

Private foundation grants. Grants made by a private foundation primarily in recognition of past achievement, with the funds being unrestricted, or earmarked for subsequent travel or study and meeting the requirements of section 4945(g) of the Code, are not taxable expenditures within the meaning of section 4945.

'Advice has been requested whether the grants to individuals made by the private foundations in the situations described below are taxable expenditures within the meaning of section 4945 of the Internal Revenue Code of 1954.

'Situation 1. Private Foundation M is a trust created for the purpose of encouraging excellence in the art of journalism. Each year, the foundation awards its net income to the person whose work represents the best example of investigative reporting on matters concerning the Federal government.

'Journalists throughout the United States are eligible for the award. The recipient is chosen by a majority vote of a selection committee comprised of three working newsmen who otherwise have no relationship with Private Foundation M and who have an established reputation for competence in the field of journalism. Each member of the selection committee is appointed by the foundation's trustees for a three-year term. The terms are staggered so that one new judge is selected each year.

'Each year, news organizations throughout the United States voluntarily submit to the committee samples of the work of journalists in their employ. These submissions consist of articles, published by the submitting newspapers, magazines, or other news media during the past year, that were written in the ordinary course of the journalists' professional employment. No journalist prepares or produces any material specifically for submission to the selection committee. The selection committee is not restricted to consideration of actual submissions, and submission is not a condition to eligibility for the award. The committee makes an attempt to review major publications in which eligible works may have appeared.

The award is granted in recognition of past achievement in this particular field of journalism, and is not intended to finance any specific activities of the recipient nor are any conditions imposed on the manner in which it may be expended by the recipient. The recipient is not required to render any substantial future services as a condition to receiving the award. The grants are awards within the meaning of section 74(b) of the Code and are excludable from the recipient's gross income.

'Situation 2. Private Foundation N is also a trust created for the purpose of encouraging excellence in the art of journalism. It has received advance approval of its grant-making

procedures. The operations of Private Foundation N are identical to those of Private Foundation M, above, except that its annual award is to be used for financing a three-month trip throughout the United States designed to further the recipient's understanding of the operations of the Federal government.

'Situation 3. Private Foundation P is also a trust created for the purpose of encouraging excellence in the art of journalism. It has received advance approval of its grant-making procedures. The operations of Private Foundation P are identical to those of Private Foundation M, above, except that its annual award is to be used for study at an institution described in section 17(b)(1)(A)(ii) of the Code and is a 'scholarship' within the meaning of section 117(a).

Section 4945 of the Code imposes a tax on each taxable expenditure made by a private foundation.

'Section 4945(d)(3) of the Code provides that the term '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 such grant satisfies the requirements of section 4945(g).

'Section 4945(d)(5) of the Code provides that 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), that is, other than for an exclusively religious, charitable, scientific, literary, or educational purpose, or to foster national or international amateur sports competition (not involving the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.

'Section 4945(g) 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 Service, if it is demonstrated that-

- (1) 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 institution described in section 170(b)(1)(A)(ii),
- (2) the grant constitutes a prize or award which is subject to the provisions of section 74(b), if the recipient of such prize or award is selected from the general public, or
- (3) 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 53.4945-4(a)(3)(i) of the Foundation Excise Tax Regulations states that a grant to an individual for purposes other than those described in section 4945(d)(3) of the Code is not a taxable expenditure within the meaning of section 4945(d)(3).

In each of the three situations described above, the grants by the private foundation must be made for purposes within the scope of section 170(c)(2)(B) of the Code. See Rev. Rul. 76-460, 1976-2, C.B. 371. In all three situations, this requirement is met, and therefore, the grants are not taxable expenditures within the meaning of section 4945(d)(5).

In Situation 1, the grants made by Private Foundation M are awards made primarily in recognition of past achievement. They are not intended to finance any future activity of the recipient. There are no conditions or requirements to be met subsequent to receiving the grants. Thus, the awards are not grants to individuals for travel, study, or other similar purposes by such individuals. See Rev. Rul. 75-393, 1975-2 C.B. 451. Accordingly, the grants made by Private Foundation M are made for purposes other than those stated in section 4945(d)(3) of the Code and they are not taxable expenditures within the meaning of section 4945.

In Situation 2, the grants made by Private Foundation N are also awards made primarily in recognition of past achievement, but they are designed to pay for subsequent travel by the recipients of the awards. Because they are so earmarked by the foundation, they represent grants to an individual for travel within the meaning of section 4945(d)(3) of the Code and would be taxable expenditures but for the fact that they satisfy the requirements of section 4945(g). The grants by Private Foundation N are awards made on an objective and nondiscriminatory basis under procedures for which advance approval has been granted. The grants constitute awards subject to the provisions of section 74(b) and the recipients are selected from the general public within the meaning of section 4945(g)(2). Accordingly, the grants made by Private Foundation N are not taxable expenditures within the meaning of section 4945.

Similarly, in Situation 3, while the grants made by Private Foundation P are awards made primarily in recognition of past achievement, they are designed to pay for subsequent study by the recipient of the award. Because they are so earmarked by the foundation, they represent grants to individuals for study within the meaning of section 4945(d)(3) of the Code but are not taxable expenditures because they satisfy the requirements of section 4945(g). The grants by Private Foundation P are awards made on an objective and nondiscriminatory basis under procedures for which advance approval has been granted. The grants constitute scholarships subject to the provisions of section 117(a) and they are to be used for study at an educational institution described in section 170(b)(1)(A)(ii). Accordingly, the grants made by

Private Foundation P are not taxable expenditures within the meaning of section 4945.