

**Rev. Proc. 2009-5**

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**SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?** . . . . .

.01 This revenue procedure explains when and how Employee Plans Technical or Exempt Organizations Technical issue technical advice memoranda (TAMs) to an Employee Plans (EP) Examinations Area manager, an Exempt Organizations (EO) Examinations Area manager, an Employee Plans (EP) Determinations manager, an Exempt Organizations (EO) Determinations manager, or an Appeals Area Director in the employee plans areas (including actuarial matters) and exempt organizations areas. It also explains the rights a taxpayer has when an EP or EO Examinations Area manager, an EP or EO Determinations manager, or an Appeals Area Director requests a TAM regarding a tax matter. Similarly, this revenue procedure may be used

by another Operating Division of the Service involved in an examination where EP Technical does not have audit jurisdiction but has interpretive jurisdiction as enumerated in section 6.02 of Rev. Proc. 2009-4, page 118 of this Bulletin.

.02 Although taxpayer participation during all stages of the process is preferred, it is not required in order to request technical advice.

**SECTION 2. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 2008-5?**

This revenue procedure is a general update of Rev. Proc. 2008-5, 2008-1 I.R.B. 164, which contains the general procedures for technical advice requests for matters within the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

**SECTION 3. WHAT IS THE DEFINITION OF TECHNICAL ADVICE?**

“Technical advice” means advice or guidance in the form of a memorandum furnished by the Employee Plans Technical or Exempt Organizations Technical office, (hereinafter referred to as “EP or EO Technical”), upon the request of an EP or EO Examinations Area manager, an EP or EO Determinations manager or an Appeals Area Director submitted in accordance with the provisions of this revenue procedure in response to any technical or procedural question that develops during any proceeding on the interpretation and proper application of tax law, tax treaties, regulations, revenue rulings, notices or other precedents published by the headquarters office to a specific set of facts. (The references in this revenue procedure to an Appeals Area Director or an appeals office include, when appropriate, an Appeals Area Director, LMSB, a Deputy Appeals Area Director, LMSB, a Deputy Appeals Area Director, an Appeals Team Manager and include in employee plans matters another Operating Division of the Service described in the last sentence of section 1.01 above.) Such proceedings include (1) the examination of a taxpayer’s return, (2) consideration of a taxpayer’s claim for refund or credit, (3) a taxpayer’s request for a determination letter, (4) any other matter involving a specific taxpayer under the jurisdiction of EP or EO Examinations, EP or EO Determinations, or an appeals office or (5) processing and considering nondocketed cases of a taxpayer in an appeals office. However, they do not include cases in which the issue in the case is in a docketed case for any year.

For purposes of TAMs, the term “taxpayer” includes all persons subject to any provision of the Internal Revenue Code (including tax-exempt entities such as governmental units which issue municipal bonds within the meaning of § 103), and when appropriate, their representatives. However, the instructions and the provisions of this revenue procedure do not apply to requests for TAMs involving any matter pertaining to tax-exempt bonds or to § 457 plans maintained by state or local governments or tax-exempt organizations or to mortgage credit certificates. Instead, in those instances the procedures under Rev. Proc. 2009-2, page 87, this Bulletin must be followed.

TAMs help Service personnel resolve complex issues and help establish and maintain consistent holdings throughout the Internal Revenue Service. An EP or EO Examinations, an EP or EO Determinations or an appeals office may raise an issue in any tax period, even though technical advice may have been requested and furnished for the same or similar issue for another tax period.

Technical advice does not include oral or written legal advice furnished to the EP or EO Examinations or the EP or EO Determinations or the appeals office, other than advice furnished pursuant to this revenue procedure. In accordance with section 12.01 of this revenue procedure, a taxpayer’s request for referral of an issue to the headquarters office for technical advice will not be denied merely because EP or EO Technical has already provided legal advice, other than advice furnished pursuant to this revenue procedure, to the EP or EO Examinations or the EP or EO Determinations or the appeals office on the matter.

Although taxpayer participation during all stages of the process is preferred, generally, it is not required in order to request a TAM.

**SECTION 4. ON WHAT ISSUES  
MAY OR MUST TAMs BE  
REQUESTED UNDER THIS  
PROCEDURE?**

**Issues under the jurisdiction of  
the Commissioner, Tax Exempt  
and Government Entities Division**

.01 Generally, the instructions of this revenue procedure apply to requests for TAMs on any issue under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division.

**Farmers' cooperatives**

.02 If an EP or EO Examinations, an EP or EO Determinations, an appeals office or a taxpayer requests technical advice on a determination letter under § 521 of the Code, the procedures under this revenue procedure, Rev. Proc. 2008-9, 2008-2 I.R.B. 258, as well as § 601.201(n) of the Statement of Procedural Rules (26 CFR § 601.201(n) (2007)), must be followed.

**Basis for requesting TAMs**

.03 Requests for TAMs are encouraged on any technical or procedural questions arising in connection with any case of the type described in section 3 at any stage of the proceedings in an EP or EO Examinations, an EP or EO Determinations or an appeals office case that cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other published precedent.

**Areas of mandatory technical  
advice**

.04 Requests for § 7805(b) relief are mandatory TAMs with respect to all exempt organizations and employee plans matters.

Regarding exempt organizations matters, EO Examinations, EO Determinations and appeals offices are required to request a TAM on their exempt organization cases concerning qualification for exemption or foundation status for which there is no published precedent or for which there is reason to believe that non-uniformity exists. (Exemption application cases handled in EO Technical in accordance with Rev. Procs. 72-5, 80-27, or 2007-52 are not covered by this provision.) A request for a TAM is not required if the Director, EO Examinations proposes to revoke or modify (1) a letter ruling found to be in error or not in accord with the current views of the Service, or (2) a letter recognizing tax-exempt status issued by the headquarters office.

Regarding employee plans matters, a request for a TAM is required in cases concerning (1) proposed adverse or proposed revocation letters on collectively-bargained plans, (2) plans for which the Service is proposing to issue a revocation letter because of certain fiduciary actions that violate the exclusive benefit rule of § 401(a) of the Code and are subject to Part 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 1974-3 C.B. 1, 43, or (3) amendments to defined contribution plans pursuant to Rev. Proc. 2004-15, 2004-1 C.B. 490, in connection with a waiver of the minimum funding standard and a request for a determination letter (*see* section 15 of Rev. Proc. 2009-6, page 189, this Bulletin, and section 3.04 of Rev. Proc. 2004-15).

**SECTION 5. ON WHAT ISSUES MUST TAMs BE REQUESTED UNDER DIFFERENT PROCEDURES?**

**Matters (other than farmers' cooperatives) under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Division Counsel/Associate Chief Counsel (TE/GE), and the Associate Chief Counsel (Procedure & Administration)**

.01 All procedures for obtaining TAMs on issues (other than farmers' cooperatives) under the interpretive jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), or the Division Counsel/Associate Chief Counsel (TE/GE), and on certain issues under the jurisdiction of the Associate Chief Counsel (Procedure & Administration), including any matter pertaining to (1) tax-exempt bonds or mortgage credit certificates, (2) deferred compensation plans under § 457, (3) § 526 of the Code (shipowners' protection and indemnity associations), (4) § 528 (certain homeowners' associations), (5) Indian tribal governments, (6) federal, state or local governments, and (7) issues involving the interpretation or application of the federal income tax laws and income tax treaties relating to international transactions are contained in Rev. Proc. 2009-2.

**Alcohol, tobacco, and firearms taxes**

.02 The procedures for obtaining a TAM specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are currently under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau within the Treasury Department.

**Excise taxes**

.03 A TAM regarding excise taxes (other than excise taxes imposed under Chapters 41, 42 and 43 of the Code), and employment taxes that employee plans and exempt organizations are subject to, is set forth in Rev. Proc. 2009-2.

**SECTION 6. MAY TAM UNDER § 301.9100-1 BE REQUESTED DURING THE COURSE OF AN EXAMINATION?**

**A § 301.9100-1 request is a letter ruling request**

.01 Except with regard to exemption application matters involving §§ 505(c) and 508, a request for an extension of time for making an election or other application for relief under § 301.9100-1 of the Procedure and Administration Regulations is not a request for a TAM; instead, the request is submitted as a letter ruling request even if the request is submitted after the examination of the taxpayer's return has begun or after the issues in the return are being considered by an appeals office or a federal court. Therefore, a § 301.9100-1 request should be submitted pursuant to Rev. Proc. 2009-4, page 118, this Bulletin (including the payment of the applicable user fee listed in section 6 of Rev. Proc. 2009-8).

**Statute of limitations**

.02 The running of any applicable period of limitations is not suspended for the period during which a § 301.9100-1 request has been filed. *See* § 301.9100-3(d)(2). If the period of limitations on an assessment under § 6501(a) for the taxable year in which an election should have been made, or any taxable year that would have been affected by the election had it been timely made, will expire before receipt of a § 301.9100-1 letter ruling, the Service ordinarily will not issue a § 301.9100-1 ruling. *See* § 301.9100-3(c)(1)(ii). Therefore, the taxpayer must secure a consent under § 6501(c)(4) to extend the period of limitations on assessment. Note that the filing of a protective claim for refund under § 6511 does not extend the period of limitations on assessment. If § 301.9100-1 relief is granted, the Service may require the taxpayer to consent to an extension of the period of limitations for assessment. *See* § 301.9100-3(d)(2).

**Address to send a § 301.9100-1 request**

.03 Requests made under § 301.9100-1, pursuant to Rev. Proc. 2009-4, together with the appropriate user fee, must be submitted to the Internal Revenue Service by the taxpayer and addressed as follows:

Requests involving employee plans matters:

Internal Revenue Service  
Commissioner, Tax Exempt and Government Entities  
Attn: SE:T:EP:RA  
P. O. Box 27063  
McPherson Station  
Washington, DC 20038

Requests involving exempt organization matters:

Internal Revenue Service  
Commissioner, Tax Exempt and Government Entities  
Attn: SE:T:EO:RA  
P. O. Box 27720  
McPherson Station  
Washington, DC 20038

A § 301.9100–1 request may also be hand delivered between the hours of 8:30 a.m. and 4:00 p.m. where a receipt will be given at the Courier’s Desk. In each instance, the package should be marked RULING REQUEST SUBMISSION. *See* Rev. Proc. 2009–8 for the appropriate user fee. Deliver to:

Courier’s Desk  
Internal Revenue Service  
Attn: SE:T:EP:RA or SE:T:EO:RA  
1111 Constitution Avenue, N.W. — PE  
Washington, D.C. 20224

**If return is being examined or considered by an appeals office or a federal court, the taxpayer must notify EP or EO Technical who will notify the EP or EO Examinations Area manager, Appeals Area Director or government counsel**

.04 If the taxpayer’s return for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made is being examined by EP or EO Examinations or the issues in the return are being considered by an appeals office or a federal court, the taxpayer must notify EP or EO Technical. *See*, § 301.9100–3(e)(4)(i) and section 6.04 of Rev. Proc. 2009–4. EP or EO Technical will notify the appropriate EP or EO Examinations Area manager or Appeals Area Director or government counsel considering the return that a request for § 301.9100–1 relief has been submitted. The EP or EO specialist, appeals officer or government counsel is not authorized to deny consideration of a request for § 301.9100–1 relief. The letter ruling will be mailed to the taxpayer and a copy will be sent to the appropriate EP or EO Examinations Area manager, or Appeals Area Director or government counsel.

## **SECTION 7. WHO IS RESPONSIBLE FOR REQUESTING TAMs?**

**EP or EO Examinations Area manager or EP or EO Determinations manager or Appeals Area Director determines whether to request the advice**

.01 The EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director determines whether to request a TAM on an issue. Each request must be submitted through proper channels and signed by a person who is authorized to sign for the EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director. The mandatory technical advice described in section 4.04(3) of this revenue procedure, for cases concerning amendments to defined contribution plans in connection with a waiver of the minimum funding standard and a request for a determination letter, is treated as if it had been a request for technical advice submitted by the EP Determinations manager. *See* section 15 of Rev. Proc. 2009–6 and section 3.04 of Rev. Proc. 2004–15 for the procedural rules applicable to this particular mandatory technical advice.

**Taxpayer may ask that issue be referred for TAM**

.02 While a case is under the jurisdiction of EP or EO Examinations, EP or EO Determinations, or an Appeals Area Director, a taxpayer may request that an issue be referred to the EP or EO Technical office for a TAM.

## **SECTION 8. WHEN SHOULD A TAM BE REQUESTED?**

### **Uniformity of position lacking**

.01 A TAM should be requested when there is a lack of uniformity regarding the disposition of an issue or when an issue is unusual or complex enough to warrant consideration by EP or EO Technical.

### **When can a TAM be requested**

.02 Generally, except as provided in section 1.01, the provisions of this revenue procedure apply only to a case under the jurisdiction of EP or EO Examinations, EP or EO Determinations or an Appeals Area Director. A TAM may also be requested on issues considered in a prior appeals disposition, not based on mutual concessions for the same tax period of the same taxpayer, if the appeals office that had the case concurs in the request.

(1) EP or EO Examinations or EP or EO Determinations may not request a TAM on an issue if an appeals office is currently considering an identical issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or an affiliated group of which the taxpayer is also a member within the meaning of § 1504).

(2) A case remains under the jurisdiction of EP or EO Examinations or EP or EO Determinations even though an appeals office has the identical issue under consideration in the case of another taxpayer (not related within the meaning of § 267 or § 1504) in an entirely different transaction. With respect to the same taxpayer or the same transaction, when the issue is under the jurisdiction of an appeals office, and the applicability of more than one kind of federal tax is dependent upon the resolution of that issue, EP or EO Examinations or EP or EO Determinations may not request a TAM on the applicability of any of the taxes involved.

(3) EP or EO Examinations or EP or EO Determinations or an Appeals Area Director, also may not request a TAM on an issue if the same issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) is in a docketed case for the same taxpayer (or for a related taxpayer or a member of an affiliated group of which the taxpayer is also a member) for any taxable year.

### **At the earliest possible stage**

.03 Once an issue is identified, all requests for a TAM should be made at the earliest possible stage in the proceeding. The fact that the issue is raised late in the examination, determination or appeals process should not influence, however, EP or EO Examinations', EP or EO Determinations' or an Appeals Area Director's, decision to request a TAM.

## **SECTION 9. HOW ARE PRE-SUBMISSION CONFERENCES SCHEDULED?**

### **Pre-submission conference generally is permitted when a request for TAM is likely and all parties agree to request the conference**

.01 In an effort to promote expeditious processing of requests for a TAM, EP or EO Technical generally will discuss the issue(s) with the EP or EO Examinations or the EP or EO Determinations or the appeals office and the taxpayer prior to the time any request for technical advice is formally submitted to EP or EO Technical. In all cases, other than mandatory TAMs which are described in section 4.04, a pre-submission conference is mandatory.

A request for a pre-submission conference should be made, however, only after the EP or EO Examinations or the EP or EO Determinations or the appeals office determines that it will likely request a TAM.

If the request for a TAM will involve more than one function, representatives from each function involved must participate in the pre-submission conference.

### **Purpose of pre-submission conference**

.02 A pre-submission conference is intended to facilitate agreement between the parties as to the appropriate scope of the request for a TAM or any collateral issues that either should or should not be included in the request for a TAM, and any other substantive or procedural considerations that will allow EP or EO Technical to provide the parties with a TAM as expeditiously as possible.



A pre-submission conference is not intended to create an alternate procedure for determining the merits of the substantive positions advocated by the EP or EO Examinations or the EP or EO Determinations or the appeals office or by the taxpayer. Rather, the conference is intended only to facilitate the overall process.

**Request for pre-submission conference must be submitted in writing by the EP or EO Examinations or the EP or EO Determinations or the appeals office**

.03 A request for a pre-submission conference must be submitted in writing by the EP or EO Examinations or the EP or EO Determinations or the appeals office. The request should identify the office expected to have jurisdiction over the request for a TAM. The request should include a brief explanation of the primary issue so that an assignment to the appropriate group can be made.

**Group will contact the EP or EO Examinations or the EP or EO Determinations or the appeals office to arrange the pre-submission conference**

.04 Within 5 working days after it receives the request, the group assigned responsibility for conducting the pre-submission conference will contact the EP or EO Examinations or the EP or EO Determinations or the appeals office to arrange a mutually convenient time for the parties to meet (generally by telephone) in the EP or EO Technical office. The conference generally should be held within 30 calendar days after the EP or EO Examinations or the EP or EO Determinations or the appeals office is contacted. The EP or EO Examinations or the EP or EO Determinations or the appeals office will be responsible for coordinating with the taxpayer as well as with any other Service personnel whose attendance the EP or EO Examinations or the EP or EO Determinations or the appeals office believes would be appropriate.

**Pre-submission conference generally held by telephone**

.05 Generally, pre-submission conferences for TAMs are held by telephone with EP or EO Technical unless the parties specifically request that the conference be held in person.

**Certain information required to be submitted to EP or EO Technical prior to the pre-submission conference**

.06 At least 10 working days before the scheduled pre-submission conference, the EP or EO Examinations or the EP or EO Determinations or the appeals office and the taxpayer should submit to EP or EO Technical a statement of the pertinent facts (including any facts in dispute), a statement of the issues that the parties would like to discuss, and any legal analysis, authorities, or background documents that the parties believe would facilitate EP or EO Technical's understanding of the issues to be discussed at the conference. The legal analysis provided for the pre-submission conference need not be as fully developed as the analysis that ultimately will accompany the request for a TAM, but it should allow EP or EO Technical to become reasonably informed regarding the subject matter of the conference prior to the meeting. The EP or EO Examinations or the EP or EO Determinations or the appeals office or the taxpayer should ensure that the EP or EO Technical office receives a copy of any required power of attorney, on Form 2848, *Power of Attorney and Declaration of Representative*.

**Manner of submitting pre-submission materials**

.07 The pre-submission materials must be submitted electronically. In order to obtain the protection of taxpayer information offered by the Service's Intranet "firewall," the pre-submission materials must be electronically transmitted by the Service office assigned to the request.

To the extent that supporting materials cannot be submitted electronically, such materials should be sent by fax or by express mail or private delivery service to the tax law specialist or actuary in Headquarters assigned to the request. In such cases, the appropriate provisions of section 10.05 should be followed.

**Pre-submission conference may not be taped**

.08 Because pre-submission conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

**Discussion of substantive issues is not binding on the Service**

.09 Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

**SECTION 10. WHAT MUST BE INCLUDED IN THE REQUEST FOR A TAM?**

**Statement of issues, facts, law, and arguments**

.01 Whether initiated by the taxpayer or by an EP or EO Examinations or an EP or EO Determinations or an appeals office, a request for a TAM must include the facts and the issues

for which the TAM is requested, and a written statement that clearly sets forth the applicable law and the arguments in support of both the Service's and the taxpayer's positions on the issue or issues.

**Taxpayer must submit statement if the taxpayer initiates request for a TAM**

(1) If the taxpayer initiates the request for a TAM, the taxpayer must submit to the EP or EO specialist or appeals office, at the time the taxpayer initiates the request, a written statement—

- (a) stating the facts and the issues;
- (b) explaining the taxpayer's position;
- (c) discussing any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, or any other authority supporting the taxpayer's position; and
- (d) stating the reasons for requesting technical advice.

If the EP or EO specialist or the appeals office determines that a TAM will be requested, the taxpayer's statement will be forwarded to EP or EO Technical with the request for the TAM.

**Taxpayer is encouraged to submit statement if Service initiates request for a TAM**

(2) If the request for a TAM is initiated by an EP or EO Examinations office or by an EP or EO Determinations office or by an appeals office, the taxpayer is encouraged to submit the written statement described in section 10.01(1) of this revenue procedure. If the taxpayer's statement is received after the request for the TAM has been forwarded to EP or EO Technical, the statement will be forwarded to EP or EO Technical for association with the TAM.

**Statement of authorities contrary to taxpayer's position**

(3) Whether the request for a TAM is initiated by the taxpayer or by an EP or EO Examinations office or by an EP or EO Determinations office or by an appeals office, the taxpayer is encouraged to comment on any legislation, tax treaties, regulations, revenue rulings, revenue procedures, or court decisions contrary to the taxpayer's position. If the taxpayer determines that there are no contrary authorities, a statement to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Service, in complex cases or those presenting difficult or novel issues, may request submission of contrary authorities or a statement that none exists.

**General provisions of §§ 6104 and 6110**

.02 Generally, § 6104(a)(1)(B) provides that an application filed with respect to: (1) the qualification of a pension, profit-sharing, or stock bonus plan under § 401(a) or § 403(a) or an individual retirement arrangement under § 408(a) or § 408(b) will be open to public inspection pursuant to regulations as will (2) any application filed for an exemption from tax under § 501(a) of an organization forming part of a plan or account described above. Generally, § 6110(a) provides that except as provided otherwise, written determinations (defined in § 6110(b)(1) as rulings, determination letters, technical advice memorandums and Chief Counsel advice) and any related background file document will be open to public inspection pursuant to regulations.

**Application of § 6104**

.03 The requirements for submitting statements and other materials or proposed deletions in TAMs before public inspection is allowed do not apply to requests for any documents to the extent § 6104 applies.

**Statement identifying information to be deleted from public inspection**

.04 The text of a TAM subject to § 6110(a) may be open to public inspection. The Service deletes certain information from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), the taxpayer must provide a statement indicating the deletions desired ("deletions statement"). If the taxpayer does not submit the deletions statement, the Service will follow the procedures in section 11.06 of this revenue procedure.

A taxpayer who wants only names, addresses, and identifying numbers deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletions statement must be accompanied by a copy of the TAM request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletions statement must indicate the statutory basis, under § 6110(c) for each proposed deletion.

The taxpayer may submit additional deletions statements before the TAM is issued.

The deletions statement must not appear in the request for a TAM but, instead, must be made in a separate document.

The deletions statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or a faxed signature is not permitted.

The taxpayer should follow these same procedures to propose deletions from any additional information submitted after the initial request for a TAM. An additional deletions statement, however, is not required with each submission of additional information if the taxpayer's initial deletions statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants the same information deleted from the additional information.

**Transmittal Form 5565, Request for Technical Advice — EP/EO**

.05 The EP or EO Examinations or the EP or EO Determinations or the appeals office (including another Operating Division of the Service involved in an examination where EP Technical does not have audit jurisdiction but has interpretive jurisdiction as enumerated in section 6.02 of Rev. Proc. 2009–4) should use Form 5565, *Request for Technical Advice — EP/EO*, for transmitting a request for technical advice to EP or EO Technical.

The appropriate office of the Service must submit electronically, the Form 5565 for a TAM request to *Donzel.H.Littlejohn@irs.gov* for EP matters and *Theodore.R.Lieber@irs.gov* for EO matters. To the extent feasible, the accompanying documents should be submitted to the same e-mail address (followed by a hard copy if requested by the assigned group). See section 9.07 for additional information.

The applicable office should submit additional documents that are not available in electronic form by fax to 202–283–9654 for EP matters and 202–283–8858 for EO matters or by express mail or private delivery service to the address below.

Whenever possible, all documents should contain the case number and name of the tax law specialist or actuary assigned to the pre-submission conference for the TAM request. Documents that are being sent in hardcopy should be sent on the business day before the day that the request for a TAM is submitted via e-mail, so as not to delay the process. It is anticipated that most, if not all, such documents will be identified during the pre-submission conference.

The field and the taxpayer are encouraged to provide electronic versions of a proposed TAM containing the taxpayer's deletions and legends for EP Technical's or EO Technical's use.

**Address to send requests from EP or EO Examinations or EP or EO Determinations offices or another Operating Division**

*Employee Plans*  
Internal Revenue Service  
Attn: SE:T:EP:RA  
1111 Constitution Ave., NW – PE  
Washington, DC 20224

*Exempt Organizations*  
Internal Revenue Service  
Attn: SE:T:EO:RA  
1111 Constitution Ave., NW – PE  
Washington, DC 20224

If a request is from an Appeals office and is within EP/EO's jurisdiction, the field office must send the request for a TAM to one of the above offices with a copy of the request to the Appeals Director, Technical Services at the address below.

Internal Revenue Service  
Director, Technical Services  
Attn: C:AP  
Franklin Court Building  
1099 14<sup>th</sup> Street, NW  
Washington, DC 20005

**Power of attorney**

.06 Any authorized representative, as described in section 9.02 of Rev. Proc. 2009-4, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230, as revised, and with the conference and practice requirements of the Statement of Procedural Rules (26 CFR part 601). A Form 2848, *Power of Attorney and Declaration of Representative*, must be used with regard to requests for a TAM under this revenue procedure. An original, a copy or a fax transmission of the power of attorney is acceptable so long as its authenticity is not reasonably disputed.

**SECTION 11. HOW ARE REQUESTS HANDLED?**

**Taxpayer notified**

.01 Regardless of whether the taxpayer or the Service initiates the request for a TAM, the EP or EO Examinations or the EP or EO Determinations or the appeals office: (1) will notify the taxpayer that the TAM is being requested; and (2) at or before the time the request is submitted to EP or EO Technical, will give to the taxpayer a copy of the arguments that are being provided to EP or EO Technical in support of its position.

If the EP or EO specialist or appeals office initiates the request for a TAM, he or she will give to the taxpayer a copy of the statement of the pertinent facts and the issues proposed for submission to EP or EO Technical.

This section 11.01 does not apply to a TAM described in section 11.07 of this revenue procedure.

**Consider whether published guidance is appropriate**

.02 Whenever the assigned reviewer suspects that general guidance should be published regarding the issue presented, the reviewer will notify the Manager, Technical who in turn will notify the Manager, Technical Guidance and Quality Assurance. The Manager, Technical Guidance and Quality Assurance will then determine if the issue meets publication standards. In general, except where policy issues and concerns regarding proper administration of the tax laws require otherwise, the TAM will be issued in advance of published guidance.

**Conference offered**

.03 When notifying the taxpayer that technical advice is being requested, the EP or EO specialist or appeals office will also tell the taxpayer about the right to a conference in EP or EO Technical if an adverse decision is indicated and will ask the taxpayer whether such a conference is desired.

**If the taxpayer disagrees with the Service's statement of facts**

.04 If the EP or EO specialist or appeals office initiates the request for a TAM, the taxpayer has 10 calendar days after receiving the statement of facts and specific issues to submit to that specialist or office a written statement specifying any disagreement on the facts and issues. A taxpayer who needs more than 10 calendar days must justify, in writing, the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director.

After receiving the taxpayer's statement of the areas of disagreement, every effort should be made to reach agreement on the facts and the specific points at issue before the matter is referred to EP or EO Technical. If an agreement cannot be reached, the EP or EO Examinations or the EP or EO Determinations or the appeals office will notify the taxpayer in writing. Within 10 calendar days after receiving the written notice, the taxpayer may submit a statement of the taxpayer's understanding of the facts and the specific points at issue. A taxpayer who needs more than 10 calendar days to prepare the statement of understanding must justify, in writing, the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director. Both the statements of the taxpayer and the EP or EO Examinations or EP or EO Determinations or appeals office will be forwarded to EP or EO Technical with the request for a TAM.

When EP or EO Examinations or EP or EO Determinations or the Appeals Area Director and the taxpayer cannot agree on the material facts and the request for a TAM does not involve the issue of whether a letter ruling or determination letter should be modified or revoked, EP

or EO Technical, at its discretion, may refuse to provide technical advice. If EP or EO Technical chooses to issue the TAM, it will base its advice on the facts provided by the EP or EO Examinations or EP or EO Determinations or appeals office.

If a request for a TAM involves the issue of whether a letter ruling or determination letter should be modified or revoked, EP or EO Technical will issue the TAM.

**If the Service disagrees with the taxpayer's statement of facts**

.05 If the taxpayer initiates the action to request a TAM, and the taxpayer's statement of the facts and issues is not wholly acceptable to the EP or EO Examinations or the EP or EO Determinations or the appeals office, the Service will notify the taxpayer in writing of the areas of disagreement. The taxpayer has 10 calendar days after receiving the written notice to reply to it. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager, or the EP or EO Determinations manager or the Appeals Area Director.

If an agreement cannot be reached, both the statements of the taxpayer and the EP or EO Examinations office or the EP or EO Determinations office or appeals office will be forwarded to EP or EO Technical with the request for a TAM. When the disagreement involves material facts essential to the preliminary assessment of the case, the EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director may refuse to refer a taxpayer initiated request for the TAM to EP or EO Technical.

If EP or EO Examinations or EP or EO Determinations or an Appeals Area Director submits a case involving a disagreement of material facts, EP or EO Technical, at its discretion, may refuse to provide the TAM. If EP or EO Technical chooses to issue the TAM, it will base its advice on the facts provided by the EP or EO Examinations or the EP or EO Determinations or the appeals office.

**If the taxpayer has not submitted the required deletions statement**

.06 When the EP or EO Examinations or the EP or EO Determinations or the appeals office initiates the request for a TAM, the taxpayer has 10 calendar days after receiving the statement of facts and issues to be submitted to EP or EO Technical to provide the deletions statement required under § 6110 if public inspection is permitted pursuant to § 6110 (*see* section 10.05 of this revenue procedure). In such a case, if the taxpayer does not submit the deletions statement, the EP or EO Examinations or the EP or EO Determinations or the appeals office, will tell the taxpayer that the statement is required.

When the taxpayer initiates the request for a TAM and does not submit with the request a deletions statement as required by § 6110, EP or EO Examinations or EP or EO Determinations or the Appeals Area Director will ask the taxpayer to submit the statement. If EP or EO Examinations or EP or EO Determinations or the Appeals Area Director does not receive the deletions statement within 10 calendar days after asking the taxpayer for it, EP or EO Examinations or EP or EO Determinations or the Appeals Area Director may decline to submit the request for the TAM.

However, if the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director decides to request a TAM, whether initiated by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office or by the taxpayer, in a case in which the taxpayer has not submitted the deletions statement, EP or EO Technical will make those deletions that the Commissioner of Internal Revenue determines are required by § 6110(c).

**Criminal or civil fraud cases**

.07 The provisions of this section (about referring issues upon the taxpayer's request, obtaining the taxpayer's statement of the areas of disagreement, telling the taxpayer about the referral of issues, giving the taxpayer a copy of the arguments submitted, submitting proposed deletions, and granting conferences in EP or EO Technical) do not apply to a TAM described in § 6110(g)(5)(A) that involves a matter that is the subject of or is otherwise closely related to a criminal or civil fraud investigation, or a jeopardy or termination assessment.

In these cases, a copy of the TAM is given to the taxpayer after all proceedings in the investigations or assessments are complete, but before the Service mails the notice of intention

to disclose the TAM under § 6110(f)(1). The taxpayer may then provide the statement of proposed deletions to EP or EO Technical.

**SECTION 12. HOW DOES A TAXPAYER APPEAL AN EP OR EO MANAGER'S OR AN APPEALS AREA DIRECTOR'S DECISION NOT TO SEEK TECHNICAL ADVICE?**

**Taxpayer notified of decision not to seek a TAM**

.01 If the EP or EO specialist's or the appeal's referral of an issue to EP or EO Technical for a TAM is not warranted, the EP or EO specialist or the appeals office will tell the taxpayer. A taxpayer's request for such a referral will not be denied merely because EP or EO Technical provided legal advice, other than advice furnished pursuant to this revenue procedure, to the EP or EO Examinations or the EP or EO Determinations or appeals office on the matter.

**Taxpayer may request review of decision not to seek a TAM**

.02 The taxpayer may request review of the decision of the EP or EO specialist or the appeals office not to request a TAM in all instances. To do so, the taxpayer must submit to that specialist or office, within 10 calendar days after being told of the decision, a written statement of the facts, law, and arguments on the issue and the reasons why the taxpayer believes the matter should be referred to EP or EO Technical for a TAM. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the appropriate appeals office.

**EP or EO Examinations Area manager or EP or EO Determinations manager or Appeals Area Director determines whether technical advice will be sought**

.03 The EP or EO specialist or the appeals office submits the taxpayer's statement through proper channels to the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director along with the EP or EO specialist's or the appeals office's statement of why the issue should not be referred to EP or EO Technical. The manager or chief determines, on the basis of the statements, whether a TAM will be requested.

If the manager or chief determines that a TAM is not warranted and proposes to deny the request, the taxpayer is told in writing about the determination. In the letter to the taxpayer, the manager or chief states the reasons for the proposed denial (except in unusual situations when doing so would be prejudicial to the best interests of the Government). The taxpayer has 10 calendar days after receiving the letter to notify the manager or chief of agreement or disagreement with the proposed denial.

**Manager or area director's decision may be reviewed but not appealed**

.04 The taxpayer may not appeal the decision of the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director not to request a TAM from EP or EO Technical. However, if the taxpayer does not agree with the proposed denial, all data on the issue for which the TAM has been sought, including the taxpayer's written request and statements, will be submitted to the Commissioner, Tax Exempt and Government Entities Division or the Director, Appeals, Technical Services as appropriate.

The Commissioner, Tax Exempt and Government Entities Division through the Director, Employee Plans, or the Director, Exempt Organizations or, if appropriate, the Chief, Appeals will review the proposed denial solely on the basis of the written record, and no conference will be held with the taxpayer or the taxpayer's representative. The appropriate Director or Chief or his or her representative may consult with EP or EO Technical and the Office of Chief Counsel, if necessary, and will notify the EP or EO Examinations or the EP or EO Determinations or the appeals office within 45 calendar days of receiving all the data regarding the request for a TAM whether the proposed denial is approved or disapproved. The EP or EO Examinations or the EP or EO Determinations or appeals office will then notify the taxpayer.

While the matter is being reviewed, the EP or EO Examinations office or the EP or EO Determinations office or the appeals office suspends action on the issue (except when the delay would prejudice the Government's interest).

The provisions of this revenue procedure regarding review of the proposed denial of a request for a TAM continue to be applicable in those situations in which the authority normally exercised by the EP or EO Examinations Area manager, the EP or EO Determinations manager, or the Appeals Area Director has been delegated to another official.

### **SECTION 13. HOW ARE REQUESTS FOR TAMs WITHDRAWN?**

#### **Taxpayer notified**

.01 Once a request for a TAM has been sent to EP or EO Technical, only an EP or EO Examinations Area manager, an EP or EO Determinations manager or the Appeals Area Director may withdraw that request for the TAM. He or she may ask to withdraw a request at any time before the responding transmittal memorandum transmitting the TAM is signed.

The EP or EO Examinations Area manager, the EP or EO Determinations manager or the Appeals Area Director as appropriate, must notify the taxpayer in writing of an intent to withdraw the request for the TAM except—

(1) when the period of limitations on assessment is about to expire and the taxpayer has declined to sign a consent to extend the period, or

(2) when such notification would be prejudicial to the best interests of the Government.

If the taxpayer does not agree that the request for a TAM should be withdrawn, the procedures in section 12 of this revenue procedure must be followed.

#### **EP or EO Technical may provide views**

.02 When a request for a TAM is withdrawn, EP or EO Technical may send its views to the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director when acknowledging the withdrawal request. In an appeals case, acknowledgment of the withdrawal request should be sent to the appropriate appeals office, through the Director, Technical Services, C:AP. In appropriate cases, the subject matter may be published as a revenue ruling or as a revenue procedure.

### **SECTION 14. HOW ARE CONFERENCES SCHEDULED?**

#### **If requested, offered to the taxpayer when adverse TAM proposed**

.01 If, after the TAM is analyzed, it appears that a TAM adverse to the taxpayer will be given, and if a conference has been requested, the taxpayer will be informed, by telephone if possible, of the time and place of the conference.

#### **Timeline**

.02 The conference for a TAM must be held within 21 calendar days after the taxpayer is contacted.

If conferences are being arranged for more than one request for a TAM for the same taxpayer, they will be scheduled to cause the least inconvenience to the taxpayer. If considered appropriate, EP or EO Technical will notify the EP or EO specialist or the appeals office of the scheduled conference and will offer the EP or EO specialist or the appeals officer the opportunity to attend the conference. The Commissioner, Tax Exempt and Government Entities Division, the Chief, Appeals, the EP or EO Examinations Area manager, the EP or EO Determinations manager, or the Appeals Area Director may designate other Service representatives to participate in the conference in lieu of, or in addition to, the EP or EO specialist or the appeals officer.

#### **21-day period may be extended if justified and approved**

.03 An extension of the 21-day period will be granted only if the taxpayer justifies it in writing, and the group manager (or his or her delegate) of the office to which the case is assigned approves it. No extension will be granted without the approval of the group manager (or his or her delegate). The taxpayer (or an authorized representative) must notify the EP Specialist or the EO Specialist or the appeals office of the request for an extension. Except in rare and unusual circumstances, EP or EO Technical will not agree to an extension of more than 10 working days beyond the end of the 21-day period.

The taxpayer's request for an extension must be submitted before the end of the 21-day period, and should be submitted sufficiently before the end of this period to allow EP or EO Technical to consider, and either approve or deny, the request before the end of the 21-day period. If unusual circumstances near the end of the period make a timely written request impractical, the taxpayer (or an authorized representative) should orally inform the assigned tax law specialist or actuary before the end of the period about the problem and about the forthcoming written request for an extension. The written request for an extension must be submitted to EP or EO Technical promptly after the oral request. The taxpayer will be told promptly (and later in writing) of the approval or denial of the requested extension.

**Denial of extension cannot be appealed**

.04 There is no right to appeal the denial of a request for an extension of a TAM. If EP or EO Technical is not advised of problems with meeting the 21-day period, or if the written request is not sent promptly after EP or EO Technical is notified of problems with meeting the 21-day period, the TAM will be processed on the basis of the existing record.

**Entitled to one conference of right**

.05 A taxpayer is entitled by right to only one conference in EP or EO Technical except as provided in section 14.09 of this revenue procedure. This conference is normally held at the group level in EP Technical or EO Technical, whichever is appropriate. It is attended by a person who has authority to sign the transmittal memorandum discussed in section 16.13 on behalf of the group manager.

When more than one group has taken an adverse position on an issue in the request, or when the position ultimately adopted by one group will affect another group's determination, a representative from each group with authority to sign for the group manager will attend the conference. If more than one subject is discussed at the conference, the discussion constitutes the conference of right for each subject discussed.

To have a thorough and informed discussion of the issues, the conference usually is held after the group has had an opportunity to study the case. However, the taxpayer may request that the conference of right be held earlier in the consideration of the case than the Service would ordinarily designate.

The taxpayer has no right to appeal the action of a group to any other Service official. But see section 14.09 for situations in which the Service may offer additional conferences.

**Conference may not be taped**

.06 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

**Conference may be delayed to address a request for relief under § 7805(b)**

.07 In the event of a tentative adverse determination, the taxpayer may request in writing a delay of the conference so that the taxpayer can prepare and submit a brief requesting relief under § 7805(b) (discussed in section 19 of this revenue procedure). The group manager (or his or her delegate) of the office to which the case is assigned will determine whether to grant or deny the request for delaying the conference. If such request is granted, the Service will schedule a conference on the tentatively adverse position and the § 7805(b) relief request within 10 days of receiving the taxpayer's § 7805(b) request. *See*, section 19.06 of this revenue procedure for the conference procedures if the § 7805(b) request is made after the conference on the substantive issues has been held.

**Service makes tentative recommendations**

.08 The senior Service representative at the conference ensures that the taxpayer has full opportunity to present views on all the issues in question. The Service representatives explain the tentative decision on the substantive issues.

If the taxpayer requests relief under § 7805(b) (regarding limitation of retroactive effect), the Service representatives will discuss the tentative recommendation concerning the request for relief and the reason(s) for the tentative recommendation.

No commitment will be made as to the conclusion that the Service will finally adopt regarding any issue, including the outcome of the § 7805(b) request for relief.



**Additional conferences may be offered**

.09 The Service will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed on a new issue or on the same issue but on grounds different from those discussed at the first conference.

When a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, the taxpayer has no right to another conference if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limitation on the number of conferences to which a taxpayer is entitled does not prevent EP or EO Technical from inviting a taxpayer to attend additional conferences, including conferences with an official higher than the group level, if EP or EO Technical personnel think they are necessary. Such conferences are not offered as a matter of course simply because the group has reached an adverse decision. In general, conferences with higher level officials are offered only if the Service determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

In accordance with section 14.02 of this revenue procedure, the EP or EO specialist or the appeals office may be offered the opportunity to participate in any additional taxpayer's conference, including a conference with an official higher than the group level. Section 14.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

**Additional information submitted after the conference**

.10 After the conference, the taxpayer must furnish to EP or EO Technical, whichever is applicable, any additional data, lines of reasoning, precedents, etc., that the taxpayer proposed and discussed at the conference but did not previously or adequately present in writing. This additional information must be submitted by letter with a penalties of perjury statement in the form described in section 16.10 of this revenue procedure.

For TAMs the taxpayer must also send a copy of the additional information to the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director for comment. Any comments on additional information by Service personnel must be furnished promptly to the appropriate group in EP or EO Technical. If the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director does not have any comments, he or she must notify the group representative promptly.

If the additional information has a significant impact on the facts in the request for a TAM, EP or EO Technical will ask EP or EO Examinations or EP or EO Determinations or the Appeals Area Director for comments on the facts contained in the additional information submitted. The EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director will give the additional information prompt attention.

If the additional information is not received from the taxpayer within 21 calendar days, the TAM will be issued on the basis of the existing record.

An extension of the 21-day period for TAMs may be granted only if the taxpayer justifies it in writing, and the group manager (or his or her delegate) of the office to which the case is assigned approves the extension. Such extension will not be routinely granted. The procedures for requesting an extension of the 21-day period and notifying the taxpayer of the Service's decision are the same as those in sections 14.03 and 14.04 of this revenue procedure.

**Normally held by telephone**

.11 The conference will be conducted by telephone, unless the taxpayer or the field requests that the conference be held in person. The taxpayer will be advised when to call the Service representatives (not a toll-free call). In no event will the conference be delayed to provide an in-person conference rather than a telephone conference.

In accordance with section 14.02 of this revenue procedure, the EP or EO specialist or appeals office will be offered the opportunity to participate in the telephone conference. Section 14.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

**SECTION 15. HOW IS STATUS OF REQUEST OBTAINED?**

**Taxpayer or taxpayer's representative may request status from EP or EO Examinations or EP or EO Determinations or appeals office**

.01 The taxpayer or the taxpayer's representative may obtain information on the status of the request for a TAM by contacting the EP or EO Examinations office or the EP or EO Determinations office or the appeals office that requested the TAM. *See* section 16.08 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer's representative. *See* section 17.03 of this revenue procedure regarding discussions of the contents of the TAM with the taxpayer or the taxpayer's representative.

**EP or EO Technical will give status updates to the EP or EO Examinations or EP or EO Determinations or Appeals Area Director**

.02 The group representative or manager to whom the TAM request is assigned will give status updates on the request once a month to the EP or EO Examination Area manager or the EP or EO Determinations manager or the Appeals Area Director. In addition, an EP or EO Examinations Area manager or an EP or EO Determinations manager or an Appeals Area Director may get current information on the status of the request for a TAM by calling the person whose name and telephone number are shown on acknowledgment of receipt of the request for the TAM.

*See* section 16.09 of this revenue procedure about discussing the final conclusions with the EP or EO Examinations office or the EP or EO Determinations office or the appeals office. Further, the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director will be notified at the time the TAM is mailed.

**SECTION 16. HOW DOES EP OR EO TECHNICAL PREPARE THE TAM?**

**Delegates authority to group managers**

.01 The authority to issue a TAM on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division has largely been delegated to the managers of the Employee Plans Rulings & Agreements Technical and Actuarial groups, and the Technical Guidance and Quality Assurance group (collectively referred to as "EP Technical"); and of the Exempt Organizations Rulings & Agreements Technical groups and the Technical Guidance and Quality Assurance group (collectively referred to as "EO Technical")

**Determines whether request has been properly made**

.02 A request for a TAM generally is given priority and processed expeditiously. As soon as the request for a TAM is assigned, the technical employee analyzes the file to see whether it meets all of the requirements of sections 7, 8, and 10 of this revenue procedure.

However, if the request does not comply with the requirements of section 10.04 of this revenue procedure relating to the deletions statement, the Service will follow the procedure in section 11.06 of this revenue procedure.

**Contacts the EP or EO Examinations or EP or EO Determinations or appeals office to discuss issues**

.03 Upon receipt of a request for a TAM, a representative of the group assigned the TAM will telephone the EP or EO Examinations office or the EP or EO Determinations office or the appeals office to acknowledge receipt of the TAM and to establish a point of contact. Within 21 calendar days from the receipt of a TAM, the tax law specialist or actuary should contact the EP or EO specialist or appeals office to discuss the procedural and substantive issues in the request that come within the group's jurisdiction.

**Informs the EP or EO Examinations or EP or EO Determinations or appeals office if any matters in the request have been referred to another group or office**

.04 If the technical advice request concerns matters within the jurisdiction of more than one group or office, a representative of the group that received the original technical advice request generally informs the EP or EO Examinations office or the EP or EO Determinations office or the appeals office within 21 calendar days of receiving the request that—

(1) the matters within the jurisdiction of another group or office have been referred to the other group or office for consideration, and

(2) a representative of the other group or office will contact the EP or EO Examinations office or the EP or EO Determinations office or the appeals office about the referral of the

technical advice request within 21 calendar days after receiving it in accordance with section 16.03 above.

**Informs the EP or EO  
Examinations or EP or EO  
Determinations or appeals office if  
additional information is needed**

.05 The group representative will inform the EP or EO Examinations office or the EP or EO Determinations office or the appeals office that the case is being returned if substantial additional information is required to resolve an issue. Cases also should be returned for additional information when significant unresolved factual variances exist between the statement of facts submitted by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office and the taxpayer. They should also be returned if major procedural problems cannot be resolved by telephone. The EP or EO Examinations office or the EP or EO Determinations office or the appeals office should promptly notify the taxpayer of the decision to return the case for further factual development or other reasons.

If only minor procedural deficiencies exist, the group will request the additional information in the most expeditious manner without returning the case.

**Informs the EP or EO  
Examinations or EP or EO  
Determinations or appeals office  
of the tentative conclusion**

.06 If all necessary information has been provided, the group representative informs the EP or EO Examinations office or the EP or EO Determinations office or the appeals office within 21-calendar days after receiving the information for a TAM of his or her tentative conclusion.

**If a tentative conclusion has not  
been reached, gives date estimated  
for tentative conclusion**

.07 If a tentative conclusion has not been reached because of the complexity of the issue, the group representative informs the EP or EO Examinations office or the EP or EO Determinations office or the appeals office of the estimated date the tentative conclusion will be made.

**Advises the EP or EO  
Examinations or EP or EO  
Determinations or appeals office  
that preliminary conclusion not  
final**

.08 Because the group representative's tentative conclusion may change during the preparation and review of the TAM, the tentative conclusion should not be considered final. Therefore, neither the group representative nor the EP or EO Examinations office or the EP or EO Determinations or the appeals office should advise the taxpayer or the taxpayer's representative of the tentative conclusion before the scheduling of the adverse conference or between the scheduling and the commencement of the adverse conference.

**Advises the EP or EO  
Examinations or EP or EO  
Determinations or appeals office  
of final conclusions**

.09 In all cases, the group representative should inform the EP or EO specialist or appeals office of EP or EO Technical's final conclusions. The EP or EO specialist or the appeals office should be offered the opportunity to discuss the issues and EP or EO Technical's final conclusions before the TAM is issued.

**If needed, requests additional  
information**

.10 If, following the initial contact referenced in section 16.03 of this revenue procedure, it is determined, after discussion with the appropriate group manager or reviewer, that additional information is needed, a group representative will obtain the additional information from the taxpayer, the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director in the most expeditious manner possible. Any additional information requested from the taxpayer by EP or EO Technical must be submitted by letter, accompanied by a penalties of perjury statement, within 21 calendar days after the request for information is made.

**Request for additional information  
by fax**

(1) To facilitate prompt action on TAM requests, the Service may request any additional information from the taxpayer by fax.

A request to fax a copy of additional information to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original TAM request or prior to the mailing of the request for additional information. The request to fax additional information must contain the fax number of the taxpayer or the taxpayer's authorized representative to and from whom the document is to be faxed.

Because of the unsecured nature of a fax transmission, the Service will take certain precautions to protect confidential information. For example, the Service will use a cover sheet that identifies the intended recipient of the fax and the number of pages transmitted, that does not identify the taxpayer by name or tax identifying number and that contains a statement prohibiting unauthorized disclosure of the document if a recipient of the faxed document is not the

intended recipient of the fax. Also, for example, the cover sheet should be faxed in an order in which it will become the first page covering the faxed document.

#### **Penalties of perjury statement**

(2) Additional information submitted to EP or EO Technical 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 the information and such facts are true, correct, and complete.”** This declaration must be signed and dated by the taxpayer, not the taxpayer’s representative. A stamped signature or a faxed signature is not permitted.

(3) A written request for an extension of time to submit additional information must be received by EP or EO Technical within the 21-day period, giving compelling facts and circumstances to justify the proposed extension. The group manager (or his or her delegate) of the office to which the case is assigned will determine whether to grant or deny the request for an extension. Except in rare and unusual circumstances, EP or EO Technical will not agree to an extension of more than 10 working days beyond the end of the 21-day period. There is no right to appeal the denial of a request for an extension.

(4) If EP or EO Technical does not receive the additional information within 21 calendar days, plus any extensions granted by the appropriate group manager (or his or her delegate), EP or EO Technical will process the TAM based on the existing record.

#### **Requests taxpayer to send additional information to the EP or EO Technical and a copy to the EP or EO Examinations or EP or EO Determinations or Appeals Area Director**

.11 Whether or not requested by the Service, any additional information submitted by the taxpayer should be sent to the headquarters office. Generally, the taxpayer needs only to submit the original of the additional information to EP or EO Technical. However, in appropriate cases, EP or EO Technical may request additional copies of the information.

Also, the taxpayer must send a copy to either the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director for comment. Any comments must be furnished promptly to the appropriate group in EP or EO Technical. If the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director does not have any comments, he or she must notify the group representative promptly.

#### **Informs the taxpayer when requested deletions will not be made**

.12 Generally, before replying to the request for a TAM, EP or EO Technical informs the taxpayer orally or in writing of the material likely to appear in the TAM that the taxpayer proposed be deleted but that the Service has determined should not be deleted.

If so informed, the taxpayer may submit within 10 calendar days any further information or other arguments supporting the taxpayer’s proposed deletions.

The Service will attempt to resolve all disagreements about proposed deletions before EP or EO Technical replies to the request for a TAM. However, the taxpayer does not have the right to a conference to resolve any disagreements about material to be deleted from the text of the TAM. These matters, however, may be considered at any conference otherwise scheduled for the request.

#### **Prepares reply in two parts**

.13 EP or EO Technical’s reply to a TAM request is in two parts. Each part identifies the taxpayer by name, address, identification number, and year or years involved.

The first part of the reply is a transmittal memorandum. In unusual cases, it is a way of giving the EP or EO Examinations office or the EP or EO Determinations office or the appeals office administrative or other information that under the nondisclosure statutes or for other reasons may not be discussed with the taxpayer.

The second part is the TAM, which contains—

- (1) a statement of the issues;
- (2) a statement of the facts pertinent to the issues;

(3) a statement of the pertinent law, tax treaties, regulations, revenue rulings, and other precedents published in the Internal Revenue Bulletin, and court decisions;

(4) a discussion of the rationale underlying the conclusions reached by EP or EO Technical; and

(5) the conclusions of EP or EO Technical.

The conclusions give direct answers, whenever possible, to the specific issues raised by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office. However, EP or EO Technical is not bound by the precise statement of the issues as submitted by the taxpayer or by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office and may reframe the issues to be answered in the TAM. The discussion in the TAM of the issues will be in sufficient detail so that the EP or EO Examinations or EP or EO Determinations or appeals officials will understand the reasoning underlying the conclusion.

Accompanying a TAM subject to § 6110, is a notice under § 6110(f)(1) of intention to disclose the TAM (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

**Routes replies to appropriate office**

.14 Replies to requests for TAMs from EO Examinations Area managers and EO Determinations managers are addressed to:

Internal Revenue Service  
Attn: EO Mandatory Review  
MC 4920 DAL  
1100 Commerce Street  
Dallas, TX 75242

The EO Mandatory Review Staff will ensure that copies are forwarded to the EO Examinations Area manager or the EO Determinations manager.

Replies to requests for TAMs from EP Examinations Area managers as well as replies to all requests for TAMs from other Operating Divisions of the Service involved in an examination where EP Technical does not have audit jurisdiction but has interpretive jurisdiction as enumerated in section 6.02 of Rev. Proc. 2009-4, are addressed to:

Internal Revenue Service  
Attn: EP Special Review — Room 1550  
SE:T:EP:E:PR:SR:Technical Advice Coordinator  
P. O. Box 13163  
Baltimore, MD 21203

The EP Special Review Staff will ensure that copies are forwarded to the applicable manager.

Replies to requests for TAMs from EP Determinations managers, are addressed to:

Internal Revenue Service  
Attn: EP Determinations Quality Assurance  
P. O. Box 2508  
Cincinnati, OH 45201

Replies to requests for TAMs from the Appeals Area Director are routed to the appropriate appeals office through Technical Services, C:AP.

**SECTION 17. HOW DOES AN EP OR EO EXAMINATIONS OR EP OR EO DETERMINATIONS OR AN APPEALS OFFICE USE THE TAMs?**

**Generally applies advice in processing the taxpayer's case**

.01 The EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director must process the taxpayer's case on the basis of the conclusions in the TAM unless—

(1) the EP or EO Examinations Area manager or the EP or EO Determinations manager or the Appeals Area Director decides that the conclusions reached by EP or EO Technical in a TAM should be reconsidered (the reconsideration process may include a conference held with the EP or EO specialist or appeals office that requested the TAM and the tax law specialist or actuary who drafted the TAM), or

(2) the Appeals Area Director in the case of a TAM unfavorable to the taxpayer, decides to settle the issue in the usual manner under existing authority.

Subject to a request for reconsideration of the conclusions in a TAM, EP or EO Examinations or EP or EO Determinations must follow the conclusions in a TAM as to all issues and the Appeals Area Director must follow the conclusions in a TAM on issues of an organization's/plan's status or qualification. Thus, if the TAM received by EP or EO Examinations or EP or EO Determinations concerns an organization's/plan's status or qualification, the organization/plan has no appeal to the appeals office on those specific issues.

**Reconsideration**

.02 The EP or EO Area Examinations office or the EP or EO Determinations office or the Appeals Area Director has 30 calendar days after receipt of a TAM to either formally request reconsideration or give the adopted TAM to the taxpayer. Requests for TAM reconsideration must describe with specificity the errors in the TAM analysis and conclusions. Requests for reconsideration should not reargue points raised in the initial request, but should instead focus on points that the TAM overlooked or misconstrued in the arguments by the EP or EO Area Examinations office or the EP or EO Determinations office or the Appeals Area Director in support of their request. The Headquarters office may request further submissions from the field or the taxpayer, but the parties should make no additional submissions in the absence of such a request.

If the field does not request reconsideration of a TAM, the TAM will take effect when the field provides a copy of the adopted TAM to the taxpayer, or at the end of the 30-day period following the issuance of the TAM to the field.

**Discussion with the taxpayer**

.03 EP or EO Technical will not discuss the contents of the TAM with the taxpayer or the taxpayer's representative until the taxpayer has been given a copy by the EP or EO Examinations office or the EP or EO Determinations office or the appeals office

**Gives copy to the taxpayer**

.04 The EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director only after adopting the TAM, gives the taxpayer (1) a copy of the TAM described in section 16.13, and (2) the notice under § 6110(f)(1) of intention to disclose the TAM (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

This requirement does not apply to a TAM involving a criminal or civil fraud investigation, or a jeopardy or termination assessment, as described in section 11.07 of this revenue procedure, or documents to which § 6104 (document open to public inspection) applies as described in section 10.03.

**Taxpayer may protest deletions not made**

.05 After receiving the notice under § 6110(f)(1) of intention to disclose the TAM, the taxpayer may protest the disclosure of certain information in it. The taxpayer must submit a written statement within 20 calendar days identifying those deletions not made by the Service that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version

of the TAM proposed to be open to public inspection with brackets around deletions proposed by the taxpayer that have not been made by EP or EO Technical.

Generally, EP or EO Technical considers only the deletion of material that the taxpayer has proposed be deleted or other deletions as required under § 6110(c) before the EP or EO Technical reply is sent to the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director. Within 20 calendar days after it receives the taxpayer's response to the notice under § 6110(f)(1), EP or EO Technical must mail the taxpayer its final administrative conclusion about the deletions to be made.

**When no copy is given to the taxpayer**

.06 If EP or EO Technical tells the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director that a copy of the TAM should not be given to the taxpayer and the taxpayer requests a copy, the EP or EO Examinations office or the EP or EO Determinations office or the Appeals Area Director will tell the taxpayer that no copy will be given.

## **SECTION 18. WHAT IS THE EFFECT OF A TAM?**

**Applies only to the taxpayer for whom TAM was requested**

.01 A taxpayer may not rely on a TAM issued by the Service for another taxpayer.

**Usually applies retroactively**

.02 Except when stated otherwise, a holding in a TAM is applied retroactively, unless the Commissioner, Tax Exempt and Government Entities Division exercises discretionary authority under § 7805(b) to limit the retroactive effect of the holding. Section 18.06 below lists the criteria necessary for granting § 7805(b) relief, and section 18 of this revenue procedure describes the effect of § 7805(b) relief.

**Generally applied retroactively to modify or revoke prior TAM**

.03 A holding that modifies or revokes a holding in a prior TAM is applied retroactively, with one exception. If the new holding is less favorable to the taxpayer than the earlier one, it generally is not applied to the period when the taxpayer relied on the prior holding in situations involving continuing transactions.

**Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked**

.04 If a TAM relates to a continuing action or a series of actions, ordinarily it is applied until specifically withdrawn or until the conclusion is modified or revoked by enactment of legislation, ratification of a tax treaty, a decision of the United States Supreme Court, or the issuance of regulations (temporary or final), a revenue ruling, or other statement published in the Internal Revenue Bulletin. Publication of a notice of proposed rulemaking does not affect the application of a TAM.

**Applies to continuing action or series of actions until material facts change**

.05 A taxpayer is not protected against retroactive modification or revocation of a TAM involving a continuing action or a series of actions occurring after the material facts on which the TAM is based have changed.

**Does not apply retroactively under certain conditions**

.06 Generally, a TAM that modifies or revokes a letter ruling or another TAM or a determination letter is not applied retroactively either to the taxpayer to whom or for whom the letter ruling or TAM or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling or TAM or determination letter if—

(1) there has been no misstatement or omission of material facts;

(2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling or TAM or determination letter was based;

(3) there has been no change in the applicable law;

(4) in the case of a letter ruling, it was originally issued on a prospective or proposed transaction; and

(5) the taxpayer directly involved in the letter ruling or TAM or determination letter acted in good faith in relying on the letter ruling or TAM or determination letter, and the retroactive

modification or revocation would be to the taxpayer's detriment. For example, the tax liability of each employee covered by a letter ruling or TAM or determination letter relating to a pension plan of an employer is directly involved in the letter ruling or TAM or determination letter. However, the tax liability of members of an industry is not directly involved in a letter ruling or TAM or determination letter issued to one of the members, and the holding in a modification or revocation of a letter ruling or TAM or determination letter to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not obtain the nonretroactive application to one client of a modification or revocation of a letter ruling or TAM or determination letter previously issued to another client.

When a letter ruling or determination letter to a taxpayer or a TAM involving a taxpayer is modified or revoked with retroactive effect, the notice to the taxpayer, except in fraud cases, sets forth the grounds on which the modification or revocation is being made and the reason why the modification or revocation is being applied retroactively.

In order for a TAM that modifies or revokes a letter ruling or another TAM or a determination letter not to be applied retroactively either to the taxpayer to whom or for whom the letter ruling, TAM or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling, TAM or determination letter, such taxpayer generally must request relief under § 7805(b) in the manner described in section 19 below.

## **SECTION 19. HOW MAY RETROACTIVE EFFECT BE LIMITED?**

### **Commissioner has discretionary authority under § 7805(b)**

.01 Under § 7805(b) the Commissioner or the Commissioner's delegate has the discretion to prescribe the extent, if any, to which a TAM will be applied without retroactive effect.

### **Taxpayer may request Commissioner to exercise authority**

.02 A taxpayer who has received a TAM or for whom a TAM request is pending may request that the Commissioner, Tax Exempt and Government Entities Division, the Commissioner of Internal Revenue's delegate, exercise the discretionary authority under § 7805(b) to limit the retroactive effect of any holding stated in the TAM, which may still be pending, which must have been issued, or to limit the retroactive effect of any subsequent modification or revocation of a TAM.

### **Form of request to limit retroactivity—before an examination**

.03 When a TAM that concerns a continuing transaction is modified or revoked by, for example, a subsequent revenue ruling or final regulations, a request to limit the retroactive effect of the modification or revocation of the TAM must be made in the form of a request for a letter ruling if submitted before examination of the return that contains the transaction that is the subject of the request for the letter ruling. *See*, Rev. Proc. 2009-4.

### **Form of request to limit retroactivity—during course of an examination**

.04 When, during the course of an examination of a taxpayer's return by EP or EO Examinations or consideration by the Appeals Area Director, a taxpayer is informed that EP or EO Examinations or the Appeals Area Director recommends that a TAM be modified or revoked, a request to limit the retroactive application of the modification or revocation of the TAM must itself be made in the form of a request for a TAM. *See*, sections 7, 8 and 10 of this revenue procedure and sections 19.07 and 19.08 below.

The taxpayer must also submit a statement that the request is being made pursuant to § 7805(b). This statement must also indicate the relief requested and give the reasons and arguments in support of the relief requested. It must also be accompanied by any documents bearing on the request. The explanation should discuss the five items listed in section 18.06 of this revenue procedure as they relate to the taxpayer's situation.

The taxpayer's request, including the statement that the request is being made pursuant to § 7805(b), must be forwarded by EP or EO Examinations or the Appeals Area Director to EP or EO Technical for consideration.



**Form of request to limit retroactivity—technical advice that does not modify or revoke prior memorandum**

.05 A request to limit the retroactive effect of a holding in a TAM that does not modify or revoke a TAM may be made as part of that TAM request, either initially, or at any time before the TAM is issued by EP or EO Technical. In such a case, the taxpayer must also submit a statement in support of the application of § 7805(b), as described in section 19.04 above.

**Taxpayer's right to a conference**

.06 When a request for a TAM concerns only the application of § 7805(b), the taxpayer has the right to a conference in EP or EO Technical in accordance with the provisions of section 14 of this revenue procedure.

If the request for application of § 7805(b) is included in the request for a TAM on the substantive issues or is made before the conference of right on the substantive issues, the § 7805(b) issues will be discussed at the taxpayer's one conference of right.

If the request for the application of § 7805(b) is made as part of a pending TAM request after a conference has been held on the substantive issues, and the Service determines that there is justification for having delayed the request, then the taxpayer will have the right to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue.

**Exhaustion of administrative remedies — employee plans determination letter requests**

.07 Where the applicant has requested EP Determinations to seek a TAM on the applicability of § 7805(b) relief to a qualification issue under § 401(a) pursuant to a determination letter request, the applicant's administrative remedies will not be considered exhausted until EP Technical has a reasonable time to act on the request for a TAM. (*See*, section 20 of Rev. Proc. 2009–6.)

**Exhaustion of administrative remedies — exempt organization matters**

.08 Where a TAM has been requested pursuant to an exempt organization's request for § 7805(b) relief from the retroactive application of an adverse determination within the meaning of § 7428(a)(1), the exempt organization's administrative remedies will not be considered exhausted, within the meaning of § 7428(b)(2), until EO Technical has a reasonable time to act on the request for a TAM.

**SECTION 20. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?**

Rev. Proc. 2008–5 is superseded.

**SECTION 21. EFFECTIVE DATE**

This revenue procedure is effective January 5, 2009.

**SECTION 22. PAPERWORK REDUCTION ACT**

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 6.03, 9, 10.01, 10.05, 11.04, 11.05, 11.06, 12.02, 12.03, 13.01, 14.03, 14.10, 16.10, 16.12, 17.05, 19.03, 19.04, and 19.05. This information is required to evaluate and process the request for a TAM. In addition, this information will be used to help the Service delete certain information from the text of the TAM before it is made available for public inspection, as required by § 6110. The collections of information are required to obtain a TAM. The likely respondents are businesses or other for-profit institutions and not-for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 1,950 hours.

The estimated annual burden per respondent/recordkeeper varies from 4 hours to 60 hours, depending on individual circumstances, with an estimated average of 19.5 hours. The estimated number of respondents and/or recordkeepers is 100.

The estimated annual frequency of responses is one request per applicant.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

#### **DRAFTING INFORMATION**

The principal author of this revenue procedure is Angelique Carrington of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding how this revenue procedure applies to employee plans matters, please contact the Employee Plans Customer Assistance Service at 877-829-5500 (a toll-free number) between the hours of 8:30 am and 4:30 pm Eastern time, Monday through Friday. In the alternative, please email Ms. Carrington at *RetirementPlanQuestions@irs.gov*. For exempt organizations matters, please email Mr. Ted Lieber at *tege.eo.ra@irs.gov*. Please put “Question about Rev. Proc. 2009-5” in the subject line.

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