



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

7.1.5

JULY 1, 2024

EFFECTIVE DATE

(07-01-2024)

PURPOSE

- (1) This transmits revised IRM 7.1.5, TE/GE Administrative Procedures and Programs, Employee Plans Technical Advice Procedures.

MATERIAL CHANGES

- (1) Updated IRM 7.1.5.1.6 to add provisions of TEGE-07-0224-0004, Digital Taxpayer Communications.
- (2) Updated throughout to cite current Revenue Procedures.
- (3) Editorial changes have been made throughout.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 7.1.5, dated June 30, 2023 and includes the applicable provisions of TEGE-07-0224-0004, Digital Taxpayer Communications.

AUDIENCE

Tax Exempt and Government Entities
Employee Plans

Eric D. Slack
Director, Employee Plans
Tax Exempt and Government Entities

7.1.5

Employee Plans Technical Advice Procedures

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7.1.5.1
(06-03-2019)
Program Scope and Objectives

- (1) **Purpose:** This IRM helps Employee Plans (EP) tax law specialists, actuaries, and other employees understand the procedures for requesting technical advice from Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) (EEE).
- (2) **Audience:** EP tax law specialists, actuaries, and other EP Technical employees.
- (3) **Policy Owner:** Director, EP
- (4) **Program Owner:** EP
- (5) **Program Goal:** To ensure accuracy and consistency in processing EP Technical cases by giving employees technical advice and procedures to request this advice.

7.1.5.1.1
(05-25-2022)
Background

- (1) Sometimes, legal issues arise in EP Technical work that aren't covered by established law, regulations, applicable revenue rulings or other published precedent. In this case, EP Technical may need to request technical advice.
- (2) Technical advice is a written advice or guidance memo EEE gives on:
 - a. Any technical or procedural question that develops during any proceeding.
 - b. The interpretation and proper application of the tax laws, regulations, revenue rulings, notices, or other guidance.
 - c. A specific set of facts that concerns the treatment of an item in a period under examination or determination.
- (3) Proceedings before the IRS include:
 - a. The examination of a taxpayer's return.
 - b. Consideration of taxpayer's claim for refund or credit.
 - c. A request for a determination letter.
 - d. Any other matter involving a specific taxpayer under the jurisdiction of EP Rulings and Agreements (R&A) or EP Examinations.
 - e. Processing and considering non-docketed cases in the Independent Office of Appeals.
- (4) This IRM section gives procedures for EP Technical to request technical advice from EEE.

7.1.5.1.2
(04-08-2022)
Authority

- (1) EEE's procedures for requesting technical advice are in the second revenue procedure each year (Rev. Proc. 2024-2, and its successors). Throughout this IRM, refer to Rev. Proc. 2024-2 and any other annually updated revenue procedures.
- (2) EEE's procedures are also discussed in Chief Counsel Directives Manual (CCDM) 33.2.1, Legal Advice, Issuing Technical Advice Memorandum and Technical Expedited Advice Memoranda. IRM 33.2.1

7.1 TE/GE Administrative Procedures and Programs

7.1.5.1.3 (05-25-2022) Responsibilities

- (1) The Director, EP oversees:
 - a. EP R&A
 - b. EP Examinations
 - c. EP Program Management Office
- (2) EP Technical employees:
 - a. Review ruling requests and other submissions.
 - b. Evaluate whether the law and guidance support the taxpayer's position.
 - c. If warranted, request technical advice following the procedures in this IRM and/or other guidance.

7.1.5.1.4 (07-01-2024) Terms and Acronyms

- (1) The following table lists commonly used acronyms and their definitions.

Acronym	Definition
CCDM	Chief Counsel Directives Manual
DUT - TPF	Document Upload Tool for Taxpayer Facing Employees
EEE	Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes)
EP	Employee Plans
TAM	Technical Advice Memorandum
TDC SM	Taxpayer Digital Communication Secure Messaging
TE/GE	Tax Exempt and Government Entities Division
TEGEDC	Office of Tax Exempt and Government Entities Division Counsel

7.1.5.1.5 (09-21-2017) Related Resources

- (1) The procedures for:
 - a. EP Determinations to request technical advice from EEE are in IRM 7.11.12, Employee Plans Determination Letter Program, Preparing Technical Advice Requests.
 - b. EP Examinations to request technical advice from EEE are in IRM 4.70.16, Employee Plans Examination of Returns, Technical Assistance and Technical Advice Requests and Requests for Relief under IRC 7805(b).
- (2) This IRM section does not include instructions on processing unagreed cases to the Independent Office of Appeals. For additional information on Appeals procedures, see IRM 8.6.3, Conference and Settlement Practices, Appeals Rulings.

7.1.5.1.6
(07-01-2024)
**Digital Taxpayer
Communications**

- (1) The IRS has implemented Taxpayer Digital Communications Secure Messaging (TDC SM) as a more efficient way for taxpayers and their authorized representatives, to exchange information and documents with the IRS. Taxpayers and representatives will use the TDC SM platform by invitation only. The procedures apply to all compliance activity types (cases) that include taxpayer contact with a start date on or after June 22, 2022. An alternative secure method, the Document Upload Tool for Taxpayer Facing Employees (DUT - TPFE) is now available for use within EO and EP Rulings & Agreements on and after February 22, 2024.
- (2) You must offer either TDC SM or DUT – TPFE to all taxpayers and their representatives with the initial contact letter. If the interaction with the taxpayer is expected to be a series of multiple exchanges of documents or communications, it is recommended that you offer TDC SM at initial contact. If the interaction with the taxpayer is expected to be limited to receipt of certain documents requested, it is recommended that you offer DUT - TPFE at initial contact. If taxpayer interaction changes while working the case, you may use the alternative tool.
- (3) TE/GE has revised many initial contact letters to include language that advises taxpayers and their representatives of the availability of TDC SM and DUT – TPFE to provide a safe means for exchanging information with the IRS online. The revised letters use selectable paragraphs that you must choose. Use the TDC SM or DUT – TPFE paragraph and include a copy of Pub 5295 with the letter on all new contacts.
- (4) Taxpayers and representatives participating in the TDC SM must consent to receive and send information and documents via the TDC SM platform. Secure from the taxpayer and their representatives electing to participate with the TDC SM platform a signed Form 15314, TE/GE Secure Messaging Taxpayer Agreement Authorization of Disclosure to Designated Users. When returned, submit the signed form to the BSP shared mailbox (*TEGE TDC TP Provisioning) for taxpayer and representative account creation. Once established, the system will notify the taxpayer and their representative through email with instructions on how to access their TDC SM account. Send a welcome message to the taxpayer and their representative.
- (5) Document your invitation to use TDC SM or DUT – TPFE and the response of the taxpayer and their representative in your CCR.
- (6) Upon closure of your case, send a message to the taxpayer that you are closing your case and future communications within TDC SM or DUT – TPFE will not be possible for this case.
- (7) To offer use of the DUT - TPFE, after a phone conversation or through correspondence, provide the taxpayer or their representative an access code and URL, granting access to the upload tool. The user can upload and submit information to the TE/GE employee through DUT - TPFE. Once submitted, the taxpayer receives a confirmation, and the employee can review the transmitted documents.
- (8) To offer the DUT - TPFE, use the following language with the request for information:
 - a. IRS Documentation Upload Tool provides a safe means for exchanging information with IRS online at www.IRS.gov/sendmyreply.

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b. Your unique one-time use code is: [insert code].

- (9) The unique access code expires after 70 days. If you need another code relating to this case, contact the specialist listed in the top right corner of the letter.

7.1.5.2
(07-01-2024)

When to Request a TAM

- (1) Ask for technical advice on any technical or procedural question that you can't resolve based on law, regulations, or a clearly applicable revenue ruling or other published precedent.
- (2) Technical advice must be requested on:
- Any request for IRC 7805(b) relief for a prior ruling letter or technical advice issued to a taxpayer.
 - Certain exclusive benefit violations under IRC 401(a).
 - Proposed adverse or proposed revocation letters on collectively bargained plans.
- (3) See Rev. Proc. 2024-2 (or its successor), Section 3.04 for a list of mandatory technical advice issues.
- (4) Refer technical advice cases to EEE for legal advice on issues within its jurisdiction. See Rev. Proc. 2024-2.
- (5) Submit requests for IRC 7805(b) relief to the Director, EP, who (if they believe the request has merit), forwards it to TE/GE Division Counsel (TEGEDC) for their consideration. See Rev. Proc. 2024-4, Sections 21 - 23 and 27 - 29 for the procedures for these requests.
- (6) A Technical Advice Memorandum (TAM) may not be requested for prospective or hypothetical transactions (except for TAMs for a taxpayer's request for a determination letter on a matter within the TE/GE Commissioner's division's jurisdiction. See Rev. Proc. 2024-2, Section 3.01).

7.1.5.3
(06-03-2019)

Annual Revenue Procedure for Requesting Technical Advice

- (1) Rev. Proc. 2024-2 describes the administrative procedures to submit requests for technical advice to EEE. It also explains taxpayer rights when a field office requests a TAM on a tax matter.

7.1.5.3.1
(05-25-2022)

Procedural Matters

- (1) See Rev. Proc. 2024-2, Sections 5, 6 and 7 for instructions for initiating and submitting a request for technical advice.
- (2) EP Technical follows these procedures to request technical advice:
- First consider whether other forms of guidance, such as, published guidance, generic advice, or some other form of advice, would be more appropriate.
 - Request TEGEDC's help and recommendations.
 - Secure the written approval of the Director, EP R&A.
- (3) If the TAM request is for a case with either an unagreed prohibited transaction, per IRC 4975(c)(1) and ERISA 406(a), or a violation of the exclusive benefit

rule of IRC 401(a)(2) or ERISA 404(a)(1)(A), refer it to the Department of Labor on Form 6212-B, Examination Referral Checksheet B, before submitting the TAM to EEE.

- (4) Notify the taxpayer in writing that you intend to request technical advice, using Letter 1399-A, Technical Advice Notification, when you get approval to initiate the TAM request. See additional information in IRM 7.1.5.3.4.

7.1.5.3.2
(07-01-2024)
**Taxpayer May Request
Technical Advice**

- (1) A taxpayer whose case is under the jurisdiction of EP Technical may request, orally or in writing, that the field office (for qualified retirement plans the term **field office** also means personnel in any R&A office) refer an issue to EEE for a TAM. Notify the taxpayer if you determine that their request for a referral isn't appropriate.
- (2) The taxpayer may appeal the decision to deny the TAM request by submitting, within 30 days after notification that the request was denied, a written statement to the field office of the reasons why they should be referred to EEE for a TAM. The taxpayer's statement should include a/an:
 - a. Description of all pertinent facts (including any facts in dispute).
 - b. Statement of the issue that the taxpayer would like to have addressed.
 - c. Discussion of any relevant authority, including legislation, court decisions, revenue rulings, revenue procedures or other authority.
 - d. Explanation of the taxpayer's position and the need for technical advice.
- (3) If the taxpayer disagrees with the TAM denial:
 - a. The field office forwards the taxpayer's written statement, along with the field office's statement of denial to the Director, EP R&A for review. If the Director, EP R&A disagrees with the taxpayer, inform the taxpayer in writing of the denial and the reasons for the denial (unless doing so will prejudice the government's interest). The decision of the Director, EP R&A may be reviewed but not appealed.
 - b. The Commissioner, TE/GE through the Director, EP reviews the denial. While under review, suspend any final decision on the issue (except when the delay would prejudice the government's interests). The review process is not available for frivolous issues.

7.1.5.3.3
(06-03-2019)
**Mandatory
Pre-submission
Conference**

- (1) You must have a pre-submission conference before submitting a request for technical advice with:
 - a. EEE
 - b. Taxpayer
 - c. TEGEDC
 - d. EP Technical
- (2) Before requesting a pre-submission conference, EP Technical and the taxpayer must exchange proposed statements of the pertinent facts and issues. The proposed statements should include:
 - a. Any facts in dispute.
 - b. The issues that the parties intend to discuss.
 - c. Any legal analysis and supporting authorities.
 - d. Any other background information that the parties believe would facilitate EEE understanding of the issues to discuss during the conference.

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- (3) EP Technical submits the request for a pre-submission conference with TEGEDC's assistance. The request must include a brief explanation of the primary issue.
- (4) EEE must receive the pre-submission materials **(including the request for a pre-submission conference)** at least 10 business days before the conference is held. TEGEDC emails the pre-submission materials to the Technical Services Support Branch (TSS4510) who ensures that the pre-submission materials are delivered to EEE.

Note: The TSS4510 email box can't accept encrypted mail.

- (5) If TEGEDC can't email the documents or the documents aren't electronically available, they may fax them to TSS4510 at 855-592-8976 and send all supporting and additional documents by express mail or private delivery service to:

Internal Revenue Service
Attn: CC:PA:LPD:TSS, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224
- (6) See Rev. Proc. 2024-2, Section 6 for EEE procedures for pre-submission conferences.

7.1.5.3.4 (06-03-2019)

Submission of the Request for Technical Advice

- (1) Every technical advice request must include a memorandum that describes:
 - a. Statement of issues, facts, applicable law, and arguments.
 - b. Statement of the taxpayer's position.
 - c. Statement of EP Technical's position.
 - d. Transmittal Form 4463, Request for Technical Advice or Expedited Technical Advice.
 - e. Disclosure provisions under IRC 6104 and IRC 6110. See IRM 11.3.10, Disclosure of Official Information, Employee Plans Information.
 - f. Supporting case files.
- (2) EP Technical:
 - a. Prepares the memorandum with TEGEDC's help.
 - b. Sends a copy of the memorandum to the taxpayer.
- (3) The taxpayer:
 - a. Has 10 calendar days from the letter or fax date to respond by providing a written statement specifying any disagreement on the facts and issues.
 - b. May request an extension of time in writing from EP Technical. A request for an extension will be deemed denied unless the taxpayer receives notification that the extension has been approved.
- (4) When EP Technical receives the taxpayer's response, the parties have 10 calendar days to resolve remaining disagreements. If all disagreements about the statement of facts and issues are resolved, EP Technical prepares a single statement of those agreed facts and issues.
- (5) If disagreements continue, EP Technical sends both versions of the facts and issues to EEE.

- a. EP Technical and TEGEDC prepare a memorandum that highlights the material factual differences.
 - b. EP Technical sends the taxpayer a copy of the memorandum and the taxpayer may respond to it in writing, under penalty of perjury.
 - c. EP Technical provides EEE a copy of the memorandum with the request for technical advice.
- (6) Every request for technical advice that is subject to IRC 6110 must include a statement of proposed deletions from public inspection in order to protect the privacy of taxpayer. See Rev. Proc. 2024-2, Section 7.05.
- (7) EP Technical prepares Form 4463, Request for Technical Advice Memorandum, which TEGEDC submits with the request for technical advice.
- (8) EP Technical submits one paper copy of the request for Technical Assistance to TEGEDC and one paper copy to:

Internal Revenue Service
Attn: CC:PA:LPD:TSS, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224

7.1.5.3.5
(06-03-2019)
**Additional Procedures
Under Rev. Proc. 2023-2**

- (1) Rev. Proc. 2024-2 outlines additional procedures:
- a. Section 8 - EEE's procedures for initially processing the request for technical advice.
 - b. Section 9 - EEE's procedures for taxpayer conferences in the event of a proposed adverse response.
 - c. Section 10 - EEE's preparation of the TAM.
 - d. Section 11 - Procedures for withdrawing a request for technical advice from EEE.
 - e. Section 12 - Use of a TAM after it has been issued.
 - f. Section 13 - The reliance a taxpayer has on a TAM as well as the retroactive effect of a TAM.
 - g. Section 14 - IRC 7805(b), which limits the retroactive effect of a TAM.

7.1.5.3.6
(06-03-2019)
Issuance of TAM

- (1) The TAM is addressed to EP Technical. EP Technical may request that EEE reconsider the result. Requests for reconsideration should focus on points that the TAM overlooked or misconstrued rather than simply re-arguing points raised in the initial request. EEE will determine per Rev. Proc. 2024-2, Section 10.07 whether the result should be modified or stay the same.
- (2) EP Technical gives a copy of the final TAM to the taxpayer. If the TAM is subject to IRC 6110, also give the taxpayer a copy of:
- The notice of intention to disclose under IRC 6110(f)(1).
 - The proposed redacted TAM.
- (3) EP Technical must process the taxpayer's case based on the conclusions in the TAM. However, see IRM 8.6.3, Conference and Settlement Practices, Appeals Rulings, for settlement authority in the Independent Office of Appeals for a TAM that is unfavorable to the taxpayer.

