



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
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MEMORANDUM FOR EXEMPT ORGANIZATIONS
RULINGS AND AGREEMENTS EMPLOYEES

FROM: Jeffrey I. Cooper /s/
Director, Exempt Organizations Rulings and Agreements

SUBJECT: Interim Guidance on Procedures for Appealed Adverse Determination
Cases

This memorandum revises procedures for Exempt Organizations (EO) Determinations Quality Assurance until IRM 7.20.5, *Review Procedures for EO Determinations*, is updated. These procedures are effective as of the date of this memo.

Purpose

This guidance serves to revise procedures followed by EO Determinations Quality Assurance (EODQA) for protested and appealed adverse determination cases.

Background/Source(s) of Authority

Section 7 of Rev. Proc. 2016-5, 2016-1 I.R.B. 188 (updated annually), provides that the IRS Appeals Office will issue a final adverse or favorable determination letter following their review of cases transferred to their office. Specifically, the Rev. Proc. states that if an organization submits a protest to a proposed adverse determination letter:

EO Rulings and Agreements will first review the protest, and, if it determines that the organization qualifies for tax-exempt status, issue a favorable exempt status determination letter. If EO Rulings and Agreements maintains its adverse position after reviewing the protest, it will forward the protest and the exemption application case file to the Appeals Office.

The Appeals Office will consider the organization's appeal. If the Appeals Office agrees with the proposed adverse determination, it will either issue a final adverse determination or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, the Appeals Office will either issue a final adverse determination letter or a favorable determination letter. If the Appeals Office believes that an exemption or private foundation status issue is not covered by published precedent or that there is non-uniformity, the Appeals Office must request technical advice from the Office of Associate Chief Counsel (Tax Exempt and Government Entities). See Rev. Proc. 2016-2 (updated annually).

However, per IRM 7.20.5, EODQA issues the standard favorable determination closing letter (e.g., Letter 947, 948, 1076, etc.) following a decision from Appeals that a favorable determination should be issued in a particular case. Currently, the IRM instructs reviewers to “Issue the appropriate EOD closing letter based on information in the Appeals closing letter if the adverse ruling isn’t upheld” and to “confirm that the Master File and/or the applicable processing systems have been updated.”

Consistent with Rev. Proc. 2016-5, supra, EODQA will no longer issue an EO Determinations closing letter if a proposed adverse determination is overturned by the Appeals Office. Rather, the Appeals Office is responsible for issuing any favorable determination letter to the organization.

Procedural Change:

(1) If an organization protests a proposed adverse determination and EODQA determines the next step is to send the case to Appeals, the EODQA reviewer prepares the administrative case record for the appropriate Appeals office. The reviewer indexes, tabs, and binds the case (using a two-prong fastener). The reviewer will also prepare a file memo indicating the following:

- Accounting period ending date
- Recommended foundation status (IRC Section 501(c)(3) only)
- Filing requirements (e.g., Form 990-series, Form 1120-C, etc.)
- Contribution deductibility

This information will be used by Appeals in preparing a favorable letter if that Office does not uphold the proposed determination.

(2) If Appeals upholds a proposed adverse determination letter issued by EO Determinations, the Appeals Office prepares and issues a final adverse letter. If Appeals doesn’t uphold a proposed adverse determination, the Appeals Office prepares and issues a closing letter revoking the proposed adverse letter and addressing the effective date of exemption and foundation status (if applicable). Appeals returns the case file to EODQA.

Note: The Appeals’ closing letter serves as the determination letter of record to the organization. EO Determinations does not issue a subsequent determination letter to the organization.

(3) The reviewer:

a. Reviews the case summary prepared by Appeals.

Note: Discuss any novel legal analyses, disagreement with case disposition, or procedures used to settle the case with the EODQA manager who will determine how to share the information.

b. Confirms that the determination made in the case is clear and consistent with the documents and letters issued by Appeals.

- c. Considers other appropriate follow-up actions before closing the case (e.g., preparing an exam referral).
- d. Confirms Master File and/or the applicable processing systems have been updated.
- e. Prepares a “no error” memo for the originating group manager, attaching a copy of the Appeals statement.
- f. Assembles the case file and submit to EP/EO Determinations Processing Unit.

(4) The EODQA Manager may report significant appealed determination case decisions to EOD senior management.

Effect on Other Documents

This guidance will be incorporated into IRM 7.20.5 by March 3, 2018.

Effective Date

March 3, 2016

Contact

EO Determinations Area 3 Manager

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