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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200209061

Date:
DEC - 5 2001

SIN: 4942.00-00

Contact Person:

Identification Number:

Telephone Number:
(202) 283-8954

T: EO: 134

Employer Identification Number:

Legend:
B=
C=
D=

Dear Sir or Madam:

This is in response to your letter dated September 21, 2001, in which you requested a ruling that grants distributed through D will be considered qualifying distributions made directly for the active conduct of activities constituting your exempt purpose under section 4942.

You are exempt under section 501(c)(3) of the Code and have been classified as a private foundation within the meaning of section 509(a). The Internal Revenue Service has ruled that your scholarship procedures comply with section 4945(g)(1) of the Code and that scholarships granted under these procedures will not be taxable expenditures within the meaning of section 4945(d)(3).

Your exempt purpose is to promote youth and education in C. You award scholarships and grants to individuals meeting certain criteria, administer a career counseling program, and award classroom enhancement grants.

You currently provide academic scholarships to graduates of B, a two-year college that is part of C's community college system. This fall you will give scholarships to ten graduates of B who have enrolled in one of C's four-year universities. These renewable scholarships range between $2,500 and $5,000 per student for the 2001-2002 academic year. Currently, the scholarship checks awarded to students are made payable to the students. You have complete responsibility for interviewing and selecting all scholarship recipients, and providing mentoring services until they graduate.

For some time, it has been the policy of C to provide matching funds for donations to C's

community colleges. In 1978, B established D to receive donated monies designated for scholarships. Donations to D qualify for state matching funds, which at the current matching level effectively doubles the amount of D's scholarship donations. D is exempt from federal income tax under section 501(c)(3) of the Code.

D provides a vehicle through which individuals, businesses, private foundations and other organizations may support B. The mission of D is threefold: to provide access to higher education, to provide assets for future enhancement of academic programs, and to manage the endowment. D is governed by a twenty-five member volunteer Board of Directors. An independent auditor conducts an annual audit and these financial statements are filed with B's Board of Trustees and C.

You propose that scholarship grants be distributed through D in order to avail D of the C matching grants. The review of applications, interviews, administration, selection and mentoring process will continue to be administered by you in the same format that is currently approved. In addition, you will still have total discretion over your funds and will earmark the funds to the specific students you have chosen. The scholarships distributed through D will be consistent with a significant number of scholarships made by you in the past. The only change will be that you will make the checks payable to D rather than to the students, and D will make checks payable to individual students as directed by you.

Section 4942(a) of the Code imposes tax on the undistributed income that a private foundation fails to timely distribute. Section 4942(c) provides that "undistributed income" is the distributable amount required to be distributed less qualifying distributions as defined under section 4942(g).

Section 4942(g)(1) of the Code provides that the term "qualifying distribution" means any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), or any amount paid to acquire an asset used or held for use directly in carrying out one or more purposes described in section 170(c)(2)(B).

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 53.4945-4(a)(4) of the Foundation and Similar Excise Taxes Regulations describes certain designated grants as follows: 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), 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 purposes of this subparagraph, 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.

Information provided by you indicates that you will continue to approve all disbursements, select all candidates, and mentor those chosen for scholarships. Moreover, D throughout its possession of the funds will remain obligated to disburse the funds in accordance with your instructions. Therefore, you will have effective control over the funds at all times.

Based on the aforementioned facts and circumstances, we have determined that these funds should be considered as a grant made to an individual within the definition of section 53.4945-4(a)(4) of the regulations.

Therefore, grants made to individuals that are distributed through D should be considered qualifying distributions made directly for the conduct of activities constituting your exempt purpose under section 4942 of the Code.

We are informing the Ohio TE/GE office of this action. Please keep a copy of this ruling in your organization's permanent records.

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 as precedent.

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.

Sincerely,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4