199943058

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

Date: AUG 6 - 1999

Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T:3

UIL Nos.
501.03-15
513.00-00
4941.04-00
4942.03-05
4943.04-03
4944.03-00
4945.04-05

Employer Identification Number:

LEGEND

M =
W =
X =
y =
z =

Dear Applicant:

This letter responds to X's request dated Sept. 24, 1998 for rulings that X's proposed foreign investment program will further its exempt purposes and will comply with requirements under chapter 42 of the Internal Revenue Code.

Facts

X is a private foundation described in sections 501(c)(3) and 509(a) of the Code. X proposes to conduct a program of investments (the "Investment Program") in order to promote economic development in M, a foreign country.

According to the facts presented, the people of M have a low standard of living due to a variety of factors. M has had longstanding conflicts with neighboring countries, which have resulted in blockades and disruptions of trade. Until recently, M was not a sovereign state, and separation from its associated state also caused economic disruption. Most businesses in M operate at a fraction of their capacity. As of several years ago, M's average per-capita income was less than 1000 U.S. dollars, and the majority of the population live below M's officially recognized poverty line. Many people work multiple jobs. M has shortages of energy, food, and other essentials. To make matters worse, natural disasters in recent years destroyed a large percentage of M's housing, most of which has not been repaired.

Capital in M is another rare resource. Banks do not make long-term loans, and short-term loans are offered at annualized rates above 40 percent and require significant collateral. Most individuals and businesses cannot afford the rates and lack sufficient collateral. Other conventional sources of funds are unable or unwilling to provide them to local businesses on economically feasible terms. The lack of available capital limits business start-up or expansion, which limits employment and economic growth and perpetuates poverty.

The U.S. Government is involved in helping to develop M's governmental institutions and private enterprise in order to help stabilize the country and the region and promote friendly relations. A primary objective of the State Department with respect to its activities in M is to develop private enterprise. Significant federal funds have been and continue to be spent in providing assistance to local businesses. X has coordinated its project with and received letters of support from the U.S. Ambassador to M and other high U.S. officials.

X's Investment Program will consist of two parts: a "Government Program," and a "Direct Loan or Investment Program."

Government Program

The Government Program, established under a Loan Agreement between X and the Government of M, involves loans to borrowers at three levels. X will make loans (in the aggregate amount of y dollars) to the Government of M. The Government of M will make loans to privately owned local banks in M. The local banks will make loans to businesses in M. The central bank of M (an agency or instrumentality of the government) is also a signatory to the Loan Agreement between X and the Government of M but acts primarily in a ministerial capacity (receiving, holding, and disbursing funds under the instructions of X, the Government of M, and the local banks with respect to the accounts of each). The program will be made known to businesses in M by publication of a description of the program in newspapers of general circulation in M. Amounts repaid by borrowers may be reloaned by the Government of M under the same procedures (including X's approval of the new loan).

Using rules and criteria set by X, the local banks will make the actual decisions to which businesses loans will be made and on what terms. To be eligible for loans, businesses must meet each of the following requirements:

- majority ownership (directly and indirectly) by residents of M
- principal operations in M
- employment of M residents
- inability to obtain conventional financing on commercially reasonable terms
- commercial viability (in the reasonable judgment of the local bank), or demonstrated ability to become so with loan proceeds
- no use of loans to fund, produce, or distribute illegal drugs or goods intended for use in warfare or terrorism
- no current or future support for acts of war or terrorism or illegal drug trade

Among businesses that meet these criteria, preference will be given to those that (in the reasonable judgment of the local bank) are most likely to provide the greatest training and employment opportunities for the unemployed or under-employed residents of M.

The Government of M will designate participating local banks based on certain criteria relating to creditworthiness and compliance with the laws, and X must approve the Government's

designations. The Government of M must also approve the loans arranged between the local banks and the businesses, and X must approve the Government's decisions, prior to X's disbursement of loan proceeds to the Government of M. X will not propose any particular local banks or business borrowers for loans and will use the same objective criteria used by the Government of M and local banks in making its approval decisions. X's purpose for reserving approval rights is solely to verify the eligibility requirements and selection criteria used in selecting loan recipients and to ensure compliance with the rules established by the Loan Agreement.

The loans between X and the Government of M will be interest-free. X will not receive any income from the Government Program other than possible foreign currency gains. The Government's loans to the local banks will be at an interest rate well below the going market rate. In order not to adversely affect the emerging local banks, the local banks may charge interest on their loans, up to a stated maximum (substantially below the going market rates). The Government of M and the local banks may also charge a penalty for late payments, in order to encourage timely repayment.

X has established various account maintenance rules, reporting requirements, conflict-of-interests provisions, and audit and inspection rights to ensure that the loans are used for proper purposes. X expressly prohibits the use of loan proceeds for attempting to influence legislation, influencing the outcome of public elections, carrying on voter registration drives, or making grants to individuals for travel or study. The Government of M must provide X with detailed monthly written reports on the loan program (including monthly reports by the local banks). Conflict-of-interest provisions will prevent individuals from approving loans to businesses in which they have a financial interest. If funds are used for impermissible purposes, or it is discovered that any requirements are not met, the Government of M is obligated to collect the loan. In its discretion, X may also call any or all loans and may terminate the Loan Agreement. X may unilaterally amend the Loan Agreement, and the Government of M guarantees that it will not impose expropriation or transfer restrictions. In the event of a dispute, the Loan Agreement calls for arbitration in international tribunals.

Regarding any possible self-dealing problems under section 4941 of the Code, X represents that its primary contributor, W, has no business interests in M and no role in the Investment Program other than as a contributor to X. X also represents that, to the best of its knowledge, no disqualified persons with respect to it (1) engage in business in M or with businesses based in M, (2) may receive a substantial increase in their business activity (aside from foundation managers acting in such capacity) as a result of the Investment Program, or (3) hold a substantial ownership interest in any business that may receive investments under the Investment Program or may receive a substantial increase in its business activity as a result of the Investment Program.

Direct Loan or Investment Program

In X's Direct Loan or Investment Program, X will make direct loans to, or equity investments in, businesses in order to induce those businesses to operate in M. X plans to devote z dollars to this program.

X will select businesses unable to obtain conventional financing or attract conventional investment on commercially reasonable terms. X may also invest in businesses that are financially secure but unwilling without further inducement to locate operations in M. In such case, X will make loans (including below-market loans) or investments to induce these businesses to enter into or expand their operations in M. In all cases, businesses will be selected based on their ability to

provide the most training and/or jobs for the unemployed or underemployed in M, and for-profit investors would not make such investments on the same terms.

X will not require businesses to be controlled by residents of M. The relaxation of this guideline will permit X to participate in projects with U.S. governmental organizations such as the Overseas Private Investment Corporation (OPIC), which provides funding only to businesses that are majority-owned by U.S. persons.

X will exercise expenditure responsibility with respect to loans and equity investments in businesses under the Direct Loan or Investment Program.

Rulings Requested

X requests the following rulings:

1. X's Investment Program is an exclusively charitable, program-related activity for purposes of the Code because its purpose is to relieve conditions of poverty in an impoverished country by alleviating unemployment and underemployment.

2. X's Investment Program will not cause the imposition of any of the following private foundation excise taxes:

a. The Government of M is unrelated to X, and the investments will not in any way create any self-dealing under section 4941 of the Code;

b. The amounts invested by X under the Investment Program will be qualifying distributions for purposes of meeting the minimum qualifying distribution amount under section 4942;

c. X's Investment Program is a program-related investment and will not create any business holding under section 4943;

d. X's Investment Program is a program-related investment and will not result in a jeopardizing investment under section 4944; and

e. X's loans under the Government Program are program-related investments and not taxable expenditures under, and not subject to the expenditure responsibility rules of, section 4945 because they are made to the Government; X's investments under the Direct Loan and Investment Program are program-related investments and not taxable expenditures under section 4945 because X will exercise expenditure responsibility.

3. X's Investment Program will not give rise to unrelated business taxable income under sections 511-513 of the Code.

Law

Sections 170(c)(2)(B) and 501(c)(3) of the Code both refer to organizations organized and operated exclusively for charitable purposes.

Section 511 of the Code imposes a tax on the unrelated business taxable income of exempt organizations.

Section 512 of the Code defines "unrelated business taxable income" as gross income derived from any unrelated trade or business regularly carried on by it, less certain deductions and modifications.

Section 512(b) of the Code excludes from unrelated business taxable income dividends, interest, and certain gains and losses from the disposition of property, except in the case of certain debt-financed property.

Section 513(a) of the Code defines "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its exempt purpose or function.

Section 4941(a) of the Code imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d) of the Code defines "self-dealing" generally as certain direct or indirect transactions between a disqualified person and a private foundation.

Section 4942 of the Code imposes an excise tax on a private foundation's undistributed income, defined as its distributable amount less qualifying distributions.

Section 4943 of the Code imposes an excise tax on the excess business holdings of a private foundation.

Section 4944 of the Code imposes an excise tax on a private foundation's making of an investment in such a manner as to jeopardize the carrying out of any of its exempt purposes.

Section 4944(c) of the Code provides that an investment is not jeopardizing if its primary purpose is to accomplish 170(c)(2)(B) purposes and no significant purpose is the production of income or the appreciation of property.

Section 4945 of the Code imposes an excise tax on each taxable expenditure of a private foundation.

Section 4945(d) of the Code defines a "taxable expenditure" by a private foundation as an amount paid or incurred--

(1) to attempt to influence legislation,

(2) to influence a specific public election or carry on a voter registration drive,

(3) to grant funds to an individual for travel, study, or similar purposes unless certain requirements are met,

(4) to grant funds to an organization unless it is described in sections 509(a)(1), (2), or (3) or 4940(d)(2) or unless the private foundation exercises expenditure responsibility with respect to the grant in accordance with section 4945(h), or

(5) for a non-170(c)(2)(B) purpose.

Section 4946 of the Code defines a "disqualified person" with respect to a private foundation as a substantial contributor, a foundation manager, a 20% owner of a substantial contributor, a family member of an individual who is one of the above, an entity 35% owned by one of the above, or a government official.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" includes relief of the poor and distressed or of the underprivileged.

Section 1.513-1(d)(2) of the regulations provides that for the conduct of trade or business to be substantially related to an organization's exempt purposes, the production or distribution of the goods or the performance of the services must contribute importantly to the accomplishment of those purposes.

Section 53.4942(a)-3(a)(2) of the regulations defines a "qualifying distribution" as including any amount (including program-related investments and reasonable and necessary administrative expenses) paid to accomplish 170(c)(2)(B) purposes, other than certain contributions to organizations controlled by the foundation or one or more disqualified persons or to non-operating private foundations.

Section 53.4943-10(b) of the regulations provides that business holdings do not include program-related investments.

Section 53.4944-3(a)(1) of the regulations defines a "program-related investment" as an investment which possesses the following characteristics:

(i) its primary purpose is to accomplish 170(c)(2)(B) purposes;

(ii) No significant purpose is the production of income or the appreciation of property; and

(iii) No purpose is to accomplish 170(c)(2)(D) purposes.

Section 53.4944-3(a)(2)(i) of the regulations provides that an investment shall be considered as made primarily to accomplish one or more purposes described in section 170(c)(2)(B) of the Code if it significantly furthers the accomplishment of the private foundation's exempt activities and if the investment would not have been made but for such relationship between the investment and the accomplishment of the foundation's exempt activities.

Section 53.4944-3(a)(2)(iii) of the regulations provides that in determining whether a significant purpose of an investment is the production of income or the appreciation of property, it shall be relevant whether investors solely engaged in the investment for profit would be likely to make the investment on the same terms as the private foundation. However, the fact that an investment produces significant income or capital appreciation shall not, in the absence of other

factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

In example (1) of section 53.4944-3(b) of the regulations, X is a small business enterprise located in a deteriorated urban area and owned by members of an economically disadvantaged minority group. Conventional sources of funds are unwilling or unable to provide funds to X on terms it considers economically feasible. Y, a private foundation, makes a loan to X bearing interest below the market rate for commercial loans of comparable risk. Y's primary purpose for making the loan is to encourage the economic development of such minority groups. The loan has no significant purpose involving the production of income or the appreciation of property. The loan significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the loan and Y's exempt activities. Accordingly, the loan is a program-related investment even though Y may earn income from the investment in an amount comparable to or higher than earnings from conventional portfolio investments.

In example (5) of section 53.4944-3(b), X is a business enterprise which is financially secure and the stock of which is listed and traded on a national exchange. Y, a private foundation, makes a loan to X at an interest rate below the market rate in order to induce X to establish a new plant in a deteriorated urban area which, because of the high risks involved, X would be unwilling to establish absent such inducement. The loan is made pursuant to a program run by Y to enhance the economic development of the area by, for example, providing employment opportunities for low-income persons at the new plant, and no significant purpose involves the production of income or the appreciation of property. The loan significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the loan and Y's exempt activities. Accordingly, even though X is large and established, the investment is program-related.

Section 53.4945-2(a)(5) of the regulations provides generally that a grant by a private foundation to an organization described in section 509(a)(1), (2) or (3) (or treated as such) does not constitute a taxable expenditure by the foundation under section 4945(d) if the grant by the private foundation is not earmarked to be used for a prohibited activity or in a prohibited manner, and there does not exist an agreement, oral or written, whereby the grantor foundation may cause the grantee to engage in any such prohibited activity or to select the recipient to which the grant is to be devoted. A grant by a private foundation is earmarked if the grant is given pursuant to an agreement, oral or written, that the grant will be used for specific purposes.

Section 53.4945-4(a)(2) of the regulations defines "grants" as including program-related investments.

Section 53.4945-4(a)(4)(i) of the regulations provides that, in general, a grant by a private foundation to another organization, which the grantee organization uses to make payments to an individual for purposes described in section 4945(d)(3) of the Code, shall not be regarded as a grant by the private foundation to the individual grantee if the foundation does not earmark the use of the grant for any named individual and there does not exist an agreement, oral or written, whereby such grantor foundation may cause the selection of the individual grantee by the grantee organization. For such purposes, a grant described herein shall not be regarded as a grant by the foundation to an individual grantee even though such foundation has reason to believe that certain individuals would derive benefits from such grant so long as the grantee organization exercises control, in fact, over the selection process and actually makes the selection completely independently of the private foundation.

Section 53.4945-4(a)(4)(ii) of the regulations provides that a grant by a private foundation to an organization described in section 509(a)(1), (2), or (3) of the Code, which the grantee organization uses to make payments to an individual for purposes described in section 4945(d)(3), shall not be regarded as a grant by the private foundation to the individual grantee (regardless of the application of section 53.4945-4(a)(4)(i) of the regulations) if the grant is made for a project which is to be undertaken under the supervision of the section 509(a)(1), (2), or (3) organization and such grantee organization controls the selection of the individual grantee. This rule shall apply regardless of whether the name of the individual grantee was first proposed by the private foundation, but only if there is an objective manifestation of the section 509(a), (1), (2), or (3) organization's control over the selection process, although the selection need not be made completely independently of the private foundation. For purposes of this rule, an organization shall be considered a section 509(a)(1) organization if it is treated as such under section 53.4945-5(a)(4).

In Example (1) of section 53.4945-4(a)(4)(iv) of the regulations, M, a university described in section 170(b)(1)(A)(ii) of the Code, requests that P, a private foundation, grant it $100,000 to enable M to obtain the services of a particular scientist for a research project in a special field of biochemistry in which he has exceptional qualifications and competence. P, after determining that the project deserves support, makes the grant to M to enable it to obtain the services of this scientist. M is authorized to keep the funds even if it is unsuccessful in attempting to employ the scientist. Under these circumstances P will not be treated as having made a grant to the individual scientist for purposes of section 4945(d)(3) and (g), since the requirements of subdivision (i) of this subparagraph have been satisfied. Even if M were not authorized to keep the funds if it is unsuccessful in attempting to employ the scientist, P would not be treated as having made a grant to the individual scientist for purposes of section 4945(d)(3) and (g), since it is clear from the facts and circumstances that the selection of the particular scientist was made by M and thus the requirements of section 53.4945-5(a)(4)(ii) of the regulations would have been satisfied.

Example (2) of section 53.4945-4(a)(4)(iv) of the regulations assumes the same facts as Example (1), except that there are a number of scientists who are qualified to administer the research project, P suggests the name of the particular scientist to be employed by M, and M is not authorized to keep the funds if it is unsuccessful in attempting to employ the particular scientist. For purposes of section 4945(d)(3) and (g) of the Code, P will be treated as having made a grant to the individual scientist whose name it suggested, since it is clear from the facts and circumstances that selection of the particular scientist was made by P.

Section 53.4945-5(a)(4)(iii) of the regulations provides that a foreign government (or agency or instrumentality) is treated as a 509(a)(1) organization for 4945 purposes even if it is not described in section 501(c)(3) of the Code. However, a grant to any such organization must be made exclusively for 170(c)(2)(B) purposes.

Section 53.4945-5(a)(6)(i) of the regulations provides that a grant by a private foundation to a grantee organization which the grantee organization uses to make payments to another organization (the secondary grantee) shall not be regarded as a grant by the private foundation to the secondary grantee if the foundation does not earmark the use of the grant for any named secondary grantee and there does not exist an agreement, oral or written, whereby such grantor foundation may cause the selection of the secondary grantee by the organization to which it has given the grant. For such purpose, a grant described herein shall not be regarded as a grant by the foundation to the secondary grantee even though such foundation has reason to believe that certain

organizations would derive benefits from such grant so long as the original grantee organization exercises control, in fact, over the selection process and actually makes the selection completely independently of the private foundation.

Rev. Rul. 71-460, 1971-2 C.B. 231, held that a 501(c)(3) organization may conduct part or all of its charitable activities in a foreign country.

Rev. Rul. 74-587, 1974-2 C.B. 162, held exempt under section 501(c)(3) of the Code an organization formed to relieve poverty, eliminate prejudice, reduce neighborhood tensions, and combat community deterioration through a program of financial assistance in the form of low-cost or long-term loans to, or the purchase of equity interests in, various business enterprises in economically depressed urban areas. Because of the lack of capital for development, the limited entrepreneurial skills of the owners, the social unrest and instability of the area, and the depressed market within which they operated, many of the businesses located in these areas had declined, fallen into disrepair, or ceased to operate. The organization provided funds to corporations or individual proprietors unable to obtain funds from conventional commercial sources because of the poor financial risks involved in establishing and operating enterprises in these communities or because of their membership in minority or other disadvantaged groups. The program was designed to enable the borrowers to start a new business or to acquire or improve an existing business. Loan terms were reasonably related to the needs of the particular business. Where the financial assistance took the form of acquiring an equity interest, the organization disposed of such interest as soon as the success of the business was reasonably assured. In selecting recipients for aid, the organization consulted with other nonprofit and governmental organizations operating anti-poverty and anti-discrimination programs to identify particular undertakings that would fill a community need and offer the greatest potential community benefit. Preference was given to businesses that would provide training and employment opportunities for the unemployed or under-employed residents of the area. In selecting a recipient for financial assistance, the organization considered the applicant's motivation, education, experience, and prior participation in management and job training programs. It also considered recommendations from other organizations conducting rehabilitation and training programs. The organization did not actively participate in the day-to-day operation of the businesses to which it provided financial assistance, but reviewed their progress periodically to assure that the funds were properly used. Also, when appropriate, the organization provided technical assistance and counseling. The organization was financed by grants and contributions. The Service considered the loans and purchases of equity interest as made not for purpose of profit or gain but for the purpose of advancing the organization's charitable goals. Although some of the borrowers did not themselves qualify for charitable assistance as such, they were merely the instruments by which the charitable purposes were sought to be accomplished.

Rev. Proc. 80-39, 1980-2 C.B. 772, provides guidelines for determining whether educational loans made by a private foundation under an employer-related loan program are taxable expenditures under section 4945 of the Code. One requirement under a safe harbor test is that selection of loan recipients must be made by a committee consisting wholly of individuals totally independent (except for participation on this committee) and separate from the private foundation, the foundation's creator, and the relevant employer. An individual who is a former employee of either the foundation or the employer concerned will not be considered totally independent. Such committees preferably should consist of individuals knowledgeable in the educational field so that they have the background and knowledge to evaluate properly the potential of the applicants. The forwarding of the selections by the independent selection committee to the employer or the private foundation for the sole purpose of verifying the eligibility requirements and selection criteria used by

the committee in considering the candidates and in making its selection will not disqualify the program. Rev. Proc. 76-47, 1976-2 C.B. 670, provides guidelines for determining whether a grant made by a private foundation under an employer-related grant program to an employee or to a child of an employee of the particular employer to which the program relates is a scholarship or fellowship grant subject to the provisions of section 117(a) of the Code (and thus satisfies certain requirements under section 4945(g)(1)), and contains a similar "independent selection committee" guideline.

Rev. Rul. 81-284, 1981-2 C.B. 130, amplifying Rev. Rul. 74-587, held that a small business investment company (SBIC) licensed under section 301(d) of the Small Business Investment Act of 1958 may qualify under section 501(c)(3) of the Code even though Small Business Administration regulations require an SBIC to charge interest rates sufficient in the aggregate to recover its costs, and impose various considerations that will restrict the degree of financial support that may be offered to a prospective recipient (regarding the borrower's type of business, security interests, and the relationship between the SBIC and the borrower). The organization at issue was ruled exempt under section 501(c)(3) of the Code where it was organized on a nonprofit basis to relieve poverty, eliminate prejudice and discrimination, reduce neighborhood tensions, and combat community deterioration, by providing low-cost or long-term loans to businesses not able to obtain funds from conventional commercial sources, with preference given to businesses providing training and employment opportunities for the unemployed or under-employed residents of economically depressed areas.

Rationale

Each of the requested rulings is discussed in turn below.

1. Under the circumstances presented, we are satisfied that X's Investment Program in M will further the charitable purpose of providing relief to the poor and distressed or underprivileged. The facts are similar to examples (1) and (5) of section 53.4944-3(b) of the regulations and Rev. Ruls. 74-587 and 81-284.

2.a. In order for an act of self-dealing to occur, there must be a direct or indirect transaction between a private foundation and a disqualified person. We do not find any direct or indirect transaction between X and any disqualified person under the facts presented.

2.b. Since the Investment Program will be conducted for charitable purposes and will consist of program-related investments (see 2.d), investments made under the program will be qualifying distributions under section 4942 of the Code. See section 53.4942(a)-3(a)(2) of the regulations.

2.c. Since the investments under the Investment Program will be program-related investments (see 2.d), they will not constitute business holdings. See section 53.4943-10(b) of the regulations.

2.d. Under the circumstances presented, we find that the primary purpose of X's Investment Program is to accomplish charitable purposes, that X's investments under this program will significantly further the accomplishment of the program, that such investments would not be made except to accomplish charitable purposes, that X has no significant purpose in making the

investments involving the production of income or appreciation of property, and that X has no purpose to accomplish non-exempt purposes.

2.e. Under the circumstances presented, X's Investment Program will not result in a taxable expenditure under section 4945(d)(1), (2), (3), or (5) of the Code. X's Direct Loan and Investment Program will not result in a taxable expenditure under section 4945(d)(4) because X will exercise expenditure responsibility with respect to such investments under section 4945(h).

We have considered whether X, under section 4945(d)(4) and (h) of the Code, must exercise expenditure responsibility over loans in the Government Program from the Government of M to the local banks and from the local banks to the business borrowers. We have determined that X need not.

Generally, a private foundation need not exercise expenditure responsibility over a grant to a public charity. Section 53.4945-5(a)(4)(iii) of the regulations treats as public charities foreign governments or their agencies or instrumentalities. However, section 53.4945-5(a)(6)(i) of the regulations contains a special "look-through" rule where the foundation causes the selection of the public charity's grant recipient. The question in this case is whether X's power to approve the Government of M's selection of a local bank, or the local bank's loan to a business borrower, is a power of selection described in section 53.4945-5(a)(6)(i) of the regulations, even though X plays no role in nominating the local bank or business borrower in the first instance. Sections 53.4945-4(a)(4)(i) and (ii) indicate that there may be varying degrees of control and independence over a selection process short of complete independence.

We believe that X's power of approval is consistent with the notion that the Government of M and the local banks make their selection "completely independently" of X. In a similar context, Rev. Proc. 80-39 contains guidelines for a process of approving educational loans under employer-related programs consistent with section 4945 of the Code. To meet a safe harbor test, the selection of the individual recipient must be made by a selection committee "totally independent" of the foundation. The committee's forwarding of selections to the foundation for the sole purpose of verifying the eligibility requirements and selection criteria used does not render the selection committee less than totally independent of the foundation. Similarly, it can be said that the Government of M and the local banks make their selections completely independently of X, even though X has a limited role in the selection process to ensure compliance with its written eligibility and selection standards.

3. Consistent with our finding that X's Investment Program will further its charitable purposes, we find that the Investment Program contributes importantly to the accomplishment of X's charitable purposes, and therefore will not constitute unrelated trade or business. Even if the business activity were unrelated, however, the income generated by the activity might still qualify for the "passive income" exceptions to unrelated business taxable income set forth in section 512(b) of the Code.

Rulings

Accordingly, we rule as follows:

1. X's Investment Program is an exclusively charitable, program-related activity for purposes of the Code because its purpose is to relieve conditions of poverty in an impoverished country by alleviating unemployment and underemployment.

2. X's Investment Program will not cause the imposition of any of the following private foundation excise taxes:

a. The Government of M is unrelated to X, and the investments will not in any way create any self-dealing under section 4941 of the Code;

b. The amounts invested by X under the Investment Program will be qualifying distributions for purposes of meeting the minimum qualifying distribution amount under section 4942;

c. X's Investment Program is a program-related investment and will not create any business holding under section 4943;

d. X's Investment Program is a program-related investment and will not result in a jeopardizing investment under section 4944; and

e. X's loans under the Government Program are program-related investments and not taxable expenditures under, and not subject to the expenditure responsibility rules of, section 4945 because they are made to the Government; X's investments under the Direct Loan and Investment Program are program-related investments and not taxable expenditures under section 4945 because X will exercise expenditure responsibility.

3. X's Investment Program will not give rise to unrelated business taxable income under sections 511-513 of the Code.

Except as we have ruled above, we express no opinion as to the tax consequences of the grant under the cited provisions of the Code or under any other provisions of the Code.

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

Because this letter could help resolve any future tax questions relating to X's activities, X should a copy of this ruling in its permanent records.

We are providing the [redacted] Key District Director a copy of this ruling.

Sincerely yours,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

324