



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR BALTIMORE DISTRICT COUNSEL-S OFFICE
ATTN: DAVID FERGUSON

FROM: Chief, Branch 7
Office of Associate Chief Counsel (EBEO) (CC:EBEO:7)

SUBJECT: - IRC ' 4980A

This Field Service Advice responds to your request for assistance regarding the applicability of IRC ' 4980A to the above-referenced case. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

TP =
X corporation =
Y plan =
a =
b =
c =
d =
e =
f =
g =
h =
i =

ISSUE:

Whether IRC ' 4980A (as applicable to certain excess distributions from qualified plans occurring before January 1, 1997) applies to a corrective distribution from X corporation to TP.

CONCLUSION:

The correct technical position is that the IRC ' 4980A tax is applicable to TP.

FACTS:

We understand that X corporation was appointed trustee of Y plan, a qualified plan under IRC ' 401(a), sometime prior to a. Upon conducting an audit of Y plan, X corporation discovered that TP, a plan participant, had been receiving a monthly benefit payment that was substantially less than that which should have been paid. By letter dated b, X corporation advised TP that he was entitled to a monthly pension payment of c dollars, instead of d dollars. Accordingly, to correct the error (including interest thereon), X corporation made a one-time corrective distribution of e dollars to TP in f. The Service then assessed a g dollars IRC ' 4980A excess distribution excise tax (15 percent of h dollars, the portion of the distribution exceeding the \$150,000 threshold).

LAW AND ANALYSIS:

IRC ' 4980A was repealed in 1997 by ' 1073(a) of the Taxpayer Relief Act of 1997, P.L. 105-34, effective for excess distributions received after December 31, 1996. Prior to its repeal, IRC ' 4980A imposed on any individual receiving an excess distribution from a qualified plan a tax in the amount of 15 percent of the excess distribution. The term excess distribution, as defined under IRC ' 4980A(c) prior to its repeal, means the aggregate amount of the retirement distributions of any individual during any calendar year to the extent such amounts exceed the greater of (A) \$150,000, or (B) \$112,000 (adjusted at the same time and in the same manner as under IRC ' 415(d)). Certain exclusions not relevant here are provided under IRC ' 4980A(c)(2). Under IRC ' 4980A(e)(A) prior to its repeal, the term retirement distributions includes, with respect to any individual, the amount distributed in any taxable year under any qualified employer plan with respect to which such individual is or was the employee. The term qualified employer plan, under prior IRC ' 4980A(e)(2)(A), includes any plan described in IRC ' 401(a) which includes a trust exempt from tax under ' 501(a) and which includes any plan or contract which, at any time, has been determined by the Secretary to be such a plan or contract.

Prior to its repeal in 1997, the tax on excess distributions from qualified retirement plans under IRC ' 4980A had been strictly imposed. See Montgomery v. Commissioner, T.C.Memo. 1996 - 263, aff=d sub nom Powell v. Commissioner, 129 F.3d 321 (4th Cir. 1997) and Powell v. Commissioner, T.C.Memo. 1996-264, aff=d, 129 F.3d 321 (4th Cir. 1997). In this case, Y plan was a qualified plan under IRC ' 401(a) and the Service asserted the tax with respect to the excess distribution portion of the f distribution of e dollars that TP received from X corporation, as trustee of Y plan maintained by TP-s former employer. In addition, because the distribution occurred prior to i, the IRC ' 4980A tax applies to the extent of any Aexcess distribution.@ Based on the facts, it is clear that h dollars of e dollars TP received constituted an Aexcess distribution@under IRC ' 4980A(e) since none of the exclusions of IRC ' 4980A(c)(2) apply.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

Review of the legislative history indicates that, in general, IRC ' 4980A was intended to prevent participants from accumulating excessive retirement savings. See Staff of Joint Committee on Taxation, 100th Cong., 1st Sess. (May 4, 1987). In this case, if TP had received the correct monthly annuity amount at the time he began receiving his monthly annuity benefit, the same benefit would not have been an excess distribution subject to IRC ' 4980A since it would have been payable as a monthly annuity without the additional accrued interest. Thus, TP-s situation is not of the type contemplated in enacting the IRS ' 4980A tax. Further TP is in no way responsible for the events that resulted in the f corrective distribution by X corporation. See Murillo v. Commissioner, T. C. Memo. 1998-13; Larotonda v. Commissioner, 89 T. C. 287 (1987) , AOD CC-1988-010 (April 11,1988). Both of these factors could be seen as suggesting some litigating hazards. [REDACTED]

[REDACTED] Thus, we believe on balance that the correct technical position is that the IRC ' 4980A tax is applicable to TP.

If you have any further questions, please call the branch telephone number.

By:

MICHAEL ROACH
Chief, Branch 7
CC:EBEO:7