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IRS Consolidates Memos on TE/GE's Expedited Application Process.

The IRS Tax-Exempt and Government Entities division has issued guidance (TEGE-07-0714-0022) consolidating into one document prior memoranda on the optional expedited process for some pending section 501(c)(4) tax-exempt applications.

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July 28, 2014

Affected IRM: IRM 7.20.2
Expiration Date: July 28, 2016

MEMORANDUM FOR EXEMPT ORGANIZATIONS DETERMINATIONS UNIT AND EXEMPT ORGANIZATIONS TECHNICAL UNIT

FROM:
Matthew A. Weir
Director, Rulings and Agreements,
Exempt Organizations

SUBJECT:

Interim Guidance on Optional Expedited Process for Applicants for Section 501(c)(4) Status Who Received a Letter 5228 Before December 23, 2013

On June 25, 2013, Exempt Organizations issued Interim Guidance Memo TEGE-07-0613-08 (the "June 25, 2013 memorandum"), which provided interim administrative guidance to the Exempt Organizations Determinations Unit (EOD) and the Exempt Organizations Technical Unit (EOT) regarding an optional expedited process for applicants for section 501(c)(4) status with applications pending for more than 120 days as of May 28, 2013, that indicate the organization may be involved in political campaign intervention or issue advocacy ("identified pending applications"). The June 25, 2013 memorandum was reissued without modification as Interim Guidance Memo TEGE-07-06-4-0016.

Since the issuance of the original June 25, 2013 memorandum, other interim guidance memoranda were released that modified some portions of the process originally described in the June 25, 2013 memorandum. These memoranda included Interim Guidance Memo TEGE-07-0713-12 (July 18, 2013) (providing for the transfer of applications to EOT), Interim Guidance Memorandum TEGE-0--0913-14 (September 10, 2013) (stating that referrals will now be sent through the Exempt Organizations Examinations Classifications Unit instead of the Review of Operations Unit), and Interim Guidance Memorandum TEGE-07-0514-0012 (May 19, 2014) (providing for Office of Appeals review of proposed adverse determinations issued by EOT).

EOT has processed cases according to the procedures described in all applicable interim guidance impacting the optional expedited program as initially described in the June 25, 2013 memorandum. The purpose of this Interim Guidance is to consolidate the various interim guidance memoranda impacting the original optional expedited program described in the June 25, 2013 memorandum into a single document that clearly describes the process that Exempt Organizations has used and will continue to use in processing the identified pending applications.

This memorandum applies only to applicants for section 501(c)(4) status who received a Letter 5228 (6-2013), Application Notification of Expedited 501(c)(4) Option, before December 23, 2013. Applicants for section 501(c)(4) status who receive a Letter 5228 (9-2013) on or after December 23, 2013, are subject to the expanded optional expedited process described in TEGE-07-1213-24 (December 23, 2013) or any of its future updates. Applicants for section 501(c)(4) status who have not yet received a Letter 5228 but believe they may be eligible for the optional expedited process should also consult TEGE-07-1213-24 (December 23, 2013) or any of its future updates.

The content of this memorandum will be incorporated in IRM 7.20.2.

Please contact the Senior Manager, Rulings and Agreements, Technical with any questions regarding the application of this memorandum.

cc:
www.IRS.gov
* * * * *

Optional Expedited Process for Applicants for Section 501(c)(4) Status Who Received a Letter 5228 before December 23, 2013

Outlined below are the steps of the process for achieving expedited and fair processing of the exemption applications of those applicants for section 501(c)(4) status that received a Letter 5228, Application Notification of Expedited 501(c)(4) Option (6-2013),1 before December 23, 2013 (hereinafter, “identified pending applications”). All identified pending applications had been pending 120 or more days since filing as of May 28, 2013 and indicated the applicant may be involved in political campaign intervention or issue advocacy.

Step 1: IRS Ensures Reviews for Private Inurement

The IRS will promptly review all signed identified pending applications to ensure the case does not indicate any private inurement.

If there are no private inurement concerns, the identified pending application will proceed to step 2. If there are concerns with private inurement, the identified pending application will be transferred to EOT after completion of Step 1 for all other identified pending applications.2

If any identified pending applications are determined ready to be granted favorable status, EOD will proceed to issuing the favorable determination letter and steps 2 through 5 will not apply to such applications.

Step 2: Offering Expedited Option Process

By letter to the applicant (Letter 5228), EOD will provide an optional expedited process for all identified pending applications for which there are no indications of private inurement. The optional expedited process will permit these applicants to make representations under penalties of perjury regarding their past, current, and anticipated future political campaign intervention and social

welfare activity. Applicants choosing to make the representations will receive a favorable determination letter from the IRS without further review. The favorable determination letter will be issued within two weeks of receipt of the signed representations.

This process is optional; applicants may determine whether they want to provide the representations, assuming they are able to do so, or whether they want the IRS to continue to review their application with regard to political campaign intervention or advocacy issues and requirements for section 501(c)(4) status.

Letter 5228 will request a response by the applicant within 45 days. During the period in which the applicant is considering whether to make the representations in Letter 5228, EOD will transfer the identified pending applications to EOT.3 During this period, EOT, with assistance from Chief Counsel attorneys, will review the identified pending applications for purposes of making a proposed recommendation should the applicant not provide the representations in Letter 5228. If EOT and Chief Counsel attorneys determine a favorable determination is warranted, EOT will issue a favorable determination letter4 and steps 3 through 5 will not apply to such application.5

Step 3: IRS Processing of Applications

Optional Expedited Process: Any applicant that provides the representations under penalties of perjury will receive a favorable determination from EOD or EOT6 within 2 weeks of receiving the signed representations. Like all organizations receiving a favorable determination of exempt status, the organization may be subject to examination by the IRS and the organization's exempt status may be revoked if, and as of the tax year in which, the facts and circumstances indicate exempt status is no longer warranted. Revocation may be retroactive to the date of formation if the facts and circumstances indicate the representations were not accurate. An organization may no longer rely on the determination letter issued as part of this optional expedited process for any tax year in which its activities are no longer consistent with the representations, if the applicable legal standards change, or if the determination letter is revoked. If the organization determines that it continues to be described in section 501(c)(4) notwithstanding the fact that its activities are no longer consistent with the representations, it may continue to take the position that it is described in section 501(c)(4) and file Form 990, Return of Organization Exempt From Income Tax, but it must notify the IRS about such representations ceasing to be correct on Schedule O, Supplemental Information, of the Form 990.

An organization receiving Letter 5228 that provides the representations may be referred to the Exempt Organizations Classification Unit7 for subsequent review.

Regular Process: If an applicant received Letter 5228 and does not provide the additional representations under the optional expedited process within 45 days from the date of the letter, EOT will review and process the pending application under Steps 4 and 5.

Step 4: Reviewing the Pending Application under the Regular Process — Documenting Review and Recommendations

Review of the pending applications under the regular process will include review by EOT, Chief Counsel attorneys, and (in some cases) a second layer of review by supervisory personnel in Chief Counsel and Exempt Organizations.8

EOT and Chief Counsel attorneys will review the facts and circumstances in the pending application and any other materials to determine if the organization is operated primarily for social welfare purposes, including by evaluating the amount of political campaign intervention activity. The issues

will be analyzed as quickly as possible under current law, using available resources in applying the law to the facts.

Under the regular process, EOT and Chief Counsel attorneys will document9 their review of the pending application and their recommendation regarding a favorable or adverse determination or a request for additional information.

Favorable Recommendation: If the recommendation of both EOT and Chief Counsel attorneys is for a favorable determination, EOT will issue the favorable determination. In some cases, Exempt Organizations Technical and Chief Counsel attorneys may recommend referral of a recipient of a favorable determination to the Exempt Organizations Classification Unit for subsequent review.10

Adverse Recommendation: If the recommendation of both EOT and Chief Counsel attorneys is for an adverse determination and the supervisory personnel agree with this recommendation, Chief Counsel attorneys will assist EOT in preparing the proposed adverse determination letter and EOT will follow normal processes in issuing the letter and notifying the applicant that it may file a protest and request a conference with EOT (which would be provided on an expedited basis).

Pursuant to Interim Guidance Memorandum TEGE-07-0514-0012 (May 19, 2014), applicants receiving a proposed adverse determination letter from Exempt Organizations Technical may also request review of their application by the IRS Office of Appeals. EOT will advise applicants with pending proposed adverse determination letters that they may request review by the Appeals Office.

If the organization files a protest and/or has a conference with EOT, and that protest and/or conference results in a changed recommendation to a favorable determination, EOT will issue the favorable determination.

If the protest and/or adverse conference does not result in a changed recommendation and the applicant timely requests review by the Appeals Office, EOT will forward the case to the Appeals Office.11

If the applicant does not timely file a protest or if the applicant files a protest but the protest and/or adverse conference does not result in a changed recommendation and the applicant does not timely request Appeals Office review, EOT will issue a final adverse determination.

Additional Information: If the recommendation of both EOT and Chief Counsel attorneys is that additional information is needed to make a determination, Chief Counsel attorneys will assist EOT in preparing a letter that requests such additional information and EOT will send the letter to the applicant. If and when the applicant has provided the requested additional information, EOT and Chief Counsel attorneys will review the additional information to determine whether the organization is operated primarily for social welfare purposes under current law. EOT and Chief Counsel attorneys will then follow the process for a favorable or adverse recommendation (or for a disagreement with respect to the recommendation) described in this Step 4.

Disagreement Between Exempt Organization Technical and Chief Counsel Attorneys: If EOT and Chief Counsel attorneys disagree on their recommendation, the application will be discussed with supervisory personnel.to reach resolution on the recommendation.12

FOOTNOTES

1 All references to Letter 5228 made hereinafter are intended to refer to the Letter 5228 approved in June 2013 that was sent to certain applicants before December 23, 2013.

2 The original June 25, 2013 memorandum provided that pending applications "will be referred to Exempt Organizations Technical for technical assistance with regard to private inurement issues after completion of Step 1 for all other pending applications." The July 18, 2013 Interim Guidance Memo TEGE-07-0713-12 (the "July 18, 2013 memorandum") modified that step to provide that the "[t]hose identified pending applications raising inurement concerns (described in Step 1) have already been formally transferred to Exempt Organizations Technical."

3 The June 25, 2013 memorandum provided that, "During the period in which the applicant is considering the expedited option process, Exempt Organizations Determinations will refer the pending applications to Exempt Organizations Technical for technical assistance." This language was modified by the July 18, 2013 memorandum which instructed EOD to formally transfer the identified pending applications to EOT rather than referring them for technical assistance.

4 The June 25, 2013 memorandum provided that "Exempt Organizations Technical will instruct Exempt Organizations Determinations to issue a favorable determination letter. . . ." This language was modified by the July 18, 2013 memorandum which stated, "Because all identified pending applications have been formally transferred to Exempt Organizations Technical, the favorable determination letters described in Step 2 will be issued by Exempt Organizations Technical rather than Exempt Organizations Determinations."

5 In such cases, the favorable determination letter will include an addendum that will instruct the applicant to disregard the Letter 5228 it had received.

6 The original June 25, 2013 memorandum provided that favorable determination letters would be "issued within two weeks of receipt of the signed representations by Exempt Organizations Determinations." Because the July 18, 2013 memorandum stated that cases would be formally transferred to EOT during the 45-day period, favorable determination letters could also be issued by EOT.

7 The June 25, 2013 memorandum originally stated that an "organization receiving the expedited option letter that provides the representations may be referred to the Review of Operations Unit for subsequent review." Under Interim Guidance Memorandum TEGE-07-0913-14 (September 10, 2013), the Review of Operations Unit no longer accepts referrals. Instead referrals must go through the Exempt Organizations Examinations Classification Unit

8 The June 25, 2013 memorandum said that review of pending applications would include, in some cases, review by a new Advocacy Application Review Committee (the "Review Committee"), which was to be "comprised of 3 career executives from the IRS and the Office of Chief Counsel," which were identified in a footnote as the "Director, EO; Commissioner (TE/GE); and Division Counsel/Associate Chief Counsel (TEGE), or their delegates." As discussed further in note 11, the process of referring cases to the Review Committee was superseded by Interim Guidance Memorandum TEGE-07-0514-0012 (May 19, 2014),

9 Documentation will be done consistently through a template; reviewer will be noted by an identifying number rather than by name.

10 The June 25, 2013 memorandum originally stated "Any level of review may note a recommendation, or review an earlier level's recommendation, regarding referral to the Review of Operations Unit." As noted above in note 7, referrals now go through the Exempt Organizations Classification Unit.

11 The June 25, 2013 memorandum stated that if an "adverse conference is held and does not result

in a changed recommendation, the pending application will be sent to the Review Committee in Step 5." Step 5 was superseded by Interim Guidance Memorandum TEGE-07-0514-0012 (May 19, 2014), which stated that it "supersede[d] any prior IRM section or Interim Guidance that may provide for alternative procedures, including the Interim Guidance Memoranda TEGE-07-0613-08 and TEGE-0--1213-24 which provided for an optional expedited program for certain section 501(c)(4) organizations."

12 The June 25, 2013 memorandum said that applications would be sent to Review Committee in the event of disagreement between EOT and Chief Counsel attorneys. As discussed in note 11, the process of referring cases to the Advocacy Application Review Committee was superseded by Interim Guidance Memorandum TEGE-07-0514-0012 (May 19, 2014).

END OF FOOTNOTES

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