

Rev. Proc. 96-5

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

This revenue procedure explains when and how the Assistant Commissioner (Employee Plans and Exempt Organizations) gives technical advice to a key district director or a chief, appeals office in the employee plans areas (including actuarial matters) and exempt organizations areas. It also explains the rights a taxpayer has when a key district director or a chief, appeals office requests technical advice regarding a tax matter.

The term key district director means the district director of one of the key district offices set forth in Rev. Proc. 96–8, page 187, this Bulletin, and section 20.06 of Rev. Proc. 96–6, page 151, this Bulletin, as updated on Form 8717, User Fee for Employee Plan Determination Letter Request, or Form 8718, User Fee for Exempt Organization Determination Letter Request. The reference in this revenue procedure to the chief, appeals office includes, when appropriate, the Assistant Regional Director of Appeals (Large Case). In addition, any reference to appeals officer includes, when appropriate, the team chief. Finally, any reference to EP/EO means Employee Plans and Exempt Organizations.

SECTION 2. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 95–5?

.01 Section 8.03 is amended to provide that the key district or appeals office’s decision whether to request technical advice should not be influenced by the fact that the issue is raised late in the determination letter, examination or appeals process.

.02 Sections 9.05 and 15.10 are amended to clarify that a stamped signature is not permitted on, respectively, a deletions statement and a penalties of perjury statement.

.03 A new section 9.07 is added to provide that the key district or appeals office must submit three (3) copies of a technical advice request to the national office.

.04 Section 10.03 is amended to provide that the option of not issuing technical advice by the national office applies when the key district director or the chief, appeals office, and the taxpayer cannot agree on the material facts and the request for technical advice does not involve the issue of whether a letter ruling or determination letter should be modified or revoked. If a technical advice request involves the issue of whether a letter ruling or determination letter should be modified or revoked, the national office will issue technical advice.

.05 Section 13.09 is amended to clarify that the EP/EO specialist or appeals officer may be offered the opportunity to participate in any additional conference, including a conference with an official higher than the branch level.

SECTION 3. WHAT IS TECHNICAL ADVICE?

“Technical advice” means advice or guidance in the form of a memorandum furnished by the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations), (hereinafter referred to as the “national office”), upon the request of a key district director or a chief, appeals office, 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 national office to a specific set of facts. Such proceedings include (1) the examination of a taxpayer’s return, (2) consideration of a taxpayer’s claim for refund or credit, (3) a request for a determination letter, (4) any other matter involving a specific taxpayer under the jurisdiction of the chief, EP/EO division or chief, appeals office, or (5) processing and considering nondocketed cases 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 technical advice, the word “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(a)), and when appropriate, their representatives. However, the instructions and the provisions of this revenue procedure do not apply to requests for technical advice involving any matter pertaining to either tax-exempt bonds or mortgage credit certificates. Instead, the procedures under Rev. Proc. 96–2, page 60, this Bulletin must be followed.

Technical advice resolves complex issues and helps establish and maintain consistent holdings throughout the Internal Revenue Service. A key district director or a chief, appeals office, may raise an issue in any tax period, even though technical advice may have been asked and furnished for the same or similar issue for another tax period.

Technical advice does not include legal advice furnished to the key district or appeals office in writing or orally, other than advice furnished pursuant to this revenue procedure. In accordance with section 11.01 of this revenue procedure, a taxpayer’s request for referral of an issue for technical advice will not be denied merely because the national office has provided legal advice, other than advice furnished pursuant to this revenue procedure, to the key district or appeals office on the matter.

SECTION 4. ON WHAT ISSUES MAY OR MUST TECHNICAL ADVICE BE REQUESTED UNDER THIS PROCEDURE?

Issues under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations)

.01 Generally, the instructions of this revenue procedure apply to requests for technical advice on any issue under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations).

Farmers’ cooperatives

.02 If a key district director, chief, 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. 90–27, 1990–1 C.B. 514, as modified by Rev. Proc. 96–8, as well as § 601.201(n) of the Statement of Procedural Rules, must be followed.

Basis for requesting technical advice

.03 Requests for technical advice 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 the key district or appeals office 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 technical advice with respect to all exempt organizations and employee plans matters.

Except for those exemption application cases handled in the national office in accordance with section 6.02 of Rev. Proc. 90–27, key district and appeals offices are required to request technical advice 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 nonuniformity exists.

Regarding employee plans matters, a request for technical advice 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. 93-406, 1974-3 C.B. 1, 43, (3) amendments to defined contribution plans pursuant to Rev. Proc. 94-41, 1994-1 C.B. 711, in connection with a waiver of the minimum funding standard and a request for a determination letter (*See* section 16 of Rev. Proc. 96-6 and section 3.04 of Rev. Proc. 94-41), (4) termination/reestablishment and spinoff-termination cases in which the key district office proposes that the Implementation Guidelines are not applicable, or (5) a situation in which the employer has had a prior termination/reestablishment or spinoff-termination within 15 years of the time of the transaction.

SECTION 5. ON WHAT ISSUES MUST TECHNICAL ADVICE BE REQUESTED UNDER DIFFERENT PROCEDURES?

Matters (other than farmers' cooperatives) under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), and the Associate Chief Counsel (International)

.01 All procedures for obtaining technical advice on issues (other than farmers' cooperatives) under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), and the Associate Chief Counsel (International) including any matter pertaining to tax-exempt bonds or mortgage credit certificates, § 526 of the Code (shipowners' protection and indemnity associations), § 528 (certain homeowners' associations) and 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. 96-2.

Alcohol, tobacco, and firearms taxes

.02 Procedures for obtaining technical advice specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are under the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms.

Excise taxes

.03 Technical advice procedures 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, are set forth in Rev. Proc. 96-2.

SECTION 6. MAY TECHNICAL ADVICE BE REQUESTED FOR A § 301.9100-1 REQUEST DURING THE COURSE OF AN EXAMINATION?

Generally a § 301.9100-1 request is a letter ruling request

.01 Except with regard to exemption application matters involving §§ 505(c) and 508, requests for an extension of time for making an election or other application for relief under § 301.9100-1 of the Procedure and Administration Regulations made after the examination of the taxpayer's return has begun or made after the issues in the return are being considered by an appeals office are letter ruling requests. Therefore, § 301.9100-1 requests should be submitted pursuant to Rev. Proc. 96-4 and require payment of the applicable user fee listed in section 6 of Rev. Proc. 96-8.

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. If the period of limitations on an assessment under § 6501(a) for the year for which a timely filed election would have been made or for any affected succeeding year will expire before receipt of a § 301.9100-1 letter ruling, the Service ordinarily will not issue a § 301.9100-1 ruling. *See* section 5.02(2) of Rev. Proc. 92-85, 1992-2 C.B. 490, as modified by Rev. Proc. 93-28, 1993-2 C.B. 344. 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* section 8.02 of Rev. Proc. 92-85.

Address to send a § 301.9001-1 request

.03 Requests made under § 301.9100-1, pursuant to Rev. Proc. 96-4, 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
Assistant Commissioner (EP/EO) Attn: CP:E:EP:T
P.O. Box 14073
Ben Franklin Station
Washington, D.C. 20044

Requests involving exempt organization matters:

Internal Revenue Service
Assistant Commissioner (EP/EO) Attn: CP:E:EO
P.O. Box 120
Ben Franklin Station
Washington, D.C. 20044

The package should be marked: RULING REQUEST SUBMISSION. A § 301.9100-1 request may also be hand delivered to the drop box at the 12th Street entrance of 1111 Constitution Ave., N.W., Washington, DC. No receipt will be given at the drop box. See Rev. Proc. 96-8 for the appropriate user fee.

If return is being examined, taxpayer must notify the national office which will notify the key district or appeals office

.04 If the taxpayer's return covering the issue presented in the § 301.9100-1 request is being examined by a key district office or the issues in the return are being considered by an appeals office, the taxpayer must notify the national office. *See*, section 6.04 of Rev. Proc. 96-4. The national office will notify the appropriate key district office or appeals office considering the return that a request for § 301.9100-1 relief has been submitted to the national office. The EP/EO specialist or the appeals officer 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 key district office or appeals office.

SECTION 7. WHO IS RESPONSIBLE FOR REQUESTING TECHNICAL ADVICE?

Key district director or chief, appeals office determines whether technical advice should be requested

.01 The key district director or chief, appeals office determines whether to request technical advice on any issue being considered. Each request must be submitted through proper channels and signed by a person who is authorized to sign for the key district director or chief, appeals office. 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 key district director. *See* section 16 of Rev. Proc. 96-6 and section 3.04 of Rev. Proc. 94-41 for the procedural rules applicable to this particular mandatory technical advice.

Taxpayer may ask that issue be referred for technical advice

.02 While a case is under the jurisdiction of a key district director or chief, appeals office, a taxpayer may request that an issue be referred to the national office for technical advice.

SECTION 8. WHEN SHOULD TECHNICAL ADVICE BE REQUESTED?

Uniformity of position lacking

.01 Technical advice 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 the national office.

When technical advice can be requested

.02 The provisions of this revenue procedure apply only to a case under the jurisdiction of a key district director or chief, appeals office. Technical advice 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. A key district director may not request technical advice 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 a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504). A case remains under the jurisdiction of the key district director 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, a key district director may not request technical advice on the applicability of any of the taxes involved.

A key district director or chief, appeals office also may not request technical advice 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 technical advice should be made at the earliest possible stage in any proceeding. The fact that the issue is raised late in the examination or appeals process should not influence, however, the key district or appeals office's decision to request technical advice.

SECTION 9. WHAT MUST BE INCLUDED IN THE REQUEST?

Statement of issues, facts, law, and arguments

.01 Whether initiated by the taxpayer or by a key district or appeals office, a request for technical advice must include the facts and the issues for which technical advice is requested, and a written statement clearly stating the applicable law and the arguments in support of both the Service's and the taxpayer's position on the issue or issues.

Taxpayer must submit statement if the taxpayer initiates request for technical advice

(1) If the taxpayer initiates the request for technical advice, the taxpayer must submit to the EP/EO specialist or appeals officer, 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 authority supporting the taxpayer's position; and
- (d) stating the reasons for requesting technical advice.

If the EP/EO specialist or appeals officer determines that technical advice will be requested, the taxpayer's statement will be forwarded to the national office with the request for technical advice.

Taxpayer is encouraged to submit statement if Service initiates request for technical advice

(2) If the request for technical advice is initiated by a key district or appeals office, the taxpayer is encouraged to submit the written statement described in section 9.01(1) of this revenue procedure. If the taxpayer's statement is received after the request for technical advice has been forwarded to the national office, the statement will be forwarded to the national office for association with the technical advice request.

Statement of authorities contrary to taxpayer's position

(3) Whether the request for technical advice is initiated by the taxpayer or by a key district or appeals office, the taxpayer is also 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.

Statement pertaining to statute of limitations

.02 As part of the request, the key district or appeals office must submit a statement, in addition to the criteria on Form 5565 referred to below, that (1) the applicable statute of limitations has at least 180 calendar days to run before its expiration or (2) the applicable statute of limitations will run prior to 180 calendar days from the date a request is transferred to the national office and the case should be processed on an expedited basis. If the key district or appeals office obtains an extension of the statute of limitations while the request is being processed in the national office, the office obtaining the extension must also submit a revised statement to the national office advising it of the new expiration date.

If there are less than 61 calendar days remaining before the expiration of the statute of limitations with respect to a case being processed on an expedited basis, the case will be returned to the office responsible for statute control of the file unless a decision is made pursuant to section 7(10)(14)1.5:(8) of the Internal Revenue Manual that the case can be timely processed. The national office will telephone (or fax notice of) its decision to the requesting key district or appeals office and will place a memorandum in the file to reflect whatever procedural steps have been taken.

General provisions of §§ 6104 and 6110

.03 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, and technical advice memorandums) and any related background file document will be open to public inspection pursuant to regulations.

Application of § 6104

.04 The requirements for submitting statements and other materials or proposed deletions in technical advice memorandums 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

.05 The text of a technical advice memorandum subject to § 6110 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 10.05 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 technical advice 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.

If the taxpayer decides to ask for additional deletions before the technical advice memorandum is issued, additional deletion statements may be submitted.

The deletions statement must not appear in the request for technical advice but, instead, must be made in a separate document attached to the request.

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

The taxpayer should follow these same procedures to propose deletions from any additional information submitted after the initial request for technical advice. 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

.06 The key district or appeals office should use Form 5565, Request for Technical Advice—EP/EO, for transmitting a request for technical advice to the national office using the addresses listed below.

Address to send requests from key district offices

Employee Plans
Internal Revenue Service
Attn: CP:E:EP
1111 Constitution Ave., N.W.
Room 6052 CP:E:EO:P:2
Washington, DC 20224

Exempt Organizations
Internal Revenue Service
Attn: CP:E:EO
1111 Constitution Ave., N.W.
Room 6052 CP:E:EO:P:2
Washington, DC 20224

Address to send requests from appeals offices

Internal Revenue Service
Attn: C:AP:FS
Box 68
901 D Street, S.W.
Washington, DC 20024

Number of copies of request to be submitted

.07 The key district or the appeals office must submit (3) three copies of the request for technical advice to the national office.

Power of attorney

.08 Any authorized representative, as described in section 9.02 of Rev. Proc. 96-4, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230 (31 CFR part 10 (1995)) and with the conference and practice requirements of the Statement of Procedural Rules (26 CFR part 601). It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used with regard to requests for technical advice under this revenue procedure.

Case files

.09 The key district or appeals office will submit copies of the original documents (the administrative file) to the national office accompanying the applicable Form 5565. The key district or appeals office will maintain the original documents (including any power of attorney).

SECTION 10. HOW ARE REQUESTS HANDLED?

Taxpayer notified

.01 Regardless of whether the taxpayer or the Service initiates the request for technical advice, the key district or appeals office will notify the taxpayer that technical advice is being requested and will give the taxpayer a copy of the arguments that are being provided to the national office in support of its position, except as noted in section 10.06 of this revenue procedure.

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

Conference offered

.02 When notifying the taxpayer that technical advice is being requested, the EP/EO specialist or appeals officer will also tell the taxpayer about the right to a conference in the national office 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

.03 If the EP/EO specialist or appeals officer initiates the request for technical advice, the taxpayer has 10 calendar days after receiving the statement of facts and specific issues to indicate in writing any disagreement. 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 chief, EP/EO division, or the chief, appeals office.

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 the national office. If an agreement cannot be reached, the key district or 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 chief, EP/EO division, or the chief, appeals office. Both the statements of the taxpayer and the key district or appeals office will be forwarded to the national office with the request for technical advice.

When the key district director or the chief, appeals office, and the taxpayer cannot agree on the material facts and the request for technical advice does not involve the issue of whether a letter ruling or determination letter should be modified or revoked, the national office, at its discretion, may refuse to provide technical advice. If the national office chooses to issue technical advice, it will base its advice on the facts provided by the key district or appeals office.

If a request for technical advice involves the issue of whether a letter ruling or determination letter should be modified or revoked, the national office will issue the technical advice.

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

.04 If the taxpayer initiates the action to request technical advice, and the taxpayer's statement of the facts and issues is not wholly acceptable to the key district or 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 chief, EP/EO division, or the chief, appeals office.

If an agreement cannot be reached, both the statements of the taxpayer and the key district or appeals office will be forwarded to the national office with the request for technical advice. When the disagreement involves material facts essential to the preliminary assessment of the case, the key district director or the chief, appeals office, may refuse to refer a taxpayer initiated request for technical advice to the national office.

If the key district director or the chief, appeals office, submits a case involving a disagreement of material facts, the national office, at its discretion, may refuse to provide technical advice. If the national office chooses to issue technical advice, it will base its advice on the facts provided by the key district or appeals office.

If the taxpayer has not submitted the required deletions statement

.05 When the key district or appeals office initiates the request for technical advice, the taxpayer has 10 calendar days after receiving the statement of facts and issues to be submitted to the national office to provide the deletions statement required under § 6110(c) if public inspection is permitted pursuant to § 6110 (*see* section 9.05 of this revenue procedure). In such a case, if the taxpayer does not submit the deletions statement, the key district director or the chief, appeals office, will tell the taxpayer that the statement is required.

When the taxpayer initiates the request for technical advice and does not submit with the request a deletions statement as required by § 6110, the key district director or the chief, appeals office, will ask the taxpayer to submit the statement. If the key district director or the chief, appeals office, does not receive the deletions statement within 10 calendar days after asking the taxpayer for it, the key district director or the chief, appeals office, may decline to submit the request for technical advice.

However, if the key district director or the chief, appeals office, decides to request technical advice, whether initiated by the key district or appeals office or by the taxpayer, in a case in which the taxpayer has not submitted the deletions statement, the national office will make those deletions that the Commissioner of Internal Revenue determines are required by § 6110(c).

Criminal or civil fraud cases

.06 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 the national office) do not apply to a technical advice memorandum 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 technical advice memorandum is given to the taxpayer after all proceedings in the investigations or assessments are complete, but before the Commissioner mails the notice of intention to disclose the technical advice memorandum under § 6110(f)(1). The taxpayer may then provide the statement of proposed deletions to the national office.

SECTION 11. HOW DOES A TAXPAYER APPEAL A KEY DISTRICT OR AN APPEALS OFFICE DECISION NOT TO SEEK TECHNICAL ADVICE?

Taxpayer notified of decision not to seek technical advice

.01 If the EP/EO specialist or appeals officer concludes that a taxpayer's request for referral of an issue to the national office for technical advice does not warrant referral, the EP/EO specialist or appeals officer will tell the taxpayer. A taxpayer's request for such a referral will not be denied merely because the national office provided legal advice, other than advice furnished pursuant to this revenue procedure, to the key district or appeals office on the matter.

Taxpayer may appeal decision not to seek technical advice

.02 The taxpayer may appeal the decision of the EP/EO specialist or the appeals officer not to request technical advice. To do so, the taxpayer must submit to that official, within 10 calendar days after being told of the decision, a statement of the facts, law, and arguments on the issue and the reasons why the taxpayer believes the matter should be referred to the national office for technical advice. 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 chief, EP/EO division, or the chief, appeals office.

Chief, EP/EO division, or chief, appeals office, determines whether technical advice will be sought

.03 The EP/EO specialist or the appeals officer submits the taxpayer's statement through proper channels to the chief, EP/EO division, or the chief, appeals office, along with the EP/EO specialist's or the appeals officer's statement of why the issue should not be referred to the national office. The chief determines, on the basis of the statements, whether technical advice will be requested.

If the chief determines that technical advice 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 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 chief of agreement or disagreement with the proposed denial.

Chief's decision may be reviewed but not appealed

.04 The taxpayer may not appeal the decision of the chief, EP/EO division, or the chief, appeals office, not to request technical advice from the national office. However, if the taxpayer does not agree with the proposed denial, all data on the issue for which technical advice has been sought, including the taxpayer's written request and statements, will be submitted to the Assistant Commissioner (Employee Plans and Exempt Organizations) or the National Director of Appeals as appropriate.

The Assistant Commissioner (Employee Plans and Exempt Organizations), through the Director, Employee Plans Division, or the Director, Exempt Organizations Division or, if appropriate, the National Director of 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 his or her representative may consult within the national office, if necessary, and will notify the key district office or appeals office within 45 calendar days of receiving all the data regarding the request for technical advice whether the proposed denial is approved or disapproved. The key district office or appeals office will then notify the taxpayer.

While the matter is being reviewed, the key district 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 technical advice continue to be applicable in those situations in which the authority normally exercised by the key district director or chief, appeals office, has been delegated to another official.

SECTION 12. HOW ARE REQUESTS FOR TECHNICAL ADVICE WITHDRAWN?

Taxpayer notified

.01 Once a request for technical advice has been sent to the national office, only a key district director or a chief, appeals office, may withdraw a request for technical advice. He or she may ask to withdraw a request at any time before the responding transmittal memorandum transmitting the technical advice is signed.

The key district director or the chief, appeals office, as appropriate, must notify the taxpayer in writing of an intent to withdraw the request for technical advice 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 technical advice should be withdrawn, the procedures in section 11 of this revenue procedure must be followed.

National office may provide views

.02 When a request for technical advice is withdrawn, the national office may send its views to the key district director or the chief, appeals office, when acknowledging the withdrawal request. In an appeals case, acknowledgment of the withdrawal request

should be sent to the appropriate appeals office, through the National Director of Appeals, C:AP:FS. In appropriate cases, the subject matter may be published as a revenue ruling or as a revenue procedure.

SECTION 13. HOW ARE CONFERENCES SCHEDULED?

If requested, offered to the taxpayer when adverse technical advice proposed

.01 If, after the technical advice request is analyzed, it appears that technical advice 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.

Normally held within 21 days of contact with the taxpayer

.02 The conference must be held within 21 calendar days after the taxpayer is contacted. If conferences are being arranged for more than one request for technical advice for the same taxpayer, they will be scheduled to cause the least inconvenience to the taxpayer. If considered appropriate, the national office will notify the EP/EO specialist or appeals officer of the scheduled conference and will offer the EP/EO specialist or appeals officer the opportunity to attend the conference. The Assistant Commissioner (EP/EO), the National Director of Appeals, the key district director, or the chief, appeals office may designate other Service representatives to attend the conference in lieu of, or in addition to, the EP/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 appropriate branch chief (or his or her delegate) approves it. The request for an extension should be submitted before the end of the 21-day period. If unusual circumstances near the end of the period make a timely written request impractical, the national office should be told orally before the end of the period about the problem and about the forthcoming written request for an extension. 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 an extension request. If the national office is not advised of problems with meeting the 21-day period, or if the written request is not sent promptly after the national office is notified of problems with meeting the 21-day period, the case 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 the national office unless one of the circumstances discussed in section 13.09 of this revenue procedure exists. This conference is normally held at the branch level in the appropriate division (Employee Plans Division or Exempt Organizations Division). It is attended by a person who has authority to sign the transmittal memorandum discussed in section 15.13 on behalf of the branch chief.

When more than one branch has taken an adverse position on an issue in the request, or when the position ultimately adopted by one branch will affect another branch's determination, a representative from each branch with authority to sign for the branch chief 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 branch 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 branch to a Division Director or to any other Service official. But see section 13.09 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 branch representatives may offer the taxpayer the option of delaying the conference so that the taxpayer can prepare and submit a brief requesting relief under § 7805(b) (discussed in section 18 of this revenue procedure). In these cases, 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.

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 and the reasons for it.

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

No commitment will be made as to the conclusion that the Service will finally adopt regarding the outcome of the § 7805(b) issue or on any other issue discussed.

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 the national office from inviting a taxpayer to attend additional conferences, including conferences with an official higher than the branch level, if national office personnel think they are necessary. Such conferences are not offered as a matter of course simply because the branch 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 13.02 of this revenue procedure, the EP/EO specialist or appeals officer will be offered the opportunity to participate in any additional taxpayer's conference, including a conference with an official higher than the branch level. Section 13.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

Additional information submitted after the conference

.10 Within 21 calendar days after the conference, the taxpayer must furnish to the national office 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 15.10 of this revenue procedure.

The taxpayer must also send a copy of the additional information to the key district director or the chief, appeals office, for comment. Any comments must be furnished promptly to the appropriate branch in the national office. If the key district director or the chief, appeals office, does not have any comments, he or she must notify the branch representative promptly.

If the additional information would have a significant impact on the facts in the request for technical advice, the national office will ask the key district director or the chief, appeals office, for comments on the facts contained in the additional information submitted. The key district director or the chief, appeals office, will give the additional information prompt attention.

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

An extension of the 21-day period may be granted only if the taxpayer justifies it in writing, and the appropriate branch chief (or his or her delegate) approves the extension. 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 13.03 and 13.04 of this revenue procedure.

May, under limited circumstances, schedule a conference to be held by telephone

.11 Infrequently, taxpayers request that their conference of right be held by telephone. This may occur, for example, when a taxpayer wants a conference of right but believes that the issue does not warrant the expense of traveling to Washington, DC. If a taxpayer makes such a request, the branch chief, or his or her delegate of the

branch to which the case is assigned, will decide if it is appropriate in the particular case to hold the conference of right by telephone. If the request is approved, the taxpayer will be advised when to call the Service representatives (not a toll-free call).

In accordance with section 13.02 of this revenue procedure, the EP/EO specialist or appeals officer will be offered the opportunity to participate in the telephone conference. Section 13.02 of this revenue procedure also provides that Service representatives are allowed to participate in the conference.

SECTION 14. HOW IS STATUS OF REQUEST OBTAINED?

Taxpayer may request status

.01 The taxpayer or the taxpayer's representative may obtain information on the status of the request for technical advice by contacting the key district or appeals office that requested the technical advice. *See* section 15.08 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer's representative. *See* section 16.02 of this revenue procedure regarding discussions of the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative.

Key district director or chief, appeals office may request status

.02 The key district or appeals office will be given status updates on the technical advice quarterly by the national office branch chief assigned to the request. In addition, a key district director or chief, appeals office, may get current information on the status of the request for technical advice by calling the office of the appropriate branch chief. Those offices and their matters of responsibility are listed below:

Official	Telephone Numbers (Area Code 202) (not toll-free)
Chief, Employee Plans Technical Branch 1;	622-6077
Branch 2;	622-8400
Branch 3;	622-8447
Branch 4;	622-8457
Branch 5	622-8165
Chief, Employee Plans Projects Branch 1;	622-7428
Branch 2;	622-7882
Branch 3	622-7389
Chief, Employee Plans Actuarial Branch 1;	622-8330
Branch 2;	622-7529
Branch 3	622-7789
Chief, Exempt Organizations Technical Branch 1;	622-8715
Branch 2;	622-8140
Branch 3;	622-8120
Branch 4;	622-8130
Branch 5	622-6861

See section 15.09 of this revenue procedure about discussing the final conclusions with the key district or appeals office. Further, the key district director or the chief, appeals office will be notified at the time the technical advice memorandum is mailed.

SECTION 15. HOW DOES THE NATIONAL OFFICE PREPARE THE TECHNICAL ADVICE MEMORANDUM?

Delegates authority to branch chiefs

.01 The authority to issue technical advice on issues under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) has largely been delegated to the Chiefs, Employee Plans Technical Branches; Chiefs, Employee Plans Projects Branches; Chiefs, Employee Plans Actuarial Branches; and Chiefs, Exempt Organizations Technical Branches.

Determines whether request has been properly made	.02 Requests for technical advice generally are given priority and processed expeditiously. As soon as the request for technical advice is assigned, the technical employee analyzes the file to see whether it meets all requirements of sections 7 through 9 of this revenue procedure.
	However, if the request does not comply with the requirements of section 9.05 of this revenue procedure relating to the deletions statement, the Service will follow the procedure in the last paragraph of section 10.05 of this revenue procedure.
Contacts the key district or appeals office to discuss issues	.03 Usually, within 21 calendar days after the branch receives the request for technical advice, a representative of the branch telephones the key district or appeals office to discuss the procedural and substantive issues in the request that come within the branch's jurisdiction.
Determines whether any matters in the request should be referred to another branch	.04 If the technical advice request concerns matters within the jurisdiction of more than one branch, a representative of the branch that received the original technical advice request generally informs the key district or appeals office within 21 calendar days of receiving the request that—
	(1) the matters within the jurisdiction of another branch have been referred to the other branch or office for consideration, and
	(2) a representative of the other branch or office will contact the key district or appeals office about the referral of the technical advice request within 21 calendar days after receiving it in accordance with section 15.03 above.
Informs the key district or appeals office if additional information is needed	.05 The branch representative will inform the key district or appeals office that the case is being returned if substantial additional information is required to resolve an issue. Cases should be returned for additional information when significant unresolved factual variances exist between the statement of facts submitted by the key district or appeals office and the taxpayer. They should also be returned if major procedural problems cannot be resolved by telephone.
	If only minor procedural deficiencies exist, the branch will request the additional information in the most expeditious manner without returning the case.
Gives tentative conclusion	.06 If all necessary information has been provided, the branch representative discusses with the key district or appeals office 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 branch representative informs the key district or appeals office of the estimated date the tentative conclusion will be made.
Advises the key district or appeals office that preliminary conclusion not final	.08 Because the branch representative's tentative conclusion may change during the preparation and review of the technical advice memorandum, the tentative conclusion should not be considered final. Therefore, neither the branch representative nor the key district or appeals office should advise the taxpayer or the taxpayer's representative of the tentative conclusion before the scheduling of the adverse conference.
Advises the key district or appeals office of final conclusions	.09 In all cases, the branch representative should inform the EP/EO specialist or appeals officer of the national office's final conclusions. The EP/EO specialist or the appeals officer should be offered the opportunity to discuss the issues and the national office's final conclusions before the technical advice memorandum is issued.
If additional information is requested	.10 If, following the initial contact referenced in section 15.03 of this revenue procedure, it is determined, after discussion with the appropriate branch chief or reviewer, that additional information is needed, a branch representative will obtain the additional information from the taxpayer, the key district director, or the chief, appeals office, in the most expeditious manner possible. Any additional information requested from the taxpayer by the national office must be submitted by letter with a penalties of perjury statement within 21 calendar days after the request for information is made.
Penalties of perjury statement	Additional information submitted to the national office 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 facts represented are true, correct, and complete." This declaration must be signed and dated by the taxpayer, not the taxpayer's representative. A stamped signature is not permitted.

A written request for an extension of time to submit additional information must be received by the national office within the 21 day period, giving compelling facts and circumstances to justify the proposed extension. The appropriate branch chief (or his or her delegate) will determine whether to grant or deny the request for an extension of the 21-day period. There is no right to appeal the denial of an extension request.

If the national office does not receive the additional information within 21 calendar days, plus any extensions granted by the branch chief (or his or her delegate), the national office will process the technical advice memorandum based on the existing record.

Additional information sent to the national office and copy sent to the key district director or chief, appeals office

.11 If additional information is requested, it should be sent by the taxpayer to the national office.

Also, the taxpayer must send a copy to either the key district director or the chief, appeals office, for comment. Any comments must be furnished promptly to the appropriate branch in the national office. If the key district director or the chief, appeals office, does not have any comments, he or she must notify the branch representative promptly.

Informs the taxpayer when requested deletions will not be made

.12 Generally, before replying to the request for technical advice, the national office informs the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum 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 the national office replies to the request for technical advice. 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 technical advice memorandum. These matters, however, may be considered at any conference otherwise scheduled for the request.

Prepares reply in two parts

.13 The national office's reply to a technical advice 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 (Form M-6361). In unusual cases, it is a way of giving the key district or 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 technical advice memorandum, 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 the national office; and
- (5) the conclusions of the national office.

The conclusions give direct answers, whenever possible, to the specific issues raised by the key district or appeals office. However, the national office is not bound by the precise statement of the issues as submitted by the taxpayer or by the key district or appeals office and may reframe the issues to be answered in the technical advice memorandum. The discussion of the issues will be in sufficient detail so that the key district or appeals officials will understand the reasoning underlying the conclusion.

Accompanying a technical advice memorandum subject to § 6110, is a notice under § 6110(f)(1) of intention to disclose the technical advice memorandum (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 technical advice are addressed to the key district director or the chief, appeals office. Replies to requests from appeals should be routed to the appropriate appeals office through the National Director of Appeals, C:AP:FS.

SECTION 16. HOW DOES A KEY DISTRICT OR AN APPEALS OFFICE USE THE TECHNICAL ADVICE?

Generally applies advice in processing the taxpayer's case

.01 The key district director or the chief, appeals office, must process the taxpayer's case on the basis of the conclusions in the technical advice memorandum unless—

(1) the key district director or the chief, appeals office, decides that the conclusions reached by the national office in a technical advice memorandum should be reconsidered, or

(2) the chief, appeals office, in the case of technical advice unfavorable to the taxpayer, decides to settle the issue in the usual manner under existing authority.

In any event, with or without requesting reconsideration, the key district director must follow the conclusions in a technical advice memorandum as to all issues, and the chief, appeals office, must follow the conclusions in a technical advice memorandum on issues of an organization's/plan's status or qualification. Thus, if the technical advice memorandum received by a key district director concerns an organization's/plan's status or qualification, the organization/plan has no appeal to the appeals office on those specific issues.

Discussion with the taxpayer

.02 The national office will not discuss the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative until the taxpayer has been given a copy by the key district or appeals office.

Gives copy to the taxpayer

.03 The key district director or the chief, appeals office, only after adopting the technical advice, gives the taxpayer (1) a copy of the technical advice memorandum described in section 15.13, and (2) the notice under § 6110(f)(1) of intention to disclose the technical advice memorandum (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 technical advice memorandums involving criminal or civil fraud investigations, or jeopardy or termination assessments, as described in section 10.06 of this revenue procedure, or documents to which § 6104 (document open to public inspection) applies as described in section 9.03.

Taxpayer may protest deletions not made

.04 After receiving the notice under § 6110(f)(1) of intention to disclose the technical advice memorandum, 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 technical advice memorandum proposed to be open to public inspection with brackets around deletions proposed by the taxpayer that have not been made by the national office.

Generally, the national office considers only the deletion of material that the taxpayer has proposed be deleted or other deletions as required under § 6110(c) before the national office reply is sent to the key district director or the chief, appeals office. Within 20 calendar days after it receives the taxpayer's response to the notice under § 6110(f)(1), the national office must mail the taxpayer its final administrative conclusion about the deletions to be made.

When no copy is given to the taxpayer

.05 In those cases in which the national office tells the key district director or the chief, appeals office, that a copy of the technical advice memorandum should not be given to the taxpayer, the key district director or the chief, appeals office, will tell the taxpayer that no copy will be given if the taxpayer requests a copy.

SECTION 17. WHAT IS THE EFFECT OF TECHNICAL ADVICE?

Applies only to the taxpayer for whom technical advice was requested

.01 A taxpayer may not rely on a technical advice memorandum issued by the Service for another taxpayer.

Usually applies retroactively

.02 Except when stated otherwise, a holding in a technical advice memorandum is applied retroactively, unless the Assistant Commissioner (Employee Plans and Exempt Organizations) exercises discretionary authority under § 7805(b) to limit the

retroactive effect of the holding. Section 17.06 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 technical advice

.03 A holding that modifies or revokes a holding in a prior technical advice memorandum 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 in which 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 technical advice memorandum 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 technical advice memorandum.

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 technical advice memorandum involving a continuing action or a series of actions occurring after the material facts on which the technical advice memorandum is based have changed.

Not applied retroactively under certain conditions

.06 Generally, a technical advice memorandum that modifies or revokes a letter ruling or another technical advice memorandum or a determination letter is not applied retroactively either to the taxpayer to whom or for whom the letter ruling or technical advice memorandum or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling or technical advice memorandum 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 technical advice memorandum 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 technical advice memorandum or determination letter acted in good faith in relying on the letter ruling or technical advice memorandum 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 technical advice memorandum or determination letter relating to a pension plan of an employer is directly involved in the letter ruling or technical memorandum or determination letter. However, the tax liability of members of an industry is not directly involved in a letter ruling or technical advice memorandum or determination letter issued to one of the members, and the holding in a modification or revocation of a letter ruling or technical advice memorandum 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 technical advice memorandum or determination letter previously issued to another client.

When a letter ruling or determination letter to a taxpayer or a technical advice memorandum 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 technical advice memorandum that modifies or revokes a letter ruling or another technical advice memorandum or a determination letter not to be applied retroactively either to the taxpayer to whom or for whom the letter ruling, technical advice memorandum or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling, technical advice memorandum or determination letter, such taxpayer generally must request relief under § 7805(b) in the manner described in section 18 below.

**SECTION 18. 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 technical advice memorandum will be applied without retroactive effect.

**Taxpayer may request
Commissioner to exercise
authority**

.02 A taxpayer who has received a technical advice memorandum or for whom a technical advice request is pending may request that the Assistant Commissioner (Employee Plans and Exempt Organizations), the Commissioner's delegate, exercise the discretionary authority under § 7805(b) to limit the retroactive effect of any holding stated in the technical advice memorandum or to limit the retroactive effect of any subsequent modification or revocation of the technical advice memorandum.

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

.03 When a technical advice memorandum 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 technical advice memorandum 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 letter ruling. *See Rev. Proc. 96-4.*

**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 a key district director or consideration by the chief, appeals office, a taxpayer is informed that the key district director or the chief, appeals office, recommends that a technical advice memorandum be modified or revoked, a request to limit the retroactive application of the modification or revocation of the technical advice memorandum must itself be made in the form of a request for technical advice. *See sections 7 through 9 of this revenue procedure and sections 18.07 and 18.08 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 17.06 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 the key district director or the chief, appeals office, to the national office 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 technical advice memorandum that does not modify or revoke a technical advice memorandum may be made as part of that technical advice request, either initially, or at any time before the technical advice memorandum is issued by the national office. In such a case, the taxpayer must also submit a statement in support of the application of § 7805(b), as described in section 18.04 above.

Taxpayer's right to a conference

.06 When a request for technical advice concerns only the application of § 7805(b), the taxpayer has the right to a conference in the national office in accordance with the provisions of section 13 of this revenue procedure.

If the request for application of § 7805(b) is included in the request for technical advice 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 technical advice 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 the key district director to seek technical advice 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 the national office has a reasonable time to act on the request for technical advice. (*See section 21 of Rev. Proc. 96-6.*)

Exhaustion of administrative remedies—exempt organization matters

.08 Where technical advice 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 the national office has a reasonable time to act on the request for technical advice.

Rev. Proc. 95-5 is superseded.

SECTION 19. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

This revenue procedure is effective January 2, 1996.

SECTION 20. EFFECTIVE DATE DRAFTING INFORMATION

The principal authors of this revenue procedure are Michael Rubin of the Employee Plans Division and Dave Flavin of the Exempt Organizations Division. For further information regarding how this revenue procedure applies to employee plans matters, please contact the Employee Plans Division's taxpayer assistance telephone service or Mr. Rubin between the hours of 1:30 and 4 p.m. Eastern time, Monday through Thursday on (202) 622-6074/6075 or (202) 622-6214, respectively. For exempt organizations matters, please contact Mr. Flavin at (202) 622-7922. These telephone numbers are not toll-free.

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