

**INTERNAL REVENUE SERVICE
TECHNICAL ADVICE MEMORANDUM**

November 22, 2004

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EO Area Manager:

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's EIN:

Tax Year Involved:

Legend:

X =
C =
D =
E =
F =
Y =
Z =

Issue:

Whether the section 4945 first tier excise tax imposed on X for its failure to include the required expenditure responsibility reports on its Form 990-PF for fiscal year ended (FYE) should be abated as provided in section 4962(a) of the Code.

Facts:

X is exempt from federal income tax as an organization described in section 501(c)(3) of the Code. X is classified as a private foundation within the meaning of section 509 of the Code. Therefore, X is subject to the provisions of Chapter 42 of the Code (i.e., sections 4941-4948).

On _____, X made endowment grants to three new related private foundations (the “C grants”). Prior to making the C grants, X sought and received a private letter ruling (“PLR”) approving the grants and advising X of its requirement to exercise expenditure responsibility.

During FYE _____, X made a series of grants (program related investments) to D (the “D grants”). Because the grants were made to a non-charitable organization, the grants would be considered taxable expenditures unless X exercised expenditure responsibility as described in section 4945(h) of the Code by filing the reports required by section 53.4945-5(d) of the regulations. In addition, X was required to report on the C grants made the previous fiscal year. Therefore, X’s Form 990-PF for FYE _____ should have included expenditure responsibility reports covering the D grants and the C grants.

X’s Form 990-PF for FYE _____, although timely filed, did not include the required expenditure responsibility reports on the C grants. The Form 990-PF lists the D grants under “program-related investments”, but does not include the required expenditure responsibility reports on the D grants. Form 990-PF for FYE _____ was prepared by E, and was reviewed and approved by F of Y.

E had been hired as X’s Chief Financial Officer in _____. Prior to working at X, E was president and sole shareholder of a public accounting firm. E’s accounting practice was general in nature and did not specialize in nonprofit or private foundation tax consulting or compliance work.

On _____, Z, X’s new tax advisor, discovered that Form 990-PF for FYE _____ did not include the expenditure responsibility reports as required by Section 4945(h) of the Code. Z prepared an amended Form 990-PF for FYE _____ which included the required expenditure responsibility reports for the C grants and the D grants. The amended return was postmarked _____. Since the required expenditure responsibility reports were not received by the Service on or before the extended due date for the Form 990-PF for FYE _____, the C grants and D grants constitute taxable expenditures subject to the excise tax provisions of section 4945 of the Code. Therefore, Form 4720 was required to be filed for FYE _____.

X filed Form 4720 for FYE _____ on _____, reflecting excise tax of _____ relating to taxable events which occurred in several years. The District analyzed the transactions and information provided in the Form 4720 and concluded that taxable events had occurred in FYE _____ only, and that, therefore, Form 4720 should have been filed only for FYE _____ and should have reflected a tax of _____. X stated in its Form 990-PF for FYE _____ that the fair market value of all assets at the end of the year was _____.

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.

Delegation Order No. 237 (Rev. 2), updated October 2, 2000, delegates authority to abate substantial first tier excise tax amounts imposed by Chapter 42 of the Code to the Director, Exempt Organizations. A "substantial qualified first tier excise tax amount" is 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 1.2.2.7.10.

Conclusion:

The section 4945 first tier excise tax imposed on X for fiscal year ended (FYE) should be abated as provided in section 4962(a) of the Code.

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