DEPARTMENT OF THE TREASURY 199927047
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: APR 15 1999

Contact Person:

Uniform Issue List:
4945.04-00
4945.04-04
4942.03-05

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Dear Sir or Madam:

This is in reply to your rulings request of February 23, 1998, supplemented by your letters of December 10, 1998, and February 1, 1999, on whether your proposed grants to ministers to pay their current debts for their past ministerial educations will be qualifying distributions under section 4942(g)(1)(A) of the Internal Revenue Code and will not be taxable expenditures under section 4945 of the Code.

You, X, are exempt from federal income tax under section 501(c)(3) of the Code and are a private foundation under section 509(a) of the Code. Your proposed grant program will pay grants of money to ministers in amounts to reduce or eliminate their current outstanding ministerial educational loan balances. Your purpose is to encourage ministers to continue to promote religion without the economic conflict of their educational loan debts. Also, with less debt, ministers can more readily work for a less affluent congregation. You will select the grantee ministers in an objective and nondiscriminatory manner, based upon application forms submitted to you by the ministers. Each minister's application will state that the minister is applying for the grant to reduce his or her ministerial educational debt. You will inform churches of this program. You will require that each grantee must be currently active in a religious ministry in your state, have a master of divinity degree, and reside in your state. The grantee ministers will incur no obligation to you or anyone as a result of this grant program, including no obligation to remain in the ministry.

It is your position that: the ministers seeking your grants should not be required to agree to any commitment to remain in the ministry for any future period of time; the ministers should not be required to represent or document financial need or to compete on that basis for grants; the ministers should not be required to submit any confirming debt documents to prove their written representations in their grant applications as to the actual amount of their educational debts; and you should not be required to obtain any follow-up reports or maintain records as to the grantees after you have paid the grants to them based on their applications.

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

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" in section 501(c)(3) of the Code is used in its generally accepted legal sense which includes "advancement of religion."

Section 509(a) of the Code describes private foundations which are exempt from federal income tax under section 501(c)(3) of the Code and are subject to the further restrictions of Chapter 42 of the Code, including sections 4942 and 4945.

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Section 4942 of the Code requires that a private foundation must annually make "qualifying distributions" under section 4942(g) of the Code for exempt purposes.

Section 4942(g)(1)(A) of the Code and section 53.4942(a)-3(a) (2)(i) of the Foundation and Similar Excise Taxes Regulations provide that a qualifying distribution is an amount, including reasonable and necessary administrative expenses, paid to accomplish one or more exempt purposes under section 170(c)(2)(B), which includes the exempt charitable and religious purposes under section 501(c)(3) of the Code.

Section 4945 of the Code imposes an excise tax on a private foundation's making of any "taxable expenditure", as defined, in pertinent part, by sections 4945(d)(3) and 4945(d)(5) of the Code.

Section 4945(d)(3) of the Code indicates that a taxable expenditure includes any amount paid by a private foundation as a grant to an individual for study, or other similar purposes, by such individual, unless the grant satisfies the advance approval requirements of section 4945(g) of the Code.

Section 53.4945(a)-4(c)(1)(iii) of the regulations indicates that a private foundation must obtain reports to determine whether the grantees of grants for study or similar purposes have performed the activities that the grants are intended to finance, and section 53.4945(a)-4(c)(6)(iv) of the regulations provides that the private foundation must retain records of this follow-up information on its grantees.

Section 4945(d)(5) of the Code provides that a taxable expenditure means any amount paid or incurred by a private foundation for any purpose other than those specified in section 170(c)(2)(B) of the Code describing charitable and religious purposes.

Section 53.6001-1(a) of the regulations provides: "Any person subject to tax under Chapter 42, Subtitle D, of the Code shall keep such complete and detailed records as are sufficient to enable the district director to determine accurately the amount of liability under Chapter 42."

Revenue Ruling 56-304, 1956-2 C.B. 306, holds that, where an organization exempt from federal income tax under section 501(c)(3) of the Code makes charitable payments to individuals, it must maintain "adequate records and case histories" to show that the payments "are made on a true charitable basis" and can be "substantiated". Similarly, section 53.4945-4(c)(6)(iv) of the regulations under Chapter 42 of the Code provides that a private foundation's adequate record, if it pays a grant for study or similar purposes, must include "follow-up information" on the grantee's actual uses of the funds.

In The Church in Boston v. Commissioner, 71 T.C. 102 (November 1, 1978), the Tax Court considered, for purposes of the definition of charitable under section 501(c)(3) of the Code, the inadequacy of the Church's records of its grants to individuals where: "The only documentation was a list of grants made during 1975 which included the name of the recipient, the amount of the grant, and the 'reason' for the grant which was specified as either unemployment, moving expenses, school scholarship, or medical expense." The Tax Court concluded that this stated documentation failed to establish whether exempt charitable purposes were served in fact, and the Court noted that failure "to keep adequate records of each recipient can result in abuse."

You propose to pay grants to ministers whose applications for such grants indicate that the grant amounts will be used by them to reduce or eliminate their current educational loan balances for their past education for the ministry. You will require that each applicant must be currently active in religious ministry in your state, must have a master of divinity degree or equivalent, and must reside in your state. The grantee ministers will be under no obligation to you or anyone as a result of this grant program, including no obligation to remain in the ministry. You want to induce the ministers to continue their religious ministry work without the interference of their past ministerial education debts. By helping ministers to focus on their religious work, you believe that your grants will be for the exempt purpose of advancement of religion.

Because your proposed grant program does not require the grantee ministers to document how the grants for educational debts were actually used, you have failed to establish that there is, in fact, a reasonable assurance or relationship of your grants to the advancement of religion or to any other exempt purpose under section 4945(d)(5) of the Code.

Also, because your proposed grant program does not require the grantee ministers to document how the grant funds were actually used, you have failed to establish that your grants will, in fact, be qualifying distributions for any exempt purpose under section 4942(g)(1)(A) of the Code.

Because your proposed grant program has no follow-up information or record-keeping on grantees, nor a copy of the evidence of the past educational debts, and will lack any actual debt repayment record (which the ministers themselves would likely obtain for their own personal records to show that their creditors and debts have been paid), you have failed to establish that your proposed grant program meets any of the documentation and record-keeping requirements imposed by the Code and the regulations.

We note that your proposed grant program is not directed to either financially needy ministers or to any specific objective, such as a commitment by the minister to remain in the ministry. To that extent, it is uncertain that your program is sufficiently tailored to achieve the advancement of religion for purposes of sections 501(c)(3) and 4945(d)(5) of the Code.

Accordingly, based on the information presented concerning your proposed grants to ministers, we rule that:

1. Your grants will not be qualifying distributions under section 4942(g)(1)(A) of the Code.

2. Your grants will be taxable expenditures under section 4945(d)(5) of the Code.

Because this ruling letter could help to resolve any questions, please keep it in your permanent records.

This ruling letter 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,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

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