

Internal Revenue Service
memorandum

date: Nov. 27, 2000

to: Director, EO Examinations T:EO:E

(signed) Thomas J. Miller for

from: Director, Exempt Organizations T:EO

subject: Removal from Suspense of Certain Refund Claims Involving
IRC 45B

In a memorandum dated January 13, 2000, we notified you that certain refund claims from exempt organizations that want to use the IRC 45B credit in computing their unrelated business taxable income ("UBTI") under IRC 512 would be forwarded from the Ogden Service Center to your office. We also advised you to suspend such refund claims pending further consideration of this issue in conjunction with the Office of Chief Counsel.

The refund claims in question are based on TAM 1999-31-041 (April 28, 1999), which concluded that in the case of a social club described in IRC 501(c)(7), the credit provided in IRC 45B is an allowable credit in computing UBTI under IRC 512(a)(3). The TAM stated that the IRC 45B credit is not limited to the taxes associated with the unrelated trade or business activity, but may be claimed with respect to all tips received by the club's employees.

Subsequent to the issuance of the TAM, questions arose as to whether the case was correctly decided, thus prompting the need for additional consideration. This process has now been completed, and we believe the conclusion contained in TAM 1999-31-041 is correct. Accordingly, the suspense directive of January 13, 2000, is now being lifted. All cases which had been suspended as a result of the January 13 memorandum should now be removed from suspense and resolved in a manner consistent with the holding in TAM 1999-31-041. Also, any claims for refunds involving this issue should be processed as expeditiously as possible.

For your convenience, we are enclosing copies of TAM 1999-31-041 and the January 13 memorandum.

Re: Removal from Suspense of Certain Refund Claims Involving
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If you have any questions concerning this matter, please contact Thomas Miller at (202) 622-5656, or members of your staff may contact Dave Jones at (202) 622-8095 or Charles Barrett at (202) 622-8152.

Enclosures

Copy of TAM 1999-31-041

Copy of memorandum dated 1/13/00

cc: Manager, Processing Center Programs, T:CAS

cc: Regina Oldak, CC:TEGE:EOEG:EO2, Rm. 5241