



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

7.11.12

OCTOBER 17, 2023

EFFECTIVE DATE

(10-17-2023)

PURPOSE

- (1) This transmits revised IRM 7.11.12, *Employee Plans Determination Letter Program, Preparing Technical Advice Requests*.

MATERIAL CHANGES

- (1) Updated to reflect current versions of annual revenue procedures.
- (2) Updated this IRM for editorial changes and plain language.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 7.11.12 dated October 7, 2022.

AUDIENCE

Tax Exempt and Government Entities
Employee Plans

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7.11.12

Preparing Technical Advice Requests

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7.11.12.1
(01-08-2018)
Program Scope and Objectives

- (1) **Purpose:** This IRM gives the procedures for requesting technical advice for an Employee Plans (EP) Determination Letter (DL) application and for requests for relief under IRC 7805(b).
- (2) **Audience:** EP Determinations and Quality Assurance (QA) staff.
- (3) **Policy Owner:** Director, EP.
- (4) **Program Owner:** EP.
- (5) **Program Goals:** The goal of EP Determinations is to ensure that plans are in compliance with the tax laws by reviewing applications for DLs, opinion letters, and advisory letters, and to protect the public interest by applying the tax law with integrity and fairness to all.

7.11.12.1.1
(10-07-2022)
Background

- (1) The Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes) (Associate Office) in Washington, D.C:
 - a. Reviews all technical advice requests.
 - b. Is responsible for determining the resolution and guidance for the specific set of facts in the request.
 - c. Issues a resolution in the form of written guidance called a Technical Advice Memorandum (TAM).
- (2) Technical advice requests help to:
 - a. Resolve complex issues.
 - b. Establish and maintain consistent holdings throughout the IRS.
- (3) Associate Office's issuance of a TAM on the qualified status of a plan prevents the requesting taxpayer from appealing within the IRS for issues addressed by the TAM. The TAM is based on a specific set of facts for only the taxpayer who receives the TAM and no other plan sponsor can rely on that TAM.
- (4) A request for technical advice can be initiated by EP Determinations or a taxpayer. The group manager decides whether to pursue technical advice. Get help, if necessary, from the EP QA Manager.
- (5) Submit your consideration for any technical advice to the EP QA Manager after your group manager agrees. EP QA:
 - a. Helps address the potential issues.
 - b. Supports you in preparing the technical advice request.
- (6) The EP QA Manager with the agreement of the office of the Director, EP Rulings & Agreements (R&A) must approve the request before information is sent to TEGE Division Counsel (Division Counsel).
- (7) Division Counsel reviews the request for technical advice and must recommend that the request be submitted to the Associate Office.
- (8) If Division Counsel denies the request for technical advice but the group manager still believes a request is warranted, follow the reconciliation procedures in Rev. Proc. 2023-2, section 5.01. If the group manager decides that a request for technical advice from a taxpayer is unwarranted, the taxpayer may appeal that decision using the steps in Rev. Proc. 2023-2, section 5.03.

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7.11.12.1.2 (10-07-2022) Authority

- (1) Rev. Proc. 2023-2 (revised annually) lists the administrative procedures to request technical advice on matters under the Director, EP R&A of the Office of the Commissioner's jurisdiction. See IRM 7.11.12.3(2), When to Request a Technical Advice, for EP Determination issues for which you're required to submit for technical advice.
- (2) Delegation Order 7-1 states that the authority to issue favorable DLs on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans under IRC 401, IRC 403(a), IRC 409, and IRC 4975(e)(7) and the status for exemption of any related trusts or custodial accounts under IRC 501(a) is delegated to the Director, EP, and has been re-delegated to the Director, EP R&A. IRM 1.2.2.8.1.
- (3) Delegation Order 7-16, delegates the authority to allow a plan to be amended after the expiration of its IRC 401(b) remedial amendment period to the Director, EP Rulings and Agreements. IRM 1.2.2.8.16.
- (4) Find a complete list of delegation orders governing EP R&A at <https://www.irs.gov/privacy-disclosure/delegation-orders-and-policy-statements-by-process>.
- (5) See IRM 7.1.1, Exhibit 7.1.1-1 for a complete list of the major EP revenue procedures currently in effect.

7.11.12.1.3 (11-06-2019) Acronyms and Definitions

- (1) These acronyms, terms and definitions are used in this IRM:

Acronyms and Terms	Definitions
Associate Office	The Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes)
Division Counsel	TEGE Division Counsel
DL	Determination Letter
EP	Employee Plans
ERISA	Employee Retirement Income Security Act of 1974
Field Office	Personnel in any Rulings and Agreements office
QA	Quality Assurance
R&A	Rulings and Agreements
TAM	Technical Advice Memorandum
TEDS	Tax Exempt Determination System

7.11.12.2
(11-06-2019)
**Requests for Relief
under IRC 7805(b)**

- (1) Requests for relief from retroactive revocation or modification of a determination letter under IRC 7805(b)(8) will be the decision of the Director, EP R&A.
- (2) A request for relief can occur only when the plan has a determination letter and the specialist discovers the plan document contains faulty language or fails to include required language. In other words, the determination letter was issued in error.

Reminder: Without 7805(b)(8) relief, revocation is retroactive. Generally, the revocation will be retroactive to the effective date of the plan, to the effective date of the plan provision containing the faulty language or, if later, to the effective date of the required omitted language. Retroactivity is based on when the language was effective.

- (3) The request can be initiated by the taxpayer or specialist assigned to the case. If initiated by the taxpayer, it must be submitted to specialist assigned to the case prior to the issuance of the final adverse determination letter.
- (4) If initiated by the taxpayer, the request for retroactive relief must be in writing. The request must contain content specified in Rev. Proc. 2023-4, section 23.08 (updated annually).
- (5) The taxpayer's written request for relief must:
 - a. State that relief is being made under IRC 7805(b).
 - b. State the relief sought.
 - c. Explain the reasons and arguments in support of the relief sought; and
 - d. Include any documents bearing on the request.
- (6) The specialist will submit the request and accompanying information to the group manager who will make the decision to accept or deny the request for relief.
 - a. If the group manager believes that the request should be denied or further consideration is warranted to make an appropriate recommendation, the request will be sent to Division Counsel based on geography or subject matter.
 - b. Division Counsel will review the information from the group and furnish a memorandum to the group manager as to whether the determination letter should be "applied without retroactive effect" under IRC 7805(b)(8).
- (7) The group manager will decide whether IRC 7805(b) relief should be granted after consideration of the legal advice of Division Counsel if requested and will advise the specialist to prepare and transmit a recommendation memorandum to the Director, EP R&A.

Note: See Exhibit 7.11.12-2, Recommendation Memorandum for IRC 7805(b) Relief for a sample recommendation memorandum.

- (8) The Director, EP R&A will evaluate the recommendation memorandum and if necessary, consult with the appropriate Division Counsel office, to determine if relief will be granted and will return a signed memorandum back to the group.
- (9) The memorandum will either indicate "limited" or "not limited" retroactivity.

- a. If the decision is not limited, the Director, EP R&A's office will provide rationale for the decision if not otherwise described in the body of the memorandum.
- b. If the request for relief is denied, the specialist will inform the taxpayer in writing.

7.11.12.3
(11-06-2019)

**When to Request
Technical Advice**

- (1) Request technical advice:
 - a. For assistance on any technical or procedural question that develops during any proceeding before the Internal Revenue Service (Service) when the application of the law to the facts involved is unclear.
 - b. When the question involves the interpretation and proper application of any legal authority, including legislation, court decisions, regulations, notices, revenue rulings, revenue procedures, to a specific set of facts, that concerns the treatment of an item in a tax period or under examination.
 - (2) The group manager must concur (and the case file documented) that a technical advice request is:
 - a. Warranted based on the facts of the case or
 - b. Mandatory.
 - (3) A TAM may not be requested for prospective or hypothetical transactions except for certain TAMs in connection with a taxpayer's request for a determination letter on a matter within the jurisdiction of the Commissioner, TE/GE pursuant to Rev. Proc. 2023-4.
 - (4) A request for a TAM is mandatory regarding qualified retirement plan matters concerning plans for which the Service is proposing to issue a revocation letter because of certain fiduciary actions that violate the exclusive benefit rule of IRC 401(a) and are subject to Part 4 of Subtitle B of Title 1 of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406.
 - (5) Before a technical advice request is sent to the Associate Office, make a referral per IRM 4.71.6.7, EP Group Procedures – Making Referrals to DOL, on Form 6212-B, Examination Referral Checksheet B, to the U.S. Department of Labor if the technical advice request is for a case with either:
 - a. An unagreed prohibited transaction, as defined in IRC 4975(c)(1) and ERISA 406(a).
 - b. A violation of the exclusive benefit rule of IRC 401(a)(2) or ERISA 404(a)(1)(A).
- Note:** QA will tell you when to send the referral.
- (6) Technical advice can't be requested until all other case issues have been resolved. Before you request technical advice and during the technical advice process, keep the taxpayer informed and give them an opportunity to participate in the process.

7.11.12.3.1
(09-14-2021)
Taxpayer May Request Referral for Technical Advice

- (1) While a case is under the jurisdiction of the Director, EP R&A, a taxpayer may make an oral or written request that the group manager refer an issue to the Associate Office for technical advice.
- (2) If the group manager decides that the taxpayer's request is unwarranted, the group manager will notify the taxpayer.
- (3) A taxpayer's request for technical advice will not be denied merely because the Associate Office has already provided legal advice, other than a TAM, to the field office on the matter.

7.11.12.3.2
(09-14-2021)
Appeal of Field Office Denial of TAM Referral Request

- (1) The taxpayer may appeal the group manager's denial of the request for referral by submitting to the group manager, within 30 calendar days after notification that the request was denied, a written statement of the reasons why the matter should be referred to the Associate Office, in accordance with the procedures set out in Rev. Proc. 2023-2, Section 5.03.
- (2) The Director, EP R&A will determine whether the issue should be referred for technical advice based on the statements of the field office and the taxpayer. No conference will be held with the taxpayer or the taxpayer's representative.
- (3) If the Director, EP R&A determines that a TAM is not warranted, the taxpayer will be informed in writing of the proposed denial of the request and the reasons for the denial (unless doing so would prejudice the Government's interest).
- (4) The decision of the Director, EP R&A may be reviewed but not appealed.

7.11.12.4
(09-14-2021)
Pre-Submission Conference Overview

- (1) A pre-submission conference is required under Rev. Proc. 2023-2, Section 6.02 before a formal request for technical advice is sent to the Associate Office.
- (2) Pre-submission conferences are mandatory because they promote expeditious processing of requests for technical advice. A pre-submission conference helps the field office, field counsel, taxpayer, and the Associate Office agree on the:
 - a. Appropriate scope of the technical advice request.
 - b. Factual information and documents that must be included in formal submission of the request for technical advice.

Note: A pre-submission conference isn't an alternate procedure for evaluating the merits of the positions presented. The conference is intended only to facilitate the overall process.

- (3) Prior to requesting a pre-submission conference, the field office and taxpayer must exchange proposed statements of the pertinent facts and issues, to include any facts in dispute, issues the parties intend to discuss, any legal analysis and supporting authorities, and any background information that the parties believe would facilitate the Associate Office's understanding of the issues to be discussed.
- (4) If the taxpayer fails to provide a statement of pertinent issues and facts within a reasonable time, the conference may be scheduled without the taxpayer's statements.

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- (5) The QA reviewer and the Division Counsel attorney coordinate the scheduling of the conference, based on the time frames provided by the Associate Office.
- (6) No taping, stenographic or other type of verbatim recording of the conference may be done by any party.
- (7) Any discussion of substantive issues at the pre-submission conference:
 - a. Is advisory only.
 - b. Is not binding on the Service or on the Associate Office.
 - c. Can't be relied upon as a basis for obtaining retroactive relief under the provisions of IRC 7805(b).
- (8) During the pre-submission conference, the Associate Office may raise new issues in addition to those submitted by the field office and the taxpayer.
- (9) The conference is held by telephone with:
 - a. Specialist and group manager.
 - b. QA.
 - c. Division Counsel.
 - d. Associate Office.
 - e. Taxpayer.
 - f. Taxpayer's representative, if any.
 - g. EP R&A Technical Advisor.

7.11.12.4.1
(01-08-2018)

Preparing a Draft Proposed Statement of Issues and Facts Before the Pre-Submission Conference - Specialist's Responsibility

- (1) Prepare a draft proposed Statement of Issues and Facts (Draft Statement) and import it into the Nondisclosable folder and name it "Tech Advice - Draft Statement". The Draft Statement includes these sections:
 - a. Issues - specific questions or issues for the Associate Office to address.
 - b. Facts - a synopsis of the relevant background or plan history and the specific plan provisions in dispute. Include any information that would help the Associate Office understand the issues to be discussed during the conference.
 - c. Law - legal analysis including relevant statutory provisions, regulations, revenue rulings, revenue procedures, notices, or any other authority.
 - d. Plan Sponsor's Position - arguments presented by the plan sponsor (if available).
 - e. Service's Position - analysis and arguments in support of the Service's position. Coordinate with your group manager to get QA's help in forming the position. Provide any relevant legal authority contrary to our position or state that there isn't any.
- (2) See Exhibit 7.11.12-3, Sample Statement of Issues and Facts, for an example.
- (3) Once the Draft Statement is ready, email the statement to your group manager for approval. The email from the group manager granting approval should be imported and made a part of the work papers.
- (4) Send a copy of the Draft Statement to the plan sponsor for their review and comments. Prepare a cover letter which states that comments are welcome but not required and that the draft is subject to change.
- (5) If the plan sponsor disagrees with the Draft Statement, they should submit a statement, in the same format, detailing their position and a cover letter explaining the issues in dispute. They should provide any relevant legal authority

contrary to their position or state that there isn't any. The plan sponsor's statement should be copied into the Nondisclosable Folder and labeled "Tech Advice - Plan Sponsor Draft Statement".

Note: The plan sponsor's statement of issues and facts is not required to be submitted under the penalties of perjury. However, if facts remain unresolved after the pre-submission hearing, the statement will be required. Rev. Proc. 2023-2 section 7.06.

- (6) Every effort should be made to reach a mutual agreement on the issues and the facts to create one Draft Statement. If agreement is not possible, forward the plan sponsor's statement with the package to QA.

Note: If the plan sponsor doesn't provide a response in a reasonable amount of time, as determined by the group manager and specialist, don't delay the process.

7.11.12.4.2
(11-06-2019)

Forwarding the Draft Proposed Statement of Issues and Facts to Quality Assurance

- (1) Prepare the case and Draft Statement for QA to review and approve. You must include:
 - a. A cover memo requesting review of the Draft Statement and data related to the request. Include in the cover memo your contact information and a list of the items that you are sending.
 - b. The Draft Statement.
 - c. The written Draft Statement from the plan sponsor per Rev. Proc. 2023-2, section 6.03 and 7.01, if available.
- (2) Prepare Form 3198-A, Special Handling Notice, select the "Other" box and cite "Potential Technical Advice Request – Request for review of Draft Statement of issues and facts document."
- (3) Send the case to QA in TEDS using TEDS mandatory review indicator procedures.
- (4) If QA returns the case with Form 5456, Reviewer's Memorandum - TE/GE, complete Form 5457, Response to Reviewer's Memorandum - TE/GE, with comments addressing all issues the QA reviewer raised. Secure email Form 5457 and Draft Statement and update the case in TEDS to QA.

7.11.12.4.3
(11-06-2019)

Assistance from Quality Assurance

- (1) The QA reviewer will:
 - a. Evaluate Draft Statement for technical soundness.
 - b. Review and evaluate the plan sponsor's statement, if available.
 - c. Review the completeness, clarity and adequacy of the case file.
 - d. Return the case for additional development, if needed, using Form 5456.
 - e. Forward the Draft Statement to the QA manager for review after it has been fully developed.
- (2) The QA manager will:
 - a. Contact Division Counsel for consultation and recommendation that a technical advice request is warranted.
 - b. Secure email the Draft Statement to Division Counsel, along with contact information for the QA reviewer, specialist and group manager. Include any additional information relevant to the request in the email.

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Note: QA should include the EP R&A Technical Advisor in any communication with Division Counsel.

- (3) The Division Counsel attorney assigned to the case will:
- Contact the QA reviewer to discuss the request, including the specialist and group manager.
 - Advise the QA reviewer of any additions, deletions, suggestions or corrections to the Draft Statement.
 - Request the pre-submission conference package.
- (4) Follow these procedures depending on Division Counsel's decision:

If Division Counsel...	Then...
Requests extensive changes or additional case development	<ul style="list-style-type: none"> QA returns the Draft Statement and instructions to the specialist on Form 5456 via secured email then updates the case on TEDS back to the group. The specialist reviews QA and Division Counsel's instructions and makes any necessary changes. If the Draft Statement is modified, the specialist shares the new version with the taxpayer after QA review. Move the old "Tech Advice - Draft Statement" to Purge folder and save the revised Draft Statement as the new "Tech Advice - Draft Statement". The specialist sends the Draft Statement back to QA for further processing via secured email and updates the case on TEDS back to QA.
Approves the request	<p>QA:</p> <ul style="list-style-type: none"> Returns the Draft Statement and instructions to the specialist on Form 5456 via secured email and updates the case in TEDS back to the group. Instructs the specialist to complete the steps for the pre-submission conference in IRM 7.11.12.5.

If Division Counsel...	Then...
Denies the request and QA doesn't agree	The respective managers reconcile the issues within a reasonable time.
Denies the request and QA agrees	QA instructs the specialist how to close the case. Note: The taxpayer may appeal the decision per Rev. Proc. 2023-2, section 5.03.

7.11.12.5
(11-06-2019)
**Pre-Submission
Conference Preparations
- Specialist's
Responsibilities**

- (1) After you receive the case from QA, inform the taxpayer that the request to proceed with the technical advice request has been approved and send them a revised copy of the Draft Statement, if any.
- (2) Give the taxpayer 10 calendar days to respond to the revised Draft Statement and submit his or her own.

Note: If the taxpayer delays responding, don't delay the process.

- (3) Prepare the pre-submission conference package. Make copies of items and label them as individual files that will, collectively, create the electronic package. Use the following file naming format: "Pre-Submission Conference Package - "item name". Example: Pre-Submission Conference Package - Cover memo". You must include:
 - a. A cover memo requesting a technical advice request pre-submission conference. Include in the cover memo your contact information and a list of the material included in the pre-submission package.
 - b. The latest Draft Statement.
 - c. Form 2848, Power of Attorney and Declaration of Representative (if applicable). Form 8821, Tax Information Authorization, is not acceptable. Rev. Proc. 2023-2, section 6.03.
 - d. Copies of any relevant information, including workpapers and the plan document needed to evaluate the latest Draft Statement.

Note: The case file won't be sent to the Associate Office, so include copies of any relevant information needed to support the Draft Statement in the pre-submission package.

- (4) Prepare Form 3198-A, select the "Other" box and cite "Technical Advice - Pre-Submission Conference Request."
- (5) Send documents and the pre-submission package to the QA reviewer via secured email.

7.11.12.5.1
(01-08-2018)

**Pre-Submission
Conference Preparations
- QA Responsibilities**

- (1) The QA reviewer reviews and evaluates the pre-submission package for:
 - a. Technical soundness.
 - b. Uniformity.
 - c. Completeness.
 - d. Clarity.
 - e. Adequacy.
- (2) The QA reviewer may contact the specialist and request clarification of the pre-submission package. They may also return both the package and case file for additional development, if necessary, using Form 5456.
- (3) After review of the pre-submission package and any needed additional development, the reviewer forwards the package to the EP QA manager.
- (4) The EP QA manager contacts and forwards the pre-submission package to Division Counsel.
- (5) Division Counsel will email the request for a pre-submission conference and pre-submission materials to the Technical Services Support Branch (TSS4510). TSS4510 will ensure delivery of the pre-submission materials to the appropriate Associate Office. Rev. Proc. 2023-2, section 6.05.
- (6) Participate in the pre-submission conference after the Associate Office notifies you of the time and date. The conference should be held 15 to 30 calendar days from the notification date.
- (7) Follow these procedures depending on the pre-submission conference results:

If, as a result of the conference, it's decided:	Then:
Technical advice shouldn't be requested	QA: <ul style="list-style-type: none"> • Returns the case file/ materials to the specialist. • Instructs the specialist how to close the case (based on Division Counsel's recommendations).
The issue needs further development	QA: <ul style="list-style-type: none"> • Returns the case file/ materials via Form 5456 with instructions for further development or other required actions. The specialist responds to QA on Form 5457 with the case file and sends via secured email.

If, as a result of the conference, it's decided:	Then:
Technical advice will be requested	QA: <ul style="list-style-type: none"> Returns the case to the specialist to issue Letter 1399-A per IRM 7.11.12.5.2, Letter 1399-A, Technical Advice Notification.

7.11.12.5.2
(11-06-2019)
Letter 1399-A, Technical Advice Notification - Specialist's Responsibilities

- (1) If the parties determine during the pre-submission conference that technical advice is warranted, resolve any issues identified during the conference and issue Letter 1399-A.

- (2) Create the Letter 1399-A using the version in the *Forms/Pubs/Products Repository*:

Note: Select the appropriate selective paragraph for the disclosure requirements and enter 10 calendar days from the letter date for the "Required Response Date."

- a. Attach the latest Draft Statement to Letter 1399-A.
- b. Mail the letter and statement to the taxpayer and representative, if applicable.

- (3) If a taxpayer responds with disagreements on the issues and facts, resolve the disagreements within 10 calendar days. If all disagreements are resolved, consult with the QA reviewer to prepare a single combined statement of the agreed issues and facts.

- (4) If the disagreement can't be resolved, send both the taxpayer's set of issues and facts and the Service's latest Draft Statement to QA.

- a. QA will assist Division Counsel,
- b. QA helps the specialist to prepare a "Reconciliation" memo detailing items of disagreement.
- c. The specialist attaches the Reconciliation Memo to the Service's statement.

Note: The taxpayer's statement of issues and facts must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for technical advice, and such facts are true, correct and complete."

- (5) Include in the Reconciliation Memo:

- a. Discrepancies in facts that can't be reconciled or resolved.
- b. Relevant rebuttal of arguments presented by the plan sponsor or an explanation of how you considered the arguments in developing the latest Draft Statement.

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7.11.12.6
(09-14-2021)

Prepare Technical Advice Package - Specialist's Responsibilities

- c. Any new information presented by the taxpayer that was not previously included in the case.

(1) Prepare the technical advice package:

- a. If you don't receive a response by the 10-day deadline described in IRM 7.11.12.5.2 (3).
- b. If the taxpayer agrees with the Draft Statement.
- c. After you (with QA's help) complete the Reconciliation Memo.

(2) Prepare Form 4463, Request for Technical Advice or Technical Expedited Advice, for the request for technical advice. Find the form in the *Forms/Pubs/Products Repository*. Complete all parts (including the applicable exhibit attachment spaces) except for the Approving Official section, which is completed by the Manager, EP QA.

Note: To ensure that a copy of the reply to the request for technical advice is sent to the Manager of EP QA, enter the address in Exhibit 7.11.12-1, Mailing Address List, and their email address in the first box on Form 4463.

Note: Complete Part 3: Case Information – "Statutory period expires" "N/A." Generally, determination cases don't have a statute of limitations.

(3) Prepare technical advice package with copies of the following:

- a. Form 2848 (if applicable).
- b. Taxpayer's statement of proposed deletions (Deletion Statement), if any. See Rev. Proc. 2023-2, section 7.05.
- c. Letter 1399-A and the latest Draft Statement.
- d. Taxpayer's response to Letter 1399-A.
- e. Completed Form 4463.
- f. Pertinent case file documents labeled and indexed to Form 4463. Each document should be imported into the folder and labeled "Form 4463". This includes copies of the application, prior DLs, correspondence, specific plan provisions, plan document or amendment(s), and other relevant information in IRM 7.11.12.5, Pre-Submission Conference Preparations - Specialist's Responsibilities.

(4) After making copies, export the documents into one electronic file called "Technical Advice Request Package".

(5) Prepare a Form 3198-A, cite "Technical Advice Request" in the "Other" box.

(6) Submit the electronic technical advice request package, along with the case, to your manager for review and approval.

(7) Send the technical advice package to QA.

7.11.12.6.1
(11-06-2019)

Technical Advice Package - QA Responsibilities

(1) Conduct a final technical and procedural review of the package. Review the case on TEDS if significant changes were made to the Draft Statement.

(2) Review and complete Form 4463:

- a. Verify specialists' entries and correct, if necessary.

- b. Secure the signature and date of the EP QA manager as the Approving Official.
- (3) Update TEDS to 34TA and the group manager will update the case to status 91 (Case is in Counsel).
- (4) Email the original Form 4463 and any electronic documents in the technical advice request package to Division Counsel who will forward the information to the Associate Office according to Rev. Proc. 2023-2, section 7.07. Mail any hard copies of documents that can't be emailed to Division Counsel (ask them for the address).

Note: Once Division Counsel transfers the case to the Associate Office for TAM consideration, Division Counsel will notify the QA Manager to update the case to status 56 (Technical Advice Transfer (suspense status)).

- (5) Return the technical advice package, via secured email to the specialist. Prepare a memo:
 - a. Instruct the specialist to import the copy of the technical advice package into the case, if any of the original technical advice package items have been changed.
 - b. Give any further instructions.
- (6) Facilitate any requests from Division Counsel for additional information from the taxpayer, in an agreed timeframe given, if requested. Rev. Proc. 2023-2, section 8.06.
- (7) Provide assistance to Division Counsel and the Associate Office and/or participate in conferences, if requested, if an adverse TAM is proposed. Rev. Proc. 2023-2, section 8.09 and section 9.
- (8) Evaluate the proposed final version of the TAM. If there is a disagreement with the proposed final conclusions, normal reconciliation and reconsideration procedures should be followed to resolve the disagreement. Rev. Proc. 2023-2, section 10.04.

7.11.12.6.2
(11-06-2019)
**Completed Technical
Advice Memorandum
from the Office of
Associate Chief Counsel
- QA Responsibilities**

- (1) When QA receives the TAM, the QA manager reviews it to determine whether reconsideration is warranted with the approval of the Director, EP R&A. Rev. Proc. 2023-2, section 10.07.
- (2) QA can request with the approval of the Director, EP R&A reconsideration of the advice due to specific errors in the TAM analysis and conclusions within a reasonable amount of time after receiving the TAM.
 - a. Requests for reconsideration must describe, with specificity, the errors in the analysis and conclusions.
 - b. Don't re-argue points raised in the initial request but focus on any points that the TAM overlooked or misconstrued.
 - c. The taxpayer is not entitled to be informed that a request for reconsideration is being considered. See Rev. Proc. 2023-2, section 10.07.
- (3) After reconsideration, or if no reconsideration is requested, send the TAM and completed technical advice package to the originating group, via Form 5456, with instructions for sending the TAM to the taxpayer and processing the case. Update the case status from 56 to the appropriate status.

7.11.12.6.3
(11-06-2019)

**Completed Technical
Advice Memorandum
from the Office of
Associate Chief Counsel
- Specialist
Responsibilities**

(1) When you receive the case back, follow any instructions in the Form 5456 and the Transmittal Memo from the Associate Office. If the Transmittal Memo directs us to share the TAM with the taxpayer, mail it to the taxpayer. See Rev. Proc. 2023-2, section 10.10.

(2) Close the case to your manager using the normal procedures.

7.11.12.7
(10-07-2022)

**Electronic Signature and
Encrypted Submission**

(1) The electronic signature and submission procedures in Rev. Proc. 2023-1, sections 7.01(13) and 7.04(3) apply to this IRM for purposes of the taxpayer and authorized representative signing documents and submitting email attachments.

Exhibit 7.11.12-1 (11-18-2016)
Mailing Address List

Division	Address
EP Determinations QA express mail or private delivery address	Internal Revenue Service 550 Main Street EP Determinations Quality Assurance - Stop 6403 Cincinnati, OH 45202
EP Determinations QA address	Internal Revenue Service PO Box 2508 EP Determinations Quality Assurance - Stop 6403 Cincinnati, OH 45201
Associate Office express mail or private delivery address	Internal Revenue Service, Attn: CC:PA:LPD:TSS, Room 5336 1111 Constitution Avenue, NW Washington, DC 20224

Exhibit 7.11.12-2 (11-06-2019)**Sample Recommendation Memorandum for IRC 7805(b) Relief****Internal Revenue Service****memorandum****Date:****To:** Director, [EO] [EP] [Rulings and Agreements] [Examinations] SE:T:[_: _]**Subject** Application for Section 7805(b) Relief in the case of: [Taxpayer name] [(EIN: ____-____)]**Issue**

Whether [Taxpayer name] should be granted relief under § 7805(b) of the Internal Revenue Code ("I.R.C.") for all taxable years up until the issuance of a letter revoking its exempt status under § [____] of the Code.

Facts

[Taxpayer name] was recognized as exempt from federal taxation under [§ ____], effective [____]. [Provide additional facts relevant for § 7805 analysis and recommendation.]

VIEWS OF THE TAXPAYER:

[Taxpayer name] argues that relief under § 7805(b) is appropriate for all taxable years because:

[Summarize reasons and arguments of taxpayer and reference any documents that were included as bearing upon the request. See Section 23 of Rev. Proc. 2023-4 or Section 12 of Rev. Proc. 2023-5 for relevant criteria.]

VIEWS OF THE GROUP MANAGER:

The Group Manager proposes revoking [Taxpayer name]'s tax exempt status under § [____] effective as of [Date]. Revocation is proposed because:

[summarize reasons for revocation.]

Furthermore, the revocation should be effective [Date] because:

[summarize reasons for effective date of proposed revocation; reference any legal memorandum obtained from TEGEDC pursuant to 7805(b) case processing procedures.]

Exhibit 7.11.12-2 (Cont. 1) (11-06-2019)**Sample Recommendation Memorandum for IRC 7805(b) Relief****ANALYSIS:**

[Section 23 of Rev. Proc. 2023-4, 2023-X I.R.B. XXX] [Section 12 of Rev. Proc. 2023-5, 2023-X I.R.B. XXX], sets forth criteria which must be met for an organization to obtain relief under § 7805(b). First, ***

Delegation Order 30-1 (Rev. 3) delegates authority to the Director, [EO] [EP] [Rulings and Agreements] [Examinations], to prescribe the extent to which any ruling relating to the internal revenue laws shall be applied without retroactive effect for letter rulings and determination letters issued by the Commissioner, Tax Exempt and Government Entities.

In the present case, [insert analysis taking into account relevant criteria]

RECOMMENDATION:

We believe granting relief under § 7805(b) [would] [would not] be appropriate in this case. [Taxpayer name] [has] [has not] met the criteria of Rev. Proc. [2023-4] [2023-5] for relief under § 7805(b) because [summarize reasons for recommendation].

Therefore, we recommend the Director, [EO] [EP] [Rulings and Agreements] [Examinations] exercise discretionary authority [to limit] [not to limit] the retroactivity of the revocation. In accordance with [section 23 of Rev. Proc. 2023-4] [section 12 of Rev. Proc. 2023-5], revocation of [Taxpayer's] exempt status should be effective [Date] based on [significance of date].

DECISION:

Retroactivity [limited.] [not limited.]

[If decision is not to limit retroactivity, Director's office to provide rationale for decision if not otherwise described previously in memorandum.]

Approved By: _____ Date: _____

Director

[EO] [EP] [Rulings and Agreements] [Examinations]

Exhibit 7.11.12-3 (01-08-2018)**Sample Statement of Issues and Facts**

INTERNAL REVENUE SERVICE
STATEMENT OF ISSUES AND FACTS
Taxpayer's Name: Taxpayer Address: Taxpayer Identification No. Years Involved: Date of Conference: or (No Conference Held)

Issue(s):

State the issue(s) in clear, precise language to pinpoint the exact question or issue that needs to be resolved.

Sample language: *Whether the Plan meets the minimum participation requirements of section 401(a)(26) of the Internal Revenue Code (the "Code")?*

Sample language: *Whether the Plan is required to include a reference to section 457 of the Internal Revenue Code (the "Code") in its definition of compensation for purposes of applying the limits of section 415 of the Code?*

Facts:

Provide a synopsis of the relevant background or history of the plan and the specific plan provisions in question to help the Associate Office understand the issues. The essential facts should be fully represented. Use short quotations from documents in the case to aid in identifying particular areas when the conclusion depends on the interpretation of such language. However, avoid lengthy quotations whenever practicable.

Sample language: *xxxxxx (hereafter "Taxpayer"), Employer Identification Number of (enter number), adopted the xxxx (the Plan) on (enter date). The Plan was originally effective (enter date). The Plan year ends on (enter date). (Choice: The Plan last received a favorable determination letter from the Internal Revenue Service (IRS) on (enter date). OR The Plan has never received a favorable determination letter.) Section 2.3 provides the definition of Compensation for purposes of section 415 of the Code is...*

Law:

Refer to any relevant statutory provisions, regulations, revenue ruling, revenue procedures, notices, tax treaties, court decisions, or any other application authority. Ensure that all citations are directly on point. Use short quotations directly from the law when necessary but avoid lengthy quotations whenever practicable.

Sample language: *Revenue Ruling 76-259, 1976-2 CB 111, provides that the pension benefit may be offset only by the vested portion of the profit sharing plan account balance.*

Sample language: *Section 1.401-1(b)(1)(i) of the Income Tax Regulations ("Regulations") defines a qualified pension plan as a plan established and maintained by an employer to provide definitely determinable benefits to its employees.*

Exhibit 7.11.12-3 (Cont. 1) (01-08-2018)
Sample Statement of Issues and Facts

Taxpayer's Position:

Include arguments presented by the plan sponsor and their POA. Skip section if none available. This section is required if the plan sponsor requested the technical advice.

Service's Position:

Include analysis and arguments in support of the IRS's position. Make a reasonable, good faith effort to fully prepare this section but coordinate with your group manager and QA when necessary.

