



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Date: September 30, 2008
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Contact Person:
Identification Number:
Telephone Number:
Employer Identification Number:

Legend:

N =
O =
Date =

Dear

We have considered your request dated August 20, 2007, for a ruling that your grant to N, an organization exempt under section 501(c)(6) of the Internal Revenue Code (Code), is for charitable purposes and is not a taxable expenditure under section 4945.

Facts:

You are a private foundation organized as a trust under state law and exempt from federal income tax as an organization described in section 501(c)(3) of the Code. Your trust agreement requires you to make payments or distributions for charitable, scientific, or educational purposes as defined by section 501(c)(3), giving first consideration to grants for research, treatment, prevention, elimination, or meeting the challenges of diabetes or hearing impairment, with special preference to specific projects.

You have represented that a substantial part of your mission is to promote the availability of spoken language communication options for deaf children. Toward that purpose, you make grants to raise public awareness, to promote, support, and increase the availability of quality spoken language educational programs and qualified professionals.

The information submitted with your request shows that you have conducted pre-grant inquiries and obtained information about O, an organization exempt under section 501(c)(3) of the Code, that created N, an organization exempt under section 501(c)(6), to advance spoken language communication options for individuals who are deaf or hard of hearing by developing and managing educational standards for professionals. Recently, N developed an international program that offers two separate certifications, one for therapists and one for educators. In

addition, N plans to develop a program for groups of professionals that work in public and private educational, clinical and early intervention settings. In the future, N may also develop a certification that would be available to programs offered by both public and private institutions. N also plans to collaborate with other organizations to expand the availability of professional training opportunities in this field.

The information you submitted with your request shows that you awarded a one-year general support grant to N on Date for these purposes:

1. To define the essential knowledge, skills and core competencies that professionals must have to work with children who are deaf or hard of hearing to teach them to use spoken language to communicate and,
2. To develop and administer educational opportunities for professionals in the field of spoken language deaf education, such as workshops, seminars, continuing education courses, practicum and mentorship placements and other training programs, in order to enhance their knowledge, skills and core competencies.

You provided a signed and executed copy of the terms and conditions agreement associated with your grant to N. The agreement requires N to use all grant funds solely for charitable, literary, scientific, or educational purposes within the meaning of section 170(c)(2)(B) of the Code. Also, the agreement requires N to immediately return any grant funds not expended for the purpose of the grant during the grant term and to provide annual reports on the use of the grant funds with a narrative of the accomplishments attested to by the responsible financial officer or a certified public accountant. Last, the agreement restricts N from using the grant for the purposes described in sections 53.4945-5(b)(3)(i) through (iv) of the Foundation and Similar Excise Tax Regulations ("foundation regulations"). Finally, your request states that you will fulfill the reporting requirements contained in section 53.4945-5(d)(1) of the foundation regulations.

You requested the following ruling:

That the current grant is not a taxable expenditure as defined by section 4945(d)(5) of the Code, where you are exercising expenditure responsibility over the grant.

Law:

Section 170(c)(2)(B) of the Code states that the term "charitable contribution" means a contribution or gift to or for the use of a corporation, trust, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals.

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

Section 4945(a) of the Code imposes a tax on the taxable expenditures of a private foundation.

Section 4945(d)(4)(B) of the Code states that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an organization, unless the foundation exercises "expenditure responsibility" over the grant, in accordance with section 4945(h).

Section 4945(h) of the Code defines the term "expenditure responsibility" to mean that a private foundation is responsible for exerting all reasonable efforts and for establishing procedures:

1. to see that the grant is spent solely for the purpose for which made,
2. to obtain full and complete reports from the grantee on how the funds are spent, and
3. to make full and detailed reports with respect to such expenditures to the Secretary.

Section 6033(a)(1) of the Code generally requires that an organization exempt from federal income tax under section 501(a) be required to file an annual return.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations("regulations") includes the advancement of education in the definition of the term "charitable".

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term "educational" as relating to 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 53.4945-5(a)(1) of the foundation regulations states that, in general, under section 4945(d)(4) of the Code, 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).

Section 53.4945-5(b)(1) of the foundation regulations states that, generally, a private foundation will be considered to be exercising "expenditure responsibility" under section 4945(h) of the Code 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 make full and detailed reports with respect to such expenditures to the Commissioner.

Section 53.4945-5(b)(2) of the foundation regulations requires a private foundation to conduct a pregrant, limited inquiry concerning the potential grantee. Such inquiry should be complete enough to give a reasonable person 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 foundation regulations states that, in order to meet the expenditure responsibility requirements of section 4945(h) of the Code, a private foundation must require that each grant to an organization with respect to which expenditure responsibility requirements 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. The

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,
 - 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)(3), or
 - 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.

Section 53.4945-5(d)(1) of the foundation regulations provides generally that to satisfy the reporting requirements of section 4945(h)(3) of the Code, a granting foundation must provide certain information on its annual information return, required to be filed by section 6033, for each taxable year with respect to each grant made during the taxable year (or upon which any amount or report is outstanding at any time during the taxable year) which is subject to the expenditure responsibility requirements of section 4945(h). These requirements may be satisfied by submission with the foundation's information return of a report received from the grantee, if the information required by section 53.4945-5(d)(2) is contained in the report.

Section 53.4945-5(d)(2) of the foundation regulations states that the report attached to the return must contain, or be accompanied by, the following information:

- i. the name and address of the grantee;
- ii. the date and amount of the grant;
- iii. the purpose of the grant;
- iv. the amounts expended by the grantee (based on the most recent report received from the grantee);
- v. whether the grantee has diverted any portion of the funds (or the income therefrom in the case of an endowment grant) from the purpose of the grant (to the knowledge of the grantor);
- vi. the dates of any reports received from the grantee; and
- vii. the date and results of any verification of the grantee's reports undertaken pursuant to and to the extent required under section 53.4945-5(c)(1) by the grantor or by others at the direction of the grantor.

Rev. Rul. 68-489, 1968-2 C.B. 210 held that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to organizations that are not exempt under section 501(c)(3), provided it retains control and discretion over use of the funds for section 501(c)(3) purposes.

Rev. Rul. 76-455, 1976-2 C.B. 150 held that an organization formed to encourage and assist in establishment of nonprofit regional health data systems, to conduct studies and propose improvements with regard to quality, utilization, and effectiveness of health care and health care agencies, and to educate those involved in furnishing, administering, and financing health care was furthering a charitable purpose.

Analysis:

An organization that is exempt under section 501(c)(3) of the Code can make grants to organizations that are not within the scope of section 501(c)(3), so long as the distributions are made and used to further its own charitable purposes and it exercises expenditure responsibility over the distributions. Rev. Rul. 68-489, *supra*. You made a grant to N, an organization that is not exempt under section 501(c)(3), to further an important part of your charitable purpose, which is to promote the availability of spoken language communication options for deaf children. Your grant will not be considered a taxable expenditure described in section 4945(d) of the Code as long as it is used to further a charitable purpose and both parties meet the expenditure responsibility requirements of section 4945(h).

N plans to use your grant to conduct two primary activities. First, N will define the qualifications that professionals need to educate deaf children, which will advance education by providing standards for professional educational programs. This activity is consistent with the definition of "educational" under section 1.501(c)(3)-(d)(3) of the regulations which includes the instructing and training of individuals to improve or develop their capabilities. Second, N will use part of the grant to make educational opportunities available to institutions, programs and professionals. This activity is similar to the ones performed by the organization described in Rev. Rul. 76-455, *supra*, that conducted studies and proposed improvements for health care programs and systems. Your grant to N will not be considered a taxable expenditure under section 4945(d) of the Code because N will use it to further your purpose of advancing education, which is a charitable purpose described in section 501(c)(3), by promoting the availability of spoken language communication options for deaf or hard of hearing individuals.

Generally, when a private foundation makes a grant to an organization that is not described in section 170(c)(2)(B) of the Code, the regulations require the exercise of expenditure responsibility. Thus, a grantor must "retain control and discretion as to the use of the funds and maintain records establishing that the funds were used for section 501(c)(3) purposes." The terms and conditions set forth in the agreement meet the requirements of section 4945(h) and provide you with reasonable assurance that N will use the grant exclusively to further your charitable purposes. In addition, you have represented that you will meet the reporting requirements in section 53.4945-5(d) of the foundation regulations. Accordingly, your grant will not be considered a taxable expenditure as long as you exercise expenditure responsibility over the grant in accordance with section 4945(h) and section 53.4945-5.

Conclusion:

Based on the foregoing, we rule as follows:

That the grant described above is not a taxable expenditure within the meaning of section 4945(d)(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.

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. 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. 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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Ronald J. Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437