable year that ended during the "taxable period." If the act of self-dealing remained uncorrected at the end of the statutory "correction period," IRC 4941(b) imposed an additional, second-tier tax on the self-dealer. In Adams v. Commissioner, 72 T.C. 81 (1979), however, the Tax Court found that the definition of "correction period," which ended after the "taxable period," created a timing problem that barred judicial review of the second-tier tax and made the scheme unworkable. Congress responded by revising the time that the second-tier taxes are imposed and adding IRC 4961, which provides a abatement procedure to make the new scheme workable.

C. Statutory Provisions

Under the revised statutory scheme enacted in 1980 by Pub. L. 96-596, the second-tier tax liability arises when the taxable period for the first-tier tax ends (unless correction has been made, in which case there would only be a liability for first-tier tax). Liability for the second-tier tax is eliminated if correction is made before the end of the correction period. IRC 4961(a) provides that if any taxable event is correct during the correction period for such event, then any second tier tax imposed because of the event (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed, it shall be abated, and if collected, it shall be credited or refunded as an overpayment.

IRC 4961(c) provides for suspension of the collection period for the second tier tax to allow the taxpayer to seek judicial review of the asserted liability. The procedure provides that if the taxpayer pays the first tier tax and files a claim for refund within 90 days of assessment of the second tier tax, no levy or proceeding will be begun to collect the second tier tax until final judicial resolution of the liability for first tier tax. The taxpayer must file suit within 90 days after the date the claim for refund is denied to use this procedure.

D. Application

The revised procedures require that second level taxes be determined at the time liability for first level tax is determined if correction has not been completed. In such cases the examination report must propose the second level tax, whether or not the first level tax is agreed. The second level tax must be included in any notice of deficiency. If correction is subsequently made before the end of the correction

period, the second tier tax is abated. The abatement request is processed like a claim.

4. IRC 7611 - Waiver of All or a Part of its Provisions

A. Introduction

Waiver of all or part of the restrictions of IRC 7611 is a seldom applied practice that exists solely for the convenience of the taxpayer. Based on the principle that a taxpayer is free to waive any protection, it allows a church that wants to resolve a matter as expeditiously as possible to relieve the Service from taking statutorily mandated actions the organization believes are superfluous and time consuming.

B. Background

IRC 7611, Restrictions on Church Tax Inquiries and Examinations, was added to the Code by the Deficit Reduction Act of 1984 to increase the protection afforded churches in dealings with the Internal Revenue Service. IRC 7611 establishes a number of requirements the Service must meet to examine a church, including approval by the regional commissioner before a church tax inquiry can be started, and notice to the church that it is being started; a second approval and notice before an examination can be started; an offer of pre-examination conference; and completion of any examination of tax liabilities within two years. IRC 7611 also requires that any adverse conclusion from the examination contain the regional counsel's written determination that there has been substantial compliance with the IRC 7611 requirements and written approval of the conclusion. (See IRM 7(10)71 for a detailed discussion of the requirements of IRC 7611.)

C. Provision for Waiver

IRC 7611 does not contain an express provision authorizing waiver of any of its requirements. Reg. 301.7611-1A-14, in discussing the extent church records or religious activities may be examined, applies the general principle that a taxpayer is free to waive any protection. Reg. 301.7611-1A-14 states that examination of church records may be made only after complying with the notice provisions of IRC 7611 unless the church files a written waiver of all or part of the provisions of 7611. The regulations do not prescribe a specific form for the written waiver.

D. Application

Waivers should not be solicited, as the IRC 7611 provisions are for the protection of churches and Service personnel should not be in the position of appearing to encourage an organization to voluntarily give up rights. However, should a church desire to forgo notice to which it is entitled, it may do so, and Service personnel can certainly advise an organization of this possibility. In such a circumstance the church should submit a written statement, signed by a person authorized to act on the church's behalf, explicitly describing the provision or provisions that it is waiving. The Service, of course, is not required to observe the waiver (for example, it can send a notice of examination even if an organization has waived the notice requirement) and should be mindful of any subsequent circumstances that might make the waiver obsolete.

5. Reg. 1.9100-1 and Reg. 301.9100-1T

A. Introduction

Reg. 1.9100-1 and the recently promulgated Reg. 301.9100-1T are regulatory provisions that authorize the Service to grant discretionary relief from certain time limits imposed by regulations. Reg. 1.9100-1 concerns time limits for making elections mandated by regulations with respect to taxes imposed by subtitle A of the Code. Reg. 301.9100-1T provides similar authority for similar elections under regulations with respect to subtitles B, C, D, and F.

B. Reg. 1.9100-1

Reg. 1.9100-1(a) grants the Commissioner the discretion, upon a showing of good cause by a taxpayer, to grant a reasonable extension of time fixed by the regulations for making an election or application for relief in respect of tax under subtitle A of the Code, provided:

(1) the time for making the election or application is not expressly prescribed by the statute;

(2) the request for the extension is filed with the Commissioner within a period of the time the Commissioner considers reasonable under the circumstances; and

(3) it is shown to the Commissioner's satisfaction that granting the extension will not jeopardize the Government's interests.

C. Scope of Provision

Reg. 1.9100-1 applies only to time limits imposed by regulations for making elections under subtitle A of the Code. Two time limits applicable to exempt organizations are imposed by Reg. 1.508-1(a)(2)(i), for satisfying the notice requirement of IRC 508(a), and Reg. 1.505(c)-1T, for satisfying the notice required by IRC 505(c). IRC 508(a) requires that certain organizations seeking exemption under IRC 501(c)(3) must give "notice" to the Secretary, "in such manner as the Secretary may by regulations prescribe." Reg. 1.508(a)(2)(i) provides that the required notice is a "properly completed and executed Form 1023" filed within fifteen months of the end of the month in which the organization was organized. Failure to satisfy Reg. 1.508(a)(2)(i) may result in the organization being recognized exempt under IRC 501(c)(3) only from the date Form 1023 was filed.

IRC 505(c) and Reg. 1.505-1T impose similar filing requirements on organizations claiming exemption under IRC 501(c)(9), 501(c)(17), or 501(c)(20). IRC 505(c) provides that an organization shall not be treated as an organization described in paragraph (9), (17), or (20) of section 501(c) unless it has given notice to the Secretary, "in such manner as the Secretary may by regulations prescribe," that it is applying. Reg. 1.505-1T provides that IRC 501(c)(9) and (17) organizations organized on or before July 18, 1984, must file a properly completed and executed Form 1024 before February 4, 1987. Organizations formed after July 18, 1984, that claim exemption under IRC 501(c)(9) or (17) must file Form 1024 by the later of February 4, 1987, or 15 months from the end of the month in which it was organized. Trusts claiming exemption under IRC 501(c)(20) need not file a separate application if the plan of which it is a part satisfied the notice requirement of IRC 120(c)(4).

D. Authority to Grant Relief Under Reg. 1.9100-1

Delegation Order 183 (as revised) authorizes district directors of EP/EO key districts to grant, for IRC 505(c) and IRC 508 matters, a reasonable extension of time under Reg. 1.9100-1. The authority for granting relief may be redelegated, but no lower than the Chief, Technical/Review staff.

E. Standards for Granting Relief Under Reg. 1.9100-1

Whether an extension under Reg. 1.9100-1 should be granted depends on whether the facts and circumstances establish that the taxpayer has shown good cause. Rev. Proc. 79-63, 1979-2 C.B. 578, sets the standards for determining if

good cause is shown. It lists five factors the Service generally will consider and sets forth information and representations that the taxpayer must furnish. The factors are:

(1) Due diligence of the taxpayer.

What action, if any, did the taxpayer take to determine the existence of and requirements for the election or application? In this regard, did the taxpayer consult an attorney or accountant knowledgeable in tax matters or communicate with a responsible employee of the Service? Further, what action, if any, did the taxpayer take to make the election or application?

(2) Prompt action by the taxpayer.
Is the taxpayer requesting the extension within a reasonable time after discovering a deadline that could not be met or, alternatively, within a reasonable time after discovering a deadline that has already passed? Was the discovery made within a reasonable time after passage of the deadline? Did the taxpayer take reasonable action under all the circumstances to deal promptly with a missed deadline?

(3) Intent of the taxpayer
Did the taxpayer intend to make the election or application on time? If the taxpayer knew of the election or application, was the taxpayer's failure to elect or apply on time due to mere inadvertence or to significant intervening circumstance beyond the taxpayer's control? Have the taxpayer's actions been consistent with the intent to make the particular election or application or has the taxpayer taken action inconsistent with the intent to make the particular election or application?

(4) Prejudice to the interests of the Government
Would granting the extension neither prejudice the interests of the Government nor cause undue administrative burden? For example, has the taxpayer used or had the opportunity to use hindsight to the Government's prejudice by actions based on knowledge of events occurring after the time when the taxpayer would have had to act in order to make the election or application timely?

(5) Statutory and regulatory objectives
Would granting the extension be consistent with the objectives of the underlying statute and the regulatory election or application provision?

F. Procedures for Requesting Relief Under Reg. 1.9100-1

Section 4.02 of Rev. Proc. 79-63 provides that taxpayers requesting relief must submit information to the Service that specifically responds to each of the above questions. The information should include:

(1) a chronological account of the events leading to that taxpayer's failure to make the election or application;

(2) the names and current addresses of each person having knowledge or information about the events,

(3) affidavits or statements from the persons having knowledge or information about the events that led to the failure to make a timely election or application;

(4) all documents relevant to the questions; and

(5) any other information the taxpayer believes may have a bearing on the request.

Section 4.03 of Rev. Proc. 79-63 provides that requests for extensions under Reg. 1.9100-1 must be accompanied by a declaration, signed by an officer (not an authorized representative) of the taxpayer who has knowledge of the facts, 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 this request are true, correct, and complete."

Any supporting affidavits or statements by the taxpayer's authorized representative or other persons must be accompanied by a declaration by the person making the affidavit or statement in the following form:

> "Under penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented herein are true, correct, and complete."

G. Examples of Application of the Relief Provisions

Whether an extension is granted under Reg. 1.9100-1 depends on the particular facts and circumstances of the organization's failure to comply with the time limit. In Codington County Humane Society v. Commissioner, T.C. Memo 1991-186 (1991), the Tax Court found that the Service did not abuse its discretion in denying an extension to file an application for recognition of exemption under Reg. 1.508-1(a)(2). In Codington, the organization was incorporated on August 15, 1977. Although it realized in November 1980 that it had not been recognized exempt and it authorized an attorney in February 1981 to take the steps to secure recognition of exemption, no Form 1023 was filed until August 3, 1988. Although

it noted that the organization's officers had changed, the court concluded that the eight year delay was due to carelessness and inadvertence. The court also noted the organization's history of sporadic and late filings of Forms 990 as further evidence of casual approach to meeting its tax obligations.

Other examples of application of the factors set out in Rev. Proc. 79-63 are found in IRM 7669.42. Although these examples are not precedent for future cases, they illustrate the process of applying the factors to particular cases. The three fact situations are:

> (1) A charitable organization gives its Form 1023 to a knowledgeable attorney or accountant who agrees to submit the application within the 15-month period, but fails to do so. As soon as the organization discovers that the application was not filed and the 15-month period has passed, it files Form 1023 and requests relief under Reg. 1.9100-1. The facts indicate that the organization always intended to be exempt under IRC 501(c)(3). There is no reason granting such relief would prejudice the Government or cause undue administrative burden. The IRC 508 notice requirements would not be frustrated as the organization did all that was reasonably necessary to provide notice within the prescribed time. Under these circumstances, relief under Reg. 1.9100-1 would be appropriate, and the organization's exempt status under IRC 501(c)(3) would be retroactive to the date of its formation.
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> (2) A charitable organization was dilatory in retaining the services of an attorney, who then did not have enough time to prepare the application for exemption so it could be filed before the end of 15 months. The application is filed after expiration of the 15-month period and the organization requested relief under Reg. 1.9100-1. The organization's lack of due diligence suggests that relief should not be granted.
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> (3) A charitable organization relied on an attorney who was also a member of its board of directors to file its application within the 15-month period. At periodic board meetings the attorney indicated that the application was close to completion and would be filed timely. The application was not filed timely. As soon as the organization discovered the failure to file, it submitted its application. The "due diligence" standard appears to be met. The organization reasonably relied on the competence of a tax professional even though that person was an insider.

H. Reg. 301.9100-1T

Treasury Decision 8342, 56 Fed. Reg. 14023 (1991), issued Reg. 301.9100-1T, temporary regulations that extend the discretionary authority to grant reasonable extensions of time for making elections with non-statutory due dates

under subtitle B, Estate and Gift taxes; subtitle C, Employment taxes; subtitle D, Miscellaneous Excise taxes; and subtitle F, Procedure and Administration. Reg. 301.9100-1T does not apply to subtitle E, governing Alcohol, Tobacco, and Certain Other Excise Taxes; subtitle G, governing the Joint Committee on Taxation; subtitle H, governing the Financing of Presidential Elections; and subtitle I, governing the Trust Fund Code, because the Service does not have jurisdiction over them.

T.D. 8342 estimated that subtitles B,C,D, and F have over 500 elections with due dates. Some may apply to exempt organizations, as the employment tax, excise tax, and procedure and administration regulations contain provisions applicable to exempt organizations. For example, Reg. 53.4942(a)-3(b)(7) provides a procedure for a private foundation to obtain approval for a set-aside under the suitability test that might conceivably be interpreted to be an election covered by Reg. 301.9100-1. As with Reg. 1.9100-1, however, Reg. 301.9100-1T does not apply to any statutory election. Thus, it would not apply to a religious order's IRC 3121(r) election of social security coverage.

T.D. 8342 provides that until further guidance is issued, the Service will apply the requirements of Rev. Proc. 79-63, 1979-2 C.B. 578, to requests for relief under Reg. 301.9100-1T. Because the specific requirements for obtaining relief under Reg. 1.9100-1 set out in Rev. Proc. 79-63 may not be compatible with certain characteristics of some of the elections in subtitles B,C,D, or F, the precise application will be determined case-by-case.

T.D. 8342 sets out a special transitional rule for elections or applications for relief required to be made before April 5, 1991 (the date the temporary regulations were issued), for any year the period of limitations has not expired under subtitle B, C, D, or F. For these elections and applications, a taxpayer must request relief by the later of October 2, 1991, or the date that is one year after the date the election or application was required to be made. Also, a taxpayer seeking relief under this rule must, in addition to satisfying the requirements of Rev. Proc. 79-63, provide clear evidence of intent to make the specific election or application. T.D. 8342 provides that this ordinarily will require the production of written contemporaneous documents demonstrating the taxpayer's intent to make the specific election or application.

Requests for extensions under Reg. 301.9100-1T must be sent to the National Office, as set out in Rev. Proc. 79-63, as authority to grant extensions under the section has not been redelegated.