



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Date: July 5, 2005

Contact Person:

ID Number:

Telephone Number:

Employer Identification Number:

Legend:

M =

N =

O =

Dear :

This is in reference to your letter of April 6, 2004, requesting advance approval of your grant procedures under section 4945(g)(1) and 4945(g)(3) of the Internal Revenue Code. You believe that your new scholarships and loan procedures differ materially from those approved in your determination letter dated April 2, 1996.

You are recognized as exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have been classified as a private foundation as defined by section 509(a) of the Code. Your scholarship procedures were approved under section 4945(g)(1) and 4945(g)(3) of the Code at the time you were recognized as exempt under section 501(c)(3) of the Code. For those scholarships that were employer-related you agreed to meet the percentage tests and the other guidelines of Rev. Proc. 76-47, 1976-2 C.B. 670.

The name of your scholarship and loan program is M. You now propose to make additional college scholarships pursuant to the submitted procedures and use these procedures for those scholarship and loans that were approved in your determination letter dated April 2, 1996. You initially plan to grant added scholarships to graduating seniors at N. These scholarships will be called O. These scholarships will be awarded annually to one or more seniors graduating from N to provide assistance in paying for their college costs. The purpose of your new scholarship and loan program is to allow graduating high school seniors, who are from low-income families and who have demonstrated strength of character and initiative in overcoming obstacles and hardships, to seek a college degree. Your scholarship and loan recipients will be determined

by a Selection Committee comprising (3) active or retired members of the faculty of N, your President and the President's designee. Your applications scholarship and loans will include

some or all of the following:

1. A transcript of prior academic achievements.
2. A report of performance on tests designed to measure ability and aptitude for academic work.
3. A description of financial need.
4. An essay written by the applicant describing her or his interests and aspirations.
5. A description of past involvement in extracurricular activities.
6. A list of academic honors and recognitions.
7. Written recommendations by individuals not related to the applicant.

Your criteria used in selecting your recipients will include, but not be limited to: prior academic performance; performance on tests designed to measure ability and aptitude for higher education; recommendations from educators, social workers, and others not related to the potential recipients; financial need; and the conclusions that the Selection Committee might draw from personal interviews as to the applicant's motivation, character, ability, and potential. Financial need will be an important criterion.

Your scholarships and loans will be awarded to recipients for study toward a degree at an educational organization described in section 170(b)(1)(A)(ii) of the Code. All high school seniors are eligible to apply for your scholarships. Your scholarship and loan recipients must use the funds for tuition, board, room, fees, books, supplies, travel costs, and incidental expenses for attendance at the recipient's respective school.

You initially plan to award one new scholarship in the amount that is yet to be determined. The above number of new scholarships and loans amounts may change in the future and may vary to each recipient. Although your procedures allow for loans, you do not plan to make loans under your O program at this time.

None of your scholarships may be awarded to the children of your Trustees or officers, to the children of any disqualified person or to the children of the Selection Committee members or children of persons aiding in the selection process.

You plan to receive reports from those scholarship recipients which you do not directly pay their scholarship funds to the respective college or university. You will investigate and seek recovery of any misuse of funds.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inures to the benefit of any individual.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. "Charitable" as used in its generally accepted legal sense includes advancement of education.

Section 4945(a) and (b) of the Code impose certain excise taxes on expenditure defined as taxable expenditures by section 4945(d).

Section 4945(d)(3) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g).

Section 4945(g)(1) of the Code provides that section 4945(d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to the satisfaction of the Secretary that the grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).

Section 4945(g)(3) of the Code provides that section 4945(d)(3) shall not apply to an individual grant the purpose of which is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Rev. Rul. 77-434, 1977-2 C.B. 420, provides that long-term, low-interest educational loans made by a private foundation under a program that specifically limits the use of the funds to furtherance of the recipient's education at an educational institution described in section 170(b)(1)(A)(ii) of the Code are individual grants within the meaning of section 4945(g)(3).

Section 53.4945-4(c)(1) of the Foundation and Similar Excise Taxes Regulations provides that to secure approval for a grant-making procedure, a private foundation must demonstrate to the satisfaction of the commissioner that:

- (a) The grant procedures include an objective and nondiscriminatory selection process;
- (b) The procedure is designed to result in the performance of the activities intended to be financed; and
- (c) The foundation will obtain reports to determine whether the grant funds are being properly used. Reports are not required if the foundation pays the scholarship grants to an educational institution. See sections 53.4945-4(c)(5) and 53.4945-4(c)(7) of the Foundation Excise Tax Regulations.

Section 53.4945-4(c)(4) of the Foundation and Similar Excise Taxes Regulations provides that a foundation is under a duty to investigate and attempt to recover any misuse of grants.

Since you are aiding students to attend and graduate from college, your scholarship program and loan program would be a charitable activity of advancing education under section 501(c)(3) of the Code.

Based on the information submitted, and assuming your scholarship procedures will be conducted as proposed, we rule that your procedures for awarding scholarships and loans comply with the requirements contained in section 4945(g)(1) and 4945(g)(3) of the Code because:

- (a) Your scholarship procedures and loan program include an objective and nondiscriminatory selection process. Your applicants are rated by objective and nondiscriminatory criteria by persons experienced in rating of students on their accomplishments and potential.
- (b) Your recipients must be enrolled in a degree program to receive your scholarship grants and loans. Your recipients must be enrolled in an educational organization described in section 170(b)(1)(A)(ii) of the Code. Thus, your procedures are designed to result in the performance of the activities that you intend to finance.
- (c) You will satisfy the report requirement by paying some of your scholarship grants directly to the respective College or the respective University. You will obtain reports to determine whether the scholarships and loans that you pay directly to the recipients are being properly used and will not continue payments if the recipient's performance is not satisfactory.

You have submitted information showing that you will investigate and seek recovery of any misuse of your grants.

Based upon the information submitted, and assuming your program will be conducted as proposed, with a view to providing objectivity and nondiscrimination in the awarding of your scholarship grants and loans, we rule that your grants comply with requirements of section 4945(g)(1) and 4945(g)(3) of the Code. Expenditures made in accordance with these procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3) of the Code, and as such are eligible for the exclusion from income provided for in section 117(a) of the Code to the extent that such grants are actually used for qualified tuition and related expenses within the meaning of section 117(b)(2) of the Code.

This ruling is conditioned on the understanding that there will be no material changes in the facts upon which it is based. It is further conditioned on the understanding that no grants will be awarded to your organization's creators, officers, directors, trustees, or members of the selection committee, or for a purpose inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

The approval of your grant-making procedures is a one time approval of your system of standards and procedures for selecting recipients of grants that meet the requirements of section 4945(g)(1) and 4945(g)(3) of the Code. Thus, approval will apply to succeeding grant programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in your request.

We are informing the Ohio TE/GE office of this action. Please keep a copy of this ruling with your organization's permanent records.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Jane Baniewicz
Manager, Exempt Organizations
Technical Group 2