



# Appeal Procedures:

## Adverse Determination Letter on Qualification of a Retirement Plan

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### Appeal Rights

Because people sometimes disagree on retirement plan qualification matters, the IRS has an administrative appeal system. Most differences can be settled by appeal without a court trial.

### Appeal within the IRS

You may appeal the adverse finding to the IRS Office of Appeals. They will arrange a conference or telephone meeting at a convenient time and place, and an Appeals Officer will discuss the disputed issues with you or your representative. You should be prepared to discuss all issues you don't agree with at this meeting. Most differences are resolved at this conference.

### How to Appeal to the Office of Appeals

You need to file a written appeal with the Director, Employee Plans Rulings and Agreements, at the address shown on the proposed adverse determination letter within 30 days from the date of the letter.

This written protest should contain:

1. Your name, address and daytime telephone number
2. A copy of the letter showing the findings you don't agree with (or the date and symbols of the letter)
3. Request for a telephone conference or conference in the Appeals Office
4. The issues you don't agree with and why you don't agree
5. The facts supporting your position on any issue you don't agree with
6. The law or authority you're relying on

You must sign the written protest and add the following oath to your letter:

"Under penalties of perjury, I declare that I have examined the facts presented in this appeal and any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

If your representative prepares the appeal for you, he or she must include a substitute declaration stating:

- they prepared the appeal and accompanying documents, and
- whether they know personally that the statements are true and complete.

### Representation

You may represent yourself at your conference, and you may bring another person with you to support your position. If you want to be represented by someone, the person you choose to represent you must be an attorney, certified public accountant, or enrolled agent authorized to practice before the IRS. If you want your representative to appear without you, you must provide a properly completed power of attorney [Form 2848](#), Power of Attorney and Declaration of Representative.

You can download this form from [www.irs.gov](http://www.irs.gov) or you may pick one up at any IRS office.

If you cannot reach an agreement with the Office of Appeals, you may take your case to court.

### Appeal to the Courts

If you still disagree with the IRS after your conference, you may take your case to the United States Tax Court. If you disagree with its decision, you may appeal to the U.S. Court of Appeals. These courts are independent judicial bodies and have no connection with the IRS.

## Tax Court

You may petition the Tax Court for a declaratory judgment on the qualification of your plan when you have:

1. Filed a completed application for a determination letter with the Director, Employee Plans Rulings and Agreements.
2. Notified all interested parties as provided in Internal Revenue Code Section 7476(b)(2).
3. Appealed to the Office of Appeals within 30 days from the date of the proposed adverse determination letter.

If you receive a final adverse determination letter, your petition to the Tax Court must be made before 92 days after the date the letter was mailed.

However, if you have not received a final adverse determination letter after 270 days from the date you filed your application for determination and you can demonstrate that you were prevented from completing the administrative process because of the failure of the IRS to proceed with due diligence, you may petition the Tax Court for a declaratory judgment.

The Tax Court will schedule your case for trial at a location convenient to you. You may represent yourself before the Tax Court, or you may be represented by anyone admitted to practice before that Court. For more information, contact the United States Tax Court, 400 Second St., N.W., Washington, D.C. 20217.

