

Full Text: Deposition Of The IRS's Jay H. Rotz.

APR. 11, 1995

===== **CASE NAME** =====

TAX ANALYSTS,

Plaintiff,

versus

INTERNAL REVENUE SERVICE,

Defendant.

===== **FULL TEXT** =====

Deposition of Jay Harold Rotz, witness called for examination by counsel on behalf of plaintiff, Bruce L. Stern, Esquire, pursuant to notice in the offices of Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, Room 3412, commencing at 9:30 a.m., Tuesday, April 25, 1995, before Paulette J. Blair, Notary Public in and for the District of Columbia.

APPEARANCES:

On behalf of Plaintiff, Tax Analysts:

Bruce L. Stern, Esquire and

William J. Lehrfeld, Esquire

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DEPOSITION OF JAY H. ROTZ

Direct Examination by Mr. Stern

Cross Examination by Mr. Jackel

Redirect Examination by Mr. Stern

P R O C E E D I N G S

10:02 a.m.

Whereupon,

JAY HAROLD ROTZ

having been previously called, was duly sworn and testified as

follows:

MR. STERN: Good morning, Mr. Rotz. My name is Bruce Stern. I'm an attorney for the plaintiff, Tax Analysts. I'll be taking your deposition today. I don't know if you've ever had your deposition taken before, but I thought to start we'd go over some of the groundworks and procedures for this deposition.

First, I'd like to introduce the people sitting on this side of the table. Mr. Tom Field, he's the executive director of the plaintiff, Tax Analysts; and to my immediate left is Bill Lehrfeld, my boss, who is also representing Tax Analysts in this matter.

As you can see, your testimony is going to be recorded today. It is given under oath, so we ask that you be honest and truthful in all your responses. If you don't know the response to any question, I'm going to ask you to please feel free to state so. Anytime you want to confer with counsel, you can just lean over and talk to your counsel, or you can ask that we go off the record and you can step outside and speak with them.

In addition, anytime you want to take a break, you're tired of answering questions, you want a drink of water, stretch your legs, please feel free to state so and we can go off the record and take a break.

One of the problems with witnesses is, sometimes in response to questions, they will nod or shake their head or say, "uh huh, or uhm hum." Unfortunately, that doesn't come out well on the record. So we ask, if it's a yes/no question, you try and state, yes/no." If you don't, I may ask you to state so, specifically.

Before we begin this deposition, do you have any questions regarding the procedures or what's going to happen today?

THE WITNESS: No.

DIRECT EXAMINATION

BY MR. STERN:

Q Please state your name for the record, please, and spell it out?

A Jay Harold Rotz. That's J-A-Y, H-A-R-O-L-D, R-O-T-Z.

Q Mr. Rotz, are you appearing at the deposition today pursuant to subpoena which was served on you?

A Yes.

Q Did you receive a copy of that subpoena?

A Yes.

Q I'd like to show you Exhibit A and ask you to review it. Is this a copy of the subpoena you received?

A Yes.

Q I'd like to have this marked as Exhibit A and placed in the record.

(Whereupon, the document previously marked as Plaintiff's Exhibit A was entered into the record.)

BY MR. STERN:

Q Has the IRS authorized your appearance at the deposition today?

A Yes.

Q Is this a copy of the authorization allowing you to testify here today?

A Yes, it is.

Q I'd like to have this marked as Exhibit B and placed in the record.

(Whereupon, the document previously marked as Plaintiff's Exhibit B was entered into the record.)

BY MR. STERN:

Q Mr. Rotz, is there any reason why you feel you should not be testifying today? Are you on any medication or under the influence of any drugs or alcohol --

A No.

Q -- which might affect your ability to testify?

A No.

Q Did you discuss your appearance at the deposition today with any of your superiors or others in the EPEO Division?

A No, other than the fact of being here.

Q Has anyone instructed you or advised you about how you should testify or answer any question which may be asked you?

A I was -- we discussed it yesterday and I was told the procedures and what would occur here, and to answer the questions truthfully.

Q And, were these conversations with counsel?

A Yes.

Q Have you spoken with Marcus Owens, Howard Schoenfeld or Jeanne Gessay regarding their depositions taken in this matter?

A No.

Q Did you read Jeanne Gessay's or Marcus Owens' deposition transcript or a summary thereof?

A No.

Q Did you review any documents or materials in preparation for your deposition today?

A I reviewed some materials relating to closing agreement procedures and the materials that counsel provided to tell me what's happening, that sort of thing.

Q What type of materials did counsel provide you with?

A The subpoena, the testimony -- testimony authorization, the questions that were asked of Jeanne and Marcus.

Q Did you review those questions which were asked of Jeanne Gessay and Marcus Owens?

A I briefly looked over them. I didn't read them in depth.

Q Did you read a copy of the complaint in this matter?

A Yes.

Q Did you read any other pleadings in this matter, like an answer or interrogatories or interrogatory responses?

A I think I did, yes.

Q And that would have been done yesterday?

A Yes.

Q Are you presently an employee of the Internal Revenue Service?

A Yes.

Q What is your current title or position?

A I'm the executive assistant to the director of the Exempt Organizations Division.

Q And how long have you held this position?

A Approximately four years.

Q Can you describe your duties and responsibilities in your position?

A Uhm, I handle a wide variety of things, partly personnel, administrative sort of things, budgetary matters. I'm also involved in the technical issues in connection with cases, case conferences on -- with taxpayers, preruling conferences, matters going to chief counsel.

I'm sort of the central point through which things flow to counsel, and I attempt to keep track of those sort of things, as well as closing agreements; and pretty much any sort of contact in which EO is involved in a cross-functional type activity. That is, say, employment tax or international affairs, or other federal agencies. I'm often the person that's the sort of go-between, or the division representative on those sort of things.

Q Does your job require an expert understanding of the rules governing exempt organizations?

A Yes, it does.

Q Mr. Rotz, I'd like to show you a document that was produced to us this morning and ask you to take a look at it. It's entitled "Position Description." Is this an official job description of your position as executive assistant to the director?

A Yes, it is.

Q I'd like to have that marked as Exhibit C and placed in the record.

(Whereupon, the document previously marked as Plaintiff's Exhibit C was entered into the record.)

BY MR. STERN:

Q Mr. Rotz, how many years have you worked for the IRS on exempt organization matters?

A Twenty-nine years.

Q Prior to becoming the executive assistant to the director, what was your position with the IRS?

A I was a group manager of one of the rulings groups.

Q And how long did you hold that position?

A For about 20 years.

Q Is that position still in existence?

A Yes, it is.

Well, let me correct that. They're called "Branch Chiefs" now, but the position is essentially --

Q Your duties are similar to those of a branch chief?

A That's correct.

Q Is Marcus Owens your immediate supervisor?

A Yes.

Q And he is the director of the Exempt Organizations Division?

A Yes.

Q Mr. Rotz, you stated earlier that you were the central point for matters going to the chief counsel. Is that correct?

A That's correct.

Q Are chief counsel opinions, which are issued regarding exempt organizations, returned to you?

A Yes.

Q And does your position entail the responsibility of assigning cases to the review branch?

A On occasion it does. I am no longer the head of the review staff. Until about six months ago, that was a part of my job. Now I only do it in the absence of Dave Jones, the review branch chief.

Q So, six months ago your duties also entailed -- you were head of the review staff?

A That's right.

Q And what were your positions as head of the review staff - - what were your duties?

A Well, the only thing different from what I've already described was, I was responsible for assigning the cases to the -- one of the six reviewers and monitoring their progress.

Q Cases that came from the rulings branch, you would be responsible for assigning?

A That's correct.

Q Are you generally familiar with the IRS' internal practices and procedures regarding the consideration and review of exemption applications filed by organizations which are seeking recognition as an organization described in Section 501(c)(3)?

A Yes.

Q I'm going to be using a number of terms today. I want to reach an agreement as to their meaning for purposes of this definition -- of this deposition.

I want to clarify the term, 501(c)(3) organization. Can we agree upon the term -- agree that the term, charitable organization or 501(c)(3) organization includes churches, educational institutions, religious groups and charities --

A Yes.

Q -- among others?

That the term, exemption application or applications refer to Form 1023, which is filed by organizations seeking recognition as an organization exempt under Section 501(c)(3)?

A Yes.

Q When we use the term, division, it will mean the Exempt Organizations Division?

A Okay.

Q Can we agree that the term, Assistant Commissioner, will refer to the Assistant Commissioner for Employee Plans and Exempt Organizations?

A Yes.

Q I'd also like to establish a term -- an agreement upon the use of the words, "administrative file," and "administrative record." Are you familiar with those terms?

A I think I know what you mean.

Q With respect to an organization applying for exemption under Section 501(c)(3), does the IRS create an administrative file?

A Yes, it does.

Q And that administrative file would contain all documents created by the IRS and received by the IRS with respect to that application?

A That's right.

Q And the IRS also creates an administrative record with respect to an application for recognition of exemption. Is that correct?

A By that do you mean the publicly disclosable portion --

Q Right.

A -- of an approved application? Yes, it does.

Q And the administrative record is more limited than the administrative file?

A Yes.

Q I'd like to show you an document which is an excerpt from Tax Court Rule 210 and ask you to look at (b)(10) where it defines the term, administrative record, and ask you to review that definition.

(Witness perusing document.)

BY MR. STERN:

Q Is the IRS' administrative record the record they create regarding applications for exemption identical to the administrative record as defined in this rule?

A I wouldn't say identical, but it's awful close.

Q Okay, could I have this admitted as Exhibit D.

(Whereupon, the document previously marked as Plaintiff's Exhibit D was entered into the record.)

BY MR. STERN:

Q Mr. Rotz, I want to establish what the National Office's typical procedure for considering and reviewing exemption applications submitted by 501(c)(3) applicants is. As I understand it, organizations which are applying for 501(c)(3) status, will typically file their exemption application, Form 1023, with the Key District Office in which their principal place of business is located. Is that correct?

A That's correct.

Q And the application will be screened in the Key District Office, and if complete, reviewed there?

A Yes.

Q And under certain circumstances, which are described in the Internal Revenue Manual, or where the District Office believes that National Office review is warranted, the application will be forwarded to the National Office for issuance of a ruling?

A Yes.

Q And the applicant's administrative file, which is forwarded by the District Office, will be received by the National Office's assignment officer, who will control the file and will forward it to a rulings branch?

A Yes.

Q Once it's received by a technical branch, will a branch chief forward it to a tax law specialist, who will consider the application and prepare an initial recommendation as to its disposition?

A Yes.

Q And this recommendation will be contained in a file memorandum prepared by the tax law specialist?

A Yes.

Q Once this file memorandum is completed and a draft ruling prepared, will the tax law specialist forward the administrative file, which now includes his or her file memorandum, and the proposed ruling letter to the branch reviewer?

A Yes.

Q Will the branch reviewer then review the administrative file, and if he or she agrees with the tax law specialist and is going to sign off on the ruling letter, issue a ruling letter to the applicant?

A Yes.

Q Will the ruling letter, which is issued, typically bear the branch chief's signature?

A Yes.

Q And this signature is typically affixed by the branch reviewer?

A Yes.

Q If the branch reviewer disagrees with the tax law specialist recommendation, or is otherwise unwilling to sign off on the ruling letter, will the branch chief typically be consulted on the matter?

A Yes.

Q If the matter cannot be resolved in the branch or if the branch chief or reviewer believes the matter warrants further consideration, will the administrative file be forwarded for division review?

A Yes.

Q Once the file is received by division review, will it be assigned to a division reviewer?

A Yes.

Q Will the division reviewer review the administrative file?

A Yes.

Q Does the division reviewer have the authority to make a determination with respect to the outstanding technical issues and sign and issue a ruling letter to the applicant?

A Yes.

Q What happens if the division reviewer is not willing to sign off on the ruling letter?

A That's typically brought to my attention, then. Or, now, probably to myself or Dave Jones.

Q And what happens then? What is the review process?

A At that point, we would probably get all the parties involved in one room and just sort of resolve it that way, and get -- you know, just get the opinion of everybody and the decision would probably be made by myself or Dave Jones, perhaps Marc Owens.

Q Is this what's called a technical issue conference? Or, is there a name for this kind of conference?

A There isn't really a name for it, no. It's not a technical issue conference. I guess -- if it has a name, it would be a reconciliation meeting.

Q And who participates in this reconciliation meeting?

A The reviewer, the tax law specialist, the division reviewer and the branch chief, at their option.

Q Are minutes kept of this meeting, or is a memorialization made?

A There's a memorialization, yes.

Q And is that placed in the applicant's administrative file?

A Yes.

Q At this reconciliation meeting, who makes the final determination as to whether a favorable ruling will be issued to the applicant, or initial adverse ruling?

A It's pretty much a consensus, or Dave or myself or Marc could make the decision.

Q In those situations, would Dave, yourself or Marc sign off on the ruling letter?

A Not necessarily.

Q Would the administrative file contain any record that the decision was made by such persons?

A It should.

Q In such a situation, would the letter go out under the branch chief's signature?

A Yes.

Q Who would be listed as the contact person on the ruling letter?

A It would probably be the person that we feel is most familiar with the case. If it's the -- it may be the division reviewer. It's more likely to be the branch reviewer. But there's no hard and fast rule. It could be me.

Q Are you consulted on pending exemption applications and circumstances other than those when a reconciliation meeting is held?

A Yes.

Q Under what circumstances are you so consulted?

A If it's a situation where the individuals knew I had a particular interest in it. Obviously, I'm consulted where a case is coming up for division review. In other words, does it warrant

division review? It might just be something I have a particular expertise in that someone wants to talk about. A dispute between groups, something like that.

Q Do you or did you previously make the determination as to what type of cases warranted division review?

A I think our division procedures designate certain type of cases to come to division review, but it's basically a judgmental thing on the basis of the individual reviewer.

Q The individual branch reviewer?

A The individual branch reviewer.

Q So, if a case was forwarded to division review by an individual branch reviewer, you would not make the determination that it did not warrant division review and send the case back down?

A I could, but I don't particularly do that.

Q Do you have the final authority to sign off on a ruling letter?

A Yes.

Q If you make the final determination regarding an exemption application, is the administrative file so noted?

A Yes.

Q When will you bring a pending exemption application to the attention of the director?

A It's a judgmental thing on my part, no clear guidelines. Certainly, anything significant, potentially controversial, precedent setting, anything that I'm aware that he has a particular interest in.

Q On the first page of ruling letters issued to 501(c)(3) applicants is the name of a person to contact, a contact person. Whose name is usually placed on this letter?

A It's usually the branch reviewer.

Q Are there circumstances when other names are placed as the contact, other than the branch reviewer?

A Yes, as I mentioned before, sometimes it's the person that, perhaps, knows the most about the case, sometimes a division reviewer.

Q So, in those circumstances in which your name appears as the contact person on a ruling letter, you would know the most about the case?

A Yes.

Q When your name appears as the contact person on a ruling letter, do you affix the branch chief's signature or the name --

A Yes.

Q -- appearing as the signature.

Is authority delegated to you to sign those letters, or is it simply division practice to do so?

A I would call it division practice.

Q Mr. Rotz, can a church be listed in Publication Number 78 without filing a Form 1023?

A I don't think so.

Q If a church has its exemption revoked for prior years, must it file a new application to obtain recognition for years subsequent to the revocation?

A Yes, I think it would.

Q And if a charity has its ruling revoked under Section 501(c)(3) for prior years, must it refile a new exemption application for years subsequent to the revocation?

A Yes.

Q In any case, is it IRS practice not to carve out years subject to denial?

A Could you repeat that question, please?

Q Sure.

In any case, is it IRS practice not to carve out years subject to denial?

A Not to carve?

Q Where a revocation occurs --

A Yes.

Q -- let's say, for 1980, and the IRS requires -- the applicant, to obtain recognition, would file a new application. Will the application -- the new exemption be retroactive to the date of the former revocation, or will there be years carved out?

A Oh, okay. Yes, there will be some years carved out. Typically, the organization has to make some changes or do something to convince us that they are now qualified for exemption. So, there are quite often periods of years where they are taxable entities.

Q Is there a policy where the IRS doesn't want to carve out those years?

A You mean and make them exempt, too?

Q Continuously, right?

A No. Typically not, no.

Q In any new application filed by an organization which has lost its exemption due to revocation, is it the IRS' practice to request stronger assurances of compliance with 501(c)(3) than normally requested?

A If we are aware of the problems that caused the loss of revocation, we would probably focus more on making certain that those problems have been corrected, yes.

Q And how do you do that?

A Well, just by asking more questions. If it was a question of poor financial controls, or if it was an inurement situation, or private benefits, our questions would focus on what they've done to beef up their controls, for example, or to take steps to insure that the inurement is no longer occurring, or the private benefit no longer being served. It would just be through a series of more focused questions.

Q Can this goal also be accomplished through use of a closing agreement?

A I -- I guess it could be, yes.

Q Are you aware of any circumstances where it has? Where a closing agreement has been used following the revocation of a (c)(3)'s exempt status?

A There have been situations.

Q Did these closing agreements contain assurances to the IRS that the organization would comply with Section 501(c)(3)?

A Yes.

Q And in such situations where a closing agreement has been used, does the closing agreement give the IRS stronger assurances or better procedures for action than the usual submissions made by an applicant?

A Yes, it does.

Q Mr. Rotz, are you aware that certain taxpayer information is privileged and may not be disclosed by IRS?

A Yes.

Q And is it your understanding that privileged taxpayer information includes tax returns and return information?

A Yes.

Q Do you have a general understanding as to what constitutes a tax return and return information?

A Yes.

Q Is it your understanding that information as to whether or not a particular taxpayer filed a tax return constitutes return information?

A Could you repeat that?

Q Sure.

Is it your understanding that information as to whether or not a particular taxpayer filed a tax return constitutes return information?

A Yes, I believe it is.

Q Is IRS Form 990 treated as a tax return?

A It's an information return. It's not a tax return. It's not a tax return for nondisclosable purposes.

Q When is it treated as a tax return?

A I don't know when it would be treated as a tax return.

Q Would a corporate tax return be subject to public disclosure? Or, is it a privileged return.

A I think it is not subject to public disclosure.

Q Is the same true of a Form 990T?

A That's correct.

Q Would the fact that such returns were filed by a particular taxpayer be return information?

A It's not disclosable information.

Q So, you cannot disclose whether a taxpayer has filed a Form 990T?

A That's correct.

Q Are you familiar with IRS Form 1023?

A Yes.

Q Are 501(c)(3) applicants required to complete Form 1023 in its entirety?

A Yes.

Q And, if an application is not completed and each question is not answered, it will be returned to the applicant?

A It will be returned or we will solicit the information and just keep the application in our files until that information comes in.

Q I'll just show you a copy of Form 1023. I've also attached Schedule I to the return and ask you to take a look at it.

If you look at page one, question 10 of Form 1023 asks in relevant part, "Has the organization filed federal income tax returns?"

Does this question seek in part the disclosure of privileged return information?

MR. JACKEL: Uhm, you're now asking him for a legal opinion. I was willing to let it go for awhile. Now, you're really asking him for an opinion on what comes with 6103. He's not here as an expert on 6103. He's here as a fact witness.

MR. STERN: He testified that it was his general understanding that whether or not a particular taxpayer filed a particular return, tax return, was privileged -- or was return information. I'm just querying him a little further on that point.

MR. JACKEL: Well, he may have an understanding of that, and I was willing to allow him -- in general terms -- to say what his understanding was. Now, you're asking him for what amounts to a legal opinion.

I assume you're going to ask him -- or the point you're driving at is, doesn't this form require you to waive your rights under 6103? Well, you know, I suppose that's arguable. I guess you

think that's somehow relevant. But, this witness isn't qualified to give an opinion about 6103. It's not his area of expertise. Moreover, he's here as a fact witness.

MR. STERN: His area of expertise is exempt organizations. All exempt organizations applying for exemption under Section 501(c)(3) must complete this form.

MR. JACKEL: Right.

MR. STERN: I'm asking him whether or not this form requires the disclosure of what he considers return information.

MR. JACKEL: He's not an expert on what constitutes return information.

MR. STERN: I'm not asking for an expert opinion from him.

MR. JACKEL: Well then, how could the answer possibly be relevant?

MR. STERN: Well, he is an expert --

MR. JACKEL: Moreover --

MR. STERN: He is an expert in exempt organization matters, as he has testified. He has an expert understanding of the issues regarding exempt organizations. One of those issues is the application process, the materials they are required to submit in support of the application process, and the forms they are required to file.

MR. JACKEL: Whether he is an expert in exempt organization procedures or not, he is here as a fact witness. He is not here as an expert witness.

If you want an expert, you can retain one. He's not here as an expert on what constitutes return information. He's not here to answer hypothetical questions, or to give his opinion on the application of the law.

So, if you want to make an argument that this question requires the taxpayer to disclose return information in exchange for consideration of their application, well, you can go ahead and make that argument. I think the document is pretty clear on its face. But you don't have

to get an answer out of this witness to do that, and it's beyond his testimony authorization to do that.

MR. STERN: Are you directing the witness not to answer my question?

MR. JACKEL: I am advising the witness that giving an answer to that question is beyond the scope of his testimony authorization. It's up to him to decide whether to answer that question.

BY MR. STERN:

Q Mr. Rotz, does this question ask in part for the disclosure of privileged return information?

A I decline to answer that.

Q Mr. Rotz, if an organization has filed federal income tax returns with the IRS, which is applying for exemption under Section 501(c)(3), must it disclose that on question 10?

A I'm not sure I'm authorized to answer that either.

MR. JACKEL: Well, you can say what information is being requested in question ten. So, I believe you can answer that question.

THE WITNESS: They would be required to answer that question, yes or no.

BY MR. STERN:

Q And, if the answer is, yes, they would have to identify the form numbers which they filed and the years they were filed, and which Internal Revenue Service Office they were filed with. Is that correct?

A According to the instructions, that's correct.

Q Mr. Rotz, do you participate in the design of Internal Revenue Service forms regarding exempt organizations?

A I am in the review process. I'm in the review chain on changes on these sort of things. I don't typically initiate changes or anything like that.

Q Have you participated in the review or the design of Form 1023?

A I have reviewed the changes as they've gone through in the past.

Q Do you make input into those changes?

A In some cases I did, yes.

Q And what is the purpose of those changes?

MR. JACKEL: Wait a minute, deliberative process privilege. I'm directing him not to answer that question.

BY MR. STERN:

Q I'd like to have this Form 1023 entered into the record as Exhibit E.

(Whereupon, the document previously marked as Plaintiff's Exhibit E was entered into the record.)

BY MR. STERN:

Q Mr. Rotz, if an applicant responds to question number ten, affirmatively, and identifies particular tax returns it has filed with the IRS, will the District or National Office considering the application request that the applicant provide it with copies of those returns?

A I don't know.

Q If the IRS were unable to locate internal copies of those forms, is it likely that they would ask the applicant to provide it with such copies?

MR. JACKEL: Your question assumes that the IRS does in fact look for such forms, and that's not a fact that he's testified to.

BY MR. STERN:

Q Mr. Rotz, in your review of exemption applications filed by applicants, which have made their way to the National Office, have you ever reviewed an application in which question ten

was answered affirmatively on the Form 1023?

A I don't recall.

Q Have you ever reviewed an exemption application which contained, as part of the administrative file, tax returns filed by the applicant?

A Yes.

Q And those tax returns were part of the administrative file?

A Yes.

Q Were they part of the administrative record?

A No.

Q Were they submitted by the taxpayer in support of its exemption application?

MR. JACKEL: You're asking him to draw a legal conclusion about what constitutes something that's in support of an application. Can we go off the record for a moment?

MR. STERN: Sure.

(Whereupon, counsel engaged in off-the-record discussion.)

MR. STERN: Back on the record.

MR. JACKEL: Before we go back, could I hear the question again?

(Whereupon, the reporter played back the previous question.)

MR. JACKEL: Back on the record.

The question of what comes within 6104, meaning what is submitted in support of the application, is a legal determination. Whether something was submitted in support of the application is a legal question that would depend on facts and circumstances of the individual case. He's not qualified to give that legal opinion on -- certainly not on the matter of

disclosure. And, it's beyond his testimony authorization. He's here as a fact witness, not as an expert witness.

I really wish you'd stop asking questions that ask the witness to interpret the law.

MR. STERN: I didn't think my use of "in support of" was asking the witness to interpret the law. I mean, whether document --

MS. STEVENS: The point is, it's a term that is in the statute. You're choosing a phrase that is not intended to be asking for an interpretation.

MR. STERN: I was not asking the witness in that instance to provide a legal conclusion or interpretation of 6104. It's common -- I mean, it's a term I use commonly. I've picked it up from the statute, obviously, and will avoid or attempt to avoid using it in the future.

BY MR. STERN:

Q Mr. Rotz, does the IRS have any way to determine where documents contained in an applicants administrative file come from? I mean, whether they're submitted by the applicant, a third party, or whether they're internally created?

A I believe we could always tell that, yes.

Q So, in those circumstances in which you have reviewed an administrative file of an applicant for exemption which contained tax returns, were those returns submitted by the applicant, internally created, or submitted by a third party?

A I think I said before, I don't have a recollection of looking at one where that was checked, yes.

Q I'm talking about in those situations where you saw tax returns contained in the administrative file. I believe you testified that there were circumstances when you reviewed an administrative file which contained tax returns.

A I don't recall giving an affirmative answer to that. I may have actually done that, but I just don't recall a specific instance. I'm not sure how I answered it before.

When you asked before, I don't remember a case where that occurred, but I have no doubt that it did occur.

Q So you don't recall any particular situation in which you've reviewed an administrative file which contained tax returns.

A That's what I said. I don't recall, specifically, yes.

Q I think your previous testimony was, yes. I just wanted to make sure that was clear.

A Okay.

Q Mr. Rotz, are you familiar with Form 990?

A Yes.

Q I'd like to show you a copy of IRS Form 990.

Are tax exempt organizations with annual gross receipts in excess of \$25,000 required to file this form? AYes.

Q And the form must be completed in its entirety?

A Yes.

Q I'd like to direct your attention to page four, question 78(a). The question states: "Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?"

If an organization had unrelated business gross income of \$1,000 or more during the year, would it be required to check, yes?

A Yes.

Q And 78(b) states: "If yes, has it filed a tax return Form 990T, Exempt Organization Business Income Tax Return for this year?"

Would an organization also be required to respond to this question answering it, yes or no, if it provided an affirmative response to 78(a)?

A We would expect it to check yes.

Q Okay, I'd like to have this marked as Plaintiff's Exhibit F.

(Whereupon, the document previously marked as Plaintiff's Exhibit F was entered into the record.)

BY MR. STERN:

Q Mr. Rotz, is Form 1023 a tax return?

A No.

Q Mr. Rotz, can the IRS disclose the identity of an exempt organization? And by the use of the word, identify, I mean, name, address, employer identification number.

A Uh, no. It can identify -- it can confirm whether or not the organization has been recognized as exempt by name and by city.

Q Does the IRS maintain a master file of exempt organizations?

A Yes.

Q Is this master file subject to public disclosure -- or, in fact, publicly disclosed?

A The information on it is. I don't think the master file itself is.

Q I'd like to show you a printout of the IRS master file. This printout comes from Tax Analysts. They produce a CD-ROM from information provided to the IRS.

MR. JACKEL: So that we do not unduly delay things, I'm going to make an objection on the record as to foundation. I'm assuming that should this information be submitted to the court that you will have some sort of appropriate documentation of the fact that you just represented, that this is, in fact, a copy of the Internal Revenue Service's master file.

MR. STERN: That will not be a problem.

MR. JACKEL: Okay.

BY MR. STERN:

Q Mr. Rotz, by reviewing this document, is it your understanding that the IRS does disclose the name of a taxpayer, its address, employer identification number, and that that information is available for public disclosure?

MR. JACKEL: Well, I just want it on the record that you're asking him based on a sample of one, what his understanding of the disclosure --

MR. STERN: I've got a sample of two, actually.

MR. JACKEL: Okay, a sample of two -- and, you know, I think the record is going to assume that he's basing his answers on what you've just handed him. I certainly would.

BY MR. STERN:

Q Mr. Rotz, does the IRS disclose the identity of exempt organizations?

A It does.

Q Does it disclose the name of the organization?

A Yes.

Q Does it disclose their employer identification number?

A It appears that they do, yes.

Q Does it disclose their asset amount?

A Again, it appears that they do.

Q Their income amount?

A Yes.

Q The date of their favorable ruling letter?

A Yes, they do.

Q And the Code section under which the organization is exempt?

A That's right.

Q Mr. Rotz, were you in any way involved in the project relating to the IRS' master file to which it was publicly disclosed?

A No.

Q Are you aware of that situation in any respect?

A No.

Q Are you aware of any agreement that the IRS has reached with Tax Analysts regarding the disclosure of the master file?

A No.

Q I'd like to have this marked as Exhibit G.

(Whereupon, the document previously marked as Plaintiff's Exhibit G was entered into the record.)

BY MR. STERN:

Q Has the IRS published guidelines or regulations as to what constitutes return information with respect to exempt organizations?

A I'm not aware of anything.

Q Are you generally familiar with the division's practices and procedures regarding closing agreements with exempt organizations?

A Yes.

Q Has the division adopted formal guidelines or procedures regarding closing agreements with exempt organizations?

A I wouldn't call them formal procedures. The documents you were given at the beginning of the session are essentially the procedures that we have in place now.

Q And those procedures are dated January 23, 1995?

A That's right.

Q Were these procedures in place before January 23, 1995?

A Not in that form.

Q And what form were they in place?

A Just general understanding. They had not been reduced to writing.

Q So these procedures, which are outlined in this document dated January 23, 1995 were the division's procedures for handling exempt organizations prior to that time?

A No, that's not accurate to say that either.

Q Okay. What were the procedures, then? Perhaps you could explain.

A They were handled on an ad hoc basis in -- well, in basic accordance with the closing agreement handbook and procedures that were established for the Service, generally. I mean, it's not like we were without any kind of guidance, but there was nothing specific to our division.

Q And, do these procedures dated January 23, 1995 now constitute division policy?

A Yes.

Q Are you familiar with the 1992 CPE article on closing agreements?

A Yes.

Q Other than this article and your memorandum dated January 23, 1995, has the division published any materials or guidelines regarding closing agreements with exempt organizations?

A No.

Q Prior to January 23, 1995, with respect to an exemption application pending in the National Office, when the organization requested or made a request that the IRS enter into a closing agreement with it to resolve outstanding issues relating to the application, was it division practice that either you or the director be notified?

A Eventually, yes.

Q So, in all situation, you or the director would be notified when a closing agreement request was made?

A Perhaps not at the -- immediately after the request. It may have been -- one of us would have known sometime along the line, because it had to be signed by the Assistant Commissioner, so, exactly when we were supposed to have been told, there was never a formal procedure.

Q What were the circumstances when an application was pending in a District Office? Were the District Offices under any instructions to notify you or the director?

A Of?

Q Of a closing agreement request. Obviously, if a closing agreement was going to be executed, it would have to be routed through you, but that doesn't necessarily cover requests which are made.

A No, that's not accurate. A district director could sign off on a closing agreement. They don't have to come to the AC.

Q So, a district director can sign off on a closing agreement with an exempt organization?

A That's my understanding, yes.

Q And that would include issues relating to a pending exemption application?

A It could.

Q And it could include other matters as well?

A That's correct.

Q Is the National Office notified, or is there a policy requiring the National Office to be notified when a district director executes a closing agreement with an exempt organization?

A I'm not aware of any.

Q Do you know how often district directors execute closing agreements with exempt organizations?

A No.

Q Are district directors required to provide the National Office with any statistics on the number of closing agreements they enter into with exempt organizations, or provide it with any statistical information?

A I'm not aware of any such requirement.

Q When someone in the division believes that a closing agreement may be an appropriate method to resolve outstanding issues regarding a pending exemption application, prior to January 23, 1995, was it division practice that either you or the director be consulted?

A Yes.

Q When EO was approached regarding a closing agreement proposal made by a taxpayer, what happens? What is the process?

A Now?

Q Prior to January 23, 1995.

A They would make the proposal typically to the tax law specialist and reviewer, and perhaps the division reviewer, describing the problem as they see it, and their proposed solution to it.

Q And, if such a proposal was made to a tax law specialist, or the reviewer, what would be the next step? How would they proceed?

A They would probably reduce it to writing and send it forward in essentially a file memorandum to one of us.

Q Was there any requirement that the taxpayer make its request in writing?

A At some time -- at some time in the process they had to. Not the initial conversation, but after the initial conversation, if they still appeared serious about it, that was the next step, to get something in writing from the taxpayer.

Q So, the taxpayer would be required to put something in writing and submit it to the IRS?

A Yes.

Q Now when such a closing agreement request was made with respect to pending exemption application, would this written request become part of the applicant's administrative record?

A Administrative file or administrative record?

Q Administrative record.

A I don't know that.

Q Who would make the determination as to whether this writing submitted by the taxpayer to the IRS would be made part of the administrative record?

A It would be someone with expertise in the disclosure area.

Q And when would this person in the disclosure area be consulted regarding the application files? Is the file ever routed to them, or how is that determination reached?

A I can't answer that. I'm not aware of it ever being done.

Q So you're not aware of any situation in which a disclosure officer made a decision whether a written request submitted to the IRS regarding a closing agreement was to be made part of the administrative record?

A I have never been involved in that kind of a decisionmaking process.

Q After a writing is made and submitted by a taxpayer, to the reviewer or tax law specialist handling the case, what happens to that writing? I believe you were saying a memorandum is prepared; and is it sent to you or the director?

A The closing agreement proposal you're talking about?

Q Right.

A Yeah -- yes.

Q What do you or the director do with that memorandum?

A We make a decision as to whether or not the reviewer or TLS should proceed further with it. In some cases, we would discuss it or bring it to the attention of the AC's office at that time.

At the same time, if it appears -- it's hard to say -- if it appeared it was pretty serious about it, we would then also contact the Key District Office having jurisdiction over that organization to determine how much input they wanted to have.

MR. JACKEL: I'm sorry, can we clarify -- are we still talking about pre-1/23/95?

MR. STERN: Yes, we are.

MR. JACKEL: Did you understand the question?

THE WITNESS: I think it would still be the same. I frankly -- they were very vague before that, so -- but, I think that that is about the way it is.

BY MR. STERN:

Q So, this document essentially codified what was your practice previously?

A That was my intention.

Q Now, you said that either you or the director made the initial decision whether or not to proceed with respect to closing agreement proposals. Would that be a decision you'd make individually or together, or how does that work?

A Uhm, it can be either way.

Q And there are certain circumstances where you will bring the closing agreement request to the attention of the Assistant Commissioner's office?

A That's right.

Q Under what circumstances would you do that?

A If it's a -- in these situations, we've had very few closing agreements. So, as we were developing a better feel as to what would be acceptable to our Assistant Commissioner, we would sort of informally bounce it off the Assistant Commissioner. In other words, "Is this something that sounds good to you?" and we would await their reaction before we'd go forward.

Q When the decision is made to go forward with respect to a closing agreement, is a negotiating committee formed in all instances?

A No.

Q Under what circumstances would a negotiating committee be established?

A I've never been involved in a situation involving a negotiating committee, so, I really can't answer that.

Q Are you aware that negotiating committees have been formed by the IRS?

A I'm aware of one instance.

Q But it is not standard practice?

A To my knowledge it is not.

Q When the Assistant Commissioner's office is consulted regarding a closing agreement request, are meetings held to discuss the issue?

A At their option.

Q Have meetings been held to discuss these issues?

A I have never been involved in one.

Q As I understand it, either you or the director has the authority to enter into closing agreement negotiations with the taxpayer regarding a pending exemption application.

A Yes.

Q What criteria do you take into account in determining whether a closing agreement is appropriate in a certain matter? Especially, I'd like to focus your attention on pending exemption applications.

MR. JACKEL: Uhm, when you say, "you," are you referring to what he does or what the Service does?

MR. STERN: In this instance I'm referring to what Jay Rotz does.

MR. JACKEL: Uhm --

MR. STERN: He testified that he has the authority, or he makes the decisions, or can make the decision as to whether or not the IRS will engage in closing agreement negotiations with a particular taxpayer. My question is, what criteria do you take into account in making that determination as to why a closing agreement would be appropriate in a particular case.

MR. JACKEL: Uhm, I'm going to instruct him that, insofar as you apply criteria that you believe are important, but are not contained in whatever constitutes the IRS' procedures or practices, as broadly defined, then, that's deliberative process and I'm instructing you not to answer it.

However, you can answer about what the IRS takes into account in answering this question. Do you understand the distinction?

THE WITNESS: In which case, I can't really answer. I haven't had the experience to know what the IRS policies are in that area.

BY MR. STERN:

Q Are there any published policies or procedures in the division regarding the criteria for entering into closing agreement negotiations with a taxpayer?

A The only thing -- well, not procedures. The only thing that I'm aware of is that memorandum you have and the 1992 CPE article that outlines some examples of situations that would be appropriate for a closing agreement. Other than that, I'm aware of nothing.

Q Do you have an estimate as to how many exemption applicants propose entering into a closing agreement with the IRS, annually?

A No, I don't.

Q Mr. Rotz, when a determination is made that a closing agreement will be negotiated with respect to pending exemption application, who negotiates the closing agreement?

A It would typically be the people working on the application.

Q Would that be the tax law specialist, or perhaps the --

A Reviewer.

Q Branch reviewer?

A Or division reviewer.

Q Or revision reviewer.

Are they given guidelines or instructions in any way regarding the appropriate form for the closing agreement?

A Well, the form-type instructions are included in the handbook, the closing agreement handbook, and they're all aware of that.

Q Are they aware of certain terms that the division requires to be included in the closing agreement?

A What do you mean by terms? You mean the nature of the -- of the kind of things we would deal with in it?

Q That's correct. Also, disclosure provisions?

A I -- I don't know if they would include that sort of thing or not. The best guidance they have, again, is the '92 CPE text and that memorandum, as to the typical kinds of things that --

Q So, prior to January 23, 1995, the only thing they really had to guide them was the CPE text?

A CPE text and their own knowledge. To the extent that we've had closing agreements in the past, the division reviewers were the ones that were probably the most familiar with those cases.

Q Would an individual from division, or the Assistant Commissioner's office, be assigned to oversee the negotiating process?

A There would be a division person involved in it, yes.

Q And who would that be?

A Typically, one of the reviewers.

Q Other than the reviewer who is immediately responsible for negotiating the agreement, would there be someone above him?

A Well, at this point, it would be me as sort of a monitor to keep track of it. Would not necessarily have any substantive input into it though.

Q So, the division reviewer would be primarily responsible for the substantive input contained in a closing agreement?

A But, the closer it gets to substance, the more I or Marc would get involved in it. So, we would eventually get involved as it gets closer to the substance, as opposed to the question of

whether or not to do it and what sort of things are important to the taxpayer and important to the Service.

Q So, at some point, you or the director would get involved in the negotiating process?

A Negotiating process is the wrong word. It was more or less a review of what -- in other words, what the taxpayer has offered, what the problem is. They describe the problem. It isn't necessarily a negotiating thing at all. It's, "Let's correct the problem here."

Q So, perhaps you can -- what essentially will happen then is the taxpayer will submit a written paper to the IRS which describes the problem, or the technical issue involved, and a proposed solution?

A Right.

Q Okay. What will happen -- that will be provided to you or Mr. Owens?

A That's right.

Q What will you do? What will you propose?

A If it looks perfectly acceptable to us, we will tell them to go ahead and get the thing executed by the taxpayer.

Q Okay, so then the document will be formalized and signed by the Service and the taxpayer?

A Yes.

Q Mr. Rotz, we've been going at this, actually now, for about an hour and 45 minutes, an hour and a half. I apologize. Would you like to take a break.

A Okay.

MR. STERN: We'll take a ten minute break. Off the record.

(Break.)

MR. STERN: Back on the record.

BY MR. STERN:

Q Mr. Rotz, you were explaining the development process for a closing agreement, and the written request submitted by the taxpayer is provided by the reviewer, perhaps, to you or Mr. Owens?

A That's correct.

Q And you review this document to determine whether it would be acceptable to the IRS?

A That's correct.

Q Do you provide information as submitted to you to the Assistant Commissioner for his review or consideration?

A Yes, I do.

Q When I say, that material, I'm speaking about the -- does the Assistant Commissioner have to signoff or approve the negotiation of the closing agreement?

A No. Let me correct that.

If I bring it to his attention and he says, "No," I don't do it. I mean, he has to sign the final thing.

Q Right.

A But, if I advise him of it and he has no objections -- I guess, in a sense, he does have to approve it before we go any deeper into it.

Q So, he essentially will make an initial determination as to whether to go forward with the closing agreement or not, if it's brought to his attention?

A That's right.

Q And, under what circumstances would you bring it to his attention?

A Well, every one that I was familiar with, I think I always brought them, every one that I can remember. I always brought them to the Assistant Commissioner's office's attention before I went very far into it, because I was fairly unfamiliar with the process.

Q And, just so the record's clear when you were referring to "them," you were referring to closing agreements?

A Yes.

Q And once you received the Assistant Commissioner's approval to go forward with the closing agreement, what happens then?

A We contact the taxpayer. If there are any more areas of disagreement, we resolve those. At that point, we ask the taxpayer to prepare the document, sign it and send it to us.

Q Now, who prepares the actual closing agreement that is sent to the taxpayer?

A In my experience, it's always been the taxpayer that prepares it.

Q Does the IRS insist that certain terms or conditions be included in the closing agreement?

A The --

Q Other than those terms submitted by the taxpayer?

A Are you talking about the form and the -- there are certain paragraphs, there's certain language that's common to --

Q Right.

A -- closing agreements? Yes, that has to be in there.

Q Other than the district directors, is the Assistant Commissioner the only person authorized to sign closing agreements with exempt organizations?

A I don't know that.

Q In your experience, has the Assistant Commissioner been the only one to sign off on closing agreements?

A I have never been involved in any that was signed by anyone but the Assistant Commissioner.

Q Mr. Rotz, how many closing agreements have you been involved with?

A By involved, you mean just aware of it or actually did a little substance on it?

Q Let's say since -- in your position as Executive Assistant, you've served there -- I think you testified for the last four years or so?

A Right.

Q In your position as executive assistant to the director, how many closing agreements have you been involved with?

A I can only recall two in which I was involved more than just being aware that they were happening.

Q Since 1991, has the IRS entered into closing agreement with one or more taxpayers regarding a pending application for recognition of exemption or claim a 501(c)(3) status?

A Yes.

Q Since 1991, has the IRS conditioned its issuance of a 501(c)(3) ruling letter having prospective effect to an organization on the organization's agreement to be bound by the terms of a closing agreement?

A Not to my knowledge.

Q Since 1991, has the IRS resolved outstanding issues regarding an organization's application for recognition of exemption through the use of a closing agreement?

A By "outstanding issues," do you mean outstanding issues for exemption going forward, or --

Q Yes.

A -- for things that happened before they applied?

Q Let's -- I guess the question would encompass both, then, we could break it down.

A Read the question again.

Q Sure.

Since 1991, has the IRS resolved outstanding issues regarding an organization's application for recognition of exemption through the use of a closing agreement?

A The ones I'm thinking of the answer is, yes.

Q Can a closing agreement, which is entered into with respect to pending exemption application, govern years covered by the exemption application?

A It could, yes.

Q Since 1991, has the IRS more than once used a closing agreement to resolve outstanding issues regarding an organization's future exempt status?

A I have to say, no, on that. Let me explain it?

Q Sure.

A The closing agreements I'm familiar with went to the period prior to the application. In other words, there were situations where the taxpayer was concerned with how we would treat the organization for prior years, things like, were we going to demand returns, or were we going to pose penalties.

In the unusual situation where a taxpayer requested that, it was for their comfort. The application itself stood on its own for exemption in the future. The kind of requirements that may have been in the closing agreement are requirements that go with exemption anyway, filing returns on time, complying with the rules under 501(c)(3) as far as inurement, financial transactions, private benefit, that sort of thing.

Q So, the closing agreements you're familiar with contain provisions regarding the organization's future status and compliance with the 501(c)(3)?

A No, I said just the opposite.

Q Didn't you say that closing agreements contain provisions regarding the prohibition against private inurement?

A No. If I said that, that's not what I meant.

I said, the closing agreements I'm familiar with that arose in connection with applications went to, how do we deal with prior periods, before they applied for exemption or before they qualified, technically, for exemption.

Going forward, I don't recall that the closing agreements imposed any rules other than what exempt status imposes on the organization.

Q So, the closing agreements contain language regarding their exempt status in the future? Similar to language that would be found in a ruling letter recognizing an organization's exempt status?

A I don't recall what -- I don't recall the language in these particular closing agreements. I -- it seems -- it would seem unnecessary to me in the context of an application for exemption. Because what they -- what they agree to or what they tell us about in their 1023 binds them to act that way or the ruling can be revoked, retroactively.

So, the language may have been in there, but I don't know that it adds anything to the ruling letter itself. I frankly don't recall what the language was in the ones I'm familiar with.

Q Are you familiar with the terms of the closing agreement the IRS entered into with Herman Hospital?

A I'm aware of the agreement. I can't say I'm aware of the terms.

Q Are you aware that a condition of the agreement was that it be made public and distributed to the national tax media?

A I believe that is correct.

Q Are you familiar with the terms of the closing agreement that the IRS entered into with Jimmy Swaggart Ministries in January 1992?

A I'm only aware of its existence.

Q Are you aware that the IRS required the Ministries to publicly disclose the terms of that closing agreement?

A I think that's correct, yes.

Q Are you familiar with the terms of the closing agreement the IRS entered into with the Old Time Gospel Hour?

A Only its existence.

Q Are you aware that one of the terms of that agreement was that the Old Time Gospel Hour publicly disclose its terms.

A Again, I think so.

Q Mr. Rotz, have you ever served on a negotiations committee established by the IRS with respect to a pending exemption application?

A No.

Q Mr. Rotz, can you describe the IRS policy or practice as to when it will not insist that a public disclosure provision be included in a closing agreement?

A When it will not include that? I would say it would be a situation where it deals with something that we feel doesn't really have any application on the taxpayer, a very unique situation that would be of little value for other organizations to even know about.

Q Who makes the determination as to whether a disclosure provision will be contained in a closing agreement?

A Those would be the reviewer, tax law specialist, Marc and myself.

Q And the basis for the determination as to whether or not such a provision would be included is whether the closing agreement can provide guidance to other taxpayers?

A The reason we do it is in the hopes that other organizations will see what kind of problems the IRS has found in a particular organization, and how they corrected them. Hopefully, the organization would then correct them themselves. It's more or less an enforcement sort of thing.

Q Is the Assistant Commissioner involved in the determination as to whether a closing agreement will contain a disclosure provision?

A Sure, they would always be.

Q When the IRS enters into a closing agreement to resolve outstanding issues regarding an exemption application, is the agreement placed in the applicant's administrative record?

A No.

Q Is it placed in its administrative file?

A Yes.

Q Are you generally familiar with the exemption applications filed by the Church of Scientology and organizations affiliated with the church?

A Yes.

Q Are you generally familiar with the National Office's handling and review of those applications?

A Yes.

Q Are you aware that in 1991, the Assistant Commissioner created a working group consisting of employees from the division and Office of Chief Counsel to consider the exemption applications filed by those organizations?

MR. JACKEL: Okay, let me just get this on the record now.

We're again talking about a particular taxpayer, not just the procedure that the Service goes through with exempt organizations. As we've stated numerous times before, if it's not in the 6104 file, then it's 6103 information.

I believe the fact that there was a committee is in the file. I guess you can ask about that. But I want the witness to be aware that with respect to applications that were not granted -- in other words, that were withdrawn or denied or resolved in some other way, that those applications are protected by 6103 and that you can't give information about those applications.

The question asked about a period prior to the date that the applications of the Scientology organizations that were granted were submitted. That's why I'm bringing it up now. I believe the existence of this committee is a matter of public record, however.

So, with that caution, I'm going to allow you to answer that question, keeping in mind that you shouldn't disclose information that's subject to 6103. Okay?

THE WITNESS: Okay. I'm aware that there was a committee formed, but their charge, I don't know what it was.

BY MR. STERN:

Q Were you appointed to serve as a member of this committee?

A No.

Q Did you have any role on this committee?

A No.

Q Did you request that you be recused from service on this committee?

A No.

Q Do you know whether the committee was created to negotiate a resolution to issues regarding exemption applications filed by the Scientology applicants?

A I already said I didn't know what the committee was supposed to do.

Q Mr. Rotz, I'd like you to take a look at the Exhibit A to your subpoena, which was served on you.

In paragraph seven, there are a number of organizations listed - - paragraph five. I ask that you look at those organizations. There's one error, I believe. One organization should be, "The Church of Spiritual Technology."

On October 1, 1993, did the IRS issue favorable ruling letters to the 25 Scientology organizations?

MR. JACKEL: Could you give the witness just a couple minutes to look at those?

MR. STERN: Sure. I'm sorry.

(Witness perusing document.)

THE WITNESS: Now, your question?

BY MR. STERN:

Q On October 1, 1993, did the IRS issue favorable ruling letters to the 25 Scientology organizations listed in that paragraph?

A Yes.

Q Can we agree that if I use the term, Scientology applicants, that it refers to those 25 organizations?

A Yes.

Q Does your name appear as the contact person on page one of those 25 ruling letters?

A Yes.

Q Did you affix Jeanne Gessay's signature to those ruling letters?

A Yes.

Q Did the Assistant Commissioner sign off on those ruling letters?

A I don't recall.

Q Are you familiar with the closing agreement the IRS entered into with the Scientology applicants?

A No.

Q You did not read that agreement?

A I did not read that agreement.

Q Do you know whether under the terms of that agreement, the IRS agreed to issue favorable ruling letters to the Scientology applicants?

A I don't know what's in that agreement.

Q Mr. Rotz, how did you become involved with the processing and review of those 25 applications?

A I was asked to take those applications and process them within the division.

Q Were those applications filed directly with the National Office?

A I don't know that.

Q Did you receive those applications from an assignments officer?

A They were given to the assignment officer to assign to our branch to get them into the normal control system, and then they were assigned to the branch. I did not receive them from the assignment officer.

Q Do you know who provided them to the assignment officer?

A I think it may have been Howard, who was the person that physically handed them to me.

Q And that would be Howard Schoenfeld?

A Howard Schoenfeld, yes.

Q And once you received these applications, what did you do with them?

A I assigned them to Jeanne Gessay's branch.

Q Were you given special instructions regarding the handling of these applications?

A The only --

MR. JACKEL: You can answer that question, yes or no. The content of the instructions, however, are privileged and I'm advising you not to answer to that extent. The question does not ask you for the content, I might add.

THE WITNESS: Yes.

BY MR. STERN:

Q Yes, you did receive special instructions?

A Yes.

Q What did these special instructions tell you to do?

MR. JACKEL: That's deliberative. I'm instructing the witness not to answer.

BY MR. STERN:

Q Were these special instructions in writing, or were they given to you orally?

A Orally.

Q And, you provided these applications to Jeanne Gessay for processing her her branch?

A Yes.

Q Is that Rulings Branch 2?

A Yes.

Q Do you know whether she assigned them to a tax law specialist or specialist --

A Yes.

Q -- for initiation?

Did you provide Ms. Gessay with special instructions as to how these applications were to be processed?

MR. JACKEL: Uhm, wait a minute. We're now outside the realm of what the Service's procedures are in general and we're talking about how a particular taxpayer's case was handled. To the extent that's not in the 6104 file, that's 6103 information.

MR. STERN: I think Mr. Schoenfeld testified that he issued special instructions regarding how these applications were to be processed.

MR. JACKEL: Well, you have Mr. Schoenfeld's testimony, if you wish to use it. But, how a particular taxpayer was handled is 6103. And, the closing agreement permits us to say, there was a closing agreement, it resolved certain issues, it included exemption issues, it included other issues.

But, how a particular application is handled within the Service, that's all a different story.

BY MR. STERN:

Q Mr. Rotz, we went over, in the beginning of your testimony, what the IRS' typical procedures for processing an exemption application were, or are. Were the Scientology applications considered and reviewed in accordance with these typical procedures?

A No.

Q Were special procedures adopted for the handling of the Scientology applications?

A Yes.

Q Mr. Rotz, typically, when a tax law specialist receives an exemption application for consideration, is the tax specialist -- does the tax law specialist review the application for technical issues regarding the organization's compliance with Section 501(c)(3)?

A Yes.

Q And would these issues, which the tax law specialist normally reviews, include the issues of inurement, private benefit and commerciality?

A Yes.

Q Are you aware of any situation in which a tax law specialist was advised not to review an exemption application for issues of inurement, private benefit or commerciality?

A No.

Q You're not aware of any such situation?

A That's correct. I'm not aware of any such situation.

Q Are you aware of any situation in which a favorable ruling letter was issued to a 501(c)(3) organization where its exemption application was not considered or reviewed for issues of private inurement, private benefit or commerciality?

A No, I'm not aware of any such situation.

Q Mr. Rotz, for the record, were you directed not to review or have reviewed the Scientology applications for issues of inurement, private benefit or commerciality?

MR. JACKEL: I'm going to point out that that is an objectionable question. However, in this case, I'm -- I need to confer with my client.

MR. STERN: Off the record.

(Whereupon, counsel engaged in off-the-record discussion.)

MR. STERN: Back on the record.

MR. JACKEL: I've reconsidered my objections about the -- what instructions were given to Mr. Rotz and I withdraw my objection.

If you want to ask those questions again, you're free to and you're also free to ask the question that was pending when we went off the record.

BY MR. STERN:

Q Mr. Rotz, I'll go back a little bit.

You testified that you received special instructions regarding the handling of the Scientology applications, is that correct?

A Yes.

Q What were these special instructions that were issued to you?

A They were oral, so, I -- from my recollection, it was basically two things: To review them thoroughly, to make sure the files established that the organization was qualified for exemption under 501(c)(3); and to avoid delays.

Q And these instructions were given to you by Howard Schoenfeld, orally and not in writing?

A I think it was Howard, yeah.

Q And, when you provided these applications to Jeanne Gessay, did you relay these instructions to her?

A The same thing.

Q And, did you advise her tax law specialist of this, or did you expect that Ms. Gessay would advise her tax law specialist of these instructions?

A I don't recall, but I think I talked directly with the tax law specialist as well.

Q The tax law specialist initiated the files or considered the files and the exemption applications therein, and then they were provided to you. Is that correct?

A That's correct.

Q You served the role, in this regard, as kind of the branch reviewer, because there was no branch reviewer involved. Is that correct?

A I -- not exactly. Terry Berkovsky served as sort of a reviewer, and Ted Lieber and her worked together. She was basically the reviewer for these cases, and I was an additional reviewer.

Q So the tax law specialist considered the files and Terry Berkovsky and Ted Lieber reviewed them?

A Ted Lieber would have been the initiator. Terry would have been a reviewer. She may also have served as an initiator on some of the cases.

Q And the tax law specialists were directed -- had no special instructions not to treat these applications any differently than any other application. Is that correct?

A No, the instructions were to treat them as any other application.

Q Right.

So, the tax law specialists should have reviewed these applications for issues of inurement, private benefit or commerciality?

A That's correct.

Q Mr. Rotz, do you know Donna Moore?

A Yes. I forgot. I think she may have been --

Q Was she one of the tax law specialists?

A She may have been an initiator, too.

Q One of the initiators for the Scientology applications?

A Right.

Q I'd like to show you a file memorandum that came from the administrative record downstairs in which Ms. Moore states on the first page: "This application request was

processed as part of settlement negotiations and in accordance with special instructions from the negotiations committee. The committee was chaired by Howard Schoenfeld. This review does not address issues regarding inurement, private benefit, public policy or commerciality."

MR. JACKEL: Uhm, once again, we're in the same kind of problem we had a few days ago.

MR. STERN: Sure.

MR. JACKEL: We don't know whether this came out of the file.

MR. STERN: Sure. I would suggest that at a break we can go downstairs to the FOIA reading room and pull these documents.

MR. JACKEL: Would you hold off on your questions, then, until we can do that?

MR. STERN: Sure.

MR. JACKEL: If you like, it's about noon, we could break for lunch now.

MR. STERN: We can break for lunch.

MR. JACKEL: You want to take care of this now or after lunch?

MR. LEHRFELD: Why don't we do it now?

MR. STERN: Okay.

(Lunch break.)

MR. STERN: Back on the record.

BY MR. STERN:

Q Mr. Rotz, before we broke for lunch, I gave you two memoranda. The first one, which is signed by Donna Moore, the document which was taken from the administrative record for the Dianetics Foundation, International, I believe it is.

This memorandum states: "This application was processed as part of settlement negotiations and in accordance with special instructions from the negotiations committee. The committee was chaired by Howard Schoenfeld. This review does not address the issues regarding inurement, private benefit, public policy or commerciality."

Was that application -- was the application that was initiated in this manner processed correctly?

MR. JACKEL: Well, wait a minute. You've taken one or two paragraphs out of context and asked him about the whole case. Howard Schoenfeld was here and he testified that the review was handled at a higher level than Ms. Moore.

I think you're implying something that is not borne out by the facts.

MR. STERN: Well, the witness today testified that special instructions were given to him regarding the handling of this application. The instructions were, first, to review the applications thoroughly; and second, to avoid delays.

Apparently, there were different instructions, or the application was not handled in that manner.

MR. JACKEL: Well, you can ask about whether this is accurate. My objection is to the implication that you can tell something about how the whole case was processed by looking at these two paragraphs.

I mean, this file memorandum by Donna Moore doesn't even say which application it refers to, I mean, the only real information we have about it is, it was somewhere in the SCI file.

MR. STERN: It was taken out of the folder for the Dianetics Foundation -- I believe it's Institute or International.

MR. JACKEL: Okay, well, I'll take your word for it for now, but, you know, this is taken out of context and I -- the fact that Ms. Moore is saying in this document that, "this review." It's not even clear, whose review -- does not address the issues that are listed. It doesn't mean that those issues were not addressed.

For you to say that this document proves that those issues were not addressed -- which is the implication of your question -- that's just erroneous.

MR. STERN: That was not the implication of my question. The implication of my question was that Ms. Moore did not review the application. It may have been done at a higher level, but according to Mr. Rotz, he did not issue special instructions to the tax law specialist not to review these applications for these issues and, to the contrary, directed them to review the application thoroughly.

It appears that those instructions were not followed by the tax law specialist. That's the only implication being derived from this document.

MR. JACKEL: Well, you also -- although he's testified generally, you don't know that he gave instructions to Ms. Moore. He said he gave them to a tax law specialist. He didn't say he gave them to Ms. Moore, and there are several tax law specialists whose name have come up in connection with this.

MR. STERN: Okay.

MR. JACKEL: Okay.

BY MR. STERN:

Q Mr. Rotz, so the record is clear. I believe you testified earlier that you were given special instructions with respect to the handling of the Scientology applications. Is that correct?

A Right.

Q And those instructions which were given to you, as I believe you recalled, were: first, that the applications were to be reviewed thoroughly; and second that, delay should be avoided in the handling of these applications. Is that correct?

A That's correct.

Q Okay. With respect to that first instruction, that the applications were to be reviewed thoroughly. Can you explain what you mean by this, what the "reviewed thoroughly" meant?

A That the application should support exemption for the church and its related organizations, including these issues. If the applications had been prepared properly, they would have supported exemption on these issues as well.

Q Okay, so, to review thoroughly would require a determination that the application supported exemption; and, in the typical ordinary procedure, the tax law specialist would consider the application for these issues. Is that correct?

A That's correct.

Q From Ms. Moore's memorandum, it appears that these issues were not examined. Is that correct?

MR. JACKEL: The document speaks for itself.

BY MR. STERN:

Q Did you instruct Ms. Gessay or Ms. Moore not to examine the Scientology applications for issues regarding inurement, private benefit, public policy or commerciality?

A I don't recall doing anything like that.

Q Are you aware of any instructions being issued by someone other than yourself, directing the tax law specialist or Ms. Gessay, not to examine the applications for issues of private benefit, public policy, commerciality or inurement?

A I don't recall that either.

Q I'd like to have this placed in the record as Exhibit H.

(Whereupon, the document previously marked as Plaintiff's Exhibit H was entered into the record.)

BY MR. STERN:

Q I'd like to call you attention to the memorandum prepared by Terrell Berkovsky, which is a memorandum for file on the Church of Scientology, Western United States.

On page three of that memorandum -- the memorandum states on page three: "The issues regarding inurement, private benefit, public policy, and whether the organization is involved in commercial activities has not been addressed in this file memorandum, as the negotiation committee made the determination that there was no inurement, private benefit or commercial activities that would prohibit recognition of exempt status.

"This request to affirm organization's exempt status was processed as part of settlement negotiations and in accordance with special instructions from the negotiations committee. The committee was chaired by Howard Schoenfeld."

Mr. Rotz, were you ever told that the negotiations committee had made the determination that there was no inurement, private benefit or commercial activities that would prohibit recognition of exempt status of any of the Scientology applicants?

A I don't recall specifically being told that. By the time the applications were submitted, it's my understanding that those issues had been resolved at that point.

Q Did you instruct Ms. Gessay or the tax law specialist not to consider these issues, since it was your understanding that they had already been resolved?

A I don't recall doing that.

Q When you referred or forwarded the Scientology applications to Ms. Gessay and her tax law specialist, did you expect the applications to be examined for issues of inurement, private benefit, commerciality?

A I expected them to be examined, and if there was anything in the applications that indicated inurement or private benefit, we would have certainly had the expectation that we should have talked with Howard or the committee.

Q So you expected the tax law specialist to examine the file for those issues in the application materials?

A I don't recall ever being told or telling anyone else to -- you know, if you see something, look the other way. I mean, if it was there, we would have brought it to Mr. Schoenfeld's attention.

Q In the division's typical procedures, those issues are looked at. Is that correct?

A Yes.

Q After the tax law specialist examined the Scientology applications, who were the administrative files forwarded to?

A They came to me.

Q And, did you review the administrative files?

A Yes.

Q And did you review the file memoranda prepared by the tax law specialist?

A Yes.

Q Do you recall seeing these two memoranda in particular?

A I -- since you've shown them to me I recall.

Q So, you did see them prior to the issuance of the favorable ruling letter.

A Yeah, I believe so.

Q So you were aware, prior to the issuance of the ruling letter, that the tax law specialist had not conducted an examination of the applications for these issues?

A No, that's not what I said. I said, if there was an issue in there, they were not to ignore it. The instructions were that these have been considered and Howard and the committee were satisfied that those issues had been resolved.

Q Did you advise Ms. Gessay or the tax law specialist that the negotiations committee had resolved these issues?

A I don't know as I did.

Q When you received these file memoranda, you were aware that someone had advised the tax law specialist that the negotiations committee had made a determination with respect to these issues?

A Yes.

Q So you knew that the tax law specialists themselves hadn't addressed the issues regarding inurement, private benefit, public policy or commerciality?

A Not in these file memos.

Q Would -- if such a review was done, would it be memorialized elsewhere?

A I mean -- you --

Q You said, not in these file memoranda. So, I was just wondering if there was someplace else where that information might be contained?

A I don't know that.

Q I'd like to have this placed in the record as Exhibit I.

(Whereupon, the document previously marked as Plaintiff's Exhibit I was entered into the record.)

BY MR. STERN:

Q Once you received the Scientology applicants' administrative files from the tax law specialists, what happened next? What did you do with them?

A I reviewed the files and looked at some of the exhibits.

Q Were you also provided with a proposed ruling letter for issuance to the applicants?

A Yes.

Q Did you sign off on that?

A Yes.

Q Did it require further review by your superiors or others?

A I think I answered that before. I don't recall whether it was reviewed by the Assistant Commissioner or anybody else on the committee.

Q Do these ruling letters or the administrative files, do they contain a buck sheet or similar document?

A They contain a file copy of the ruling letter.

Q And this file copy of the ruling letter would contain the initials of those individuals who signed off on the ruling letter?

A I -- that's the normal practice. I don't recall that these did.

Q And, did you prepare the final ruling letter that was issued to the applicant?

A The tax law specialist prepared it.

Q Under your directions?

A Yeah, they prepared it as part of the processing of the application.

Q And, would the tax law specialist affix Jeanne Gessay's signature to the ruling letters as well?

A No.

Q Would you affix the --

A Did you say signature?

Q Signature.

A Yes.

Q And, after the ruling letters were issued to the applicants, what did you do with the administrative file for each applicant?

A We forwarded it to our records unit to be imaged.

Q And, prior to forwarding it to the records -- did you say, records office?

A I'm sorry, records control unit is the name.

Q And, prior to forwarding it to the records control unit, did you -- were you charged with the responsibility of creating an administrative record?

A No, I was not.

Q Do you know who was charged with that responsibility?

A That would have been handled as a routine matter by the records control unit.

Q So, the records control unit has the responsibility of creating the administrative record from the administrative file?

A That's right.

Q Prior to being sent to the records control unit, are administrative files purged in any way, documents removed, sorted out, extraneous materials, anything like that? Or is everything just sent to the records control unit?

A We are supposed to remove duplicates and things -- basically, duplicates, or maybe envelopes that are of no value.

Q So, in the typical practice, the records control unit has responsibility for photocopying -- or is it imaging now --

A Yes.

Q -- the administrative file and creating the administrative record, which is subject to public disclosure?

A Yes.

Q And are there any division policy, or is there guidelines for the record control unit for them to use in determining what documents should be included in the administrative record?

A The only guidance is Section 6104.

Q Does the records control unit duplicate all materials in the administrative file, or only selected materials in the administrative file?

A We image everything.

Q I noticed down in the public reading room with respect to the Scientology applications that a number of books and other materials were submitted in support of the application. Would those documents be imaged as well?

A No.

Q Are there other exceptions made as to -- obviously, not everything is imaged. I'm just trying to understand what the guidelines are.

A Okay, the way we handle documents like that, that are bound volumes, is we image the -- I guess the title page, and sometimes the table of contents. In a case like this, we would keep all of those exhibits and documents for the 6104 file, for the administrative record; and we maintain those as long as someone has an interest in looking at the file.

When we're done with the file that contains those kind of documents, we do not image the entire book. We do what I just said.

Q So, I would assume, then, that the -- actually, the only complete, I mean, everything -- administrative record, which is maintained by the IRS with respect to the Scientology applications, is what's in the FOIA reading room.

A That's correct, yes.

Q And, once public interest wanes with respect to an exemption application, what happens to the administrative file then; or the administrative record?

A If it hasn't been imaged already, it would be imaged at that time and then the -- some of the bulky exhibits, like books and stuff like that, are not imaged in their entirety.

Q Is the file maintained by the National Office, or would it be sent to the District Office of the applicants?

A Current practice is to send it to the District Office.

Q Mr. Rotz, if a closing agreement is executed between the IRS and a taxpayer regarding the taxpayer's exemption application which has been approved, is a copy of the closing agreement maintained in the applicant's administrative file?

A I think so.

Q And, I think as you testified earlier, it's not maintained in the applicant's administrative record.

A That's incorrect.

Q I believe you testified at the beginning of this deposition that one of your responsibilities was, I guess, the coordination of closing agreements entered into between the IRS and exempt organizations?

A Yes.

Q Do you receive all copies of closing agreements that are entered into between the National Office and taxpayers -- exempt organizations?

A I'm supposed to.

Q And have you received copies of all such closing agreements?

A No.

Q Do you maintain a master file, a cumulative file, of all closing agreements entered into between the IRS and the -- and exempt organizations?

A I haven't received any.

Q You haven't received any at all?

A Not pursuant to this new procedure. I mean --

Q Going back a few years. Let's say since 1991.

A No.

Q Is this a new procedure that all closing agreements are to be sent to you?

A Yes.

Q A copy provided to you?

A Yes.

Q Mr. Rotz, this memoranda you prepared, dated January 23, 1995, regarding the closing agreement procedure in the division, is this going to be published in any way as a Revenue Procedure or anything else, similar in purpose or in effect?

A No.

Q This is just for internal use and guidance?

A It will become part of our division operating procedures.

Q You stated on the first page of this memorandum that, "A formal request for a closing agreement should be controlled as a line 25." What is a line 25?

A It's a work code item similar to technical advice requests, or PLRs, or applications. Our revenue procedures, revenue rulings, each have their own code for statistical purposes.

Q Are these codes published anywhere?

A In our division operating procedures I suppose.

Q Can we go off the record.

(Whereupon, counsel engaged in off-the-record discussion.)

MR. STERN: Back on the record.

Those are all the questions we have, Mr. Rotz.

MR. JACKEL: Let's take a break. I'm probably going to need, maybe, 15 minutes.

MR. STERN: Okay.

MR. JACKEL: Back on the record.

C R O S S E X A M I N A T I O N

BY MR. JACKEL:

Q Mr. Rotz, you understand that this deposition is going to be transcribed into a book-type of document that you can review, and that you can make changes to on an errata sheet, if you so desire. I, as the attorney here, would advise you to avail yourself of that.

Do you wish to do that?

A Yes.

Q Okay.

You testified about negotiating committees, and I believe you testified that, as you understood it -- understood the question -- negotiating committees are not a standard procedure. Was that what you testified to earlier?

A Yes.

Q I want to make sure that there isn't any confusion about this.

When a case is designated, "a significant matter," is it -- is it common for that case to be handled in a way that wouldn't be common for a run-of-the-mill case?

A That's the uncommon part of the handling.

Q These cases are, because they're labeled, "significant," they're handled in a somewhat different way. Right?

A Yes.

Q And in handling these cases, isn't one way they're reviewed and resolved by forming a group of people to consider an application for exemption, for instance?

A It can be. If -- the purpose of the significant matter report is to alert our superiors to a case that they may have some interest in. At that point, it's their option to become more involved, and at that point, there could be a higher level of review and more people.

Q And, if there are a number of issues that are pending before the Service, isn't it also sometimes done that a -- the group of people that's put together, includes people that have expertise on the various issues that are pending before the Service?

A Yes.

Q Uhm, you were asked a question about guidance on closing agreements before the publication of the CPE article?

A Yes.

Q And, I wonder -- well, strike that.

Before the CPE article was published, there was a provision in the Internal Revenue Manual regarding closing agreements, wasn't there?

A Yes.

Q And, that provision, or that part of the Internal Revenue Manual also applied to closing agreements that dealt with exempt organizations. Right?

A Yes.

Q So, was your answer, then, to the -- well, I believe you testified that, before the CPE article was published, there was no guidance on closing agreements relating to exempt organizations. Right?

A To my knowledge, there was not.

Q Okay. And, was your answer, then, limited to whether there was guidance directed, particularly, to exempt organization closing agreements?

A There was none.

Q Okay.

Uhm, closing agreements have to be signed by the Assistant Commissioner, don't they?

A Yes.

Q And, when you review a closing agreement and direct the tax law specialist, or the other people below you who are handling the closing agreement to have the taxpayer prepare and sign the closing agreement, that doesn't make the closing agreement effective does it?

A That's correct, it does not.

Q It still has to be signed by the Assistant Commissioner?

A Right.

Q If the Assistant Commissioner doesn't sign it, it never becomes effective. Right?

A That's correct.

Q You were asked a question about the closing agreement in Jimmy Swaggart Ministries. Do you remember that?

A Yes.

Q And the question asked you whether you were aware that the IRS required Jimmy Swaggart Ministries to disclose the existence of the closing agreement. Do you recall that question?

A Yes, I recall.

Q I want to ask you about the word, required, that was in that question. Did you participate in the negotiation of that particular closing agreement?

A No.

Q Do you know anything about who required that -- the provision in there that the closing agreement be disclosed? Do you know who insisted on that particular provision?

A No.

Q When you answered earlier, were you -- why did you answer affirmatively to the question earlier?

A I assumed that that was the case.

Q Those are all the questions that I have.

MR. STERN: I have a couple more questions.

REDIRECT EXAMINATION

BY MR. STERN:

Q Mr. Rotz, when a matter is deemed or classified as a "significant matter," who makes that determination?

A Uh, the tax law specialist, I think.

Q And, what are the considerations, or are there procedures when a case will be designated as a "significant matter?"

A We have a form that we use with a title something like that, report of significant matter.

Q With respect to exemption applications, what are the characteristics necessary to deem a matter a significant matter?

A It could be, perhaps, because of the people involved, whether it was precedent setting.

Q Could it perhaps depend upon congressional awareness of the application or matter?

A Yes, it could.

Q If there was a prior judicial determination regarding the applicant, is there a requirement that its application be deemed a significant matter?

A Not necessarily.

Q If the applicant had previously had its exemption revoked, would that application be deemed a significant matter?

A I'm not sure of that.

Q How about regarding the personality of the applicants, who the particular applicant is, maybe a controversial applicant?

A Yes.

Q Now, when a matter is deemed a significant matter, I believe you testified that essentially alerts the tax law specialist superiors that the matter under -- or the application may require higher review. Is that correct?

A Yes.

Q And, I may have been confused here, but, Mr. Jackel was talking about, in those situations, a group of people or a working group is formed. Is that necessarily true?

A No. I said, it could have.

Q How many situations are you aware of where a working group or a committee of people was formed to consider and review an exemption application in the National Office?

A I just don't have information like that.

Q More than one?

A Yeah, it's more than one.

Q Does it occur frequently or infrequently?

A It's infrequent.

Q In response to a question posed by Mr. Jackel, you stated that closing agreements with exempt organizations have to be signed by the Assistant Commissioner.

A Right.

Q But you testified earlier they can also be signed by the district director.

A Yes.

Q And if the Assistant Commissioner signs a closing agreement -- let me strike that.

When a closing agreement is provided to the Assistant Commissioner for his signature, has it already been signed by the taxpayer?

A Yes.

Q And, after the closing agreement is signed by the Assistant Commissioner, is it sent back to the taxpayer, a fully executed copy?

A Yes.

Q And, is the original kept by the IRS?

A Yes.

Q Or are duplicate originals made?

A Yes, we keep a copy. I can't say it's the original.

Q And, I believe you testified earlier, that's placed in the applicant's administrative file.

A It's supposed to be.

Q And, in the future, a copy will be provided to you as well?

A Yes.

Q I believe you testified earlier that you were involved with a number of closing agreements?

A Yes.

Q In any of those situations, has a taxpayer requested that a disclosure provision be put in the closing agreement?

A No.

Q Those are all the questions that I have.

MR. JACKEL: Uhm, let's go off the record for a moment. I'm not sure I want to call this to an end yet.

MR. STERN: Back on the record.

Mr. Rotz, we have no more questions for you. Thank you for taking the time to answer questions today. I appreciate your assistance.

(Whereupon, at 2:43 p.m., the deposition was concluded.)