

Test of Arbitration Procedure for Appeals

Announcement 2000-4

SUMMARY: The Internal Revenue Service Office of Appeals (Appeals) is conducting a two-year test of a binding arbitration procedure. This procedure allows taxpayers to request binding arbitration for factual issues that are already in the Appeals administrative process. Under the procedure, the taxpayer and Appeals must first attempt to negotiate a settlement. If those negotiations are unsuccessful, the taxpayer and Appeals may jointly request binding arbitration. Binding arbitration will only be used to resolve factual disputes. This procedure is effective for requests for arbitration made during the two-year test period beginning on January 18, 2000, the date this Announcement is published in the Internal Revenue Bulletin.

BACKGROUND: Section 3465 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685, creates new section 7123(b)(2) of the Internal Revenue Code which provides that the Secretary shall establish a pilot program under which a taxpayer and Appeals may jointly request binding arbitration on certain unresolved issues. This procedure is effective for requests for arbitration made during the two-year test period, as described above.

PUBLIC HEARING: This document contains a notice of a public hearing on the arbitration procedure set forth in this announcement. A public hearing will be held at 10:00 a.m. on April 5, 2000 in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW, Washington, DC.

SUPPLEMENTARY INFORMATION: Written comments on the announcement should be delivered or mailed by May 5, 2000 to:

Internal Revenue Service
National Director of Appeals
Attn.: C:AP:ADR&CS, Suite 4200E
1099 14th Street, N.W.
Washington, D.C. 20005

or electronically via:

http://www.irs.gov/prod/tax_regs/comments.html (the Service Internet site).

Requests to speak at the public hearing and outlines of oral comments should be delivered or mailed by March 20, 2000 to these same addresses. Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the government panel and answers to these questions.

Because of controlled access restrictions, persons attending the hearing will not be permitted beyond the lobby of the Internal Revenue Service building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

FOR FURTHER INFORMATION CONTACT: Thomas Carter Louthan, Director, Office of Alternative Dispute Resolution and Customer Service, National Office Appeals, (202) 694-1842 (not a toll-free number), or Gary Slayen, analyst, Office of Alternative Dispute Resolution and Customer Service, National Office Appeals, (202) 694-1837 (not a toll-free number).

TEST OF ARBITRATION PROCEDURE FOR APPEALS

Summary:

Appeals is conducting a two-year test of an arbitration procedure. This procedure is effective for arbitration requests made during the two-year test period beginning on January 18, 2000, the date this Announcement is published in the Internal Revenue Bulletin.

Under the test, arbitration:

- is optional;
- must be agreed to in a formal agreement executed by the taxpayer and the Assistant Regional Director of Appeals-Large Case or successor (ARDA-LC);
- will bind the parties to the findings made by the arbitrator with respect to the issues to be resolved.

Overview:

Section 3465 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685 creates new section 7123(b)(2) of the Internal Revenue Code, which provides that the Secretary shall establish a pilot program under which a taxpayer and Appeals may jointly request binding arbitration on any issue unresolved at the conclusion of: (A) Appeals procedures, or (B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122. The Administrative Dispute Resolution (ADR) Act of 1996, Pub. L. No. 104-320, 110 Stat. 3870, also encourages federal agencies to use all alternative dispute resolution techniques in the federal administrative process (including binding arbitration where warranted) to resolve disputes. See 5 U.S.C. § 575, Authorization of arbitration.

Arbitration is an optional process for resolving factual issues that are currently in the Appeals process. A factual issue is eligible for this process if it is susceptible to being resolved solely upon a finding of fact, and where any interpretation of law, regulation, ruling or other legal authority is agreed to by the parties. The taxpayer and Appeals must agree to be bound by, and not appeal, the findings of the arbitrator. The arbitrator and either party must communicate through an administrator unless both parties are present. This includes communications regarding requests for and transfers of documentation and information. The administrator will be from Appeals, Office of Alternative Dispute Resolution and Customer Service (ADR&CS), or the organization providing the arbitrator. The arbitrator and the administrator will discuss with the parties the rules and procedures concerning the arbitration process and will inform the parties that there can be no ex parte communication between either party and the arbitrator.

Scope of Arbitration:

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

Arbitration is available:

- Only for factual issues (such as valuation and reasonable compensation); and
- Whether the case involves a sole factual issue or multiple issues, where the factual issue to be arbitrated can be severed.

In addition, arbitration will **not** be available for:

- Cases where arbitration is not appropriate under either 5 U.S.C. §572, General authority, or 5 U.S.C. §575, Authorization of arbitration;
- Issues involving the substantiation of expenses under I.R.C. §162, Trade or Business Expenses, or §274, Disallowance of Certain Entertainment, Etc., Expenses;
- An issue designated for litigation or docketed in any court [for the Chief Counsel arbitration program involving issues in docketed cases, see Chief Counsel Directives Manual (CCDM) (35)3(17)1];
- An Industry Specialization Program (ISP) issue or an Appeals Coordinated Issue (ACI) [ISP issues are listed in Exhibit 8.7.1-1 and ACI issues are listed in section 8.7.1-3 of the Internal Revenue Manual]; or
- An issue for which the taxpayer has filed a request for competent authority assistance, or an issue for which the taxpayer intends to seek competent authority assistance. Arbitration is also not available for an issue for which the taxpayer has requested the simultaneous Appeals/Competent Authority procedure described in section 8 of Revenue Procedure 96-13, 1996-1 C.B. 616 or subsequent revenue procedure. If a taxpayer enters into a settlement with Appeals (including an Appeals settlement through the arbitration process), and then requests 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 amend the settlement. See section 7.05 of Revenue Procedure 96-13.

Arbitration Process:

1. *Arbitration is optional.* A taxpayer or Appeals may request arbitration after

both parties agree to arbitrate. A taxpayer should send their written request to the Team Chief/Appeals Officer who has responsibility for the case. A written recommendation for action on the request will be prepared by this Team Chief/Appeals Officer. The request and recommendation will be forwarded to the immediate supervisor for approval/disapproval. That decision will be reviewed by the supervisor's manager and forwarded to the ARDA-LC for final determination. The National Director of Appeals, Office of ADR&CS will be consulted before making a final determination.

Generally, the ARDA-LC will make a final determination within 30 calendar days of the date the Team Chief/Appeals Officer received the taxpayer's request. Upon making the final determination, the ARDA-LC will promptly inform ADR&CS and the Appeals Team Chief or Appeals Associate Chief and Appeals Officer. The Team Chief or Appeals Officer will then promptly inform the taxpayer of the final determination.

Request approved - ADR&CS will schedule an administrative conference to discuss the arbitration process with the taxpayer.

Request denied - Although no formal appeal procedure exists for the denial of an arbitration request, a taxpayer may request a conference with the ARDA-LC to discuss the denial.

2. *Agreement to arbitrate.* The taxpayer and Appeals will enter into a written arbitration agreement. See Exhibit 1, below, for a model arbitration agreement. This agreement will be negotiated at an administrative conference provided by ADR&CS. The agreement should be as concise as possible. The agreement should focus the arbitrator on the prescribed tasks of finding facts, preventing ex parte contact between the arbitrator and the parties, and limiting or describing the kind of information the arbitrator is permitted to consider. The agreement may indicate the tax treatment of the arbitrator's findings or clarify any issues which may arise in calculating any deficiency or overpayment resulting from the arbitrator's fact finding.

The following sections describe some terms and considerations that the taxpayer and Appeals should take into account in preparing this agreement.

3. *Participants.* The parties to the arbitration process will be the taxpayer and their authorized representative and Appeals. During the test of this program, Appeals reserves the right to have an observer attend any arbitration. The purpose for this is to familiarize Appeals personnel with the arbitration process. If a taxpayer does not accept observers in this test, the taxpayer will be excluded from the test. Appeals also reserves the right to have District Counsel assist in the arbitration. Taxpayers or their representative may also have an observer attend any arbitration session.

The arbitration agreement will set forth the initial list of participants and observers for each party and may limit the number, identity, or participation of such participants. The parties are encouraged to include persons with information and expertise that will be useful to the arbitrator. The parties must notify the administrator, in a signed writing not later than two weeks before the arbitration session, of any change to the initial list of participants and observers contained in the Agreement to Arbitrate. The parties and arbitrator, by signed agreement, may modify the list of participants and observers at any time up to and including the date of the arbitration session. The administrator will promptly and simultaneously forward each party's final and complete list to the other party and the arbitrator. See Exhibit 2, below, for a Model Participants List.

4. *Selection of arbitrators, in general.* The taxpayer and Appeals will select an arbitrator at an administrative conference provided by ADR&CS. The test of the arbitration procedure described herein seeks to use both non-IRS and Appeals personnel as arbitrators. See sections 5, 6, and 7, below. The parties may, by mutual agreement, use any local or national organization that provides a roster of neutrals in selecting an arbitrator. In the event such local or national organization provides an arbitrator, this organization may also provide the administrator for the arbitration, or the administrator may be provided by ADR&CS.

In obtaining the services of an 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 ARDA-LC and they agree that the arbitrator may serve. *See* 5 U.S.C. § 573.

5. *Appeals personnel as arbitrators, conflict statement, and expenses.* The taxpayer and the ARDA-LC (in consultation with the Appeals Team Chief or Appeals Associate Chief and Appeals Officer) may select an Appeals representative to be the arbitrator at an administrative conference provided by ADR&CS. The Appeals arbitrator shall be from another Appeals region, or from National Office Appeals. The ARDA-LC from the region in which the case is located will coordinate with the ARDA-LC from the region in which the proposed arbitrator is located. For cases assigned to an Appeals Officer, the Appeals arbitrator may be from another Appeals office. National Office 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, Appeals will provide to the taxpayer a statement confirming the employee's proposed service as an arbitrator, that the person is a current employee of the IRS, and that a conflict results from that arbitrator's continued status as an IRS employee. The written agreement to arbitrate shall include this statement.

6. *Non-Internal Revenue Service arbitrator, expenses.* The taxpayer and the ARDA-LC may agree on an arbitrator from outside the IRS. If a non-IRS arbitrator is selected, the taxpayer and National Office Appeals will equally share compensation, expenses, and related fees and costs of the arbitrator, as well as any reasonable costs for the services of an outside administrator subject to applicable rules and regulations for Government procurement. The arbitrator will be a contractor subject to the disclosure restrictions of I.R.C. § 6103(n).

7. *Criteria for selection of arbitrators.* Criteria for selecting an arbitrator will 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. Criteria may also include the projected travel costs, hourly fees and other expenses, which will be

considered subject to rules and regulations for Government procurement. The arbitrator's qualifications and potential conflicts of interest should be thoroughly reviewed prior to selection. The arbitrator should agree to look solely to each party for one-half of his or her compensation, expenses and related reasonable fees and costs, subject to the applicable rules and regulations for Government procurement.

8. *Issues covered.* The agreement to arbitrate will specify the factual issue(s) that the parties have agreed to arbitrate. Each party will prepare a summary of their position for consideration by the arbitrator. The parties should submit their summaries to the administrator no later than two weeks before the scheduled arbitration session.

The parties will set forth their agreement as to any legal guidance the arbitrator must consider, and may also set forth the tax or other treatment of the arbitrator's findings or clarify any other issues resulting from the arbitrator's fact finding. If appropriate, the parties may require the arbitrator to find a specific value within a range agreed to by the parties. The arbitrator will look solely to the legal guidance provided by the parties. If the arbitrator desires further legal guidance, both parties must agree in writing to the guidance.

9. *Site, date, agenda.* The agreement to arbitrate should specify that the arbitrator may request hearings as necessary. The agreement must prohibit ex parte contacts between the arbitrator and either party. In addition, the agreement must specify that no party, witness, agent or other person shall have contact with the arbitrator without the express approval of the taxpayer and Appeals. The agreement must provide that the time and place of any hearing will be determined at an administrative conference between the parties and an administrator who will be from either ADR&CS or the organization providing the arbitrator.

10. *Confidentiality.* The arbitration process is confidential. Therefore, all information concerning any dispute resolution communication is confidential and may not be disclosed by any party or arbitrator except as provided under 5 U.S.C. § 574. A dispute resolution communication includes all oral or written communications prepared for the purposes of a dis-

pute resolution proceeding [*see* 5 U.S.C. § 571(5)].

In executing the arbitration agreement, the taxpayer consents to the disclosure by the IRS of the taxpayer's returns and return information incident to the arbitration to any participant or observer for the taxpayer identified in the initial list of participants and observers and to any participants and observers for the taxpayer identified in writing by the taxpayer subsequent to execution of the agreement to arbitrate. (See section 3 above.) If the arbitration agreement 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.

IRS and Treasury employees, including the administrator, who participate or observe in any way in the arbitration process and any person under contract to the IRS as described in I.R.C. § 6103(n), including the administrator, that the IRS invites to participate or observe, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including I.R.C. §§ 6103, 7213, and 7431.

11. *Section 7214(a)(8) disclosure.* 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.

12. *Disqualification.* 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.

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.

These procedures only apply to representations on matters before the IRS. The provisions of this section 12 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.

13. *Withdrawal.* With the consent of the parties, the arbitrator may suspend the arbitration process to allow the parties to reach a final Appeals settlement at any time prior to the scheduled arbitration session.

14. *Arbitrator's report.* At the conclusion of the arbitration process, the arbitrator will prepare a brief written report and submit a copy to the administrator. See Exhibit 3 below, for a model arbitrator's report. The report will not provide any findings or reasoning that represents an interpretation of the law. The arbitrator is limited to the task of finding facts. Neither party may appeal the finding(s) of the arbitrator nor contest the finding(s) 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.

15. *Appeals procedures apply.* If 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). See Statement of Procedural Rules, 26 C.F.R. § 601.106. Delegation Order 236 (Rev. 3) may apply to settlements resulting from the arbitration process. Each party enters this agreement in reliance on the other party's agreement to be bound by the decision of the arbitrator.

16. *Precedential Use.* The findings 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, the arbitration findings may not be used as precedent by any party.

17. *Effective Date.* These procedures are effective for requests for arbitration made during the two-year test period beginning on January 18, 2000, the date this Announcement is published in the Internal Revenue Bulletin.

For further information contact: Thomas Carter Louthan, Director, Office of Alternative Dispute Resolution and Customer Service, National Office Appeals, (202) 694-1842 (not a toll-free number), or Gary Slayen, Office of Alternative Dispute Resolution and Customer Service, National Office Appeals, (202) 694-1837 (not a toll-free number).

Model Agreement to Arbitrate

1. *The Arbitration Process.* Arbitration is optional and will be used to assist [NAME OF TAXPAYER] and the Internal Revenue Service (IRS) - Appeals (the PARTIES) in resolving certain factual issues that are currently in the Appeals administrative process. A factual issue is eligible for this process if it is susceptible to being resolved solely upon a finding of fact, and where any interpretation of law, regulation, ruling or other legal authority is agreed to by the PARTIES. The PARTIES to this agreement (see section 2 below) will submit the issue(s) for arbitration (see section 4 below) and agree to be bound by the Arbitrator’s findings on these issues. There can be no ex parte communication between either PARTY, any third party, witness, agent, or other person regarding the issue(s) for arbitration, with the arbitrator. All communication between the arbitrator and either PARTY, including requesting and transferring documentation and information, will be made through an administrator who will be either the Appeals Office of Alternative Dispute Resolution and Customer Service (ADR&CS) or the organization providing the arbitrator. The administrator will inform and discuss with the PARTIES the rules and procedures pertaining to the arbitration process.

2. *Participants.* The participants in the arbitration session will be:

Taxpayer: _____

For Taxpayer: _____

For IRS: _____

_____ Assistant Regional Director of Appeals - Large Case (ARDA-LC)

_____ Appeals Associate Chief

_____ Appeals Team Chief

_____ Appeals Officer

_____ Other

Appeals reserves the right to have an observer attend any arbitration. The purpose for this is to familiarize Appeals personnel with the arbitration process. Taxpayers or their representatives may also have an observer attend the arbitration.

All participants and observers who will attend the arbitration on behalf of or at the request of a PARTY, including witnesses and attorneys, must be set forth in the list of participants and observers of section 2 of the Agreement to Arbitrate. If a PARTY subsequently modifies their list, then, no later than two weeks before the arbitration session, such PARTY will submit to the administrator a complete and final list of participants and observers who will attend the arbitration session. The list must identify, for each participant or observer, their position with the PARTY or other affiliation (e.g., a member of the XYZ law firm, counsel to the taxpayer), and their address, telephone and fax numbers. See Exhibit 2. The administrator will submit each PARTY’s list to the other PARTY and to the arbitrator. The PARTIES and the arbitrator by mutual agreement may modify the list of participants and observers in writing at any time up to and including the date of the arbitration session.

3. *Selection of Arbitrator, Costs.* [NAME OF TAXPAYER] and [NAME], Assistant Regional Director of Appeals-Large Case (ARDA-LC) or successor, by mutual agreement, will select an arbitrator, and can use any local or national organization that provides a roster of neutrals in selecting an arbitrator. The arbitrator may be a non-IRS individual or an Appeals arbitrator. 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 PARTIES, and the PARTIES agree that the arbitrator may serve. See 5 U.S.C. § 573.

The costs of a non-IRS arbitrator will be shared equally by the taxpayer and National Office Appeals, subject to applicable rules and regulations for Government procurement. If an Appeals arbitrator is selected, National Office Appeals will pay all expenses associated with the arbitrator.

A conflict results when an Appeals employee acts as an arbitrator. In such a case, Appeals will provide to the taxpayer a statement confirming the employee’s proposed service as an arbitrator, that the person is a current employee of the IRS and that a conflict results from that arbitrator’s continued status as an IRS employee. This statement shall be acknowledged by the taxpayer.

4. *Issues to be Arbitrated.* The PARTIES agree that the following issue(s) submitted for determination by the arbitrator are factual in nature and do not require the arbitrator to interpret any law, regulation, ruling or other legal authority:
- #1)
 - #2)
 - #3)

5. *Guidance for Arbitrator.* The arbitrator is not permitted to contact either PARTY, nor any participant, nor any other individual or other entity, in connection with this arbitration unless in the presence of both PARTIES.

Although the arbitrator is not permitted to make any findings of law or provide reasoning that represents an interpretation of the law, it may be necessary for the arbitrator to refer to the law in determining a factual issue. The arbitrator shall look solely to the legal guidance provided by the PARTIES. Any legal guidance for the arbitrator is agreed to by the PARTIES as follows:

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 or a hearing, the PARTIES will attempt to agree on the guidance needed to resolve the issue. If no agreement can be reached and the guidance is necessary to decide the matter, then the matter cannot be arbitrated. If any legal guidance for the arbitrator was overlooked, the PARTIES may agree upon further legal guidance and the manner in which it is to be communicated to the arbitrator.

The PARTIES may also require the arbitrator to make certain findings, such as a specific value within a range agreed to by the PARTIES. The PARTIES should provide any further guidance for the arbitrator, and may also set forth the tax or other treatment of the arbitrator's findings or clarify any other issues resulting from the arbitrator's fact-finding.

6. *Submission of Materials.* Each PARTY agrees to provide a summary of their position including any evidence relevant and necessary for the arbitrator to understand and determine the issue(s). The PARTIES will submit their summary and any evidence to the administrator by two weeks before the arbitration session. 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 provided to the administrator who will simultaneously forward such to the Arbitrator and the other PARTY.

- a. The PARTIES agree that the arbitrator shall have the right to interview the following persons:

and no other persons, except upon joint agreement of both PARTIES. The PARTIES shall specify the form and content of the questions to be asked by the arbitrator. The PARTIES shall specify the dates of the interview(s). Any such interviews shall be held in the presence of both PARTIES, or their counsel, unless either PARTY waives in writing their right to be present.

- b. The PARTIES agree that the arbitrator shall have the right to inspect the following documents or other information:

and no other evidentiary material, except upon agreement of both PARTIES. Such inspection shall occur only after reasonable opportunity is given to both PARTIES to be present. If relevant, describe any agreed access by the arbitrator to such documentation, including the location at which such access is to be made available.

c. The PARTIES agree that the methodology to be used by the arbitrator in deciding any issue described in section 4 must follow these principles:

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:

e. The PARTIES agree that the time and location of any hearing, or postponement for good cause, shall be determined by agreement between the PARTIES. If the PARTIES cannot agree, then the determination shall be made by the administrator.

7. *Contact with Arbitrator.* The PARTIES agree that there shall be no ex parte communication between the arbitrator and either PARTY or witness or agent for a PARTY. In addition, the arbitrator may not have contact with any other individuals 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 such contact must be arranged by the administrator.

8. *Proposed Schedule.* Subject to the approval of the arbitrator, the arbitration session will be conducted according to the following schedule:

Submission of Materials to arbitrator:	<u>A DATE WHICH IS NOT LATER THAN TWO WEEKS BEFORE THE DATE OF ARBITRATION SESSION</u>
Arbitration:	<u>MONTH _____ DATE _____, YEAR _____</u>

9. *Place of Arbitration.* The PARTIES should attempt to select a site at or near the arbitrator's office, [NAME OF TAXPAYER'S] office, or an Appeals office.

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 I.R.C. § 6103(n), including the arbitrator, that the IRS invites to participate will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including I.R.C. §§ 6103, 7213, and 7431. See also 5 U.S.C. § 574.

[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 or observer for the taxpayer identified in the initial list of participants and observers in section 2 above and to any participant or observer for [NAME OF TAXPAYER] identified in writing by the taxpayer subsequent to execution of the agreement to arbitrate. 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, such as an Appeals arbitrator, are bound by I.R.C. § 7214 (a)(8) and must report information concerning violations of any revenue law to the Secretary.

12. *Record.* A PARTY desiring a stenographic record shall make arrangements and shall bear costs. The PARTIES agree that any stenographic record or other recording of the arbitration proceeding shall remain confidential as described in section 10 of this agreement.

13. *Withdrawal and Postponement.* By mutual agreement of the PARTIES, the arbitrator, through the administrator, may allow the PARTIES to 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, and will explain the findings for each issue and any methodology referred to in section 6.c. that was utilized in reaching such findings.
15. *Arbitrator's Decision is Final.* The PARTIES agree to be bound by the arbitrator's findings and to incorporate these findings into an Appeals closing agreement that the PARTIES will execute. Delegation Order 236 (Rev. 3) may be applied 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. Each PARTY enters this agreement in reliance on the other PARTY'S agreement to be bound by the decision of the arbitrator.
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 the agreement to arbitrate, the arbitration findings may not be used as precedent by any PARTY.

INTERNAL REVENUE SERVICE,
APPEALS

By: _____
Assistant Regional Director
of Appeals-Large Case

Date : _____

NAME OF TAXPAYER

By: _____
NAME
Title

Date: _____

Exhibit 2

Model Arbitration List of Participants and Observers

Case Name: _____

Submitted By: _____

Date: _____

Please list below all participants and observers attending the arbitration including witnesses, agents or other individuals, and attorneys, and indicate any observers with an asterisk next to their names. This form must be sent to the administrator no later than two weeks before the arbitration session. The administrator will promptly forward each party's list to the other party and to the arbitrator.

<u>NAME & TELEPHONE</u>	<u>POSITION OR AFFILIATION</u>	<u>ADDRESS</u>	<u>FAX No.</u>
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Model Arbitrator’s Report

The PARTIES below agreed to arbitrate their dispute on **MONTH, DATE, YEAR.**

The arbitrator made the following findings:

ISSUE:

FINDING:

ISSUE:

FINDING:

ISSUE:

FINDING:

Settlement documents will be prepared under established Appeals procedures.

DATED this ____ day of _____, 200X

/s/ Arbitrator

/s/ PARTY

/s/ PARTY

Notice of Proposed Rulemaking by Cross Reference to Temporary Regulation

Disclosures of Return Information to Officers and Employees of the Department of Agriculture for Certain Statistical Purposes and Related Activities

REG-116704-99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides a proposed regulation relating to the disclosure of return information to officers and employees of the Department of Agriculture for certain statistical purposes and related activities. The proposed regulation would permit the IRS to disclose return information to the Department of Agriculture to structure,

prepare, and conduct the Census of Agriculture. The text of the temporary regulation T.D. 8854, published on page 306, also serves as the text of this proposed regulation.

DATES: Written and electronic comments and requests for a public hearing must be received by April 3, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-116704-99), room 5226 Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-116704-99), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW; Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the “Tax Regs” option on the IRS Home Page, or by submitting comments directly to the IRS Internet site: http://www.irs.gov/tax_regs/regslst.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jennifer S. McGinty, (202) 622-

4570; concerning submissions of comments, Guy Traynor (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in T.D. 8854 amend the Procedure and Administration Regulations (26 CFR part 301) relating to section 6103(j)(5). The temporary regulations contain rules relating to the disclosure of return information to officers and employees of the Department of Agriculture for certain statistical purposes and related activities.

The text of these temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Explanation of Provisions

This proposed regulation will allow the IRS to disclose return information to the Department of Agriculture to structure, prepare, and conduct the Census of Agriculture.