



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.70.16

NOVEMBER 20, 2023

EFFECTIVE DATE

(11-20-2023)

PURPOSE

- (1) This transmits IRM 4.70.16, TE/GE Technical Assistance, Technical Advice Requests and Requests for 7805(b) Relief.

MATERIAL CHANGES

- (1) The TE/GE Examinations process was created to provide a consistent and streamlined examination process across TE/GE.
- (2) This IRM was extracted from the Internal Guidance Memos (IGMs) and IRM sections tabled here:

IGM	IRM
IGM TEGE-04-0222-0006 Elimination of requirement to post Form 3198-A as a separate workpaper in RCCMS Office Documents folder, dated February 23, 2022.	IRM 4.71.13 Technical Assistance, Technical Advice Requests and Requests for Relief under IRC section 7805(b), dated July 12, 2019.
	IRM 4.75.13.5.1, 4.75.13.5.2, 4.75.13.5.3 and 4.75.13.8.5 Issue Development and Conclusion, dated October 16, 2019.
	IRM 4.75.36 Procedures for Processing Technical Advice Cases, dated January 14, 2020.
	IRM 4.81.5.19 Conducting the Examination, dated August 5, 2021.
	IRM 4.86.5.17 Conducting Indian Tribal Government Examinations, dated December 15, 2020.
	IRM 4.88.1 Examination Issues Pertaining to ITG Cases, dated December 10, 2021.
	IRM 4.80.1 Technical Assistance and Technical Advice Requests, dated February 23, 2021.

EFFECT ON OTHER DOCUMENTS

This IRM obsoletes IRM 4.71.13 Technical Assistance, Technical Advice Requests and Requests for Relief under IRC section 7805(b), dated July 12, 2019, IRM 4.75.13.5.1, 4.75.13.5.2, 4.75.13.5.3 and 4.75.13.8.5 Issue

Development and Conclusion, dated October 16, 2019, IRM 4.75.36 Procedures for Processing Technical Advice Cases, dated January 14, 2020, IRM 4.81.5.19 Conducting the Examination, dated August 5, 2021, IRM 4.86.5.17 Conducting Indian Tribal Government Examinations, dated December 15, 2020, IRM 4.88.1 Examination Issue pertaining to ITG Cases, dated December 10, 2021, and IRM 4.80.1 Technical Assistance and Technical Advice Requests, dated February 23, 2021. This IRM incorporates the following Interim Guidance Memos: TEGE-04-0222-0006, Elimination of Requirement to Post Form 3198-A as a Separate Workpaper in RCCMS Office Documents folder, dated February 23, 2022.

AUDIENCE

Tax Exempt and Government Entities (TE/GE) Examination Employees and Managers

Robert Choi
Deputy Commissioner,
Tax Exempt and Government Entities

4.70.16

TE/GE Technical Assistance, Technical Advice Requests and Requests for 7805(b) Relief

Table of Contents

- 4.70.16.1 Program, Scope and Objectives
 - 4.70.16.1.1 Background
 - 4.70.16.1.2 Authority
 - 4.70.16.1.3 Responsibilities
 - 4.70.16.1.4 Program Controls
 - 4.70.16.1.5 Acronyms, Abbreviations, Forms and Pubs
- 4.70.16.2 Assistance from the KM&T Sites
- 4.70.16.3 Assistance from Mandatory Review and Special Review
 - 4.70.16.3.1 Assistance for TEB Technical
- 4.70.16.4 Requesting Technical Assistance from Specialists
- 4.70.16.5 Assistance from TEGEDC
- 4.70.16.6 Technical Advice Procedures
 - 4.70.16.6.1 Mandatory Technical Advice for Certain EP Examinations
 - 4.70.16.6.2 Initiating a Request for Technical Advice
 - 4.70.16.6.2.1 Notifying the Taxpayer of the Intent to Request TAM
 - 4.70.16.6.3 Taxpayer Initiated Requests for Technical Advice
 - 4.70.16.6.3.1 Taxpayer Appeals Field Office's Denial of TAM Request
 - 4.70.16.6.4 Pre-Submission Conference
 - 4.70.16.6.5 Preparation of the Technical Advice Package
 - 4.70.16.6.5.1 Form 4463, Request for Technical Advice or Technical Expedited Advice
 - 4.70.16.6.5.2 Memorandum of Facts, Law, and Arguments
 - 4.70.16.6.5.3 Deletion Statement
 - 4.70.16.6.6 Electronic Submission
 - 4.70.16.6.7 Responsibilities of the Examiner While Technical Advice is Pending
 - 4.70.16.6.8 Obtaining Status Updates for the TAM
 - 4.70.16.6.9 Review of the TAM by Associate Chief Counsel
 - 4.70.16.6.9.1 Exam Does Not Concur with TAM - Request for Reconsideration
 - 4.70.16.6.9.2 Director of Area Manager Disagree Over Whether to Protest
 - 4.70.16.6.10 Final TAM
 - 4.70.16.6.10.1 Effect of the TAM
 - 4.70.16.6.11 Responsibilities of the Respective Exam Director's Office Upon Receipt of the TAM
 - 4.70.16.6.11.1 Responsibilities of the Examiner Upon Receipt of the TAM
 - 4.70.16.6.12 Letter 438, Notice of Intention to Disclose – Technical Advice
 - 4.70.16.6.13 Withdrawal of Requests for Technical Advice
 - 4.70.16.6.14 Conclusion of the Case When Technical Advice Is Received

4.70.16.7 Requests for 7805(b) Relief

4.70.16.7.1 Employee Plans Rev. Proc 2023-4

4.70.16.7.2 Exempt Organizations Rev. Proc. 2023-5

4.70.16.7.3 Group Manager Recommends Granting IRC 7805(b) Relief

4.70.16.7.4 Group Manager Recommends Denying IRC 7805(b) Relief or that Further Consideration Is Warranted

Exhibits

4.70.16-1 Recommendation Memo

4.70.16.1
(11-20-2023)
Program, Scope and Objectives

- (1) **Purpose** IRM 4.70.16, TE/GE Technical Assistance, Technical Advice Requests and Requests for 7805(b) Relief, contains guidance and procedures for TE/GE examiners to obtain:
 - a. Technical assistance
 - b. Technical Advice Memorandum (TAM) from Associate Counsel, and
 - c. Procedures for 7805(b) relief.
- (2) **Audience:** This IRM provides procedures for examiners, managers, tax law specialists, and support staff in TE/GE examination functions.
- (3) **Policy Owner:** The Directors, Employee Plans and Exempt Organizations / Government Entities
- (4) **Program Owner:** The Directors, Employee Plans Examinations, Exempt Organizations Examinations, and Government Entities

4.70.16.1.1
(11-20-2023)
Background

- (1) This IRM provides an overview of the responsibilities that examiners should understand and apply in the performance of their duties in requesting Technical Assistance, Technical Advice and Requests for 7805(b) Relief.
- (2) Examination of exempt organizations will be conducted to determine whether such entities meet continued qualification of exempt status, compliance and the causes of noncompliance with the tax laws and applicable resolutions.
- (3) Examination of employee benefit plans is regulatory, with emphasis on continued qualification of employee benefit plans. The IRS selects and examines returns to:
 - Promote the highest degree of voluntary compliance with the tax laws governing plan qualification.
 - Determine the extent of compliance and the causes of noncompliance with the tax laws and applicable resolutions.
 - Determine whether such plans meet the applicable qualification requirements in operation.
- (4) Examination of governmental entities will be conducted to determine whether such entities are in compliance with their employment tax filing, reporting, and payment requirements.
- (5) The Tax Exempt Bond Examination Program is to identify and correct noncompliance in tax-advantaged bonds.
- (6) "Proceedings before the IRS" include:
 - The examination of a taxpayer's return.
 - The consideration of a taxpayer's claim for credit or refund.
 - Any matter under examination or in the IRS Independent Office of Appeals (Appeals) pertaining to tax-exempt bonds, tax credit bonds, or mortgage credit certificates.
 - Any other matter involving a specific taxpayer under the jurisdiction of a Director.
- (7) Technical advice is a written advice or guidance memo Associate Chief Counsel provides as to:

- a. The interpretation and proper application of any legal authority, including legislation, tax treaties, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements.
 - b. A specific set of facts for the examination of a taxpayer's return, consideration of a taxpayer's claim for refund or credit.
 - c. Any other matter under TE/GE's jurisdiction.
- (8) Requests for Technical Advice Memorandum (TAMs) are submitted under Rev. Proc. 2023-2, Rev. Proc. 2023-1 IRB 107 (or its successor). The IRS updates this revenue procedure annually as the second revenue procedure of the year and may modify or amplify the revenue procedure during the year. This Revenue Procedure also explains the rights that a taxpayer has when a field office requests a TAM regarding a tax matter.
- (9) Technical advice does not include any oral or written legal advice furnished to the examiner that is not submitted and processed under Rev. Proc. 2023-2 (or its successor).
- (10) If a provision of this IRM is inconsistent with Rev. Proc. 2023-2 (or its successor), follow the provisions of the Revenue Procedure.
- (11) Rev. Proc. 2023-4 and Rev. Proc. 2023-5 (or their successor) provides procedures for IRC 7805(b) relief. These revenue procedures are updated annually. All personnel should refer to the most current versions of the annual revenue procedures.
- (12) The procedures contained in this IRM are not intended to be all inclusive. Examiners must use their professional judgment in completing their exam cases and other compliance activities.

4.70.16.1.2
(11-20-2023)

Authority

- (1) Policy Statement 4-119 states that the primary objective of the TE/GE examination program is regulatory, with emphasis on continued qualification of exempt organizations and employee benefit plans, and continued compliance of governmental entities (federal, state, and local governmental entities, Indian tribal governments and tribal entities, and entities or organizations that issue tax advantaged bonds). See IRM 1.2.1.5.36, Policy Statement 4-119 (Rev.1), Selection and Examination of Returns. IRS selects and examines returns to:
 - a. Promote the highest degree of voluntary compliance with the statutes governing qualification of plans and exemption of certain types of organizations from tax.
 - b. Determine the extent of compliance and the causes of noncompliance with the tax laws by plans, organizations, and governmental entities.
- (2) IRC 7602 gives examiners the authority to:
 - 1. Examine any books, papers, records, or other data necessary to complete an examination (includes electronic media).
 - 2. Issue a summons for information necessary to complete an examination.
 - 3. Take testimony under oath to secure additional information needed.
 - 4. Ask about any offense connected to administering or enforcing the Internal Revenue laws.
- (3) IRC 6201 - Assessment Authority, which falls under Chapter 63 - Assessment.

- (4) All examinations are conducted per the Taxpayer Bill of Rights (TBOR) as listed in IRC 7803(a)(3).

Note: Find additional information at *Taxpayer Bill of Rights* and IRM 4.10.1.2, Taxpayer Rights.

4.70.16.1.3 (11-20-2023) Responsibilities

- (1) The Directors, EO/GE and EP, are the executives responsible for providing policy and guidance for field employees and ensuring consistent application of policy, procedures and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.23, Tax Exempt and Government Entities Division, for additional information.
- (2) The Directors, EO Examinations, GE, and EP Examinations reports to the Directors, EO/GE and EP respectively, and are responsible for the delivery of policy and guidance that impacts the field examination process. See IRM 1.1.23, Tax Exempt and Government Entities Division, for additional information.
- (3) All examiners must perform their professional responsibilities in a way that supports the IRS Mission. This requires examiners to provide top quality service and to apply the law with integrity and fairness to all.
- (4) Examiners and their managers should thoroughly acquaint themselves with the examination procedures and information contained in this IRM, as well as other resources.

4.70.16.1.4 (11-20-2023) Program Controls

- (1) TE/GE has established two review groups to make sure examiners conduct examinations per technical, procedural and administrative requirements:
- a. Mandatory Review / Technical.
 - b. Special Review, see IRM 4.70.7, Special Review (SR) and Tax Exempt Quality Measurement System (TEQMS) Procedures.
- (2) In order to ensure a consistent level of managerial engagement in the process of making key strategic decisions during an exam, the examiner submits requests for approval by their manager through RCCMS.
- (3) The manager approves or rejects any request through RCCMS.
- (4) The IRS is fully committed to protecting the privacy rights of taxpayers and employees. Privacy laws are included in the IRC, the Privacy Act of 1974, the Freedom of Information Act, and IRS policies and practices. For more information about these laws, visit the *IRS Electronic Freedom of Information Act Reading Room*.
- a. For questions about privacy, email **Privacy*
 - b. For question about disclosure, email **Disclosure*

4.70.16.1.5 (11-20-2023) Acronyms, Abbreviations, Forms and Pubs

- (1) Associate Counsel - Office of Associate Chief Counsel Employee Benefits, Exempt Organizations, and Employment Tax (EEE) or Office of Associate Chief Counsel Financial Institutions & Products (FIP).

- (2) TEGEDC – Tax Exempt and Government Entities Division Counsel (TEGE Division Counsel). References to TEGE Area Counsel refer to the first line supervisors for TEGE Division Counsel attorneys.
- (3) Examiner - TE/GE Exam employees (examiner, Group Manager, Area Manager/Program Manager).
- (4) This manual uses the following acronyms and references the following forms.

Acronym	Definition
AIMS	Audit Information Management System
EEE Counsel	Employee Benefits, Exempt Organizations, and Employment Tax Office of Associate Chief Counsel
EO	Exempt Organizations
EOE	EO Examination Director
EP	Employee Plans
FIP	Financial Institutions & Products Office of Associate Chief Counsel
FSL/ET	Federal State and Local Employment Tax Area
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
KM&T	The Knowledge Management & Transfer Team
PM	Program Manager
RAR	Revenue Agent Report
RCCMS	Reporting Compliance Case Management System
REV. PROC	Revenue Procedure
SOL	Statute of Limitations
TAM	Technical Advice Memorandum
TEB	Tax Exempt Bonds
TEB Exam	Tac Exempt Bonds Exam Groups
TEB Technical	Technical Group in Tax Exempt Bonds
TE/GE	Tax-Exempt and Government Entities
TEGEDC	Tax-Exempt and Government Entities Division Counsel

Acronym	Definition
TIN	Taxpayer Identification Number
TLS	Tax Law Specialist

Form	Name
Form 870-EP	Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment
Form 2297	Waiver of Statutory Notification of Claim Disallowance
Form 2504	Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment
Form 2848	Power of Attorney and Declaration of Representative
Form 3363	Acceptance of Proposed Disallowance of Claim for Refund or Credit
Form 4463	Request for Technical Advice or Technical Expedited Advice
Form 4549-E	Income Tax Discrepancy Adjustments
Form 6212-B	Examination Referral Checksheet B
Form 8821	Tax Information Authorization

4.70.16.2 (11-20-2023) Assistance from the KM&T Sites

- (1) As an examiner, you may need technical assistance and/or technical advice. The examiner should first attempt to resolve technical and procedural issues at the group level including peers, senior examiners and the Group Manager for help as well as their own research and analysis before you request technical assistance.
- (2) Technical assistance can be requested from the *TE/GE Knowledge Bases*. The KM&T sites provide technical assistance on general issues or questions, including issues you're considering in your exam. However, it's not intended to provide case specific guidance. You may:
 - a. Call a KM&T team member for quick and informal technical input on basic questions that will help you independently resolve an issue.
 - b. Post questions/comments on a discussion forum to begin a peer-to-peer conversation. KM&T team members participate in discussion forum conversations with other tax law specialists (TLS) and examiners.
 - c. Use Contact an Expert on the KM&T sites to ask for technical guidance or resources that will help you independently resolve an issue. The assigned KM&T team member will contact you to discuss your question.
 - d. Attend a KM&T event to hear technical information and ask questions.

Caution: Don't include any PII/SBU when using Contact an Expert.

4.70.16.3
(11-20-2023)

**Assistance from
Mandatory Review and
Special Review**

- (1) Reviewers in Mandatory Review and Special Review assist examiners and managers with technical and procedural issues. When you submit questions on procedural matters, include the following information:
 - a. The research already conducted, stating the materials used and the tax law considered, such as the IRM, court cases and other sources already contacted.
 - b. Any relevant information.
 - c. No PII.
- (2) Mandatory Review offers help with:
 - a. Anticipated "unagreed" exam issues.
 - b. Procedural questions on examination procedures.
 - c. Special exam projects coordinated by a reviewer in Mandatory Review.
- (3) Contact can be made to:
 - a. For EO Examinations, contact through Mandatory Review through **TEGE EO Review Staff*.
 - b. For EP Examinations, contact the manager, EP Mandatory Review for assistance.
 - c. For FSL/ET, contact the GS-14 Lead for assistance.
 - d. For ITG, contact the manager, ITG Technical for assistance.
 - e. For TEB, contact the manager, TEB Technical for assistance.
- (4) Special Review helps examiners and managers with examination procedural questions, including but not limited to questions related to third party contacts, disclosure, Form 2848 Power of Attorney and Declaration of Representative, Form 8821 Tax Information Authorization or potential fraud issues.
- (5) Group managers may contact the Manager, Mandatory Review or the Manager, Special Review to ask a reviewer to give a presentation of a specific topic of interest at a group meeting.

4.70.16.3.1
(11-20-2023)

**Assistance for TEB
Technical**

- (1) TEB examiners must get approval to request technical assistance from TEB Technical. They do this by filling out necessary forms and providing information to move a technical assistance request forward.
- (2) TEB examine: If your manager agrees that you're likely to close the case unagreed or as a claim denial, and determines that technical assistance is warranted (with PM's approval), prepare and send Form 14501, TEB CPM Technical Assistance Request, to TEB Technical manager requesting a TLS for technical assistance. Your request must:
 - a. Identify the taxpayer and bond issue under examination.
 - b. Include your name and your manager's name.
 - c. Describe the identified area of noncompliance.
 - d. Include any taxpayer or issuer correspondence with a position on the matter.
- (3) Program Manager: Approve the Group Manager's request for technical assistance, if warranted.

- (4) TEB Technical manager:
 - a. Notify the Group Manager and PM of the assigned TLS.
 - b. Discuss the assignment's priority with the TLS.
- (5) TLS:
 - a. Review the draft document(s) and prepare a memorandum to the Group Manager and examiner with comments on any areas requiring further development.
 - b. Coordinate with the examiner if additional information is needed.
 - c. Update the TEB Technical manager on case progress.
- (6) Examiner:
 - a. Respond to any TLS request for additional information.
 - b. Incorporate all revisions into the necessary documents.
- (7) All: Share and discuss pertinent case-related communication during the technical review process.

4.70.16.4
(11-20-2023)
Requesting Technical Assistance from Specialists

- (1) You may need assistance from specialists such as engineers or economists (for example, to confirm the value of property). When requesting help from specialists from other operating divisions, use the SRS at *Specialist Referral System*. See IRM 4.70.12.3.5, Specialist Referral System. This includes requests for:
 - Engineers
 - Economists
 - Financial products specialists
 - Computer audit specialists
 - International language specialists
 - Other specialists
- (2) For further information on other specialty areas see IRM 4.70.13.6, Using Technical Expert Resources.

4.70.16.5
(11-20-2023)
Assistance from TEGEDC

- (1) You should try to resolve technical questions via research and analysis, including discussion with your Group Manager and colleagues. However, there will be instances in which Counsel's assistance is appropriate.
- (2) You can make informal, and if needed, written requests for assistance to TEGEDC for
 1. Legal interpretations
 2. Case development for "unagreed" issues
- (3) Contact TEGEDC you need legal advice to properly interpret and apply the Internal Revenue Code or other issues. See IRM 1.54.1.8, Referral to or Consultation with Counsel for the specific criteria in making a referral.
- (4) Obtain approval from your Group Manager before contacting TEGEDC in most cases, it is preferred that the request be routed through your manager. For EO, EP, and ET cases, the manager sends a request to the applicable email box:

- **CC TEGE Division Counsel Exempt Organizations Counsel Assistance* for issues related to exempt organizations and related excise taxes,
- **CC TEGE Division Counsel Employee Plans Counsel Assistance* for issues related to employee plans and related excise taxes, and
- *CC TEGE Division Counsel Employment Tax Counsel Assistance* for employment tax matters.

Note: These email addresses will eventually be replaced by SharePoint sites. Cases in other practice areas such as Indian tribal governments, tax-exempt bonds, executive compensation, and federal, state, and local governments, will generally continue to be assigned based on the location of the taxpayer or coverage by a special program or project.

- (5) For all other matters, the manager makes the request of a TEGEDC Attorney in the examiner's area or by subject matter through the email boxes above for an attorney assignment. For appropriate assignment, information provided in the request for assistance on a particular case should include the taxpayer's name, TIN, and address; taxable periods at issue; earliest statute of limitations date; brief summary of the issue, including applicable IRC sections; and prior Counsel involvement, if applicable. If your case is part of a special project or practice area, your request may be assigned to a TEGEDC project or practice area attorney, regardless of the taxpayer's location.
- (6) See the TEGEDC Geographic Coverage List for the office covering the taxpayer's location and the *TEGE Division Counsel Office Listing* for TEGE Division Counsel employees' contact information.
- (7) Assistance from a TEGEDC Counsel can be sought in preparing a request for TEGEDC assistance.
 - a. EP examiners can ask Special Review for help when preparing a request for TEGEDC assistance. Email Special Review at **TE/GE-EP-Technical Rulings*.
 - b. TEB examiners can ask for a TEB tax law specialist to help you prepare a request. See IRM 4.70.16.3.1, Assistance from TEB Technical, for more details.

Note: TEGEDC can help Special Review to draft the memo.

- (8) Generally, an opinion from TEGEDC is confined to the specific facts and circumstances of a case. You should not apply the opinion to other cases without contacting Counsel.
- (9) Whenever you want to pursue the application of the six-year statute of limitations (SOL) under IRC 6501(e) for a case, you must obtain written concurrence from TEGEDC. Keep a copy of the written response in the case file.
- (10) Examiners may also seek technical advice on examinations from the TEGEDC. See IRM 4.70.16.6, Technical Advice Procedures, and Rev. Proc. 2023-2 (updated annually).

4.70.16.6
(11-20-2023)
**Technical Advice
Procedures**

- (1) Rev. Proc. 2023-2, updated annually, defines a Technical Advice Memorandum (TAM) as "advice furnished by an Associate office in a memorandum that responds to any request, submitted under (Rev. Proc. 2023-2), for assistance on any technical or procedural question that develops during any proceeding before the IRS. The question must be on the interpretation and proper applica-

tion of any legal authority, including legislation, tax treaties, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements to a specific set of facts that concerns the treatment of an item in a tax period under examination or in Appeals”.

- (2) Proceedings before the IRS include:
 - a. The examination of a taxpayer’s return.
 - b. The consideration of a taxpayer’s claim for credit or refund.
 - c. Any matter under examination or in Appeals pertaining to tax-exempt bonds, tax credit bonds, or mortgage credit certificates.
 - d. Any other matter involving a specific taxpayer under the jurisdiction of a Director.
- (3) Before requesting a TAM, try to resolve technical questions via research and analysis, including discussion with your Group Manager and peers. You may also get help from:
 - a. KM&T
 - b. TEGEDC
 - c. An assigned Tax Law Specialist or an assigned Technical Reviewer
- (4) Technical advice does not include any oral legal advice, or any written legal advice furnished to the examiner that is not submitted and processed under Rev. Proc. 2023-2.
- (5) The examiner or taxpayer may request a TAM when the application of the law to the facts involved is unclear. A taxpayer may request a TAM as per IRM 1.2.1.5.25 Policy Statement 4-82, Taxpayer may request referral of issue under jurisdiction of District Director to National Office.
- (6) You may raise an issue in any tax period, even if a TAM was furnished for the same or similar issue for another tax period.
- (7) You may also request a TAM on an issue even if Appeals disposed of the same or similar issue for another tax period of the same taxpayer.
- (8) Taxpayer participation is preferred, but not required, to process a request for technical advice.
- (9) Contact the relevant TEGEDC Counsel through the TEGEDC Counsel email boxes listed in, IRM 4.70.16.5, Assistance from TEGEDC, (if applicable) or the TEGEDC Counsel Area Counsel office responsible for the state in which the taxpayer is located before you request a TAM.

Note: You must receive TEGEDC’s support before proceeding with a TAM. As discussed below, TEGEDC will help you with the TAM request submission.

4.70.16.6.1
(11-20-2023)
**Mandatory Technical
Advice for Certain EP
Examinations**

- (1) You must request Technical Advice for plans for which the IRS is proposing to issue a revocation letter because of certain fiduciary actions that violate the exclusive benefit rule of IRC 401(a) and are subject to Part 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 1974-3 C.B. 1, 43.

Note: If a plan is not subject to Title I of ERISA (plans covering only owners and their spouses may be exempt) a request for tech advice isn't required. If you're unsure whether a plan is subject to Title I of ERISA, contact TEGEDC.

- (2) Effective January 5, 2018, under Rev. Proc. 2018-4, EP Examination groups began processing section 7805(b) relief requests. See Rev. Proc. 2023-4, which superseded Rev. Proc. 2018-4, for the most current procedures.
- (3) Effective January 1, 2018, under Rev. Proc. 2018-4, requests for letter rulings on a waiver of the minimum funding standard are submitted to the TE/GE Office of Associate Chief Counsel and not to Employee Plans Rulings and Agreements. For current procedures see Rev. Proc. 2023-1 (updated annually).

4.70.16.6.2
(11-20-2023)

**Initiating a Request for
Technical Advice**

- (1) Initiate a request for a TAM (to the extent possible) at the earliest stage of the examination.
- (2) If you think that technical advice is warranted, discuss the issue with your Group Manager.
- (3) If your Group Manager agrees that technical advice may be warranted, they will contact TEGEDC along with the Area Manager to discuss the issue. For ITG and GE exams, the Group Manager contacts the Program Manager. You must receive approval from TEGEDC before proceeding.
- (4) After obtaining TEGEDC's approval to request a TAM, the Group Manager must obtain written approval (email approval will suffice) from their Area Manager/Program Manager and the Director before submitting the formal TAM request.
- (5) If the Area Manager/Program Manager and the Director agree that a TAM should be pursued, a Pre-Submission Conference must be held with Associate Chief Counsel.
- (6) For FSL/ET cases, if the GE Director agrees that a TAM should be pursued, the FSL/ET Program Manager need to request a Reviewer to be assigned before scheduling the Pre-Submission Conference.
- (7) For ITG cases, if the GE Director agrees that a TAM should be pursued, the ITG Program Manager needs to request a Technical Reviewer to be assigned before scheduling the Pre-Submission Conference.
- (8) For TEB cases, if the GE Director agrees that a TAM should be pursued, the TEB Exam Group Manager needs to request a Tax Law Specialist to be assigned to the case.
- (9) If the appropriate Director agrees that a TAM should be pursued, the examiner needs to notify the taxpayer of the intention to request a TAM.
- (10) If the appropriate Director doesn't approve the TAM request, continue to work the case using normal case procedures.

- (11) If Associate Chief Counsel agrees during the Pre-Submission Conference that a TAM should be requested, the examiner prepares Form 4463, Request for Technical Advice or Technical Expedited Advice, with attachments explaining the:

- a. Facts and the issues surrounding the TAM request
- b. Applicable law and arguments in support of the position(s) of the IRS on the issue or issues
- c. Applicable law and arguments in support of the position(s) of the taxpayer on the issue or issues

Note: Generally, each issue must be presented separately using the traditional facts, law, government's position, taxpayer's position, and conclusion format. TEGEDC will help prepare the TAM request. For TEB and ITG cases, the assigned Technical Reviewer or assigned Tax Law Specialist will also help prepare the TAM request.

- (12) For EP:

- a. The examiner sends Form 4463, Request for Technical Advice or Technical Expedited Advice, to the Director, EP Examinations, for approval.
- b. If the TAM request is for a case involving a prohibited transaction, as defined in IRC 4975(c)(1), or a violation of the exclusive benefit rule under IRC 401(a)(2), which is subject to review by the Department of Labor under section 103 of Reorganization Plan No. 4 of 1978, then you must make a referral on Form 6212-B Examination Referral Checksheet B, to the Department of Labor before submitting the TAM to Associate Chief Counsel.

4.70.16.6.2.1
(11-20-2023)

Notifying the Taxpayer of the Intent to Request TAM

- (1) The examiner must also notify the taxpayer of the TAM request in writing (Technical Advice Notification) using Letter 1399-A Technical Advice Notification. The response due date of Letter 1399-A should be 10 calendar days from the date of the letter.
- (2) The taxpayer has no authority to bar an internal decision to seek technical advice. However, examiners, Group Managers, and Area Managers/Program Managers may consider any taxpayer objections.
- (3) Per Rev. Proc. 2023-2, Section 7(.01), the taxpayer has ten calendar days to respond to the Technical Advice Notification. If the taxpayer requests additional time:
 - a. The taxpayer must make a written request to extend the ten-day period before the period expires. The request must include the specific reasons justifying the extended time requested and a written signature of a duly authorized individual on behalf of the taxpayer.
 - b. Upon receipt of the written request to extend the ten-day period, the examiner immediately reviews the request and sends it to their Group Manager with a recommendation.

Note: These actions can be conducted by fax or via secure email.

- c. The Group Manager must approve the written request to extend the 10-day period. They may direct the manner and the extent of documentation needed for approval.
- (4) If the taxpayer agrees with the issues and facts stated in the Technical Advice Notification, they must acknowledge agreement in writing. Include the taxpayer's letter in the TAM request package.
- (5) If the taxpayer disagrees with the examiner's statement of issues and facts in the Technical Advice Notification, they must identify each point of disagreement and state the reasons for disagreement in writing. The taxpayer's written statement must respond completely to the Technical Advice Notification and must include a written signature of a duly authorized individual on behalf of the taxpayer.

Note: The examiner and the taxpayer have 10 calendar days to resolve disagreements. The Group Manager is authorized to extend the 10-day period.

- (6) Follow these procedures depending on your case progress:

If you	Then
Don't receive a written statement from the taxpayer or it's incomplete.	Advise him/her that the formal request for technical advice will go forward with the information available.
Disagree with the issues and facts presented in the taxpayer's written statement.	Try to resolve any disagreement over the issues and facts with the taxpayer.
Can't agree on the issues and facts with the taxpayer.	Send a written notice of disagreement to the taxpayer.
Continue to disagree	Send both the taxpayer's set of facts and issues and the examiner's set of facts and issues to Associate Chief Counsel with the TAM.

- (7) The taxpayer's statement of facts and issues must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for technical advice, and such facts are true, correct, and complete".
- (8) Include all statements and correspondence between the examiner and the taxpayer on disagreements over the issue(s) or facts in the formal TAM request.

Note: The TEGEDC attorney will help the examiner prepare the memo for Associate Chief Counsel, highlighting the material factual differences. For GE cases, the assigned Technical Reviewer or Tax Law Specialist can also help in this process.

4.70.16.6.3
(11-20-2023)

**Taxpayer Initiated
Requests for Technical
Advice**

- (1) The taxpayer may initiate a request for a TAM orally or by submitting a written statement to the examiner that includes the taxpayer's reasons for requesting the TAM (under section 5.02 of Rev. Proc. 2023-2, or current version of the Rev. Proc.).
- (2) If you receive a taxpayer's written statement and disagree with their statements of issues and facts, respond in writing explaining your disagreement. Before responding to the taxpayer discuss the matter with your Group Manager. The response is required even if you determine that request for technical advice is not warranted.
- (3) After you evaluate all documents and determine whether a TAM is warranted, prepare a written summary of the issues, specifically for the Group Manager and Area Manager/Program Manager, explaining why the taxpayer's request for a TAM must be approved or denied.
- (4) Immediately fax or email the summary and a copy of the taxpayer's written statement to your manager.
- (5) Group manager: Upon receipt, immediately forward the examiner's summary and a copy of the taxpayer's written statement with your recommendation to the Area Manager/Program Manager.
- (6) The Area Manager/Program Manager:
 - a. May direct the manner and the extent of additional documentation needed for approval.
 - b. May deny a taxpayer-initiated request for a TAM based on material disagreement over issues and/or facts.
 - c. May approve the taxpayer's request for a TAM, then solicit the Director's approval.
 - d. If the Area Manager/Program Manager and Director both approve the TAM request, they will send their written approval to the Group Manager.
- (7) The formal TAM request includes the taxpayer's written statement and all other statements and correspondence between the examiner and the taxpayer in connection with any disagreement over issues and facts.
- (8) If the Area Manager/Program Manager denies the taxpayer's request for a TAM, the examiner will inform the taxpayer in writing.
- (9) The taxpayer may appeal IRS's decision to deny the taxpayer's TAM request by submitting to the examiner, within 30 calendar days after being notified the request was denied, a written statement of the reasons why the matter must be referred to Associate Chief Counsel. The statement must include a description of all pertinent facts (including any facts in dispute); a statement of the issue that the taxpayer would like to have addressed; a discussion of any relevant legal authority, including legislation, tax treaties, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements and an explanation of the taxpayer's position and the need for technical advice.

Note: Any extensions of the 30-day period must be requested in writing. For EP examinations, the Director, EP Examinations must approve the extension request. For EO examinations, the Director, EO Examinations must approve

the extension request. For GE examinations, the applicable Program Manager must approve the extension request.

- (10) Upon receipt of the written request from the taxpayer to appeal the decision to deny the TAM request, the Group Manager immediately sends the taxpayer's written request appealing the decision to deny the TAM request, along with the examiner's statement as to why the issue shouldn't be referred to Associate Chief Counsel for technical advice, to the Director, EP Examinations (for EP issues) or to the EO Exam Director (for EO issues). For GE issues, the manager sends the request to the Program Manager. The Program Manager sends the package with their recommendations to the GE Director.
- (11) If the applicable Exam Director agrees with the taxpayer that a TAM should be requested:
 - a. For EP and EO, the examiner informs the taxpayer of the decision and submits the TAM request.
 - b. For GE, the GE Director notifies the GE Functional Program Manager and Group Manager of the decision in writing and requests the assignment of a technical reviewer or Tax Law Specialist. The examiner notifies the taxpayer of the decision and submits the TAM request.
- (12) If the applicable Exam Director determines that a TAM is not warranted:
 - a. For EP and EO, the examiner informs the taxpayer in writing of the denial and the reasons for the denial (unless doing so would prejudice the Government's interests).
 - b. For GE, the GE Director informs the GE Functional Program Manager of the decision, and the examiner informs the taxpayer in writing of the denial and the reasons for the denial.

4.70.16.6.3.1
(11-20-2023)

**Taxpayer Appeals Field
Office's Denial of TAM
Request**

- (1) The taxpayer may appeal the Field Office's denial of their TAM request.
- (2) Within 30 calendar days after being notified that their request was denied, the taxpayer must submit a written statement of the reasons why the matter should be referred to Associate Counsel. The statement must include:
 - a. An explanation of the need for technical advice.
 - b. A description of all pertinent facts (including any facts in dispute).
 - c. A statement of the issue that the taxpayer would like to have addressed.
 - d. A discussion of any relevant legal authority including legislation, tax treaties, case law, and other authorities.
 - e. An explanation of the taxpayer's position.

Note: Any extensions of the 30-day period must be requested in writing and approved by the functional Exam Director. The Director's decision is final and may not be appealed.
- (3) Upon receipt, forward the taxpayer's written statement, along with your statement of why the issue must not be referred for technical advice, to the Exam Director.
- (4) The Exam Director determines if the issue should be referred for technical advice based on your statements and the taxpayer's; no conference is held with the taxpayer/representative.

- (5) If the Exam Director determines that a TAM isn't warranted, the field office notifies the taxpayer (along with the examiner/Group Manager) in writing of the proposed denial and the reasons (unless doing so would prejudice the Government's interests).
- (6) The taxpayer may not appeal the Exam Director's decision.
- (7) Although the taxpayer cannot appeal the Exam Director's decision denying a TAM request, the taxpayer may request a review by the Director, Exempt Organizations and Government Entities or Director, Employee Plans.
- (8) If requested by the taxpayer, the EOE, EPE, or GE Director will send the proposed denial to Director, Exempt Organizations and Government Entities for review or Director, Employee Plans. All data on the issue for which the TAM has been sought, including the taxpayer's written request and statements, will be submitted for the review to the TE/GE Commissioner after endorsing the decision to deny. Review of the proposed denial will be based solely on the written record. No conference will be held with the taxpayer or the taxpayer's representative.

Note: The Commissioner, TE/GE has 45 days to deliver a final decision per section 5.04 of Rev. Proc. 2023-2.

- (9) The Director may consult with the Associate Chief Counsel office, if appropriate, and will notify the field office whether the proposed denial of the taxpayer's request is approved or denied within 45 days of receiving all information. While the matter is under review, the field office will suspend any final decision on the issue (except when the delay would prejudice the Government's interests).
- (10) The examiner will notify the taxpayer of the TE/GE Commissioner's decision

4.70.16.6.4 (11-20-2023) **Pre-Submission Conference**

- (1) A pre-submission conference is mandatory for all TAM requests. If you submit a request for technical advice before the pre-submission conference is held, Counsel will return it.
- (2) A pre-submission conference helps the parties involved discuss and agree on:
 - Background information.
 - Documents that must be included in the formal submission of the request for technical advice.
 - The appropriate scope of the request for technical advice.
 - The framing of the issues.
- (3) A pre-submission conference is held with:
 - Associate Chief Counsel attorney
 - TEGEDC attorney
 - Examiner
 - Group Manager
 - Area Manager (EO and EP issues)
 - Technical Reviewer (ITG issues)
 - Tax Law Specialist (TEB issues)

- Taxpayer/Representative

Note: The technical advice request can proceed even if the taxpayer declines to participate in the pre-submission conference.

- (4) Before the pre-submission conference the examiner needs to:

- a. Prepare your own statement of pertinent facts and issues.
- b. Solicit from the taxpayer their respective statement of pertinent facts and issues.
- c. Make sure Form 2848 Power of Attorney and Declaration of Representative is secured for the representative involved with the TAM and that the Form 2848 covers all applicable periods.

Note: The legal analysis provided in the parties' statements must be sufficient to enable Counsel to be reasonably informed about the subject matter.

- (5) The examiner and the taxpayer must exchange proposed statements of the pertinent facts and issues. The proposed statements must include any facts in dispute, the issues that the parties intend to discuss, any legal analysis and supporting authorities, and any other background information that the parties believe would facilitate Associate Chief Counsel's understanding of the issues to be discussed during the conference.

Note: The taxpayer's failure to provide a statement of pertinent issues and facts must not unduly delay the scheduling of the pre-submission conference. If the taxpayer doesn't provide it within a reasonable period, you may schedule the conference without the statements.

- (6) Before the scheduled pre-submission conference, the examiner must prepare and email the following items to the TEGEDC attorney:

- a. A statement of issues that the parties would like to discuss.
- b. A statement of pertinent facts.
- c. A statement of the facts in dispute, if any.
- d. Any legal analysis, authorities or background documents that could help the attorney understand the issues. (This doesn't have to be fully developed as there will be an analysis that will ultimately accompany the formal request for a TAM).
- e. The taxpayer's statement of pertinent facts and issues.
- f. A copy of Form 2848, Power of Attorney and Declaration of Representative, for the representatives involved with the TAM. Make sure to verify it covers all applicable periods.

- (7) TEGEDC: After reviewing the emailed information (from the examiner), forward it to the Associate Chief Counsel TSS4510 mailbox, requesting a pre-submission conference. Include the following in the request for pre-submission conference:

- a. A cover memo, including contact information, requesting a technical advice pre-submission conference.
- b. The name of the office expected to have jurisdiction over the request for a TAM (For example, the EP Examination Group and Area).
- c. A list of representatives from each IRS function known to the examiner that he/she expects to attend the pre-submission conference.

- d. A brief explanation of the primary issue.

Note: The factual information must cover all collateral issues for which EP Examinations is seeking technical advice from Associate Chief Counsel. The assigned branch of the Associate Chief Counsel office must receive the pre-submission materials at least 10 business days before the conference is to be held.

- (8) TEGEDC: If you can't email any part of the information in IRM 4.70.16.6.4, Pre-submission Conference, fax it to 202-317-6718, or send the package by express mail or private delivery service to:

Internal Revenue Service
Attn.: CC:PA:LPD:TSS, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224

- (9) Associate Chief Counsel: Arrange the pre-submission conference call and notify all parties involved of the date, time, and conference call number.
- (10) Associate Chief Counsel will contact the taxpayer, the examiner, and the TEGEDC attorney within five business days of receipt of the request to schedule a pre-submission conference and notify all parties of the date, time, and conference call number.
- (11) The pre-submission conference (likely held by telephone) must be held within 30 calendar days after the examiner is contacted.
- (12) Any discussion of substantive issues at a pre-submission conference:
- Is advisory only.
 - Is not binding on the IRS or the Office of Chief Counsel.
 - Can't be relied upon as a basis for obtaining retroactive relief under IRC 7805(b).
- (13) No tape, stenographic, or other verbatim recording of the conference may be made by any party.
- (14) If everyone agrees during the pre-submission conference that the technical advice:
- a. Is not warranted, then continue to process the case to completion under normal procedures.
 - b. Is warranted, continue to prepare and submit the formal technical advice package.
- (15) During the pre-submission conference, Counsel may raise new issues in addition to those that the examiner and taxpayer submitted.

4.70.16.6.5
(11-20-2023)
**Preparation of the
Technical Advice
Package**

- (1) The examiner prepares the technical advice package with TEGEDC's help. For EO and EP, request assistance from TEGEDC. For GE, request assistance from the Technical reviewer or assigned TLS and TEGEDC. The TAM package consists of:
- a. Form 4463, Request for Technical Advice or Technical Expedited Advice, approved by the functional Director.

- b. A detailed explanation of the issues, facts, law, government's position, and taxpayer's position.
- c. Form 2848, Power of Attorney and Declaration of Representative
- d. Agreed Statement of issue and facts
- e. Memorandum-Resolution of Disagreement and taxpayer's Statement
- f. Taxpayer's Deletion statement (taxpayer's request to delete certain taxpayer information)
- g. IRC 7805(b) Relief Request, if applicable
- h. Penalties of perjury statement signed by the taxpayer, if applicable
- i. Documentation supporting the Area Manager/Program Manager's and Director's approval of the TAM
- j. Any other supporting documentation

Note: Whenever possible, mark all documents with the case number and name of the Associate Chief Counsel attorney assigned to the pre-submission conference for the TAM request.

Reminder: Make sure Form 4463, Request for Technical Advice or Technical Expedited Advice reflects the Examinations Director as the approving official and includes the Director's address.

- (2) Every request for technical advice must include a description of the facts, issues, applicable law, and arguments supporting the taxpayer's position on the issues and the IRS's position on the issues.
 - a. If the taxpayer and the IRS disagree about ultimate findings of fact or the relevance of facts, include all of the facts with an explanation highlighting the areas of disagreement.
 - b. Include in the memo, an explanation of the taxpayer's position. This explanation must include a discussion of any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, and any other authority supporting the taxpayer's position.
 - c. Include in the memo, a similar explanation of the position of the IRS. This explanation must include a discussion of any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, and any other authority supporting the IRS position.
 - d. Both the IRS and the taxpayer should comment on any existing or pending legislation, tax treaties, regulations, revenue rulings, revenue procedures, notices, or court decisions contrary to their respective positions.
 - e. If either party determines that there are no authorities conflicting their position, that statement must be noted in the memo. The field office submits the request for tech. advice.
- (3) Unless specifically requested, do not send the exam case file to Associate Chief Counsel with the TAM request.
- (4) Keep original documents in the exam case file. Use copies of these documents for the technical advice package.
- (5) Include only relevant information, documents, correspondence, etc. related to the issue(s) in the request.
- (6) Remember that Associate Chief Counsel will base their decision on the information provided with the technical advice package, so it's important that you include all relevant information and clearly articulate the issue(s).

- (7) Keep a copy of the technical advice package for reference if Associate Chief Counsel has any questions.
- (8) Ensure that a minimum of one year remains on the statute of limitations for all returns before you submit the request.

Caution: If the request involves direct pay bonds, ensure that a minimum of one year remains on the statute of limitations for all Forms 8038-CP before you submit the request.

- (9) For EP: Send a courtesy copy of Form 4463, Request for Technical Advice or Technical Expedited Advice to Special Review. Form 4463, can be sent electronically to Special Review's Tech Advice mailbox at **TE/GE-EP-Technical Rulings*
- (10) For TEB: Send a courtesy copy of Form 4463, Request for Technical Advice or Technical Expedited Advice, to the assigned TLS and your Group Manager. The Group Manager will forward to the Program Manager and the Director.
- (11) After you assemble, tab, and index the technical advice package, route the package through your Group Manager to the TEGEDC attorney who will submit the package to the Associate Chief Counsel attorney.

Note: The examiner must send a paper copy of the entire TAM request package to TEGEDC. TEGEDC will review the technical package before submitting it to Associate Chief Counsel.

- (12) TEGE Area Counsel will submit Form 4463, Request for Technical Advice or Technical Expedited Advice to Special Review and the rest of the technical advice package to the *TSS Assignments* email address within 10 business days of receipt from the examiner. When possible, also send the accompanying documents to the TSS Assignments mail address. Follow by sending any hard copy documents if Associate Chief Counsel requests any.
- (13) Fax any part of the technical advice package that can't be emailed to TSS4510 (EP) at (202) 317-6718. Fax to TSS Assignments (TEB) at (855) 592-8976. Or send information by express mail or private delivery service to:

Internal Revenue Service
Attn: CC:PA:LPD:TSS, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224

4.70.16.6.5.1
(11-20-2023)

Form 4463, Request for Technical Advice or Technical Expedited Advice

- (1) The request for technical advice must include Form 4463, Request for Technical Advice or Technical Expedited Advice.
- (2) Complete Form 4463. Include the mailing address of the function specific Examinations Director.
- (3) Route the completed Form 4463 through the Group Manager to the function specific Examinations Director for approval.
- (4) The function specific Examinations Director returns the approved Form 4463 to the examiner to include in the TAM request package.

Note: Form 4463 has an “Employee Checklist” in Part 5. Review the checklist as you prepare the TAM request package to make sure you’ve included all required items.

4.70.16.6.5.2

(11-20-2023)

**Memorandum of Facts,
Law, and Arguments**

- (1) Every request for technical advice must include a memorandum of facts, issues, law, and arguments. TEGEDC can help prepare the memorandum.
- (2) The memorandum must fully describe the:
 - Facts
 - Issues
 - Applicable law, and
 - Supporting arguments for both you and the taxpayer
- (3) Include a discussion of:
 - Relevant statutory provisions
 - Tax treaties
 - Court decisions
 - Regulations
 - Revenue rulings
 - Revenue procedures
 - Notices
 - Other authorities
- (4) The memorandum includes:
 1. If the taxpayer and the examiner/Group Manager disagree about ultimate findings of fact or about the relevance of facts, include all the facts with an explanation highlighting the areas of disagreement.
 2. An explanation of the taxpayer’s position. This explanation must include a discussion of any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, and any other authority supporting the taxpayer’s position.
 3. A similar explanation of the IRS position. This explanation must include a discussion of any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, and any other authority supporting the IRS position.
 4. Both the IRS and the taxpayer should comment on any existing or pending legislation, tax treaties, regulations, revenue rulings, revenue procedures, or court decisions contrary to their respective positions.
 5. If either party determines that there are no authorities conflicting their position, that statement must be noted in the memo.
- (5) Once prepared, send a draft of the memorandum of facts, law, and arguments to the taxpayer by mail or fax for comment and review.
- (6) The taxpayer has 10 calendar days from the date you mail or fax the written notice of disagreement to respond per Rev. Proc. 2023-2, Section 7.06.

Note: If the taxpayer needs more than 10 calendar days to respond, they must submit a written request for extension to you. If an extension is warranted, secure Group Manager approval and notify the taxpayer as soon as possible. The extension request is considered denied unless you inform the taxpayer otherwise. Your decision is final and can’t be appealed.

- (7) After you receive the taxpayer's response, the parties have 10 calendar days to resolve remaining disagreements.
- (8) If all disagreements are resolved, prepare a single statement of the agreed facts and issues.
- (9) If disagreements continue, prepare a statement that highlights the material factual differences and provide a copy of the statement to the taxpayer for review.

Note: The taxpayer's statement of facts and issues must be accompanied by the following penalties of perjury statement: "Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for technical advice, and such facts are true, correct, and complete".

Caution: The taxpayer, not the representative, must sign the declaration under penalties of perjury. See Rev. Proc. 2023-1 section 7.01(16)(b) for requirements.

4.70.16.6.5.3 (11-20-2023) Deletion Statement

- (1) The text of TAMs and background file documents are open to public inspection under IRC 6110(a).
- (2) To help the IRS make the necessary deletions, the taxpayer or authorized representative must provide a statement indicating the deletions desired.
- (3) The deletion statement must be:
 - A separate document from the memorandum of facts, issues, law, and arguments.
 - Signed and dated by the taxpayer or the taxpayer's authorized representative.

Note: A stamped signature or faxed signature isn't permitted.

- (4) If the taxpayer wants only names, addresses, and identifying numbers deleted, they must state this in the deletion statement.
- (5) If the taxpayer wants more information deleted they must provide both a:
 - Copy of the TAM request and supporting documents on which they have placed brackets around the material to be deleted, and
 - Statement giving the statutory basis under IRC 6110(c) for each proposed deletion.
- (6) Notify the taxpayer the deletion statement is required.
- (7) If the taxpayer doesn't provide the deletion statement within 10 calendar days of the notice, inform Associate Chief Counsel. Advise Associate Chief Counsel of any information in addition to names, addresses, and identifying numbers that must be deleted.
- (8) The deletion statement requirements do not apply if the TAM is open to public inspection under IRC 6104.

4.70.16.6.6
(11-20-2023)

Electronic Submission

- (1) The technical advice package may be submitted electronically, except for the information listed in paragraph (2) below. You may either:
 - a. Scan all documents and submit the entire technical advice package electronically, or
 - b. Email documents already in electronic format and mail hard copies of the remaining items.
- (2) You must send hard copies of executed legal documents and penalty of perjury statements.
- (3) Secure email the supporting documents to TEGEDC.

4.70.16.6.7
(11-20-2023)

Responsibilities of the Examiner While Technical Advice is Pending

- (1) During the technical advice process, the examiner “owns” the case and maintains possession of all examination case files involved in the technical advice and all related examination files.

Note: If there's a short statute that is in danger of expiring, the Group Manager must contact the TEGEDC attorney and the Manager, EP Mandatory Review when 180 days or less remain on the statute of limitations of a case with a pending TAM when the examiner is unable to secure a statute extension.
- (2) The examiner:
 - a. Maintains possession of all original documents secured during the examination.
 - b. Is always responsible for ensuring that the statute of limitations is protected on the lead exam and any related case while Associate Chief Counsel considers the technical advice request.
 - c. Is responsible for updating the inventory control systems upon receipt of the approved Form 4463, Request for Technical Advice or Technical Expedited Advice from the Director. Update the AIMS and RCCMS systems to reflect the case in status 38, *Suspense, All Other*. AIMS and RCCMS must continue to reflect case control at the group level.
 - d. Must issue Letter 1014-A, Taxpayer Notification of Examination Delay, to the taxpayer to formally notify them of the technical advice and the corresponding delay in the examination.
 - e. Must forward any additional information received for an issue pending technical advice to Associate Chief Counsel through the TEGEDC.

4.70.16.6.8
(11-20-2023)

Obtaining Status Updates for the TAM

- (1) The taxpayer or their representative may obtain information on the TAM request status by contacting the examiner who requested the TAM. See Section 10.02 of Rev. Proc. 2023-2.

Note: Section 10.08 of Rev. Proc. 2023-2 provides that the Associate Chief Counsel office will not discuss the specific contents of the TAM with the taxpayer until after the examiner has provided a copy of the TAM to the taxpayer.
- (2) Associate Chief Counsel will give frequent TAM status updates to the appropriate Counsel attorney, who in turn will notify/email the examiner of the status of the TAM request.

4.70.16.6.9
(11-20-2023)
**Review of the TAM by
Associate Chief Counsel**

- (3) When the TAM is complete, Associate Chief Counsel will mail or email the TAM to the Director, EP Examinations, Director, EO Examinations, or the Director, GE along with a copy to the examiner and the appropriate Counsel attorney.
- (1) If Associate Chief Counsel determines that the TAM request package is deficient, the examiner, the TEGEDC attorney and the Associate Chief Counsel attorney will work together to obtain the necessary information. If the issue can't be resolved within seven days, Associate Chief Counsel may return the TAM request and a new TAM request may be required.
- (2) Within 21 days after receipt, Associate Chief Counsel should:
 - a. Contact the examiner and/or TEGEDC to discuss any procedural and substantive issues in the case.
 - b. Notify the examiner whether any matters have been referred to another Associate Chief Counsel attorney for assistance.
- (3) When Associate Chief Counsel is ready to issue the TAM, they will communicate their conclusions and reasoning to TEGEDC. TEGEDC may informally discuss any disagreements.
- (4) If Associate Chief Counsel proposes an adverse TAM and the taxpayer has not waived their right to a conference, then Counsel will inform the taxpayer of the time and place of the conference.
 - a. The examiner and their Group Manager will be given the opportunity to participate in that conference.
 - b. Although the taxpayer is entitled to only one conference of right, Associate Chief Counsel may choose to offer additional conferences.
- (5) If the taxpayer submits additional information after the conference, the examiner must either provide Associate Chief Counsel with comments on the additional information or notate to Associate Chief Counsel that the examiner has no comments.
- (6) Before issuing the final TAM, Associate Chief Counsel will issue a preliminary TAM to the examiner and to TEGEDC.
 - a. If there is disagreement about any aspect of the TAM, normal reconciliation and reconsideration procedures will be followed to resolve the disagreement.
 - b. The examiner must refrain from discussing the TAM issues while Associate Chief Counsel processes the TAM request and issues the final TAM.
- (7) When the TAM is complete, Associate Chief Counsel will mail or email the TAM to the Director of the respective examination function and send a copy to the examiner and the TEGEDC attorney.

4.70.16.6.9.1
(11-20-2023)

**Exam Does Not Concur
with TAM - Request for
Reconsideration**

- (1) If the examination function doesn't agree with the TAM, do **not** inform the taxpayer that the TAM is subject to a Request for Reconsideration or of any other similar internal disagreements over the TAM.
- (2) If the Area Manager/Program Manager agrees to protest the TAM, the examiner immediately prepares a Memorandum of Request for Reconsideration addressed to Associate Counsel that signed the TAM in question. Include in the memorandum:
 - a. The name and phone number of the examiner.
 - b. A signature block for the Group Manager (electronic signature permitted).
 - c. A signature block for the Area Manager/Program Manager (electronic signature permitted).
 - d. A description of the specific errors in the TAM analysis and conclusions. Don't re-argue points raised in the initial request. Instead focus on points the TAM overlooked or misconstrued. Attach a copy of the TAM in question.
 - e. Attach other pages from the technical advice case file that have a direct bearing on the issues or arguments that are being made in the request for reconsideration.
- (3) The examiner sends the Memorandum of Request for Reconsideration to their manager, Area Manager/Program Manager, as well as the EOE Director by no later than the Performance Date.
- (4) The examiner updates the case back to AIMS status 38, "Suspense All Other", unless there are other issues being developed.
- (5) Upon receipt the examiner or Group Manager sends the completed Memorandum of Request for Reconsideration and its attachments to TEGEDC who signed the TAM in question.
- (6) TEGEDC sends their reply in response to the Examination Director's office with instructions. The reply will either include a re-issued TAM or confirm the initial TAM in question.
- (7) The Examination Director's staff forwards the reply and its attachments to the examiner with instructions.
- (8) The examiner updates the case to AIMS status 12, "Assigned, Started (Time Applied)", when the reply is received along with a re-issued TAM or a confirmation of the initial TAM in question.
- (9) If Associate Chief Counsel re-issues a new TAM, the examiner follows the procedures in IRM 4.70.16.6.11.1, Responsibilities of the Examiner Upon Receipt of the TAM. There will generally not be another request for reconsideration (protest).
- (10) If Associate Counsel denies the request for reconsideration and confirms the initial TAM, the examiner follows the procedures in IRM 4.70.16.6.11.1, Responsibilities of the Examiner Upon Receipt of the TAM, on sending the initial TAM and other documents to the taxpayer and to the Office of Chief Counsel for Disclosure.

4.70.16.6.9.2
(11-20-2023)

**Director of Area
Manager Disagree Over
Whether to Protest**

- (1) If the examinations group doesn't agree with Director of Examinations' recommendations and requests reconsideration, the Group Manager through the Area Manager/Program Manager immediately contacts the Director's staff to discuss the TAM.
- (2) If the Director agrees to reconsideration, the examiner must prepare the Memorandum of Request for Reconsideration addressed to Associate Counsel who signed the TAM in question and follows the procedures in IRM 4.70.16.6.9.1, Exam Does Not Concur with TAM - Request for Reconsideration.
- (3) If the Director recommends adoption of the TAM, the examinations group and the Area Manager/Program Manager will have previously discussed the merits of reconsideration and the Director makes the final decision.
- (4) The final decision can be made at any time up to 28 calendar days after the Examinations Director's office receives the initial TAM. The final decision must be in time to allow the examiner to submit the Memorandum of Request for Reconsideration with appropriate signatures.
- (5) If the final decision is to adopt the TAM in question, follow the procedures in IRM 4.70.16.6.11.1, Responsibilities of the Examiner Upon Receipt, of the TAM to send the official TAM to the taxpayer and to the Office of Chief Counsel for Disclosure.
- (6) A TAM is issued whether Associate Counsel accepts or denies a Memorandum of Request for Reconsideration of the initial TAM. Only a Director may withdraw the request, and this must be done before the responding transmittal memorandum for the TAM is signed.

4.70.16.6.10
(11-20-2023)

Final TAM

- (1) Associate Counsel addresses the final TAM to the respective exam director, and provides a copy to the:
 - Individual TEGEDC attorney who assisted the examiner in submitting the request
 - Division Counsel
- (2) The TAM contains:
 - a. A statement of the facts and issues.
 - b. A statement of relevant legal authority such as regulations, revenue rulings, and court cases.
 - c. The conclusions of Associate Chief Counsel.
 - d. A discussion of the rationale behind the conclusions reached.
- (3) A TAM applies only to the taxpayer for which technical advice was requested.

4.70.16.6.10.1
(11-20-2023)

Effect of the TAM

- (1) Associate Chief Counsel's reply to a TAM request is in two parts. Each part identifies the taxpayer by name, address, identification number and years involved.
- (2) The first part of the reply is a transmittal memorandum.
 - a. **Do not release** the transmittal memorandum to the taxpayer.

- b. Coordinate any request, by any party, for a copy of the transmittal memorandum with the examiner's Disclosure Officer.
 - c. In unusual cases, the transmittal memorandum gives the Exam function other information that per the nondisclosure statutes or for other reasons may not be discussed with the taxpayer.
- (3) The second part of the reply is the TAM, which contains:
 - a. A statement of the issues.
 - b. A statement of the facts pertinent to issues.
 - c. A statement of the pertinent law, tax treaties, regulations, revenue rulings, other precedents published in the Internal Revenue Bulletin and court decisions.
 - d. A discussion of the rationale underlying conclusions reached by Associate Chief Counsel.
 - e. The conclusions of Associate Chief Counsel.
- (4) If a TAM is subject to IRC 6110, a notice under IRC 6110(f)(1) of the intention to disclose the TAM (including a copy of the version proposed to be open to public inspection and notations of third-party communications under IRC 6110(d)) will be enclosed.
- (5) A TAM involving criminal or civil fraud investigations, or a jeopardy termination assessment is **NOT** furnished to the taxpayer.
- (6) Process the case based on the conclusions stated in the TAM.
- (7) A TAM applies only to the taxpayer for which technical advice was requested.
- (8) A taxpayer may not rely on a TAM issued for another taxpayer.
- (9) The Area and the group have 30 days from the date the Examinations Director receives the TAM to ensure either:
 - a. The TAM is mailed to the taxpayer.
 - b. A written protest (request for reconsideration) is sent to Associate Chief Counsel.

4.70.16.6.11
(11-20-2023)

**Responsibilities of the
Respective Exam
Director's Office Upon
Receipt of the TAM**

- (1) Upon receipt of the TAM, the respective exam director's office, immediately sends a secure email of an advanced unofficial copy of the TAM to the examiner, the Group Manager and the Area Manager/Program Manager. The Director's staff must mark on the advanced unofficial copy "DO NOT RELEASE TO TAXPAYER".
- (2) The director's office prepares a transmittal memo (with the concurrence of the examiner and the Area Manager/Program Manager) recommending either adopting the TAM or requesting reconsideration of the TAM. The director's office includes the date they received the TAM and the date the examiner must either send the TAM via certified mail to the taxpayer, or securely email a Memorandum of Request for Reconsideration to the director's office. This date is known as the examiner's "Performance Date".

Note: The examiner's Performance Date must be no later than 21 days after the Exam Director's office received the TAM.

4.70.16.6.11.1 (11-20-2023)

Responsibilities of the Examiner Upon Receipt of the TAM

- (3) Within 14 days of receiving the TAM, the Exam Director's staff sends the official TAM along with the transmittal memo (collectively known as the TAM Package) to the exam group, with a copy to the Area Manager/Program Manager.
- (1) Update AIMS and RCCMS to status "12", Assigned with Taxpayer Contact when you receive the TAM Package from the director's office. By the time you receive the TAM Package you must have already:
 - Reviewed the advanced non-releasable copy of the TAM,
 - Consulted with the Group Manager, the Area Manager/Program Manager and TEGEDC where appropriate, and
 - Taken steps to decide whether to adopt or protest the TAM.
- (2) Consider the recommendations of the director's office when determining whether to adopt the TAM or submit a Memorandum of Request for Reconsideration. Don't share the conclusions of the TAM with the taxpayer until you mail the official TAM by certified mail.
- (3) If the Area Manager/Program Manager and Group Manager concur with Associate Chief Counsel's recommendations, and don't request reconsideration, send a copy of the TAM by certified mail to the taxpayer and its designated representatives within 30 days after the exam group receives the TAM.

Note: You may use Letter 1014-A, Taxpayer Notification of Examination Delay for this purpose. Select paragraph 8 and enter the applicable information in the space provided.

- (4) For Employee Plans: If the TAM pertains to issues that affect the plan's qualified status, then give the TAM to the taxpayer without any deletions, omissions or sanitizing marks.
- (5) For Employee Plans: If the TAM pertains to issues that do **not** affect the plan's qualified status, then send the taxpayer a cover letter describing the enclosed attachments:

Note: The cover letter must emphasize the 20-day response period for additional IRC 6110 deletions.

- a. An exact copy of the TAM as received from Associate Chief Counsel
 - b. A copy of the TAM with proposed deletions under IRC 6110
 - c. A copy of the version proposed to be open to public inspection
 - d. Letter 438, Notice of Intention to Disclose - Technical Advice
 - e. If applicable, waiver form(s) soliciting agreement for the issues covered by the TAM, including Form 4549-E, Form 870-EP, Form 2297, Form 3363, or Form 2504 series.
- (6) The TAM is effective when the taxpayer receives it.
 - (7) Upon receipt, the examiner will send a copy of the TAM to the following:
 - a. Employee Plans: Special Review's Tech Advice mailbox at **TE/GE-EP-Technical Rulings*.

- b. Exempt Organizations: Mandatory Review mailbox at **TEGE EO Review Staff*.
 - c. Government Entities: Contact the functional Program Manager
- (8) Specifically for Exempt Organizations, on the same day the TAM is mailed to the taxpayer, the EO group mails a copy of the Modified TAM Package (items listed in IRM 4.70.16.6.11.1(5)(b), (d), (e)) to:

Internal Revenue Service
 Attention: CC:PA:LPD:DLS, Room 5201
 Ben Franklin Station
 Post Office Box 7604
 Washington, D.C. 20044

Caution: Do not send this package piecemeal.

- a. Instead of mailing, you may send the copy of the Modified TAM Package including Letter 438 electronically by secured email to **CC 6110 Disclosure*.
- b. Type in the subject line of the secured email in all caps, "IRC 6110(f)(1) NOTICE MAILED TO TAXPAYER – SEE ATTACHED".

4.70.16.6.12
 (11-20-2023)

**Letter 438, Notice of
 Intention to Disclose –
 Technical Advice**

- (1) Letter 438, Notice of Intention to Disclose – Technical Advice, must be included with TAM notices subject to IRC 6110. The letter states the IRS's intention to disclose the TAM (including a copy of the version proposed to be open to public inspection and notations of third-party communications under IRC 6110(d)). See IRC 6110(f)(1).
- (2) If Letter 438 is required, Associate Chief Counsel will send it to the examiner with the TAM and all the information that the examiner will need to complete the notice, before sending it to the taxpayer.
- (3) Letter 438 informs taxpayers of their right to request additional deletions from the sanitized TAM.
- (4) Per Letter 438, the Office of Chief Counsel for Disclosure is the primary contact for the taxpayer for this matter.
- (5) The examiner isn't involved in the IRC 6110 deletion process after mailing Letter 438 except to provide direction to the taxpayer, as needed.
- (6) Before you mail the TAM Package, complete Letter 438 by filling in the taxpayer's name and the required dates. Input the dates:
 - a. "Mailing date of this notice": Enter the certified mailing date.
 - b. "Last date to request IRS review": Enter the 20th day after the notice mailing date. If the 20th day falls on a weekend or holiday, then enter the next business day.
 - c. "Last Date to petition Tax Court": Enter the 60th day after the notice mailing date. If the 60th day falls on a weekend or holiday, then enter the next business day.
 - d. "Date open to public inspection": Enter the Friday preceding the 90th day. Enter the date after the notice mailing date. If that Friday falls on a holiday, then enter the previous business day.

4.70.16.6.13
(11-20-2023)

Withdrawal of Requests for Technical Advice

- (1) Once the request for a TAM has been sent to Associate Chief Counsel, only the Director (of EP Examinations, EO Examinations or GE) may withdraw the request, and it may only be done before the responding transmittal memorandum for the TAM is signed. See procedures in Rev. Proc. 2032-2, section 11.
- (2) The Director (of EP Examinations, EO Examinations or GE) sends a memorandum to Associate Counsel to request the withdrawal.

Note: The taxpayer may not withdraw a request for a TAM, but if you receive a withdrawal request, consider and document it. If warranted, the withdrawal request must be elevated to the Exam Director's office through the Area Manager or Program Manager.

- (3) The examiner will notify the taxpayer of the decision to withdraw the TAM by issuing Letter 6293, Notice of Withdrawal of Request for Technical Advice, unless:
 1. The period of limitation on assessment is about to expire and the taxpayer has declined to give written consent to extend, or
 2. The notification would be prejudicial to the best interests of the Government.

4.70.16.6.14
(11-20-2023)

Conclusion of the Case When Technical Advice Is Received

- (1) After you mail the TAM to the taxpayer, close the case based on the TAM conclusions.
- (2) Follow the normal "agreed" or "unagreed" closing procedures, as applicable.
- (3) If the issue covered by the TAM is still unagreed, attach the TAM to the RAR.
- (4) Technical advice cases aren't subject to mandatory review unless they meet one of the other criteria for mandatory review.
- (5) The holdings in a TAM are applied retroactively unless the TAM grants section IRC 7805(b) relief.
- (6) Use AIMS disposal code 10, (RCCMS disposal code 604), *Unagreed Without Protest*, to close your case if there is an unagreed issue for which the taxpayer is unable to file a protest to Appeals because it was the subject of a TAM. For EO, the taxpayer is unable to file a protest to Appeals when revocation or private foundation reclassification is the subject of the TAM.
- (7) Notate on the RCCMS 3198-A Checksheet in RCCMS that the case had been in suspense, status code 38.
- (8) Note in the RCCMS comment box that this case was previously in status 38. This alerts the Closing Function Tax Examiner to change the case to status 55, *Closing Unit: Cases Previously Held in Suspense or Returned from Appeals*.
- (9) If the case is closed "agreed", the TE/GE Closing Unit Group will update the case from status 51, **Closing Unit: Unassigned**, to status 55 first and then to status 90, *Closed*, when it closes.

Note: The closing unit puts the case in status code 55 immediately before placing the case in status 90. This tells AIMS that the return must not be counted against the official table upon which cycle time is measured.

4.70.16.7
(11-20-2023)
**Requests for 7805(b)
Relief**

- (1) IRC 7805(b) provides discretionary authority to determine the extent to which any ruling may apply without retroactive effect. IRC 7805(b) relief may apply to:
 - Revocations.
 - Determinations of liability for UBI.
 - Determinations of liability for excise taxes.
 - Private letter rulings.
 - Technical advice issues.
- (2) The procedures for requesting relief under IRC 7805(b) are contained in Rev. Proc. 2023-4 EP and Rev. Proc. 2023-5 EO, as appropriate, or their successors.
- (3) The taxpayer's written request must:
 1. State that it is being made under IRC 7805(b)
 2. State the relief sought
 3. Explain the reasons and arguments in support of the relief sought
 4. Include any documents bearing on the request

Note: This information is referred to as the Request File.

- (4) When the taxpayer submits a request for relief, the examiner and Group Manager review and analyze the taxpayer's documents and request. The Group Manager will make the final recommendation on whether to:
 1. Grant or deny, or
 2. Seek advice from TEGEDC

Note: The examiner assigned the case may also initiate a request to limit retroactivity if the Group Manager concurs with the examiner's recommendation.

4.70.16.7.1
(11-20-2023)
**Employee Plans Rev.
Proc 2023-4**

- (1) Section 22.03 of Rev. Proc. 2023-4 states, "In order for a petitioner to be deemed to have exhausted administrative remedies within the IRS with respect to §7805(b), an applicant must submit a request for relief under §7805(b) to the IRS in accordance with the procedures in section 23.08 of this revenue procedure."
- (2) Section 23.08 of Rev. Proc. 2023-4 states, "A request for relief under §7805(b) must be in writing and must be submitted to the agent or specialist assigned to the case. The request for relief under §7805(b) must be submitted before issuance of the final adverse determination letter."
- (3) A request for relief can occur only when the plan has a determination letter and the examiner discovers the plan document contains faulty language or fails to include required language. In other words, the determination letter was issued in error.
- (4) A taxpayer's request for retroactive relief must be in writing and submitted to the examiner prior to Mandatory Review issuing the final revocation letter.
- (5) Effective date of revocation: Without IRC 7805(b) relief, revocation is retroactive. Generally, the revocation will be retroactive to the effective date of the plan, to the effective date of the plan provision containing the faulty language

or, if later, to the effective date of the required omitted language. Retroactivity is based on when the language was effective.

4.70.16.7.2
(11-20-2023)
Exempt Organizations
Rev. Proc. 2023-5

- (1) Section 12.04(3) of Rev. Proc. 2023-5 states, “If an organization seeks declaratory judgment under §7428 in response to a retroactive revocation or, to preserve judicial review of a claim for relief under §7805(b), the organization must follow the steps in this revenue procedure in order to have exhausted its administrative remedies with respect to its request under §7805(b). If the organization does not complete the applicable steps, the organization will not have exhausted its administrative remedies as required by §7428(b)(2) with respect to its request for §7805(b) relief and will thus be precluded from obtaining §7805(b) relief in any declaratory judgment it seeks under §7428.”
- (2) Section 12.04 of Rev. Proc. 2023-5 states, “A request for relief under §7805(b) must be in writing and must be submitted to the agent or specialist assigned to the case. The request for relief under §7805(b) must be submitted before issuance of the final adverse determination letter.”
- (3) A request that the determination letter “shall be applied without retroactive effect” under IRC 7805(b)(8) may be initiated by you or the taxpayer. If initiated by the taxpayer, it must be submitted to you prior to the issuance of the final adverse determination letter.
- (4) The request must be in writing in the same form and with the content specified in Rev. Proc. 2023-5, as appropriate, or its successors.
- (5) Effective date of revocation:
 - a. When an entity receives a determination letter or ruling, and later loses exemption due to a change in the facts or law, revocation is effective the first day of the first tax year in which the change occurs. Under these circumstances, there is no need to request application of IRC 7805(b) relief. When an entity erroneously receives a determination letter or ruling due to an omission or misstatement of material facts, the effective date of revocation is the first day of the first tax year. In this case, don’t recommend relief under IRC 7805(b) .
 - b. It’s generally not available.
 - c. When an entity erroneously receives a determination letter or ruling due to an IRS misinterpretation of the law, recommend IRC 7805(b) relief.
 - d. The following table recaps the situations described above:

Entity’s Determination Letter revoked due to:	Revocation effective date:	IRC 7805(b) Applicability:
Change in tax law or organization alters its operation after initial recognition of exemption	First day of first tax year in which organization altered its operations or the law changed	Not necessary, but taxpayer may request a TAM if disputing whether it altered its operations

Entity's Determination Letter revoked due to:	Revocation effective date:	IRC 7805(b) Applicability:
Omission or mis-statement of material facts by the applicant organization	Retroactive to the first day of the first tax year	Not Available
Misinterpretation of law by IRS	Determined by IRC 7805(b) relief	Applies. Recommend requesting relief

Note: In revocation cases, advise the organization of the provisions of IRC 7805(b).

4.70.16.7.3
(11-20-2023)
**Group Manager
Recommends Granting
IRC 7805(b) Relief**

- (1) When the Group Manager recommends granting 7805(b) relief, the examiner prepares and sends a Recommendation Memo to the Director, see the sample memo in Exhibit 4.70.16-1. For purposes of this section the Director:
 - a. Employee Plans – Director is either, EP Examinations or Rulings and Agreements Director, as appropriate
 - b. Exempt Organizations – Director is either Examinations or Rulings and Agreements Director, as appropriate
- (2) The Group Manager routes the Recommendation Memo through their Area Manager/Program Manager for review and approval.
- (3) When the Director:
 - a. Concurs that relief is appropriate; they acknowledge concurrence on the Recommendation Memo and signs and returns the Recommendation Memo to the examiner and Group Manager to associate with the case file. The examiner prepares an individually designed letter notifying the taxpayer that IRC 7805(b) relief was granted.
 - b. Disagrees with the Group Manager's recommendation to grant relief, they send the Request File to TEGEDC to obtain their legal opinion
- (4) TEGEDC reviews the request and provides a memorandum (Legal Opinion Memo) responding to the Director. When the TEGE Division Counsel Legal Opinion Memo:
 - a. Agrees with the Director in denying relief, the Director will provide the denial rationale directly on the Recommendation Memo, sign the Recommendation Memo, and return the memos (Recommendation Memo and Legal Opinion Memo) to the examiner and Group Manager for association with the case.

Note: The examiner *must* prepare an individually designed letter to notify the taxpayer that IRC 7805(b) relief was denied.
 - b. Disagrees with the Director and recommends granting relief, the Director will contact TEGEDC to discuss and resolve the matter.
- (5) If the final resolution is to:

- a. Grant IRC 7805(b) relief, the Director acknowledges agreement on the Recommendation Memo, and signs and returns the Recommendation Memo, along with the TEGEDC Legal Opinion Memo, to the examiner and Group Manager to associate with the case file. The examiner prepares an individually designed letter to notify the taxpayer that IRC 7805(b) relief was granted.
- b. Deny IRC 7805(b) relief, the Director provides the rationale for the denial directly on the Recommendation Memo, signs the Recommendation Memo, and return the memos (Recommendation Memo and Legal Opinion Memo) to the examiner and Group Manager to associate with the case file.

Note: The examiner must prepare an individually designed letter to notify the taxpayer that IRC 7805(b) relief was denied.

4.70.16.7.4
(11-20-2023)
**Group Manager
Recommends Denying
IRC 7805(b) Relief or
that Further
Consideration Is
Warranted**

- (1) When the Group Manager recommends denying IRC 7805(b) relief or determines further consideration is warranted, the manager sends the Request File to TEGEDC for their legal opinion. TEGEDC will respond in the form of a memorandum (Legal Opinion Memo).

Note: See section IRM 4.70.16.2, Assistance from TEGEDC above for information on contacting TEGEDC.

- (2) When the TEGEDC Legal Opinion Memo supports denial of IRC 7805(b) relief, the examiner prepares and provides a Recommendation Memo to the Director, see the sample memo in Exhibit 4.70.16-1, Recommendation Memo. For purposes of this section, the Director is:
 - a. Employee Plans – Director is either, Examinations or Rulings and Agreements Director, as appropriate
 - b. Exempt Organizations – Director is either Examinations or Rulings and Agreements Director, as appropriate
- (3) The Group Manager sends the Recommendation Memo through their Area Manager/Program Manager for review and approval.
- (4) When the Director:
 - a. Agrees to deny relief, the Director will acknowledge concurrence directly on the Recommendation Memo, sign the Recommendation Memo, and return the memos (Recommendation Memo and Legal Opinion Memo) to the examiner and Group Manager for association with the case file. The examiner **must** prepare an individually designed letter notifying the taxpayer that IRC 7805(b) relief was denied.
 - b. Disagrees with the Group Manager's decision to deny relief, the Director will contact the appropriate TEGEDC to discuss and resolve the matter.
- (5) If the final resolution is to:
 - a. Grant IRC 7805(b) relief, the Director will acknowledge agreement directly on the Recommendation Memo, sign the Recommendation Memo, and return the memos (Recommendation Memo and Legal Opinion Memo) to the examiner and Group Manager for association with

the case file. The examiner prepares an individually designed letter to notify the taxpayer that IRC 7805(b) relief was granted.

- b. Deny IRC 7805(b) relief, the Director will provide the rationale for denial directly on the Recommendation Memo, sign the Recommendation Memo, and return the memos (Recommendation Memo and Legal Opinion Memo) to the examiner and Group Manager for association with the case file.

Note: The examiner **must** prepare an individually designed letter to notify the taxpayer that IRC 7805(b) relief was denied.

Exhibit 4.70.16-1 (11-20-2023)**Recommendation Memo****Internal Revenue Service****Memorandum**

Date:

To: Director, [EO] [EP] [Rulings and Agreements] [Examinations] SE:T[__:__]

From: Group Manager, [_____] SE:T[__:__]

Subject: Application for Section 7805(b) Relief in the case of:
[Taxpayer name] [(EIN:____-____)]**ISSUE:**

Whether [Taxpayer name or Plan name] should be granted relief under IRC 7805(b) for all taxable years up until the issuance of a letter revoking its exempt status under section 401(a) and/or section 501(a) of the Code.

FACTS:

[Taxpayer name or Plan name] was recognized as exempt from federal taxation under section [(For EP: section 401(a) of the Code and its related trust as exempt under section 501(a) of the Code)] [_____] effective Date]. [Provide additional fact relevant for section 7805 analysis and recommendation.]

VIEWS OF THE TAXPAYER:

[Taxpayer name or Plan name] argues that relief under section 7805(b) is appropriate for all taxable years because:

[Summarize reasons and arguments of taxpayer and reference any documents that were included as bearing upon the request. See section 23 of Rev. Proc. 2023-4 or Section 12 of Rev. Proc. 2023-5 for relevant procedures for taxpayers requesting 7805(b) relief].

VIEWS OF THE GROUP MANAGER:

The Group Manager proposes revoking [Taxpayer name or Plan name] tax exempt under section [For EP: section 401(a) of the Code and its related trust as exempt under section 501(a) of the Code][_____] effective as of [date]. Revocation is proposed because:

[summarize reasons for revocation.]

Furthermore, the revocation should be effective [date] because:

[summarizes reasons for effective date of proposed revocation; reference any legal memorandum obtained from TEGE Division Counsel pursuant to 7805(b) case processing procedures.]

ANALYSIS:

EP: Section 23.08 of Rev. Proc. 2023-4 sets forth procedures that must be followed for a qualified plan to request relief under section 7805(b).

EO: Section 12 of Rev. Proc. 2023-5 sets forth procedures that must be followed for an Exempt Organization to request relief under section 7805(b). First,**

Delegation Order 30-1 (Rev. 3) delegates authority to the Director, [EO] [EP] [Rulings and Agreements] [Examinations], to prescribe the extent to which ruling relating to the internal revenue laws shall be applied without retroactive effect for letter rulings and determination letters issued by the Commissioner, Tax Exempt and Government Entities.

In the present case, [insert analysis taking into account relevant criteria].

Exhibit 4.70.16-1 (Cont. 1) (11-20-2023)
Recommendation Memo**RECOMMENDATION:**

We believe granting relief under section 7805(b) [would/would not] be appropriate in this case. [Taxpayer name or Plan name] [has/has not] met the criteria for relief under section 7805(b) because [summarize reasons for recommendations].

Therefore, we recommend the Director, [EO Examinations, EO Rulings and Agreements EP Examinations or EP Rulings and Agreements] exercise discretionary authority [to limit] [not to limit] the retroactivity of the revocation. In accordance with [section 23 of Rev. Proc. 2023-4] revocation of the exempt status of the [Plan name] [section 12 of Rev. Proc. 2023-5], revocation of exempt status [organization name] should be effective [Date] based on [significance of date].

DECISION:

Retroactivity [limited.] [not limited.]

If decision is not to limit retroactivity, Director's office to provide rationale for decision if not otherwise described previously in memorandum.]

Approved By: _____ Date: _____
Director, [EO Examinations, EO Rulings and Agreements, EP Examinations]