

FOUNDATION THAT CORRECTS SECTION 4942 DISTRIBUTION DEFICIENCY ON ITS OWN ACCORD STILL IS SUBJECT TO PENALTY

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Section 4942 requires a private foundation to make minimum distributions to charitable recipients each year (generally, no less than 5% of its assets). If not made in a timely manner, a first tier penalty tax of 30% is imposed.

A private foundation filed its Forms 990-PF for several years, but neglected to make the required minimum distributions. When this was discovered by a new accountant, the foundation eventually made the missing distributions and filed a Form 4720 (Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code) requesting abatement of the penalty tax.

Under Code Section. 4962(a) , the IRS can abate the penalty if the private foundation establishes to the IRS's satisfaction that the violation (1) was due to reasonable cause; (2) wasn't due to willful neglect, and (3) has been corrected within the appropriate correction period. The foundation alleged reasonable cause due its accountant advising it that it qualified as a private operating foundation that did not have the minimum distribution requirement.

Since the foundation submitted returns that provided it was *not* a private operating foundation, the IRS did not accept that reasonable cause existed for missing the required distributions. The IRS also felt that changes by the foundations Board to increase returns and reduce expenditures evidenced knowledge that the foundation should have known that distribution shortfalls were occurring.

While not discussed in the ruling, apparently the foundation did not earn enough brownie points by reason of its voluntary disclosure of the issue so as persuade the IRS to abate the penalty.

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