

**Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements**

**Department of the Treasury
P.O. Box 2508, EODQA Rm. 7-008
Cincinnati, Ohio 45201**

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Dear

This is in reply to your letter of May 25, 2004, in which you requested a ruling concerning your grant procedures pursuant to section 4945(g) of the Internal Revenue Code.

You are a nonexempt charitable trust as described in section 4947(a)(1) of the Code. Therefore, you are subject to the provisions of chapter 42 of the Code, specifically as they relate to the advance approval of scholarship procedures.

Your grant -making program is formed for the purpose of providing and paying for the tuition of two or more students to a college institution of their choice. The grant-making program is structured as follows:

- **Scholarships are open to all students attending high school in your city. Applications are mailed to high school counselors of all high schools located in this area.**
- **A selection committee, composed of the principals and high school counselors or all area high schools, selects scholarship winners and alternate recipients.**
- **Selection criteria to be used by the committee are weighed equally upon scholarship, ability, need and other grants received by the applicants.**
- **A committee made up of the Superintendent of Schools and the President of your trustee gives final approval to the recipients named by the selection committee**
- **The trustee exercises supervision over the grants by paying the funds directly to the educational institution rather than to the individual grantee. Each educational institution receiving the funds must sign a letter acknowledging that the funds will be deposited for tuition only to the named students' accounts. These acknowledgements are retained in the trustee's permanent records.**
- **If the trustee is notified that the student did not attend, the trustee will recover any funds not used for tuition from the educational institution and deposit the refunds into the scholarship account to be used for the next year's awards.**
- **The trustee maintains permanent records relating to all scholarships, including the names of the primary and alternate recipients, their addresses, social security number, parents' names, the date and amount paid and the names and addresses of the educational institutions attended.**

- The selection committee retains all records relating to the selection process, including copies of all applications received and documentation of their evaluation thereof.

Sections 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 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 subsection (g).

Section 4945(g) of the Code provides that section 4945(d) (3) shall not apply to individual grants awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance 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 organization 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 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 that to secure approval, a private foundation must demonstrate that:

- (i) Its grant procedure includes an objective and nondiscriminatory selection process;
- (ii) Such procedure is reasonably calculated to result in performance by grantees of the activities that the grants are intended to finance; and
- (iii) The foundation plans to obtain reports to determine whether the grantees performed activities that the grants are intended to finance.

Based on the information submitted and assuming your award programs will be conducted as proposed with a view to provide objectivity and nondiscrimination in making the awards, we have determined that your procedures for granting the awards comply with the requirements contained in section 4945(g) of the Code and that awards granted in accordance with such procedures will not constitute "taxable expenditures" within the meaning of section 4945(d) (3).

In addition, we have determined that awards made under your procedures are excludable from the gross income of the recipients subject to the limitations provided by section 117 of the Code.

You have also requested, under Section 4962 that the Service not assess any initial taxes under Section 4945 for any expenditure of its grant making program covered by the determination letter that precedes its effective date.

Section 4962(a) provides that if it is established to the satisfaction of the Secretary that (1) a taxable event was due to reasonable cause and not to willful neglect, and (2) such event was corrected within the correction period for such event, then any qualified first tier tax imposed with respect to such event (including interest) shall not be assessed.

Regulations Section 53-4945-1(d) (3) provides that where an expenditure is taxable under Section 4945(d) (3) only because of a failure to obtain advance approval of procedures with respect to grants as required by Section 4945(g), correction may be accomplished by obtaining approval of the grant making procedures and establishing to the satisfaction of the Commissioner that:

- (i) no grant funds have been diverted to any use not in furtherance of a purpose specified in the grant;
- (ii) the grant making procedures instituted would have been approved if advance approval of such procedures had been properly requested; and
- (iii) where advance approval of grant making procedure is subsequently required, such approval will be properly requested.

You have provided sufficient information to show that it has met the above requirements. Specifically, you have shown that (1) the procedures described above do not permit the diversion of grant funds and have not been substantially changed in prior years; (2) Your grant-making procedures met all requirements of Section 4945(g) in all subsequent respects for all prior years except for the failure to obtain advance approval; and (3) You have now properly requested approval of grant making procedures.

Therefore, according to Section 4962, you are not subject to initial taxes under Section 4945 for any expenditure of its grant-making program covered by the determination letter that precedes its effective date.

This determination is conditioned on the understanding that there will be no material change in the facts upon which it is based. It is further conditioned on the premise that no grants will be awarded to foundation managers, or members of the selection committee, or for a purpose that is inconsistent with the purpose described in section 170(c) (2) (B) of the Code.

The approval of your award program procedures herein constitutes a one-time approval of your system standards and procedures designed to result in awards which meet the requirements of section 4945(g) (1) of the Code. This determination only covers the grant program described above. Thus,

approval shall apply to subsequent award programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in your request.

Any funds you distribute to individuals must be made on a true charitable basis in furtherance of the purposes for which you are organized. Therefore, you should maintain adequate records and case histories so that any or all award distributions can be substantiated upon request by the Internal Revenue Service.

This determination 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 a precedent.

You must report any future changes in your grant making procedures. Please keep a copy of this letter in your permanent records.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Lois G. Lerner
Director, Exempt Organizations
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