

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:TEGE:EOEG:E01:HFRogers
PRENO-120876-05

date: July 12, 2005

to: MICHAEL SETO

Acting Manager, EO Technical Guidance & QA Group 1

from: MICHAEL B. BLUMENFELD

Senior Technician Reviewer, Exempt Organizations Branch 2 (Tax Exempt & Government Entities)

subject: Refusal to Rule Letters

This is in response to your memorandum dated April 12, 2005, requesting our views on a draft memorandum discussing "refusal to rule" letters.

[REDACTED]

While the regulations appear to provide for failure to rule letters, the failure to rule provisions originate in regulations that were issued prior to Congress enacting I.R.C. § 7428 in 1976. Section 7428 provides for a deemed exhaustion of administrative remedies at the expiration of 270 days if the organization has taken in a timely manner all reasonable steps to secure a determination. The consequence of deemed exhaustion is that the Service has the burden of proof in court. T.C. Rule 142(a); World Family Corporation v. Commissioner, 81 T.C. 958 (1983).

[REDACTED]

[REDACTED]

Failure to rule and failure to establish letters are very similar in format. They differ in that the failure to rule letter allows the applicant to perfect its application at some future time in excess of one year while the failure to establish letter becomes final if the applicant does not file a timely protest. Finally, eliminating failure to rule letters should not impose significant hardships on taxpayers since they have the ability to file a new application for exemption.

Please call Helen Rogers at (202) 622-6902 or me at (202) 622-7103 if you have any further questions.