

Rev. Proc. 2004-5

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SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

.01 This revenue procedure explains when and how Employee Plans Technical or Exempt Organizations Technical issue technical advice memoranda (TAMs) and technical expedited advice memoranda (TEAMs) to an Employee Plans (EP) Examinations Area manager, an Exempt Organizations (EO) Examinations Area manager, an Employee Plans (EP) Determinations manager, an Exempt Organizations (EO) Determinations manager, or the Appeals Area

Director, Area 7 in the employee plans areas (including actuarial matters) and exempt organizations areas. It also explains the rights a taxpayer has when an EP or EO Examinations Area manager, an EP or EO Determinations manager, or the Appeals Area Director, Area 7 requests a TAM or a TEAM regarding a tax matter.

.02 Although taxpayer participation during all stages of the process is preferred, it is not required in order to request technical advice. In the event that a taxpayer chooses not to participate in a request for a TEAM, the request usually will be treated as a request for a TAM.

SECTION 2. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2003-5?

.01 This revenue procedure is a general update of Rev. Proc. 2003-5, 2003-1 I.R.B. 163, which contains the general procedures for technical advice requests for matters within the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

.02 This revenue procedure adopts the use of technical expedited advice memoranda (TEAM) for matters within the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. (TEAMS were first established in a pilot program in Rev. Proc. 2002-30, 2002-1 C.B. 1184, and subsequently adopted throughout the Office of the Chief Counsel in Rev. Proc. 2003-2, 2003-1 I.R.B. 76.)

.03 Termination/reestablishment and spin-off termination cases are no longer mandatory technical advice cases.

.04 Sections 9.07 and 10.05 are revised to provide for electronic filing.

.05 Section 14.02 is added to expand upon what is meant by the “reconsideration” of a TAM or a TEAM.

SECTION 3. WHAT IS THE DIFFERENCE BETWEEN TECHNICAL ADVICE AND TECHNICAL EXPEDITED ADVICE?

“Technical advice” means advice or guidance in the form of a memorandum furnished by the Employee Plans Technical or Exempt Organizations Technical office, (hereinafter referred to as “EP or EO Technical”), upon the request of an EP or EO Examinations Area manager, an EP or EO Determinations manager or the Appeals Area Director, Area 7, submitted in accordance with the provisions of this revenue procedure in response to any technical or procedural question that develops during any proceeding on the interpretation and proper application of tax law, tax treaties, regulations, revenue rulings, notices or other precedents published by the headquarters office to a specific set of facts. (The references in this revenue procedure to the Appeals Area Director, Area 7 include, when appropriate, an Appeals Area Director, LMSB, a Deputy Appeals Area Director, LMSB, a Deputy Appeals Area Director, Area 7 or an Appeals Team Manager.) Such proceedings include (1) the examination of a taxpayer’s return, (2) consideration of a taxpayer’s claim for refund or credit, (3) a taxpayer’s request for a determination letter, (4) any other matter involving a specific taxpayer under the jurisdiction of EP or EO Examinations, EP or EO Determinations, or an appeals office or (5) processing and considering nondocketed cases of a taxpayer in an appeals office. However, they do not include cases in which the issue in the case is in a docketed case for any year.

“Technical expedited advice” means technical advice issued in an expedited manner (hereinafter referred to as a TEAM). Subject to an agreement among the taxpayer, the field office, and the headquarters office, any issue eligible for a TAM (other than those enumerated in section 4.04 of this procedure as mandatory technical advice cases) can be submitted for TEAM treatment. A TEAM has several characteristics that are different from a TAM, including: a mandatory pre-submission conference involving the taxpayer and once the conference of right is held, no further conferences will be offered. The procedures associated with a TEAM help expedite certain aspects of the TAM process and eliminate some of the requirements that may delay or frustrate the TAM process. For purposes of TAMs and TEAMS, the term “taxpayer” includes all persons subject to any provision of the Internal Revenue Code (including tax-exempt entities such as governmental units which issue municipal bonds within the meaning of § 103), and when appropriate, their representatives. However, the instructions and the provisions of this revenue procedure do not apply to requests for TAMs or TEAMS involving any matter pertaining to tax-exempt bonds or to § 457 plans maintained by state or local governments or tax-exempt organizations or to mortgage credit certificates. Instead, in those instances the procedures under Rev. Proc. 2004-2, page 83, this Bulletin must be followed.

TAMS and TEAMs help Service personnel resolve complex issues and help establish and maintain consistent holdings throughout the Internal Revenue Service. An EP or EO Examinations, an EP or EO Determinations or an appeals office may raise an issue in any tax period, even though technical advice or technical expedited advice may have been requested and furnished for the same or similar issue for another tax period.

Neither technical advice nor technical expedited advice includes oral or written legal advice furnished to the EP or EO Examinations or the EP or EO Determinations or the appeals office, other than advice furnished pursuant to this revenue procedure. In accordance with section 12.01 of this revenue procedure, a taxpayer's request for referral of an issue to the headquarters office for technical advice or technical expedited advice will not be denied merely because EP or EO Technical has already provided legal advice, other than advice furnished pursuant to this revenue procedure, to the EP or EO Examinations or the EP or EO Determinations or the appeals office on the matter.

Although taxpayer participation during all stages of the process is preferred, generally, it is not required in order to request a TAM or a TEAM. In the event that a taxpayer chooses not to participate in a request for a TEAM, the request usually will be treated as a request for a TAM.

SECTION 4. ON WHAT ISSUES MAY OR MUST TAMs AND TEAMs BE REQUESTED UNDER THIS PROCEDURE?

Issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division

.01 Generally, the instructions of this revenue procedure apply to requests for TAMs and TEAMs on any issue under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

Farmers' cooperatives

.02 If an EP or EO Examinations, an EP or EO Determinations, an appeals office or a taxpayer requests technical advice on a determination letter under § 521 of the Code, the procedures under this revenue procedure, Rev. Proc. 90-27, 1990-1 C.B. 514, as well as § 601.201(n) of the Statement of Procedural Rules (26 CFR § 601.201(n) (2003)), must be followed.

Basis for requesting TAMs and TEAMs

.03 Requests for TAMs and TEAMs are encouraged on any technical or procedural questions arising in connection with any case of the type described in section 3 at any stage of the proceedings in an EP or EO Examinations, an EP or EO Determinations or an appeals office that cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other published precedent.

Areas of mandatory technical advice

.04 Requests for § 7805(b) relief are mandatory TAMs with respect to all exempt organizations and employee plans matters.

Except for those exemption application cases handled in EO Technical in accordance with section 6.02 of Rev. Proc. 90-27, EO Examinations, EO Determinations and appeals offices are required to request a TAM on their exempt organization cases concerning qualification for exemption or foundation status for which there is no published precedent or for which there is reason to believe that non-uniformity exists.

Regarding employee plans matters, a request for a TAM is required in cases concerning (1) proposed adverse or proposed revocation letters on collectively-bargained plans, (2) plans for which the Service is proposing to issue a revocation letter because of certain fiduciary actions that violate the exclusive benefit rule of § 401(a) of the Code and are subject to Part 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 1974-3 C.B. 1, 43, (3) amendments to defined contribution plans pursuant to Rev. Proc. 94-41, 1994-1 C.B. 711, in connection with a waiver of the minimum funding standard and a request for a determination letter (*see* section 15 of Rev. Proc. 2004-6, page 197, this Bulletin, and section 3.04 of Rev. Proc. 94-41), or (4) any determination letter case or any examination case involving a plan amendment to convert an existing defined benefit formula to a cash balance type benefit formula that was not previously subject to a TAM on the conversion.

Special procedures for certain conversions

.05 In the instance of section 4.04(6) above, the requirements of the first sentence of section 10.01 below will be deemed met by the Service by the use of the following (or similar) statement: A TAM is requested on the effect on the plan's qualified status of the conversion of an existing defined benefit plan formula to a cash balance type benefit formula.

SECTION 5. ON WHAT ISSUES MUST TAMs AND TEAMs BE REQUESTED UNDER DIFFERENT PROCEDURES?

Matters (other than farmers' cooperatives) under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International) the Associate Chief Counsel (Passthroughs & Special Industries), the Division Counsel/Associate Chief Counsel (TE/GE), and the Associate Chief Counsel (Procedure & Administration)

.01 All procedures for obtaining TAMs and TEAMs on issues (other than farmers' cooperatives) under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), or the Division Counsel/Associate Chief Counsel (TE/GE), and on certain issues under the jurisdiction of the Associate Chief Counsel (Procedure & Administration), including any matter pertaining to (1) tax-exempt bonds or mortgage credit certificates, (2) deferred compensation plans under § 457, (3) § 526 of the Code (shipowners' protection and indemnity associations), (4) § 528 (certain homeowners' associations), (5) Indian tribal governments, (6) federal state or local governments, and (7) issues involving the interpretation or application of the federal income tax laws and income tax treaties relating to international transactions are contained in Rev. Proc. 2004-2.

Alcohol, tobacco, and firearms taxes

.02 The procedures for obtaining a TAM or a TEAM specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are currently under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau within the Treasury Department.

Excise taxes

.03 A TAM or a TEAM regarding excise taxes (other than excise taxes imposed under Chapters 41, 42 and 43 of the Code), and employment taxes that employee plans and exempt organizations are subject to, are set forth in Rev. Proc. 2004-2.

SECTION 6. MAY A TAM OR A TEAM UNDER § 301.9100-1 BE REQUESTED DURING THE COURSE OF AN EXAMINATION?

A § 301.9100-1 request is a letter ruling request

.01 Except with regard to exemption application matters involving §§ 505(c) and 508, a request for an extension of time for making an election or other application for relief under § 301.9100-1 of the Procedure and Administration Regulations is not a request for a TAM or a TEAM; instead, the request is submitted as a letter ruling request even if the request is submitted after the examination of the taxpayer's return has begun or after the issues in the return are being considered by an appeals office or a federal court. Therefore, a § 301.9100-1 request should be submitted pursuant to Rev. Proc. 2004-4, page 125, this Bulletin (including the payment of the applicable user fee listed in section 6 of Rev. Proc. 2004-8).

Statute of limitations

.02 The running of any applicable period of limitations is not suspended for the period during which a § 301.9100-1 request has been filed. *See* § 301.9100-3(d)(2). If the period of limitations on an assessment under § 6501(a) for the taxable year in which an election should have been made, or any taxable year that would have been affected by the election had it been timely made, will expire before receipt of a § 301.9100-1 letter ruling, the Service ordinarily will not issue a § 301.9100-1 ruling. *See* § 301.9100-3(c)(1)(ii). Therefore, the taxpayer must secure a consent under § 6501(c)(4) to extend the period of limitations on assessment. Note

that the filing of a protective claim for refund under § 6511 does not extend the period of limitations on assessment. If § 301.9100-1 relief is granted, the Service may require the taxpayer to consent to an extension of the period of limitations for assessment. *See* § 301.9100-3(d)(2).

Address to send a § 301.9100-1 request

.03 Requests made under § 301.9100-1, pursuant to Rev. Proc. 2004-4, together with the appropriate user fee, must be submitted to the Internal Revenue Service by the taxpayer and addressed as follows:

Internal Revenue Service
Commissioner, Tax Exempt and Government
Entities
Attn: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, DC 20038

Requests involving exempt organization matters:

Internal Revenue Service
Commissioner, Tax Exempt and Government
Entities
Attn: SE:T:EO:RA
P.O. Box 27720
McPherson Station
Washington, DC 20038

A § 301.9100-1 request may also be hand delivered between the hours of 8:30 a.m. and 4:00 p.m. where a receipt will be given at the Courier's Desk. In each instance, the package should be marked RULING REQUEST SUBMISSION. *See* Rev. Proc. 2004-8 for the appropriate user fee. Deliver to:

Courier's Desk
Internal Revenue Service
Attn: SE:T:EP:RA or SE:T:EO:RA
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

If return is being examined or considered by an appeals office or a federal court, the taxpayer must notify EP or EO Technical who will notify the EP or EO Examinations Area manager, Appeals Area Director, Area 7 or government counsel

.04 If the taxpayer's return for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made is being examined by EP or EO Examinations or the issues in the return are being considered by an appeals office or a federal court, the taxpayer must notify EP or EO Technical. *See*, § 301.9100-3(e)(4)(i) and section 6.04 of Rev. Proc. 2004-4. EP or EO Technical will notify the appropriate EP or EO Examinations Area manager or Appeals Area Director, Area 7, or government counsel considering the return that a request for § 301.9100-1 relief has been submitted. The EP or EO specialist, appeals officer or government counsel is not authorized to deny consideration of a request for § 301.9100-1 relief. The letter ruling will be mailed to the taxpayer and a copy will be sent to the appropriate EP or EO Examinations Area manager, or Appeals Area Director, Area 7, or government counsel.

SECTION 7. WHO IS RESPONSIBLE FOR REQUESTING TAMs AND TEAMs?

EP or EO Examinations Area manager or EP or EO Determinations manager or Appeals Area Director, Area 7 determines whether to request the advice

.01 The EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director, Area 7, determines whether to request a TAM or a TEAM on an issue. Each request must be submitted through proper channels and signed by a person who is authorized to sign for the EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director, Area 7. The mandatory technical advice described in section 4.04(3) of this revenue procedure, for cases concerning amendments to defined contri-

bution plans in connection with a waiver of the minimum funding standard and a request for a determination letter, is treated as if it had been a request for technical advice submitted by the EP Determinations manager. *See* section 15 of Rev. Proc. 2004–6 and section 3.04 of Rev. Proc. 94–41 for the procedural rules applicable to this particular mandatory technical advice.

Taxpayer may ask that issue be referred for a TAM or a TEAM

.02 While a case is under the jurisdiction of EP or EO Examinations, EP or EO Determinations, or the Appeals Area Director, Area 7, a taxpayer may request that an issue be referred to the EP or EO Technical office for a TAM or a TEAM.

SECTION 8. WHEN SHOULD A TAM OR TEAM BE REQUESTED?

Uniformity of position lacking

.01 A TAM or a TEAM should be requested when there is a lack of uniformity regarding the disposition of an issue or when an issue is unusual or complex enough to warrant consideration by EP or EO Technical.

When can a TAM or a TEAM be requested

.02 The provisions of this revenue procedure apply only to a case under the jurisdiction of EP or EO Examinations, EP or EO Determinations or the Appeals Area Director, Area 7. A TAM or a TEAM may also be requested on issues considered in a prior appeals disposition, not based on mutual concessions for the same tax period of the same taxpayer, if the appeals office that had the case concurs in the request.

(1) EP or EO Examinations or EP or EO Determinations may not request a TAM or TEAM on an issue if an appeals office is currently considering an identical issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or an affiliated group of which the taxpayer is also a member within the meaning of § 1504).

(2) A case remains under the jurisdiction of EP or EO Examinations or EP or EO Determinations even though an appeals office has the identical issue under consideration in the case of another taxpayer (not related within the meaning of § 267 or § 1504) in an entirely different transaction. With respect to the same taxpayer or the same transaction, when the issue is under the jurisdiction of an appeals office, and the applicability of more than one kind of federal tax is dependent upon the resolution of that issue, EP or EO Examinations or EP or EO Determinations may not request a TAM or TEAM on the applicability of any of the taxes involved.

(3) EP or EO Examinations or EP or EO Determinations or the Appeals Area Director, Area 7, also may not request a TAM or TEAM on an issue if the same issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) is in a docketed case for the same taxpayer (or for a related taxpayer or a member of an affiliated group of which the taxpayer is also a member) for any taxable year.

(4) A TEAM cannot be requested on those areas of mandatory technical advice set forth in section 4.04 of this procedure.

At the earliest possible stage

.03 Once an issue is identified, all requests for a TAM or a TEAM should be made at the earliest possible stage in the proceeding. The fact that the issue is raised late in the examination, determination or appeals process should not influence, however, EP or EO Examinations', EP or EO Determinations' or the Appeals Area Director, Area 7's decision to request a TAM or a TEAM.

SECTION 9. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED?

Pre-submission conference generally is permitted when a request for a TAM or a TEAM is likely and all parties agree to request the conference

.01 In an effort to promote expeditious processing of requests for a TAM or a TEAM, EP or EO Technical generally will discuss the issues with the EP or EO Examinations or the EP or EO Determinations or the appeals office and the taxpayer prior to the time any request for technical advice is formally submitted to EP or EO Technical. In all cases, other than mandatory TAMs which are described in section 4.04, a pre-submission conference is mandatory. Although taxpayer participation in the conference is not required for a TAM, it is required for a TEAM. A request for a pre-submission conference should be made, however, only after the EP or EO Examinations or the EP or EO Determinations or the appeals office determines that it will likely request a TAM or a TEAM. If the request for a TAM or TEAM will involve more than one function, representatives from each function involved must participate in the pre-submission conference.

Purpose of pre-submission conference

.02 A pre-submission conference is intended to facilitate agreement between the parties as to the appropriate scope of the request for a TAM or a TEAM any collateral issues that either should or should not be included in the request for a TAM or a TEAM , and any other substantive or procedural considerations that will allow EP or EO Technical to provide the parties with a TAM or a TEAM as expeditiously as possible.

A pre-submission conference is not intended to create an alternate procedure for determining the merits of the substantive positions advocated by the EP or EO Examinations or the EP or EO Determinations or the appeals office or by the taxpayer. Rather, the conference is intended only to facilitate the overall process.

During the pre-submission conference, the parties should determine whether the issue or issues is appropriate for a TEAM. The parties should discuss the framing of the issue(s), what background information and documents are required and when the request for a TAM or a TEAM will be submitted. Where more than one function will be involved in responding to a proposed TEAM, each must agree that the request is suitable for TEAM procedures and that the necessary coordination can be provided.

If the different functions do not agree that the TEAM procedures are appropriate, then the request will be processed subject to the procedures in this revenue procedure for a TAM.

Request for pre-submission conference must be submitted in writing by the EP or EO Examinations or the EP or EO Determinations or the appeals office

.03 A request for a pre-submission conference must be submitted in writing by the EP or EO Examinations or the EP or EO Determinations or the appeals office. The request should identify the office expected to have jurisdiction over the request for a TAM or a TEAM. The request should include a brief explanation of the primary issue so that an assignment to the appropriate group can be made.

Group will contact the EP or EO Examinations or the EP or EO Determinations or the appeals office to arrange the pre-submission conference

.04 Within 5 working days after it receives the request, the group assigned responsibility for conducting the pre-submission conference will contact the EP or EO Examinations or the EP or EO Determinations or the appeals office to arrange a mutually convenient time for the parties to meet in the EP or EO Technical office. The conference generally should be held within 30 calendar days after the EP or EO Examinations or the EP or EO Determinations or the appeals office is contacted. The EP or EO Examinations or the EP or EO Determinations or the appeals office will be responsible for coordinating with the taxpayer as well as with any other Service personnel whose attendance the EP or EO Examinations or the EP or EO Determinations or the appeals office believes would be appropriate.

If a TEAM is requested, the group assigned responsibility for conducting the pre-submission conference will, within two working days of receiving the request, schedule the conference. The conference will be held within 15 calendar days of the assigned group's call to the field.

Pre-submission conference generally held by telephone

.05 Generally, pre-submission conferences for TAMs and TEAMS are held by telephone with EP or EO Technical unless the parties specifically request that the conference be held in

person. In no event will the request for an in person pre-submission conference on a TEAM be allowed to delay the conference beyond the 15-day period in section 9.04 of this revenue procedure.

Certain information required to be submitted to EP or EO Technical prior to the pre-submission conference

.06 At least 10 working days before the scheduled pre-submission conference, EP or EO Examinations or EP or EO Determinations or the appeals office and the taxpayer should submit to EP or EO Technical a statement of the pertinent facts (including any facts in dispute), a statement of the issues that the parties would like to discuss, and any legal analysis, authorities, or background documents that the parties believe would facilitate EP or EO Technical's understanding of the issues to be discussed at the conference. The legal analysis provided for the pre-submission conference need not be as fully developed as the analysis that ultimately will accompany the request for a TAM or a TEAM, but it should allow EP or EO Technical to become reasonably informed regarding the subject matter of the conference prior to the meeting. The EP or EO Examinations or the EP or EO Determinations or the appeals office or the taxpayer should ensure that the EP or EO Technical office receives a copy of any required power of attorney, preferably on Form 2848, *Power of Attorney and Declaration of Representative*.

If the pre-submission conference pertains to a request for a TAM, the assigned group must receive the pre-submission materials at least 10 working days prior to the conference.

If the pre-submission conference pertains to a request for a TEAM, the assigned group must receive the pre-submission materials no later than five calendar days before the conference. Failure to timely submit the materials will result in the case being processed as a TAM rather than a TEAM.

Manner of submitting pre-submission materials

.07 Regardless whether the pre-submission conference pertains to a request for a TAM or a request for a TEAM, the pre-submission materials must be submitted electronically. In order to obtain the protection of taxpayer information offered by the Service's Intranet "firewall," the pre-submission materials must be electronically transmitted by an EP or EO office of the Service assigned to the request.

To the extent that supporting materials cannot be submitted electronically, such materials should be sent by fax or by express mail or private delivery service to the tax law specialist or actuary in Headquarters assigned to the request. In such cases, the appropriate provisions of section 10.05 should be followed.

Pre-submission conference may not be taped

.08 Because pre-submission conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Discussion of substantive issues is not binding on the Service

.09 Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

SECTION 10. WHAT MUST BE INCLUDED IN THE REQUEST FOR A TAM OR A TEAM ?

Statement of issues, facts, law, and arguments

.01 Whether initiated by the taxpayer or by an EP or EO Examinations or an EP or EO Determinations or an appeals office, a request for a TAM or a TEAM must include the facts and the issues for which the TAM or the TEAM is requested, and a written statement that clearly sets forth the applicable law and the arguments in support of both the Service's and the taxpayer's positions on the issue or issues.

Taxpayer must submit statement if the taxpayer initiates request for a TAM or a TEAM

(1) If the taxpayer initiates the request for a TAM or a TEAM, the taxpayer must submit to the EP or EO specialist or appeals officer, at the time the taxpayer initiates the request, a written statement—

- (a) stating the facts and the issues;
- (b) explaining the taxpayer's position;

(c) discussing any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, or any other authority supporting the taxpayer's position; and

(d) stating the reasons for requesting technical advice.

If the EP or EO specialist or the appeals officer determines that a TAM or TEAM will be requested, the taxpayer's statement will be forwarded to EP or EO Technical with the request for the TAM or TEAM.

Taxpayer is encouraged to submit statement if Service initiates request for a TAM or a TEAM

(2) If the request for a TAM or a TEAM is initiated by an EP or EO Examinations office or by an EP or EO Determinations office or by an appeals office, the taxpayer is encouraged to submit the written statement described in section 10.01(1) of this revenue procedure. If the taxpayer's statement is received after the request for the TAM or the TEAM has been forwarded to EP or EO Technical, the statement will be forwarded to EP or EO Technical for association with the TAM or the TEAM.

Statement of authorities contrary to taxpayer's position

(3) Whether the request for a TAM or a TEAM is initiated by the taxpayer or by an EP or EO Examinations office or by an EP or EO Determinations office or by an appeals office, the taxpayer is also encouraged to comment on any legislation, tax treaties, regulations, revenue rulings, revenue procedures, or court decisions contrary to the taxpayer's position. If the taxpayer determines that there are no contrary authorities, a statement to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Service, in complex cases or those presenting difficult or novel issues, may request submission of contrary authorities or a statement that none exists.

General provisions of §§ 6104 and 6110

.02 Generally, § 6104(a)(1)(B) provides that an application filed with respect to: (1) the qualification of a pension, profit-sharing, or stock bonus plan under § 401(a) or § 403(a) or an individual retirement arrangement under § 408(a) or § 408(b) will be open to public inspection pursuant to regulations as will (2) any application filed for an exemption from tax under § 501(a) of an organization forming part of a plan or account described above. Generally, § 6110(a) provides that except as provided otherwise, written determinations (defined in § 6110(b)(1) as rulings, determination letters, technical advice memorandums and Chief Counsel advice) and any related background file document will be open to public inspection pursuant to regulations.

Application of § 6104

.03 The requirements for submitting statements and other materials or proposed deletions in TAMs or TEAMS before public inspection is allowed do not apply to requests for any documents to the extent § 6104 applies.

Statement identifying information to be deleted from public inspection

.04 The text of a TAM or a TEAM subject to § 6110(a) may be open to public inspection. The Service deletes certain information from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), the taxpayer must provide a statement indicating the deletions desired ("deletions statement"). If the taxpayer does not submit the deletions statement, the Service will follow the procedures in section 11.07 of this revenue procedure.

A taxpayer who wants only names, addresses, and identifying numbers deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletions statement must be accompanied by a copy of the TAM or the TEAM request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletions statement must indicate the statutory basis, under § 6110(c) for each proposed deletion.

The taxpayer may submit additional deletions statements before the TAM or TEAM is issued.

The deletions statement must not appear in the request for a TAM or a TEAM but, instead, must be made in a separate document.

The deletions statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or a faxed signature is not permitted.

The taxpayer should follow these same procedures to propose deletions from any additional information submitted after the initial request for a TAM or a TEAM. An additional deletions statement, however, is not required with each submission of additional information if the taxpayer's initial deletions statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants the same information deleted from the additional information.

Transmittal Form 5565, Request for Technical Advice — EP/EO

.05 The EP or EO Examinations or the EP or EO Determinations or the appeals office should use Form 5565, Request for Technical Advice — EP/EO, for transmitting a request for technical advice to EP or EO Technical.

The appropriate office of the Service must submit electronically, the Form 5565 for a TAM or a TEAM request to *David.W.Welty@irs.gov* for EP matters and *Wayne.C.Hardesty@irs.gov* for EO matters. To the extent feasible, the accompanying documents should be submitted to the same e-mail address (followed by a hard copy if requested by the assigned group). See section 9.07 for additional information.

The applicable office should submit additional documents that are not available in electronic form by fax to 202-283-9654 for EP matters and 202-283-8858 for EO matters or by express mail or private delivery service to the address below.

Whenever possible, all documents should contain the case number and name of the tax law specialist or actuary assigned to the pre-submission conference for the TAM or TEAM request. Documents that are being sent in hardcopy should be sent on the business day before the day that the request for a TAM or a TEAM is submitted via e-mail, so as not to delay the process. It is anticipated that most, if not all, such documents will be identified during the pre-submission conference.

The field and the taxpayer are encouraged to provide electronic versions of a proposed TAM or TEAM containing the taxpayer's deletions and legends for EP Technical's or EO Technical's use.

Address to send requests from EP or EO Examinations or EP or EO Determinations offices

Employee Plans
Internal Revenue Service
Attn: SE:T:EP:RA
1111 Constitution Ave., NW
Washington, DC 20224

Exempt Organizations
Internal Revenue Service
Attn: SE:T:EO:RA
1111 Constitution Ave., NW
Washington, DC 20224

Address to send requests from appeals offices

Internal Revenue Service
Director, Technical Services
Attn: C:AP
Franklin Court Building
1099 14th Street, NW
Washington, DC 20005

Power of attorney

.06 Any authorized representative, as described in section 9.02 of Rev. Proc. 2004-4, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230, as revised, and with the conference and practice requirements of the Statement of Procedural Rules (26 CFR part 601). It is preferred that Form 2848, *Power of Attorney and Declaration of Representative*, be used with regard to requests for a TAM or a TEAM under this revenue

procedure. An original, a copy or a fax transmission of the power of attorney is acceptable so long as its authenticity is not reasonably disputed.

SECTION 11. HOW ARE REQUESTS HANDLED?

Taxpayer notified

.01 Regardless of whether the taxpayer or the Service initiates the request for a TAM or a TEAM, the EP or EO Examinations or the EP or EO Determinations or the appeals office: (1) will notify the taxpayer that the TAM or the TEAM is being requested; and (2) at or before the time the request is submitted to EP or EO Technical, will give to the taxpayer a copy of the arguments that are being provided to EP or EO Technical in support of its position.

If the EP or EO specialist or appeals officer initiates the request for a TAM or a TEAM, he or she will give to the taxpayer a copy of the statement of the pertinent facts and the issues proposed for submission to EP or EO Technical.

This section 11.01 does not apply to a TAM or a TEAM described in section 11.08 of this revenue procedure.

Consider whether the issue or issues is appropriate for a TEAM

.02 The tax law specialist or actuary assigned to the case and reviewer should evaluate the issue(s) presented in any TEAM request to confirm that the issue(s) is appropriate for TEAM procedures. If the tax law specialist or actuary and the reviewer have reservations as to whether TEAM procedures should apply, the reviewer should discuss those reservations with both the field and the taxpayer and, if necessary, the group manager. If they agree that the TEAM procedures should not apply because the issue is too complex or cannot for practical reasons, be resolved within 60 days, the group manager should prepare a memo to the Manager, Technical asking that the case be excluded from the TEAM procedures and be treated as a TAM.

The office assigned the case will attempt to issue all TEAMs within 60 calendar days of receipt, provided that the field and the taxpayer submit all required information in a timely manner. The office will provide the field with the TEAM at the earliest possible date (whether the proposed TEAM is favorable or adverse, in whole or in part, to the taxpayer). The headquarters office will not advise the taxpayer of a proposed or final conclusion until the office assigned the case has considered a request for reconsideration under section 17 of this revenue procedure, or if no reconsideration is requested after the 30-day period to request reconsideration, whichever occurs later.

Consider whether published guidance is appropriate

.03 Whenever the assigned reviewer suspects that general guidance should be published regarding the issue presented, the reviewer will notify the Manager, Technical who in turn will notify the Manager, Technical Guidance and Quality Assurance. The Manager, Technical Guidance and Quality Assurance will then determine if the issue meets publication standards. In general, except where policy issues and concerns regarding proper administration of the tax laws require otherwise, the TAM or the TEAM will be issued in advance of published guidance.

Conference offered

.04 When notifying the taxpayer that technical advice is being requested, the EP or EO specialist or appeals officer will also tell the taxpayer about the right to a conference in EP or EO Technical if an adverse decision is indicated and will ask the taxpayer whether such a conference is desired.

If the taxpayer disagrees with the Service's statement of facts

.05 If the EP or EO specialist or appeals officer initiates the request for a TAM or a TEAM, the taxpayer has 10 calendar days after receiving the statement of facts and specific issues to submit to that specialist or officer a written statement specifying any disagreement on the facts and issues. A taxpayer who needs more than 10 calendar days must justify, in writing, the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 7. This section 11.05 does not apply to a TAM or a TEAM described in section 11.08.

After receiving the taxpayer's statement of the areas of disagreement, every effort should be made to reach agreement on the facts and the specific points at issue before the matter is

referred to EP or EO Technical. If an agreement cannot be reached, the EP or EO Examinations or the EP or EO Determinations or the appeals office will notify the taxpayer in writing. Within 10 calendar days after receiving the written notice, the taxpayer may submit a statement of the taxpayer's understanding of the facts and the specific points at issue. A taxpayer who needs more than 10 calendar days to prepare the statement of understanding must justify, in writing, the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 7. Both the statements of the taxpayer and the EP or EO Examinations or EP or EO Determinations or appeals office will be forwarded to EP or EO Technical with the request for a TAM or A TEAM.

When EP or EO Examinations or EP or EO Determinations or the Appeals Area Director, Area 7, and the taxpayer cannot agree on the material facts and the request for a TAM or a TEAM does not involve the issue of whether a letter ruling or determination letter should be modified or revoked, EP or EO Technical, at its discretion, may refuse to provide technical advice. If EP or EO Technical chooses to issue the TAM or the TEAM, it will base its advice on the facts provided by the EP or EO Examinations or EP or EO Determinations or appeals office.

If a request for a TAM or a TEAM involves the issue of whether a letter ruling or determination letter should be modified or revoked, EP or EO Technical will issue the TAM or TEAM.

If the Service disagrees with the taxpayer's statement of facts

.06 If the taxpayer initiates the action to request a TAM or A TEAM, and the taxpayer's statement of the facts and issues is not wholly acceptable to the EP or EO Examinations or the EP or EO Determinations or the appeals office, the Service will notify the taxpayer in writing of the areas of disagreement. The taxpayer has 10 calendar days after receiving the written notice to reply to it. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager, or the EP or EO Determinations manager or the Appeals Area Director, Area 7.

If an agreement cannot be reached, both the statements of the taxpayer and the EP or EO Examinations or EP or EO Determinations or appeals office will be forwarded to EP or EO Technical with the request for a TAM or a TEAM. When the disagreement involves material facts essential to the preliminary assessment of the case, the EP or EO Examinations Area manager, EP or EO Determinations manager or the Appeals Area Director, Area 7, may refuse to refer a taxpayer initiated request for the TAM or the TEAM to EP or EO Technical.

If the EP or EO Examinations or the EP or EO Determinations or the Appeals Area Director, Area 7, submits a case involving a disagreement of material facts, EP or EO Technical, at its discretion, may refuse to provide the TAM or the TEAM. If EP or EO Technical chooses to issue the TAM or the TEAM, it will base its advice on the facts provided by the EP or EO Examinations or the EP or EO Determinations or the appeals office.

If the taxpayer has not submitted the required deletions statement

.07 When the EP or EO Examinations or the EP or EO Determinations or the appeals office initiates the request for a TAM or a TEAM, the taxpayer has 10 calendar days after receiving the statement of facts and issues to be submitted to EP or EO Technical to provide the deletions statement required under § 6110 if public inspection is permitted pursuant to § 6110 (*see* section 10.05 of this revenue procedure). In such a case, if the taxpayer does not submit the deletions statement, the EP or EO Examinations or the EP or EO Determinations or the appeals office, will tell the taxpayer that the statement is required.

When the taxpayer initiates the request for a TAM or a TEAM and does not submit with the request a deletions statement as required by § 6110, EP or EO Examinations or EP or EO Determinations or the Appeals Area Director, Area 7, will ask the taxpayer to submit the statement. If EP or EO Examinations or EP or EO Determinations or the Appeals Area Director, Area 7, does not receive the deletions statement within 10 calendar days after asking the taxpayer for it, EP or EO Examinations or EP or EO Determinations or the Appeals Area Director, Area 7, may decline to submit the request for the TAM or the TEAM.

However, if EP or EO Examinations or EP or EO Determinations or the Appeals Area Director, Area 7, decides to request a TAM or a TEAM, whether initiated by the EP or EO Examinations or the EP or EO Determinations or the appeals office or by the taxpayer, in a case in which the taxpayer has not submitted the deletions statement, EP or EO Technical will make those deletions that the Commissioner of Internal Revenue determines are required by § 6110(c).

Criminal or civil fraud cases

.08 The provisions of this section (about referring issues upon the taxpayer's request, obtaining the taxpayer's statement of the areas of disagreement, telling the taxpayer about the referral of issues, giving the taxpayer a copy of the arguments submitted, submitting proposed deletions, and granting conferences in EP or EO Technical) do not apply to a TAM or a TEAM described in § 6110(g)(5)(A) that involves a matter that is the subject of or is otherwise closely related to a criminal or civil fraud investigation, or a jeopardy or termination assessment.

In these cases, a copy of the TAM or the TEAM is given to the taxpayer after all proceedings in the investigations or assessments are complete, but before the Service mails the notice of intention to disclose the TAM or the TEAM under § 6110(f)(1). The taxpayer may then provide the statement of proposed deletions to EP or EO Technical.

SECTION 12. HOW DOES A TAXPAYER APPEAL AN EP OR EO MANAGER'S OR AN APPEALS AREA DIRECTOR'S DECISION NOT TO SEEK TECHNICAL ADVICE?

Taxpayer notified of decision not to seek a TAM or TEAM

.01 If the EP or EO specialist's or the appeal's referral of an issue to EP or EO Technical for a TAM or a TEAM does not warrant referral, the EP or EO specialist or the appeals officer will tell the taxpayer. A taxpayer's request for such a referral will not be denied merely because EP or EO Technical provided legal advice, other than advice furnished pursuant to this revenue procedure, to the EP or EO Examinations or EP or EO Determinations or appeals office on the matter.

Taxpayer may request review of decision not to seek a TAM or a TEAM

.02 The taxpayer may request review of the decision of the EP or EO specialist or the appeals officer not to request a TAM or a TEAM in all instances. To do so, the taxpayer must submit to that specialist or officer, within 10 calendar days after being told of the decision, a written statement of the facts, law, and arguments on the issue and the reasons why the taxpayer believes the matter should be referred to EP or EO Technical for a TAM or a TEAM. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager or EP or EO Determinations manager or the appropriate appeals office.

EP or EO Examinations Area manager or EP or EO Determinations manager or Appeals Area Director, Area 7, determines whether technical advice will be sought

.03 The EP or EO specialist or the appeals officer submits the taxpayer's statement through proper channels to the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 7, along with the EP or EO specialist's or the appeals officer's statement of why the issue should not be referred to EP or EO Technical. The manager or chief determines, on the basis of the statements, whether a TAM or a TEAM will be requested.

If the manager or chief determines that a TAM or a TEAM is not warranted and proposes to deny the request, the taxpayer is told in writing about the determination. In the letter to the taxpayer, the manager or chief states the reasons for the proposed denial (except in unusual situations when doing so would be prejudicial to the best interests of the Government). The taxpayer has 10 calendar days after receiving the letter to notify the manager or chief of agreement or disagreement with the proposed denial.

Manager or area director's decision may be reviewed but not appealed

.04 The taxpayer may not appeal the decision of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 7, not to request a TAM or a TEAM from EP or EO Technical. However, if the taxpayer does not agree with the proposed denial, all data on the issue for which the TAM or the TEAM has been sought, including the taxpayer's written request and statements, will be submitted to the Commissioner,

Tax Exempt and Government Entities Division or the Director, Appeals, Technical Services as appropriate.

The Commissioner, Tax Exempt and Government Entities Division through the Director, Employee Plans, or the Director, Exempt Organizations or, if appropriate, the Chief, Appeals will review the proposed denial solely on the basis of the written record, and no conference will be held with the taxpayer or the taxpayer's representative. The appropriate Director or Chief or his or her representative may consult with EP or EO Technical and the Office of Chief Counsel, if necessary, and will notify the EP or EO Examinations or the EP or EO Determinations or the area appeals office within 45 calendar days of receiving all the data regarding the request for a TAM or a TEAM whether the proposed denial is approved or disapproved. The EP or EO Examinations or the EP or EO Determinations or area appeals office will then notify the taxpayer.

While the matter is being reviewed, the EP or EO Examinations office or the EP or EO Determinations office or the area appeals office suspends action on the issue (except when the delay would prejudice the Government's interest).

The provisions of this revenue procedure regarding review of the proposed denial of a request for a TAM or a TEAM continue to be applicable in those situations in which the authority normally exercised by the EP or EO Examinations Area manager, the EP or EO Determinations manager, or the Appeals Area Director, Area 7, has been delegated to another official.

SECTION 13. HOW ARE REQUESTS FOR TAMs and TEAMs WITHDRAWN?

Taxpayer notified

.01 Once a request for a TAM or a TEAM has been sent to EP or EO Technical, only an EP or EO Examinations Area manager, an EP or EO Determinations manager or an Appeals Area Director, Area 7 may withdraw that request for the TAM or the TEAM. He or she may ask to withdraw a request at any time before the responding transmittal memorandum transmitting the TAM or the TEAM is signed.

The EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director, Area 7, as appropriate, must notify the taxpayer in writing of an intent to withdraw the request for the TAM or the TEAM except—

- (1) when the period of limitations on assessment is about to expire and the taxpayer has declined to sign a consent to extend the period, or
- (2) when such notification would be prejudicial to the best interests of the Government.

If the taxpayer does not agree that the request for a TAM or a TEAM should be withdrawn, the procedures in section 12 of this revenue procedure must be followed.

EP or EO Technical may provide views

.02 When a request for a TAM or a TEAM is withdrawn, EP or EO Technical may send its views to the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7, when acknowledging the withdrawal request. In an appeals case, acknowledgment of the withdrawal request should be sent to the appropriate appeals office, through the Director, Technical Services, C:AP. In appropriate cases, the subject matter may be published as a revenue ruling or as a revenue procedure.

SECTION 14. HOW ARE CONFERENCES SCHEDULED?

If requested, offered to the taxpayer when adverse TAM or TEAM proposed

.01 If, after the TAM or the TEAM is analyzed, it appears that a TAM or a TEAM adverse to the taxpayer will be given, and if a conference has been requested, the taxpayer will be informed, by telephone if possible, of the time and place of the conference.

Timeline

.02 The conference for a TAM must be held within 21 calendar days after the taxpayer is contacted.

Within 20 calendar days of receipt of a TEAM request, the assigned group in EP Technical or in EO Technical will analyze the facts and offer the taxpayer a conference of right which will be scheduled within 10 calendar days of the date of the offer of the conference.

If conferences are being arranged for more than one request for a TAM or a TEAM for the same taxpayer, they will be scheduled to cause the least inconvenience to the taxpayer. If considered appropriate, EP or EO Technical will notify the EP or EO specialist or the appeals officer of the scheduled conference and will offer the EP or EO specialist or the appeals officer the opportunity to attend the conference. The Commissioner, Tax Exempt and Government Entities Division, the Chief, Appeals, the EP or EO Examinations Area manager, the EP or EO Determinations manager, or the Appeals Area Director, Area 7 may designate other Service representatives to participate in the conference in lieu of, or in addition to, the EP or EO specialist or the appeals officer.

21-day period may be extended if justified and approved

.03 In the case of a TAM, an extension of the 21-day period will be granted only if the taxpayer justifies it in writing, and the group manager (or his or her delegate) of the office to which the case is assigned approves it. No extension will be granted without the approval of the group manager (or his or her delegate). The taxpayer (or an authorized representative) must notify the EP Specialist or the EO Specialist or the appeals officer of the request for an extension. Except in rare and unusual circumstances, EP or EO Technical will not agree to an extension of more than 10 working days beyond the end of the 21-day period. No extension of the ten day period for TEAMs is allowed.

The taxpayer's request for an extension must be submitted before the end of the 21-day period, and should be submitted sufficiently before the end of this period to allow EP or EO Technical to consider, and either approve or deny, the request before the end of the 21-day period. If unusual circumstances near the end of the period make a timely written request impractical, the taxpayer (or an authorized representative) should orally inform the assigned tax law specialist or actuary before the end of the period about the problem and about the forthcoming written request for an extension. The written request for an extension must be submitted to EP or EO Technical promptly after the oral request. The taxpayer will be told promptly (and later in writing) of the approval or denial of the requested extension.

Denial of extension cannot be appealed

.04 There is no right to appeal the denial of a request for an extension of a TAM. If EP or EO Technical is not advised of problems with meeting the 21-day period, or if the written request is not sent promptly after EP or EO Technical is notified of problems with meeting the 21-day period, the TAM will be processed on the basis of the existing record.

Entitled to one conference of right

.05 A taxpayer is entitled by right to only one conference in EP or EO Technical except as provided in section 14.09 of this revenue procedure. This conference is normally held at the group level in EP Technical or EO Technical, whichever is appropriate. It is attended by a person who has authority to sign the transmittal memorandum discussed in section 16.13 on behalf of the group manager.

When more than one group has taken an adverse position on an issue in the request, or when the position ultimately adopted by one group will affect another group's determination, a representative from each group with authority to sign for the group manager will attend the conference. If more than one subject is discussed at the conference, the discussion constitutes the conference of right for each subject discussed.

To have a thorough and informed discussion of the issues, the conference usually is held after the group has had an opportunity to study the case. However, the taxpayer may request that the conference of right be held earlier in the consideration of the case than the Service would ordinarily designate.

The taxpayer has no right to appeal the action of a group to any other Service official. But see section 14.09 for situations in which the Service may offer additional conferences.

Conference may not be taped

.06 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Conference may be delayed to address a request for relief under § 7805(b)

.07 In the event of a tentative adverse determination, the taxpayer may request in writing a delay of the conference so that the taxpayer can prepare and submit a brief requesting relief under § 7805(b) (discussed in section 19 of this revenue procedure). The group manager (or his or her delegate) of the office to which the case is assigned will determine whether to grant or deny the request for delaying the conference. If such request is granted, the Service will schedule a conference on the tentatively adverse position and the § 7805(b) relief request within 10 days of receiving the taxpayer's § 7805(b) request. See section 19.06 of this revenue procedure for the conference procedures if the § 7805(b) request is made after the conference on the substantive issues has been held.

Service makes tentative recommendations

.08 The senior Service representative at the conference ensures that the taxpayer has full opportunity to present views on all the issues in question. The Service representatives explain the tentative decision on the substantive issues.

If, in the instance of a TAM, the taxpayer requests relief under § 7805(b) (regarding limitation of retroactive effect), the Service representatives will discuss the tentative recommendation concerning the request for relief and the reason for the tentative recommendation. Because a request for § 7805(b) relief is mandatory pursuant to section 4.04 of this revenue procedure, a TEAM cannot be requested.

No commitment will be made as to the conclusion that the Service will finally adopt regarding any issue, including the outcome of the § 7805(b) request for relief.

Additional conferences may be offered

.09 In the case of a TAM, the Service will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed on a new issue or on the same issue but on grounds different from those discussed at the first conference. In the case of a TEAM, once the conference of right is held, no further conferences will be offered unless the case is first excluded from the TEAM procedure and treated as a TAM as described in section 3 of this revenue procedure.

When a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, the taxpayer has no right to another conference if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limitation on the number of conferences to which a taxpayer is entitled does not prevent EP or EO Technical from inviting a taxpayer to attend additional conferences, including conferences with an official higher than the group level, if EP or EO Technical personnel think they are necessary. Such conferences are not offered as a matter of course simply because the group has reached an adverse decision. In general, conferences with higher level officials are offered only if the Service determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

In accordance with section 14.02 of this revenue procedure, the EP or EO specialist or the appeals officer may be offered the opportunity to participate in any additional taxpayer's conference, including a conference with an official higher than the group level. Section 14.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

Additional information submitted after the conference

.10 After the conference, the taxpayer must furnish to EP or EO Technical, whichever is applicable, any additional data, lines of reasoning, precedents, etc., that the taxpayer proposed and discussed at the conference but did not previously or adequately present in writing. This additional information must be submitted by letter with a penalties of perjury statement in the form described in section 16.10 of this revenue procedure.

For TAMs and TEAMs the taxpayer must also send a copy of the additional information to the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7, for comment. Any comments on additional information by Service personnel must be furnished promptly to the appropriate group in EP or EO Technical. If the EP or EO

Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7, does not have any comments, he or she must notify the group representative promptly.

If the additional information has a significant impact on the facts in the request for a TAM or a TEAM, EP or EO Technical will ask EP or EO Examinations or EP or EO Determinations or the Appeals Area Director, Area 7, for comments on the facts contained in the additional information submitted. The EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7, will give the additional information prompt attention.

In the case of a TAM, if the additional information is not received from the taxpayer within 21 calendar days, the TAM will be issued on the basis of the existing record. In the case of a TEAM, if the additional information is not received within 15 calendar days the TEAM will be issued based on the existing record.

An extension of the 21-day period for TAMs may be granted only if the taxpayer justifies it in writing, and the group manager (or his or her delegate) of the office to which the case is assigned approves the extension. Such extension will not be routinely granted. The procedures for requesting an extension of the 21-day period and notifying the taxpayer of the Services's decision are the same as those in sections 14.03 and 14.04 of this revenue procedure. There is no extension of the 15-day period for TEAMS.

Normally held by telephone

.11 The conference will be conducted by telephone, unless the taxpayer or the field requests that the conference be held in person. The taxpayer will be advised when to call the Service representatives (not a toll-free call). In no event will the conference be delayed to provide an in-person conference rather than a telephone conference.

In accordance with section 14.02 of this revenue procedure, the EP or EO specialist or appeals officer will be offered the opportunity to participate in the telephone conference. Section 14.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

SECTION 15. HOW IS STATUS OF REQUEST OBTAINED?

Taxpayer or taxpayer's representative may request status from EP or EO Examinations or EP or EO Determinations or appeals office

.01 The taxpayer or the taxpayer's representative may obtain information on the status of the request for a TAM or a TEAM by contacting the EP or EO Examinations office or the EP or EO Determinations office or the appeals office that requested the TAM or the TEAM. *See* section 16.08 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer's representative. *See* section 17.03 of this revenue procedure regarding discussions of the contents of the TAM or the TEAM with the taxpayer or the taxpayer's representative.

EP or EO Technical will give status updates to EP or EO Examinations or EP or EO Determinations or Appeals Area Director, Area 7

.02 The group representative or manager to whom the TAM or the TEAM request is assigned will give status updates on the request once a month to the EP or EO Examination Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 7. In addition, an EP or EO Examinations Area manager or an EP or EO Determinations manager or the Appeals Area Director, Area 7 may get current information on the status of the request for a TAM or a TEAM by calling the person whose name and telephone number are shown on acknowledgment of receipt of the request for the TAM or the TEAM.

See section 16.09 of this revenue procedure about discussing the final conclusions with the EP or EO Examinations office or the EP or EO Determinations office or the appeals office. Further, the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7 will be notified at the time the TAM or the TEAM is mailed.

SECTION 16. HOW DOES EP OR EO TECHNICAL PREPARE THE TAM OR THE TEAM?

Delegates authority to group managers

.01 The authority to issue a TAM or a TEAM on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division has largely been delegated to the managers of the Employee Plans Rulings & Agreements Technical and Actuarial groups, and the Technical Guidance and Quality Assurance group (collectively referred to as “EP Technical”); and of the Exempt Organizations Rulings & Agreements Technical groups and the Technical Guidance and Quality Assurance group (collectively referred to as “EO Technical”)

Determines whether request has been properly made

.02 A request for a TAM or a TEAM generally is given priority and processed expeditiously. As soon as the request for a TAM or a TEAM is assigned, the technical employee analyzes the file to see whether it meets all of the requirements of sections 7, 8, and 10 of this revenue procedure.

However, if the request does not comply with the requirements of section 10.04 of this revenue procedure relating to the deletions statement, the Service will follow the procedure in the last paragraph of section 11.05 of this revenue procedure.

Contacts the EP or EO Examinations or EP or EO Determinations or appeals office to discuss issues

.03 Upon receipt of a request for a TAM or a TEAM, a representative of the group assigned the TAM or the TEAM will telephone the EP or EO Examinations office or the EP or EO Determinations office or the appeals office to acknowledge receipt of the TAM or the TEAM and to establish a point of contact. Within 21 calendar days from the receipt of a TAM or within five calendar days for a TEAM, the tax law specialist or actuary should contact the EP or EO specialist or appeals officer to discuss the procedural and substantive issues in the request that come within the group’s jurisdiction.

Informs the EP or EO Examinations or EP or EO Determinations or appeals office if any matters in the request have been referred to another group or office

.04 If the technical advice request concerns matters within the jurisdiction of more than one group or office, a representative of the group that received the original technical advice request generally informs the EP or EO Examinations office or EP or EO Determinations office or the appeals office within 21 calendar days of receiving the request that—

(1) the matters within the jurisdiction of another group or office have been referred to the other group or office for consideration, and

(2) a representative of the other group or office will contact the EP or EO Examinations office or the EP or EO Determinations office or the appeals office about the referral of the technical advice request within 21 calendar days after receiving it in accordance with section 16.03 above.

If the request for a TEAM involves more than one office, all of the offices involved should have had the opportunity to participate in the pre-submission conference. Within five calendar days of receipt, the office with the primary responsibility over the TEAM will confirm that all of the offices have received copies of the TEAM request and will advise the submitting office as to who is assigned the TEAM among the various offices. If, after receiving the TEAM request, the office with jurisdiction over the TEAM determines that coordination with another office is required, the tax law specialist or actuary will also notify of the new coordination within five calendar days of the receipt of the TEAM.

Informs the EP or EO Examinations or EP or EO Determinations or appeals office if additional information is needed

.05 The group representative will inform the EP or EO Examinations office or the EP or EO Determinations office or the appeals office that the case is being returned if substantial additional information is required to resolve an issue. Cases also should be returned for additional information when significant unresolved factual variances exist between the statement of facts submitted by the EP or EO Examinations office or the EP or EO Determinations or the appeals office and the taxpayer. They should also be returned if major procedural problems cannot be resolved by telephone. The EP or EO Examinations office or the EP or EO Determinations office or the appeals office should promptly notify the taxpayer of the decision to return the case for further factual development or other reasons.

If only minor procedural deficiencies exist, the group will request the additional information in the most expeditious manner without returning the case.

**Informs the EP or EO
Examinations or EP or EO
Determinations or appeals office
of the tentative conclusion**

.06 If all necessary information has been provided, the group representative informs the EP or EO Examinations office or the EP or EO Determinations office or the appeals office within 21-calendar days after receiving the information for a TAM and within five calendar days after receiving the information for a TEAM of his or her tentative conclusion.

**If a tentative conclusion has not
been reached, gives date estimated
for tentative conclusion**

.07 If a tentative conclusion has not been reached because of the complexity of the issue, the group representative informs the EP or EO Examinations office or the EP or EO Determinations office or the appeals office of the estimated date the tentative conclusion will be made.

**Advises the EP or EO
Examinations or EP or EO
Determinations or appeals office
that preliminary conclusion
not final**

.08 Because the group representative's tentative conclusion may change during the preparation and review of the TAM or the TEAM, the tentative conclusion should not be considered final. Therefore, neither the group representative nor the EP or EO Examinations office or the EP or EO Determinations or the appeals office should advise the taxpayer or the taxpayer's representative of the tentative conclusion before the scheduling of the adverse conference or between the scheduling and the commencement of the adverse conference.

**Advises the EP or EO
Examinations or EP or EO
Determinations or appeals office
of final conclusions**

.09 In all cases, the group representative should inform the EP or EO specialist or appeals officer of EP or EO Technical's final conclusions. The EP or EO specialist or the appeals officer should be offered the opportunity to discuss the issues and EP or EO Technical's final conclusions before the TAM or the TEAM is issued.

**If needed, requests additional
information**

.10 If, following the initial contact referenced in section 16.03 of this revenue procedure, it is determined, after discussion with the appropriate group manager or reviewer, that additional information is needed, a group representative will obtain the additional information from the taxpayer, the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7, in the most expeditious manner possible. Any additional information requested from the taxpayer by EP or EO Technical must be submitted by letter, accompanied by a penalties of perjury statement, within 21 calendar days after the request for information is made. In the case of a TEAM, any additional information requested from the taxpayer by the Headquarter's office must be submitted by letter with a penalties of perjury statement within five calendar days after the request for information is made.

**Request for additional
information by fax**

(1) To facilitate prompt action on TAM and TEAM requests, the Service may request any additional information from the taxpayer by fax.

A request to fax a copy of additional information to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original TAM or TEAM request or prior to the mailing of the request for additional information. The request to fax must contain the fax number of the taxpayer or the taxpayer's authorized representative to and from whom the document is to be faxed.

Because of the unsecured nature of a fax transmission, the Service will take certain precautions to protect confidential information. For example, the Service will use a cover sheet that identifies the intended recipient of the fax and the number of pages transmitted, that does not identify the taxpayer by name or identifying and that contains a statement prohibiting unauthorized disclosure of the document if a recipient of the faxed document is not the intended recipient of the fax. Also, for example, the cover sheet should be faxed in an order in which it will become the first page covering the faxed document.

Penalties of perjury statement

(2) Additional information submitted to EP or EO Technical 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 the information and such facts are true, correct, and complete."** This declaration must be signed and dated by the taxpayer, not the taxpayer's representative. A stamped signature or a faxed signature is not permitted.

(3) A written request for an extension of time to submit additional information must be received by EP or EO Technical within the 21-day period for TAMs (5-day period for TEAMS), giving compelling facts and circumstances to justify the proposed extension. The group manager (or his or her delegate) of the office to which the case is assigned will determine whether to grant or deny the request for an extension. Except in rare and unusual circumstances, EP or EO Technical will not agree to an extension of more than 10 working days beyond the end of the 21-day period in the case of a TAM or a 5-day period in the case of a TEAM. There is no right to appeal the denial of a request for an extension.

(4) If EP or EO Technical does not receive the additional information within 21 calendar days, plus any extensions granted by the appropriate group manager (or his or her delegate), EP or EO Technical will process the TAM or the TEAM based on the existing record.

Requests taxpayer to send additional information to EP or EO Technical and a copy to EP or EO Examinations or EP or EO Determinations or Appeals Area Director, Area 7

.11 Whether or not requested by the Service, any additional information submitted by the taxpayer should be sent to the headquarters office. Generally, the taxpayer needs only to submit the original of the additional information to EP or EO Technical. However, in appropriate cases, EP or EO Technical may request additional copies of the information.

Also, the taxpayer must send a copy to either the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7, for comment. Any comments must be furnished promptly to the appropriate group in EP or EO Technical. If the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7, does not have any comments, he or she must notify the group representative promptly.

Informs the taxpayer when requested deletions will not be made

.12 Generally, before replying to the request for a TAM or a TEAM, EP or EO Technical informs the taxpayer orally or in writing of the material likely to appear in the TAM or the TEAM that the taxpayer proposed be deleted but that the Service has determined should not be deleted.

If so informed, the taxpayer may submit within 10 calendar days any further information or other arguments supporting the taxpayer's proposed deletions.

The Service will attempt to resolve all disagreements about proposed deletions before EP or EO Technical replies to the request for a TAM or a TEAM. However, the taxpayer does not have the right to a conference to resolve any disagreements about material to be deleted from the text of the TAM or the TEAM. These matters, however, may be considered at any conference otherwise scheduled for the request.

Prepares reply in two parts

.13 EP or EO Technical's replies to a TAM or a TEAM request is in two parts. Each part identifies the taxpayer by name, address, identification number, and year or years involved.

The first part of the reply is a transmittal memorandum. In unusual cases, it is a way of giving the EP or EO Examinations office or the EP or EO Determinations office or the appeals office administrative or other information that under the nondisclosure statutes or for other reasons may not be discussed with the taxpayer.

The second part is the TAM or the TEAM, which contains—

- (1) a statement of the issues;
- (2) a statement of the facts pertinent to the issues;
- (3) a statement of the pertinent law, tax treaties, regulations, revenue rulings, and other precedents published in the Internal Revenue Bulletin, and court decisions;
- (4) a discussion of the rationale underlying the conclusions reached by EP or EO Technical; and
- (5) the conclusions of EP or EO Technical.

The conclusions give direct answers, whenever possible, to the specific issues raised by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office. However, EP or EO Technical is not bound by the precise statement of the issues as submitted by the taxpayer or by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office and may reframe the issues to be answered in the TAM or the TEAM. The discussion in the TAM or the TEAM of the issues will be in sufficient detail so that the EP or EO Examinations or EP or EO Determinations or appeals officials will understand the reasoning underlying the conclusion.

Accompanying a TAM or a TEAM subject to § 6110, is a notice under § 6110(f)(1) of intention to disclose the TAM or the TEAM (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

Routes replies to appropriate office

.14 Replies to requests for TAMs and TEAMS from EO Examinations Area managers and EO Determinations managers are addressed to:

Internal Revenue Service
Attn: EO Mandatory Review
MC 4920 DAL
1100 Commerce Street
Dallas, TX 75242

The EO Mandatory Review Staff will ensure that copies are forwarded to the EO Examinations Area manager or the EO Determinations manager.

Replies to requests for TAMs (1) from EP Examinations Area managers and (2) from EP Determinations managers that were sent to Headquarters before November 1, 2000, are addressed to:

Internal Revenue Service
Attn: EP Special Review — Room 1550
SE:T:EP:E:PR:SR:Technical Advice Coordinator
P.O. Box 13163
Baltimore, MD 21203

The EP Special Review Staff will ensure that copies are forwarded to the applicable EP manager.

Replies to requests for TAMs or TEAMS from EP Determinations managers sent to Headquarters after October 31, 2000, are addressed to:

Internal Revenue Service
Attn: EP Determinations Quality Assurance
P.O. Box 2508
Cincinnati, OH 45201

Replies to requests for TAMs and TEAMS from the Appeals Area Director, Area 7, are routed to the appropriate appeals office through Technical Services, C:AP.

SECTION 17. HOW DOES EP OR EO EXAMINATIONS or EP OR EO DETERMINATIONS OR AN APPEALS OFFICE USE THE TAMs AND TEAMS?

Generally applies advice in processing the taxpayer's case

.01 The EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 7, must process the taxpayer's case on the basis of the conclusions in the TAM or the TEAM unless—

(1) the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director, Area 7, decides that the conclusions reached by EP or EO Technical in a TAM or a TEAM should be reconsidered (the reconsideration process may include a conference held with the EP or EO specialist or appeals officer that requested the TAM or the TEAM and the tax law specialist or actuary who drafted the TAM or the TEAM), or

(2) the Appeals Area Director, Area 7, in the case of a TAM or a TEAM unfavorable to the taxpayer, decides to settle the issue in the usual manner under existing authority.

Subject to a request for reconsideration of the conclusions in a TAM or a TEAM, EP or EO Examinations or EP or EO Determinations must follow the conclusions in a TAM or a TEAM as to all issues and the Appeals Area Director, Area 7, must follow the conclusions in a TAM or a TEAM on issues of an organization's/plan's status or qualification. Thus, if the TAM or the TEAM received by EP or EO Examinations or EP or EO Determinations concerns an organization's/plan's status or qualification, the organization/plan has no appeal to the appeals office on those specific issues.

Reconsideration

.02 The EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7 has 30 calendar days after receipt of a TAM or a TEAM to either formally request reconsideration or give the adopted TAM or TEAM to the taxpayer. Requests for TAM or TEAM reconsideration must describe with specificity the errors in the TAM or TEAM analysis and conclusions. Requests for reconsideration should not reargue points raised in the initial request, but should instead focus on points that the TAM or the TEAM overlooked or misconstrued in the arguments by the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7, in support of their request. The Headquarters office will consider the request for reconsideration of a TEAM and will, if possible, rule on that request within 30 calendar days of receipt. The Headquarters office may request further submissions from the field or the taxpayer, but the parties should make no additional submissions in the absence of such a request.

If the field does not request reconsideration of a TAM or a TEAM, the TAM or TEAM will take effect when the field provides a copy of the adopted TAM or TEAM to the taxpayer, or at the end of the 30-day period following the issuance of the TAM or the TEAM to the field. If reconsideration is requested for a TEAM, the TEAM will take effect five calendar days after the TEAM is ruled on.

Discussion with the taxpayer

.03 EP or EO Technical will not discuss the contents of the TAM or the TEAM with the taxpayer or the taxpayer's representative until the taxpayer has been given a copy by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office

Gives copy to the taxpayer

.04 The EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7, only after adopting the TAM or the TEAM, gives the taxpayer (1) a copy of the TAM or the TEAM described in section 16.13, and (2) the notice under § 6110(f)(1) of intention to disclose the TAM or the TEAM (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

This requirement does not apply to a TAM or a TEAM involving a criminal or civil fraud investigation, or a jeopardy or termination assessment, as described in section 11.08 of this revenue procedure, or documents to which § 6104 (document open to public inspection) applies as described in section 10.03.

Taxpayer may protest deletions not made

.05 After receiving the notice under § 6110(f)(1) of intention to disclose the TAM or the TEAM, the taxpayer may protest the disclosure of certain information in it. The taxpayer must submit a written statement within 20 calendar days identifying those deletions not made by the Service that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the TAM or the TEAM proposed to be open to public inspection with brackets around deletions proposed by the taxpayer that have not been made by EP or EO Technical.

Generally, EP or EO Technical considers only the deletion of material that the taxpayer has proposed be deleted or other deletions as required under § 6110(c) before the EP or EO Technical reply is sent to the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7. Within 20 calendar days after it receives the taxpayer's response to the notice under § 6110(f)(1), EP or EO Technical must mail the taxpayer its final administrative conclusion about the deletions to be made.

When no copy is given to the taxpayer

.06 If EP or EO Technical tells the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7, that a copy of the TAM or the TEAM should not be given to the taxpayer and the taxpayer requests a copy, the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director, Area 7, will tell the taxpayer that no copy will be given.

SECTION 18. WHAT IS THE EFFECT OF A TAM OR A TEAM?

Applies only to the taxpayer for whom a TAM or a TEAM was requested

.01 A taxpayer may not rely on a TAM or a TEAM issued by the Service for another taxpayer.

Usually applies retroactively

.02 Except when stated otherwise, a holding in a TAM is applied retroactively, unless the Commissioner, Tax Exempt and Government Entities Division exercises discretionary authority under § 7805(b) to limit the retroactive effect of the holding. Section 18.06 below lists the criteria necessary for granting § 7805(b) relief, and section 18 of this revenue procedure describes the effect of § 7805(b) relief. Because § 7805(b) relief is mandatory technical advice, it cannot be the subject of a TEAM.

Generally applied retroactively to modify or revoke prior TAM or TEAM

.03 A holding that modifies or revokes a holding in a prior TAM or TEAM is applied retroactively, with one exception. If the new holding is less favorable to the taxpayer than the earlier one, it generally is not applied to the period when the taxpayer relied on the prior holding in situations involving continuing transactions.

Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked

.04 If a TAM or a TEAM relates to a continuing action or a series of actions, ordinarily it is applied until specifically withdrawn or until the conclusion is modified or revoked by enactment of legislation, ratification of a tax treaty, a decision of the United States Supreme Court, or the issuance of regulations (temporary or final), a revenue ruling, or other statement published in the Internal Revenue Bulletin. Publication of a notice of proposed rulemaking does not affect the application of a TAM or a TEAM.

Applies to continuing action or series of actions until material facts change

.05 A taxpayer is not protected against retroactive modification or revocation of a TAM or a TEAM involving a continuing action or a series of actions occurring after the material facts on which the TAM or the TEAM is based have changed.

Does not apply retroactively under certain conditions

.06 Generally, a TAM that modifies or revokes a letter ruling or another TAM or TEAM or a determination letter is not applied retroactively either to the taxpayer to whom or for whom the letter ruling or TAM or TEAM or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling or TAM or TEAM or determination letter if—

- (1) there has been no misstatement or omission of material facts;
- (2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling or TAM or TEAM or determination letter was based;
- (3) there has been no change in the applicable law;
- (4) in the case of a letter ruling, it was originally issued on a prospective or proposed transaction; and

(5) the taxpayer directly involved in the letter ruling or TAM or TEAM or determination letter acted in good faith in relying on the letter ruling or TAM or TEAM or determination letter, and the retroactive modification or revocation would be to the taxpayer's detriment. For example, the tax liability of each employee covered by a letter ruling or TAM or TEAM or determination letter relating to a pension plan of an employer is directly involved in the letter ruling or TAM or TEAM or determination letter. However, the tax liability of members of an industry is not directly involved in a letter ruling or TAM or TEAM or determination letter issued to one of the members, and the holding in a modification or revocation of a letter ruling or TAM or TEAM or determination letter to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not obtain the nonretroactive application to one client of a modification or revocation of a letter ruling or TAM or determination letter previously issued to another client.

When a letter ruling or determination letter to a taxpayer or a TAM or a TEAM involving a taxpayer is modified or revoked with retroactive effect, the notice to the taxpayer, except in fraud cases, sets forth the grounds on which the modification or revocation is being made and the reason why the modification or revocation is being applied retroactively.

In order for a TAM that modifies or revokes a letter ruling or another TAM or TEAM or a determination letter not to be applied retroactively either to the taxpayer to whom or for whom the letter ruling, TAM or TEAM or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling, TAM or TEAM or determination letter, such taxpayer generally must request relief under § 7805(b) in the manner described in section 19 below.

SECTION 19. HOW MAY RETROACTIVE EFFECT BE LIMITED?

Commissioner has discretionary authority under § 7805(b)

.01 Under § 7805(b) the Commissioner or the Commissioner's delegate has the discretion to prescribe the extent, if any, to which a TAM will be applied without retroactive effect.

Taxpayer may request Commissioner to exercise authority

.02 A taxpayer who has received a TAM or a TEAM or for whom a TAM request is pending may request that the Commissioner, Tax Exempt and Government Entities Division, the Commissioner of Internal Revenue's delegate, exercise the discretionary authority under § 7805(b) to limit the retroactive effect of any holding stated in the TAM, which may still be pending, or the TEAM, which must have been issued, or to limit the retroactive effect of any subsequent modification or revocation of a TAM or a TEAM through a TAM.

Form of request to limit retroactivity—before an examination

.03 When a TAM or a TEAM that concerns a continuing transaction is modified or revoked by, for example, a subsequent revenue ruling or final regulations, a request to limit the retroactive effect of the modification or revocation of the TAM or the TEAM must be made in the form of a request for a letter ruling if submitted before examination of the return that contains the transaction that is the subject of the request for the letter ruling. *See* Rev. Proc. 2004-4.

Form of request to limit retroactivity—during course of an examination

.04 When, during the course of an examination of a taxpayer's return by EP or EO Examinations or consideration by the Appeals Area Director, Area 7, a taxpayer is informed that EP or EO Examinations or the Appeals Area Director, Area 7, recommends that a TAM or a TEAM be modified or revoked, a request to limit the retroactive application of the modification or revocation of the TAM or the TEAM must itself be made in the form of a request for a TAM. *See* sections 7, 8 and 10 of this revenue procedure and sections 19.07 and 19.08 below.

The taxpayer must also submit a statement that the request is being made pursuant to § 7805(b). This statement must also indicate the relief requested and give the reasons and arguments in support of the relief requested. It must also be accompanied by any documents bearing on the request. The explanation should discuss the five items listed in section 18.06 of this revenue procedure as they relate to the taxpayer's situation.

The taxpayer's request, including the statement that the request is being made pursuant to § 7805(b), must be forwarded by EP or EO Examinations or the Appeals Area Director, Area 7, to EP or EO Technical for consideration.

Form of request to limit retroactivity—technical advice that does not modify or revoke prior memorandum

.05 A request to limit the retroactive effect of a holding in a TAM that does not modify or revoke a TAM may be made as part of that TAM request, either initially, or at any time before the TAM is issued by EP or EO Technical. In such a case, the taxpayer must also submit a statement in support of the application of § 7805(b), as described in section 19.04 above.

Taxpayer's right to a conference

.06 When a request for a TAM concerns only the application of § 7805(b), the taxpayer has the right to a conference in EP or EO Technical in accordance with the provisions of section 14 of this revenue procedure.

If the request for application of § 7805(b) is included in the request for a TAM on the substantive issues or is made before the conference of right on the substantive issues, the § 7805(b) issues will be discussed at the taxpayer's one conference of right.

If the request for the application of § 7805(b) is made as part of a pending TAM request after a conference has been held on the substantive issues, and the Service determines that there is justification for having delayed the request, then the taxpayer will have the right to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue.

Exhaustion of administrative remedies — employee plans determination letter requests

.07 Where the applicant has requested EP Determinations to seek a TAM on the applicability of § 7805(b) relief to a qualification issue under § 401(a) pursuant to a determination letter request, the applicant's administrative remedies will not be considered exhausted until EP Technical has a reasonable time to act on the request for a TAM. (*See* section 20 of Rev. Proc. 2004-6.)

Exhaustion of administrative remedies — exempt organization matters

.08 Where a TAM has been requested pursuant to an exempt organization's request for § 7805(b) relief from the retroactive application of an adverse determination within the meaning of § 7428(a)(1), the exempt organization's administrative remedies will not be considered exhausted, within the meaning of § 7428(b)(2), until EO Technical has a reasonable time to act on the request for a TAM.

SECTION 20. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

Rev. Proc. 2003-5 is superseded

SECTION 21. EFFECTIVE DATE

This revenue procedure is effective January 5, 2004.

SECTION 22. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 6.03, 9, 10.01, 10.02, 11.03, 11.06, 11.07, 12.02, 12.03, 13.01, 14.03, 14.10, 16.10, 16.12, 17.05, 19.03, 19.04, and 19.05. This information is required to evaluate and process the request for a TAM or a TEAM. In addition, this information will be used to help the Service delete certain information from the text of the TAM or the TEAM before it is made available for public inspection, as required by § 6110. The collections of information are required to obtain a TAM or a TEAM. The likely respondents are businesses or other for-profit institutions and not-for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 1,950 hours.

The estimated annual burden per respondent/recordkeeper varies from 4 hours to 60 hours, depending on individual circumstances, with an estimated average of 19.5 hours. The estimated number of respondents and/or recordkeepers is 100.

The estimated annual frequency of responses is one request per applicant.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding how this revenue procedure applies to employee plans matters, please contact the Employee Plans Customer Assistance Service at 1-877-829-5500 (a toll-free number) or Mr. Rubin at (202) 283-9888 (not a toll-free number). For exempt organizations matters, please contact Mr. Wayne Hardesty at (202) 283-8976 (not a toll-free number).

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