

Internal Revenue Service memorandum

date: June 25 1998

to: Regional Chief Compliance Officers
District Director, Key District Officers (EP/EO)
Information Copy: EP/EO Division Chiefs

from: Director, Exempt Organizations Division OP:E:EO
signed for by Jay Rotz

subject: Requests for Technical Advice in Cases Involving Excess Benefits Excise Taxes

Our office is working with the offices of the Chief Counsel and the Tax Legislative Counsel to issue proposed regulations under IRC 4958, the intermediate sanctions provisions. Issuance of the proposed regulations is a priority item on the 1998 IRS/Treasury Business Plan. However, as the IRC 4958 intermediate sanctions, which were designed to provide a new enforcement tool for the inurement prohibitions under IRC 501(c)(3) (and now IRC 501(c)(4) as well), were made generally effective for transactions occurring after September 13, 1995, they may be applicable in cases currently under examination. Pursuant to our memorandum dated September 6, 1996, we have been contacted informally on a number of cases to which the IRC 4958 provisions may apply. We reiterate that memorandum's encouragement to send all questions concerning intermediate sanctions to Tom Miller, whose telephone number is currently (202) 622-5656, or Toussaint Tyson at (202) 622-8363. This applies to questions concerning the intermediate sanctions that your staff, or the public, might have.

Because of questions raised in the regulation drafting process and in connection with examinations in process, and to insure consistent analysis and application, we request that all examinations in which the applicability of the IRC 4958 tax is an issue be submitted for technical advice. This includes all cases in which a tax under IRC 4958 is being proposed, as well as any cases being considered for a closing agreement in which an IRC 4958 excess benefit transaction or inurement issue is an issue to be resolved by the closing agreement. As the IRC 4958 excise taxes are imposed on persons whose interests might be inconsistent with the interests of the applicable tax exempt organization, or the interests of other persons that participated in the excess benefit transaction, there should be a separate technical advice request for each participant.

If you have any questions concerning these issues or this memorandum, please feel free to contact me; or if you prefer a member of your staff can call Tom Miller (202) 622-5656 or Toussaint Tyson (202) 622-8363.