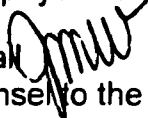


**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:NTA:SLHartford
PRENO-117206-05

date: June 1, 2005

to: Nina E. Olson
National Taxpayer Advocate

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

subject: Section 7526 and Eligibility for Organizations in Guam

On March 29, 2005, you met with several representatives from the Guam Department of Revenue & Taxation. During the meeting, you asked this office to look into whether the Internal Revenue Service could fund a clinic in Guam. This memorandum is in response to your request for guidance on section 7526 as it applies to an organization in Guam.

Issue:

Whether an organization in Guam is eligible for a low income taxpayer clinic (LITC) matching grant under section 7526?

Conclusion:

An organization in Guam is eligible for a matching grant that otherwise meets the requirements of section 7526.

Law and Analysis:

Section 7526 of the Internal Revenue Code authorizes the Internal Revenue Service, subject to availability of appropriated funds, to award organizations matching grants of up to \$100,000 for the development, expansion, or continuation of qualified low income taxpayer clinics. For purposes of section 7526, a qualified low income taxpayer clinic is a clinic that represents low income taxpayers in controversies with the Service or informs individuals for whom English is a second language of their tax rights and responsibilities. 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 qualified low income taxpayer clinic.

It is our understanding that the native language of Guamanians is Chamorro; thus, English could very well be a second language for many taxpayers in Guam. The operative question, however, in the analysis of whether an organization in Guam could

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be eligible under section 7526, is whether there are taxpayers located in Guam that could have federal tax controversies with the Service. To answer this question, we must turn to subchapter N of the Code. In particular, section 935 provides the rules for coordination of United States and Guam individual income taxes. Although Public Law 99-514 repealed section 935, the repeal does not take effect until the United States and Guam enter into an implementing agreement.

Under the provisions of section 935, residents of Guam are required to file income tax returns with Guam, but not with the United States. Similarly, citizens of Guam who are not otherwise citizens of the United States are required to file an income tax return only with Guam. See I.R.C. § 935(b). Residents of the United States mainland who derive income from Guam are not required to file income tax returns under Guam's territorial income tax law; they satisfy any potential Guamanian income tax liability on Guamsource income by filing with the United States. I.R.C. § 935(c). Section 935 also allows for the filing of a joint return with an individual who is a bona fide resident of Guam, is a citizen of Guam but not otherwise a citizen of the United States, or has income derived from Guam and is a citizen or resident of the United States. I.R.C. § 935(a)(4). Joint returns are filed according to the residence and citizenship of the spouse who has the greater adjusted gross income (determined without regard to any community property laws) for the tax year. I.R.C. § 935(b)(3). Thus, there are individual and joint return filers in Guam that file returns with the Service. Consequently, there are taxpayers in Guam that could have controversies with the Service for which services provided by a clinic could be utilized.

It is important to note that section 908 of the American Jobs Creation Act, Pub. L. No. 108-357, added section 937 to the Code to provide rules on residency in U.S. Possessions, including Guam. In addition, section 937 provides rules for determining when income is considered to be from sources within Guam and whether income is effectively connected with the conduct of a trade or business with Guam. Section 937 is effective for tax years ending after 10-22-04, with a transition period for residency reporting that includes an individual's three taxable years ending before the end of such individual's 2004 tax year. Because of the complexity in determining residency and sourcing and the confusion that could result in the transition period, there will likely be taxpayers who file in Guam when they should have filed in the United States, and vice versa, thereby adding to the need for a clinic in Guam.

Although your inquiry related only to Guam, we would also like to mention that the above analysis and conclusion applies to the Commonwealth of the Northern Mariana Islands as well, as its income tax rules mirror the Internal Revenue Code in the same manner as those laws are in force in Guam. Moreover, new section 937 also sets forth residence and sourcing rules for the Commonwealth of the Northern Mariana Islands. Thus, there could be taxpayers in the Commonwealth of the Northern Mariana Islands that have controversies with the Service. Consequently, an organization in the Commonwealth of the Northern Mariana Islands that otherwise meets the requirements of section 7526 is eligible for an LITC matching grant.

We have coordinated our response with the Office of the Associate Chief Counsel (International) and the Office of the Associate Chief Counsel (Procedure & Administration).

cc: Carol Nachman
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