



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

November 15, 2022

Control Number: TEGE-04-1122-0033
Expiration Date: November 15, 2024
Affected IRM: 4.71.1, 4.71.4, 4.71.6,
4.71.10, 4.71.17, 4.75.10,
4.75.12, 4.75.13, 4.75.15,
4.75.16, 4.75.20, 4.75.21,
4.75.22, 4.75.39, 4.81.5

MEMORANDUM FOR ALL TAX EXEMPT AND GOVERNMENT ENTITIES EMPLOYEES

FROM: Robert S. Choi /s/ *Robert S. Choi*
Deputy Commissioner, Tax Exempt and Government Entities

SUBJECT: Letter Consolidation for Change due to Correction of Operations
Closing Letter

Purpose:

This memorandum supplies guidance on a new TE/GE-wide consolidated closing letter, Change Due to Correction of Operations, for examinations of a primary return to:

- set consistency for the use of disposal code 52 (214 in RCCMS), Change due to Correction of Operations,
- set consistency for the type of closing letter to be used with disposal code 52 (214 in RCCMS), and
- end the use of a written advisory.

All TE/GE employees must follow these procedures.

Background:

Before the letter consolidation effort, each function kept separate letters for similar purposes. TE/GE began a review of letters we could merge to:

- further the goal of "one TE/GE,"
- conserve limited resources, and
- simplify which letter to use when.

Across the IRM sections listed above, we direct examiners to prepare and issue no change advisory/no change with comment closing letters when applicable. This guidance highlights

cases where a plan, exempt organization or bond has no change in status but has issues meriting an advisory.

These IRM sections directed examiners to close cases with disposal codes:

- 08/213, Correction of Operations/Written Advisory (Form 5666), or
- 52/214, Correction of Operations/Written Advisory (No Form 5666).

The examples in the IRM explain to use these closing letters and disposal codes to reflect situations when the entity:

- took corrective actions to resolve non-compliant issues or
- had deficiencies that may affect future operations of the organization, entity, or plan.

Procedural Changes:

Examiners will use the newly revised [Letter 1744, TE/GE Change due to Correction of Operations](#). The letters listed below will be obsolete and should no longer be used.

The table below names previously used letters for obsolescence and the affected IRM sections.

Owning function	Obsolete letters	Affected IRM sections
Employee Plans Examinations	1204, No-Change Form 5500 Exam Letter - Amendment	IRM 4.71.1.22.1
	1744-A, SARSEP and SIMPLE Plan No Change with Comments Closing Letter	IRM 4.71.3.5.1
	1744-B, 403(b)/457 No Change with Adjustment Closing Letter	IRM 4.71.17.6
	1744-C, IRC 457(b) No Change with Adjustment Closing Letter	IRM 4.71.17.7
	1744-D, Church Plan No Change with Adjustment Closing Letter	
	1744-F, Form 5500 Examination Closing Agreement Closing Letter With Comments	
	1744-H, SEP, SIMPLE, IRC 403(b) or IRC 457(b) Examination Closing Agreement Closing Letter With Comments	
	1744-I, IRC 412(i) Non-Return Unit No Change with Comments Closing Letter	
	1744-J, Governmental Plan No Change with Adjustments Closing Letter	

Owning function	Obsolete letters	Affected IRM sections
Exempt Organizations Examinations	3609, No Change Advisory – Exempt Organizations	IRM 4.75.10.7.6
	3609-P, No Change with Advisory for Cases Involving Political Campaign Activity	IRM 4.75.15.1.4
		IRM 4.75.15.6
		IRM 4.75.15.8.2
		IRM 4.75.15.8.9
		IRM 4.75.15.8.11.1
		IRM 4.75.15.9
		IRM Exhibit 4.75.15-1
		IRM 4.75.21.2
		IRM 4.75.22.6
		IRM 4.75.22.7
		IRM 4.75.22.7.1
		IRM 4.75.22.10
	IRM Exhibit 4.75.39-3 through 4.75.39-10	
Tax Exempt Bonds	5954, No Change Advisory – Tax Advantaged Bonds Qualification	IRM 4.81.5.17.3

Note: Federal State Local/Employment Tax and Indian Tribal Governments examiners do not issue no change advisory closing letters. They will only use Letter 1744 when applicable, decided on a case-by-case basis with managerial approval.

1. Group managers review, approve, sign for the director or program manager and issue the Letter 1744.
2. Examiners closing examinations of primary returns, where the taxpayer took corrective actions during the examination to correct operational or compliance issues that did not result in a change to exempt status or plan or bond qualification, should:
 - a. Prepare Letter 1744, Change due to Correction of Operations.
 - i. For EP, choose selectable paragraph 1 or 2 and 7 (if a closing agreement is entered into and there are additional comments to be included on the Form 886-A).
 - ii. For EO, choose selectable paragraph 3, 4, or 5 and 7 (if a closing agreement is entered into).

- iii. For TEB, choose selectable paragraph 6 and 8 or 9.

Note: Letter 1744 should **not** be used when there are deficiencies that may affect future operations of the organization, entity, or plan. If there is no change to the return being examined, and no corrections made during the examination to correct the deficiencies, then use Letter 6049, Examination Closed - No Change, unless another letter is appropriate.

- b. Describe the compliance issues resolved on a Form 886-A, for inclusion with Letter 1744. Describe the change due to correction of operations and/or separate reports issued for related returns in the Form 886-A. Use the sample paragraphs on the following Knowledge Management & Transfer sites. However, the examiner can write their own paragraphs with managers approval.

- i. [Employee Plans 1744 Closing Letter Paragraphs](#)

- ii. [Exempt Organizations Resources Knowledge Base](#)

- iii. [Tax Exempt Bonds Knowledge Base](#)

3. When delinquent returns or related delinquent returns are secured, include the following on the Form 886-A:
 - a. Cite the law that requires the return filing.
 - b. State the Form and year/period for the delinquent return(s) we secured.
 - c. State that we imposed or will impose delinquency penalties, or that the taxpayer established reasonable cause.
 - d. Cite the law that authorizes the proposed penalty assessment.
 - i. If assessing a penalty, state, "Please be sure to file your return when due to avoid a penalty in the future."
 - ii. If not assessing because the taxpayer established reasonable cause, state, "We may not waive late filing penalties on future returns if filed late due to the same circumstances."
4. Include the following, whichever applies, in each paragraph about refusals to file delinquent returns or related return adjustments:
 - a. The examiner prepared a substitute for return under [IRC 6020\(b\)](#) for the non-filed tax return, reflected in a separate report.
 - b. A separate report reflects an adjustment to tax reported on a related return (state the return).
 - c. A separate report reflects an adjustment to tax reported on a secured delinquent return.
 - d. The taxpayer agreed, partially agreed or did not agree, with or without protest, to the proposed tax.

5. Include the following in each paragraph for issues other than delinquent returns or a related return adjustment:
 - a. Identify the noncompliant issue.
 - b. Cite the law that requires compliance.
 - c. Identify how the taxpayer corrected the noncompliant issue.
 - d. List any penalties assessed or abated, and if the taxpayer established reasonable cause.
 - e. Cite the law that authorizes any listed penalties.
6. Use disposal code 52 (214 in RCCMS), Change due to Correction of Operations, unless a higher priority disposal code applies. Examiners can use Letter 1744 with other disposal codes, when applicable (for example: change to related return, delinquent related return secured, or closing agreement with additional changes due to correction of operations).

Note: Disposal Code 08 (213 in RCCMS) is obsoleted, because the reference to whether a referral is submitted or not will be indicated on the 3198-A and will not be distinguished by disposal code.

Note: Do not use Disposal Code 52 (214 in RCCMS) when there are deficiencies that may affect future operations of the organization, entity, or plan. If there is no change to the return being examined, and no corrections made during the examination to correct the deficiencies, then use Disposal Code 02 (107 in RCCMS), No Change.
7. Prepare [Form 5666](#) if the examiner finds some aspect of the taxpayer's activities or operations that may jeopardize future compliance.
 - a. Prepare Form 5666, attaching any documents needed to support the referral.
 - b. Name the electronic files of the referral package following the established naming convention format and post to the RCCMS Office Documents folder.
 - c. Check the "Yes" box on the SH-S6.0 Referral item on tab 3 of 6 of the RCCMS 3198-A Checksheet to flag the Form 5666.

Note: Manager reviews and sends the signed electronic [Form 5666](#) (and attachments) in a secure email to the TE/GE Referral Group email box at [Manager EO Classification](#). See IRM 4.70.6.4 for more details.
8. Employee Plans examiners can use the "Change due to Correction of Operations" disposal code in situations such as:
 - a. The plan didn't have adequate bonding per ERISA Act section 412.
 - b. The plan sponsor didn't properly perform the ADP or ACP test or had systemic errors, such as incorrect compensation or employee classification. When the plan corrects all errors and reruns the tests, the plan still passes for the year under examination.

- c. The plan sponsor or their plan administrator made errors when computing the top heavy or nondiscrimination testing. After the examiner reviewed the corrected nondiscrimination test, the plan passed.
- d. The examiner secured an amended Form 5500 series or schedule to the Form 5500 series.

Note: These examples are not intended to be all inclusive.

9. Exempt Organization examiners can use the “Change due to Correction of Operations” disposal code in situations such as:

- a. An exempt organization eligible to file [Form 990-N](#) refuses or is unable to file [Form 990-N](#) (or a 990 series return). Include a paragraph stating that failing to file a [Form 990-N](#) or a complete [Form 990](#) for three consecutive tax years jeopardizes the organization's tax-exempt status and cite [IRC 6033\(j\)](#).
- b. The examiner secured and sent amended organizational/governing documents for inclusion in the determinations administrative file and determined there was no change to the organization's exempt status.
- c. The examiner secured an amended Form 990 series or schedule to the Form 990 series.

Note: These examples are not intended to be all inclusive.

10. Tax-exempt Bond examiners can use the “Change due to Correction of Operations” disposal code in situations such as:

- a. The examiner secured an amended Form 8038.
- b. The taxpayer adopted procedures or makes corrections in the books and records to correct identified compliance issues and supplied substantiation of their corrective actions.
- c. The taxpayer inadequately supplied records to determine the bonds' compliance, and later adopted procedures to maintain records needed to satisfy the continued excludability of bond interest paid.
- d. The taxpayer amended the (lease, management contract, or other arrangement) to reduce the level of private business use throughout the remainder of the measurement period.

Note: These examples are not intended to be all inclusive.

11. Don't use the “Change due to Correction of Operations” disposal code in situations such as:

- a. The examiner could use a higher applicable priority disposal code (for example: change to related return, delinquent related return secured, etc.).
- b. The taxpayer failed to file a related return and based on the facts and circumstances in the case the examiner didn't secure the delinquent related return but told the taxpayer to

file the delinquent return. Close the examination as a "No Change" (assuming there are no other issues).

- c. The taxpayer filed an incomplete or inaccurate primary return or schedules, which has no impact on a compliance issue (for example: exempt status, plan qualification, tax, penalties, etc.). The correct disposal code is a "No Change" if not assessing penalties (assuming there are no other compliance issues).

12. The following employee plans examples would result in a no change (i.e., DC 02/107) (assuming there are no other issues), not a change due to correction of operations (i.e., DC 52/214), in situations such as:

- a. The sponsor improperly reported the pension plan deduction on their tax return. However, the plan sponsor did not take an improper deduction; they merely completed the form improperly.
- b. The examiner found assets that hadn't been reported correctly on the Form 5500 series return or schedules.
- c. The examiner found that for the plan under examination the plan exceeded the allowable deduction by a de minimis amount. The examiner decided with group manager concurrence, to neither pursue a discrepancy adjustment, nor complete a referral to SB/SE. The over-deduction was an isolated error and didn't result from a systemic error.
- d. The plan sponsor didn't timely deposit elective deferrals per DOL Regulation Section 2510.3-102(b)(1). However, the lost interest per participant was de minimis. The examiner, with group manager concurrence, decided to neither require correction nor request delinquent Forms 5330.

Note: These examples are not intended to be all inclusive.

13. The following exempt organization examples would result in a no change (i.e., DC 02/107) (assuming there are no other issues), not a change due to correction of operations (i.e., DC 52/214), in situations such as:

- a. The EO didn't properly complete Schedule A, Public Charity Status and Public Support, or other Schedules with the Form 990 series, but the omissions/errors did not result in penalties under IRC Section 6652(c) and did not change the EO's tax exempt status.
- b. The EO didn't answer all the right questions on the Form 990, but the omissions/ errors did not result in penalties under IRC section 6652(c).
- c. The EO filed a delinquent return with the service center for a return that was not open under examination, and the service center assessed penalties.
- d. The EO didn't attach a list with the Form 990 of all grants and contributions made.
- e. The EO didn't properly report the income or expenses on the correct lines of the return, or there were variances between the return and the books and records, but such errors resulted in no tax changes or penalties assessed.

- f. The Form 990 series didn't supply all of the required officers, directors and trustees' information. The examiner did not secure an amended Form 990 and did not assess penalties under IRC section 6652(c).

Note: These examples are not intended to be all inclusive.

14. The following tax-exempt bond examples would result in a no change (i.e., DC 02/107) (assuming there are no other issues), not a change due to correction of operations (i.e., DC 52/214), in situations such as:

- a. The examiner finds that a payment of rebate will likely be due for the first computation date. However, the first date for payment of rebate hasn't occurred, and there were no corrections made during the examination.
- b. The examination shows that an incorrect bond yield calculation. The bond yield adjustment didn't affect arbitrage rebate or yield restrictions for the first computation period.
- c. The examination shows that the taxpayer didn't timely allocate bond proceeds to expenditures. However, there were no proposed compliance changes and no corrections made during the examination to ensure timely allocations.
- d. The examiner finds the return didn't have an attached copy of the volume cap allocation for the bonds and doesn't secure it.
- e. The taxpayer filed the return using an incorrect employer identification number.

Note: These examples are not intended to be all inclusive.

Effective Date:

November 15, 2022

Effect on Other Documents:

Our IRM authors will incorporate the contents of the memorandum into the above IRM sections within two years from this memo's effective date.

Contact:

If you have any questions, please contact George Brim (EP) at (609) 858-7979, Brett Dietrich (EO) at (801) 620-4313, and Mildred Jordan (GE) at (321) 441-2645.

Distribution:

www.irs.gov