

How to Appeal an IRS Decision on Tax-Exempt Status



Introduction

U.S. tax law grants the Internal Revenue Service the authority to determine which organizations meet the criteria for tax-exempt status and which do not. This power applies to new applicants as well as existing groups that – in the view of the IRS – are no longer complying with the law.

The tax laws also provide the right of appeal for organizations that disagree with a proposed determination by the IRS.

You may appeal when:

- you do not agree with a decision made by the IRS about your organization's initial qualification for tax-exempt status
- as a result of an audit, the IRS proposes to revoke or modify your organization's tax exempt status

Certain appeals rules apply. See Special Considerations below.

Appeals are considered by the Appeals Office, an independent function within the IRS. The appeals process offers an opportunity to resolve disputes before they lead to litigation.

This publication helps explain the steps involved and how the system works.

Filing a Protest

If you disagree with a proposed determination an agent made about your organization's qualification for tax-exempt status, you may file an immediate appeal or request a meeting or telephone call with the supervisor of the person who issued the findings. If, after you meet with the supervisor, you agree with the determination regarding your tax-exempt status, you will be asked to sign a consent form. By signing, you do not waive your right to protest the determination and ask for Appeals Office consideration later on.

If, however, you still disagree, the IRS encourages you to file an appeal. This is your statement about why you disagree and it becomes the first step in the appeals process. Your protest statement must be filed within 30 days of the date of the formal written proposal letter from the IRS (often called the "30-day letter") and should include:

- Your organization's name, address, Employer Identification Number (EIN) and a daytime phone number
- A statement that the organization wants to protest the proposed determination
- A copy of the 30-day letter showing the findings that you disagree with (or the date and IRS office symbols from the letter)
- An explanation of your reasons for disagreeing, including any supporting documents
- The law or authority, if any, on which you are relying

Include the following declaration with your protest statement:

"Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts, and such facts are true, correct and complete."

The protest statement may be signed by an officer of your organization or your representative. Submit your protest and any supporting documents to the address shown on the letter.

Note: If you do not file a protest, you will not be able to seek a declaratory judgment in court at a later date. The court requires that you first exhaust administrative remedies at the IRS. Generally, if you do not file, you will not have exhausted those remedies.

Representation

A principal officer or trustee may act on behalf of your organization at any level of appeal. Or you may authorize an attorney, certified public accountant or individual enrolled to practice before the IRS to represent you. In that case, you need to file Form 2848, Power of Attorney and Declaration of Representative. The IRS will then authorize your representative to file written responses and execute consents, agreements and – in certain circumstances – returns on your behalf and communicate directly with him or her about your case. For more information, see Publication 947, Practice Before the IRS and Power of Attorney (<http://core.publish.no.irs.gov/pubs/htm2006/p947toc.html>)

If the protest is signed by your representative, a so-called substitute declaration also must be included stating that the representative prepared the protest and any accompanying documents, and personally knows (or does not know) that the statement of facts in the protest and any accompanying documents are true and correct.

If We Propose Changes to Your Tax-Exempt Status

Let's say your organization already has been granted tax-exempt status. If, after examining your annual information return or considering information from other sources, we determine that you no longer qualify, we may propose revocation or modification of your status.

For example, if you are classified as a publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi), but the level of public support reported on your return does not meet the required public support tests, we might propose that your exempt status be revoked or that your group be reclassified as a private foundation.

You will be notified of the proposed revocation or modification by letter or a Revenue Agent's Report. At that point you may file an appeal or request a conference with the manager of the IRS employee who made the proposal. As noted earlier, if after meeting with the manager you decide to agree with the revocation or modification, you will be asked to sign a consent form. If you still disagree after the conference, you may exercise your appeal rights by filing the protest. You have 30 days from the date of the IRS's proposal letter to file.

Special Considerations

Limits on appeals rights apply in some cases. The right to an appeal or an appeals conference does not apply in cases where a delay in the proceedings would harm the interests of the IRS. Such cases might include fraud, jeopardy, the statute of limitations or where other immediate action is necessary to protect the interests of the government.

After You File Your Protest

The Appeals Office is the dispute resolution forum of the IRS. It is separate from – and independent of – Exempt Organizations and other IRS divisions. Most disputes can be settled through the Appeals Office. But if you cannot reach an agreement with the Appeals Office, you may still be able to take your case to federal court.

Review of your case by the Appeals Office is neither automatic nor mandatory. If you believe that your disputed issue has not been addressed in published precedent or has been treated inconsistently by the IRS, you may ask that it be referred to the EO Technical office for advice or guidance. EO Technical will consider the issue and render a written decision in the form of a technical advice memorandum. You can request EO Technical consideration at any time, whether your case is in Examinations or in Appeals.

But note: A decision rendered in a technical advice memorandum that concerns your tax-exempt status or foundation classification is final and will not be reconsidered by Appeals. If the decision concerns any other issue, it is binding on Appeals only if it is favorable

to you. If the decision is unfavorable, Appeals can reach its own conclusion.

Appeals Office conferences may be in person, by telephone or by correspondence. In-person meetings are informal so that you, your representative and the Appeals officer can engage in a frank discussion of the issues in dispute. There is no sworn testimony, and no stenographer is present to record the discussions. Matters alleged as fact must be submitted in the form of an affidavit or declared to be true under penalty of perjury.

If the Appeals officer considers the issues amenable to settlement, you will be asked to submit an offer of settlement or the Appeals officer will propose the terms of a settlement. If you agree to settle, you will be asked to sign a settlement agreement form.

Taking Your Dispute to Court

If a settlement cannot be reached in a dispute about the revocation or determination of tax-exempt status or modification of foundation classification, we will send you a letter stating our final determination and telling you the deadline for filing a pleading in court.

Declaratory judgments relating to status and classification of organizations under Section 501(c)(3)

Once you receive the letter, you have the right to petition the U.S. Tax Court, the U.S. Court of Federal Claims or the U.S. District Court for the District of Columbia for a declaratory judgment as to your qualification for section 501(c)(3) status, your classification as a private foundation or a dispute about taxes owed. If the court rules in your favor, the IRS must abide by the court's decision. If the court does not rule in your favor, it will return the case to the IRS to determine whether additional taxes are owed.

(For more about taxes owed or refunds, please see IRS Publication 5, Your Appeals Rights and How to Prepare a Protest If You Don't Agree.)

The court cannot issue you a declaratory judgment unless you file an appropriate petition or complaint with

the court within 90 days of the date of our final determination letter. The court also must find that you have exhausted all administrative remedies available to you within the IRS. The IRS will not consider you to have exhausted your administrative remedies if you fail to protest a proposed determination or modification.

United States Tax Court

To initiate a declaratory judgment action in U.S. Tax Court, file a petition titled "Petition for Declaratory Judgment (Exempt Organization)" with the court clerk at the address: United States Tax Court, 400 Second Street, N.W., Washington, DC 20217. The petition should contain:

- The petitioner's name and principal place of business or principal office or agency
- A statement that the petitioner is an exempt organization, private foundation or private operating foundation, the qualification or classification of which is at issue
- A statement that the petitioner has exhausted its administrative remedies within the IRS
- The date of the notice of the IRS's determination
- A copy of the IRS notice of determination
- A clear and concise statement of each reason why the determination is erroneous
- A statement of facts upon which petitioner relies to support each such reason
- An appropriate request for relief
- The signature, mailing address and telephone number of the petitioner or its counsel, and counsel's Tax Court bar number.

For more information about bringing an action in the U.S. Tax Court, visit the court's Website at www.ustaxcourt.gov or contact the Office of the Clerk by mail at 400 Second Street NW, Washington, DC 20217-0002, or by phone at (202) 521-0700.