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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

Date: MAR 1 1999

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Dear Sir or Madam:

This is in reference to your letter of October 12, 1998, requesting advance approval of your grant-making procedures under section 4945(g) of the Internal Revenue Code.

In a letter dated June 17, 1985, you were granted recognition of exemption under section 501(c)(3) of the Code and determined not to be a private foundation within the meaning of section 509(a). You state that, in the future, you may have difficulty in meeting the public support test and could, at some point in the future, be classified as a private foundation.

Your purpose, as represented in your Articles of Incorporation, is to "encourage, assist, promote, foster, and support education." In furtherance of your purposes, you will provide scholarship grants and loans to undergraduate members of B to enable them to attend an undergraduate institution of higher education in the United States. You will also make grants to enable a recipient to achieve a specific objective or to enhance a recipient's capacities or skills. In the future you may also make scholarship grants to B alumni, and members of the general public who satisfy scholarship criteria.

You will use the following criteria in making awards: (a) prior academic performance (b) performance on tests designed to measure ability and aptitude for higher education (c) recommendations from educators, social workers, and others not related to the potential recipient's (d) conclusions that the selection committee might draw from personal interviews as to the applicant's motivation, character, ability, and potential. Financial need may be an important criterion. Factors that are not reasonably related to the purposes of the scholarship, such as race and gender, will not be considered and will have no influence on the selection of recipients.

Your selection committee will consist of some or all members of your Board of Directors or other persons designated by your Board. No member of the committee will be in a position to derive private benefit, directly or indirectly, by the selection of one or more particular recipients. Spouses and dependents of members of the committee will be ineligible to receive a scholarship or loan.

Each scholarship will be awarded by the selection committee in an amount determined by it, not to exceed the anticipated cost of a recipient's tuition, board, room fees, books supplies, travel costs, and incidental expenses. Scholarship recipients must maintain satisfactory progress toward completion of his/her course of study while in attendance at an educational institution. The course of study for which scholarships are available is not limited. No scholarship will be conditioned on a recipient choosing a particular course of study.

All scholarship payments will be made by you directly to the educational institution. You will secure the agreement of the institution to use such payments for a recipient's expenses and to pay the excess, if any, to a 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.

Grants to achieve a specific objective will be awarded by the selection committee for a specified period (usually one year or less). The amount of such a grant will not exceed the anticipated cost of the particular educational activity designed to achieve a specific objective or to enhance a recipient's personal capacities or skills. The purpose of such a grant must be to assist a recipient to develop fully and productively his/her exceptional talents.

You will retain records pertaining to all scholarships grants and loans, including the following: (a) all information used to evaluate the qualifications of potential recipients (b) identification of each recipient (including any relationship of a recipient to you sufficient to make the recipient a disqualified person of you within the meaning of section 4946(a)(1) (c) specification of the amount and purpose of each scholarship (d)reports and other follow-up information obtained under your procedures.

Section 4945 of the Code provides for the imposition of taxes on each taxable expenditure of 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 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 institution described in section 170(b)(1)(A)(ii) of the Code.

Section 4945(g)(3) of the Code provides, in part, that the provisions of section 4945(d)(3) will not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance if 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 similar capacity, skill, or talent of the grantee.

Section 53.4945-4(c)(1) of the Foundation and Similar Excise Taxes Regulations provides that, in order to secure the advance approval required by section 4945(g), a private foundation must demonstrate to the satisfaction of the Commissioner that: (1) its grant procedures includes an objective and non-discriminatory selection process; (2) this procedure is reasonably calculated to result in performance by grantees of the activities that the grants were intended to finance; and, (3) the foundation plans to obtain reports to determine whether the grantees have performed the activities that the grants are intended to finance. No single procedure or set of procedures is required.

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.

Revenue Ruling 56-403, 1956-2 C.B. 307, held that the fact that the foundation's scholarships are limited to undergraduate members of designated fraternity will not preclude it from exemption under section 501(c)(3) of the Code as a foundation organized and operated exclusively for educational purposes.

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 scholarship grants, we rule that your procedures for the awarding of scholarship grants comply with the requirements of section 4945(g)(1) of the Code. Thus, 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. These grants will be subject to the abbreviated supervisory duties stated in section 53.4945-4(c)(5) of the regulations.

Your procedures for selecting grant recipients who are engaged in activities designed to achieve a specific objective or to enhance a recipient's capacities or skills through the provision of grants satisfy the requirements of section 4945(g)(3) of the Code and the accompanying regulations. The grants made in support of these activities will be awarded on an objective and non-discriminatory basis with the purpose of assisting the recipient to develop fully and productively his/her exceptional talents. The grants will serve to further the personal development of the grantees. Therefore, we rule that your selection procedures in making these grants satisfy the requirements of section 4945(g)(3) and, thus, the grants are not taxable expenditures described in section 4945(d). Your scholarship loans are approved under the provisions of section 4945(g)(3).

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 premise that no grants will be awarded to 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.

Please note that this ruling is only applicable to grants awarded under your programs as outlined above. Before you enter into any other scholarship programs you should submit a request for advance approval of that program.

We are informing your key District Director of this action. Please keep a copy of this ruling with your permanent records.

This ruling is directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4