

Title 03

COMPTROLLER OF THE TREASURY

Subtitle 01 OFFICE OF THE COMPTROLLER

Notice of Final Action

[23-226-F]

On December 19, 2023, the Comptroller of the Treasury adopted new Regulations .01—.07 under a new chapter, **COMAR 03.01.05 Private Letter Rulings**. This action, which was proposed for adoption in 50:22 Md. R. 979-982 (November 3, 2023) has been adopted as proposed.

Effective Date: January 8, 2024

03.01.05 Private Letter Rulings

Authority: State Government Article, §10-122(a); Tax-General Article, §§2-102, 2-103, and 13-1A-05; Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Authorized representative" means an attorney, agent, or person designated by a petitioner to represent the petitioner in a petition for a private letter ruling.

(2) "Person" means:

(a) An individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind;

(b) Any partnership, firm, association, corporation, or other entity; and

(c) A governmental entity or a unit or instrumentality of a governmental entity.

(3) "Petition" means a written request for a private letter ruling that is submitted to the Legal Division of the Comptroller's Office by first-class mail, postage prepaid, or electronically or is delivered in person.

(4) Petitioner.

(a) "Petitioner" means a person who is requesting a private letter ruling.

(b) "Petitioner" does not include a class or group of persons who are not related parties in a specific and actual prospective transaction.

(5) "Private letter ruling" means a final, written, non-appealable determination:

(a) Applicable to a specific set of facts;

(b) Submitted in a written petition under this chapter; and

(c) Issued by the Comptroller of Maryland on:

(i) The application of tax law administered by the Comptroller under Tax-General Article, Annotated Code of Maryland;

(ii) The application of regulations under this title to a specific set of facts; and

(iii) Other matters over which the Comptroller has administrative authority.

(6) "Tax" means those State and local taxes and fees administered by the Comptroller.

.02 General.

A. A private letter ruling is binding on the Comptroller for a period of 7 years from the date the private letter ruling is issued unless void, modified, or revoked in accordance with the provisions of Regulation .07 of this chapter.

B. A private letter ruling is a determination of the Comptroller only as to the transaction that is the subject of the ruling.

C. A petitioner is not bound by a private letter ruling.

D. A petitioner's failure to follow a private letter ruling may be considered in determining whether interest and penalty should be reduced or abated for reasonable cause in any subsequent challenge of an assessment or denial of a refund on the issue covered by the private letter ruling.

E. A private letter ruling may be used as evidence of a petitioner's knowledge or intent in a subsequent proceeding.

F. The Comptroller may use information submitted in a petition for a private letter ruling for subsequent audit purposes.

.03 Petition for Private Letter Ruling.

A. A petition for private letter ruling shall be submitted with respect to a specific party and a specific, actual, and prospective transaction or situation.

B. A petition for private letter ruling may be submitted by either:

(1) A person who is a party to the subject transaction; or

(2) An authorized representative on behalf of a party to the subject transaction.

EXAMPLE: The president of a trade association may submit a petition for private letter ruling on the taxability of a transaction contemplated by the trade association, such as whether a prospective purchase by the non-profit trade association is exempt from sales and use tax.

C. A petition for private letter ruling may not be submitted by:

- (1) A group of persons that are not related parties in the subject transaction, or a person acting on their behalf;
- (2) A person that is not a party to the subject transaction;
- (3) A person that is not an authorized representative of the party to the subject transaction; or
- (4) An anonymous or hypothetical party.

EXAMPLE: The president of a trade association may not submit a petition for private letter ruling on the taxability of a type of transaction that some or all its members are contemplating, because the trade association is not itself a party to the transaction and does not represent any party to the transaction in the transaction.

D. A petition for private letter ruling shall be submitted in the form and manner required by the Comptroller. The petition shall:

- (1) Identify the petitioner and all parties involved in the transaction or question;
- (2) Contain a concise statement of the question or issue on which the petition is based;
- (3) Contain a detailed statement of the facts on which the petition is based;
- (4) Contain a redacted or anonymized version of the statement of facts upon which the petition is based, which may be published under Regulation .06 of this chapter;
- (5) Identify all statutes, regulations, judicial decisions, or other published federal or state guidance relevant to the petition, including authority adverse to the petitioner's position;
- (6) Include a discussion of whether, and in what manner, the statutes, regulations, judicial decisions, and other published federal or state guidance apply to the petitioner under the facts outlined in the petition;
- (7) Contain a description of the petitioner's interest in the private letter ruling, which shall include:
 - (a) A statement as to whether the private letter ruling sought is intended to affect the tax consequences of any transaction or transactions entered into or contemplated by the petitioner, its vendors, customers, clients, or any other person who is a party to the transaction described in the petition, which are known by the petitioner to be the subject of a Comptroller inquiry, audit, refund, or assessment proceeding or any inquiry, audit, refund, or assessment proceeding conducted on behalf of and with the approval of the Comptroller;
 - (b) A statement as to whether the private letter ruling sought is intended to affect the petitioner's status under any of the licensing, regulatory, or statutory provisions administered by the Comptroller, which is known by the petitioner to be the subject of an inquiry, inspection, investigation, audit, refund request, voluntary disclosure, or other proceeding in the Comptroller's Office; and
 - (c) An explanation of the circumstances surrounding the inquiry, audit, refund, assessment, inspection, investigation, or other proceedings, if any;
- (8) Contain a statement as to whether the petitioner has sought or is seeking a private letter ruling or other guidance from the Internal Revenue Service, another state, or another taxing authority on the transaction or question that is the subject of its petition for a private letter ruling to the Comptroller of Maryland and, if so, from what other state or taxing authority;
- (9) Contain, if the petitioner asserts a position or alternative positions, a concise proposed draft ruling;
- (10) Contain the signature of the petitioner or the petitioner's authorized representative; and
- (11) Include, if the petition is submitted by an authorized representative, a completed Maryland Form 548 Power of Attorney.

.04 Requests for Additional Information.

A. At any time before a private letter ruling is issued, the Comptroller may request additional information from a petitioner.

B. Additional information may include:

- (1) Statements or other information required by Regulation .03 of this chapter;
- (2) Documents or supporting information;
- (3) Specific facts about the issue or transaction that is the subject of the petition; or
- (4) Clarification of statements of facts submitted to the Comptroller as part of the request for a private letter ruling.

C. The petitioner shall submit the information to the Comptroller within 30 days after the date of the Comptroller's request for additional information. The Comptroller's request for additional information shall state the date on which the additional information is due and the manner of submission of the information.

D. If a petitioner fails to timely submit the additional information requested by the Comptroller, the Comptroller may deny the petition for private letter ruling.

E. The Comptroller may reopen a petition for private letter ruling denied under §D of this regulation if, within 12 months after the denial of the petition, the petitioner:

- (1) Submits the additional information requested by Comptroller; and
- (2) Affirms that there have been no material changes to the facts submitted in the petition for private letter ruling.

.05 Withdrawals and Denials of Petitions.

A. Petitioner may withdraw the petition for private letter ruling at any time before the private letter ruling is issued.

B. Denial of Petition for Private Letter Ruling. The Comptroller may deny a petition for private letter ruling for good cause, including:

- (1) The issue is the subject of existing guidance to taxpayers published by the Comptroller;
- (2) The petitioner did not timely submit additional information requested by the Comptroller under Regulation .04 of this chapter.

- (3) *The issue identified in the petition is:*
 - (a) *Under extensive study or review; or*
 - (b) *Currently being considered in a rule-making procedure, contested case, or any other agency or judicial proceeding that may resolve the issue;*
 - (4) *The Comptroller has reason to believe the issue is the subject of an examination, audit, or pending refund request of the petitioner for the same or a prior tax period;*
 - (5) *The petition for private letter ruling does not identify the taxpayer or taxpayers;*
 - (6) *The petition involves a hypothetical situation or alternative plans;*
 - (7) *The transaction for which the petition for private letter ruling is submitted is designed to avoid taxation;*
 - (8) *The facts or issues identified in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis on which to issue a private letter ruling;*
 - (9) *The petition seeks to determine whether a statute is constitutional under the Maryland Constitution or the United States Constitution;*
 - (10) *The issue is addressed by statute, regulation, or Court decision; or*
 - (11) *The issue involves the tax consequence of any proposed but not yet enacted federal, state, or local legislation.*
- C. If the Comptroller denies a petition for private letter ruling under this section, the Comptroller shall notify the petitioner in writing of the reason for the denial within 60 days of the date on which the petition was submitted to the Comptroller.*

.06 Issuance and Publication of Private Letter Ruling.

- A. A private letter ruling shall be issued to the petitioner in writing.*
- B. Publication.*
 - (1) *The Comptroller shall publish periodically on the Comptroller's website redacted or anonymized copies of private letter rulings the Comptroller determines may be of interest to the public.*
 - (2) *The Comptroller, in its sole discretion, shall determine whether to publish a private letter ruling.*
 - (3) *A published private letter ruling is not binding on the Comptroller as to any person other than the petitioner who requested the private letter ruling.*
 - (4) *Published private letter rulings may be relied upon by the public as informal guidance.*
 - (5) *If the Comptroller intends to publish a private letter ruling, the Comptroller shall provide, at least 15 business days prior to publication, a redacted or anonymized draft for publication of the private letter ruling to the petitioner or the petitioner's authorized representative.*
 - (6) *In the draft for publication, the Comptroller shall redact or anonymize identifying details, trade secrets, commercial or financial information considered privileged, and any information that would constitute an unwarranted invasion of personal privacy.*
 - (7) *The draft for publication shall retain information sufficient to provide meaningful guidance to the public.*
 - (8) *Within 15 business days of the date the draft of the private letter ruling intended for publication is sent to petitioner, the petitioner may submit revisions to the proposed draft for publication of the anonymized or redacted information, if any, to the Comptroller.*
 - (9) *Failure of the petitioner to submit proposed revisions within 15 business days shall be deemed a waiver of any claim that the version for publication contains confidential information.*
 - (10) *The Comptroller shall respond to petitioner's proposed revisions of the anonymized or redacted private letter ruling before publication.*
 - (11) *The Comptroller shall consider the petitioner's proposed redactions to the draft intended for publication; however, the Comptroller, in its sole discretion, shall determine the contents of the published private letter ruling.*

.07 Status of Private Letter Rulings.

- A. Effect and Non-Appealability.*
 - (1) *A private letter ruling becomes binding on the Comptroller on the date it is issued.*
 - (2) *A private letter ruling is binding on the Comptroller for 7 years from the date it is issued, unless the private letter ruling is void or is modified or revoked under this regulation.*
 - (3) *A private letter ruling may not be appealed to the Comptroller's Hearings and Appeals Division, the Maryland Tax Court, any other administrative agency or tribunal, or any State or federal court.*
- B. Void Private Letter Rulings.*
 - (1) *A private letter ruling is void and of no effect from the date it is issued if:*
 - (a) *The petition contains a misstatement or omission of material facts in the petition; or*
 - (b) *The facts are determined to be materially different from the representations on which the void private letter ruling was based.*
 - (2) *A void private letter ruling is not binding on the Comptroller.*
 - (3) *Penalty and interest shall be applied to any tax owed but not remitted in reliance on a private letter ruling that is void, and it shall not be a defense to the assessment of any tax, interest, or penalty that the petitioner relied on the private letter ruling in not paying the tax.*
 - (4) *The Comptroller may consider a misstatement, omission, or misrepresentation of material facts, whether made by the petitioner or the petitioner's authorized representative, that voids a private letter ruling to indicate fraud.*
- C. Modification or Revocation of Private Letter Rulings*

(1) A private letter ruling is of no force or effect, and no longer binds the Comptroller, automatically upon a material change in fact, or as of the effective date of a change in any statute, regulation or rule, or the issuance of a final decision in a contested case on which the private letter ruling relies.

(2) A petitioner may request a written modification or revocation of a private letter ruling. A request for modification or revocation of a private letter ruling shall:

(a) Be submitted in writing;

(b) Include a detailed description of the basis for the modification or revocation request; and

(c) Conform to the requirements of Regulation .03 of this chapter.

(3) The Comptroller may modify or revoke a private letter ruling if the Comptroller determines that a material change in facts or a change in law, regulations, rules, or a final decision in a contested case affects the validity of the private letter ruling. When modifying a private letter ruling, the Comptroller shall notify the petitioner in writing of the modified private letter ruling.

(4) A modified or revoked private letter ruling does not apply to any period that predates the date the material change in facts occurred, or that predates the date of the change in law, regulations, rules, or final decision in a contested case that resulted in the modification or revocation of the private letter ruling.

D. Renewal of Private Letter Ruling.

(1) A petitioner may request a renewal of a private letter ruling no earlier than 6 months before the expiration of the private letter ruling.

(2) A request for renewal of a private letter ruling shall:

(a) Be submitted in writing;

(b) Include a detailed description of the basis for the renewal, including:

(i) A statement that no material facts have changed; and

(ii) A statement that no law, regulation, rule, or decision in a contested case affects the validity of the private letter

ruling.

(3) The Comptroller may deny a request for renewal of a private letter ruling:

(a) If the Comptroller, in its sole discretion, determines that:

(i) Material facts have changed; or

(ii) There has been a change in law, regulation, rule, or final decision in a contested case that affects the validity of the private letter ruling; or

(b) For any of the reasons listed in Regulation .05B of this chapter.

E. Expiration of Private Letter Ruling.

(1) Unless renewed, a private letter ruling automatically expires as to the petitioner 7 years from the date the private letter ruling is issued.

(2) An expired private letter ruling is not binding on the Comptroller.

(3) An expired private letter ruling may be used as evidence of petitioner's knowledge or intent in a subsequent proceeding.

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Comptroller