



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D C. 20224

January 5, 2018

Control No: TEGE-04-0118-0001
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Affected IRM: 4.71.13; 4.75.13

MEMORANDUM FOR EO Examinations Employees
EO Rulings & Agreements Employees
EP Examinations Employees
EP Rulings & Agreements Employees

FROM: Sunita B. Lough /s/ *Sunita B. Lough*
Commissioner, Tax-Exempt and Government Entities

SUBJECT: Procedures for Requests for Relief from Retroactive Revocation
or Modification of a Determination under IRC § 7805(b)

Revenue Procedures 2018-4 and 2018-5 provide that an organization may seek relief from retroactive revocation or modification of a determination letter under IRC § 7805(b) by submitting a written request to the agent or specialist assigned to the case before issuance of the final adverse determination letter. In addition, the agent or specialist may independently determine that circumstances warrant limiting retroactivity under IRC § 7805(b). This memo provides procedures for Exempt Organizations (EO) and Employee Plans (EP) to process such requests. The following procedures are effective as of the issuance of Revenue Procedure 2018-4 and Revenue Procedure 2018-5.

- (1) A request that the determination letter “shall be applied without retroactive effect” under IRC § 7805(b)(8) may be initiated by the taxpayer or the agent or specialist assigned the case. If initiated by the taxpayer, it must be submitted to the agent or specialist assigned the case prior to the issuance of the final adverse determination letter.
- (2) The request must be in writing in the form and with the content specified in Revenue Procedures 2018-4 or 2018-5 as appropriate, or their successors.
- (3) The agent/specialist will review with the group manager the written request (including any attached supporting documentation that bears on the request). The group manager, with input from the agent/specialist, shall make a decision recommending whether IRC § 7805(b) relief should be granted.

- (4) If the group manager believes the request should be denied or that further consideration is warranted to make an appropriate recommendation, the group manager will forward the request to the appropriate TEGEDC Division Counsel (TEGEDC) Area Counsel (Area Counsel), based on either geography or subject matter.
- (5) If forwarded, Area Counsel will review the information from the Group and furnish a memorandum to the group manager giving TEGEDC's legal opinion as to whether the determination letter should be "applied without retroactive effect" under IRC § 7805(b)(8).
- (6) After the group manager makes a decision whether IRC § 7805(b) relief should be granted or not – based on the legal advice from the Area Counsel in paragraph (5) or review of the case as described in paragraph (3) – the agent/specialist will prepare and transmit a recommendation memorandum to the Examinations or Rulings & Agreements Director, as appropriate. See template recommendation memorandum at Exhibit XX.XX-1.
- (7) The appropriate Director will review the recommendation memorandum described in paragraph (6). If the Director concurs with the recommendation, the Director will return the memorandum with signature to the agent/specialist and group manager.
- (8) If the Director does not concur with the recommendation in the memorandum described in paragraph (6), the Director will, if disagreeing with relief from retroactivity, raise the issue with the appropriate Area Counsel. In any case, the Director will indicate the decision on the memorandum, including an explanation in writing of the rationale, and sign and return the memorandum to the agent/specialist and group manager.
- (9) The specialist/agent will notify the taxpayer in writing if retroactivity is not limited under I.R.C. § 7805(b).

We will incorporate these procedures into IRM 4.71.13, *Employee Plans Examination of Returns, Technical Advice and Technical Assistance Requests*, and IRM 4.75.13, *Exempt Organizations Examination Procedures, Issue Development and Conclusion*, by January 5, 2020.

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Internal Revenue Service

memorandum

Date:**To:** Director, [EO] [EP] [Rulings and Agreements] [Examinations] SE:T[:_:~]**From:** Group Manager, [~] SE:T[:_:~]

subject: Application for Section 7805(b) Relief in the case of:
[Taxpayer name] [(EIN: ~-~)]**ISSUE:**

Whether [Taxpayer name] should be granted relief under § 7805(b) of the Internal Revenue Code ("I.R.C.") for all taxable years up until the issuance of a letter revoking its exempt status under § [~] of the Code.

FACTS:

[Taxpayer name] was recognized as exempt from federal taxation under [§ ~], effective [~]. [Provide additional facts relevant for § 7805 analysis and recommendation.]

VIEWS OF THE TAXPAYER:

[Taxpayer name] argues that relief under § 7805(b) is appropriate for all taxable years because:

[Summarize reasons and arguments of taxpayer and reference any documents that were included as bearing upon the request. See Section 23 of Rev. Proc. 2018-4 or Section 12 of Rev. Proc. 2018-5 for relevant criteria.]

VIEWS OF THE GROUP MANAGER:

The Group Manager proposes revoking [Taxpayer name]'s tax exempt status under § [~] effective as of [Date]. Revocation is proposed because:

[summarize reasons for revocation.]

Furthermore, the revocation should be effective [Date] because:

[summarize reasons for effective date of proposed revocation; reference any legal memorandum obtained from TEGEDC pursuant to 7805(b) case processing procedures.]

ANALYSIS:

[Section 23 of Rev. Proc. 2018-4, 2018-X I.R.B. XXX] [Section 12 of Rev. Proc. 2018-5, 2018-X I.R.B. XXX], sets forth criteria which must be met for an organization to obtain relief under § 7805(b). First, ***

Delegation Order 30-1 (Rev. 3) delegates authority to the Director, [EO] [EP] [Rulings and Agreements] [Examinations], to prescribe the extent to which any ruling relating to the internal revenue laws shall be applied without retroactive effect for letter rulings and determination letters issued by the Commissioner, Tax Exempt and Government Entities.

In the present case, [insert analysis taking into account relevant criteria]

RECOMMENDATION:

We believe granting relief under § 7805(b) [would] [would not] be appropriate in this case. [Taxpayer name] [has] [has not] met the criteria of Rev. Proc. [2018-4] [2018-5] for relief under § 7805(b) because [summarize reasons for recommendation].

Therefore, we recommend the Director, [EO] [EP] [Rulings and Agreements] [Examinations] exercise discretionary authority [to limit] [not to limit] the retroactivity of the revocation. In accordance with [section 23 of Rev. Proc. 2018-4] [section 12 of Rev. Proc. 2018-5], revocation of [Taxpayer's] exempt status should be effective [Date] based on [significance of date].

DECISION:

Retroactivity [limited.] [not limited.]

[If decision is not to limit retroactivity, Director's office to provide rationale for decision if not otherwise described previously in memorandum.]

Approved By: _____ Date: _____
 Director
 [EO] [EP] [Rulings and Agreements] [Examinations]