



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

January 7, 2015

Control No: TEGE-07-0115-0001  
Affected IRM: IRM 4.71.5.13; 4.71.13;  
7.1.1; 7.1.5 & 7.11.12  
Expiration Date: January 7, 2017

MEMORANDUM FOR ALL EMPLOYEES IN EMPLOYEE PLANS EXAMINATIONS AND  
EMPLOYEE PLANS RULINGS AND AGREEMENTS

FROM: Robert S. Choi /s/ *Robert S. Choi*  
Director, Employee Plans

SUBJECT: Realignment of Technical Work between the Tax Exempt and Government  
Entities Division (TE/GE) and Office of Associate Chief Counsel (Tax Exempt and  
Government Entities)

The purpose of this memorandum is to provide administrative guidance to Employee Plans Examinations and Employee Plans Rulings and Agreements regarding matters that are being transferred from the Tax Exempt and Government Entities Division (TE/GE) to Office of Associate Chief Counsel (Tax Exempt and Government Entities) (TEGE Counsel) that impact IRM sections 4.71.5.13, 4.71.13, 7.1.1, 7.1.5, & 7.11.12.

On January 2, 2015, the authority to prepare revenue rulings, revenue procedures, announcements, and notices, and to issue technical advice (including technical advice memoranda (TAMs)), certain letter rulings, and information letters, on matters involving qualified retirement plans and IRAs, shifted from TE/GE to TEGE Counsel. The Employee Plans office of TE/GE (Employee Plans) will continue to work on all matters unaffected by the realignment.

The following chart identifies the IRM sections affected by the realignment. In some cases, the specific provisions of the IRM have been revised to reflect the change. In other cases, a summary of the changes are provided. **Except as set forth below, the provisions of each of the existing IRM sections should be followed.**

IRM Section	Change (Note: Only portions of the IRM that are changing as a result of this Memorandum are shown below)
<p>4.71.5</p> <p>4.71.5.13</p>	<p><b><u>Form 5330 Examinations</u></b></p> <p><b><u>Requests for Waivers or Exemption from IRC 4971/4975 Excise Taxes</u></b></p> <p>(1) During the examination of a Form 5330 or Form 5500 series return involving an accumulated funding deficiency or prohibited transaction, the employer or disqualified person may request or have pending a waiver of the funding deficiency before IRS or an administrative exemption from the prohibited transaction requirements with respect to a given transaction before DOL. These types of cases may be subject to mandatory technical advice procedures and require coordination with Office of Associate Chief Counsel (Tax Exempt and Government Entities) (TEGE Counsel)) in Washington, D.C. Waiver of the liquidity shortfall (as that term is defined in IRC 430(j)(4)) excise tax under IRC 4971(f)(4) may be subject to coordination with EP Rulings and Agreements in Washington, DC.</p> <p>(2) Requests for waivers of the minimum funding standards will be considered by the TEGE Counsel under the following circumstances:</p> <ul style="list-style-type: none"> <li>a. If the case involves a minimum funding waiver request for a defined contribution plan which is accompanied by a request for a determination letter on the effect of an amendment necessary to satisfy section 3 of <a href="#">Rev. Rul. 78-223</a>, IRB 1978-1 C.B. 125, the case is subject to mandatory technical advice.</li> <li>b. If the case involves a minimum funding waiver request for a defined benefit plan, or a request for a waiver ruling for a defined contribution plan which is not accompanied by a request for a determination letter on the effect of an amendment necessary to satisfy section 3 of Rev. Rul. 78-223.</li> </ul> <p>(3) Under ERISA section 3002, the Service is authorized to waive part or all of the tax under IRC 4971(b) on failure to meet minimum funding standards. These types of cases require coordination with TEGE Counsel in Washington, DC.</p> <p>.....</p> <p>(9) See the following revenue procedures for additional guidance: Rev. Proc. 2015-1, Rev. Proc. 2015-2, Rev. Proc. 2015-4, Rev. Proc. 2015-6, Rev. Proc. 2000-17, Rev. Proc. 2004-15, and Rev. Proc. 81-44. The first four listed are revised annually, usually in January.</p>
<p>4.71.13</p>	<p><b><u>Employee Plans Examination of Returns, Technical Assistance and Technical Advice Requests</u></b></p> <p>Effective January 2, 2015, the authority for issuing technical advice (including technical advice memoranda (TAMs)) has been transferred from the Employee Plans office of the Tax Exempt and Government Entities Division (TE/GE) to Office of Associate Chief Counsel (Tax Exempt and Government Entities ) (TEGE Counsel). The procedures for requesting technical advice from TEGE Counsel are set forth in Rev. Proc. 2015-2. Employees are encouraged to review Rev. Proc. 2015-2, since the procedures therein are different than the procedures that were set forth in Rev. Proc. 2014-5. IRM 4.71.13 will be revised in its entirety to reflect the new procedures.</p>

<p>7.1.1</p>	<p><b><u>Rulings and Agreements, TE/GE Administrative Procedures and Programs, Employee Plans</u></b></p> <p>Effective January 2, 2015, the authority to prepare revenue rulings, revenue procedures, announcements, and notices, and to issue technical advice (including technical advice memoranda (TAMs) and IRC 7805(b) relief), certain letter rulings, and information letters, on matters involving qualified retirement plans, and IRAs, will be shifted from Tax Exempt and Government Entities Division (TE/GE) to Office of Associate Chief Counsel (Tax Exempt and Government Entities) (TEGE Counsel). TEGE Counsel will be responsible for the issuance of all letter rulings except for the rulings listed below. After January 1, 2015, Employee Plans will retain the authority to issue letter rulings on the following subject matters:</p> <ul style="list-style-type: none"> <li>• Computation of the exclusion ratio under § 72;</li> <li>• Waiver of the 60-day rollover requirement under §§ 402(c)(3) and 408(d)(3) for distributions;</li> <li>• Whether individual retirement accounts established by employers or associations of employers meet the requirements of § 408(c);</li> <li>• Approval to become a nonbank trustee (see § 1.408-2(e));</li> <li>• Change in funding methods and actuarial assumptions under §§ 412, 430, 431 or 433;</li> <li>• Approval of substitute mortality tables under Rev. Proc. 2008-62, 2008-42 I.R.B. 935;</li> <li>• Extension of an amortization period under Rev. Proc. 2010-52, 2010-52 I.R.B. 927;</li> <li>• The tax consequences of prohibited transactions under §§ 503 and 4975;</li> <li>• Waiver of the liquidity shortfall (as that term is defined in § 430(j)(4)) excise tax under § 4971(f)(4);</li> <li>• Approval of the return of certain nondeductible contributions to the employer pursuant to Rev. Proc. 90-49, 1990-2 C.B. 620;</li> <li>• Roth IRA recharacterization relief under § 301.9100-1; and</li> <li>• A change in the plan year of an employee retirement plan and the trust year of a tax-exempt employees' trust.</li> </ul> <p>TEGE Counsel will also issue administrative scrutiny determination letters under IRC 414(r), waiver of taxes under IRC 4971(b) and (g), and waiver of the minimum funding requirement under Rev. Proc. 2004-15.</p> <p>Employees are encouraged to review Rev. Proc. 2015-2, Rev. Proc. 2015-4, and Rev. Proc. 2015-6. IRM 7.1.1 will be revised in its entirety.</p>
<p>7.1.5</p>	<p><b><u>Rulings and Agreements, Employee Plans Technical Advice Procedures</u></b></p> <p>Effective January 2, 2015, the authority for issuing technical advice (including technical advice memoranda (TAMs)) has been transferred from the Employee Plans office of the Tax Exempt and Government Entities Division (TE/GE) to Office of Associate Chief Counsel (Tax Exempt and Government Entities Division) (TEGE Counsel). The procedures for requesting technical advice from TEGE Counsel are set forth in Rev. Proc. 2015-2. Employees are encouraged to review Rev. Proc. 2015-2, since the procedures therein are different than the procedures that were set forth in Rev. Proc. 2014-5. IRM 7.1.5 will be revised in its entirety to reflect the new procedures.</p>

7.11.12

**Employee Plans Determination Letter Program, Preparing Technical Advice Requests**

Effective January 2, 2015, the authority for issuing technical advice (including technical advice memoranda (TAMs)) has been transferred from the Employee Plans office of the Tax Exempt and Government Entities Division (TE/GE) to Office of Associate Chief Counsel (Tax Exempt and Government Entities Division) (TEGE Counsel). The procedures for requesting technical advice from TEGE Counsel are set forth in Rev. Proc. 2015-2. Employees are encouraged to review Rev. Proc. 2015-2, since the procedures therein are different than the procedures that were set forth in Rev. Proc. 2014-5. IRM 7.11.12 will be revised in its entirety to reflect the new procedures.

The content of this memorandum will be incorporated in IRM sections 4.71.5.13, 4.71.13, 7.1.1, 7.1.5, & 7.11.12.

Please contact Sherri Edelman with any questions regarding the application of this memorandum.

cc: [www.irs.gov](http://www.irs.gov)