

Private foundation taxable expenditures; amended return correcting omission of grant. A private foundation that failed to list on its original annual information return a grant to an organization not described in either section 509(a)(1), (2), or (3) of the Code, but corrected the omission on an amended return filed after the due date, has failed to exercise the expenditure responsibility requirements of section 4945(h)(3) with respect to the grant, and the grant is a taxable expenditure.

Advice has been requested whether, under the circumstances described below, the omission of a particular expenditure from the annual information return of a private foundation subjects the expenditures to the tax imposed on taxable expenditures under section 4945(a)(1) of the Internal Revenue Code of 1954.

The foundation is exempt from Federal income tax under section 501(c)(3) of the Code and is a private foundation within the meaning of section 509(a). The foundation accomplishes its objectives through a program of making grants to other organizations for charitable and educational purposes.

Pursuant to a resolution of its board of directors, the foundation made a grant in 1974 to X, an organization that is not described in either section 509(a)(1), (2) or (3) of the Code.

The foundation filed its annual information return, Form 990PF, before the fifteenth day of the fifth month following the close of the taxable year as required by section 6033 of the Code. However, on the annual information return the foundation failed to include the grant to X among the list of grants made during the taxable year. Aside from failing to report the grant to X on the annual information return, the foundation otherwise complied with the expenditure responsibility requirements in connection with the grant as required by section 4945(h).

After filing the return, and after the due date of the return had passed, the foundation discovered the omission of the grant from the return. Consequently, the foundation filed an amended return that included the grant to X among the list of grants made during the taxable year.

Section 4945(a)(1) of the Code imposes a tax on each 'taxable expenditure' of a private foundation.

Section 4945(d)(4) of the Code provides that a 'taxable expenditure' includes any amount paid by a private foundation as a grant to an organization (other than one described in section 509(a)(1), (2), or (3)) unless the private foundation exercises expenditure responsibility with respect to such grant in accordance with the provisions of section 4945(h).

Section 4945(h) of the Code provides that expenditures

responsibility referred to in section 4945(d)(4) means that a private foundation is responsible to exert all reasonable efforts, and to establish adequate procedures--

- 1.) to see that the grant is spent solely for the purpose for which made,
- 2.) to obtain full and complete reports from the grantee on how the funds are spent, and
- 3.) to make full and detailed reports with respect to such expenditures to the Secretary or his delegate.

Section 53.4945-5(e)(3)(iii) of the Foundation Excise Tax Regulations provides that a grant which is subject to the expenditure responsibility requirements of section 4945(h) of the Code will be considered a taxable expenditure of the granting foundation if that foundation fails to report to the Internal Revenue Service as provided in section 53.4945-5(d) of the regulations.

Section 53.4945-5(d) of the regulations provides that in order to satisfy the reporting requirements of section 4945(h)(3) of the Code, a granting foundation must provide the required information on its annual information return, required to be filed by section 6033, for each taxable year with respect to each grant made during the taxable year that is subject to the expenditure responsibility requirements of section 4945(h).

Section 1.6033-2(e) of the regulations states that the annual return required by this section shall be filed on or before the fifteenth day of the fifth month following the close of the period for which the return is required to be filed.

Section 53.4945-1(d)(2) of the regulations provides that if an expenditure is taxable only because of a failure to obtain a full and complete report as required by section 4945(h)(2) of the Code, or because of a failure to make a full and detailed report as required by section 4945(h)(3), correction may be accomplished by obtaining or making the report in question.

Since X is not an organization described in either section 509(a)(1), (2), or (3) of the Code, the foundation must exercise expenditure responsibility in connection with the grant in order to avoid having the grant considered a taxable expenditure. Section 4945(h) and the regulations thereunder require the foundation to fulfill three basic conditions in order to comply properly with the expenditure responsibility requirements. Failure to comply with any one of these requirements will cause the grant to be a taxable expenditure. One of the requirements imposed by section 4945(h) is that the foundation make a 'full and detailed report of its expenditures to the Secretary or his delegate.' The report referred to in that section is the annual information return required to be filed by section 6033.

By omitting the grant to X from the original annual information return, the foundation failed to comply with the reporting requirements of section 4945(h)(3) of the Code with respect to the grant. Consequently, the foundation did not satisfy the expenditure responsibility requirements of section 4945(h). While the subsequent filing on the amended return may have accomplished correction within the meaning of section 53.4945-1(d)(2) of the regulations, the untimeliness of such filing precluded it from nullifying the foundation's failure to exercise expenditure responsibility in connection with the grant.

Accordingly, since the foundation failed to exercise expenditure responsibility within the meaning of section 4945(h)(3) of the Code, the grant to X is a taxable expenditure within the meaning of section 4945(d)(4) and is subject to the tax imposed by section 4945(a)(1).