

SEP 25 '00 10:55AM HON STAR BULLETIN

Docket No. 84

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

PETITION

Petitioner Henry Haalilio Peters hereby petitions for redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in the Notice of Deficiency [TE/GE: RED: AD] dated May 5, 2000 respecting the calendar tax years 1995, 1996, 1997, 1998, and 1999, and as the basis for his case, alleges as follows:

1. Petitioner Henry Haalilio Peters ("Petitioner") is an individual. Petitioner's legal residence and mailing address is 87-641 Farrington Highway, Waianae, Hawaii 96792. Petitioner's taxpayer identification number is 575-42-0747. No returns for the tax periods at issue were required to be filed with the Internal Revenue Service.

2. The Notice of Deficiency (a copy of which is attached, including any relevant material, statements and schedules accompanying the notice) was mailed to Petitioner on May 5, 2000, and was issued for the Commissioner (also referred to hereinafter as "Respondent") by the Director of Exempt Organizations Examinations in Los Angeles, California.

3. The deficiencies determined by the Commissioner are in excise taxes regarding certain charitable organizations and are as follows:

FILED	CLERK
ADMISSIONS	
RECORDED	
SERIALIZED	

<u>Year</u>	<u>Deficiency Under § 4958(a)(1)</u>	<u>Deficiency Under § 4958(b)</u>	<u>Deficiency Under § 4958(a)(2)</u>	<u>Total</u>
1995	\$64,326	\$514,606	\$50,000	\$628,932
1996	176,395	1,411,158	50,000	1,637,553
1997	179,739	1,437,908	50,000	1,667,647
1998	231,134	1,849,068	50,000	2,130,202
1999	35,848	286,782	50,000	372,630

The entire amount of each deficiency is in dispute.

4. The determination of the excise taxes set forth in the Notice of Deficiency is based upon the following errors by the Commissioner:

- a. The Commissioner erred in determining that any portion of the compensation paid Petitioner by the Kamehameha Schools/Bishop Estate ("KSBE") constituted an "excess benefit" within the meaning of Section 4958(c)(1) of the Code.
- b. The Commissioner erred in determining that the fact that a state or local legislative or agency body or court has authorized or approved a particular compensation package paid to a disqualified person should not be afforded any weight as to determining the reasonableness of compensation paid for purposes of Section 4958 of the Code;
- c. The Commissioner erred in determining that there are no facts indicating that Petitioner engaged in any arms-length negotiations regarding the terms of Petitioner's compensation;
- d. The Commissioner erred in determining that the size and complexity of the KSBE organization is only a minor factor in the analysis of reasonable compensation.

e. The Commissioner erred in determining that the duties and responsibilities of a trustee under Hawaiian law do not include operating and managing businesses and investments owned directly or indirectly by the trust;

f. The Commissioner erred in determining that Petitioner did not have any special experience in managing large business and investment assets;

g. The Commissioner erred in determining that Petitioner did not offer any unique or irreplaceable skills necessary for the conduct of KSBE's business and investments;

h. The Commissioner erred in determining that Petitioner's qualifications to operate the business and investments of KSBE were not commensurate with the compensation paid to Petitioner by KSBE for the services provided;

The Commissioner erred in determining that Petitioner's performance as a trustee did not further KSBE's tax exempt purposes of operating a school;

j. The Commissioner erred in determining that there was evidence that KSBE was operated for a non-exempt purpose and in determining that KSBE failed to engage in activities that primarily furthered KSBE's charitable purpose;

k. The Commissioner erred in determining that the Petitioner's performance as a trustee did not justify the compensation paid for Petitioner's services;

l. The Commissioner erred in determining that Petitioner's compensation was substantially out of proportion in relation to the other executives employed by KSBE;

m. The Commissioner erred in determining that it was not probable that an outside investor would approve of such a compensation plan as paid to the trustees of KSBE as being reasonable;

n. The Commissioner erred in determining that reasonable compensation for Petitioner in 1995 and 1996 would have been in the following ranges:

<u>Year</u>	<u>Compensation Range</u>
1995	\$84,000 to \$147,000
1996	\$90,000 to \$158,000

o. The Commissioner erred in determining that reasonable compensation for Petitioner in 1997, 1998, and 1999 would have been no more than \$158,000 per year;

p. The Commissioner erred in determining that Petitioner received the following amounts of compensation as a result of "excess benefit transactions" with KSBE within the meaning of Section 4958(d) of the Code.

Alleged Excess Benefit

1995	\$257,303
1996	\$705,579
1997	\$718,954
	\$924,534
	\$143,391

- q. The Commissioner erred in asserting against Petitioner an initial tax on a disqualified person under Section 4958(a)(1) of the Code for each taxable year at issue;
- r. The Commissioner erred in asserting against Petitioner an additional tax on a disqualified person under Section 4958(b) of the Code for each taxable year at issue;
- s. The Commissioner erred in asserting against Petitioner the additional tax under Section 4958(b) before the time has expired for correcting any § (f)(6);
- t. The Commissioner erred in asserting against Petitioner the initial tax on an organization manager under Section 4958(a)(2) of the Code for each taxable year at issue;
- u. The Commissioner erred in determining that Petitioner's alleged participation in these excess benefit transactions as an organization manager was wilful and was not due to reasonable cause within the meaning of Section 4958(a)(2);

- v. The Commissioner erred in determining that the binding written contract exception in Section 1311(d)(2) of P.L. 104-168 does not apply in Petitioner's situation; and
 - w. The Commissioner erred in determining that excise taxes for 1995 could be timely assessed.
- 5 The facts supporting Petitioner's case are as follows:

**The Unique History of the
Kamehameha Schools/Bishop Estate**

- a. The Kamehameha Schools/Bishop Estate (hereinafter "KSBE" or "The Kamehameha Schools/Bishop Estate") has a rich cultural history in the State of Hawaii. The benefits KSBE provides to the State of Hawaii emanate from the Will of Princess Bernice Pauahi Bishop, in which the Princess created a charitable trust for educational purposes.
- b. Princess Pauahi Bishop died in 1884 in Hawaii as the final heir of King Kamehameha of Hawaii. The trust established under her Will became known as The Bishop Estate, or Kamehameha Schools/Bishop Estate (hereinafter "KSBE" or "The Bishop Estate"). The primary purpose of the trust was to manage its bequests and legacies, and thereupon expend same to build and operate the Kamehameha Schools, such schools serve as a model for the State of Hawaii.
- c. In the late 19th century, at about the same time that Princess Pauahi Bishop bequeathed her estate for the education of Hawaiian children, other Hawaiian royal family members established similar trusts and estates with

different goals, all of which related to health and family services. Only KSBE has survived to the present time as a significant part of Hawaiian culture.

d. KSBE survived in part because it was originally approximately 430,000 acres of land in the Hawaiian islands, which has since become some of the world's most expensive real estate. Until the 1960's, KSBE was restricted with respect to disposition of these lands and therefore obtained most of its income from leasing operation

e. In the mid-1980's, after litigation that went to the Supreme Court of the United States, KSBE was forced to sell some of its residential leasehold properties. The sale changed KSBE from a land-burdened organization to an entity with a greater variety of assets to be preserved and developed by the trustees.

f. By the time of the transactions that are the subject of this Petition, KSBE had grown to become one of America's wealthiest philanthropic organizations. Its endowment had grown to become one of the world's richest for an educational institution, approximating or exceeding the endowments of Harvard, Princeton and Yale.

g. In 1984, when Petitioner was appointed as a KSBE trustee, Kamehameha provided education for less than 2,700 students at a single campus. By 1999, approximately 16,700 students were served through the Kamehameha Schools statewide on a day or boarding basis. In the aggregate, KSBE covered over 94% of the costs of educating these students. KSBE also provided more than \$15 million of post-high school

financial aid. Moreover, KSBE administered federally-funded programs that supported another 29,000 students.

h. Trustees of the Bishop Estate have a fiduciary duty to manage the expensive and complex assets of the estate. Trustees of the Bishop Estate also are bound by such duty to manage the Kamehameha Schools. Thus, the trustees have the responsibility and complex duties that result from managing one of the largest private endowments in the world, but using it to benefit children of Hawaiian and aboriginal ancestry within the complex political climate of a multi-racial state such as Hawaii.

i. The governing instrument of the trust, as construed by the Hawaiian courts, authorizes its trustees to pay out or set aside sums in support of its charitable and educational purposes.

j. Since 1939, the Internal Revenue Service has recognized KSBE as an organization exempt from federal income taxes. Currently, this exemption is based upon Section 501(c)(3) of the Code. In the 1970s, the Internal Revenue Service classified the trust as a school described in section 170(b)(1)(A)(ii) of the Code. As a result of such classification, the trust was treated as a public charity described in section 509(a)(1) of the Code.

Trustee Compensation

k. Regarding the appointment of KSBE trustees, the Princess' Will provides that the number of trustees shall be kept at five and that any

vacancies shall be filled by the choice of the majority of the Justices of the Supreme Court of Hawaii.

l. Because of the unique complexity of serving as a trustee of such a large philanthropic organization with political overtones, the Supreme Court routinely appointed trustees to lifetime appointments with mandatory retirement at age 70. These lifetime appointments were designed specifically to give trustees sufficient time to learn to deal with the complex economic and political issues that relate to the Kamehameha Schools.

m. The Princess' Will provides no guidance with respect to compensation for the trustees. However, from the inception of KSBE, it was the practice of the Supreme Court (and the other courts of Hawaii) to allow the KSBE trustees (and other trustees) to be paid commissions based upon the statutory schedule applicable to executors, administrators and guardians. That schedule was adopted as part of the Civil Code of 1859 and was enacted while Hawaii was still a sovereign nation. Eventually, in 1928, the practice approved by the courts of Hawaii for compensating trustees was incorporated into a statute of the then Territory of Hawaii.

n. During the five years in issue, the formula for computing the maximum compensation payable to trustees of charitable and non-charitable trusts was set forth in Hawaii Revised Statutes (HRS) Sections 607-18 and 607-20. HRS Section 607-18 provides the formula for computing trustee commissions allowable upon income of a non-charitable trust estate and upon the principal of the estate. HRS Section 607-20 applies in the case of

a charitable trust and sets forth the commission based on percentages of the trust income. As the Notice of Deficiency admits by quoting the statutory language, these sections of the Hawaiian statutes expressly apply to estates in existence when the statutes were adopted, such as KSBE. The statutes of Hawaii did not expressly authorize payments to trustees for other benefits such as pension benefits or health insurance. Petitioner has borne such expenses out of the commissions paid.

o. The text and the legislative history of HRS Section 607-18 expressly authorize and condone the compensation to trustees that is based on percentages of income to the trust. In 1959, the Hawaiian legislature modified the allowed percentages as they relate to revenue and income on the charitable trust.

p. Despite the statutory authority for commission income, Petitioner and the other trustees of KSBE have regularly and voluntarily waived commissions to which their services for KSBE otherwise entitled them.

q. The Notice of Deficiency cites and relies on an amendment to Section 607-20 for the proposition that trustees are limited to reasonable compensation. That provision became effective January 1, 1999, and cannot be applied retroactively to Petitioner's compensation for the years in issue. Moreover, no change was legislated to HRS Section 607-18, so percentage compensation is still appropriate.

r. For example, in computing the percentage of income payment of compensation to trustees during the years in issue, the trustees took no

compensation for the increase in the value of the real estate holdings of KSBE. Moreover, the trustees waived their stipulated percentage of income on the capital gains from sales of residential properties.

s. Indeed, a master appointed by the Probate Court of the State of Hawaii pointed out that the trustees always received less than what they were entitled to receive by law.

t. An annual reconciliation of commissions paid to KSBE trustees has been prepared by KSBE staff and reviewed by KSBE's independent external auditors. Adjustments, if any, were resolved annually.

Petitioner Henry Haalilio Peters

u. Petitioner has a lengthy record of public service. He served as a State Representative in Hawaii and as Speaker of the House of Representatives in the Hawaiian legislature prior to becoming a trustee of KSBE. This experience provided him with many unique qualifications that were critical to handling the political, racial, and economic issues that faced KSBE during his time as a trustee.

v. The Supreme Court of Hawaii appointed Petitioner as a trustee of the Bishop Estate on May 4, 1984. Petitioner accepted that appointment in writing on May 10, 1984. Title to the property and assets of the Estate was vested in Petitioner jointly as trustee on May 16, 1984.

w. Petitioner served as a trustee during a time of major change in the asset mix of KSBE. This major change resulted because the extensive

leasehold properties throughout Hawaii held by KSBE were required to be disposed of pursuant to the decision of the United States Supreme Court in 1984.

x. During his 15 years as a trustee, Petitioner developed substantial expertise in managing the assets of the estate. Transactions negotiated by Petitioner have yielded billions of dollars of profits for KSBE, as evidenced by annual information returns (IRS Forms 990) filed with Respondent.

y. As of June 30, 1984, the corpus held by KSBE was valued on KSBE's financial statements at approximately \$349,000,000. As of June 30, 1999, the combined assets of KSBE were valued on KSBE's financial statements at approximately \$5,600,000,000. This sixteen-fold increase occurred during Petitioner's 15-year tenure as trustee. This valuation severely understated the actual fair market value of the assets, because the real estate holdings were reported at tax assessed values and other investment assets were valued at cost. For example, one investment, an equity ownership interest in the Goldman Sachs firm, was carried on the KSBE books at approximately \$500 million despite press reports which valued the investment at over \$3 billion. The fair market value of KSBE's corpus in June 1999 exceeded \$10 billion.

z. The Kamehameha Schools have helped educate tens of thousands of Hawaiian children, many of whom were too poor to afford such educational opportunities without KSBE's assistance. Although Princess Pauahi Bishop's trust created the genesis of an educational powerhouse

without the actions of Petitioner and his contemporaries to grow and expand KSBE, the tens of thousands of Hawaiian children educated by KSBE could not have been so well served.

Petitioner worked well in excess of 40 hours per week for the benefit of KSBE and subsidiary businesses for each of the taxable years at issue.

bb. Petitioner's compensation package at KSBE did not include a pension plan, medical benefits, dental benefits or the other emoluments normally associated with employment agreements at large organizations with comparable assets. Petitioner's percentage commission compensation was adopted with the knowledge that Petitioner would have to purchase or otherwise provide for his own social services and benefits.

HRS Section 560: 7-306 articulates that a trustee is personally liable on contracts entered into in the trustee's fiduciary capacity in the course of administration of the trust estate, unless otherwise provided in the contract. Because KSBE is one of the largest endowed public charities in the United States, Petitioner's service as a KSBE trustee exposed him to substantial personal liability. Although KSBE provided liability coverage for each trustee, Petitioner believed that the available insurance did not adequately cover his exposure to various potential liabilities.

dd. As with most contingent compensation agreements, Petitioner's compensation agreement intentionally created the incentive for Petitioner to render the investment assets under his dominion and control more productive. Petitioner's contingent compensation agreement was entered

pursuant to a free bargain between KSBE and Petitioner before any services were rendered and was not influenced by any consideration on the part of KSBE other than that of securing on fair and advantageous terms the services of Petitioner.

Trustee Compensation Was Reasonable

ee. For the taxable years at issue, KSBE calculated the commissions paid to Petitioner according to the formulas permitted by HRS Section 607-18 and Section 607-20. In each of the years, Petitioner and his co-trustees each waived a portion of the maximum commissions to which his agreement with KSBE otherwise entitled him. Respondent's Notice of Deficiency recognizes that the commissions computed by reference to the statutes less the portion Petitioner waived constitutes Petitioner's compensation for the years under examination.

ff. The schedule below details the commissions Petitioner received in 1995 through 1999, accounting for the amounts waived by Petitioner and amounts Petitioner deferred under the KSBE deferred compensation plan:

<u>Year</u>	<u>Commissions</u>
1995	\$ 886,214
1996	\$ 863,579
1997	\$ 876,954
1998	\$1,082,534
1999	\$ 301,391

Each of these amounts constitutes reasonable compensation for the year in issue.

In determining reasonable compensation, the circumstances to be taken in to consideration are those existing at the date when the contract for services was made, not those existing on the date when the contract is questioned. In Petitioner's case, the circumstances to be taken into consideration are those existing at the date of his hire when he entered into the contract for services with KSBE.

hh. The possibility of substantial contingent compensation was naturally foreseen and expressly contemplated at the time that the commission agreement was entered into by Petitioner and KSBE.

ii. The incentive compensation paid to Petitioner and the other KSBE trustees was not challenged by Respondent in earlier years in which the asset mix of KSBE produced relatively little income.

jj. The compensation paid to KSBE trustees was reviewed by the probate court of the State of Hawaii and by the Attorney General as *parens patriae* annually from the inception of KSBE. No adjustments to compensation have ever been made despite the State's authority to do so. Thus, there was a century-long pattern and history of approval of percentage compensation of KSBE trustees. Petitioner and the other trustees relied on this historic approval in setting compensation for the years in issue.

The fair market value of the services rendered by Petitioner to KSBE exceeded the benefits received by Petitioner for each of the years in issue.

ll. Alternatively, if for any reason the Court should find that the benefits received in any year exceeded the fair market value of the services rendered

In that year, then the compensation is reasonably attributable to services performed in one or more prior years.

mm. Throughout the years in issue, Petitioner was a duly and legally appointed trustee of KSBE.

nn. The Supreme Court of Hawaii authorized commission compensation to KSBE trustees from the inception of the Bishop Estate in 1884, at a time when Hawaii was a sovereign nation.

oo. The 1928 trustee compensation statutes were enacted while Hawaii was a territory of the United States under the sovereignty of the Congress of the United States. These compensation statutes were enacted and enforced by the legislature of Hawaii under the sovereignty of the Congress of the United States as established by the *Newlands Joint Resolution of July 7, 1898* and the *Organic Act* signed into law on April 30, 1900. Thus, the statutory compensation structure permitting substantial commission income to trustees was enacted while Hawaii was a U. S. Territory, and became the law of the State of Hawaii upon admission of Hawaii as the fiftieth state on August 21, 1959. Thus, KSBE trustees were compensated by commissions first pursuant to the rulings of the Supreme Court of Hawaii, then pursuant to a statute enacted under the sovereignty of the independent nation of Hawaii, and later pursuant to a statute enacted under the sovereignty of the Congress of the United States. As a result, Petitioner and the other trustees were paid compensation under a formula system that was determined by Hawaiian state law and which remained essentially unaltered for decades.

At all times relevant, a binding written contract existed between Petitioner and KSBE. The contract was approved by the probate court's vesting order dated May 16, 1984, which granted to Petitioner the power to act as trustee of KSBE pursuant to the terms of compensation in place at that time.

Petitioner relied on compensation experts accepting the compensation paid to him and in approving the compensation paid to other trustees of KSBE. Furthermore, Petitioner relied on the legislature of Hawaii in accepting and approving the compensation.

rr. Alternatively, to the extent that Respondent is entitled to any determination of possible excise taxes against Petitioner, that tax must be computed as a percentage of the amount by which the benefits received exceeded reasonable compensation. Here, the reasonable compensation for Petitioner is far in excess of the amounts presumed by Respondent in his Notice of Deficiency.

ss. Respondent's determination of excess benefits relied on compensation opinions that were fatally flawed by inappropriate comparable data. The unique social, political and financial history of the Bishop Estate make it impossible to compare service as a KSBE trustee to virtually any other fiduciary position in the United States.

The Manager Tax Is Inappropriate

tt. The other trustees of KSBE also were compensated by percentage commission. Similar to the facts stated above regarding Petitioner's compensation, the compensation paid to the other four trustees of KSBE was reasonable and appropriate under the circumstances.

uu. The value of the services rendered by the other four trustees also at issue.

vv. Petitioner relied upon the Hawaiian statutes, the reviews by the probate court of the State of Hawaii, the opinions of third party compensation experts, the approximately 100 years of Hawaiian experience in permitting percentage compensation to trustees, and all the other facts and circumstances in approving the compensation paid to the other four trustees of KSBE for the years 1995, 1996, 1997, 1998 and 1999. Reliance on these factors was reasonable. Petitioner never willfully neglected his duties as trustee in determining the compensation of others, nor did Petitioner ever trustee.

Legal Defenses

ww. Respondent's Notice of Deficiency illegally and erroneously attempts to apply Section 4958(c)(1) to the compensation arrangements between KSBE and its trustees. Because the trustees of KSBE, including Petitioner, were compensated by percentage commissions based in whole on the

revenues of KSBE, these compensation arrangements are governed by Section 4958(c)(2) rather than Section 4958(c)(1).

xx. The purpose of Section 4958(c)(2) was to assure trustees whose compensation arrangements were based upon percentages of revenues or income that their arrangements would not be subject to excise tax unless and until the Secretary prescribed regulations to give fair notice to those trustees that certain percentage compensation arrangements were subject to scrutiny as "excess benefit transactions." Section 4958(c)(2) expressly provides that percentage compensation arrangements can only be scrutinized for excess benefits "[t]o the extent provided in regulations prescribed by the Secretary."

yy. Section 4958(c)(2) requires regulations to be adopted by the Secretary of the Treasury before that section becomes effective and enforceable. No such regulations have been adopted or even proposed by the Secretary.

zz. As of the date of the Notice and as of the date of this Petition, the Secretary has yet to exercise the discretion granted by Section 4958(c)(2). Respondent thus is estopped and legally barred from assessing any excise tax under that provision.

aaa. The compensation agreement between KSBE and Petitioner was within the compensation range established by Hawaiian statutes and was the Hawaii. For Respondent to substitute his own interpretation of reasonable compensation

for the interpretation adopted by the sovereign State of Hawaii constitutes an arbitrary and capricious determination. Moreover, such determination contravenes the scope and authority granted to Respondent by the Code.

To the extent that the Notice of Deficiency asserts the organization manager excise tax against Petitioner under Section 4958(a)(2) without simultaneously assessing the same tax against the other four KSBE trustees of faith.

At all times relevant, Petitioner was not a disqualified person as defined in Section 4958(f)(1) and was not an organization manager as defined in Section 4958(f)(2).

At all times relevant, Petitioner's activities while acting as a trustee of KSBE were proper, appropriate and legal.

At all times relevant, Petitioner exercised ordinary business care and prudence, and Petitioner acted with reasonable cause and not wilful neglect in carrying out any transactions in which trustee compensation was determined.

fff. Under Sections 4961 and 4962 of the Code, Petitioner has the right to discretionary abatement of the initial and additional excise taxes in this matter.

To the extent that Respondent refuses to abate the excise taxes proposed in the Notice of Deficiency, Respondent has abused his discretion.

Respondent obtained extensions of the statute of limitations based on express agreements that Respondent has abrogated. Thus, the extensions are void *ab initio* or Respondent is estopped from reliance on the extensions

iii. Petitioner's actions as trustee and his acceptance of benefits as trustee always were based on reasonable cause and not willful neglect,

iii. Petitioner never knowingly or willfully accepted or permitted any excess benefit from KSBE.

The Notice of Deficiency was issued on May 5, 2000. By that date, the statute of limitations on excise taxes under Sections 4958 relating to KSBE's trustee compensation for 1995 had expired.

iii. The compensation arrangements for trustees of KSBE were pursuant to written agreements that were binding and in force prior to September 14, 1995 and that did not materially change. Thus, pursuant to Proposed Regulations, the excise taxes proposed by Respondent in this case are inapplicable.

mmm. To the extent that Respondent's Notice proposes excise taxes for transactions that predate the adoption of the 1996 Taxpayer Bill of Rights 2, the excise tax constitutes an *ex post facto* law in violation of the Constitution of the United States. Specifically, the effective date of the provisions imposing the excise taxes at issue was September 14, 1995, but the provisions were not signed into law until July 30, 1996.

nnn. To the extent that Respondent's Notice proposes excise taxes for transactions that predate the adoption of the 1996 Taxpayer Bill of Rights 2,

or the adoption of regulations enforcing Section 4958, the Notice constitutes retroactive application of the Code in violation of the due process clause of

13.

The compensation arrangement between KSBE and Petitioner is entitled to a presumption of reasonableness.

Respondent's Notice of Deficiency erroneously and illegally attempts to tax Petitioner under Section 4958(f)(6) of the Code for failing to correct the allegedly excess benefit transaction with KSBE before any determination is made that the transaction in fact constituted an excess benefit, and before the period for correction of the transaction has expired.

WHEREFORE, Petitioner prays that after due proceedings are had, this Court redetermine that:

1. The Notice of Deficiency is invalid;
2. There are no deficiencies in federal excise taxes for 1995, 1996, 1997, 1998 and 1999 with respect to Petitioner;
3. Petitioner's compensation for the performance of services was reasonable;
4. The Petitioner did not engage in any excess benefit transaction for any of the years at issue;
5. The Commissioner erred in determining that the Section 4958(a)(1) excess benefit transaction excise tax applied to Petitioner for 1995, 1996, 1997, 1998 and 1999;
6. The Commissioner erred in determining that the Section 4958(b) initial tax on a disqualified person applied to Petitioner for 1995, 1996, 1997, 1998 and 1999;

7. The Commissioner erred in determining that the Section 4958(a)(2) organization management penalty applied to Petitioner;

8. That Respondent bears the burden of proof as to all issues that the Court provide Petitioner with such other and further relief as is appropriate.

Respectfully submitted,

ADMITTED U. S. TAX COURT

RENEE M. L. YUEN

Tax Court No. YR0078

Attorney at Law, A Law Corporation

Haseko Center, Suite 702A

820 Mililani Street

Honolulu, HI 96813-2937

(808) 523-0125

Dated: August 1, 2000

**Internal Revenue Service
Director, EO Examinations**

**Department of Treasury
Western Area (TE/GE)**

Date: May 5, 2000

Taxpayer Identification Number:
575-42-0747

CERTIFIED MAIL

Tax Year and Deficiency:

December 31, 1995 \$ 628,932

December 31, 1996 \$ 1,637,553

December 31, 1997 \$ 1,667,647

December 31, 1998 \$ 2,130,202

December 31, 1999 \$ 372,630

90th Day for Filing Tax Court Petition:
August 3, 2000

**Henry H. Peters
87-641 Farrington Highway
Waianae, HI 96792**

Person to Contact:
Alan Dreizen
Badge No. 95-02145

Reply to:
TE/GE:REV:AD

Contact Telephone Number:
(323) 869 3943
(323) 869 3952 (TAX)

We have determined that there is a deficiency (increase) in your excise tax under Chapter 4 of the Internal Revenue Code as shown above. This letter is a **NOTICE OF DEFICIENCY** sent to you as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this deficiency in court before making any payment, you have 90 days from the above mailing date of this letter to file a petition with the United States Tax Court for a redetermination of the deficiency. The petition should be filed with the United States Tax Court, 400 Second Street, NW., Washington D.C. 20217, and the copy of this letter should be attached to the petition. The time in which you must file the petition with the Court (90 days) is fixed by law and the Court cannot consider your case if your petition is filed late.

If you dispute not more than \$50,000 for any one tax year, a simplified procedure is provided by the Tax Court for small tax cases. You can get information about this procedure, as well as a petition form you can use, by writing to the Clerk of the United States Tax Court at 400 Second Street, NW., Washington D.C. 20217. You should do this promptly if you intend to file a petition with the Tax Court.

If you decide not to file a petition with the Tax Court, we would appreciate it if you would sign and return the enclosed waiver form. This will permit us to assess the deficiency quickly and will limit the accumulation of interest. The enclosed addressed envelope is for your convenience. If you decide not to sign and return the statement and you do not timely petition the Tax Court, the law requires us to assess and bill you for the deficiency after 90 days from the above mailing date of this letter.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number is shown above since that person has direct access to your tax information resulting in this notice and can answer questions or concerns that you might have. You can call 1-800-829-1040 and ask for a Taxpayer Advocate's assistance. Or you can contact the Taxpayer Advocate for your local area. The local Taxpayer Advocate's address is Stop H-405, 300 Ala Moana Blvd., #50089, Honolulu, HI 96850 and the phone number is (808) 539 2870. Taxpayer Advocate assistance cannot be used as a substitute for established Internal Revenue Service procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the U.S. Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels, gets prompt and proper handling.

300 N. Los Angeles Street
Los Angeles, CA 90012

Letter 531

Internal Revenue Service
Director, EO Examinations

Department of Treasury
Western Area (TE/GE)

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Charles Rosotti

Commissioner

By

Marcelo Gamez

Marcelo Gamez
EO Area Manager
(Acting)

FR

Enclosures:

Notice 1214
Statement
Waiver Form 4089
Envelope
Copy of this letter

HENRY H. PETERS

Calendar Years
1995, 1996, 1997, 1998, 1999

Facts

The will of Princess Bernice Pauahi Bishop, created a trust that is known as the Estate of Bernice Bishop later known as Kamehameha Schools/Bishop Estate ("KSBE") now known as Kamehameha School. Princess Pauahi placed more than 434,300 acres of Hawaii land in the trust. The will directed that two schools be established, one for boys and one for girls. The schools are now operated jointly as a coeducational school. The will mandates the use of the income from the trust for the operation and maintenance of the schools for the support and education of certain orphans and other indigent children giving preference to Hawaiians of pure or part aboriginal blood.

In 1939, the Internal Revenue Service (the "Service") recognized KSBE as exempt from federal income taxes under the predecessor provision of section 501(c)(3) of the Internal Revenue Code. In 1952 and in 1969, the Service affirmed KSBE's federal tax exemption. For federal tax reporting purposes, KSBE has adopted a fiscal year ending June 30th.

Regarding the appointment of trustees, the will provides:

I further direct that the number of my said Trustees shall be kept at five; and that vacancies shall be filled by the choice of a majority of the Justices of the Supreme Court, . . .

Mr. Peters accepted the appointment as trustee effective May 4, 1984. The judge of the Probate Court issued an order vesting the title to all KSBE property in the five Trustees, including Mr. Peters.

Mr. Peters continued to serve as trustee of KSBE until May 7, 1999, when the Probate Court issued an order temporarily removing Mr. Peters as trustee. On December 14, 1999, Mr. Peters permanently resigned as trustee. In an order dated February 10, 2000, the Probate Court accepted Mr. Peters' permanent resignation.

Hawaii Revised Statutes (HRS) § 554A-3, defines the duties and obligations of a trustee with respect to the trust and its beneficiaries:

- 2 -

(a) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent person would perform for the purposes of the trust including but not limited to the powers specified in subsection (c).

(b) In the exercise of the trustee's powers including the powers granted by this chapter, a trustee has a duty to act with due regard to the trustee's obligation as a fiduciary, including a duty not to exercise any power under this chapter in such a way as to deprive the trust of an otherwise available tax exemption, deduction, or credit for tax purposes. . . .

At the time the will was executed and at the time of Princess Pauahi's death in 1884, there was no statutory provision for the payment of fees to the trustees of a trust. In 1928, the practice approved by the state court for compensating trustees was incorporated in a statute originally designed as section 3793. During the years at issue, the formula for computing the maximum compensation payable to trustees of charitable and non-charitable trusts was set forth in HRS § 607-18 and § 607-20. HRS § 607-18 provides a formula for computing trustee commissions allowable upon income of a noncharitable trust estate and upon the principal of the estate. HRS § 607-20 applies in the case of an estate of a charitable trust and sets forth the commission schedule based on percentages of the trust's income.

In pertinent part, HRS § 607-18 states:

Upon the principal of the estate, Trustees shall be allowed as commissions . . . two and one-half per cent upon all cash principal received after the inception of the trust and neither being nor representing principal upon which the two and one-half per cent has previously at any time been charged, payable at the receipt out of principal, and two and one-half per cent upon the final payment of any cash principal prior to the termination of the trust, payable at the final payment out of the principal, provided that such five-tenths of one percent on the principal shall not apply to charitable trusts, nor to the extent the trustee has employed others to perform bookkeeping and clerical services at the expense of the estate as permitted by the trust document or as provided in section 554A-3.

In pertinent part, HRS § 607-20 states:

Notwithstanding any other provisions, in the case of an estate of a charitable trust, the commissions of the Trustees shall be limited to the following schedule of percentages on all moneys

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received in the nature of revenue or income of the estate, such as rents, interests, and general profits: ten per cent on the first \$1,000; seven percent on the next \$4,000; five percent on the next \$100,000; three per cent on the next \$100,000; and two per cent on all [sic] over \$205,000. This schedule of percentages shall be applied not oftener than once a year.

The Trustees shall also be entitled to just and reasonable allowances for bookkeeping, clerical, and special services and expenses incidental thereto.

This section shall apply as well to future accounts existing estates as to new estates.

In 1998, the Hawaii Legislature enacted Act 310 to amend HRS § 607-20, effective January 1, 1999, to read as follows:

- (a) Notwithstanding any other provisions, in the case of a charitable trust, the compensation of the Trustees shall be limited to an amount that is reasonable under the circumstances.
- (b) This section shall apply to existing and new charitable trusts established after the effective date of this Act; provided that any provisions in existing trust agreements regarding Trustee compensation shall supersede this section.

No change was legislated to HRS § 607-18.

For the years at issue, KSBE calculated the commission paid to Mr. Peters according to the formulas permitted by HRS § 607-18 and § 607-20. In each of the years under examination, Mr. Peters elected to waive a portion of the commissions to which the estate determined he was entitled. The commissions computed by reference to the statutes less the portion Mr. Peters waives is Mr. Peters' compensation for the years under examination.

Attached as Exhibit "A" is a schedule of the commissions Mr. Peters received in 1995 through 1999, after his waiver of certain amounts but including the amounts he deferred pursuant to the KSBE deferred compensation plan.

Law

Section 4958 of the Internal Revenue Code states:

(a) Initial taxes.

- (1) On the disqualified person. There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax

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imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(2) On the management. In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.

(b) Additional tax on the disqualified person.

In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(c) Excess benefit transaction; excess benefit.

For purposes of this section —

(1) Excess benefit transaction.

(A) In general. The term "excess benefit transaction" means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

(B) Excess benefit. The term "excess benefit" means the excess referred to in subparagraph (A).

(d) Special rules.

For purposes of this section —

(1) Joint and several liability. If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.

(2) Limit for management. With respect to any 1 excess benefit transaction, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000.

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(e) Applicable tax-exempt organization.

For purposes of this subchapter, the term "applicable tax-exempt organization" means —

- (1) any organization which (without regard to any excess benefit) would be described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a), and
- (2) any organization which was described in paragraph (1) at any time during the 5-year period ending on the date of the transaction.

Such term shall not include a private foundation (as defined in section 509(a)).

(f) Other definitions.

For purposes of this section —

(1) **Disqualified person.** The term "disqualified person" means, with respect to any transaction —

- (A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization,
- (B) a member of the family of an individual described in subparagraph (A), and
- (C) a 35-percent controlled entity.

(2) **Organization manager.** The term "organization manager" means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization).

(5) **Taxable period.** The term "taxable period" means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest of —

- (A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or
- (B) the date on which the tax imposed by subsection (a)(1) is assessed.

(6) **Correction.** The terms "correction" and "correct" mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the organization in a financial position not worse than that in which it would be

if the disqualified person were dealing under the highest fiduciary standards.

Treasury Regulation §1.162-7 of the Income Tax Regulations describes various criteria for determining the reasonableness of compensation for personal services.

Government Position

KSBE at all relevant times has been recognized as a tax-exempt organization under section 501(c)(3) of the Code. Therefore, KSBE is an applicable tax-exempt organization, as defined in section 4958(e).

As a trustee of KSBE until he was temporarily removed in 1999, Mr. Peters was in a position to exercise substantial influence over the affairs of KSBE. Therefore, Mr. Peters was a disqualified person with respect to KSBE within the meaning of section 4958(f)(1)(A) of the Code.

Section 4958(c)(1) of the Code provides that an excess benefit transaction is any transaction in which an economic benefit is provided by a section 501(c)(3) or 501(c)(4) organization to a disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. Thus, compensation paid may not exceed what is reasonable under all the circumstances. Compensation for the performance of services is reasonable if it is only such amount as would ordinarily be paid for like services by like enterprises under like circumstances. The fact that a state or local legislative or agency body or court has authorized or approved a particular compensation package paid to a disqualified person is not determinative of the reasonableness of compensation paid for purposes of section 4958.

Therefore, it is necessary to determine whether the compensation paid by KSBE to Mr. Peters exceeded the value of the services Mr. Peters performed for KSBE. In making this determination, the following factors are taken into account:

- i. Arm's-Length Bargaining - Compensation resulting from arm's-length bargaining is a strong factor supporting the reasonableness of compensation received. In the present case, there are no facts indicating that Mr. Peters engaged in any arm's-length negotiations over the terms of his compensation. Instead, state law provided a formula for determining the maximum compensation a trustee could be paid. However, the Special Master of the Probate Court, in reviewing the Annual Accounts of the Trustees, criticized the KSBE trustees, including Mr. Peters, for the methods used to calculate compensation under the statutory formula.

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- ii. Size and Complexity of the Organization – The size of the organization, in terms of assets, income, and employees, is a significant factor in determining reasonable compensation. The entire KSBE organization is large and complex, although this complexity is attributable to the organization's business and investment activities and not to its tax-exempt activity of operating a school. Nevertheless, the size and complexity of the entire KSBE organization should be taken into account in determining the reasonableness of Mr. Peters' compensation.
- iii. Nature of the Trustee's Duties – The duties and responsibilities of a trustee are described in Hawaii law and do not include operating and managing businesses and investments. Mr. Peters and the other four trustees should be treated as having equal responsibility for the operation and management of the entire KSBE organization.
- iv. The Trustee's Qualifications and Prior Compensation – Neither did Mr. Peters have any special experience in managing large business and investment assets. A person's qualifications for a position and prior compensation received are factors in determining reasonable compensation. Mr. Peters did not offer any unique or irreplaceable skills necessary for the conduct of KSBE's business and investments. Mr. Peters' qualifications to operate the business of KSBE were not commensurate with the compensation paid to Mr. Peters for by KSBE for the services.
- v. Trustee's Performance – An important factor in determining reasonable compensation is job performance. The performance of a KSBE trustee should be measured primarily in terms of school performance and secondarily in terms of investment performance. In some respects, Mr. Peters' performance as a trustee did not further KSBE's tax-exempt purpose of operating a school. Instead, it substantially impeded the accomplishment of this purpose. The IRS concluded that there was substantial evidence of the operation of KSBE for a non-exempt purpose and, therefore, concluded that KSBE failed to engage in activities that primarily furthered KSBE's charitable purpose, and that unrelated business income revenue was not properly reported on KSBE's IRS Forms 990-T.
- vi. Mr. Peter's performance as a trustee does not justify the compensation paid for his services as trustee. The Internal Revenue Service determined that, during Mr. Peters tenure as trustee, KSBE's exempt status should be revoked because it was not operated in a manner that primarily furthered the tax exempt purpose of KSBE and that KSBE was liable for unrelated business

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income tax on revenue. To resolve the revocation and unrelated business tax issues, the five incumbent trustees, including Mr. Peters had to resign or be removed and KSBE paid tax and interest on the unreported unrelated business income in the amount of \$13,992,500.89. In addition, a major restructuring of the operations of KSBE under new management was required by the Service. Simultaneously, independent discrete investigations by the Attorney General of Hawaii and the Special Master of the Probate Court concluded that Mr. Peter's performance as a trustee was not prudent and that his conduct placed KSBE at risk of losing its tax exempt status. These findings are public information available in Equity No. 2048, Estate of Bernice P. Bishop, Circuit Court for the First Circuit, State of Hawaii.

vii. Compensation Scale for All Employees - Another factor determining the reasonableness of compensation its relation to other salaries paid to others in the same organization. Mr. Peters' compensation was substantially out of proportion in relation to the other executives employed by KSBE. For example, in 1996, the next highest paid KSBE executive received \$207,000 and the next four highest paid executives received compensation ranging from \$156,000 to \$176,000.

viii. Independent Investor Test - It is not probable an outside investor would approve of such a compensation plan as reasonable.

The Internal Revenue Service compensation consultant determined that reasonable compensation for Mr. Peters in 1995 and 1996 was in the following ranges:

\$84,000 - \$147,000

\$90,000 - \$158,000

Thus, a reasonable level of compensation for Mr. Peters in 1995 was no more than \$147,000 and in 1996, 1997, 1998 and 1999 was no more than \$158,000 per year. Since the compensation KSBE paid to Mr. Peters in each of these years exceeded a reasonable level of compensation, the following amounts of compensation represent excess benefits Mr. Peters received as a result of having entered into excess benefit transactions with KSBE under section 4958(c)(1) of the Code. (See Exhibit A.)

1995 \$257,303

705,579

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	718,954
	924,534
1999	143,391

As of the date of this notice, Mr. Peters has not corrected, within the meaning of section 4958(f)(6) of the Code, any of the excess benefit transactions with KSBE.

As a trustee of KSBE, Mr. Peters was an organization manager within the meaning of section 4958(f)(2) of the Code. Separately, the Internal Revenue Service has determined that the four other trustees of KSBE were each disqualified persons with respect to KSBE. In addition, a portion of the compensation KSBE paid to each of these KSBE trustees during 1995 to 1999 was unreasonable and therefore constituted excess benefit transactions between KSBE and each trustee. As a trustee himself, Mr. Peters participated in these excess benefit transactions, knowing that these transactions were excess benefit transactions. In addition, Mr. Peters' participation in these excess benefit transactions was willful and was not due to reasonable cause, within the meaning of section 4958(a)(2) of the Code.

Finally, the binding written contract exception in section 1311(d)(2) of P.L. 104-168 does not apply in the present situation.

Conclusions

Under section 4958(a)(1) of the Code, there is hereby imposed on the excess benefit transactions that occurred in 1995 to 1999 between KSBE and Mr. Peters a tax equal to 25% of the excess benefits, as follows. These taxes are payable by Mr. Peters. (See Exhibit A.)

	\$ 64,326
1996	176,395
1997	179,739
	231,134
1999	35,848

Since Mr. Peters has not corrected, within the meaning of section 4958(f)(6) of the Code, any of the excess benefit transactions that occurred in 1995 to 1999 between him and KSBE, there is hereby imposed on these excess

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benefit transactions, under section 4958(b), a tax equal to 200% of the excess benefits, as follows. These taxes are payable by Mr. Peters. (See Exhibit A.)

1995	\$ 514,608
	1,411,158
	1,437,908
1998	1,849,068
	286,782

Under section 4958(a)(2) of the Code, there is hereby imposed on the participation by Mr. Peters, an organization manager with respect to KSBE, in excess benefit transactions between disqualified persons with respect to KSBE, and KSBE, a tax equal to 10% of the excess benefits, as follows. This tax, limited to \$10,000 of each excess benefit transaction under section 4958(d)(2), is payable by Mr. Peters. (See Exhibit A.)

	\$50,000
	50,000
1997	50,000
1998	50,000
1999	50,000

EXHIBIT A

**HENRY H. PETERS
SCHEDULE OF COMMISSIONS SUBJECT TO IRC 4958
CALENDAR YEARS 1995 TO 1999**

	1995	1996	1997	1998	1999
COMMISSIONS RECEIVED 1/1 - 8/30	\$469,024	\$422,641	\$435,507	\$521,798	\$301,391
COMMISSIONS RECEIVED 7/1 - 12/31	\$417,190	\$440,938	\$441,447	\$580,738	\$0
TOTAL COMMISSIONS RECEIVED - CALENDAR YEAR	<u>\$886,214</u>	<u>\$863,579</u>	<u>\$876,954</u>	<u>\$1,082,534</u>	<u>\$301,391</u>
COMMISSIONS RECEIVED 1/1/95 - 8/30/95	\$469,024				
COMMISSIONS RECEIVED 7/1/95 - 8/13/95	\$159,887				
TOTAL COMMISSIONS RECEIVED 1/1/95 - 8/13/95	<u>\$628,911</u>				
COMMISSIONS RECEIVED 8/14/95 - 12/31/95	\$257,303				
TOTAL COMMISSIONS RECEIVED - CALENDAR YEAR	<u>\$886,214</u>				
TOTAL COMMISSIONS RECEIVED 1/1/95 - 8/13/95	\$628,911				
REASONABLE COMMISSIONS	(\$147,000)	(\$158,000)	(\$168,000)	(\$158,000)	(\$158,000)
EXCESSIVE COMMISSIONS RECEIVED 1/1/95 - 8/13/95	<u>\$481,911</u>				
EXCESSIVE COMMISSIONS RECEIVED 8/14/95 - 12/31/95	<u>\$257,303</u>				
EXCESSIVE COMMISSIONS RECEIVED - CALENDAR YEAR		<u>\$705,579</u>	<u>\$718,854</u>	<u>\$924,534</u>	<u>\$143,391</u>
25% FIRST TIER EXCISE TAX - IRC 4958(a)(1)	\$84,326	\$176,395	\$179,739	\$231,134	\$35,846
200% SECOND TIER EXCISE TAX - IRC 4958(b)	\$514,608	\$1,411,158	\$1,437,808	\$1,849,068	\$288,782
EXCISE TAX ON ORGANIZATION MANAGER - IRC 4958(a)(2)	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
TOTAL EXCISE TAXES UNDER IRC 4958	<u>\$628,932</u>	<u>\$1,637,553</u>	<u>\$1,667,847</u>	<u>\$2,130,202</u>	<u>\$372,630</u>

AUGSEP 25 '00 11:04AM HON STAR BULLETIN565432 LEHRFELD

808 5238509

NO. 833

PP. 19720

Form 4089

Department of the Treasury - Internal Revenue Service

Symbols

TE/GE:RS:AD

Notice of Deficiency - Waiver

Name, SSN or EIN, and Address of Taxpayer(s)

Henry H. Peters

575-42-0747

87-641 Farrington Highway, Waianae, HI 96792

Kind of Tax

Excise

Copy to Authorized Representative

Tax Year Ended

Deficiency

December 31, 1995

Increase in Tax

Penalties

\$ 628,932

-0-

December 31, 1996

\$1,637,553

-0-

December 31, 1997

\$1,667,647

-0-

December 31, 1998

\$2,130,202

-0-

December 31, 1999

\$ 372,630

-0-

See the attached explanation for the above deficiencies

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest provided by law.

Your

signature

Date Signed

Spouse's Signature,

If A Joint Return

Was Filed

Date Signed

Taxpayer's

Representative

Sign Here

Date Signed

Corporate

Name

Corporate

Officers

Sign Here

Date Signed

Date Signed

Notes:

If you consent to the assessment of the amounts shown in this waiver, please sign and return it in order to limit the accumulation of interest and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund. It will not prevent us from later determining, if necessary, that you owe additional tax; nor will it extend the time provided by law for either action.

If you later file a claim and the Internal Revenue Service disallows it, you may file suit for refund in a district court or in the United States Claims Court, but you may not file a petition with the United States Tax Court.

Who Must Sign

If this waiver is for any year(s) for which you filed a

If you agree, please sign one copy and return it; keep the other copy for your records.

Cat. No. 22650Y

joint return, both you and your spouse must sign the original and duplicate of this form. Sign your names exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

For a person acting in a fiduciary capacity (executor, administrator, trustee), file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

Form 4089 (Rev. 1-83)