



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

TAX EXEMPT AND
GOVERNMENT ENTITIES

Number: **200522016**
Release Date: 6/3/05

Date: 03/08/05

Contact Person:

ID Number:

Telephone Number:

UIL: 4945.00-00

LEGEND

K =
M =

Dear _____ :

K is requesting advance approval of its grant-making procedures under section 4945(g) of the Internal Revenue Code.

FACTS

K is exempt under section 501(c)(3) of the Code and is classified as a nonoperating private foundation within the meaning of section 509(a).

K recently established a scholarship trust fund, titled M. K now proposes to implement a scholarship procedure ("Procedure") that will be consistent with four previously approved scholarship grants and the current scholarship trust fund, M. The Procedure is designed to address all the scholarships (including those awarded from M) administered by K. Scholarships will be awarded by a selection committee comprised of K's Board of Trustees and other individuals selected by K's Board of Trustees. K states none of the selection committee members will derive a private benefit from the selection of one or more scholarship recipients.

The grants awarded will be college scholarships under section 4945(g)(1) of the Code or grants under section 4945(g)(3). K states the following: scholarships will be awarded on an objective and nondiscriminatory basis to individuals who

attend an educational institution described in section 170(b)(1)(A)(ii) of the Code; no disqualified person with respect to K will be eligible for consideration; and donors of K will not be able to designate recipients.

K further states: the scholarships will be used to cover the recipient's tuition, room, board, fees, books, supplies, travel costs and incidental expenses for attendance at the educational institution; K will make the payments directly to the educational institution, will secure the agreement of such institution to use such payments for the recipient's expenses and pay the excess (if any) to the recipient only if the recipient is enrolled at the institution and the recipient's standing at the institution is consistent with the purposes and conditions of the scholarship; K will retain written records pertaining to all scholarship grants and loan awards; K will supervise and investigate the use of the grant funds by the recipients; and K will seek recovery of any misused funds.

RULINGS REQUESTED

K requests the following rulings:

1. The Procedure satisfies the requirements of section 4945(g) of the Code.
2. Grants awarded by K pursuant to the Procedure, including grants awarded by M, will not be treated as taxable expenditures under section 4945(d)(3) of the Code.
3. The scholarship administration provisions satisfy the requirements for supervision and investigation established in section 53.4945-4(c)(5) of the Foundation and Similar Excise Taxes Regulations.

LAW

Section 4945(a) and (b) of the Code impose certain excise taxes on taxable expenditures made by a private foundation.

Section 4945(d)(3) of the Code provides the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or 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) of the Code and is to be used for study at an educational institution described in section 170(b)(1)(A)(ii) of the Code.

Section 4945(g)(3) of the Code provides 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(c)(1) of the regulations provides to secure approval for a grant-making procedure, a private foundation must demonstrate to the satisfaction of the commissioner:

- (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 regulations.

Section 53.4945-4(c)(2) of the regulations provides that, at least once per year, the private foundation must obtain a reporting, verified by the educational institution, on the grantee's progress for each academic period.

Section 53.4945-4(c)(4) of the regulations provides, if grantee reports submitted or other information, including failure to submit reports, indicate any part of a grant is not being used for purposes of the grant, the grantor foundation is under a duty to investigate and, while conducting its investigation, must withhold further payments. The grantor's reasonable steps to recover misused grant funds must include legal action where appropriate, unless legal action would not, in all probability, result in satisfaction of execution on the judgment.

Section 53.4945-4(c)(5) of the regulations provides the requirements for supervision of scholarship grants will be considered satisfied if the foundation pays the grants to an educational institution described in section 170(b)(1)(A)(ii) and the educational institution agrees to use the funds to defray the recipient's expenses or to pay the funds (or a portion thereof) to the recipient only if the recipient is enrolled at such educational institution and his/her standing at such educational institution is consistent with the purposes and conditions of the grant.

ANALYSIS

K's Procedure, including grants awarded by M, satisfy the requirements of sections 4945(g)(1) and 4945(g)(3) of the Code because: K's scholarship procedures include an objective and nondiscriminatory selection process; the recipient must be enrolled in a degree program to receive the scholarship grant; the procedures are designed to result in the performance of the activities K intended to finance; and K will satisfy the report requirement by requiring annual reports, investigating and seeking recovery of any misuse of your scholarship grants. Further, grants made in accordance with these procedures, including grants awarded by M, will not constitute "taxable expenditures" within the meaning of section 4945(d)(3) of the Code.

Lastly, the scholarship administration provisions of K's Procedure satisfy the requirements for supervision and investigation established in section 53.4945-4(c)(5) of the regulations. K's Procedure states the grants are being paid directly to the educational institution described in section 170(b)(1)(A)(ii) of the Code and the educational institution will be required to use the grant funds to defray the grantee's expenses only if the grantee is enrolled at such educational institution and the grantee's standing is consistent with the purposes and conditions of the grant.

This ruling is conditioned on the understanding no grants will be awarded to K'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 the grant-making procedures is a one-time approval of K's system of standards and procedures for selecting recipients of grants meeting the requirements of section 4945(g)(1) 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.

CONCLUSION

Based on the facts and information submitted and the representations made, we conclude:

1. The Procedure satisfies the requirements of section 4945(g) of the Code.
2. Grants awarded by K pursuant to the Procedure, including grants awarded by M, will not be treated as taxable expenditures under section 4945(d)(3) of the Code.
3. The scholarship administration provisions satisfy the requirements for supervision and investigation established in section 53.4945-4(c)(5) of

the regulations.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

These rulings are directed only to the organizations that requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Sincerely yours,

Debra J. Kawecki
Manager, EO Technical
Technical Group 1

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