



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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

SUBJECT: Interim Guidance on Procedures for Protested Adverse Exempt
Organizations Rulings and Agreements Determinations

Purpose

This memorandum revises procedures for protested adverse determinations. As of the date of this memo, Exempt Organizations (EO) Rulings and Agreements (R&A) employees should use these procedures until IRM 7.20.2, *Determination Letter Processing of Exempt Organizations*, and IRM 7.20.5, *Review Procedures for EO Determinations*, are updated.

Background/Source(s) of Authority

Rev. Proc. 2017-5, 2017-1 I.R.B. 230, provides procedures for a protest of a proposed adverse determination. The Rev. Proc. states:

[§ 9.06] If an organization submits a protest/appeal of a proposed adverse determination letter described in section 9.02, EO Determinations will review the protest, and, if it determines that the organization meets the requirements for approval of its request, issue a favorable determination letter. If EO Determinations maintains its adverse position after reviewing the protest, it will forward the case file to Appeals. If new information is raised in the protest, EO Determinations will follow the procedures described in section 9.08, which may require the issuance of a new proposed denial, prior to sending the case to Appeals.

...

[§ 9.08] If the organization submits new information as part of a protest, or during Appeals consideration, the matter may be returned to EO Determinations for further consideration. As a result of its review of the new information, EO Determinations may issue a favorable determination letter, rebuttal letter, or new proposed adverse determination letter. If a rebuttal letter is issued, EO Determinations will forward the case to the Appeals office. If a new proposed adverse determination letter is issued, the organization must submit a protest/appeal of the new proposed adverse determination letter in order to have Appeals Office consideration of the issue.

Currently, IRM 7.20.5.7.1, *Response to Adverse Letter*, instructs the EO Determinations Quality Assurance (EODQA) reviewer to consider the protest's effect on the determination. If the protest raises facts or arguments the original Determinations specialist hadn't considered, the reviewer prepares a memo to return the case to the specialist for further consideration. If the specialist determines the protest does not change the proposed determination, he or she incorporates the protest and a response into the proposed adverse letter and sends it to the organization with a new 30-day protest period.

This memorandum modifies EO R&A's procedures for responding to submitted protests based on the provisions of Rev. Proc. 2017-5.

Procedural Change:

EO R&A employees will generally continue to follow the procedures in IRM 7.20.5.6, *Reviewer's Memorandum*, and IRM 7.20.2.4, *Adverse Determinations*, for preparing a review memo, returning a case to a specialist, taking action on a case, and returning a case to EODQA except as specified below.

Note: Letters 4036, 4038, 1079, and 4786, proposing adverse determinations, instruct organizations to submit protests to EODQA. If an organization submits the protest instead to the original Determinations specialist, he or she will forward the protest to EODQA and notify the EODQA reviewer.

1. If the protest doesn't present new facts or arguments, the reviewer prepares the case file for Appeals following current procedures and notifies the organization by letter that its case has been forwarded to Appeals.
2. If the protest presents new or revised facts or raises arguments the specialist hasn't addressed, the reviewer prepares a memo (see IRM 7.20.5.6) and returns the case to the specialist for further consideration. In the memo, the reviewer may recommend approval, preparation of a rebuttal letter, or a new proposed adverse letter.
3. If the case is returned to the specialist, he or she reviews the protest to determine whether the information changes the original determination:
 - a. If the protest changes the determination, process the case per IRM 7.20.2.4, *Approvals*.
 - b. If the protest doesn't change the determination:
 - i. In general, the specialist prepares a rebuttal letter. Note: The specialist should not prepare a legend or redact the letter. EODQA will do this, if required, and mail the letter.
 - ii. In rare circumstances, where the protest provides significant new facts or law but doesn't change the determination, the specialist prepares a revised proposed adverse letter incorporating the new information and providing a new 30-day protest period. See IRM 7.20.2.4.

Note: The specialist considers all facts and circumstances when determining if the protest should be addressed in a rebuttal letter or a revised proposed adverse letter, consulting his or her manager and EODQA as necessary.

c. If the protest requires additional issue development, follow procedures in IRM 7.20.2 to request additional information. Review this additional information to determine if the case should be processed as an approval. If the additional information doesn't change the determination, prepare a revised proposed adverse letter.

4. EODQA follows its current review procedures once it receives the case back from the Determinations group or after preparing the case to send to Appeals.

Effect on Other Documents

This guidance will be incorporated into the affected IRMs by January 3, 2019.

Effective Date

January 3, 2017

Contact

EO Determinations Area 3 Manager

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