

Exempt Organization Appeal Procedures for Unagreed Issues

If the Organization Agrees

Exempt Status Issues

If an organization decides to agree with the determination of its status as proposed in the determination letter, it may notify the office at the address shown on the letter by phone or mail. If the organization takes no action, the decision will become final in 30 days. If both tax and exempt status issues are involved, that is, if a specific amount of tax has been proposed and an adverse determination of the organization's status has also been proposed, the organization should respond immediately indicating what action it intends to take. Any questions should be directed to the person whose name and telephone number are shown on the letter enclosing these procedures.

Tax Issues

If an organization decides to agree with the tax findings in the examination report, the agreement form enclosed with the transmittal letter should be signed and returned. By signing, the organization agrees to pay the amount of tax shown on that form. Interest charges on that tax will stop 30 days after the form is filed. No further interest (or penalties) will be charged if the organization pays the amount owed within 10 days from the date of the notice it receives showing such amount. If the tax is paid when the agreement form is signed, interest stops immediately.

If the organization wishes to pay the tax, make the check or money order payable to the Internal Revenue Service. Include interest on the additional tax (but not on penalties) from the due date of the return to the date of payment. The annual rate of interest is established under section 6621(b). Please do not send cash through the mail. If the examination results in a refund, the Internal Revenue Service can have a refund issued more promptly if the agreement form is signed. The organization will receive interest on the amount of the refund.

If the Organization Does Not Agree

Because people sometimes disagree on issues, the Service maintains a system of appeals.

An organization's appeal rights may vary depending on whether or not additional tax has been proposed. Certain appeal procedures are available for issues resulting in additional tax. These appeal rights also extend to persons subject to tax under chapter 42 of the Code, such as foundation managers. Other procedures are available for issues involving determination, revocation, or modification of an organization's exempt or private foundation status. Eventually, a tax may be charged even on an exempt status issue. Issues involving determination, revocation, or modification of an organization's exempt status may not be appealed to the courts until a tax has been proposed or paid unless the adverse determination, revocation, or modification concerns exempt status or certain related questions under section 501(c)(3) of the Code and related provisions. (See the section on Declaratory Judgment, in these procedures.)

If an organization decides not to agree with the proposed findings, it may appeal the decision as explained in Part I, Adverse Determination, Revocation, or Modification letter, or Part II, Proposed Additional Tax. If both tax and determination issues are involved, the determination issue will usually be resolved before the tax issue. In these cases, the organization's appeal should cover the requirements of both Parts I and II.

Representation

A principal officer or trustee may represent an organization at any level of appeal. Or, the organization may be represented by an attorney, certified public accountant, or individual enrolled to practice before the Internal Revenue Service, provided the representative is qualified to practice before the Service.

If the organization's representative attends a hearing without a principal officer or trustee, the representative must file a power of attorney or a tax information authorization before receiving or inspecting confidential information. Form 2848, Power of Attorney and Declaration of Representative, or Form 2848-D, Tax Information Authorization and Declaration of Representative, as appropriate, (or any other properly written power of attorney or authorization) may be used for this purpose. Copies of these forms may be obtained from Internal Revenue district offices.

Part I - Adverse Determination, Revocation, or Modification Letter

The sections below explain the appeal procedures if an organization receives a proposed adverse determination letter, or a letter proposing revocation or modification of exempt status. If the organization does not exercise its appeal rights within the time provided, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. A declaratory judgment under section 7428 of the Code will not be issued in a case subject to that provision unless a court with jurisdiction determines that the organization involved has exhausted its administrative remedies available within the Internal Revenue Service.

Key District Action

If an organization receives from a key district office of the Internal Revenue Service a proposed adverse determination letter or a determination letter proposing revocation or modification of exempt status, the organization may, within 30 days from the date of the letter, appeal through the key district office to the Office of the Regional Director of Appeals.

If no appeal is filed within the 30-day period, the proposed adverse determination, revocation, or modification letter will become final.

Key district offices must request technical advice from the National Office on any exempt organization status issue for which there is no published precedent or for which there is reason to believe that nonuniformity exists. If an organization believes that its case falls within this category, it should ask the District Director to request technical advice. If a determination letter is issued based on technical advice from the National Office, no further administrative appeal is available on the issue that was the subject of technical advice.

Regional Office Appeal

The appeal to the Office of Regional Director of Appeals should be filed with the key district office and contain the following information:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and

6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

If the organization's representative submits the appeal, a substitute declaration must be included stating:

1. That the representative prepared the appeal and accompanying documents; and
2. Whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

Please be sure the appeal contains all of the information asked for in this section. Incomplete appeals will be returned for completion.

If a hearing is requested, it will be held at the regional office, unless the organization requests that the meeting be held at a district office convenient to both parties.

If the regional office, after considering the organization's appeal as well as information presented in any hearing held, agrees with the key district office's position in whole or in part, it will notify the organization of its decision in writing, presenting a statement of the key facts, law, rationale, and conclusions for each issue contested.

The Office of Regional Director of Appeals must request technical advice from the National Office on any exempt organization status issue or which there is no published precedent or for which there is reason to believe that nonuniformity exists. If an organization believes that its case falls within this category, it should ask the Director of Appeals to request technical advice. If a determination letter is issued based on technical advice from the National Office, no further administrative appeal is available on the issue that was the subject of technical advice.

Declaratory Judgment

Final adverse determination, revocation, and modification letters concerning exemption qualification or private foundation classification are subject to court review. The letter must contain an adverse ruling on one or more of the following issues:

1. Initial or continuing qualification as an organization described in section 501(c)(3) of the Code;
2. Initial or continuing qualification as an organization described in section 170(c)(2) of the Code;
3. Initial or continuing classification of an organization as a private foundation described in section 509(a) of the Code; or
4. Initial or continuing classification of an organization as an operating foundation described in section 4942(j)(3) of the Code.

An organization that has received a final adverse letter by registered or certified mail concerning any such issue may file a petition for declaratory judgment with respect to the Service decision on that issue. Within 90 days of the date the final adverse letter was mailed, the petition must be filed with the United States Tax Court, the United States Claims Court, or the United States District Court for the District of Columbia. These courts will hear declaratory judgment petitions before any amount of tax in controversy has been paid. However, processing of assessments of such taxes by the Service may continue during declaratory judgment proceedings.

For information about filing suit in these courts, contact the Clerk of the Tax Court, 400 Second St., N.W., Washington, D.C. 20217, Clerk of the Claims Court, 717 Madison Place, N.W., Washington, D.C. 20005, or Clerk of the United States District Court for the District of Columbia, Third and Constitution Avenues, N.W., Washington, D.C. 20001.

If the declaratory judgment is adverse to the organization and the matter is referred to the Examination Division for determination of any taxes due as a result of the court decision, additional appeal rights within the Service concerning the tax computation will be available.

Part II - Proposed Additional Tax

If, after an examination is completed, the key district office determines that the organization owes additional tax, an examination report will be issued explaining the reasons for the proposed adjustments.

If the organization disagrees with the proposed adjustments, it has the right to appeal within the Service, take the case to court, or both.

The following general rules explain how to appeal a case involving proposed additional tax.

Appeal Within The Service

An organization may appeal the decision of the key district office to the Office of Regional Director of Appeals. This is done by filing an appeal with the key district office within 30 days from the date of the letter transmitting the examination report.

The appeal should contain:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the findings of the key district office to the Office of Regional Director of Appeals;
3. The date and symbols on the letter transmitting the examination report and findings that the organization is appealing;
4. The tax periods involved;
5. An itemized list of the adjustments with which the organization does not agree;
6. A statement of facts supporting the organization's position in any contested factual issue;
7. A statement outlining the law or other authority the organization is relying on; and
8. A statement as to whether a hearing is desired.

The statement of facts (item 6) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

If the organization's representative submits the appeal, a substitute declaration must be included stating:

1. That the representative prepared the appeal and accompanying documents; and
2. Whether the representative knows personally that the statements of fact contained in the appeal and accompanying documents are true and correct.

Please be sure that the appeal contains all of the information asked for in this section. Incomplete appeals will be returned for completion.

If a hearing is requested, it will be held at the regional office, unless the organization requests that the meeting be held at a district office convenient to both parties.

If the Office of Regional Director of Appeals, after considering the organization's appeal as well as information presented in any hearing held, agrees with the key district office's position in whole or in part, it will notify the organization of its decision in writing, presenting a statement of the key facts, law, rationale, and conclusions for each issue contested.

A notice of deficiency will be issued at this point and to appeal further, the organization must turn to the courts.

In situations involving both a proposed revocation or modification of a previous ruling or determination letter and additional tax, issuing the notice of deficiency may be delayed pending the outcome of any request for technical advice made to the National Office on the determination, revocation, or modification issue.

Appeals to the Courts

If the organization and the Service disagree after appeal to the regional office, or if the organization wants to bypass the regional office appeal, it may take the case to the United States Tax Court, the United States Claims Court, or the District Court. These courts are independent judicial bodies and have no connection with the Internal Revenue Service.

Tax Court

If the case involves a disagreement over whether the organization owes additional income tax or excise tax imposed by chapters 41 through 45 of the Internal Revenue Code, the organization may go to the United States Tax Court. To do this, ask the Service to issue a notice of deficiency. The organization has 90 days from the date this notice is mailed to file a petition with the Tax Court (150 days if addressed to an organization outside the United States). If a petition is not filed within the 90-day period (or 150 days, as the case may be) the law requires that the Service assess the tax and bill the organization for the deficiency.

The Court will schedule the case for trial at a location convenient to the organization. The organization may be

represented by a principal officer or trustee before the Tax Court, or it may be represented by anyone admitted to practice before that Court.

There are simplified Tax Court procedures for cases involving income tax disputes of \$10,000 or less for any year or, in the case of excise taxes imposed by chapters 41 through 45, when the amount of tax in dispute is \$10,000 or less for any one taxable period (or taxable event if there is no taxable period). These procedures apply even if the notice of deficiency issued by the Service was for more than the \$10,000 limitation but the taxpayer contests only \$10,000 or less of the deficiency for any one year, taxable period or taxable event, whichever applies. If multiple years or taxable events are involved, the simplified procedures may be invoked if the taxpayer does not contest more than the \$10,000 limitation for any one year or taxable event covered by the deficiency notice or notices. Information regarding these procedures and other matters relating to the Court may be obtained from the Clerk of the Tax Court, 400 Second St., N.W., Washington, D.C. 20217.

District Court and Claims Court

An organization may take its case to its United States District Court or to the United States Claims Court. Generally, the District Court and the Claims Court hear tax cases only after the tax has been paid and a claim for refund has been filed. Information about procedures for filing suit in these courts can be obtained by contacting either the Clerk of the District Court, or the Clerk of the Claims Court.