

# Internal Revenue Service memorandum

date: Apr 16 1999

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

from: Director, Exempt Organizations Division CP:E:EO  
signed Marcus S. Owens

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subject: Requests for Technical Advice in Cases Involving Excess Benefit Transactions or Inurement

This supplements and clarifies procedures set out in memoranda dated June 25, 1998, and December 23, 1998, concerning cases involving excess benefit transactions under section 4958 of the Code or violation of the inurement proscription of paragraphs (3) or (4) of section 501(c). These memoranda provided that Key District Offices should request technical advice in:

1. All cases in which a tax under section 4958 of Code is being proposed;
2. All cases in which an adverse action under an inurement proscription is being proposed;
3. All section 4958 excess benefit transaction cases being considered for resolution by a closing agreement; and
4. All inurement cases being considered for resolution by a closing agreement.

In addition, the memorandum dated June 25, 1998, points out that separate technical advice requests must be submitted for each exempt organization and each disqualified person who participated in any excess benefit transaction.

In preparing a request for technical advice, a Key District is required to afford each party an opportunity to submit a written statement of the facts, applicable law, and arguments(s) with respect to the issue(s). In these cases, *party* means the exempt organization and each disqualified person who may have been involved in an excess benefit transaction and who is potentially liable for the section 4958 excise tax.

The organization must be provided a copy of all technical advice requests. Each disqualified person who participated in an excess benefit transaction should receive a copy of their own technical advice request **and** a copy of the technical advice request of the

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organization **with information redacted for any separate excess benefit transaction of other disqualified persons.** The facts relating to potential excess benefit transactions should be separately stated in the technical advice request with respect to the organization for ease of redactions.

Consistent with Rev. Proc. 99-5, 1999-1 I.R.B. 158, all parties to the excess benefit transaction should be invited to any pre-submission conference. However, if the organization has participated in more than one excess benefit transaction involving different disqualified persons, a separate pre-submission conference should be held for the respective parties of each transaction.

Once the key district receives the technical advice memoranda as described in Rev. Proc. 99-5, section 16.13, it will give the various parties their copies as provided in the transmittal memorandum.

- . Each disqualified person will receive a redacted copy of the "global" technical advice memorandum (the copy with respect to the organization) and a copy of their respective technical advice memorandum, and
- . The organization will receive the "global" technical advice memorandum and a copy of each disqualified person's technical advice memorandum.

This memorandum has been coordinated with the Office of Chief Counsel (Disclosure Litigation). If you have any questions on this matter, please contact me, or if you prefer, a member of your staff may contact Tom Miller at (202) 622-5656, or Toussaint Tyson at (202) 622-8363.

Attachments:

- June 25, 1998, memorandum
- December 23, 1998, memorandum