

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:NTA:MSShurliff/SLHartford
PRENO-127285-09

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to: Cathy VanHorn
Director, Low Income Taxpayer Clinic Program Office

from: Judith M. Wall *Jmw*
Special Counsel to the National Taxpayer Advocate

subject: Definition of Clinic Under Section 7526 and \$100,000 Limitation

This memorandum is in response to your request for guidance on the \$100,000 limitation of section 7526 as it applies to academic institutions.

Issue:

Whether an academic institution is eligible for multiple low income taxpayer clinic matching grants of \$100,000 under section 7526?

Conclusion:

An academic institution that operates more than one clinical program listed in section 7526(b)(2)(A) and otherwise meets the requirements of section 7526 is eligible for multiple matching grants of \$100,000.

Law and Analysis:

Section 7526 of the Internal Revenue Code authorizes the Internal Revenue Service, subject to availability of appropriate funds, to award matching grants for the development, expansion, or continuation of qualified low income taxpayer clinics (LITCs). For purposes of section 7526, a qualified LITC is a clinic that represents low income taxpayers in controversies with the Internal Revenue Service or informs individuals for whom English is a second language (ESL) of their taxpayer rights and responsibilities. Section 7526(c)(2) limits the aggregate amount of grants which a clinic may receive for a year to \$100,000.

There are a number of requirements that a clinic must meet to be eligible for a matching grant under section 7526, but for purposes of our analysis, we have focused solely on the definition of a "clinic" as defined in section 7526(b)(2) and the \$100,000 funding limitation in section 7526(c)(2).

Section 7526(b)(2) states that the term "clinic" includes —

(A) a *clinical program* at an accredited law, business, or accounting school in which students represent low-income taxpayers in controversies arising under this title; and

(B) an *organization described in section 501(c)* and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1) [of section 7526(b)] through representation of taxpayers or referral of taxpayers to qualified representatives.

I.R.C. § 7526(b)(2) (emphasis added).

It is important to distinguish between the types of clinics described in sections 7526(b)(2)(A) and 7526(b)(2)(B) in order to determine whether an academic institution that operates more than one clinic is eligible for multiple matching grants. Note that the definition in section 7526(b)(2)(A) uses the generic phrase "clinical program," while the definition in section 7526(b)(2)(B) uses the specific phrase "organization described in section 501(c)." When reading the definition in section 7526(b)(2)(A) in conjunction with the \$100,000 limitation of section 7526(c)(2), a clinical program at an accredited law school could receive a \$100,000 grant and a clinical program at an accredited business school could also receive a \$100,000 grant, notwithstanding that both clinical programs are operating under the umbrella of the same parent institution. To illustrate, suppose University A operates a law school and a business school, and each school has a clinical program whose students are representing low income taxpayers in controversies with the Internal Revenue Service. University A submits two grant applications, one for the law school, and one for the business school. Each applicant would be eligible for a \$100,000 matching grant, provided that each clinical program operates completely independent of each other and otherwise meets all the requirements of section 7526.

In contrast, a section 501(c) organization that operates more than one clinic in separate locations is only eligible for one matching grant of \$100,000. For example, assume that Organization B is an organization described in section 501(c) and exempt from tax under section 501(a). Organization B provides free legal services to residents of state X. Organization B has an office in three different cities within state X. Although the three offices treat themselves as separate clinics and may even have different names, each office operates under one Employer Identification Number (EIN), that of Organization B, and none of the offices are separately incorporated entities. In order to request exemption under section 501(a), an EIN is required, and each applicant for tax-exempt status must be separately organized and provide a copy of the organization's articles of incorporation, articles of association, or similar organizing document. See Publication 557, *Tax-Exempt Status for Your Organization*. Organization B, therefore, is not eligible for multiple grants because the clinics are not separate section 501(c) organizations themselves. They come under the umbrella of Organization B, as each clinic does not have its own EIN and is not separately organized, and therefore cannot apply for separate tax-exempt status. As a result, Organization B is the only entity

eligible for a matching grant and is therefore restricted to a maximum grant of \$100,000.

On previous occasions, we have advised the LITC Program Office that a section 501(c) organization which constitutes a "clinic" under section 7526(b)(2)(B) is not eligible for multiple grants in excess of \$100,000. While at first glance, it may appear that our conclusion with regard to academic institutions is inconsistent with our previous advice, we believe the difference in wording of the two subsections in 7526 supports different conclusions. Congress could have defined a clinic under section 7526(b)(2)(A) as "an organization operating a clinical program" and then the two types of clinics would have been defined in a similar manner and the reference to "organization" would have similarly limited an academic institution to receiving a maximum grant of \$100,000. Applying principles of statutory construction, where different words are used in different parts of the same statute, it is presumed that the use of different words results in a different interpretation. See Russello v. United States, 464 U.S. 16, 23 (1983) (quotation omitted). See also National Data Corp. & Subsidiaries v. United States, 50 Fed. Cl. 24, 30 (2001), *aff'd*, 291 F.3d 1381 (Fed. Cir. 2002). Congress added the definitions in subsections (A) and (B) of section 7526(b)(2) at the same time, and thus, we believe that Congress intended this difference in result.

To summarize, it is possible for an academic institution that operates more than one clinical program listed in section 7526(b)(2)(A) to receive multiple matching grants of \$100,000. However, a section 501(c) organization that operates more than one clinic through only one distinct legal entity is only eligible for one matching grant of \$100,000.

Our legal conclusion has no effect on the Internal Revenue Service's grantmaking authority. The National Taxpayer Advocate (NTA) has discretion to decide whether to make a grant after considering the criteria listed in section 7526(c)(4). Specifically, in determining whether to make a grant, the NTA considers the number of taxpayers who will be served by the clinic, including the number of ESL taxpayers in that geographic area; the existence of other LITCs serving the same population; the quality of the program offered by the clinic, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing service to low income taxpayers; and alternative funding sources available to the clinic, including the amounts received from other grants and contributions, and other endowment and resources of the institution sponsoring the clinic. Thus, although an academic institution operating more than one clinical program is eligible for multiple matching grants of \$100,000, the NTA has discretion to determine how the appropriated funds will be allocated.

cc: Nina Olson