



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200634016**
Release Date: 8/25/06
Date: 6/1/2006

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL #:
4942.00-00
4945.00-00

Dear :

This is in response to your ruling request as to the tax implications of establishing the proposed grant-making program.

Facts:

You are exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code and classified as a private foundation under section 509(a). You are a trust that has four trustees. Your activities consist of making grants to qualified charitable, scientific, literary, religious and educational organizations.

You plan on establishing a grant-making program to individuals that are impoverished and have desperate financial needs due to being (a) victims (or families of victims) of a natural disaster, violence, terrorist acts or acts of war, (b) impoverished artists, or (c) victims of discrimination, social injustice or persecution.

The grant-making program will be administered by a committee comprised of three trustees. Upon receipt of an application, the committee will evaluate it as to whether the individual is impoverished and has desperate financial needs, and determine if the individual fits within one or more of the above referenced categories. All decisions of the committee require the concurrence of two members and are final. Funds will be distributed to the individual who applied, or upon behalf an of applicant. None of the grants will be for travel, study, or other similar purposes as described in section 4945(d)(3) of the Code, and there are no future restrictions on the grant.

The grants will be administered without giving any consideration to an applicant's gender, creed, race, age or national origin. You will maintain records of all grants made in order that the purpose of any and all grants can be substantiated upon request by the Service. Your records will show the name and address of each recipient, the circumstances justifying the grants, amounts disbursed, the purpose for which the aid is given, and the recipient's relationship, if any to you. If in the discretion of the committee, a follow up accounting is required, you will keep detailed records of the information gathered.

An individual would be determined to be impoverished or indigent and eligible for a grant, if

the individual lacks the necessities of life, involving physical, mental or emotional well being, as a result of poverty or temporary distress, and, therefore, is the proper object of charity. Desperate financial needs include (1) a need resulting directly from an identifiable, sudden, and unexpected event, (2) the inability to provide for the basic necessities of life such as food, clothing, furniture and other items of basic sustenance, (3) unusual and uninsured medical expenses caused by severe illness or accident or (4) need for supplemental assistance by an aged or handicapped individual with insufficient income to maintain a minimum standard of living. You will establish criteria for reviewing applications to determine if the applicant will qualify.

An identifiable, sudden, and unexpected event would include, but not be limited to, serious illness or injury to the individual or a member of his or her household, casualty or theft loss to personal residence or work facilities, or civil unrest. Any emergency event would have to be caused by factors outside the control of the individual or members of his or her household. Such emergencies would be situations that are not expected to continue for lengthy periods of time or to be recurring in the normal course of events. In order for an emergency to result in desperate financial need, the individual and the member of his or her family would have to be without sufficient available financial resources to meet the emergency, which would leave the individual in a situation in which he or she would be unable to continue to live and work in his or her accustomed manner (which would not be lavish or extravagant). After making the grant, you will periodically contact the grantee to confirm that the grant proceeds are being used in furtherance of its intended purpose.

It is not contemplated that an individual would have to exhaust completely all personal financial resources before being eligible for a grant. Rather, the individual would have to establish that the financial hardship would cause a significant interruption in his or her life and that he or she lack the liquid financial reserves to meet the financial demands of the emergency or the basic necessities of life.

Because emergency situations giving rise to the desperate financial need may demand a prompt response for assistance to be effective, the committee, on occasion, may not be able to verify immediately the information contained in the application. You will keep certain basic case records of all emergency grants made under the program in order that the purpose and qualifications of the applicant for each such grant can be substantiated upon request by the Service. Each record will show the name of the recipient, the circumstances justifying the grant, the amount disbursed and the recipient's relationship, if any, to your members and officers, or a grantor or substantial contributor, and a corporation controlled by a grantor or substantial contributor to you.

You will provide information to the public regarding your grant making activities through separate materials that you distribute. Details of the program will be included in the program materials and will include the forms needed to request a grant, the documentation to be submitted in connection with the grant request, the persons to contact and a statement regarding the possibility of a final accounting and additional documentation that may be requested at some reasonable time following the disbursement of funds. The program materials will also include a notice that funds not spent on expenditures contemplated by the approval process must be returned. Your program materials will state that the grants are intended to

cover expenses not otherwise covered by other sources, such as insurance.

Contributions you receive will not be earmarked for a specific individual or family. You will not provide assistance to any disqualified person as defined in section 4946 of the Code.

Issues:

You are requesting the following rulings:

1. Your grant-making program will be in furtherance of your charitable purposes within the meaning of section 501(c)(3) and section 170(c)(2)(B) of the Code.
2. Grants made pursuant to the grant-making program will constitute qualifying distributions within the meaning of section 4942 of the Code.
3. Grants made pursuant to the grant-making program will not constitute taxable expenditures within the meaning of sections 4945(d)(3) and (5) of the Code.

Law:

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable or educational purposes.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides, in relevant part, that the term "charitable" includes, among others, relief of the poor and distressed or of the underprivileged and promotion of social welfare by organizations designed to eliminate prejudice and discrimination or to defend human and civil rights secured by law.

Section 170(c)(2)(B) of the Code defines "charitable contribution" as a contribution or gift to or for the use of a corporation, trust, community chest, fund, or foundation, organized and operated exclusively for, among others, charitable purposes.

Section 4942(g)(1)(A)(i) of the Code provides, in relevant part, that the term "qualifying distribution" means any amount (including the portion of reasonable and necessary administrative expenses) paid to accomplish one or more exempt purposes described in section 170(c)(2)(B), other than any contribution to an organization controlled by (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation.

Section 53.4942(a)-3(a)(2)(i) of the Foundation and Excise Tax Regulations provides that the term "qualifying distribution" means, in relevant part, any amount (including program-related investments, as defined in section 4944(c), and reasonable and necessary administrative expenses) paid to accomplish one or more described purposes described in section 170(c)(1) or (2)(B), other than a contribution to a private foundation which is not a private operating foundation (as described in section 4942(j)(3)) or an organization controlled directly or indirectly by the contributing private foundation or one or more disqualified persons with respect to the

foundation.

Section 4946(a) of the Code provides in part, that the term, “disqualified person” means with respect to a private foundation, a person who is (A) a substantial contributor to the foundation, (B) a foundation manager (within the meaning of subsection (b)(1)), (C) an owner of more than 20 percent of the total combined voting power of a corporation which is a substantial contributor to the foundation, (D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), (C), or (E), a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power.

Section 4945 of the Code imposes a tax on each “taxable expenditure” of a private foundation as defined in section 4945(d) of the Code.

Section 4945(d)(3) of the Code provides that a “taxable expenditure” includes 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 it satisfies the requirements of subsection (g).

Section 4945(d)(5) of the Code provides that the term “taxable expenditure” means any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 4945(g)(3) 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 purpose of the grant 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.

Section 53.4945-6(b)(1)(v) of the regulations provides, in relevant part, that any payment which constitutes a qualifying distribution under section 4942(g) will not be treated as a taxable expenditure under section 4945(d)(5) of the Code.

Section 53.4945-4(a)(3)(i) of the regulations provides, in relevant part, that a grant to an individual for purposes other than those described in Section 4945(d)(3) is not a taxable expenditure within the meaning of that subsection. For example, if a foundation makes grants to indigent individuals to enable them to purchase furniture, such grants are not taxable expenditures within the meaning of Section 4945(d)(3) even if the requirements of Section 4945(g) are not met.

Section 53.4945-6(a) of the regulations provides that under section 4945(d)(5), the term, “taxable expenditure” includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B). Thus ordinarily, only an expenditure for an activity which, if it were a substantial part of the organization’s total activities, would cause loss of tax exemption is a taxable expenditure under section 4945(d)(5). For purposes of section 4945 and its regulations, the term “purposes” described in section 170(c)(2)(B), shall be treated as including purposes described in section 170(c)(2)(B) whether or not carried out by an organization described in section 170(c).

Rationale:

You plan on establishing and administering a grant-making program for impoverished individuals with desperate financial needs. Desperate financial needs would include (1) an emergency need resulting directly from an identifiable, sudden and unexpected event, (2) the inability to provide for the basic necessities of life such as food, clothing, furniture and other items of basic sustenance, (3) unusual and uninsured medical expenses caused by severe illness or accident or (4) the need for supplemental assistance by an aged or handicapped individual with insufficient income to maintain a minimum standard of living. Grants will not be made for study, travel or other similar purposes.

You plan on making grants to the following classes of impoverished people with desperate financial needs: (1) victims(or families of victims) of a natural disaster, violence, or terrorist acts of war, (2) impoverished artists, and (3) victims of discrimination, social injustice or persecution.

Providing financial assistance to impoverished individuals with desperate financial needs provides relief of the poor and distressed consistent with furthering a charitable purpose within the meaning of section 501(c)(3) and 170(c)(2)(B) of the Code. Persons who are unable to financially care for themselves as a result of being victimized as a result of an expected event are proper objects of charity. Considering the size of your eligible pool of recipients and the fact that it is open ended, we conclude that your proposed recipients constitute a charitable class within the meaning of section 501(c)(3) of the Code.

Since the grants will further a charitable purpose under section 170(c)(2)(B) of the Code, the amounts paid to the individuals will be qualifying distributions under section 4942(g)(1)(A) and section 53.4942(a)-3(a)(2)(i) of the regulations. The grants will not be considered taxable expenditures under section 4945 of the Code, and section 53.4945-6(a) of the regulations because the grants further charitable purposes under section 170(c)(2)(B) of the Code and are not to be used for education, travel or similar purpose by the individual.

Based on the facts and circumstances as described above, we rule that:

1. The grant-making program will be in furtherance of your charitable purposes within the meaning of section 501(c)(3) of the Code and section 170(c)(2)(B) of the Code.
2. Grants made pursuant to your grant-making program will constitute qualifying distributions within the meaning of section 4942 of the Code.
3. Grants made pursuant to your grant-making program will not constitute taxable expenditures within the meaning of sections 4945(d)(3) and (5) of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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 by others 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,

Steven B. Grodnitzky
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437