509.01-02
6652.03-01
7805.00-00

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

200047048

JUN 22 2000

T:EO:4

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification
Number:

Years Involved:

Date of Conference:

LEGEND:

F:
S:
B:
C:
Date1:
Date2:
Date3:
Date4:
Date5:

ISSUES:

1 Is a trust ("Trust") considered one contributor for purposes of the public support test under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code if the trust instrument creates four separate funds each operated with separate Employer Identification Numbers, files separate returns and maintains separate bank accounts?

2 Does F meet the public support test for classification under section 509(a)(1) and 170(b)(1)(A)(vi)?

3 Does F meet the support test for classification under section 509(a)(2)?

4 Is the failure to identify Trust as a 2% contributor or disqualified person on its Form 990 for 1994, 1995, and 1996 tax years, a material omission for the purpose of the penalty imposed by section 6652(c)(1) and the assessment and collection of tax under IRC 6501(c)(3)?

5 Would F have qualified as a private operating foundation under section 4942(j)(3) of the Code in 1998?

6 Should section 7805(b) relief be granted?

FACTS:

F is a non-profit corporation formed in S that operates the F devoted to the subjects of botany and pharmacology. Ownership of F was transferred into a trust operated and managed by B, as Trustee. F applied for exemption under section 101(6) of the Code, predecessor of current section 501(c)(3). The exemption letter shows F has been exempt since Date1. On, Date2, F was classified as an organization that is not a private foundation as defined in section 509(a)(1) of the Code.

F is supported primarily by Trust separately established by F's founder at approximately the same time F was transferred into its own trust. The Trust agreement sets up four separate funds for the maintenance, book, publication and binding functions of F. C as Trustee of Trust, operates these funds with separate Employer Identification Numbers, files separate returns and maintains separate bank accounts. Income of Trust is primarily investment income from various sources. Trust receives no public support. Trust distributes all income to F. The founder set up the initial trust agreements so that separate trustees would operate F and manage Trust's assets. There is no evidence that Trust applied for exemption under section 501(c)(3) of the Code or requested a determination that it was a section 509(a)(3) supporting organization pursuant to Rev. Proc. 72-50, 1972-2 C.B. 380.

F received its classification under sections 509(a)(1) and 170(b)(1)(A)(vi) after Library's submission of Form 4653, Notification Concerning Foundation Status, and accompanying attachments to the Service. Specifically, this information stated that F received $407,611 in the gifts, grants and contributions, and $45,769 in gross receipts. Contributions from Trust included amounts of $101,857 for maintenance, $125,901 for book, $1,838 for publication and $168,714 for binding. Additionally, many gifts of rare and priceless books and materials have been received from public contributions. No attempt was made to place a value on those gifts.

During an audit of F for the 1970 tax period, Technical Advice was requested from the National office. Copies of a Date3 letter to F notifying F of intent to request Technical Advice, a response to the notice to request a Technical Advice and a Date4 "no change" letter are contained in the file. However, a copy of the actual Technical Advice cannot be found in either F's records or the Service's records. On Date5, F submitted an affidavit from a F official who served during the 1973 Technical Advice request, stating that the response submitted in 1973 was correct and complete and that there were no misrepresentation or omissions at the time the Service initially classified F as a public charity. There is no evidence that the Technical Advice request or the Technical Advice itself provided any issues of discussion involving section 6033 of the Code, in particular, matters relating to reporting public support and substantial contributors on Form 990.

F has come under audit by the Service in February of 1998 for the tax years 1994, 1995 and 1996. A review of the financial information presented for the ruling indicates virtually all of F's support comes from Trust. In each year F indicated that it was not a private foundation because it was described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. F computed its public support on Form 990 each year to be around ninety-nine percent (99%). On the Forms 990, F did not disclose that there was a gift from a contributor, Trust, that provided greater than two percent (2%) of F's total income or that there were any substantial contributors. F timely supplied the missing information thereafter, thus avoiding a tax potentially imposed on F's managers or employees under section 6652(c)(1)(B). Additionally, during the audit period, F received income from the sale of its educational journal. For the 1996 tax year, receipts

from the journal for the four year period ending December 31, 1995 was greater than 1/3 of the total income of F. The journal's receipts for the 1995 and 1994 tax periods were under 1/3 of the total income of F.

F stated that it found the auditor's "'Statement of Facts and Issues' to be substantially correct, except to the extent that the Statement of Facts suggests that the four supporting trusts of F should be combined and treated as one for purposes of the 2% limitation under Treas. Reg. § 1.170A-9(e)(6)."

F has submitted completed Schedule E of Form 1023 (used for determining private operating foundation status) for the tax years 1995, 1996, and 1997. In each year, F's percentage of qualifying distributions to adjusted net income and percentage of qualifying distributions to minimum investment return is equal to 100%. In addition, F's percentage of qualifying assets (assets used in activities that directly carry out the exempt purpose) to total asset for each year is over 99%.

ISSUE 1 – LAW:

Section 170(b)(1)(A)(vi) of the Code describes an organization that normally receives a substantial part of its support from a governmental unit or from direct or indirect contributions from the general public.

Section 1.170A-9(e) of the Income Tax Regulations defines an 170(b)(1)(A)(vi) organization as one that is a corporation, trust, or community chest, fund, or foundation, referred to in section 170(c)(2) and publicly supported.

Section 1.170A-9(e) of the regulations further states that an organization will be treated as being 'public supported' if it meets one of the following requirements:

(1) the organization's total amount of support which the organization normally receives from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources, equals at least 33 1/3 percent of the total support normally received by the organization, or
(2) the organization is 'publicly supported' based upon an analysis of all pertinent facts and circumstances if the organization's total amount of support which the organization normally receives from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources equals at least 10 percent of the total support, and the organization is organized and operated as to attract new and additional public or governmental support on a continuous basis.

Section 1.170A-9(e)(6)(i) of the regulations states, that in determining whether the 33 1/3 percent-of-support or the 10 percent-of-support limitation is 'normally' met, contributions by an individual, trust or corporation shall be taken into account as 'support' from direct or indirect contributions from the general public only to the extent that the total amount of the contributions by any such individual, trust, or does not exceed 2 percent of the organization's total support. Therefore, any contribution by one individual will be included in full in the denominator of the fraction determining the 33 1/3 percent-of-support or the 10 percent-of-support limitation, but will only be includible in the numerator of such fraction to the extent that such amount does not exceed 2 percent of the denominator. In applying the 2 percent limitation, all contributions made by a donor and by any person or persons standing in a relationship to the donor which is described in section 4946(a)(1)(C) through (G) and the regulations thereunder shall be treated as made by one person.

An account consisting of commingled funds from a number of trusts that was treated as one source of income could account for only two percent of the foundation's total support for the years at issue. St. Johns Orphanage, Inc. d/b/a Knoxville Children's Foundation, Inc. v. United States, 89-1 USTC P9176; 16ClsCt299.

Persons described in section 4946(a)(1)(C) of the Code include persons owning more than 20 percent of a corporation, partnership, or the beneficial interest of a trust or unincorporated enterprise, which is a substantial contributor to the foundation.

ISSUE 1 – RATIONALE:

Trust must be considered one contributor for purposes of the 2% limitation on contributions for the 'public support' test. F cannot treat the contributions from Trust as contributions from four separate contributors even though Trust accounts for the funds separately. Although the Trustee of Trust operates four separate and distinct funds, those funds were created by one instrument, with one grantor, managed by one Trustee for the benefit of one benefactor. The funds do not have a separate legal existence nor can they operate outside of their single governing document. An individual fund cannot sue or be sued.

F states that the St. Johns Orphanage, supra, case does not support the proposition that Trust's four funds should be combined for purposes of the 2% limitation. Neither does St. Johns Orphanage support the proposition that a "breakdown of ...commingled funds" would be enough for recognition of separate trusts. The St John's Orphanage trusts were "created under various wills." Although those trusts were commingled in one account, each had a separate governing document, separate grantor and a separate legal existence.

ISSUE 1 – CONCLUSION:

Under the facts and circumstances, Trust should be considered one contributor for purposes of the public support test under section 509(a)(1) and 170(b)(1)(A)(vi) even if the instrument creates four separate funds each operated with separate Employer Identification Numbers, filing separate returns and maintaining separate bank accounts.

ISSUE 2 – LAW:

Section 509(a)(1) of the Code provides that the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

Section 170(b)(1)(A)(vi) of the Code describes organizations referred to in section 170(c)(2) which normally receive a substantial part of their support (exclusive of income received in the exercise or performance by such organizations of their charitable, educational, or other purpose or function constituting the basis for their exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public.

Section 1.170A-9(e)(1) of the regulations provide that an organization is described in section 170(b)(1)(A)(vi) if it is (i) A corporation, trust, or community chest, fund or foundation, referred to in section 170(c)(2) (other than an organization specifically described in paragraphs (a) through (d) of this section), and (ii) A "publicly supported" organization, which means that it normally receives a substantial part of its support from a governmental unit referred to in section 170(c)(1) or from direct or indirect contributions from the general public. An organization will be treated as being "publicly supported" if it meets the requirements of either subparagraph (2) or subparagraph (3) of this paragraph.

Section 1.170A-9(e)(2) of the regulations provides that an organization will be treated as a "publicly supported" organization if the total amount of support which the organization "normally" (as defined in subparagraph (4) of this paragraph) receives from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources, equals at least 33 1/3 percent of the total support "normally" received by the organization.

Section 1.170A-9(e)(3) of the regulations provides for a 10 percent, facts and circumstances test for organizations failing to meet the 33 1/3 percent-of-support test.

Section 1.170A-9(e)(i) of the regulations provides, in part, that in determining whether the 33 1/3 or the 10 percent-of-support limitation tests is "normally" met, contributions by an individual, trust, or corporation shall be taken into account as "support" from direct or indirect contributions from the general public only to the extent that the total amount of the contributions by any individual, trust, or corporation do not exceed 2 percent of the organization's total support. In applying the 2 percent limitation, all contributions made by a donor and by any person or persons standing in a relationship to the donor which is described in section 4946(a)(1)(C) through (G) and the regulations thereunder shall be treated as made by one person.

Section 1.170(A)-9(e)(7)(i) of the regulations provides that, for purposes of section 1.170(b)(1)(A)(vi) of the Code, the term "support" shall be as defined in section 509(d) (without regard to section 509(d)(2)).

Section 509(d)(1) of the Code provides that for purposes of section 170(b)(1)(A)(vi) of the Code the term "support" includes gifts, grants, contributions, or membership fees.

Section 1.170A-9(e) of the regulations further states that an organization may meet the facts and circumstance test of 'publicly supported' if its total amount of support which the organization normally receives from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources equals at least 10 percent of the total support, and is organized and operated as to attract new and additional public or governmental support on a continuous basis.

At a minimum, an organization must meet a 10 percent public support level calculated according to section 1.170A-9(e)(3) of the regulations that cannot be overcome by other facts and circumstances. Williams Home, Inc. and Miller Home, Inc v. United State of America, 82-2 USTC P9447.

ISSUE 2 – RATIONALE:

F should not be treated as being "publicly supported" because it does not meet the requirements of section 170(b)(1)(A)(vi) of the Code and section 1.170A-9(e)(1) of the regulations. That section sets forth a 33 1/3 percent-of-support test and a 10 percent, facts and circumstances test, for organizations failing to meet the 33 1/3 percent-of-support test to determine if an organization is "publicly supported." The 10 percent portion of the facts and circumstances test is a strict minimum before any other facts and circumstances are reviewed.

According to the information provided, F's received public support of 4.20% in 1994, 3.12% in 1995 and 0.00% in 1996. F has accepted these figures to the extent that they represent contributions. In issue one, above, Trust has been recognized as only one contributor for purposes of determining public support. Even if Trust could be otherwise viewed as four separate entities, F could not meet the requisite diversified public support requirements. Therefore, F fails to meet either the 33 1/3 percent-of-support test or the 10 percent, facts and circumstances test.

ISSUE 2 – CONCLUSION:

F does not meet the public support test under section 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

ISSUE 3 – LAW:

Section 509(a)(2) of the Code provides in part that the term "private foundation" means an organization described in section 501(c)(3) other than an organization which normally receives more than one-third of its support in each taxable year from any combination of:

(i) gifts, grants, contributions, or membership fees, and

(ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section

513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of $5,000 or 1 percent of the organization's support in such taxable year,

from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

Section 509(a)(2) of the Code further provides an organization that normally receives not more than one-third of its support in each taxable year from the sum of gross investment income and the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511.

Section 507(d)(2) of the Code defines the term "substantial contributor" as any person who contributed an aggregate amount of more than $5,000 to the foundation, if such amount is more than 2 percent of the total contributions received by the foundation before the close of the taxable year in which the contribution is receive.

Section 4947(a)(1) of the Code provides that a trust which is not exempt from taxation under section 501(a), in which all of the unexpired interests are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 shall be treated as an organization described in section 501(c)(3).

Section 1.509(a)-5(a)(1) of the regulations provides in part that income received by an organization from a charitable trust, corporation, fund, or association described in section 501(c)(3) (including a charitable trust described in section 4947(a)(1)) will retain its character of gross investment income for purposes of determining whether an organization meets the not-more-than-one-third support test set forth in section 509(a)(2)(B).

ISSUE 3 – RATIONALE:

Section 509(a)(2) set out two tests an organization must meet in order to not be recognized as a private foundation: A one-third support test and a not more than one-third investment income test. Unless an organization satisfies both tests, it must be considered a private foundation.

Only F's tax year 1996 meets the one-third support test; tax years 1994 and 1995 do not meet the test. Gross receipts from the sale of related merchandise is included in the definition of support. Until 1996 F was supported by the publication and sale of a educational journal. Income resulting from the sale of the journal was sufficient in the four years ending December 31, 1995. Over one-third of F's receipts for the four-year period were from this source. However, 1996 is the only year in the audit period that had a preceding four years when at least one-third of F's support was received from sources generated from activities as defined in section 509(a)(2).

F's tax year 1996 does not meet the not more than one-third investment income test. An organization must not receive more than one-third investment income. Investment income of an organization includes income from supporting organizations described in Section 4947(a)(1) of the Code. Trust is an organization described in section 4947(a)(1). Trust was formed for the exclusive purposes of supporting F and has historically distributed all of its income to F. Trust's investment income retains its character as investment income after it is transferred to F. Therefore, F must treat the investment income from the trust as investment income for purposes of the not more than one-third investment income test.

Other than journal receipts, virtually all of F's income is derived from the investment income of the Trust. Because F must treat the investment income from Trust as investment income to F, F does not meet the not more than one-third investment income test.

ISSUE 3 – CONCLUSION:

F does not meet the support test for public charity classification under section 509(a)(2) of the Code.

ISSUE 4 – LAW:

Section 6033(a)(1) of the Code requires every organization, with certain exceptions, exempt from taxation under section 501(a) to file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary or his delegate may by forms or regulations prescribe.

Section 1.6033-2(a)(1) of the regulations further provides that the organizations required to file a return under section 6033 of the Code shall file an annual information return specifically setting forth the items listed in section 6033 and such other information as may be prescribed in the instructions issued with respect to the return.

Form 990 and accompanying instructions require that an organization attach a list showing the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts . . . exceed the amount shown in line 26a of the Form (2% of total contributions).

Section 6501(a) of the Code provides time limitations for the assessment and collection of tax.

Section 6501(c)(3) of the Code provides that, in the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

Section 6652(c)(1) of the Code provides in part that failure to file a return required under section 6033 on the date and in the manner prescribed or a failure to include any of the information required to be shown on a return filed under section 6033 or to show correct information will result in a penalty on organizations with gross receipts not exceeding $1,000,000.00 per year of $20.00 for each day during which such failure continues, up to a maximum of $10,000, unless it is shown that such failure is due to reasonable cause.

The legislative history of section 6652(c) (formerly 6652(d)) of the Code shows that Congressional concern was to ensure that information requested on exempt organization returns was to be provided timely and completely so that the Service would be provided with the information needed to enforce the tax laws. S. Rep. No. 91-552, 91st Cong., 1st Sess. 52 (1969), 1969-3 C.B. 457

The following extract from the General Explanation of the Tax Reform Act of 1969 (Blue Book), prepared by the staff of the Joint Committee on Internal Revenue Taxation, December 3, 1970, discusses the 1969 changes in section 6033 and 6652 of the Code:

> A second change in prior law which the Act makes requires that there be shown on each information return the names and addresses of all substantial contributors, directors, trustees, and other management officials and of highly compensated employees. Compensation and other payments to managers and other highly compensated employees also must be shown. All this information is to be available to the public, except for the names and addresses of substantial contributors to exempt organizations other than private foundations. (The non-private foundations, are, however, required to disclose those names to the Internal Revenue Service.)
>
> A third change in prior law which the Act makes provides that the failure to file a timely exempt organization information return (unless reasonable cause is shown) results in a sanction of $10 per day up to a maximum of $5,000 as to any one return, imposed on the organization. The same

sanction is to apply also to a trust that fails to file on a timely basis the special information return required as to its deductible charitable contributions.

Failure to file after a reasonable demand by the Internal Revenue Service (unless reasonable cause is shown) results in an addition sanction of $10 a day to a maximum of $5,000 as to any one return. This sanction is imposed on the exempt organization official or employee who fails to file the information return.

Rev Rul 77-162, 1977-1 C.B. 400 describes an exempt organization that, without reasonable cause, filed an incomplete Form 990 information return by omitting material information. The exempt organization was subject to the penalty imposed by section 6652(d)(1) of the Code (now section 6652(c)(1)) and the period of limitations on assessment and collection of tax under section 6501(c)(3). The organization failed to supply the information required by the return nor established reasonable cause for not providing the information.

ISSUE 4 – RATIONALE:

F failed to include material information on its Form 990 and thus filed an incomplete return or furnished incorrect information.

Generally, section 6033 of the Code requires all exempt organizations to file an information return with the Service. Additionally, section 1. 6033-2(a)(1) of the regulations requires that returns filed under section 6033 of the Code include such other information as may be prescribed in the instructions issued with respect to the return. Form 990 and accompanying instructions request that an organization attach a list showing the name of and amount contributed by each person whose total gifts exceed 2% of the organization's total contributions.

F failed to include a list of contributors whose contributions exceeded 2% of F's total contributions on its Form 990 returns for the years under audit. Specifically, F reported that ninety-nine percent of its support came form the general public and did not report that it received virtually all of its contributions from one contributor, Trust, a separately established and operated organization. There is no evidence that Trust could have been viewed as an integral part of F and, in fact, F has not argued that view. The Form 990 and its instructions require public support information including a listing of donors contributing greater than 2% of the total support and the sum of these amounts. Two percent contributor information is material because the information is a key to determination of the foundation status of F and, significantly, a principal component to the section 6033 and 6652 changes of the Code enacted in the Tax Reform Act of 1969. See "Blue Book" extract, supra.

ISSUE 4 – CONCLUSION:

F, without establishing reasonable cause, filed an incomplete information return on Form 990 by omitting material information and thus failed to file a return for purposes of the penalty imposed by section 6652(c)(1) of the Code and the period of limitation on assessment and collection of tax under section 6501(c)(3). It is noted that the F's managers and employees are not liable for penalties because the omitted information was supplied to the Service upon request during the audit.

ISSUE 5 – LAW:

Section 509(a) of the Code provides that, unless otherwise excepted, organizations recognized exempt under section 501(c)(3) of the Code are classified as private foundations.

Section 4942(j)(3) of the Code provides in part that the term "operating foundation" means any organization that makes certain qualifying distributions directly for the active conduct of the activities constituting the purpose or function for which it is organized. An operating foundation must meet (i) the "income test" and (ii) either the "asset" test, the "endowment" test, or the "support" test.

Section 53.4942(b)-3(a) of the regulations provides in part that a foundation may satisfy the income test and either the assets, endowment or support test by satisfying such tests for any three taxable years during a four-year period consisting of the taxable year in question and the three immediately preceding taxable years or on the basis of an aggregation of all pertinent amounts of income or assets held, received or distributed during such four-year period. The regulations also provide that a foundation shall not be a private operating foundation in any year in which it fails to meet the tests and for all subsequent years until it satisfies the income and one of the other three tests for the taxable year.

Section 4942(j)(3)(B)(i) of the Code defines the "asset test" as substantially more than half of the assets of which are devoted directly to such activities or to functionally related businesses (as defined in paragraph (4)), or to both, or are stock of a corporation which is controlled by the foundation and substantially all of the assets of which are so devoted.

Rev. Proc. 2000-4, 2000-1 C.B. 115, (general update of Rev. Proc. 98-4, 1998 IRB-1, 113), provides in part that an organization presumed to be a private foundation may request a determination that it is a private operating foundation.

ISSUE 5 – RATIONALE:

F meets the tests under section 4942(j)(3) and would have qualified as a private operating foundation as defined in section 4942(j)(3) for 1998. To qualify as a private operating foundation, F must show that it meets (i) the "income test" and (ii) either the "asset" test, the "endowment" test, or the "support" test. F must meet these tests for any three taxable years during a four-year period consisting of the taxable year in question and the three immediately preceding taxable years or on the basis of an aggregation of all pertinent amounts of income or assets held, received or distributed during such four-year period.

F has supplied information for the tax years 1995, 1996, and 1997. In each year, F's percentage of qualifying distributions to adjusted net income and percentage of qualifying distributions to minimum investment return is equal to 100%. In addition, F's percentage of qualifying assets (assets used in activities that directly carry out the exempt purpose) to total asset for each year is over 99%. For the tax year 1998, F meets the income and asset test during three of the four tax years in the period from 1995 through 1998.

ISSUE 5 – CONCLUSION:

F would have qualified as a private operating foundation as defined in section 4942(j)(3) for 1998.

ISSUE 6 – LAW:

Section 7805(b) of the Code provides that the Secretary may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

Section 301.7805 of the regulations provides that the Commissioner with the approval of the Secretary may prescribe the extent, if any, to which any regulation or Treasury decision relating to the internal revenue laws shall be applied without retroactive effect. The Commissioner may prescribe the extent, if any, to which any ruling relating to the internal revenue laws, issued by or pursuant to authorization from him, shall be applied without retroactive effect.

Rev. Proc. 2000-5, 2000 IRB-1, 158 (general update of Rev. Proc. 98-5, 1998 IRB-1, 155), section 18.02 states that a holding in a Technical Advise Memorandum is applied retroactively, unless the Assistant Commissioner (Employee Plans and Exempt Organizations) exercises discretionary authority under section 7805(b) to limit the retroactive effect of the holding.

Rev. Proc. 2000-5, section 18.06 generally states that a Technical Advise Memorandum that modifies or revokes a letter ruling or another technical advise memorandum or a determination letter is not applied retroactively either to the taxpayer to whom or for whom the letter ruling or technical advise memorandum or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling or technical advise memorandum or determination letter if—

(1) there has been no misstatement or omission of material facts;
(2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling or technical advise memorandum or determination letter was based;
(3) there has been no change in the applicable law;
(4) in the case of a letter ruling, it was originally issued on a prospective or proposed transaction; and
(5) the taxpayer directly involved in the letter ruling or technical advise memorandum or determination letter acted in good faith in relying on the letter ruling or technical advise memorandum or determination letter, and the retroactive modification or revocation would be to the taxpayer's detriment.

ISSUE 6 – CONCLUSION:

The Commissioner, Tax Exempt and Government Entities Division, has granted relief under section 7805(b) of the Code for all periods prior to the date that F is notified by the Service that its public charity status under sections 509(a)(1) and 170(b)(1)(A)(vi) is revoked. In addition, the Commissioner has declined to grant relief under section 7805(b) for any potential penalties under sections 6652(c)(1) and 6501(c)(3).

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

-END-