



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL: 4942.00-00, 4942.03-00, 4942.03-05, 4945.00-00

Legend:

M =

P =

Q =

R =

X =

Dear :

We have considered your ruling request dated November 30, 2005 requesting rulings under section 4942 and 4945 of the Internal Revenue code concerning grants and other expenditures awarded under the proposed procedures.

FACTS

M is a tax-exempt organization under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a). P is a limited liability company that is wholly-owned and controlled by M and is treated as a disregarded entity for federal tax purposes. P's purpose is to manage, operate and administer the Q program on behalf of M.

Q is a grant program designed to award funding to support individuals and organizations that have developed, or are otherwise involved with innovative R educational initiatives ("Funded Desired Programming"). Under the Q program, grants of up to \$x will be awarded to grant recipients. Additional grants of up to \$6x will be awarded to organizations ("organization recipient") with which each grant recipient is associated with, to be used as directed by the grant recipient to promote the development, improvement and implementation of, and provide financial support for the educational initiatives for which the grant is being awarded. The grant amounts may be adjusted upwards or downwards, as P determines to be in the best interest of the Q. Under the program, the organization grant funds may be remitted to the organization recipient in one or more installments over a period not longer than 12 months.

M anticipates awarding grants to synagogues, colleges, universities, R community centers, nursing homes, assisted living facilities, and senior centers. M states that some recipients may also be private foundations and other non tax-exempt organizations. In addition, M states that individual and organization grants may be awarded for educational initiatives operating outside of the United States and grant recipients are eligible to apply for multi-year follow-up grants to fund operations and/or expansion of the programs.

The application process requires individuals interested in being selected for Q to submit to P, the following application materials: (1) a detailed current resume setting forth work experience, education and past and present involved with such desired programming; (2) a detailed description of the program for which the applicant seeks a grant; and (3) at least one letter of recommendation in support of the applicant's application, preferably from a person or persons familiar with the applicant's involvement with such programming.

Initial screening of all application materials submitted will be conducted by two coordinators of Q. The program coordinator will review the materials for eligibility and may also interview the applicant. Application materials are then forwarded to a selection committee for further review. The selection committee will evaluate each applicant's eligibility based on the following criteria: (a) whether the applicant had previously established and/or been involved with such desired programming, as well as applicant's history with such programming and the innovative nature and success of such programming ("prior programming criteria"); (b) whether the applicant has a strong work history and has demonstrated a strong interest in, and/or familiarity or involvement with, the R religion and/or R culture and heritage, and/or issues and concerns of particular interest to senior citizens.

For organization recipients requiring expenditure responsibility, the selection committee will make further inquiries to become reasonably assured that the organization grant will be used for the purposes for which such grant is awarded. Given Q's primary purpose, more weight will be given to prior programming criteria. However, Q is open to all races, faiths and religions. The selection committee will make its recommendation to P as to whether an applicant and its programming should be awarded grants under Q.

Q will be advertised principally on P's website and any website that may be created for Q, as well as by word-of-mouth and recommendations of persons involved with "family education" or "senior" programming. Any applicant who is related to by blood or marriage to any individual or organization that is directly or indirectly affiliated with any director, officer or employee of M or P or any member of the selection committee is ineligible to receive any grant under Q.

Each grant and organization recipient is required to enter into a "Grant Letter" with P. The Grant Letter sets forth that the individual and organization grants are being awarded under the express condition of full compliance by the grant recipient the obligations, terms, conditions, rules and requirements of the program including that organization grants may only be used for, or in connection with, the development, improvement, implementation, and the financial support of, the Funded Desired Programming.

In turn, each recipient must furnish to P at least annually, written reports setting forth: (a)

whether and to what extent the goals of the Funded Desired Programming are being met; (b) how the grant monies are being spent in connection with such Funded Desired Programming; (c) significant events, occurrences, successes and failures arising in connection with such Funded Desired Programming; (d) the short-term and long-term goals of the Funded Desired Programming; (e) his/her formal evaluation of Q; and (f) such other information that a program coordinator or other representative of P requests in connection with Q and the Funded Desired Programming. In addition, the Grant Letter provides that each recipient shall keep and maintain financial records to adequately reflect and account for the use of the grant funds, maintain its qualification as a tax-exempt organization under section 501(c)(3) of the Code and the regulations thereunder.

In the case where the organization recipient is a private foundation or non-tax-exempt organization ("Expenditure Responsibility Recipient"), P will require that the Grant Letter be signed by an appropriate officer, director or trustee of the organization recipient and that the organization repay any portion of the organization grant which is not used for the purpose for which such grant was awarded; submit full and complete annual (or, if requested by P, more frequent) reports on the matter in which the funds are spent and the progress made in accomplishing the purposes of the grant; maintain records of receipts and expenditures and to make its books and records available to P at reasonable times, and not use any of the funds to: carry on propaganda, or otherwise to attempt to influence legislation (within the meaning of section 4945(d)(1) of the Code); influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of section 4945(d)(2) of the Code); make any grant which does not comply with the requirements of section 4945(d)(3) or (4) of the Code; or undertake any activity for non-charitable purposes.

Each applicable program coordinator or other representative of P will maintain records to confirm that the grant monies are being properly used in support of the Funded Desired Programming and, otherwise ensure, that all of the terms and requirements of the Grant Letter are being satisfied as well as to receive feedback on the Funded Desired Programming. The Grant Letter provides that P may in its sole discretion, take any and all such reasonable and appropriate steps, including legal action, to compel such compliance, including requiring the return of all, or any portion, of the grant funds previously remitted to the grant recipient or withholding of payment of any portion of the grant not previously remitted; also such non-compliance shall render the grant recipient ineligible for any follow-up grant or other future funding or grants under Q.

Recipients may also be eligible for an additional grant to continue or expand operations of Funded Desired Programming. P indicates that if a follow-up grant is awarded, it will exercise expenditure responsibility where required.

RULINGS REQUESTED

You have requested the following rulings:

1. Any amount to be awarded or expended under Q, including without limitation, an individual grant, organization grant and follow-up grant or other amounts remitted to an organization recipient that is either a: (i) non-operating foundation to the extent

that the distribution requirement and adequate records requirements are satisfied; and (ii) foreign recipient to the extent that P, in accordance with section 53.4942(a)-3(a)(6) of the regulations and Revenue Procedure 92-94, 1992-2 C.B. 507, receives either a determination letter from the Service that the foreign recipient is a public charity or a private operating foundation or an affidavit from the foreign recipient that it is an organization described in section 509(a)(1), (2) or (3) or 4942(j)(3) of the Code, will constitute "qualifying distributions" within the meaning of section 4942(g)(1).

2. Any amount to be awarded or expended under Q, including without limitation, an individual grant, organization grant and follow-up grant which will not otherwise constitute an Individual travel/study grant, will not constitute a "taxable expenditure" within the meaning of section 4945(d) of the Code including any organization grant, follow-up grant or other amounts remitted to an organization recipient that is a: (i) foreign recipient to the extent that P, in accordance with section 53.4945-5(a) of the regulations and Revenue Procedure 92-94, 1992-2 C.B. 507, receives either a determination letter from the Service that the foreign recipient is an organization described in section 509(a)(1), (2) or (3) of the Code or an affidavit from the foreign recipient that it is an organization described in section 509(a)(1), (2) or (3); and (ii) a foreign recipient that is not so described and that is, according to good faith determination, an organization described in section 501(c)(93), to the extent P exercises "expenditure responsibility" as prescribed by section 4945(h) and the regulations thereunder with respect to such organization.

LAW

Section 170(c)(2)(B) of the Code defines the term "charitable contribution" to include a contribution to or for the use of a corporation, trust, or any community chest, fund, or foundation, organized and operated exclusively for charitable, educational, or other specified purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated "exclusively" for religious, charitable, educational, or other specified exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which does not engage in proscribed legislative or political activities.

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

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational" includes the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 4942(g)(1) of the Code defines a "qualifying distribution" as (a) any amount paid to

accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons or (ii) a private foundation which is not an operating foundation, except as otherwise provided; or (b) any amount paid to acquire an asset used directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 4942(g)(3) of the Code requires that the transferor private foundation, in order to have a qualifying distribution for its grant to another private foundation, must have adequate records to show that the transferee private foundation in fact makes a qualifying distribution that is equal to the amount of the transfer received and that is paid out of the transferee's own corpus within the meaning of section 4942(h).

Section 53.4942(a)-3(a)(2) of the Foundation and Similar Excise Taxes Regulations defines the term "qualifying distribution", in relevant part, to mean any amount (including program related investments and reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in Code section 170(c)(1) or 170(c)(2)(B), other than any contribution to a private foundation which is not an operating foundation or to an organization controlled (directly or indirectly) by the contributing private foundation or one or more disqualified persons with respect to such foundation.

Section 53.4942(a)-3(a)(6) of the regulations allows a foundation to treat a grant to a foreign organization as a grant to a public charity if the foundation makes a "good faith determination" that the organization would satisfy the requirements of section 509(a)(1), (2), or (3) of the Code.

Sections 4945(a)(1) and 4945(b)(1) of the Code impose excise taxes to be paid by a private foundation that makes a taxable expenditure, as defined in section 4945(d).

Section 4945(d) of the Code provides that a taxable expenditures includes any amount paid or incurred by a private foundation: (1) to carry on propaganda, or otherwise to attempt to influence legislation, within the meaning of section 4945(e); (2) except as provided in section 4945(f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive; (3) a grant to an individual for travel, study, or similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g); (4) a grant to an organization, unless (A) the grantee is described in paragraph (1), (2), or (3) of section 509(a) of the Code, or is an exempt operating foundation (as defined in section 4940(d)(2); or (B) the foundation exercises "expenditure responsibility" over the grant, in accordance with section 4945(h); or (5) 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 4945(h) of the Code provides that a private foundation will be considered to exercise expenditure responsibility if it exerts all reasonable efforts and establishes adequate procedures to see that the grant is spent solely for the purpose for which it was made, to obtain full and complete reports from the grantee on how the funds are spent, and to make full and detailed reports with respect to such expenditures to the Commissioner.

Section 53.4945-5(a)(1) of the regulations provides that the term “taxable expenditure” includes any amount paid or incurred by a private foundation as a grant to an organization (other than an organization described in section 509(a)(1), (2), or (3)), unless the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h) of the Code.

Section 53.4945-5(a)(4)(ii) of the regulations provides that for purposes of section 4945(d)(4) of the Code, an organization will be treated as a section 509(a)(1) organization if it is an organization described in section 170(c)(1). However, a grant to such an organization must be made exclusively for charitable purposes described in section 170(c)(2)(B).

Section 53.4945-5(b)(1) of the regulations provides that a private foundation will be considered to be exercising “expenditure responsibility” under section 4945(h) as long as it exerts all reasonable efforts and establishes adequate procedures to see that the grant is spent solely for the purpose for which made, to obtain full and complete reports from the grantee on how the funds are spent, and to obtain full and detailed reports with respect to such expenditures to the Commissioner.

Section 53.4945-5(b)(2) of the regulations requires that the private foundation conduct a pre-grant, limited inquiry concerning the potential grantee. Such inquiry should be complete enough to give a reasonable man assurance that the grantee will use the grant for the proper purposes. The inquiry should concern itself with matters such as: (a) The identity, prior history and experience (if any) of the grantee organization and its managers; and (b) any knowledge which the private foundation has (based on prior experience or otherwise) of, or other information which is readily available concerning, the management, activities, and practices of the grantee organization.

Section 53.4945-5(b)(3) of the regulations provides that in order to meet the expenditure responsibility requirements of section 4945(h), a private foundation must require that each grant to an organization, with respect to which expenditure responsibility must be exercised under this section, be made subject to a written commitment signed by an appropriate officer, director, or trustee of the grantee organization. Such commitment must include an agreement by the grantee:

- (i) To repay any portion of the amount granted which is not used for the purposes of the grant,
- (ii) To submit full and complete annual reports on the manner in which the funds are spent and the progress made in accomplishing the purposes of the grant, except as provided in paragraph (c)(2) of this section,
- (iii) To maintain records of receipts and expenditures and to make its books and records available to the grantor at reasonable times, and
- (iv) Not to use any of the funds – (a) To carry on propaganda, or otherwise to attempt, to influence legislation (within the meaning of section 4945(d)(1)); (b) To influence the

outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of section 4945(d)(2)); (c) To make any grant which does not comply with the requirements of section 4945(d)(3) or (4), or (d) To undertake any activity for any purpose other than one specified in section 170(c)(2)(B).

The agreement must also clearly specify the purposes of the grant. Such purposes may include contributing for capital endowment, for the purchase of capital equipment, or for general support provided that neither the grants nor the income therefrom may be used for purposes other than those described in section 170(c)(2)(B).

Section 52.4945-6(b)(1)(v) of the regulations provides, in relevant part, that any payment which constitutes a qualifying distribution under section 4942(g) of the Code will not be treated as a taxable expenditure under section 4945(d)(5).

ANALYSIS

A private foundation's expenditures will be treated as "qualifying distributions" under section 4942(g)(1)(A) of the Code, only if they are made to further religious, charitable, educational, or other purposes stated in section 170(c)(2)(B). M's Amended and Restated Certificate of Incorporation provides that M is organized and operated exclusively for charitable, religious, scientific, literary and educational purposes. In addition, the Q program provides individuals or organizations with funds to develop and pursue educational initiatives. The Q programs advance education and therefore further a charitable purpose within the meaning of sections 170(c)(2)(B) and 501(c)(3). See section 1.501(c)(3)-1(d)(2) of the regulations.

Generally, grants made to United States public charities and foreign "equivalents" (See Rev. Proc. 92-94, 1992-2 C.B. 507) would constitute qualifying distributions under section 4942(g). In addition, such grants would not be taxable expenditures under section 4945(d) and would not require expenditure responsibility by virtue of section 4945(d)(4)(A) of the Code. With respect to any organization grants or other amounts remitted under Q to an organization recipient that is a non-operating foundation, such grant or other amounts would constitute "qualifying distributions" of M for purposes of section 4942, to the extent that the requirements of section 4942(g)(3) are satisfied. In addition, 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) and do not otherwise constitute an Individual travel/study grant.

With respect to grants to foreign organizations and U.S. organizations that are not public charities, P will exercise expenditure responsibility within the meaning of section 4945(d)(4)(B) and section 4945(h) of the Code. Accordingly, such distributions and expenditures will not constitute taxable expenditures for purposes of section 4945 of the Code.

RULINGS

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

1. Any amount to be awarded or expended under Q, including without limitation, an individual grant, organization grant and follow-up grant or other amounts remitted to an organization recipient that is either a: (i) non-operating foundation to the extent that the distribution requirement and adequate records requirements are satisfied; and (ii) foreign recipient to the extent that P, in accordance with section 53.4942(a)-3(a)(6) of the regulations and Revenue Procedure 92-94, 1992-2 C.B. 507, receives either a determination letter from the Service that the foreign recipient is a public charity or a private operating foundation or an affidavit from the foreign recipient that it is an organization described in section 509(a)(1), (2) or (3) or 4942(j)(3) of the Code, will constitute "qualifying distributions" within the meaning of section 4942(g)(1).
2. Any amount to be awarded or expended under Q, including without limitation, an individual grant, organization grant and follow-up grant which will not otherwise constitute an Individual travel/study grant, will not constitute a "taxable expenditure" within the meaning of section 4945(d) of the Code including any organization grant, follow-up grant or other amounts remitted to an organization recipient that is a: (i) foreign recipient to the extent that P, in accordance with section 53.4945-5(a) of the regulations and Revenue Procedure 92-94, 1992-2 C.B. 507, receives either a determination letter from the Service that the foreign recipient is an organization described in section 509(a)(1), (2) or (3) of the Code or an affidavit from the foreign recipient that it is an organization described in section 509(a)(1), (2) or (3); and (ii) a foreign recipient that is not so described and that is, according to good faith determination, an organization described in section 501(c)(3), to the extent P exercises "expenditure responsibility" as prescribed by section 4945(h) and the regulations thereunder with respect to such organization.

Your request for advanced approval under section 4945(g) of the Code, of the proposed procedures for awarding such grants by P will be issued under separate cover.

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.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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,

/s/

Debra J. Kaweck
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437