



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
ASSOCIATE CHIEF COUNSEL GENERAL LEGAL SERVICES
950 L'ENFANT PLAZA, S.W., 2ND FLOOR
WASHINGTON, D.C. 20024-2123
Telephone: (202) 283-7900
Facsimile: (202) 283-7979

CASE:GLS:141472-02
CC:GLS:PCTL:DIngold

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

FROM: Donald M. Suica
Chief, Public Contracts and Technology Law Branch (GLS)
Internal Revenue Service

SUBJECT: Low-Income Tax Clinic (LITC) Questionable Award and Alleged
Misappropriation of Funds

This is in reply to your telephone and e-mail requests, on behalf of Jim Grimes,
Director, Field Operations, Stakeholder Partnerships, Education and Communication
(W&I:SPEC), for guidance on this subject.

Background:

You advised us of being contacted on July 29, 2002, by an individual who represented
that he or she was on the board of directors of the [REDACTED]
[REDACTED] an entity that was awarded a \$ [REDACTED] LITC
grant for calendar year [REDACTED]. This individual informed you that [REDACTED]

[REDACTED] Letters to this effect, that you forwarded onto us, were sent to you
via facsimile transmission on July 30, 2002.

b6

PMTA: 00575

GLS-141472-02

Your re-review of [REDACTED] grant award file and program staff coordination with the Tax Exempt/Government Entities (TEGE) branch of the Service raised an additional concern about [REDACTED] status as a "clinic," a term defined in the Service's statutory authority to include:

... an organization described in section 501(c) [of the Internal Revenue Code (IRC)] and exempt from tax under section 501(a) [of the IRC]

IRC § 7526(b)(2)(B).

You advised us of your immediately contacting the Treasury Inspector General for Tax Administration (TIGTA) upon your learning of these matters.

Summary Conclusion: For reasons that follow, we concur in the appropriateness of the referrals to TIGTA, for its investigation, of both issues (the questionability of the original award and the alleged misappropriation of funds by the [REDACTED] of the clinic). With respect to the issue of the questionability of [REDACTED] status, we caution, however, that the Grants Office's preliminary assumption that [REDACTED] non-appearance on the IRC § 501(c)(3) website known as www.guidestar.org may not mean that [REDACTED] is an entity outside the definition of the term "clinic" found in IRC § 7526(b)(2)(B). It is possible that [REDACTED] is a IRC § 501(c)(4), non-profit, social welfare organization.

Discussion:

Prior to discussing guidance in the Internal Revenue Manual (IRM) and elsewhere that supports the referrals of both issues to TIGTA, we first briefly discuss the issue of [REDACTED] tax-exempt, non-profit status.

Like a IRC § 501(c)(3) entity, a § 501(c)(4) organization's income is tax-exempt. However, gifts to a § 501(c)(4) organization are not tax-deductible.¹ We raise the possibility of [REDACTED] being a § 501(c)(4) organization because the full name of [REDACTED] is [REDACTED], which denotes that it may be a social welfare organization and connotes nothing, on its face, about its status as a non-profit, or for-profit, organization.² A possible explanation of the affirmative eligibility

¹Assuming that a LTC recipient were a § 501(c)(4) organization, this might affect negatively its ability to raise funds and meet the "dollar-for-dollar" matching funds requirement. See IRC § 7526(a) and (c)(5).)

²For our understanding of the distinction between an IRC § 501(c)(3) and § 501(c)(4), we are in debt to Mark Wiener of TE/GE Counsel's Thousand Oaks, California Office ((805) 371-6702). Mr. Wiener informally advised us about this distinction, referred us to the existence of the www.guidestar.org website for the listing of IRC § 501(c)(3)-organizations prior to your mention of it by name, and explained that – while § 501(c)(3) organizations are the result of the Service's review and approval of

GLS-141472-02

determination that was made when [REDACTED] grant application was evaluated is that [REDACTED] is an IRC § 501(c)(4) organization. [REDACTED]

Dr

With respect to obtaining a definitive opinion as to whether an IRC § 501(c)(4) organization falls within the statutory definition of a "clinic," IRC § 7526, we refer you to Ms. Carol Nachman, CC:P&A, with whom, in advance, we have discussed this issue and its relevancy.

As explained in the IRM, a subcategory of "accountable officers" is a certifying officer. IRM 3.0.167.3.6 (01-01-2002) notes that, while a certifying officer is different from other accountable officers in that they do not have physical custody of public funds, the accountability for public funds rests primarily with them. This is so because:

A Certifying Officer is a government officer or employee whose job is or includes certifying vouchers for payment. This means verifying and certifying that payments made by the agency are legal, proper and correct.

Id., (2); see 31 U.S.C. 3528(a)(3) and (4) ("A certifying official ... is responsible for – the legality of a proposed payment ... [and] ... repaying a payment [that is] illegal, improper or incorrect ... or that does not represent a legal obligation under the appropriation or fund involved.")

A certifying officer is "automatically liable at the moment ... an erroneous payment is made." IRM 3.0.167.3.7(4) (01-01-2002). Accountable officers can be relieved of liability in circumstances where it is determined, among other things, that the loss or deficiency of the funds "was not the result of fault or negligence by the accountable officer" and "the loss or deficiency was not the result of an illegal or incorrect payment." 31 U.S.C. § 3527(a)(1)(B) and (a)(2).

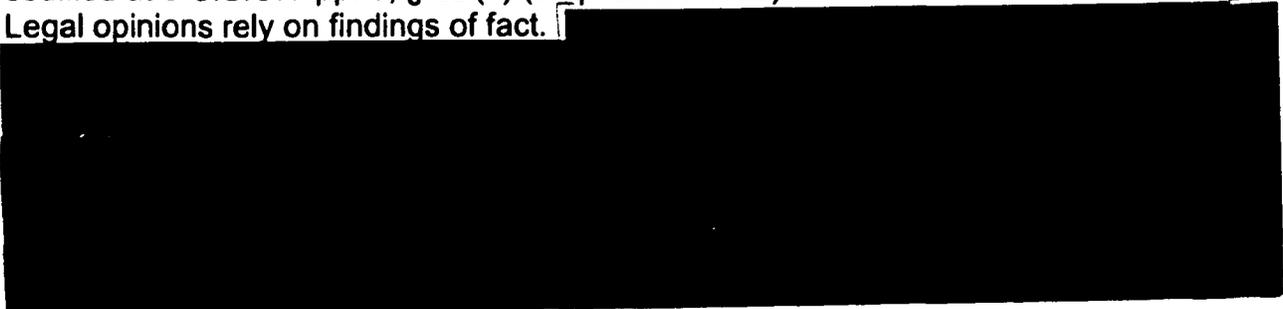
With respect to situations possibly involving negligence, the IRM provides that: "Supervisors, based on the TIGTA Report of Investigation (ROI), will determine if there was negligence on the part of the employee in regard to the loss or shortage." IRM 3.0.167.5.3 (01-01-2002). While the context of this statement in the IRM is preceded by receipt loss procedures, we believe that it applies as well to situations of possible negligence in payment certifications. This provision of the IRM supports the appropriateness of your referral of the questionable payment certification issue to TIGTA for its investigation of negligence if negligence or inadvertence is suspected. (This, of course, would be unnecessary if [REDACTED] eligibility determination had not been questioned and, instead, could be established to have been the result of its properly having § 501(c)(4) status that tax counsel deems as satisfying the definition of "clinic" used in IRC § 7526.)

applications – § 501(c)(4) organizations can self-determine their status.

GLS-141472-02

As to the referral of the issue involving the alleged misappropriation by the clinic's former executive director, this is covered by the very broad scope of TIGTA's authority to "exercise all duties and responsibilities of an Inspector General ... on all matters relating to the Internal Revenue Service." The Inspector General Act of 1978, P.L. 95-452, as amended by The IRS Restructuring and Reform Act of 1998, P.L. 105-206, codified at 5 U.S.C. App. 3, § 8D(h) (emphasis added).

Legal opinions rely on findings of fact. [REDACTED]



DP

cc: Nachman CC:P&A(APJP)
Wielobob CC:W&I