



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date February 28, 2022

Control Number: TE/GE-04-0222-0008  
Expiration Date: February 28, 2024  
Affected IRM: 4.71, 4.75, 4.81, 4.86

MEMORANDUM FOR EMPLOYEE PLANS EXAMINATIONS EMPLOYEES  
EXEMPT ORGANIZATIONS EXAMINATIONS EMPLOYEES  
GOVERNMENT ENTITIES EMPLOYEES

FROM: Edward T. Killen /s/ *Edward T. Killen*  
Deputy Commissioner, Tax Exempt and Government Entities

SUBJECT: Discussion and Documentation of Publication 1, Notice 609,  
Publication 5146 and the Examination Process

**Purpose:**

This memorandum issues guidance creating division-wide procedures for TE/GE functions to confirm receipt by and subsequent discussion with taxpayers of Publication 1, Your Rights as a Taxpayer; Notice 609, Privacy Act Notice; and Publication 5146, Employment Tax Returns: Examinations and Appeal Rights. Please distribute this memorandum to all affected employees within your organization.

**Background/Source(s) of Authority:**

Formally adopted in 2014, the Taxpayer Bill of Rights groups the existing rights in the tax code into ten fundamental rights, and makes them clear, understandable, and accessible. The Taxpayer Advocate Service [informs taxpayers](#) that:

During an in-person interview with the IRS as part of an audit, the IRS employee must explain the audit process and your rights under that process. IRC § 7521(b)(1)(A). Generally, the IRS uses Publication 1, Your Rights as a Taxpayer to meet this requirement.

The Protecting Americans from Tax Hikes Act of 2015 imposes a duty, codified at IRC § 7803(a)(3), on the IRS to ensure employees are familiar with and act in accordance with certain taxpayer rights.

To paraphrase IRMs 4.71.1.7, 4.75.40.7, 4.75.10.8, 4.81.5.10.1.1, and 4.86.5.9 which generally state to varying degrees of detail that:

When contacting the taxpayer to open an examination, the examiner will contact the taxpayer by mail using the appropriate initial contact letter, including Publication 1, Your

Rights as A Taxpayer; Notice 609, Privacy Act and Paperwork Reduction Act; and Publication 5146, Employment Tax Returns: Examinations and Appeal Rights, and the initial Form [4564](#), Information Document Request.

Additionally, during the initial telephonic or in person contact with the taxpayer, examiners are to confirm receipt of Publication 1, briefly explain the examination process, discuss the items that will be examined, the types of documents to be received, how the taxpayer is to provide the documents, confirm any appointment scheduling, explain the taxpayer's appeal rights, and address any concerns or questions the taxpayer may have. Examiners are to document their case chronology of the items discussed and with whom.

### **Procedural Change:**

When initially contacting the taxpayer for an examination or a compliance check:

- (1) Include and mail the following documents to the taxpayer with your initial contact letter:
  - a. Publication 1, Your Rights as a Taxpayer
  - b. Notice 609, Privacy Act Notice
  - c. Publication 5146, Employment Tax Returns: Examinations and Appeal Rights (for employment tax examinations only)

Note: Do not send a copy of the publications or notice to any representatives.

- (2) Take the following actions during an examination initial telephonic contact or interview:
  - a. Verify the taxpayer's receipt of Publication 1 and Notice 609. If conducting an employment tax examination, verify the taxpayer's receipt of Publication 5146.
  - b. Briefly describe the rights discussed in Publication 1 and Notice 609 and respond to any questions.
  - c. Briefly describe the examination process and inform the taxpayer and/or representative of the resolution options available for unagreed cases (e.g., managerial conference, Fast Track Settlement, formal appeal, right to petition the United States Tax Court, etc.).
  - d. Document the confirmation of receipt of Publication 1, Notice 609, and Publication 5146 if applicable, and the discussion held with the taxpayer and/or representative on your case chronology record.

Note: You may also document the confirmation and discussion in any initial interview workpapers.

### **Effect on Other Documents:**

TE/GE functional IRM Coordinators will incorporate this guidance into the IRM within two years from the date of this memo.

**Effective Date:** February 28, 2022

**Contact:** For questions about these procedures, please contact [George Brim](#) (EP) at (609) 858-7979, [Brett Dietrich](#) (EO) at (801) 620-4313 and [Lonnette Graham](#) (GE) at (505) 415-7794.

Distribution:

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