



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

May 5, 2015

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Affected IRM: [4.75.10](#), [4.75.16](#),
[4.75.17](#)

Expiration Date: May 5, 2017

MEMORANDUM FOR ALL EO EXAMINATIONS MANAGERS AND
ALL EO EXAMINATIONS REVENUE AGENTS

FROM: Margaret Von Lienen /s/
Director, EO Examinations

SUBJECT: ASED Alpha Code "PP"

The purpose of this memorandum is to instruct examination groups on the procedures and authorities required for updating the assessment statute expiration date (ASED) to alpha code "PP", *Non-taxable TE/GE Return*.

Background

Examiners ("agents") and group managers are responsible for controlling and monitoring statutes on their assigned cases in order to ensure taxes and penalties are assessed timely.

ASED alpha codes are used to indicate that special conditions exist that affect a statute expiration date.

[IRM Exhibit 25.6.23-3](#) states that alpha code "PP" is used for TE/GE non-taxable returns. Returns in EP and EO are initially controlled using actual statute expiration dates. Alpha code PP may be used when it is determined **with certainty** a non-taxable TE/GE return will not be converted to a taxable return.

Persons making alpha code determinations must understand how the tax law impacting the periods of limitation applies in each particular situation. Assessment statutes have expired and the ability to assess tax has been lost through improper use of alpha codes.

Authority

The authority to approve updating the ASED to alpha code “PP” is granted as follows:

#	Authority	Delegated to	Approving Documents
1	Form 990-N	Group Manager	On Form 895
2	Form 990 or Form 990-EZ See Authority 2 Conditions for Approval See Steps for Obtaining Approval See Contents of Memorandum of Explanation See Attachment for examples	Area Manager	On Form 895 Attach Memorandum of Explanation .
3	Form 990 or Form 990-EZ in Mandatory Review	The Manager, Mandatory Review with returns in his/her inventory with less than 270 days remaining before ASED.	On Form 895

Authority 2 Conditions for Approval

Examining (“audit”) Group: You must meet all five conditions below. Certify that conditions 1 through 4 are satisfied in a [Memorandum of Explanation](#):

1. Only Form 990 or 990-EZ is eligible for alpha code PP. Form 990 or 990-EZ filed by a private foundation is not eligible.
2. You’ve made all reasonable attempts to extend the ASED, and you’ve documented the reasons for not extending the statute date in the workpapers.
3. You are certain Form 990 or 990-EZ will not be converted to a taxable return (e.g., Form 1120, 1041 and 990-PF); or, if there will be a converted income tax return, there will be no income tax.

Note: The term “no income tax” includes within its definition estimated income tax and penalty that is within tolerance as provided in [IRM 25.6.1.13.2.4\(1\)a](#).

4. There is a valid reason to keep a Form 990 or 990-EZ open for audit to justify alpha code PP.

Example: Facts need further development for related return audits, which are best gathered within the context of the Form 990 audit. Simply needing or wanting more time to close an audit without further justification is not a valid reason to use alpha code PP.

5. The area manager must receive the request to approve alpha code PP within a window of time that is no less than 60 days remaining on the statute and no more than 270 days remaining on the statute.

Authority 2 Procedures

A. Steps for Obtaining Approval

- (1) Agents: Consult with Area Counsel on a basis similar to other legal assistance in your audit. Obtain Area Counsel's written opinion on the use of alpha code PP. Area Counsel requires 45 days to provide a written opinion. Submit your request for a written opinion to Area Counsel in enough time to allow your manager to comply with [condition 5](#) above.
- (2) Agents: Prepare, sign and date a memorandum of explanation certifying [conditions 1 through 4](#) are met. See [Contents of the Memorandum of Explanation](#) in section B below.
- (3) Group Managers: Within 7 calendar days of receipt, approve by signing and dating the memorandum. Submit the memorandum to the area manager. The area manager will not accept a request if it is received with less than 60 days, or with more than 270 days remaining on the statute.
- (4) Area Managers: Within 7 calendar days of receipt, approve by signing and dating the memorandum. A non-response is not approval.
- (5) Agents: If approved, immediately update the statute date to alpha code PP on AIMS, RCCMS and on Form 895. Attach the memorandum to Form 895 and log the approval on Form 5464.

B. Contents of the Memorandum of Explanation

Include the following items in the memorandum of explanation:

- Actual statute date for the Form 990 or 990-EZ
- Statement that you've made all reasonable attempts to extend the ASED on Form 990 or 990-EZ, and the organization would not or could not extend the ASED
- List of dates you solicited statute extensions

- Statement of certainty the Form 990 or 990-EZ will not result in a converted tax return, or there will be no tax and penalty on a converted income tax return, or the income tax and penalty is within tolerance (see [IRM 25.6.1.13.2.4\(1\)a](#))
- If the converted income tax and penalty is within tolerance, provide the estimate. See [IRM 4.75.31.7](#), *Determination of Tax Liability*, for estimating income taxes
- Estimate of any penalty under IRC 6652(c), and a description of any reasonable cause if it is established
- Statement explaining why the Form 990 or 990-EZ audit is not ready to close, the audit steps and issues that remain, and an estimated closing date
- Signature lines for the agent, group manager, and the area manager
- Area Counsel's written opinion from [step A1](#)

Other Information

The use of alpha Code "PP" does not relieve the agent from carefully monitoring normal statute expiration dates for all examined returns.

Mandatory Review will exercise oversight over the use of alpha code "PP" for purposes of consistency. Mandatory Review will alert area managers if it finds statute procedures are not followed.

Effect on Other Documents

These procedures will be incorporated in IRM [4.75.10](#), [4.75.16](#) and [4.75.17](#) within two years from the date of this memorandum.

Please submit your questions to Mandatory Review via [*TEGE EO Review Staff](#).

ATTACHMENT (1)

cc: www.irs.gov

EXAMPLES OF PROPER USE OF ALPHA CODE “PP” FOR EXEMPT ORGANIZATIONS EXAMINATIONS

Conditions 1 through 3

Example 1: Agent A is auditing a private foundation that mistakenly filed a Form 990. Agent A properly followed all statute procedures. Because the organization is a private foundation, Agent A cannot use alpha code PP for Form 990.

Example 2: Agent E is auditing V’s Form 990 for 2011. V is an IRC 501(c)(7) social club. Agent E properly followed all statute procedures. The audit revealed that V qualifies for tax-exempt status. Because there is certainty there will be no converted income tax return in 2011, Agent E may update the statute date to alpha code “PP”, so long as the Form 990 meets all the other conditions for approval, including the requirement that there be a valid reason not to close the case by the established ASED date.

Example 3: Assume the same facts in example 2 except that the audit revealed that V’s club facilities were open to the public and V did not maintain records detailing member receipts from nonmember receipts. Agent E also determined that the V’s estimated income tax on a converted return for 2011 would exceed the threshold amount in [IRM 25.6.1.13.2.4\(1\)a](#) if Agent E revoked V’s tax-exempt status. Because a converted income tax return is possible, **and** there would be an income tax on the converted return that exceeded the threshold amount in [IRM 25.6.1.13.2.4\(1\)a](#), Agent E cannot use alpha code PP for the 2011 Form 990.

Example 4: Assume the same facts in Example 3, except that the V’s estimated income tax in 2011 would be \$0 if Agent E converted Form 990 to a taxable return. Because there is certainty there will be no income tax on a converted return, Agent E can use alpha code PP on V’s 2011 Form 990 so long as the Form 990 meets all the other conditions for approval. This is true even if the audit results in a revocation.

Example 5: Agent B is auditing Y’s Form 990-EZ for 2011. Agent B properly followed all statute procedures. The audit revealed Y was ineligible to file Form 990-EZ. A revocation is possible because Y has yet to file a Form 990. The estimated income tax on a converted return would be \$0 if Agent B converted Form 990-EZ to an income tax return. Because there is certainty there will be no income tax on a converted return, Agent B can use alpha code PP on Y’s 2011 Form 990-EZ, so long as the Form 990-EZ meets all the other conditions for approval, including the requirement that there be a valid reason not to close the case by the established ASED date.

Example 6: Assume the same facts in Example 5 except that the estimated income tax on a converted return for 2011 would exceed the threshold amount in [IRM 25.6.1.13.2.4\(1\)a](#). Because a converted income tax return is possible, **and** there would be an income tax on the converted return that exceeded the threshold amount in [IRM 25.6.1.13.2.4\(1\)a](#), Agent B cannot use alpha code PP for the 2011 Form 990-EZ.

Example 7: Assume the same facts in Example 5 except that the estimated income tax on a converted return for 2011 would be *below* the threshold amount in [IRM 25.6.1.13.2.4\(1\)a](#), the group manager may exercise discretion in deciding to request approval for using alpha code PP based on the facts and circumstances of the case.

Example 8: Agent C is auditing X, an organization that declared IRC 501(c)(4) status on the 2012 Form 990. X is therefore a “Status 36” organization in the EO Business Master File (EO BMF). Agent C properly followed all statute procedures. The audit revealed that X did not qualify for tax-exempt status in 2012. Agent C cannot determine the estimated income tax for X in 2012. Because a converted income tax return is possible, **and** there could be an income tax on the converted return (because it is unknown),

Agent C cannot use alpha code PP for the 2012 Form 990. Because the ASED date is to be maintained, Agent C must collect further information to determine X's 2012 estimated income tax. If X declines to extend the statute date, then Agent C should follow the short statute procedures of [IRM 4.75.16.4.2.3](#).

Example 9: Assume the same facts in Example 8, except the audit revealed that X qualifies for tax-exempt status in 2012. Because X qualifies for tax-exempt status in 2012, there is certainty there will be no converted income tax return. Agent C may update the statute date to alpha code PP, so long as the Form 990 meets all the other conditions for approval, including the requirement that there be a valid reason not to close the case by the established ASED date.

Example 10: Agent A is conducting an audit of T's 2011 Form 990. T is an IRC 501(c)(3) organization described as publicly supported under IRC 509(a)(1) and 170(b)(1)(A)(vi). Agent A properly followed all statute procedures. The audit revealed that T qualifies for tax-exempt status, but Agent A must reclassify T as a private foundation. Because T is determined to be a private foundation, T's Form 990 is not eligible for alpha code PP, even if the estimated tax on the converted Form 990-PF is zero.

Example 11: Assume the same facts in Example 10, except that Agent A is unsure whether he should reclassify T as a private foundation. Because there is uncertainty over the private foundation status, T is not eligible for alpha code PP.

Condition 4, *Valid Reason to Keep Form 990 or 990-EZ Audit Open*

Example 12: Agent G is auditing M's Form 990 for 2012. M is an IRC 501(c)(3) organization. Agent G properly followed all statute procedures. Agent G concludes that M qualifies for tax-exempt status. Agent G certifies there will be no converted income tax return. In light of these conclusions, Agent G provides no explanation for the delay in closing the case. Because Agent G has no valid reason to keep the Form 990 audit open, Agent G has not met all the conditions for approval, and therefore cannot use alpha code PP for the 2012 Form 990, even if there is certainty there will be no converted income tax return. See [condition 4](#).

Example 13: Assume the same facts in Example 12, except that Agent G has an explanation to keep the Form 990 audit open. Agent G explains that he is also auditing a transaction occurring in 2012 between M and D, a disqualified person with respect to M. Agent G developed the facts enough to determine initially that M should retain its exempt status. Agent G applied the five factors in Treas. Reg. 1.501(c)(3)-1(f) in order to make this preliminary determination. However, Agent G explains that he must keep the Form 990 audit open in order to develop the facts relating to the transaction between M and D for purposes of a potential section 4958 excise tax on D. Agent G explains that further development of the facts on the transaction is better conducted within the context of M's audit, since M has all the records. The IRC 4958 issue ultimately impacts Agent G's determination of M's tax-exempt status and the contents of Agent G's written advisory (or audit report) to M. Because Agent G has a valid reason to keep the Form 990 audit open (facts need further development to close both D's and M's audit), Agent G can use alpha code PP, so long as the Form 990 meets all the other conditions for approval.

Example 14: Agent is conducting an audit of Y's Form 990 for 2012. Y is an IRC 501(c)(3) organization. The principal issue in the audit is whether Y operates for the private interests of private individuals. Agent thoroughly analyzed all of Y's finances, including determining with certainty that if Y were to be revoked it would have no income tax liabilities. Whether Y actually furthers the private interests of the private individuals more than insubstantially is not fully clear and Agent consults with her manager and local Area Counsel. A consensus emerges that a determination on Y's exempt status cannot be made until Agent interviews four of the particular private individuals. Because arranging and conducting these necessary interviews will extend beyond the ASED date, Agent may use alpha code PP, so long as all the other conditions for approval are met.