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CASE:GLS: 156184 -02
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MEMORANDUM FOR SUSAN E. GILBERT
CHIEF, GRANT ADMINISTRATION
WAGE & INVESTMENT OPERATION DIVISION
STAKEHOLDER PARTNERSHIPS, EDUCATION &
COMMUNICATION (W&I:SPEC)

FROM: Lori R. Larson
Acting Chief, Public Contracts and Technology Law Branch
(GLS)

SUBJECT: Status of Funding Currently Appropriated for the Low-Income
Tax Clinic (LITC) and Tax Counseling for the Elderly (TCE)
Programs that is Available for Obligation

This is in reply to your request for an expedited opinion on this subject in the light of plans to announce the 2003 LITC and TCE recipients by no later than November 1, 2002, and the fact that the Service is currently operating under a continuing resolution. As further background, you have mentioned knowledge of legislative proposals that, if enacted, would raise the aggregate sum authorized to be appropriated annually for LITC grants, under IRC § 7526(c)(1), from \$6 million to \$9 million for fiscal year 2002, \$12 million for fiscal year 2003, and \$15 million for fiscal 2004 and years thereafter. See H.R. 3991 and H.R. 5548 (copies attached).

The Service is, as you know, currently operating under a continuing resolution. It continues appropriations through November 22, 2002. See H.J. Res. 123. This resolution relies for most of its terms and conditions upon the first continuing resolution that was passed this fiscal year. See H.J. Res. 111. That resolution continued funding "under the authority and conditions provided in the applicable appropriations Act for fiscal year 2002 for continuing projects or activities ... at a rate for operations not

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exceeding the current rate, and for which appropriations, funds, or other authority was made available in ... appropriations Acts ... [including] ... the Treasury and General Government Appropriations Act, 2002." See H.J. Res. 111, § 101.

The Treasury and General Government Appropriations Act, 2002, specified the sums that were appropriated in fiscal year 2002 for both the TCE and the LITC programs:

For necessary expenses of the Internal Revenue Service for pre-filing taxpayer assistance and education, filing and account services, shared services support, general management and administration; and services as authorized by ... at such rates as may be determined by the Commissioner, \$3,797,890,000, of which up to \$3,950,000 shall be for the Tax Counseling for the Elderly program, of which \$7,000,000 shall be available for low-income taxpayer clinic grants ...

115 Stat. 521 (Nov. 12, 2001). Thus, \$1 million more than the \$6 million authorized under IRC § 7526(c)(1) to be appropriated annually "unless otherwise provided by specific appropriation" was, in fact, appropriated in fiscal year 2002 for the purpose of LITC grants. Because the continuing resolution continues funding under the authority and conditions provided in the Treasury and General Government Appropriations Act, 2002, the "mark" that is critical to answering your question are the sums mentioned in the 2002 appropriations act: "up to \$3,950,000" for the TCE program and \$7 million for the LITC program.¹

If you or others have additional questions on this issue or related concerns, please contact Dave Ingold at (202) 283-7952.

cc: Nachman (CC:PA:APJP)
Wielobob (CC:W&I)
Endick/Farahati (CC:GLS:EGG)

¹We note that Section 110 of H.J. Res. 111 provides that "for those programs that had ... complete distribution of fiscal year 2002 appropriations at the beginning of that fiscal year because of distributions of funding to ... grantees or others, similar distributions of funds for fiscal year 2003 shall not be made and no grants shall be awarded for such programs funded by this resolution that would impinge on final funding prerogatives." The funds distribution cycle for the LITC and TCE programs coincides roughly with the beginning of the fiscal year. Nevertheless, the sums at issue are such that we doubt that their distribution would be viewed as impinging on the final funding prerogatives of the Legislative Branch. We suggest, as a matter of prudence and intra-agency courtesy, that you consider coordination with the office of the Chief Financial Officer to ascertain its opinion on this issue.