



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Release Date: 10/7/05

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UIL: 4945.00-00

Date: 07/12/05

Contact Person:

ID Number:

Telephone Number:

Employer Identification Number:

Legend:

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Dear

This is in reference to your letter of April 22, 2004, requesting advance approval of your grant procedures under section 4945(g)(1) of the Internal Revenue Code. You are planning to institute a scholarship program for high school students to attend private high schools.

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.

The name of your scholarship program is M. You presently plan to award one scholarship per year unless under special circumstances for a four year period. Your scholarships will pay for tuition, room and board for private schools in the area. The Administrators of high schools located in N County and all contiguous counties will nominate candidates for your scholarships by submitting a Nomination Form. Your Board of Directors will initially be your selection committee. However, your Board of Directors may in the future delegate this responsibility to other persons. Each member of your Board of Directors must disclose any relationship of any candidate for a scholarship in which he or she may derive a direct or indirect private benefit if any candidate are selected over other candidates. Your scholarship candidates must be

enrolled, or about to enroll, as a full time student in a private high school. Your scholarship candidates must meet the following criteria:

1. The candidate shows sufficient academic ability to enable him or her to complete courses of study necessary to graduate from his or her selected private high school.
2. The candidate has the necessary character and motivation to obtain an education.
3. The candidate exhibits need for financial assistance.

Your scholarships 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 students are eligible to be nominated for your scholarships. Your scholarship 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.

None of your scholarships may be awarded to the children of your Board of Directors 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 pay your scholarship funds to the respective private high schools.

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 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 private high schools, your scholarship 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 comply with the requirements contained in section 4945(g)(1) of the Code because:

- (a) Your scholarship procedures 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. 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 of your scholarship grants directly to the respective private high schools.

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, we rule that your grants comply with requirements of section 4945(g)(1) 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 the children of 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) 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