200347023

JUN 17 2003

INTERNAL REVENUE SERVICE
TECHNICAL ADVICE MEMORANDUM

T:EO:BR 2

EO Area Manager:

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's EIN:

Tax Years Involved:

UIL: 501.00-00
4942.00-00
4943.00-00
4944.00-00
4945.00-00
4962.00-00

Legend:

X =

Issues:

1. Should the initial excise taxes due under section 4942 of the Internal Revenue Code on X's undistributed income for the years ending December 31, 1988 through December 31, 1992 be abated under section 4962?

2. Should the initial excise taxes due under section 4943 on X's excess business holdings for the years ending December 31, 1988 through December 31, 1997 be abated under section 4962?

3. Should the initial excise taxes due under section 4944 on X's jeopardizing investment for the years ending December 31, 1988 through December 31, 1997 be abated under section 4962?

4. Should the initial excise tax due under section 4945 on X's taxable expenditures for the year ending December 31, 1988 be abated under section 4962?

Facts:

X is an organization described in 501(c)(3) of the Code. X received an advance ruling as a public charity in 1980, and was reclassified as a private foundation in June 1985.

In 1985, X began construction of a hotel. In 1986, the hotel opened for business, and X placed the hotel in a wholly owned for-profit subsidiary. X relied on the written advice of counsel that its ownership of the subsidiary would not result in a violation of chapter 42 of the Code. In 1993, the Service issued a technical advice memorandum (9340002, June 16, 1993), which determined violations under sections 4942, 4943, and 4944 resulting from the ownership of the subsidiary. X has completed action to correct the chapter 42 violations.

In 1988, X made grants of stock to several organizations, also on the advice of counsel. The 1993 technical advice memorandum also held that X failed to exercise its expenditure responsibility requirements in connection with the grants in 1988. The stock produced no dividends in 1988. The situation was corrected in 1989.

Applicable Law:

Section 4962(a) of the Code provides that if it is established to the satisfaction of the Secretary that--

(1) a taxable event was due to reasonable cause and not to willful neglect, and
(2) such event was corrected within the correction period for such event,

then any qualified first tier tax imposed with respect to such event (including interest) shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be credited or refunded as an overpayment. The section applies to taxable events occurring after December 31, 1984.

H.R. Rep. No. 432 (Pt. 2), 98th Cong., 2d Sess. 1472 (1984), and S. Rep. No. 169 (Vol. 1), 98th Cong., 2d Sess. 591 (1984), indicate the intent of Congress that a chapter 42 violation due to ignorance of the law is not to qualify for abatement under section 4962(a) of the Code.

Delegation Order No. 237 (Rev. 2), updated November 24, 1999, delegates authority to abate substantial first-tier excise taxes to the Director, Exempt Organizations. "Substantial qualified first-tier tax amount" is described as a sum exceeding $200,000 for all such tax payments or deficiencies (excluding interest, other taxes, and penalties) involving all related parties and transactions arising from chapter 42 taxable events within the statute of limitations as determined by the key district office involved. See IRM 1.2.2.137.

Conclusion:

1. The initial excise taxes due under section 4942 of the Internal Revenue Code on X's undistributed income for the years ending December 31, 1988 through December 31, 1992 should be abated under section 4962.

2. The initial excise taxes due under section 4943 on X's excess business holdings for the years ending December 31, 1988 through December 31, 1997 should be abated under section 4962.

3. The initial excise taxes due under section 4944 on X's jeopardizing investment for the years ending December 31, 1988 through December 31, 1997 should be abated under section 4962.

4. The initial excise tax due under section 4945 on X's taxable expenditures for the year

ending December 31, 1988 should be abated under section 4962.

A copy of this technical advice memorandum is to be given to X. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

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